
Appeal Decision

Site visit made on 9 May 2025

by **C Carpenter BA MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 May 2025

Appeal Ref: APP/E2205/W/24/3354041

Brockton Paddocks, Vicarage Lane, Charing TN27 0BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant planning permission.
 - The appeal is made by Small, Hanrahan, Connors & Coffey against the decision of Ashford Borough Council.
 - The application Ref is PA/2024/0482.
 - The development proposed is retrospective application for continued use of Gypsy/Traveller site with 4no plots each with 1no static, 1no tourer, 1no dayroom and associated access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form. In Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
3. I observed during my visit that the site currently comprises four pitches, each with its own access onto Vicarage Road. I saw one static caravan on pitches 1, 2 and 4, two static caravans on pitch 3, a shed on pitches 1, 2 and 3 and a building described as a stable block on pitch 4. Each pitch also has a dayroom and space for a touring caravan. This appears to be consistent with the Proposed Block Plan on drawing Ref T1 100-002, which was submitted with the application. The development description on the application form refers to only one static caravan on each pitch. Be that as it may, I have considered the appeal on the basis that development has already taken place as shown on the Proposed Block Plan, as did the Council.
4. On the evidence before me, planning permission for Gypsy and Traveller accommodation on the appeal site has been granted on a temporary basis five times since 2001¹. The most recent of these permissions was for change of use to provide four pitches, each with one static caravan, one touring caravan and one dayroom, for a three-year period ending on 27 March 2023.
5. The question of whether the access points onto Vicarage Lane are lawful is not a matter for me to determine in the context of an appeal made under section 78 of

¹ Refs 00/01610/AS allowed on appeal 15/10/2001; 06/00015/AS allowed on appeal 21/05/2007; 10/01106/AS allowed on appeal 18/08/2011; 14/01000/AS granted 02/11/2016; 19/01034/AS granted 27/03/2020.

the Act. It is open to the appellant to apply to have the matter determined under section 191 and any such application would be unaffected by my determination of this appeal. Alleged unauthorised use of land within the blue line boundary of the site is a matter for the Council to consider and has had no bearing on my assessment of the planning merits of the scheme before me.

6. Planning Policy for Traveller Sites (PPTS) was updated in December 2024. I invited the parties to consider whether the revised PPTS had relevance to this appeal and have taken account of their responses in my decision.

Main Issues

7. These are the effect of the development on:

- the integrity of protected European sites, with particular reference to nutrient pollution; and
- the character and appearance of the surrounding area.

Reasons

Protected European sites

8. The appeal site is within the catchment of the River Stour, which runs into the Stodmarsh Special Area of Conservation/Ramsar (SAC) and Special Protection Area (SPA). The SAC and SPA are European sites protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Under the Habitats Regulations, an appropriate assessment is required in relation to the effect of the development on the integrity of the sites. This responsibility falls to me as competent authority in the context of this appeal.
9. The most recent temporary consent for the appeal site has expired. Consequently, I am required to consider the effect of the development on the integrity of the SAC and SPA, irrespective of the appeal site's history of residential occupation or the date when concerns about nutrient pollution at the sites were first identified.
10. The SAC and SPA are wetland sites comprising open water bodies, reedbeds, grazing marshes and alder-carr, which together support a rich flora and fauna. The SAC is home to a sizeable population of Desmoulin's whorl snail. The SPA provides wintering and breeding habitats for important assemblages of wetland bird species, particularly wildfowl and waders. The sites' conservation objectives are to ensure their integrity, including the extent, distribution, structure, function and supporting processes of the habitats, and population and distribution within the sites of each of the qualifying features, is maintained or restored.
11. Wastewater from residential development contains nitrogen and phosphorus, which are high in nutrients. Excessive levels of nutrients can cause the rapid growth of certain plants and algae through the process of eutrophication. This can displace species that are either important in their own right or that act as sources of food and shelter for other species, thereby adversely affecting the qualifying features of the European sites.
12. According to the appellant's nutrient budget calculator, the development comprising five static caravans generates an estimated additional population of 12 people and some 1,440 litres of wastewater per day. Without mitigation, this would increase

levels of nitrogen and phosphorus entering the protected sites. Therefore, the development, alone and in combination with other development, is likely to have a significant adverse effect on the integrity and conservation objectives of the SAC and SPA.

13. The wastewater at the appeal site is treated by an on-site Package Treatment Plant (PTP). The appellant's evidence shows this helps mitigate the nutrient load of the development but a modest residual quantum of phosphorous drains into the land. Natural England's (NE) standing advice on nutrient impacts dated March 2022 recognises that small discharges to ground from a PTP within the catchment of a designated site can present a low risk that the phosphorous will have a significant effect. However, this is subject to various conditions being met as set out on pages 21-23 of the NE advice letter. The information before me is not sufficient to demonstrate these conditions are satisfied in this case.
14. The appellant has proposed the creation of a small area of wetland to filter the water from the PTP in response to concerns raised with a preceding application². Nevertheless, whilst I recognise this could have a beneficial effect, there is no pertinent technical evidence before me to demonstrate the proposed wetland would achieve sufficient mitigation for the residual nutrients in the PTP discharge.
15. As competent authority, my responsibility is to ensure I am confident there is sufficient information to support my conclusion. The evidence before me is not comprehensive enough for me to be confident the development would achieve an acceptable level of nutrient mitigation, and requiring additional information later via condition would not enable me to discharge my responsibility for this decision. Even if the water from the PTP is good enough to drink, as suggested, this is of little consequence. Bearing in mind the precautionary principle, I therefore find that, notwithstanding the mitigation measures in place and proposed, the effect of the development on the integrity of the SAC and SPA is likely to be significant in the absence of objective evidence to the contrary.
16. For the above reasons, I conclude the proposal has an adverse effect on the integrity of protected European sites, with particular reference to nutrient pollution. This is contrary to Policy ENV1 of the Ashford Local Plan 2019 (ALP), which reflects the Habitats Regulations. In addition, paragraph 193 of the National Planning Policy Framework (the Framework) states that, if significant harm to biodiversity resulting from a development cannot be adequately mitigated, planning permission should be refused.

Character and appearance

17. The appeal site is within the Charing Heath Farmlands (CHF) Landscape Character Area (LCA). According to the Council's Landscape Character Supplementary Planning Document 2011 (SPD), key characteristics of the CHF include mixed farmland, a varied field pattern, small woodland copses, mature isolated trees and major transport infrastructure.
18. The site is surrounded by small fields bounded by hedgerows, with occasional copses. This field pattern contributes to the character of the CHF noted above. The land falls away slightly to the south and east, where there is a public right of way (PROW). The M20 and a high-speed railway line are nearby, and the latter's bunds

² Ref PA/2023/2374

and woodland planting are now an integral part of the landscape. Directly opposite the site are a cottage and outbuildings with two access points onto Vicarage Lane, and a third access leading to another cottage set back from the road.

19. As noted in the previous appeal decisions for the site, the structures and hard landscaped elements of the development have changed the appearance of the site from that of its previous agricultural use. This can be glimpsed from Egerton Road and the PROW. However, there appears to have been no material alteration to the overall varied field pattern that characterises the CHF. This factor was not referenced in the previous appeals, which predate the SPD.
20. Notwithstanding conditions requiring the site to be reinstated to its former agricultural state at the end of each preceding temporary consent, boundary planting has been provided over the years. As this has matured, it has softened the visual impact of the development compared to that described by previous Inspectors. The woodland associated with the railway has also lessened the prominence of the site in some views during that period.
21. The appellant has provided a landscape strategy that proposes additional hedgerow planting along the site's eastern boundary and to fill gaps in the hedgerows on the southern and northern sides. This would further mitigate the visual impact of the development from views across the landscape, including from the PROW, and could be secured by condition were I to allow the appeal. The proposed incorporation of native species would also achieve a modest enhancement to the quality and biodiversity of the natural environment.
22. The addition of three access points onto Vicarage Lane has interrupted the hedgerow on this side of the road. That said, the accesses are recessed, such that they are no more prominent in long views down the Lane than the existing accesses opposite. The over-riding impression in these views is of a country lane bounded by hedgerows, notwithstanding the quantum of hedgerow removed. The timber gates have been painted a dark colour, which helps them blend into the adjacent vegetation in passing views. An appropriate colour and potentially planting to soften the appearance of the gates could be secured by condition. Taking this into account, I find the effect of the change to the hedgerow on the character of the surrounding landscape is not significant.
23. I acknowledge the access points afford glimpses of the pitches and caravans from the Lane. Nevertheless, the modest scale of the development, spacious layout of the pitches and proximity of a small number of other dwellings mean their appearance is not dominant in the rural context. This is true even with the addition of one static caravan on pitch 3, which is large enough to accommodate it and provide adequate play areas for children. There has been no increase in the number of pitches on the site compared to the previously permitted scheme and the boundary treatments between the pitches allow free pedestrian movement across the site, facilitating contact between the occupying families. Consequently, I find the development has not subdivided the site into four separate plots or otherwise intensified its use to an unacceptable degree since the last permission.
24. Further, the four access points reduce isolation of the site and its occupants from the rest of the community, which accords with PPTS paragraph 27. This consideration was not mentioned in the other appeals decisions before me, which predate the PPTS.

25. There is no suggestion the development has had an adverse effect on the setting of the Kent Downs National Landscape.
26. Taking all this together, I conclude the development has had an acceptable effect on the character and appearance of the surrounding area. Accordingly, I find no conflict with sections (h) or (i) of ALP Policy HOU16, which require Traveller accommodation to take into account the key characteristics of the LCA within which it is located and incorporate mitigation to protect the quality of the surrounding landscape. I also find no conflict with ALP Policies SP1, SP6, ENV3a or ENV5 or Policies E4 or D1 of the Charing Neighbourhood Plan 2023, which together seek well designed development that includes a proportionate landscape strategy and responds positively to local landscape character and features, including hedgerows.
27. Further, I find no conflict with the Framework, where it requires decisions to ensure development is sympathetic to local character including the surrounding landscape setting and recognise the intrinsic character and beauty of the countryside.

Other Matters

28. The Council accepts it cannot demonstrate an up-to-date five-year supply of deliverable Traveller sites. In these circumstances, the provisions in Framework paragraph 11d) apply. However, in this case the application of policies in the Framework that protect habitat sites provides a strong reason for refusing the development. Consequently, as set out at Framework paragraph 195, the presumption in favour of sustainable development is not engaged.
29. The Council acknowledges an unmet need for 47 pitches to 2030, which is considerable. On the evidence of delivery to date, implementation of the windfall approach in ALP Policy HOU16 alone is unlikely to make up this shortfall. Supporting text to that Policy sets out the Council's intention since 2018 to allocate additional sites through a separate Gypsy and Traveller Development Plan Document. However, delays have occurred because of uncertainty over strategic mitigation for nutrient pollution to the SAC/SPA and the Council now intends to allocate Traveller sites in its emerging new Local Plan. It anticipates adoption by mid-2026, but there is little before me to show a strategic mitigation solution for nutrient neutrality is close to being agreed, so that date is uncertain.
30. The Council has referred to three vacant pitches at the Gypsy and Traveller site it runs at Chilmington. Two of these were under offer at the time the Council took its decision. Even if the pitches are still available, there is no pertinent evidence they could accommodate all the appellants' families together or adequately meet their specific needs. Consequently, I am not persuaded this other site would be suitable or available, so it does not represent a realistic alternative.
31. When I factor in as individual considerations the lack of five-year supply, the current unmet need for pitches, the absence of a realistic alternative site, and the failure of policy that has led to this situation, the provision of four pitches adds significant weight in favour of the development.
32. The Council has raised no concern with highway safety, access to local services and facilities or effects on the living conditions of neighbouring occupiers. On the evidence before me, I see no reason to disagree with these conclusions. However, an absence of harm in these regards is a neutral factor.

Personal circumstances

33. The Traveller status of the appellants and their families is not disputed. As members of an ethnic minority, they have the protected characteristic of race under s149(7) of the Equality Act 2010. In addition, members of two of the families have severe disabilities, which is also a protected characteristic. The public sector equality duty at s149(1) of the Equality Act requires me to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations.
34. The appeal scheme supports the traditional way of life of, and facilitates the establishment of a settled base for, several Traveller families. This allows cultural traditions to be balanced with the practicalities of modern living. It also enables family members with disabilities to be cared for by others within a close network of relatives; and the arrangement of pitches and accesses helps address their medical needs by facilitating ambulance visits. Further, the unmet need for pitches indicates inequality in housing opportunities and the development helps to offset this in a modest way. Together, these factors advance equality of opportunity and add significant weight in favour of the development.

Best interests of the children

35. Article 3 of the United Nations Convention on the Rights of the Child requires a child's best interests to be a primary consideration. The best interests of a child are not a determinative planning issue, but no consideration must initially be regarded as more important or, in advance of the subsequent assessment of the individual circumstances, be given greater weight. Accordingly, I need to consider whether children's best interests are relevant to the planning issues under consideration. In doing so, I need to ensure the approach is proportionate and be mindful that the best interests of children will not always outweigh other considerations including those that impact negatively on the environment or the wider community.
36. The appeal scheme provides a settled base for several children, a number of whom were born on the site and are enrolled at local schools including Egerton Primary. I understand the children are thriving at school. In addition, an enduring settled base enables continued access to healthcare and generally supports the children's welfare and development by, for example, making friends. Conversely, living an uncertain roadside existence would not support the children's welfare and development. I therefore accept the best interests of the children are served by a permanent and secure home and I give this significant weight.

Planning Balance

37. I have found that, in the absence of sufficient information to demonstrate adequate mitigation, the development has an adverse effect on the integrity of European sites. The resulting conflict with ALP Policy ENV1 leads to a conflict with the development plan read as a whole, and with the Framework as set out above. I attach substantial weight to this harm.
38. I have identified several considerations above, which together add considerable weight in favour of the appeal scheme. However, the weight of these benefits, alone or in combination, is not sufficient to outweigh the harm I have found in this case. The impact on the integrity of European sites is sufficient for me to conclude the development is unacceptable.

39. I have considered the option of granting permission for a further temporary period of three years. This requires a balancing exercise taking into account the limited duration of any permission and any reasonable expectation of a change in planning circumstances by the end of that period.
40. The substantial harm to the SAC and SPA would still occur, albeit for a limited period. As noted above, the timescale for agreement of a strategic mitigation solution is uncertain. Consequently, even if I were to require a contribution to such a scheme via condition, there is no guarantee this could be discharged and appropriate mitigation secured within the lifetime of the consent. A temporary permission would enable the children on the site to remain in local schools, but educational insecurity would recur after three years, which would not be in their best interests. There is also no suggestion the disabilities affecting site occupants are likely to abate in that period. As regards the prospect of alternative authorised sites becoming available within three years, this remains low given the uncertain plan preparation timetable noted above.
41. Taking all this together, I find material considerations do not clearly outweigh the harm arising from a limited period of occupation such as to justify a temporary permission personal to the appellants and their families. However, bearing in mind the considerable benefits and absence of harm to character and appearance I have found, and the history of temporary consents, I think it would be reasonable in this instance for the appellants to seek advice from the Council about the additional information needed to support another application for permanent planning permission.
42. Dismissing the appeal would represent an interference with the homes of the appellants such that Article 8 of the Human Rights Act is engaged. There is also a positive obligation imposed by Article 8 to facilitate the Gypsy way of life. The human rights interference associated with this conclusion is in accordance with the law and is necessary in a democratic society to protect environmental interests, which is a legitimate objective. The nature of the harm I have found is such that the public interest cannot be achieved by means that cause less interference with the appellants' rights. Therefore, dismissing the appeal is a proportionate response and a violation of rights under Article 8 would not occur.
43. In accordance with the public sector equality duty, I have also given due regard to minimising the disadvantage suffered by the occupiers of the site as persons without a permanent home and to meeting their needs insofar as they are different to those without relevant protected characteristics. Whilst ultimately the appeal is to be dismissed, these considerations have been at the forefront of the decision-making process. Nevertheless, the specific nature of the harm identified means the outcome is a proportionate one.

Conclusion

44. I have found the proposal conflicts with the development plan, read as a whole. No other material considerations, including the Framework, have been shown to indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal should be dismissed.

C Carpenter

INSPECTOR