



Appeal Decision

Hearing held on 22 October 2024

Site visit made on 22 October 2024

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2025

Appeal Ref: APP/A2280/C/24/3341249

Land at The Chestnuts, Matts Hill Road, Rainham, Kent ME9 7XA

- 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 Steven Ball against an enforcement notice issued by Medway Council.
 - The enforcement notice was issued on 28 February 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the following unauthorised development:
 - 1) Non-compliance the benefit of planning permission, the erection of with condition 2 of appeal decision references APP/A2280/C/3230873, APP/A2280/C/19/3234902 and APP/A2280/W/19/3228470 by way of the stationing of additional mobile homes and touring caravans to that permitted on the Land;
 - 2) The unauthorised change of use of the stable building on the Land to residential use; and
 - 3) The erection of palisade fencing over 1 metre in height adjacent to a public highway.
 - The requirements of the notice are to:
 - 1) Remove from the Land the additional mobile homes/static caravans and touring caravans in breach of condition 2 of appeal decision references APP/A2280/C/3230873, APP/A2280/C/19/3234902 and APP/A2280/W/19/3228470, including any associated hardstanding and residential paraphernalia, and ensure that no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, shall be stationed on the site at any one time, of which no more than one of those caravans shall be a static caravan/mobile home;
 - 2) Cease the use of the stable building for residential use and remove all fixtures and fittings related to that use;
 - 3) Remove all palisade fencing from the boundary of the Land;
 - 4) Remove all resultant debris and associated materials arising from compliance with the above requirements from the Land.
 - The period for compliance is six calendar months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
-

Formal Decision

1. It is directed that the enforcement notice be varied by extending the compliance period from six to nine months. Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is

refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Background

2. In January 2022, following successful appeals against both an enforcement notice and the Council refusing planning permission for the material change of use for the stationing of caravans on the site for gypsy and traveller purposes planning permission was granted subject to conditions. One required that the site shall not be occupied by any persons other than gypsies and travellers, and another restricted the residential use to that of one static caravan and one touring caravan.
3. The current appellant, Mr Ball, was also the previous appellant when the last enforcement notice was quashed and planning permission granted for a twin-unit, which was then present on the site, for use by gypsies and travellers as residential accommodation. This was the only static caravan/mobile home on the land at that time, and a condition was imposed limiting the use to this plus one touring caravan. It is unclear from all the evidence now whether Mr Ball remains resident at the site, but his previously twin-unit mobile home has been removed to allow for a number of single caravans to be accommodated at the site. At the time of my site visit I counted nine caravans, of various types, arranged haphazardly across the land. I also accessed a small former stable building, subsequently used as a day room. It would appear that this building is also now being used for habitable purposes.

Procedural Matters and the enforcement notice

4. The enforcement notice does not specify the number of caravans present on the land at the time it was issued. Instead, it merely refers to the presence of additional mobile homes, static and touring caravans in breach of a conditional planning permission, and requires for their removal. Thus, the deemed planning application's baseline is not nine caravans, only that 'additional' caravans have been placed on the land which, in the Council's opinion, is unacceptable with reference to the reasons specified for issuing the enforcement notice.
5. As a consequence at the Hearing the appellant advanced a feasibility plan (ref J004814-DD-01) which shows an indicative layout with five mobile homes and a single utility room accommodated within the site. Having had regard to the judgements of *Ahmed v SSCLG & Guildford BC* [2017] EWCA Civ 231, which brought to the fore the consideration of alternative schemes, I have accepted the said plan for consideration.
6. Given the very recent updates in national advice with new iterations of the government's National Planning Policy Framework, December 2024 (the Framework) and also its Planning Policy for Traveller Sites, December 2024 (PPTS) regard has been had to the updated guidance.

The appeal on ground (c)

7. An appeal under ground (c) is that the alleged breach is accepted but that planning permission is not necessary to lawfully continue the change of use or retain any associated operational development. In this instance the appellant claims that former stable building is authorised to be used as a utility room, and is therefore an 'ancillary residential use'. The claim is correct insofar as

the previous appeal resulted in planning permission being granted for the utility room, but this does not, of course, permit the building's use for habitable purposes as a single unit of residential accommodation.

8. The current enforcement notice requires only the cessation of the use of this building for residential purposes, and this does not involve the removal of the building itself. I must conclude that this specific allegation is correct, and it is not clear, therefore, what exactly an ancillary residential use constitutes in such circumstances.
9. The use of this building as an independent residential unit is not permissible in that planning permission is required for such. Accordingly, the appeal on ground (c) cannot succeed.
10. At the Hearing reference was also made to the palisade fencing bounding the site. As this lies adjacent to the public highway beyond I am satisfied that this requires the benefit of planning permission for its lawful retention.

The appeal on ground (a) and the deemed planning application (DPA)

11. Given the previous appeal decision was issued only three years ago it is necessary to consider matters which have involved a material change in circumstances rather than reiterating the findings which brought about the Inspector's decision.
12. Firstly, Medway Council's development plan remains the Local Plan (LP) which was adopted in 2003. I understand that a replacement local plan is still only at its Regulation 18 consultation stage and, as such, the policies considered in accordance with the previous appeal are the same.
13. I shall deal with the need and provision of gypsy and traveller sites within the Medway area as an update below, but the appeal site still falls within the Kent Downs National Landscape (KDNL), formerly the Kent Downs Area of Outstanding Natural Beauty and also the North Downs Special Landscape Area (NDSL). Nothing was brought to my attention to suggest that the appeal site's proximity to local services and facilities has changed in the past three years. Accordingly, the location can still not be considered as accessible.
14. Paragraph 26 of the PPTS says that Councils should very strictly limit new traveller development in open countryside that is away from existing settlements or outside areas allocated in the development plan. However, although I must agree with the enforcement notice's 'Reason for Issue' (iv), it is generally accepted that gypsies and travellers primarily look to locate in rural areas and, as a result, there is always heavy reliance on the private motor vehicle.
15. It is, though, clear, having visited the site, that the main material change, by far, is the manner in which the land is now being used and the degree of intensification of the site involved. In the circumstances the Council has raised concerns as to overcrowding and the effect on the living conditions of those residing at the site.

Main Issues

16. On the basis of the above, these are:

- 1) The need and provision of gypsy and traveller sites within the Medway area;

- 2) the effect of the development on the character and appearance of the surrounding area, with particular regard to the KDNL and the NDSL A location; and
- 3) whether the degree to which the land is now used provides for a satisfactory standard of living conditions for its occupiers;

Reasons

Need and provision

17. To inform the preparation of the replacement local plan an update to the 2018 Gypsy and Traveller Accommodation Assessment (GTAA) was commissioned. At the Hearing the Council produced the figures arising from the update. These show a need for 22 pitches between 2022 and 2026 and yet there are no site allocations earmarked by the Council for gypsy and traveller accommodation.
18. In other words, each application for such is dealt with having regard to its own individual merits and impacts, and also applying local policies such as BNE25, which serves to limit development in the countryside, BNE32 which only permits development in what was the Kent Downs AONB where it conserves the natural beauty, wildlife and cultural heritage of the area and BNE33 which permits development only if it conserves and enhances the natural beauty of the area's landscape or the economic or social benefits outweigh the priority to conserve the landscape's natural beauty.
19. Given that the Council accepts that it cannot demonstrate a five year land supply of sites for gypsy and traveller purposes I must regard this as a failure of policy. Accordingly, I afford this considerable weight. Nonetheless, when taking into account the above issues and the clear direct conflict with other said policies, this must be all factored into the planning balance.

Character and appearance

20. In the previous appeal a factor in its favour was the orderly site arrangement with a single mobile home and a former stable building used as a day room, both of which were set back into the site. Given that this is a relatively small pocket of land, the development was then considered to have only a limited visual impact.
21. Paragraph 187(a) of the Framework highlights the importance of protecting and enhancing landscapes in a manner commensurate with their statutory status or identified quality in the development plan. As mentioned, the appeal site falls within both a statutory National Landscape area and also a locally valued landscape.
22. Paragraph 189 continues, saying that the scale and extent of development within nationally designated areas, such as the KDNL, should be limited, and development within the setting of such should be sensitively located and designed to avoid or minimise adverse impacts on the areas.
23. The stationing of the various caravans is haphazard and untidy. The development thereby fails to conserve or even respect the importance and integrity of the KDNL or the NDSL A and represents an unacceptable form and intensity of development.

24. The site also falls within a Strategic Gap, as defined in the LP's Proposals Map. In this connection policy BNE31 says that development within the gap will only be permitted where it does not result in a significant expansion of the built confines of existing settlements, or it significantly degrades its open character or separating function. Matts Hill Road is a country lane with a definite rural character, although there are sporadic small pockets of residential development alongside. Further, there are other gypsy and traveller sites in proximity, notably the Scarlet Meadows site, the immediate neighbouring piece of land.
25. The said 'strategic gap' is apparent insofar as the degree of any development within the local vicinity is not of particular significance and, accordingly the general absence of development serves a particular purpose.
26. Turning to the said indicative layout plan, submitted only at the opening of the Hearing, whilst in two-dimensional form the footprints of the five mobile homes and single day-room are shown to be satisfactorily accommodated within the site, I am not necessarily convinced that this would be the case in practice. I find it doubtful that only one day-room would be sufficient for such a level of occupation but, more so, given the recent planning history of the site – there have been two enforcement notices issued against the use of the land within the past six years – and the conditional planning permission granted in 2022 which has been significantly and demonstrably breached, I consider that the degree of intensification proposed on paper, and its limitations, would not transpose itself to the land and the degree of development would likely go beyond that proposed.
27. At the Hearing I referred to the potential difficulty of attempting to plan for such and enforce the necessary restrictions given the current planning position. Although I mentioned that a legal undertaking would likely be more effective than a planning condition in this respect there was no response to such.
28. The fact that the development is screened and contained within the appeal site does not justify the continuation of this unauthorised use. I find that the development is in direct conflict with the objectives and requirements of LP policies BNE25, BNE31, BNE32 and BNE33, and it is harmful to the character and appearance of the surrounding area, being to the detrimental to its character.

Living conditions

29. None of the caravans I witnessed at the site had their own small curtilages, or defensible space, and this is indicative of what appeared as the very random positioning of the various caravans now stored at the site. The impression given is an intention to accommodate as many on the land as is possible.
30. Whilst I am mindful that the planning permission given in 2022 effectively approved the use of the land as a caravan park, albeit with significant restrictions as to the number of caravans permissibly present at any one time, I consider that the persons resident are not afforded a satisfactory standard of living conditions. Accordingly, the development is contrary to the aims and requirements of LP policy BNE2.

Other Considerations

Personal Circumstances

31. A few days prior to the Hearing the appellant's agent produced personal statements from four persons who, through these, purport to occupy the site. They are not statutory declarations, some of the wording is identical and of the same type form. Moreover, given that neither the appellant nor the other persons who also claim to live at the site, were present at the Hearing, this evidence could not be properly explored.
32. One of the statements was from the appellant himself who, given that he was living in the twin-unit at the time of the 2022 appeal decision, would have been aware of fact that the planning permission then granted was conditional with clear restrictions as to the number of caravans that could be stationed on the land at any one time. However, the twin-unit has since been removed. One interested party, in representations made, says that it was removed within weeks of the decision, following which a number of caravans were brought to the site. Yet despite the current state of the land he says that he would like to make the site nice and in-keeping with the countryside.
33. The persons mentioned in the other statements claim, amongst other things, that they are of gypsy status, and there are children of school age present at the site. Mention is generally made of the inconvenience of roadside living, and I accept this point. However, no arrangements had been made for me to access the caravans and, at my site visit, I was only given access to the former day-room building.
34. Notwithstanding the above, however, is a concern advanced by the Council that the site is seemingly no longer in full use by gypsies and travellers but is instead being advertised on social media (Facebook/Marketplace) as having properties to let. In this connection, the Council produced photographic evidence from November 2023 showing a 2 bed/1 bathroom 'flat' for rent at the site. There are, though, no residential flats at the site, only caravans.
35. To back this, Mrs Gunner, the Council witness at the Hearing, mentioned that Council officials, during a visit to the site when copies of the enforcement notice were served by hand, had spoken to occupiers who confirmed, when specifically questioned, that none were of the gypsy/traveller status. This is consistent with the representations of an interested party.
36. All in all, the evidence put to me in support of the appeal was not particularly convincing. Moreover, given that the appellant's case was somewhat thin, with the limitations of the evidence produced, I would have questioned the need for a Hearing in this instance. This forum did not enlighten the current circumstances and, in the absence of a proper schedule of accommodation, the appellant's evidence lacked precision or any reasonable certainty.

Human Rights and the Best Interests of the Child

37. There is a positive duty by virtue of Article 8 of the Human Rights Act to facilitate the traditional and nomadic way of life of travellers.
38. However, in considering the proportionality of a requirement to leave one's home it is relevant whether or not the home was established unlawfully.

39. Article 8 of the European Convention on Human Rights, enshrined in UK law through the Human Rights Act 1998, provides that everyone has the right to respect for his private and family life, his home and correspondence. In this regard there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary, amongst other things, for the protection of the rights and freedoms of others.
40. Accordingly, if Article 8 is engaged, then interference with those rights can be justified by the Council if it is a legitimate aim, in accordance with the law and necessary in the public interest. In this particular instance I am firmly of the view – and I have illustrated why – that the Council’s remedial actions served a clear and justifiable planning purpose.
41. Article 3(1) of the United Nations Conventions on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
42. In 2013, in the High Court judgement of *Stevens v SSCLG* [2013] EWHC 792 (Admin) it was held that where the Article 8 rights are those of children, their best interests are a primary consideration. Once identified, although a primary consideration, the best interests of the children were not determinative of the planning issue, but no other consideration was more important or to be given greater weight and those best interests had to be kept at the forefront of the decision maker’s mind.
43. Importantly, it was held that the best interests of the children were not only not determinative, neither were they paramount, the judge noting that Article 3 says “*a primary consideration*” rather than “*the primary consideration*”. Nor should they be considered temporally or logically first.
44. In the case the planning appeal Inspector, in her assessment, had referred to the children’s benefit as carrying moderate weight. However, the court decided that, after examining all the material considerations, she was not giving the children’s best interests inherently less weight than the visual harm to which the development had given rise. She was, therefore, fully entitled, after that analysis, to conclude that the dismissal of the appeal against the refusal of planning permission would not have a disproportionate impact on the family.
45. Also in 2013, the Court of Appeal heard the case of *Collins v SSCLG* [2013] EWCA Civ 1193 where it was held that whether the best interests of the children had been taken properly into account, the overall exercise was a question of substance to be answered by the detailed reasoning of the decision letter as a whole. It was acknowledged that the Secretary of State had, in substance, taken the view that the best interests of the children coincided with those of their families as a whole and lay in remaining on the site, but that the children’s best interests and the other factors in favour of granting planning permission were outweighed by the harm that would be caused.
46. In the current appeal, whilst it is said, that children are present at the site, I was not provided with any evidence of weight, or detailed independent confirmation of such. Notwithstanding the absence of any schedule of accommodation, if it is the case that children reside there then the best interests of the children, that is the need to safeguard and promote their welfare, are a primary consideration, particularly as their education would be likely to be interrupted if the family were forced to move from the site.

47. Further, the accessibility to health care that a settled base secures is a benefit to the family as a whole. That said, as I have mentioned, the living conditions at the site available to the children – and for that matter all persons resident – are less than ideal.
48. Nonetheless, accommodation by way of a settled base, rather than a roadside existence, can only be beneficial. I consider that the development provides suitable accommodation consistent with this and, as such, the personal circumstances of the appellants including the best interests of the child must be afforded substantial weight, but in the context overall.

Temporary planning permission

49. The appellant did not specifically request that a planning permission subject to a time limitation condition be granted, only that the time period for compliance with the requirements of the enforcement notice be increased from six to twelve months. Given the effect on the development's effect on the character and appearance of the surrounding area I consider that a temporary permission would not be appropriate in this instance.

Planning Balance

50. Whilst I attach substantial weight to the absence of a five year land supply for gypsy and traveller purposes in the Medway area there are also other factors which must be considered here. Firstly, it is not certain – and no compelling information was passed to me by the appellant – that the occupants hold gypsy and traveller status, or that dependents are resident. If not, then this would represent a breach of two of the four conditions imposed on the planning permission granted in 2022; namely the number of caravans shall not exceed a maximum of two (one static and one tourer) at at any one time, and also that the land be occupied only by gypsies and travellers.
51. The former stable building, the use of which was approved in 2022 as a day/utility room is also now in use for residential accommodation.
52. I have discussed the development's adverse effect on the character and appearance of both the KDNL and the NDSLA, which, due to intensity, it clearly detracts from. In addition to the local policy objections, the development also flies in the face of relevant advice within the Framework. Accordingly, I have given considerable weight to this matter.
53. I have had regard to the brief personal statements, submitted just prior to the Hearing, in the form of typed sheets – with some identical wording – but, whilst children may be or have been present at the site, there are no compelling details from independent bodies to confirm the authenticity of the claims. Besides, given the current site arrangement and manner of occupation I have described I must agree with the Council that this does not make for satisfactory living conditions for the site's occupiers. I have taken into account the indicative site plan tabled at the Hearing but, as mentioned, I have doubts as to whether the single proposed day-room would be adequate in relation to the degree of occupation proposed.
54. I am not therefore convinced that the proposal represents an acceptable form of development. It is contrary to both local planning policies and contemporary guidance in the form of the latest iteration of the Framework. Neither does the updated PPTS give proper support to this scheme, given its effects and

shortcomings. Accordingly, the deemed planning application should be refused.

55. Were I minded to allow this appeal and grant planning permission for the development then a tariff payment for each residential unit would be payable to address the impact on the Special Protection Areas of the Thames Estuary and Marshes and the Medway Estuary and its Marshes. I note that no such payment has been put forward in this respect but, given my decision, I need not address this matter further.

Conclusion on the DPA

56. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

The appeal on ground (g)

57. Twelve months is requested, rather than the six months specified which, given such circumstances, might be acceptable due to resultant inconvenience and upheaval from relocation. However, the Council's concerns as to site being advertised for general occupation was not allayed at the Hearing, as the agent merely said he was acting on his instructions and in accordance with what he had been told.
58. However, in the event that children are present at the site I am prepared to extend the compliance period from six to nine months as this might ease any difficulties should they arise. The appeal therefore succeeds to this extent.

Timothy C King

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Brian Woods – Director, WS Planning & Architecture

Peter Brownjohn – Senior Planner, WS Planning & Architecture

FOR THE LOCAL PLANNING AUTHORITY:

Hannah Gunner – Principal Planner

Peter Hockney – Head of Development Management