
Appeal Decision

Site visit made on 19 May 2025

by **A Wright BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17th June 2025

Appeal Ref: APP/V2255/W/24/3354226

Land West of Salvation Place, Bell Farm Lane, Minster-on-Sea, Sheerness, Kent ME12 4JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Penfold and Ms Lee against the decision of Swale Borough Council.
 - The application Ref is 22/503844/FULL.
 - The development proposed is the change of use of the land to a single residential caravan pitch for one Gypsy family with the erection of kennels for the keeping and breeding of dogs and store (partially retrospective).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address of the appeal site on the application form is 'Salvation Place, Bell Farm Lane, Minster-on-Sea, Kent ME12 4JB' but the appellants agreed to change this during the application, and this is reflected in the banner above.
3. The proposed development was originally described on the application form as 'change of use of the land to a single residential caravan pitch for one Gypsy family with erection of kennels and store (partially retrospective)'. The appellants agreed to the amended description in the banner above during the application.
4. A residential caravan, kennels and store have already been placed on the site. These appear to be consistent with the proposed site layout plan. I have determined the appeal based on the submitted plans considered by the Council.
5. The Planning Policy for Traveller Sites (PPTS) was revised in December 2024. I invited the parties to consider whether the revised PPTS has relevance to this appeal and have taken account of the responses received in my decision.

Main Issue

6. The main issue in this appeal is whether the location of the site is suitable for the proposed use, with particular regard to the risk of coastal erosion.

Reasons

7. The appeal site lies at the western end of Bell Farm Lane, adjacent to an existing Gypsy site within an area characterised by a mix of Gypsy sites, holiday chalets and dwellings. Immediately north, a steep vegetated slope leads down to the

beach and sea. The proposed caravan is close to the lane with the kennels and store behind it.

8. The site is within Erosion Zone 1 (EZ1) within the Coastal Change Management Area (CCMA) defined on the Council's Proposals Map. EZ1 is land between the low water mark and the 50 year indicative erosion line.
9. Policy DM23 of the Bearing Fruits 2031: The Swale Borough Local Plan 2017 (LP) sets out the Council's approach towards coastal change management. The proposed use does not fall within the types of development allowed within the CCMA or EZ1 under Policy DM23. Nevertheless, the policy states that permission will be granted for proposals within the CCMA where it is demonstrated that it will not result in increased risk to life, nor a significant increase in risk to property. In EZ1, Policy DM23 requires a Coastal Erosion Vulnerability Assessment to show that the development will be safe throughout its planned lifetime and will not increase risk to life or property elsewhere without the need for new or improved coastal defences.
10. National Coastal Erosion Risk Mapping (NCERM) data includes the 2018 cliff line and delineates an estimate of the landward cliff line recession for 20, 50 and 100 years respectively. The appellants' updated Coastal Erosion Technical Note (the Technical Note) uses the worst-case scenario from this data to infer a rate of erosion, in metres per year, to establish a timeline for the occupation of the site. Using this calculation, the Technical Note indicates that the proposed caravan, kennels and store would not be affected by coastal erosion over their five-year lifespan. The appellants consider that a temporary permission of five years would be a reasonable response to this data.
11. NCERM data would usually be relied upon where no other data is available. However, in this location the Council's North Sheppey Erosion Study (NSES) published in 2011 considered the cliff erosion mechanism of the coastline in detail. The Technical Note also uses data from the NSES to estimate erosion in metres per year, again stating that the proposed development would not be subject to coastal erosion within five years.
12. Aerial images and measurements of the site together with a supporting statement relating to the adjacent Gypsy site indicate that this area has not been affected by cliff slippage since 2003. Whilst this may show that there has been less erosion in the recent past than the NCERM and NSES datasets suggest, this does not mean that the rate of erosion will continue to be low. Indeed, given the effects of climate change, the rate of erosion could increase in time.
13. The NSES provides better local data and supersedes that in the NCERM. The NSES was used to underpin the establishment of EZ1 in Policy DM23 which the Council's coastal erosion consultant indicates is at immediate risk of erosion. Further, the Environment Agency objects to the proposal as the site is within an area at significant risk of coastal erosion, and residential accommodation, even on a temporary basis, is not appropriate given the difficulty in predicting locations and rates of erosion. As such, I am not satisfied that the proposed development, even with a five year restriction, would be safe throughout its planned lifetime and does not increase risk to life or property.
14. There are other Gypsy and Traveller sites in the area including the adjoining site at Salvation Place, but this was approved prior to LP Policy DM23 coming into force.

The presence of other pitches does not justify the risk to life and property caused by the location of the proposed scheme in a coastal erosion zone.

15. Consequently, I conclude that the location of the site is not suitable for the proposed use, with particular regard to the risk of coastal erosion. This is contrary to Policy DM23 of the LP which sets out the requirements for proposals in the CCMA. The proposal also conflicts with paragraph 185 of the National Planning Policy Framework (the Framework) where it states that development in a CCMA will be appropriate only where it is demonstrated that it will be safe over its planned lifetime.

Other Considerations

16. The Council accepts that it cannot currently demonstrate an up-to-date five year supply of deliverable Gypsy and Traveller sites. Its current position is a 1.3 year supply which represents a significant shortfall. In these circumstances, as set out in paragraph 28 of the PPTS, the provisions in paragraph 11(d) of the Framework apply. However, in this case, the application of policies in the Framework that protect areas of coastal change provides a strong reason for refusing the development. Consequently, the presumption in favour of sustainable development is not engaged.
17. The Council's Gypsy and Traveller Accommodation Assessment 2023 (GTAA) identifies a need for 80 Gypsy and Traveller pitches in the Borough from 2022/23 to 2026/27 and 34 in the longer term from 2027/28 to 2037/38. The GTAA indicates that regularising sites that are not permanently authorised and additional pitch provision on existing sites would help meet identified pitch needs.
18. Policy DM10 of the LP sets out the Council's approach towards proposals for Gypsy and Traveller sites. The Council has not identified any conflict with this policy, and states that windfall sites are being approved in line with the need identified in the GTAA. Nevertheless, it accepts that there is a clear ongoing need for Gypsy and Traveller sites in the Borough, but there is little indication of how this will be addressed. Further, there is no evidence of any suitable alternative sites available for the appellants in the Borough.
19. When I factor in the lack of five-year supply, the current unmet need for pitches, the absence of an alternative site, and the failure of policy that has led to this situation, the provision of one pitch adds significant weight in favour of the proposed development.
20. The Council did not find harm or development plan conflict in relation to several other matters, including character and appearance, drainage and surface water run-off, ecology, access and parking. However, even if I were to agree with the Council on these points, the absence of harm is a neutral matter which does not carry weight in favour of the proposed scheme.
21. The proposed development is likely to have a significant effect, either alone or in combination with other projects, on The Swale Special Protection Area due to its location within 6km of the protected site. However, notwithstanding the SAMMS¹ mitigation fee payment, given my conclusion below there is no need to consider

¹ Thames, Medway and Swale Strategic Access Management and Monitoring Strategy

the implications of the proposal on the protected site because the scheme is unacceptable for other reasons.

Personal circumstances

22. The Gypsy status of the appellants is not disputed. As members of an ethnic minority, they have the protected characteristic of race under section 149(7) of the Equality Act 2010. In addition, one of the appellants has various medical ailments, and ill and disabled close relatives live nearby. Disability is also a protected characteristic. The public sector equality duty (PSED) at section 149(1) of the Equality Act requires me to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations.
23. The appeal scheme supports the traditional way of life of and facilitates the establishment of a settled base for a Gypsy family which may include children in the future. This allows cultural traditions to be balanced with the practicalities of modern living. It also enables the appellants to access nearby medical support and provide care and support to sick and disabled family members close by as well as providing access to schools for any future children. Further, the unmet need for pitches indicates inequality in housing opportunities and the proposal helps to offset this in a modest way.
24. These are important points in achieving the social sustainability sought by Paragraph 13 of the PPTS. It does not automatically follow that the appeal should be allowed because the PSED is relevant. Nonetheless, the equality implications weigh notably in favour of permitting pitches at the appeal site because dismissing the appeal would perpetuate the disadvantages currently endured.

Planning Balance

25. I have found that the site is unsuitable for the proposed use due to the risk of coastal erosion. The resulting conflict with Policy DM23 of the LP leads to a conflict with the development plan as a whole and with the Framework as set out above. I attach substantial weight to this harm.
26. I have identified several considerations above, which together add considerable weight in favour of the proposed scheme. However, the weight of these benefits is not sufficient to outweigh the harm I have found in this case. The introduction of the proposed use into a CCMA is sufficient for me to conclude that the development is unacceptable.
27. I have considered the options of granting permission for a temporary period of two or five years for the appellants and their future dependents. 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 those periods.
28. The danger of coastal erosion is currently present and will not abate within two or five years. Indeed, the site is within an area where the Shoreline Management Plan policy is for no active intervention, meaning that there is no planned investment in defending against erosion. There is also no suggestion that the care and health needs of the appellants and nearby family members are likely to abate in those periods or that relatives close by are likely to move.

29. I accept that the prospect of alternative authorised sites becoming available remains low given the lack of clarity on how the Council intends to address ongoing needs. As such, I have no indication as to whether periods of two or five years are likely to be sufficient for the Council to adopt a new Local Plan, or for any future allocations to come forward.
30. Taking all this together, the 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.

Proportionality

31. If the appellants could no longer be accommodated at this site, they would be forced to reside on the roadside. Dismissing the appeal would represent an interference with the home 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.
32. In accordance with the PSED, 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 and their nearby family members' 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

33. The proposal conflicts with the development plan as a whole and the material considerations, including the PPTS and the Framework, do not indicate that the appeal should be decided other than in accordance with it. The appeal is therefore dismissed.

A Wright

INSPECTOR