



Appeal Decision

Hearing Held on 18 March 2025

Site visit made on 18 March 2025

by Philip Major BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Housing Communities and Local Government

Decision date: 28 March 2025

Appeal Ref: APP/X2220/W/24/3354851

Land south-east of Old Mill Cottage, Staple, Kent CT3 1LB

- 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 Mrs Louisa Smith against the decision of Dover District Council.
 - The application Ref: 24/00280, dated 12 March 2024, was refused by notice dated 3 October 2024.
 - The development proposed is the change of use of land for siting 2 caravans for residential use, construction of a dayroom and associated landscaping.
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Preliminary Matters

1. The description of development above is taken from the planning application form. The Council added to that description on the decision notice by making reference to 2 Gypsy and Traveller pitches. That accurately describes the intentions of the Appellant and it was clear at the hearing that each party is fully conversant with the proposal.
2. In the week before the hearing an interested third party requested that it be postponed or adjourned. The reason for the request related to the fact that the interested party (Elivia Homes) indicated that it was not aware of the hearing until late in the process. The Council confirmed that it sent notification by electronic means to the representatives of Elivia Homes and all others who made representations. I was also informed that the sending and receipt of electronic notifications had since been tested and verified by the Council. However there is no explanation of why any electronic notification was not received by Elivia Homes. Electronic communication is a normal procedure and I do not seek to criticise the Council as it clearly implemented its usual notification procedures. The fact that notification was not received until late in the day is unfortunate, but Elivia Homes did, albeit rather late, have the opportunity to attend the hearing if it had chosen to do so.
3. It is not necessary for third parties who make representations to attend a subsequent hearing and it goes without saying that the written representations submitted on behalf of Elivia Homes are fully taken into account in the decision making process. The weight attaching to those representations is not reduced because no-one representing Elivia Homes was present at the hearing. In the circumstances I was satisfied that I had all the information necessary to reach a reasoned decision in this case and that it was not necessary to postpone or adjourn the hearing. I am content that no party has been prejudiced in the proceedings.

4. There is no dispute about the Gypsy status of the Appellant and her family group. I was informed in more details at the hearing and I have no reason to doubt that they fall within the definition set out in Planning Policy for Traveller Sites (PPTS) the latest revision of which was published in December 2024.
5. The development has been partially implemented in that the site has 2 touring caravans present, alongside a storage shed and portable toilet facilities. I am aware that the Council has been in discussion with the Appellant and at one stage sought to take enforcement action to secure the removal of the development, but that the action was withdrawn when new information came to light. In any case I must make my decision on the basis of the information pertaining to the appeal before me.

Decision

6. The appeal is dismissed.

Main Issues

7. The main issues in the appeal are:
 - (a) Whether the Council is able to demonstrate a sufficient supply of Gypsy and Traveller sites, and whether there are realistic alternatives available to the Appellant;
 - (b) Whether the proposed development is in a suitable location bearing in mind the criteria set out in the relevant development plan policy;
 - (c) Whether there is a mechanism available to enable mitigation of any impact on nearby protected European sites;
 - (d) Whether there are matters which outweigh any identified harm such that the development should be permitted, including human rights and the public sector equality duty (PSED).

Reasons

Supply and Alternatives

8. I have been informed by the Council that the recently adopted Local Plan¹ has identified sufficient land for Gypsy and Traveller pitches. This was accepted by the Inspector who examined the draft Local Plan. The Local Plan (LP) is a key part of the development plan for the district. Although I have not seen the Gypsy and Traveller Accommodation Assessment (GTAA) which informed the LP provision I have no reason to doubt that it has been robustly produced. I was informed at the hearing that the GTAA included all those who would fall within the definition of Gypsy and Traveller set out in the latest version of PPTS.
9. However, the fact that the Council has identified sufficient capacity for pitch provision does not necessarily equate to any vacant pitches being available to any person or family. As discussed at the hearing it is not uncommon for particular families to exert control over the occupation of pitches which are in private ownership. Similarly different cadres of Gypsy and Traveller may have difficulty in living in close proximity to each other. So whilst there may be sufficient provision of pitches identified in the LP, that would not inevitably result in those pitches being available to all Gypsies and Travellers.

¹ Dover District Local Plan – adopted October 2024

10. I was told at the hearing that the Appellant and her family would not be allowed to move to any alternative site within the district as the owners would reject any such move. I accept what I was told as being a reflection of the belief of the Appellant, but I have no documentary or other evidence which substantiates that claim. Without such evidence I cannot reasonably conclude, on the balance of probabilities, that alternative pitches are unavailable. Hence, on this issue I am not satisfied that it has been shown that realistic options for other pitches which are suitable and affordable are not available to the Appellant.
11. Policy H4 of the LP deals with the matters which would be considered in any case where new Gypsy and Traveller sites are proposed. That policy has several criteria, all of which would need to be met for a site to be supported. Criterion a requires that it be demonstrated that the proposal cannot be accommodated on an alternative family owned site, at a site identified for intensification in the LP, or on a lawful vacant site. As I have found above, this criterion has not been met.

Location

12. Policy H4 has a number of other criteria which are also of particular importance in this case.
13. Criterion c requires safe and suitable access to the highway network. Although the highway authority (Kent County Council) did not wish to comment on this case a number of representations were made which were critical of the access to the site. Mill Road is a narrow lane and the site lies about mid way between the junctions with Mill Lane and Summerfield. The width of Mill Road is so narrow that access with any form of vehicle other than a private car would not be easy. There are no passing places along this stretch of road. To bring caravans onto the appeal site would require the existing access to be retained, and access being available only from the south, or the creation of a wide access at the northern end of the site (as proposed) to enable a vehicle towing a caravan to swing into the land. In either case I am not satisfied that access to the land is adequate. This is a proposal to site Gypsy and Traveller caravans on the site and it must be expected that from time to time touring caravans would leave and return. Quite apart from the width of Mill Road other highways in the vicinity are narrow and difficult to navigate in places. Taken overall I am not satisfied that the site can provide suitable access. Criterion c of LP Policy H4 is not met.
14. Criterion f of the policy deals with the character and appearance of the locality. I acknowledge that the new development to the east of the site has an impact on the character of the area, but I am informed that that land was previously a location with significant buildings coverage. In any event the appeal site lies on the edge of an open area of land at the edge of the village. To the north, south and south-west is open land devoid of built development (and Old Mill Cottage is secluded in its landscape setting). Open land is therefore the predominant characteristic of this location.
15. Notwithstanding the new housing to the east it is clear that the appeal site has been much altered recently. The removal of vegetation and laying of hardcore has introduced an austere visual intrusion, and the caravans present are an incongruous feature. Although the proposal includes provision for the removal of some hardcore and the introduction of landscaping it is unlikely that this

would significantly reduce the impact of the development on the character of the locality. This would be especially true in the event of the introduction of the proposed dayroom and static caravans, as would be likely. In my judgement there would be continuing significant harm to the character of the area. Furthermore, although the appeal site is not visible from great distance or over a significant length of Mill Road it would also introduce visual harm for anyone using the road. Overall it is clear that criterion f of Policy H4 is not met.

16. Because of my findings in relation to criterion f it is also my judgement that the proposal would fail to offer the opportunity to be well designed and laid out. Consequently criterion h of the policy is not met.
17. It is not necessary for me to deal with each of the remaining criteria of Policy H4 since all must be met to enable development to meet the terms of the policy. It is therefore apparent to me that the development is in clear breach of Policy H4 and that the location of the proposal is unacceptable under that policy.
18. The fact that the site would be unacceptably harmful to the character and appearance of the area also leads to conflict with LP Policy PM1, which seeks to achieve high quality design. In particular the development fails to take account of its context and is incompatible with neighbouring spaces. It also fails to demonstrate an understanding of the local landscape.

Protected Sites

19. The appeal site lies within the zone of influence of the Thanet Coast and Sandwich Bay Special Protection Area and Ramsar sites. As such new developments in that area are required to contribute to the agreed mitigation strategy² which is designed to be effective in addressing potential adverse impacts on the integrity of the protected sites. The mitigation strategy has been agreed with Natural England. Without the required contribution, which is set out in LP Policy NE3, adverse impacts on the protected sites cannot be assumed to be avoided.
20. In this case there is no formal agreement to make the necessary contributions, and I acknowledge that the Appellant did not know of the requirement. Verbal agreement to pay the necessary contributions was offered at the hearing.
21. Discussions surrounding this matter were also undertaken at the hearing. The Council has a simplified process for payments at the planning application stage, but clearly that cannot apply in an appeal. It is also not reasonable to impose a positively worded condition requiring the payment of money. In some cases it can be possible to impose a condition which would prevent development until agreement had been reached in relation to mitigation, but as the development has been implemented in part, that course of action would not be available in this case.
22. In simple terms, taking this matter overall, it is clear that a significant adverse impact on the integrity of protected sites cannot be ruled out, but no contribution to mitigation has been formally agreed. As such the proposal is in conflict with the requirements of LP Policy NE3. There is further conflict with LP Policy SP13, which seeks to protect the hierarchy of designated environmental

² Thanet Coast and Sandwich Bay SPA Strategic Access Mitigation and Monitoring Strategy

sites and biodiversity assets. Here the site has been cleared of any biodiversity interest and it is unlikely that this could be reclaimed in any significant manner if this development were to be fully implemented. The fact that the green infrastructure and biodiversity of the site would be unlikely to be enhanced also leads to conflict with the objectives of LP Policy SP14.

Other Considerations, Human Rights and PSED

23. The site is currently occupied by some 7 people, 2 of whom are children, with another child due imminently. All children are under 2 years of age. The occupants are all registered with local health practices and have local connections. The best interests of children are a primary consideration in these matters, and no consideration should attract greater weight. A settled home and access to education and healthcare is important. That is not to say that where children are present planning permission will always be granted, but it is a material consideration of substantial weight. I wholly understand the Appellant's desire for the younger members of her family to have access to education and chances in life which were not available to her.
24. I am not aware that the Appellant would have certainty of alternative accommodation should this appeal fail as the evidence on alternatives is too insubstantial, as explained above. I was told that prior to moving on to the appeal site a roadside existence was followed. Resumption of roadside camping, if necessary, would no doubt include difficulties. Article 8 of the European Convention on Human Rights is clearly engaged and dismissal of the appeal would, if no alternative was found, be likely to lead to the loss of the Appellant's home. Refusal of the proposal would interfere with the Article 8 rights of the site occupants, including children.
25. I have also had regard to the Public Sector Equality Duty (PSED). The Appellant and prospective occupants share protected characteristics, and I have taken into account the need to avoid discrimination, advance equality of opportunity and foster good relations.

Other Matters

26. A number of other matters have been raised during the course of the appeal. These include the impact of the proposal on the living conditions of the occupants of the land to the east, the potential for impact on the turtle dove sanctuary to the south, and the conclusion of an Inspector who considered a different appeal on the same site. However none of these or any other matter raised is sufficient to alter the balance of my considerations.

The Planning Balance

27. The development is in clear breach of policies of the Local Plan as set out above. The policies I identify are those which I consider to be most important and relevant in determining this appeal. Together these policy breaches carry substantial weight against the proposal.
28. On the other hand I accept that if the appeal is dismissed it is possible that a roadside existence may be necessary. But I do not have sufficient evidence to conclude that that would be the realistic outcome of a dismissal. The best interests of children are very important albeit that none are yet of an age to attend educational facilities. Even so this is also a matter of substantial weight. In this case, taking all relevant information into account, it is my judgement

that this site is simply not acceptable for the development, and that the interference with the human rights of the Appellant's family is a proportionate response in the public interest.

29. To summarise the case briefly, I am satisfied that the harm identified, and the consequent conflict with the development plan, is not outweighed by other matters in this instance. There are no material considerations which indicate that a decision other than in accordance with the development plan should be made.

Conclusion

30. For the reasons given above I conclude that the appeal should be dismissed.

Philip Major

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs L Smith
Mrs M Gilheaney

The Appellant
Also spoke on behalf of Mrs Smith

FOR THE LOCAL PLANNING AUTHORITY:

Mr V Hester
Mrs A Taylor

Case Officer, Dover District Council
Planning Policy Manager, Dover District Council