



Appeal Decision

Hearing held on 27 August 2024

Site visit made on 27 August 2024

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2024

Appeal Ref: APP/E2205/W/23/3319052

1 Meadow View, High Halden, Ashford, TN26 3BY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr George Smith against the decision of Ashford Borough Council.
 - The application Ref is 20/01196/AS.
 - The development proposed is to replace 3 x Static Mobiles with 3 x Day Rooms.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant submitted revised plans during the course of the appeal. The Council had an opportunity to comment on the plans, not least during the hearing, and so I am satisfied that I can determine the appeal on the basis of the revised plans without prejudicing any party's case. Accordingly, I have amended the description of development detailed in the banner heading above to omit reference to "an additional Touring Caravan".
3. The appeal site comprises essentially three residential caravan pitches:
 - : The '1997 pitch' is subject to planning permission granted on 26 September 1997 on appeal (ref: APP/E2205/A/96/275621) for the stationing of a mobile home and touring caravan, the erection of a stable building and the construction of a hardstanding. Conditions on the permission included (1) no more than one mobile home and one touring caravan shall be stationed on the land and the latter shall not be used for residential purposes, and (2) the mobile home should be occupied only by Gypsies or Travellers.
 - : The '2007 pitch' was granted planning permission (ref: 06/01078/AS) on 11 January 2007 pursuant to an application to 'vary' condition 1 on the 1997 permission. Conditions imposed on the 2007 permission meant that only two mobile homes and two touring caravans could be stationed on the site overall, and the touring caravans could not be

used for residential purposes, and the mobile homes should be occupied only by Gypsies or Travellers.

- : Similarly, the '2008 pitch' was permitted (ref: 07/02057/AS) on 27 August 2008 pursuant to an application to vary condition (2) imposed on the 2007 permission. New conditions imposed mean that only three mobile homes and three touring caravans can be stationed on the site overall, and the touring caravans cannot be used for residential purposes, and the mobile homes should be occupied only by Gypsies or Travellers.
4. The appellant lives on one pitch but anticipates moving away so that it will be occupied by one of his sons with their partner and child. The other pitches are occupied by another of the appellant's sons with his partner and two children, and the appellant's daughter with her partner and child. I shall refer to the three proposed occupying households together as 'the extended family' and I heard that all children are under school age.
 5. The Council suggested in their statement of case that the 2007 and 2008 pitches were granted planning permission 'for the applicant's son and daughter who were already living on the site.' For the avoidance of doubt, none of the permissions relating to the site are subject to 'personal' conditions.

Main Issues

6. I consider that the main issues are the effect of the proposed development on the supply of Gypsy and Traveller pitches in this area, and its effect on the character and appearance of the area.

Reasons

The Supply of Traveller Sites

7. As noted above, the planning permissions which govern the use of the site allow for the siting of three mobile homes (or static caravans) with three touring caravans for residential use by persons who are Gypsies or Travellers. Government policy in Planning Policy for Traveller Sites (PPTS) defines 'Gypsies and Travellers' as:
8. 'Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.'
9. PPTS also states that the Government's aims include facilitating the traditional and nomadic way of life of Travellers, promoting more private Traveller site provision, and increasing the number of Traveller sites in appropriate locations with planning permission (to address under-provision). Those aims are reflected in Policies SP1 and HOU17 of the Ashford Local Plan (the LP) which seek to provide accommodation to meet the needs of the Traveller Community, and to safeguard and retain existing permanent Gypsy and Traveller sites.

10. From the conditions imposed on the 1996, 2007 and 2008 permissions, the appeal site provides three permanent pitches for persons who must meet the 'PPTS definition' of Gypsies and Travellers as outlined above. There is no dispute that the members of the extended family occupying the site meet that definition, but it should also be noted that one or more pitches could be sold or let at any time to other Gypsies or Travellers.
11. The occupiers do not wish to move from the site; by contrast, they wish to invest in the land and construct the proposed buildings to enhance their lives here. Like many other Gypsy and Traveller families, they want dayrooms to provide extra kitchens, living/dining rooms and bathrooms separate to their sleeping accommodation, plus additional facilities such as utility rooms. However, as the Council detailed at the hearing, most Gypsy and Traveller pitches accommodate a static and touring caravan as well as a dayroom.
12. Travellers live in caravans because, under the PPTS definition, they must have or have had a nomadic way of life. In Traveller families, it is often the case that one member travels for work while other members – namely the children and any elderly or disabled Travellers, plus their main caregiver – stay on the site. That is the traditional way of life that PPTS seeks to protect, and it usually necessitates the stationing of both touring and static caravans.
13. That point was made in the now withdrawn Good Practice Guide for designing Gypsy and Traveller Sites. It described that sites are now usually designed for "a mobile home, touring caravan and a utility building..." The document also noted a "recent tendency" to favour "a mobile home over a caravan" but that I interpret that as meaning the favouring of a static over touring caravan for living in on the pitch. It did not mean the favouring of permanent buildings over caravans, as is proposed here, because permanent buildings do not facilitate the Traveller way of life.
14. The occupiers of this site live in accordance with their customs and traditions, as well as with PPTS, insofar as, on each pitch, currently all of the family travel together for work. It was acknowledged at the hearing that once the children reach school age this arrangement will change to one adult travelling for work while the other partner and young children stay at home.
15. However, that each pitch will only accommodate a single tourer caravan, makes it problematic that the proposal is to replace the static caravans with dayrooms which would not provide bedrooms. When some occupiers are away for work, meaning that the touring caravans are off the site, the children and their parental carers will have nowhere to sleep. The development would render it impossible for the occupiers to live as they do.
16. I heard that the touring caravans would not in fact need to be taken off the site because those occupiers who work go with relatives who live nearby. However, the appellant could not guarantee the continuation of arrangements which depend on personal circumstances, and I could not in any event reasonably impose a planning condition to prevent the touring caravans from being moved. The whole purpose of the tourers is to enable movement, by design and by virtue of the fact that this site must facilitate the Traveller way of life under the terms of the 1996, 2007 and 2008 planning permissions.

17. While this is not the intention of the extended family, I consider that the proposed development would, to all intents and purposes, as the Council has identified, result in the loss of three permanent Gypsy and Traveller pitches. The development would make it impossible for the existing and future occupiers to carry out a nomadic way of life whereby some members of the family travel for work and others stay on the settled base.
18. The PPTS definition of Travellers encompasses people who have ceased travelling permanently but as indicated above, all three pitches here include an occupier who works. The appellant makes no case that the health or educational needs or old age of any person is such that every occupier needs to cease travelling permanently. I must proceed on the basis that a grant of permission for the replacement of static caravans with dayrooms would leave the occupiers reliant on touring caravans for sleeping accommodation when those same touring caravans would need to be taken on and off the site.
19. As discussed below in relation to the next main issue, the appellant accepts that there is limited room on the site and so, if I were to grant planning permission for the dayrooms, conditions would need to be imposed to ensure the removal of the mobile homes and limit the caravans on the whole site to three tourers. I could not allow the appeal on the basis that the static and touring caravans are retained. And I would not grant permission on the basis that the touring caravans are removed instead of the statics because, again, the site would cease to facilitate the Traveller way of life.
20. The proposed dayrooms cannot be justified on the basis that the existing mobile homes are 'dated' because the occupiers could bring on replacement caravans without needing planning permission. Caravans are moveable by definition and that applies even to statics which can only be transported by hoisting rather than towing. So long as what is on the land does not exceed three static caravans (with three tourers alongside) which meet the statutory definition and the terms of the site licence, the residential use will be carried out in accordance with the relevant permissions.
21. That the 1996, 2007 and 2008 permissions prohibited use of the tourers for residential purposes would not prevent me from granting planning permission for the proposed development. For the reasons given, however, I conclude that the replacement of static caravans with dayrooms would be incompatible with the Traveller and the extended family's way of life, and so it would result in the practical loss of three Gypsy and Traveller pitches. It would conflict with LP Policy HOU17 and PPTS.

Character and Appearance

22. The appeal site appears as a compact and irregularly shaped site set back from the road behind a residential dwelling that was under construction at the site of the site visit. The submitted plans show the proposed day rooms arranged to the edges of the site alongside space for the tourer caravans and car parking spaces, in addition to gravelled and grassed areas.
23. The site is situated in a predominantly rural area, nonetheless I saw at the site visit that there was regular residential development along the adjacent roads and the appeal site is bound by residential properties.

24. The surrounding development appears to be at a noticeably lower density than that proposed at the appeal site which appears as a contrasting dense concentration of buildings and occupation. Furthermore, the proposed dayrooms would be permanent additions to the site, albeit I note that the proposed dayrooms are of a similar size and positioning to the static caravans that they would replace.
25. The appellant details that the proposed day rooms are of an appropriate design, being constructed in brick and timber cladding under a tiled roof, thus the proposed day rooms are of a more solid and permanent appearance in contrast to the existing static caravans. I saw at the site visit that this is not dissimilar to surrounding properties.
26. The appellant details that the "robust" hedge and fence to the site boundaries serves to screen the proposed development from wider or longer distance views. Furthermore, additional planting along the access drive could add further screening and act to soften the appearance of the appeal site when viewed from the road.
27. To conclude this main issue, while the proposed development would appear to be of a noticeably greater density than the prevailing character of the area. The proposed day rooms are nonetheless of a similar size and scale to the static caravans that would be replaced and as a result of landscape planting to the boundaries of the site would not be appear as a prominent or widely visible feature in the surrounding area.
28. As such I find that the proposed development would not unacceptably harm the character and appearance of the area and thus is not contrary to Policies HOU16, SP6 and ENV3a of the LP.

Other Matters

29. High Halden Parish Council (HHPC) objected to the proposal stating that "High Halden has already nearly 25% of static mobile homes in the Borough of Ashford, which has a significant effect on the settled community" and seeks to resist any increase in pitches. However, the proposed development as shown on the revised plans does not propose any additional pitches and indeed proposes a reduction in static mobile homes.
30. I could therefore take HHPC's objection as weighing in favour of the appeal, insofar as a grant of permission would result in the practical loss of a Gypsy or Traveller site. However, it does not persuade me to make a decision contrary to HOU17 since I do not have the evidence before me to consider the appropriate level of pitch provision in this area.
31. I am concerned that the living conditions of the occupiers, particularly the children would suffer if they have to sleep on fold-out beds in touring caravans on a long-term basis. However, while that finding adds a little weight to my conclusions on the main issues, I would not dismiss the appeal for this reason alone given that the Council made no such objection.

Conclusion

32. The proposed development would not cause unacceptable harm to the character and appearance of the area, but that finding is neutral in the planning balance.
33. Weighing against the development, it would cause the unacceptable loss of a Gypsy and Traveller site with three pitches, in conflict with LP Policy HOU17 and PPTS. The circumstances of the extended family and HHPC's concern about over-provision of Traveller sites in this area would not justify a grant of permission. The planning conditions set out in the Statement of Common Ground would not overcome the harm I have identified.
34. Dismissing the appeal would interfere with the extended family's rights to a private and family life and home under Article 8 as set out under the Human Rights Act 1998. However, that is a qualified right and interference with it in this case would accord with the law and be in pursuance of a well-established and legitimate aim: the safeguarding of Gypsy and Traveller pitches.
35. Given that the occupiers will still be able to reside on the site in accordance with the extant planning permissions, and therefore replace their static caravans with others, it is proportionate and necessary to refuse to grant planning permission. There will be no violation of the family's human rights. The protection of the public interest cannot be achieved by means that are less interfering with their rights.
36. I have had due regard to the Public Sector Equality Duty (PSED) set out under s149 of the Equality Act 2010. As Gypsies and Travellers, the extended family have the protected characteristic of race. Again, however, harm caused by the functional loss of a Traveller site outweighs its benefits to the occupiers. Dismissing the appeal is necessary and proportionate in order to eliminate discrimination against and advance equality of opportunity for persons with this protected characteristic, and to foster good relations between them and others.
37. For the reasons given above, I conclude that the appeal should be dismissed.

Mr M Brooker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Adam Russell

FOR THE LOCAL PLANNING AUTHORITY:

Kathryn Mathews

Grace Edmunds