
Appeal Decision

Hearing held on 28 May 2025

Site visit made on 28 May 2025

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 June 2025

Appeal Ref: APP/A2280/W/25/3358815

M2 Commuter Car Park, Maidstone Road, Rainham ME8 0LU

- 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 Mr K Coughtrie of the Public Interest Law Centre against the decision of Medway Council.
 - The application Ref.MC/24/1038, dated 20 May 2024, was refused by notice dated 15 July 2024.
 - The development proposed is the material change of use for Gypsy/Traveller site - retrospective.
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Preliminary Matters

1. As indicated in the description of development set out above, the development has been carried out. That said, the 'retrospective' element of the description is superfluous, and I have not used it in my decision below.
2. The site was originally a 'Park and Ride' facility from where commuters would travel into London by coach, but it fell into disuse after the pandemic. It is in the ownership of the Council. The families¹ moved on to the car park on 29 July 2023, at the suggestion of a Local Councillor, having been moved on from unauthorised sites elsewhere. On 6 October 2023, they were issued with Notice to Quit by the Council. They refused to comply, given that they had nowhere else to go, and have remained on site ever since.
3. The Council has sought to evict the occupiers and regain possession of the site through the Courts. However, I was told that this action has failed, with the Court finding, in short, that in the circumstances described to the Court, eviction would be a disproportionate infringement on the occupiers' Article 8 human rights². While I too have to consider this situation, I must do so anew, in a planning context. As a result, the decision of the Court is of no relevance.

Decision

4. The appeal is allowed, and planning permission is granted for the material change of use for Gypsy/Traveller site at M2 Commuter Car Park, Maidstone Road, Rainham ME8 0LU in accordance with the terms of the application, Ref.MC/24/1038, dated 20 May 2024, subject to the conditions set out in Annex 1 to this decision.

¹ According to the appellant's Statement of Case, there are two distinct family groups involved that form an extended family

² At the time of the Hearing a transcript of the Judgment was not available, so I here rely on what I was told

Main Issues

5. The originating application was refused planning permission for four reasons. In the lead up to the Hearing, having had regard to the Technical Note - Air Quality submitted by the appellant with the appeal, the Council withdrew the second reason for refusal relating to air quality. The Technical Note concludes that occupiers of the site would not be exposed to pollutant concentrations above the relevant objective levels, and any impact upon them in air quality terms would be negligible. On that basis, I take this matter no further.
6. The Council's fourth reason for refusal concerned the failure of the application to address the potential impact of the proposal on the Thames Estuary and Marshes and the Medway Estuary and Marshes Special Protection Areas (SPAs). Generally, these potential impacts are addressed through a financial contribution to strategic mitigation measures (SAMMS) based on a set tariff, secured through a Unilateral Undertaking (UU), or a direct payment. Given that the occupiers of the site do not own the land, the route through a UU was not available. Making a direct payment proved rather complicated too.
7. However, some helpful discussion took place at the Hearing and the parties agreed that a direct payment should be made based on ten touring caravans on the site (which could be set by condition) being the equivalent of five new dwellings. Payment was made on that basis.
8. There is the question of whether five is the correct figure to proceed upon. I appreciate that there are in fact two households on the site and so it could be argued that this is the equivalent of two new dwellings. However, the appeal is not made on the basis that any planning permission granted would be personal to the existing occupiers. If permission was granted for ten touring caravans on the site, the number of households involved could vary considerably. In that context, the figure of five seems to me to be a reasonable compromise. Given that a direct payment was made on that basis during the Hearing, the Council considered the potential impact on the SPAs to have been dealt with.
9. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 as amended requires that, before deciding to give any permission or other authorisation for a project which is likely to have a significant effect on a European site, a competent authority must make an appropriate assessment of its implications (including in combination with others). I have undertaken an appropriate assessment in a reasonable and proportionate manner relative to the circumstances of this case as follows. As there is nothing of ecological or biodiversity value on the site at present and given that direct payment to mitigate the effects on the SPAs has been made which the Council has confirmed is secured for those purposes; an approach arrived at with Natural England, I am of the view that no likely adverse effects would result either on or off site in respect of ecology.
10. With those points in mind, the remaining issues to be considered are the effect of the change of use on the character and appearance of the area, and whether the site provides reasonable living conditions for the occupiers in terms of the noise environment. That analysis must take place in the context of the development plan, and the needs of Gypsies and Travellers; there being no dispute that those occupying the site meet the Government's definition of Gypsies and Travellers as set out in the Planning Policy for Traveller Sites (PPTS) of December 2024.

11. 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.

Reasons

The Policy Background and Need

12. The development plan for the area includes the Medway Local Plan that was adopted in May 2003. Policy H13 refers to Gypsy caravan sites and Travelling Showpeople's quarters. These will be permitted when: (i) the site is close to essential local services, including shops, public transport, schools, medical and social services; and (ii) the site can be physically contained and adequately screened from surrounding land; and (iii) there is compliance with agricultural, landscape, nature conservation and countryside policies; and (iv) there is no adverse impact on nearby residential amenity or agricultural interests; and (v) access arrangements are of a standard approved by the Highway Authority; and (vi) there is adequate provision of power, water and sewerage.
13. The Council has also drawn my attention to Policy BNE1 which sets out general principles for built development; Policy BNE2 which requires all development to secure the amenities of future and existing occupiers; Policy BNE25 which covers development in the countryside; and Policy BNE35 that refers to International and National Nature Conservation Sites.
14. Obviously, these policies are of some vintage and in terms of provision for Gypsies and Travellers, based on an assessment of need from some time ago. The latest assessment of need can be found in the Medway Council Gypsy and Traveller Accommodation Assessment (GTAA) of May 2024. This concludes that there is a need for 56 pitches. I note the points made on behalf of the appellant that this is likely to be an underestimate, but the important point is that the Council has no sites, allocated or otherwise, that can address this need, let alone any greater need that might exist. As such, it is agreed that the Council cannot demonstrate a five-year supply of deliverable sites for Gypsies and Travellers. The Government's PPTS says that in such an instance, paragraph 11(d) of the National Planning Policy Framework (the Framework) applies. Here, that would mean 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.

Character and Appearance

15. The site lies to the immediate north of the M2 motorway near its junction with the A278 (J4). It is separated from the junction by a paddock. There is extensive screening from trees and bushes to the south and east that border the roads and from what I saw, the site is only visible from the length of Maidstone Road that runs along its frontage.
16. An assessment of the impact of the change of use must, in my view, take account of the former, and authorised, use of the site. To my mind, the presence of caravans and vehicles upon it is little different to the parked cars and coaches that would have been in place as part of its former use. That said, the paraphernalia that has grown up around the caravans is not something that would have been in place then.

17. I accept that this paraphernalia could be arranged better but that is most likely a product of the insecure manner in which the appeal site has been occupied. If the occupiers had security of tenure, then there would be more incentive for the site to be better maintained.
18. The Council suggest that landscape screening along the frontage of the site might relieve this impact. Redrow Homes, who have been granted planning permission for 88 homes on the site on the opposite side of Maidstone Road, subject to the completion of an Agreement under s.106, make much the same point, amongst others.
19. First of all, if Redrow Homes are concerned about screening, it is within their gift to provide it along the frontage of their site. Secondly, as the Council observed in the course of the Hearing, opportunities for landscaping along the frontage, within the appeal site itself, are very limited.
20. However, there is another point to consider here. The site is in the ownership of the Council, as is the substantial grass verge between the site access and Maidstone Road. This latter area of land is not part of the appeal site. If planning permission is granted for the change of use sought, the site would become a Council-owned site for Gypsies and/or Travellers. The occupiers, whether those who on the site at present, or other Gypsies and/or Travellers, would need some sort of lease or licence agreement authorising that occupation, for which they would no doubt pay a fee. In that context, if the Council felt that their site would benefit from some landscaped screening along the frontage, which the existing grass verge between the site access and Maidstone Road might accommodate, then they could undertake the required planting.
21. In my view, bearing in mind the former use of the site, and the limited views available of it, and the fact that housing is very likely to come forward to the west of the site, its use as a site for Gypsies and/or Travellers would cause no undue harm in character and appearance terms, as it stands. It is physically contained, and adequately screened already and as such, what is proposed complies with criteria (ii) and (iii) of Policy H13 and Policy BNE1.

Living Conditions

22. The central concern of the Council in relation to the living conditions of the occupiers relates to the prevailing noise climate. The principal influence on that noise climate is traffic noise from the nearby motorway and Maidstone Road. A Noise Impact Assessment Report was submitted with the appeal and its findings were based on an environmental noise survey. The report concludes that, unmitigated, the development site is exposed to environmental noise of a sufficient magnitude to cause a medium to high risk of adverse impact.
23. There are two aspects to the analysis that flows from this finding. The first relates to internal noise levels. The report finds that internal conditions achieving the reasonable relaxation provided for in the BS8233:2014 internal design limits should be achievable with modern mobile homes compliant with BS3632:2015. Moreover, if suitable acoustic barriers can be installed, a nominal 5dB reduction in traffic noise levels could potentially be achieved where line of sight to nearby roads and traffic is obscured. With such mitigation internal conditions commensurate with the internal design limits given in BS8233:2014 should be achievable with modern mobile homes.

24. Most importantly, given the way in which the appeal has proceeded, well insulated modern touring caravans could also potentially achieve the BS8233 reasonable relaxation.
25. In terms of external spaces, the report finds that a level of amenity commensurate with the upper guideline level of 55dB is unlikely to be achieved, with or without mitigation. However, an external area that is relatively quieter could be provided if appropriate acoustic screening is installed.
26. Having regard to those findings, the Council has suggested a condition requiring a scheme to address internal and external noise levels to be submitted for approval and implemented thereafter. I address this further below but in principle, it seems to me that such a condition, properly worded, could ensure that adequate living conditions on the site are secured in compliance with Policy BNE2.

Other Matters

27. Given that the site has an access designed to accommodate coaches, no highway related issues have been raised by the Council. I agree and on that basis there is clear compliance with Policy H13 criterion (v).
28. I saw at my site visit that the occupiers of the site are reliant on generators to provide power, have no piped water supply so rely on bottled water, and use portable toilet facilities. However, there seems to me no good reason why the site could not be connected to a power and water supply and have foul drainage facilities provided. In this way, there could be compliance with Policy H13 criterion (vi).
29. In their representation, Redrow Homes have suggested that sites for Gypsies and Travellers ought to come forward through the Council's new Local Plan to allow for a strategic assessment as to how to make provision for a sufficient level of Gypsy and Traveller sites across the district, in suitable locations, to take place. I deal further with the new Local Plan below, but I would observe that as I have set out above, this is not the approach of Government policy where a Council cannot demonstrate a five-year supply of deliverable sites for Gypsies and Travellers. Moreover, one could surely make the same point about housing in general; the lack of any up-to-date strategic assessment for its provision across the district has not prevented the Council from granting planning permission, subject to the completion of an Agreement under s.106, for housing on the Redrow Homes site.

Conclusion

30. Bringing all those points together, I am content that the change of use sought to allow the site to be used as a site for Gypsies and/or Travellers accords with the development plan. There are no material considerations in play that might serve to justify a contrary decision. On that basis, I intend to allow the appeal and there is no need for the 'tilted balance' to be applied.
31. There is then the question of the nature of that permission to be considered. Given that the Council is not meeting the needs of Gypsies and Travellers in the Borough generally, and on the basis that the needs of the families on this site are not determinative in this instance, there would be no purpose served by granting permission on a basis personal to the existing occupiers.

32. In terms of whether permission be granted on a temporary or a permanent basis, I heard that Council intends to submit its new/replacement Local Plan in the near future. However, the intention, for now at least, is for that Plan to seek to meet its needs through intensification of existing sites rather than allocating new sites. Given the acknowledged level of the need, and the possibility that needs have been underestimated, I have my doubts about whether that approach is workable. It is, however, a matter for the examination.
33. That examination and any eventual adoption might well take some time to conclude but in any event, I have found the site suitable as a site for Gypsies and/or Travellers, subject to a noise-based condition. On that basis, I see no good reason not to make the grant of permission a permanent one.
34. Notwithstanding those conclusions, it would be remiss of me not to address the personal circumstances of the existing occupiers of the site. I heard that the occupiers are happily settled, and having a base, albeit an insecure one, has allowed the children of school age living on the site to attend schools, and school places to be found for those coming up to school age.
35. 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 these best interests are most effectively served by a settled base that allows for attendance at school.
36. Moreover, having a base has allowed proper contact with medical services, and registration with local GPs, for the health issues of some of the occupiers to be addressed, and for the children to receive their immunisations.
37. It is hardly surprising that the families are happily settled on the site when they have previously led a roadside existence, moving from site to site, with no opportunity to settle. While not conclusive, conscious of the best interests of the children, the PSED, and the occupiers' Article 8 human rights, the obvious advantages of a settled base add significant weight to my findings above.
38. I would add that even had I found some harm to arise in character and appearance terms, and a failure to accord the development plan as a result, the obvious advantages of a settled base, in the light of the best interests of the children, the PSED and the occupiers' Article 8 Human Rights, would have provided material considerations sufficiently weighty to justify a decision not in accord with the development plan in this case, without the tilted balance in the Framework needing to be employed.

Conditions

39. 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 the 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 has already taken place, there is no purpose served by the inclusion of a commencement condition.
40. A condition is needed to set out the plan that underpins 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 PPTS.

41. There was some discussion about a condition restricting the number of caravans on the site. I accept that it is necessary to exert some control over numbers. The parties agreed to a limit of ten touring caravans for the purposes of the SAMMS payment (as the equivalent of five new dwellings) and for the reasons I set out above, I consider the condition should reflect that figure. However, the condition does need to make clear, given the workings of a change of use like this, that no static caravans are allowed on the site.
42. As set out above, there is a need for a condition to secure a 'scheme' that addresses traffic noise. Given that the change of use has already taken place, this condition needs to be composed in a retrospective format. As discussed, the same condition can address the layout of the caravans, and any ancillary buildings and/or structures. In terms of the noise condition, some elements of the required 'scheme', such as the nature of the touring caravans, is in the control of the occupiers. I heard during my site visit that the existing touring caravans already provide a good degree of insulation from traffic noise.
43. In terms of other parts of the 'scheme', matters are complicated by the ownership issues. Any acoustic fencing to be erected on and adjacent to the site would need the consent of the Council and others as landowners, but I am sure that a sensible arrangement providing adequate screening, could be arrived at.

Final Conclusion

44. For all the reasons given above, having taken account of the development plan as a whole alongside all relevant material considerations, it is my conclusion that the appeal should be allowed, subject to the conditions set out below.

Paul Griffiths

INSPECTOR

APPEARANCES

For the Local Planning Authority

Hannah Gunner

Principal Planning Officer

Madeleine Mead

Principal Planning Officer

For the Appellants

Alison Heine

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Cllr Satinder Shokar

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Annex 1: Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Un-numbered Location Plan.
- 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 10 (ten) caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, of which 10 (ten) shall be touring caravans and 0 (zero) static caravans, shall be stationed on the site at any time.
- 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 noise and layout scheme shall have been submitted to the local planning authority for their approval in writing. That scheme shall address transport related noise in terms of internal noise levels within caravans and external noise levels in accordance with the associated Noise Impact Assessment Report (prepared by dBA Acoustics ref.1630.NIA.00). That scheme shall also show the positions of the caravans along with any ancillary buildings and structures and shall include a written timetable for its implementation.
 - ii) If within eleven months of the date of this decision the local planning authority refuses to approve the scheme or fails 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 scheme specified in this condition, that scheme 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.