



Appeal Decision

Hearing held on 4 March 2025

Site visit made on 4 March 2025

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State

Decision date: 19th May 2025

Appeal Ref: APP/E2205/W/24/3354295

The Old Orchard, Rosemary Lane, Smarden TN27 8PF

- 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 E S N and L Lee against the decision of Ashford Borough Council.
 - The application Ref.PA/2024/0641, dated 28 March 2024, was refused by notice dated 29 August 2024.
 - The development proposed is the material change of use of land for stationing of caravans for residential occupation for Gypsy/Traveller site with 4 pitches and associated development (hardstanding, utility blocks, waste treatment plants, access track improvements, widened access, landscaping) – part retrospective.
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Preliminary Matters

1. A cost application was made on behalf of the appellants against the Council. This is the subject of a separate decision.
2. As indicated in the description of development set out above, the development has been carried out, in part. That said, the 'part retrospective' element of the description is unnecessary, and I have not used it in my decision below.

Decision

3. The appeal is allowed, and planning permission is granted for the material change of use of land for stationing of caravans for residential occupation for Gypsy/Traveller site with 4 pitches and associated development (hardstanding, utility blocks, waste treatment plants, access track improvements, widened access, landscaping) at The Old Orchard, Rosemary Lane, Smarden TN27 8PF in accordance with the terms of the application, Ref.PA/2024/0641, dated 28 March 2024, subject to the conditions set out in Annex 1 to this decision.

Main Issues

4. The main issues to be considered are the accessibility of the site, and the impact of the development on the character and appearance of the area; an analysis that must take place in the context of the development plan and the way it deals with the needs of Gypsies and Travellers (there being no dispute that the appellants meet the Government's definition of Gypsies and Travellers). There are other matters to consider too notably the personal circumstances of the appellants, the best interests of the children involved, and the implications of a dismissed appeal. These matters must be approached in the light of the Public Sector Equality Duty (PSED), and the appellants' Article 8 human rights. Highway safety, and flood risk are factors too.

Reasons

5. The development plan for the area includes the Ashford Local Plan 2030 (the Local Plan) that was adopted in February 2019. This Plan was prepared against the background of the National Planning Policy Framework (the Framework) as it stood then, and the August 2015 version of Planning Policy for Traveller Sites (the 2015 PPTS). Both documents have since been revised, and it is with the up-to-date versions of both in mind that I must determine the appeal.
6. Nevertheless, it is necessary to consider the way the Local Plan approaches the needs of Gypsies and Travellers. Those needs were first assessed in a Gypsy and Traveller Accommodation Assessment (GTAA) in 2013 which provided an Objectively Assessed Pitch Need (OAPN) for the Borough. After the publication of the 2015 PPTS the Council reassessed the travelling practices of Gypsies and Travellers using data from the GTAA. This established a new OAPN of 48 pitches between 2013 and 2028. This was then extrapolated, to account for the duration of the Local Plan, to a requirement for 54 pitches by 2030.
7. The Local Plan goes on to explain that since the GTAA was published, 31 pitches had been granted planning permission, leaving a residual requirement for 23 pitches. In response to that residual requirement, the Council allocated sites for 3 pitches, expecting the remainder to be provided through a 'windfall' policy - Policy HOU16. The Council in their Statement of Case describe this as a *robust* windfall policy and in the light of the wide disparity between needs and allocations, that description is, in my view, apt. Indeed, the need to approach this policy in a pragmatic way has been magnified recently. Shortly before the hearing opened, the Council published a new Gypsy and Traveller and Travelling Showperson Accommodation Assessment 2024/25 (the 2024/25 GTAA) intended to inform the review of the Council's Local Plan that is currently underway. As an up-to-date assessment of need, this document is, obviously, an important material consideration.
8. The 2024/25 GTAA concludes that there is an overall minimum need for 115 pitches in the Borough over the period 2024/25 to 2041/42. Of this need, 53 are needed in the first five years, and 62 between 2029/30 to 2041/42. It is then fair to observe that the need for pitches is significantly greater than when the current Local Plan was examined and adopted. That, to my mind, makes it even more important that Policy HOU16 is approached in a robust, or pragmatic way. Indeed, I would highlight that the 2024/25 GTAA recommends (in paragraph 7.5) that in order to meet its need for pitches, the Council considers regularising unauthorised sites where possible.
9. Turning then to Policy HOU16, it sets out that planning permission for new sites for Gypsy and Traveller accommodation will only be permitted where a range of criteria are met. The Council rely on criterion d) which says that local services and facilities – such as shops, public transport, schools, can be readily accessed from the site, and criteria h) and i) which require proposals to incorporate a landscape strategy, where mitigation of the impact on the landscape is necessary to protect the quality of the surrounding landscape; and the scale and siting of the site, along with its design, layout, and any boundary treatment to take into account the key characteristics of the Landscape Character Area within which it is located. Criterion c) which refers to flooding, and g) which relates to access and highway safety are also relevant; I deal with these separately below.

10. In relation to criterion d), the Council suggests, in summary, that the site, located 'deep in the countryside' is an inappropriate location for a new Gypsy and Traveller site being too remote from services and facilities thereby fostering a reliance on private motor vehicles. The Council draws support from paragraph 26 of the (December 2024) PPTS which says that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements.
11. Nevertheless, there is a need to consider the precise terms of Policy HOU16, and as I have set out above, approach it with pragmatism. The policy does not rule out sites that are in the countryside. Indeed, if it did, there would be little point in the policy incorporating criteria h) and i) which are designed to limit landscape and visual impacts. The appellants have referred to a number of appeal decisions where Policy HOU16 has been considered. None have followed the Council's interpretation as advanced in this case.
12. All criterion d) requires is that local services and facilities can be readily accessed from the site. The policy does not stipulate that this 'ready access' should be by means other than private motor vehicles. Moreover, the site is but 3.2 km from Smarden, which is home to a wide range of facilities, and 4.3 km from the larger settlement of Headcorn. The site is not, therefore, remote from services and facilities. I accept that occupiers of the site would often need to use private motor vehicles to access those services and facilities, but the trips taken would hardly be long ones and no different to many trips no doubt taken by the settled community from new housing sites on the edge of Ashford, for example. Moreover, I heard that some of the children living on the site are collected by a minibus in order to travel to and from school in Headcorn. This demonstrates that the site is not completely inaccessible, public transport wise.
13. Bringing those points together, I am of the view that the approach the Council has taken to the windfall policy is anything but a robust, or pragmatic, one, nor is it supported by previous appeal decisions. The Council's interpretation would mean that the acknowledged need, which is significant, and not being met, would have to be addressed by Gypsies and Travellers finding and then acquiring sites within, on the edge of, or very close to settlements. This would place them in direct financial competition with those seeking to develop such sites for 'bricks and mortar' housing in an area where there is significant housing pressure. That is a competition that Gypsies and Travellers are very unlikely to win. The result of the Council's interpretation of criterion d) would be inertia, with the needs of Gypsies and Travellers remaining unmet.
14. In that overall context, I am content that the proposal does not fall foul of criterion d) of Policy HOU16.
15. Turning then to criteria h) and i), I noted from my site visit that the development that has already taken place on the site is visible, and the further development proposed, would be more visible. The change from an undeveloped, former orchard, to a Gypsy and Traveller site, would have a harmful impact in landscape and visual terms but that harmful impact would be limited to areas relatively close to the site.
16. Indeed, I saw that a lot of screen planting using species common to the locality has already taken place and secured by condition, a landscaping scheme/strategy that took into account the key characteristics of the site and its surroundings, could, over time, limit that harmful impact further.

17. Criteria h) and i) must be approached pragmatically, and they do not rule out schemes that have some harmful impact in landscape and visual terms. They simply require those harmful impacts to be addressed, as far as possible, by a well-designed landscaping scheme. What the appellants have done already, that can be supplemented by more planting, is sufficient to address the limited harmful impact the proposal would have in landscape and visual terms. On that basis, subject to suitable conditions, the proposal accords with criteria h) and i) of Policy HOU16.
18. Linked to that, points were raised about the effect of the proposal on the setting and thereby the significance of the nearby Malthouse Farm and its Oasthouse, both Grade II listed buildings. Both derive something of their significance from their setting in a rural area. The proposal would be visible from the farmhouse, and its immediate surroundings, so it would bring change to the setting of the listed buildings. However, given the degree of separation involved, and the screening that has and could be provided, their rural setting would remain intact so I do not consider the change wrought by the proposals would have any harmful impact on the significance of the designated heritage assets involved.
19. Points were also raised about drainage and flood risk. Criterion c) of Policy HOU16 requires the site to provide a good living environment free from risks of flooding, amongst other things. I saw that the site is relatively low-lying and possibly prone to issues with surface water drainage. However, I am satisfied that the site could be designed in a way that allowed surface water to be dealt with effectively. A scheme for surface water drainage can be required by condition.
20. I recognise too that foul drainage may be a challenge but again, it is not something insurmountable, and a scheme that brought forward an approach that was effective, could be secured by condition. In that way, the requirements of criterion c) of Policy HOU16 can be met.
21. In terms of the access, and highway safety, criterion g) of Policy HOU16 requires the ability for access to the site to be provided that does not endanger highway safety for vehicles and pedestrians. Having used the entrance to the site myself and driven along Rosemary Lane a number of times in the course of my site visit, I am content that the access to the site is arranged with sufficient visibility in either direction for it to be safe for all users of the highway.
22. Points were made too about the additional traffic the proposal would doubtless generate and its impact on highway safety along Rosemary Lane, and the rural roads it connects to. I appreciate that these roads are relatively narrow and, as I found, passing oncoming vehicles, especially those connected with agriculture, or equestrianism, must be approached with care. However, far from making these roads unsafe, the need to drive with some caution ought to suppress speed and have the opposite effect. In that context, I do not consider that the proposal need have any harmful impact on highway safety more generally. There is no objection from the Highway Authority.
23. Bringing all those points together, I am of the view that the proposal readily accords with Policy HOU16 and the development plan read as a whole. There are no material considerations that would justify a decision not in accord with the development plan, in this case, and as such, a permanent planning permission should be granted, subject to a series of conditions.

24. Before I move on to those conditions, it is instructive to rehearse the situation that would have arisen, had I agreed with the Council and concluded that there was a failure to comply with Policy HOU16 and as a result, the development plan read as a whole, because of the locational characteristics of the site and its impact in landscape and visual terms. In that situation, one would need to consider whether other material considerations justified a decision that was contrary to the development plan.
25. The first of these, and I deal with them in an order that is convenient rather than in terms of their importance, is that the Council accepts that it cannot demonstrate a five-year supply of deliverable sites for Gypsies and Travellers. The (December 2024) PPTS says that in such an instance, paragraph 11(d) of the Framework applies. Here, that means granting planning permission unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework, considered as a whole.
26. There are a number of related benefits that I can deal with together. It is well established that in cases such as this, there is no more important single consideration than the best interests of the children involved. It is abundantly clear that some of the children living on the appeal site are settled, very happy, and making good progress, in school. Others are not currently in school because their parents are (understandably) wary of the disruption and disappointment that would result from starting in a school, only to have to leave, if this appeal is dismissed, a matter that I return to below.
27. I heard very powerful testimony at the Hearing about the importance of education for and to the children involved, and I agree entirely that education signposts a good part of the route to ensuring fair and equal treatment for Gypsies and Travellers, in a way that facilitates their traditional and nomadic way of life while respecting the interests of the settled community – the Government's overarching aim as expressed in the (December 2024) PPTS.
28. Alongside that, I heard that the appellants have, for a long period, been living on the roadside, or on transit pitches with other homeless families, with the attendant insecurity. When the appellants arrived, and set themselves up on the site, a site relatively close to sites occupied nearby by relatives, the Council almost immediately secured an Injunction Order. This requires the use to cease and the site to be cleared and reinstated if planning permission is refused.
29. The Council cannot provide, or even suggest, any alternative site so a refusal of planning permission in this case would mean an immediate return to an insecure roadside existence for the families involved, that would inevitably result in the children having to leave their schools. This is very clearly not something that is in their best interests. Moreover, it would mean that the contact that has been established with healthcare agencies would be broken.
30. With all this in mind, and conscious of the best interests of the children, the PSED, and the appellants' Article 8 human rights, I am firmly of the view that the benefits of a grant of planning permission in this case are of such a magnitude, that the adverse impacts, taken at their absolute highest, are nowhere near sufficient to significantly and demonstrably outweigh those benefits, when assessed against the policies in the Framework, considered as a whole.

31. On that basis, had I agreed with the Council and concluded that there was a failure to comply with Policy HOU16 and as a result, the development plan read as a whole, because of the locational characteristics of the site and/or its impact in landscape and visual terms, the other material considerations involved are easily sufficient to justify a decision contrary to the development plan.
32. In simple terms, whichever way one approaches the proposal, the result is the same – a grant of planning permission is very clearly justified in this case.
33. A series of conditions that might be attached if planning permission is granted for the proposal were discussed in some detail at the hearing. Given that substantive element of the proposal - the material change of use of land for the stationing of caravans for residential occupation as a Gypsy/Traveller site, the widened access, and some of the soft landscaping - have already taken place, there is no purpose served by the inclusion of a commencement condition.
34. A condition is needed to set out the plans that form the basis of the grant of planning permission. Given the basis on which planning permission has been granted, it is necessary to apply a condition requiring that the site be occupied by Gypsies or Travellers as defined in the December 2024 PPTS. I have amended the suggested condition in two ways. First, I have referred to Gypsies *or* Travellers rather than the suggested Gypsies *and* Travellers. The latter could be interpreted in a way that meant that if the site was occupied by solely Gypsies, then it would be in breach of the condition because no Travellers were present. Second, rather than merely refer to the definition in Annex 1 to the December 2024 PPTS, I have reproduced it in full, in the interests of precision.
35. A condition is required to limit the number of caravans on the site to that for which planning permission has been sought and granted. The difficulty with the condition as proposed is that it refers to static/mobile homes and touring caravans when the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended), which the suggested condition (rightly) refers to, makes no such differentiation. On that basis, I have reworded the condition to refer to eight caravans of which no more than four, can be static caravans. The position of the static caravans can then be tied to the arrangement shown on Plan 2: Proposed Site Layout.
36. A number of conditions are put forward to secure details of hard landscaping, the disposal of sewage, refuse storage, and external lighting. I agree that all are necessary, along with details of surface water drainage, but the format of the conditions suggested is problematic given that, as I have set out above, the substantive part of the development has already commenced. On that basis, I have combined these elements into one condition that, as discussed at the hearing, functions in a retrospective way so that the use for which planning permission is granted, must cease if certain requirements are not met.
37. Other conditions have been promulgated to deal with various aspects of the soft landscaping, the existing hedgerows, and habitats, such as they are. I would point out, first of all, that the orchard that used to occupy the appeal site was removed before the appellants occupied it. That said, Plan 2, the proposed site layout, does include various elements of soft landscaping, including buffer planting behind existing hedgerows and trees, new hedges, and an orchard and wildflower meadow. As I have set out above, these are important aspects of the scheme given that, in time, they will provide screening.

38. I saw at my site visit that some of this planting has already taken place, but some mechanism is needed to ensure that it is completed in accordance with what is shown on Plan 2. It seems to me that rather than include a series of conditions in the form suggested by the Council, it is much more precise to include provision for a scheme of soft landscaping, alongside that relating to hard landscaping, within the condition referred to above. This can include a reference to fencing.
39. I do not consider it necessary to apply a condition restricting permitted development rights for new fencing given that the hard and soft landscaping scheme includes fencing, and the approved scheme will need to be retained thereafter.
40. Given that works to form the Utility Blocks have not commenced, a simpler form of condition can be attached to require details of external materials to be submitted to and approved by the local planning authority. A condition limiting the use of these buildings to purposes ancillary to the use of the land as a site for Gypsies and Travellers is unnecessary as these spaces are too small to realistically be used for any other purpose.
41. Bearing in mind the location of the site, and the access to it, a condition is needed to limit the weight of vehicles that can be stationed, parked or stored on the site. For similar reasons, a further condition is needed to limit the extent of commercial activities that can take place at the site.

Final Conclusion

42. For all the reasons given above, it is my conclusion that the appeal should be allowed and a permanent planning permission granted.

Paul Griffiths

INSPECTOR

APPEARANCES

For the Local Planning Authority

Benazir Kachchhi

Development Management
Team Leader

Georgina Galley

Planning Officer

Timothy Bailey

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For the Appellants

Alison Heine

E S N and L Lee

K Lee

K N Lee

Interested Persons

Mr Mortley

Local Resident

Mr Horner

Local Resident

Ms Randolph

Smarden PC

Mr Jeffreys & Ms Rice

Local Residents

Cllr Brunger-Randell

Local Councillor

Mrs Bird

Local Resident

Annex 1: Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Plan 1: Location Plan; Plan 2: Proposed Site Layout; and Plan 3: Proposed Utility Block Plans.
- 2) The site shall not be occupied by any persons other than Gypsies or Travellers defined as 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, and all other persons with a cultural tradition of nomadism or of living in a caravan, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 3) No more than 8 (eight) caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, of which no more than 4 (four) shall be static caravans, shall be stationed on the site at any time. The static caravans shall only be positioned in accordance with Plan 2: Proposed Site Layout.
- 4) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within three months of the date of this decision a scheme for the means of foul and surface water drainage of the site; a scheme for the hard and soft landscaping of the site, including details of all hard surfacing materials, retained and new planting, and fencing; a scheme for any external lighting of the site; and a scheme for the storage of refuse and recyclables shall be submitted for the written approval of the local planning authority and the schemes shall include a written timetable for their implementation.
 - ii) If within eleven months of the date of this decision the local planning authority refuses to approve the scheme(s) or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved schemes shall have been carried out and completed in accordance with the approved timetables.

Upon implementation of the approved schemes specified in this condition, those schemes shall be retained thereafter.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 5) No development of the Day Rooms, shown on Plans 2 and 3, shall take place, above ground, until details of all external facing materials have been submitted to and approved in writing by the local planning

authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.

- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 7) No commercial activities shall take place on the site, including the storage of materials.