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## Appeal Decisions

Hearing held on 24 October 2024

Site visit made on 24 October 2024

**by Timothy C King BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 February 2025**

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### **Appeal A: APP/A2280/C/24/3341250**

#### **Land at Scarlet Meadow, Matts Hill Road, Rainham, Kent ME9 7XE**

- 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 Ms K Twinley against an enforcement notice issued by Medway Council.
  - The enforcement notice was issued on 22 February 2024.
  - The breach of planning control as alleged in the notice is 'Without the benefit of planning permission, the construction of a single storey brick built outbuilding on the land.
  - The requirements of the notice are:
    1. Demolish the unauthorised single storey outbuilding located in the approximate position shown marked A on the attached plan in its entirety; and
    2. Remove all resultant debris and associated materials arising from compliance with the above requirement from the land.
  - The period for compliance with the requirements in full is within three calendar months from the date when the notice takes effect.
  - The appeals are proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990, as amended.
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### **Appeal B: APP/A2280/W/24/3338308**

#### **Scarlet Meadow, Matts Hill Road, Rainham, Kent ME9 7XE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Ms K Twinley against the decision of Medway Council.
  - The application Ref MC/23/2505, dated 9 November 2023, was refused by notice dated 19 January 2024.
  - The development proposed is described as '*Retention of dayroom.*'
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## **Formal Decisions**

### **Appeal A**

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

## **Appeal B**

2. The appeal is allowed and planning permission is granted for the retention of a dayroom at Scarlet Meadow, Matts Hill Road, Rainham, Kent ME9 7XE, subject to the following condition:

- 1) The building hereby permitted shall be used only as a day-room in association with the residential use on the site.

## **Background**

3. The appeal site is in two parts. The rear section, which is screened with timber fencing and an expanse of laurel hedging from the area to the front, is in use for the stabling and keeping of horses, facilitated by a paddock. The front part enjoys planning permission, personal to the appellant, for residential purposes by means of caravans sited on the land. The appellant, who holds gypsy status, has lived at the site since 2015. Planning permission ref. MC/20/2495 was granted in 2021, which approved an additional mobile home on the land, along with a day-room, and allows for a maximum of four caravans (two statics and two tourers) to be stationed at the site.
4. This permission was not implemented in accordance with the approved plans, in that the day room's dimensions, as built, was not consistent with that which was permitted.
5. At the time of my site visit, two mobile homes were present; the largest resided in by the appellant, and the smaller one occupied by a relative, along with a single touring caravan. A large unauthorised day-room building, and not yet utilised, as it is yet to be fitted-out, is positioned behind the larger, centrally placed mobile home. Overlain by a pitched-roof the said building stands to a maximum height of 5.7m and, when also taking into account its significantly sized footprint, the building constitutes a prominent fixture at the site. There are also two relatively small outbuildings positioned close to the appellant's mobile home; one in use as the existing day-room and the other used as a store.
6. It is unlikely that an earlier planning permission (ref. MC/16/1652), granted in 2016, although part retrospective, would now be capable of full implementation, due not least to the wording of conditions imposed, although the time limitation of three years was effectively lifted by a subsequent permission. Moreover, it has been effectively superseded by the 2021 permission.
7. In the circumstances, the Council saw it expedient to issue the enforcement notice, now at appeal. This targets only the building, currently a shell, which is intended as a new day-room building.

## **Appeal A on ground (a); the deemed planning application (DPA) and Appeal B**

## **Main Issue**

8. The main issue for both appeals A and B is the effect of the development on the character and appearance of the surrounding area, with particular regard to its location within the North Kent Downs Area of Outstanding Natural Beauty, now the North Kent Downs National Landscape (NKDNL), and locally

designated valued landscapes, namely the North Downs Special Landscape Area (NDSLA), an identified 'Strategic Gap' and also the Matts Hill Farmland Character Area (MHFCA).

## **Reasons**

9. Despite identical issues there is a marked distinction between the two appeals in that Appeal B is accompanied by a Unilateral Undertaking (UU) whereby, in the event that this appeal is allowed and planning permission granted, the appellant has obligated herself to modify the existing day-room outbuilding with a specified reduction in its height. Additional clauses also preclude the implementation, if still possible, of the earlier planning permissions previously referred to. Permission ref MC/16/1562 is referred to in the UU as MC/16/3896, which was an application that flowed from the former and related to details required for the Council's subsequent approval.
10. 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. In addition, it also falls within the locally identified MHFCA; this being typified by flat or gently undulating landscape with scattered ancient woodland.
11. Paragraph 189 continues, saying that the scale and extent of development within nationally designated areas, such as the NKDNL, 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. In this instance the appeal site is well kept and displays an orderly site arrangement. The various buildings are set back into the site and, save for the large building at issue, are modestly sized within their setting.
12. 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. As mentioned, 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. The said 'strategic gap' running north/south 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.
13. As the Framework does not preclude development in areas designated as National Landscapes, providing it is limited and sensitively located, this approach equally applies to locally valued landscape character areas. As it stands, though, the new intended day-room building is an unduly prominent structure. However, in being largely positioned behind the main mobile home its presence is shielded to a significant extent, but its height is uncharacteristically excessive in this contextual setting.
14. The s78 appeal (Appeal B) is concerned with the building depicted on the elevational drawing no J004651-DD-07, on which the application was determined, which shows an existing maximum height of 5.7 from ground

level. However, during the appeal process, the appellant has produced a revised drawing (no J004840-DD-01) which proposes that the ridge-height be significantly reduced to a maximum of 5.05m from ground level. As mentioned, a UU dated 24 January and signed by the appellant has been produced to this end. Given the circumstances, this is a more appropriate and effective tool of control to achieve its aims than that which would be possible through the imposition of a planning condition. The undertaking also states that the required works shall be undertaken and completed within a period of three months.

15. From my site visit observations I am satisfied that this proposed degree of modification would render the development acceptable. Given also, the definite and descriptive nature of the signed undertaking any default on such would be enforceable by the Council.
16. The appellant has indicated her intention that the other much smaller buildings on the site, which are clustered around the main mobile home, would be removed if the appeal was allowed and planning permission granted. However, in the period following the Hearing, during which the UU was being drafted, although commenting on its content, the Council did not suggest that a clause be inserted in the UU to effect removal. Indeed, notwithstanding any development rights that these other buildings may enjoy – and I am mindful that the enforcement notice did not seek their removal – given their modest size and positioning, I am satisfied that they can be reasonably retained in situ, so long as they might continue to serve an ancillary purpose.
17. I, therefore, find that the development enforced against, due to the building's height, is harmful to the character and appearance of the surrounding area, and contrary to the objectives and requirements of LP policies of BNE1, BNE25, BNE31, BNE32 and BNE33. Accordingly, Appeal A should fail. In contrast, Appeal B turns on the significance of the modifications proposed to the building which, if implemented, as described, would reduce the building's ridge-height by 0.65m. I find that this remedial measure would bring about an acceptable form of development, particularly as regards its effect on the character and appearance of the surrounding area, and this would reasonably address the said policy objections along with meeting relevant advice within the Framework.
18. For the reasons given above, and having had regard to all matters raised, and the development plan as a whole, Appeal B succeeds. However, again, for the reasons given, I conclude that Appeal A should not succeed. I shall therefore uphold the enforcement notice and refuse to grant planning permission on the deemed application.
19. In terms of conditions to be imposed on the approved scheme I have attached the single condition suggested by the Council which requires that the building be used only as a day-room in association with the site's residential use. In the event that this condition be breached then it would be open to the Council to assess the materiality of any change of use.

### **Appeal A on ground (f)**

20. Appeals made on ground (f) are that the enforcement notice's requirements go beyond what is reasonably necessary to remedy the breach having occurred. The appellant's representations in this respect are merely that the roof could be

reduced in height so as to ameliorate the building's impact and, if considered acceptable, its existing floor area would be retained.

21. Given that the DPA is unsuccessful, and a ground (f) appeal cannot in itself secure planning permission for unauthorised development, I have dealt with this matter in the S78 appeal, facilitated by the revised elevational plan submitted by the appellant.

22. Accordingly, the appeal on ground (f) appeal cannot succeed.

**Appeal A on ground (g)**

23. An appeal under ground (g) is that the specified period of time for compliance with the requirements of the enforcement notice is unreasonably short. The notice indicates that, within three months of it taking effect, the building shall be demolished and all resultant debris removed. I would consider that a three month period is not here unreasonable given the circumstances involved. Besides, this is reinforced given my decision to allow Appeal B.

24. Accordingly, the appeal on ground (g) does not succeed.

*Timothy C King*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Alan Masters of counsel

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