
Appeal Decisions

Hearing Held on 12 August 2024

Site visit made on 12 August 2024

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21 November 2024

Appeal Ref: APP/G2245/C/23/3325354 ('Appeal A')

Plot 4, Grazing Land south of Viaduct Terrace, Horton Road, South Darenth, Kent

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Jason Knowles against an enforcement notice issued by Sevenoaks District Council.
- The enforcement notice was issued on 20 June 2023.
- The breach of planning control as alleged in the notice is *Without planning permission the unauthorised change of use from agricultural land to a mixed use of agricultural land and the stationing of three residential caravans and associated hard surfaces, boundary treatments and paraphernalia.*
- The requirements of the notice are to (1) permanently cease residential occupation on the land; (2) permanently return the land to its previous agricultural use by removing all caravans, and hard surfaces, boundary treatments and paraphernalia. Land to be returned to grass by seeding; and (3) the above to be complied [with] within six months of the notice becoming effective.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal Ref: APP/G2245/W/23/3325352 ('Appeal B')

Plot 4, Grazing Land south of Viaduct Terrace, Horton Road, South Darenth, Kent

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Jason Knowles against the decision of Sevenoaks District Council.
- The application Ref 22/02053/FUL, dated 20 July 2022, was refused by notice dated 2 June 2023.
- The development proposed is described as the change of use of the land for the stationing of 3 touring caravans for occupation by an extended Romany Gypsy family.

Summary Decision: The appeal is dismissed.

Preliminary Matters

1. The parties agreed at the hearing that the previous use of the land was not agricultural, as alleged in the notice, but was in an equestrian use with a stables building already in existence. The mixed use alleged in the notice would comprise an equestrian rather than agricultural element. Thus the allegation

would need correcting, and consequently so would the question arising under the deemed planning application under the ground (a) appeal on Appeal A.

2. The development in Appeal B does not describe a mixed use of land, but essentially describes the use of the land as a caravan site. The parties agreed at the hearing that the present land use is mixed. I saw on site that the land in the 'red line' of both appeals is part of a slightly wider site, including a field used for keeping horses towards the rear of it. It was explained that the horses are brought into the stable building (otherwise used for washing and storage) during the winter period. Thus the development described in Appeal B does not quite accurately describe the agreed mixed use of the land that is presently taking place, although of course that does not preclude consideration of the application.

Main Issue

3. The site lies within the Metropolitan Green Belt, and the Council's sole reason for issuing the notice and refusing planning permission alleges harm to the Green Belt. Although potential changes are afoot to national policy ('the Framework') although not to the relevant policy in respect of Traveller sites ('the PPTS') in respect of the Green Belt, the parties to the appeal are agreed that the development is inappropriate in the Green Belt as the position is presently understood. Additionally, the Council allege harm to the visual and spatial openness of the Green Belt.
4. The question arising in this appeal is therefore, upon assessment of the harm to the Green Belt, whether there are other factors in the case amounting to very special circumstances that could justify a grant of planning permission.
5. As identified at the start of the hearing, other matters for consideration in ascertaining whether very special circumstances exist include the need for Gypsy and Traveller sites in the area, whether all or any of the occupants of the site are Gypsies or Travellers, and the suitability and availability of any alternative sites. It may also be necessary to consider any personal circumstances put forward by the appellants to justify any grant of planning permission.

Reasons

The Green Belt: harm

6. The site lies on the edge of the settlement of South Darenth and is one of what appears to be a number of small fields used for grazing land on the edge of the village. The village hall lies directly opposite the site, almost at the settlement edge on that eastern side of Horton Road, surrounded by other recreational uses. On the western side, some buildings, mostly residential, lie south of the railway viaduct and the junction with Station Road, and the appeal site is then separated from the existing residential dwellings by a field. Further south of the appeal site, stable buildings lie on other grazing plots and a large electricity pylon lies close to the site with lines overhead. Then the land is undeveloped to the next settlement at Horton Kirby. That is some distance away, and although I am cognisant of the parish council's concerns that the countryside is encroached upon here, I do not find that the separation of the two settlements is seriously compromised by the development, which does not extend further south than the existing development on the other side of Horton Road.

7. The PPTS provides that traveller sites are always inappropriate development in the Green Belt, although the parties are agreed that this site constitutes previously developed land by reason of an earlier permission for the stable building and consequent equestrian, rather than agricultural, use. However, it was not contended that the appeal developments would not be inappropriate for this reason. Although the Framework envisages that the redevelopment of previously-developed land might not be inappropriate, this is subject to the redevelopment not having any greater impact on the openness of the Green Belt. I agree that this would not be the case here.
8. Under the terms of a present consultation concerning changes to the Framework, the land would potentially amount to 'grey belt'. This is proposed to be defined as land in the Green Belt comprising previously developed land and any other parcels and/or areas of Green Belt land that make a limited contribution to the five Green Belt purposes, but excluding some identified areas or assets of particular importance: generally, environmental designations which would not apply here. The proposal is then to permit development of 'grey belt' land as not inappropriate where in sustainable locations, the function of the Green Belt in the area would not fundamentally be undermined, and certain other criteria are met. Were these provisions now in force, it is likely that (save for the application of the PPTS) the development under appeal would not be inappropriate in the Green Belt, and it is possible that at some future stage the proposed development would not be unacceptable in principle. I attach a little weight to this aspect. Nonetheless, the development is presently inappropriate and I attach substantial adverse weight to this definitional harm.
9. The harm to openness is rather limited. Although previously developed, the development as a Traveller site has introduced more paraphernalia and structures than would be anticipated of an equestrian use, with a more extensive human presence for purposes, namely residential, that are not associated with the Green Belt unlike the recreational use generally associated with the keeping of horses. The caravans on the site, although not buildings, are a tangible physical presence on the land having a somewhat greater impact on the openness of the site than the single stable building formerly comprising the only built development. Additional hardstanding has been laid to facilitate the residential use, thus compromising the former lack of built development. Nonetheless, the land was formerly developed to some degree; it is set in the context of some surrounding built development including the village hall; and the caravans constitute moveable structures so lacking the permanent physical change to the land that would result from buildings of comparable size. Thus I find that there is some additional harm to openness, but that this is limited. Nonetheless, in accordance with the Framework, it attracts substantial adverse weight as an element of harm to the Green Belt.

Other considerations

The development plan

10. Although a new Local Plan is progressing, the present local policy context is primarily found in policy SP6 of the Sevenoaks Core Strategy of 2011. Criteria applicable to the allocation of traveller sites are (a) that the site should be located within or close to existing settlements with a range of services and facilities and access to public transport; (b) that the site is of a scale appropriate to accommodate the facilities required and will offer an acceptable

living environment for future occupants in terms of noise and air quality; (c) that safe and convenient vehicular and pedestrian access can be provided to the site; (d) that the site is not located within an area liable to flood; (e) that the development will have no significant adverse landscape or biodiversity impact: in the (former) AONBs, sites should only be allocated where it can be demonstrated that the objectives of the designation will not be compromised; and (f) that alternatives should be explored before Green Belt locations are considered.

11. For other, unallocated, sites coming forward, permission will only be given (outside existing settlement confines) where it is demonstrated that occupation will be by gypsies and travellers or travelling showpeople and that the proposed occupant has a need for accommodation that cannot be met on lawful existing or allocated sites in the region. It is also necessary to comply with the allocation criteria, as set out above.
12. There is no dispute that the land is being occupied by gypsies or travellers. There is also no dispute that no existing or allocated alternative sites are available. Of the allocation criteria, the Council do not dispute that all criteria are satisfied, save for the final criterion relating to the consideration of alternatives prior to using the Green Belt.
13. The Council have conducted a Gypsy and Traveller Accommodation Assessment ('GTAA') in 2022 and propose a new policy in the emerging Local Plan, GT1, that allocates three sites containing 22 pitches over the emerging plan period. All of those sites are in the Green Belt. I was told at the hearing that 93% of the Council's area falls within the Green Belt and thus the prospect of finding suitable sites beyond it is limited. Thus, notwithstanding the absence of a search for alternatives by the appellant, I find that there is overarching compliance with the specific policy provisions of the development plan as they relate to the development of gypsy or traveller sites in the area, and I accord this compliance considerable weight in favour of the proposal. It appears that the scope for applying criterion (f) of SP6 is very limited, because there appears no realistic prospect of sites outside the Green Belt coming forward as alternatives for consideration.
14. That specific policy compliance cannot by itself override the protections applicable to the Green Belt or be determinative of the question whether very special circumstances exist to justify the development proposal, however, and I now turn to consider other factors in the case.

The need for sites

15. The Council concede that, with no existing adopted allocations for gypsy or traveller pitches in the area, they are unable to demonstrate a 5-year supply of specific deliverable sites.
16. An accommodation assessment (the GTAA) has recently been carried out in pursuit of the preparation of the Local Plan, identifying a need for an additional 43 pitches in the period to 2040. The Council's case is that permissions have since been granted for 30 pitches, bringing the remaining level of identified need for pitches down to 13 for the period to 2040. A consultation in January 2024 proposed three additional sites for allocation providing 22 pitches. The Local Plan itself is yet to proceed through the final stages of consultation or examination.

17. The appellant takes issue with the findings of the GTAA and the Council's contention of having granted permissions for 30 pitches to meet the needs identified within it. The omission from the GTAA assessment of some of the sites for which (retrospective) permissions have since been granted gives rise to some circumspection as to the comprehensiveness of the needs survey and analysis. The Council's consultant conceded at the hearing that the evidence should have been looked at more closely. It is also (consequently) the case that those permissions (the Hawkhurst and Macandy sites were specifically mentioned in this regard) do not necessarily meet the needs of those persons identified by the GTAA giving rise to the 43 pitch need figure.
18. Some permissions have been granted on a personal or temporary basis, and the appellant challenges whether permissions carrying such planning conditions can in reality be said to meet the general need identified in the GTAA which assumes a requirement for permanent pitches available to any gypsy or traveller. Issue is also taken with the weighting of data, said in the GTAA (at paragraph 1.87) to be 1.543 to take account of 'responding' (70) households as against the total (108). The data appear to have been weighted in this way irrespective of the number of answers received to any particular question. In relation to some questions the number of responses was fewer than 70, leading the appellant to question the weighting and resulting multiplier, which in turn potentially affects the assessment of need.
19. It would not be appropriate for me to conduct any assessment of the general robustness of the GTAA for the purposes of this appeal: it forms part of the evidence base for the emerging Local Plan and will receive appropriate scrutiny as part of that process. For the purposes of this appeal, I accept that there is some merit in the appellant's criticisms concerning the omission of some (then) unauthorised sites (including this one, although the residential use of the site pre-dated the final GTAA report by only a couple of months) from the assessment of need, and the apparent reliance by the Council on temporary or personal permissions to meet some of that need. It appears that the unmet need in the area is likely to be somewhat underestimated as a result of these factors.
20. The Council has made considerable progress by granting several permissions since April 2022 but it remains the case that there is unmet need in the area and the Council cannot demonstrate a 5-year supply of sites. These factors weigh strongly in favour of the appeal proposal.

The personal circumstances of the site's occupants including children

21. There are three caravan pitches on the site, each occupied by members of the appellant's family. All are registered with a local GP, and one of the senior occupiers has a health condition requiring regular attendance at the Darenth Valley Hospital. At the time of the hearing there were 3 young children in occupation of the site, with another on the way. All are under three years old, with the eldest due to have begun pre-school at the local primary school by now.
22. The appeal site has been in family hands for several years, and around fifteen years ago permission was refused, and dismissed on appeal, for a similar development to those now under appeal. The appellant himself was a child at the time affected by that earlier decision. Reasons included the effects on the Green Belt and what was then an unacceptable flood risk, although I

understand from the parties that the latter matter has been overcome through more recent measures. Since that dismissal, the family has lived a rather peripatetic existence, moving onto the site again following the arrival of the next generation of children in the hope of creating a settled existence in which to raise and school the children whilst the menfolk continue to travel for work. The appellant's mother spoke at the hearing of her fear that the children would be seriously disadvantaged if made to move off the site, telling of the insecurities and vulnerability of a roadside existence and the lack of educational opportunities that had been available to her own children. The appellant's sister-in-law, the mother of two of the children on the site and expecting a third at the time of the hearing, spoke eloquently of her concerns for her children's health, social skills and education if these appeals are dismissed. The appeal site is the only home the children have ever known. Although the family have met with some local hostility, she considered that they were gradually integrating with the settled community, and expressed the hope that this would improve once her eldest child begins pre-school and thus mixing with other children.

23. The parties will be aware that I am obliged to pay regard to the best interests of any children on the site as a primary consideration in these appeals, with no other consideration being inherently more important. That does not mean those interests are determinative of the appeals, which require an assessment of many competing considerations in the public interest. They also include the relevant rights arising under the European Convention on Human Rights, particularly article 8 which requires a decision maker to accord appropriate respect to a person's private and family life and home. The public sector equality duty is also relevant to my considerations.
24. The family circumstances are not in themselves exceptional, in that there are no serious health conditions or other circumstances requiring the family to be located at this particular site. However, I am in no doubt that it is in the best interests of the children on the site to achieve a settled existence in which they may receive continuous education and regular socialising with other children of their own age. Because of the dearth of other, non-Green Belt sites, in the area, I give this particular weight in favour of the appeals because it is most unlikely that this outcome could be achieved elsewhere without some harm to the Green Belt arising.

Other matters

25. The parish council's concerns as to the separation of the settlement of South Darenth from Horton Kirby has been considered above, but they raise the additional point that this is the fourth plot of five in the immediate vicinity, and consider there is a real risk of a precedent being set for the development of the other four plots. I understand these to mean the surrounding grazing plots of land. I have no information before me as to the aspirations of the owners or occupiers of those other plots of land for any residential or other development, or of any personal circumstances that might apply in any such case. Accordingly I cannot attribute any adverse weight to this factor, because I have no information on which to base it. The parish council appear to acknowledge that a permission here would have only the 'potential' to encourage further development, which is insufficient reason in itself not to allow a permission here.

26. The parish council also consider, in respect of the public sector equality duty, that the fostering of good relations between those with and without certain protected characteristics has not been aided by the appellant's actions in respect of the land, by moving onto the site in advance of obtaining the required planning permission. They refer to the 'flouting' of planning restrictions, and thus the question arises whether intentional unauthorised development has taken place. This was not a point pursued by the Council, and the relevant written ministerial statement on the matter is primarily concerned with preventing an advantage arising from unauthorised development that is not readily reversible. Here, although I accept that the appellant is likely to have recognised the need for planning permission, given the earlier refusal and appeal dismissal, I do not think that an unwarranted advantage has arisen because if permission were refused then the reversion of the site to its former condition, as required by the notice, is readily achievable. Thus even if this were a material consideration, I would attribute it no weight. As to the fostering of good relations, that is a duty placed on public authorities rather than on those persons with protected characteristics themselves, and so is unaffected by the appellant's actions. Those actions are not in any event answerable by all of the site's occupiers including those children living there.
27. Other representations suggest that the site has given rise to adverse flooding events in the vicinity resulting from the hardstanding that has been laid. As noted above, the flood risk to the site was a reason for previously refusing planning permission, but that has since been overcome. There is no professional evidence before me to suggest that the site contributes to flooding in the area and the Council do not share those concerns.
28. It has been pointed out to me by the appellant that some of the other permissions granted in the area for gypsy or traveller developments have related to sites that are not only in the Green Belt but also benefit from other protections, in particular sites falling within areas of landscape designation. That a permission at this site would 'only' harm the Green Belt is potentially a matter in its favour, although the weight to be given to this is tempered in the absence of any detailed discussion of the availability of other (Green Belt) sites that might not have those landscape or other designations.

Planning Balance and Conclusions

29. Having regard to all the above matters, I have concluded that very special circumstances do exist to justify the development, and that a conditional planning permission should be granted. The site's Green Belt location, and the limited harm to the openness of the Green Belt, attract substantial adverse weight against the development. However, a number of considerations weigh in its favour, and together these form a set of very special circumstances to justify the development. I have found no policy conflict other than with Green Belt policy, and the development is otherwise supported by the development plan. Any search for an alternative site beyond the Green Belt is most unlikely to have borne fruit, and it appears inevitable that any permission for a gypsy or traveller site in the area would have to be in the Green Belt, as recognised by the proposed allocations in the emerging Local Plan. The absence of harm to any other policy designation, such as landscape protection, attracts a little weight in its favour although as explained above this was not explored in detail although other permissions have been granted affecting sites in the area with

those additional policy constraints. It is certainly not a determinative factor, and nor is the site's potential future in the 'grey belt'.

30. Notwithstanding the Council's efforts to accommodate the needs of gypsies and travellers in the area, it remains the case that they are unable to demonstrate a five year supply of sites to meet the local need, and no alternative sites have arisen for consideration.
31. The site itself is well-located on the settlement edge, close to other residential properties and community facilities, and with a range of services and facilities within a reasonable distance. Although changing the use of an equestrian field, it does not encroach further towards the settlement of Horton Kirby than does existing development on the opposite side of Horton Road and thus does not contribute to any settlement coalescence. Most importantly, the grant of a permission will allow a permanent settled existence for the extended family in which to raise and educate their next generation of children, in contrast with the rather footloose and uncertain childhood experienced by the appellant himself.
32. I have thus given consideration to whether to allow one or both appeals, and conclude that allowing Appeal A only will give best effect to regularising the development that presently exists upon the site, as well as certainty to the parties in granting only one permission. To allow Appeal B as well would not recognise the ongoing equestrian element of the use, and could potentially result in additional pressure for built development in order to accommodate that equestrian use to the rear of the (wider) site if it is to be divorced from the residential element of the use, which would likely follow if Appeal B were allowed and that permission implemented. Therefore I shall dismiss Appeal B but allow Appeal A and grant permission for the putative corrected allegation, subject to relevant and necessary planning conditions.

Planning Conditions

33. The Council suggested a suite of conditions, some of which are referable to documents submitted with the planning application that is the subject of Appeal B. Rather than refer to 'approved plans' in respect of the existing site layout (which is not restricted to touring caravans as anticipated by the Appeal B application), I shall require a site layout and landscaping scheme to be submitted for approval and retained thereafter. The number of caravans shall be restricted to three, although of no particular type. The flood risk measures set out in the UNDA report will however be incorporated into the relevant condition I shall impose, particularly requiring the caravans to achieve a height above ground level of up to 0.25m and requiring the appellant to sign up to the Environment Agency's Flood Warning scheme. A condition restricting the occupation of the site to gypsies and travellers is necessary in view of the need I have found to justify the development here. Other conditions, generally pertaining to pollution control and ecological enhancement measures, are required for the reasons set out in the officer's report on Appeal B.

Conclusions and Formal Decisions

Appeal A

34. As there are no other grounds of appeal to dispose of (the appeal on ground (g) not now requiring consideration), I shall not correct the notice before

quashing it, but the permission granted will reflect what would have been a corrected allegation to omit reference to an agricultural use and to incorporate an equestrian one.

35. For the reasons given above, I conclude that the appeal should succeed on ground (a) and permission will be granted. The appeal on ground (g) does not need to be considered.
36. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely the mixed use of the land at Plot 4, Grazing Land South of Viaduct Terrace, Horton Road, South Darenth, Kent for an equestrian use and the stationing of three residential caravans and associated hard surfaces, boundary treatments and paraphernalia subject to the following conditions:
- (1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy if applicable).
 - (2) There shall be no more than three caravans stationed on the site at any time (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended). No other buildings or structures shall be placed on the land without the benefit of further planning permission.
 - (3) No commercial activities shall take place on the land.
 - (4) No external lighting shall be installed on the site or affixed to any buildings or structures on the site until details of the proposed lighting have first been submitted to and approved in writing by the local planning authority. The submission of the details shall include the proposed location, height and design of the lighting and measures to reduce light spillage and intensity of illumination. The external lighting shall be installed only in accordance with the approved details.
 - (5) The development shall be carried out in accordance with the submitted Flood Risk Assessment (dated November 2021 and completed by UNDA in pursuance of planning application 22/02053/FUL) and the mitigation measures it details.
 - (6) When installing utilities or when undertaking other excavations, a clean cap of at least 1 metre in depth shall be maintained and protected at all times.
 - (7) The land shall not be used for growing home produce.
 - (8) Within three months of the date of this decision, full details of the layout of the caravans hereby permitted and of hard and soft landscaping across the site shall be submitted for approval in writing by the Local Planning Authority. All soft landscaping shall be implemented not later than the first planting season following their approval. All hard surfaces shall be laid in accordance with the approved details within three months of their approval. Following the approval of the layout of the caravans upon the site, they shall thereafter be retained in such a layout.

- (9) Within three months of the date of this decision, details of ecological enhancements for the site shall be submitted for approval in writing by the Local Planning Authority. Those enhancements shall be carried out in accordance with the approved details within three months of their approval.

Appeal B

37. The appeal is dismissed.

Laura Renaudon

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Scott Stemp, Counsel for the appellant

Brian Woods of WS Planning, planning agent for the appellant

Roseanna and Amy Knowles, both occupiers of the site and closely related to the appellant

FOR THE LOCAL PLANNING AUTHORITY:

Hayley Nixon, Principal Planning Officer

Emma Coffin, Senior Planning Officer (Planning Policy)

Louise Francis, Planning Enforcement Manager

Michael Bullock – Consultant arc4 and author of the GTAA

INTERESTED PERSONS:

None