



Appeal Decision

Hearing held on 19 August 2025

Site visit made on 20 August 2025

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2025

Appeal Ref: APP/X2220/W/25/3364988

Land South of Ash Road, Sandwich (Grid Ref Easting: 631509, Grid Ref Northing: 158554)

- 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 A Gentle against the decision of Dover District Council.
 - The application Ref is 21/00658.
 - The development proposed is part retrospective change of use of the land to 8no pitch Gypsy & Traveller site with associated development including improved access, hardstanding, installation of package treatment plant and fencing.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Dover District Council against Mr A Gentle. This application is the subject of a separate decision.

Preliminary Matters

3. I observed that development has taken place on the appeal site and that the site is occupied. However, the plots have not been established as indicated on the submitted plans. I have considered the appeal accordingly.
4. The National Planning Policy Framework (the Framework) and Planning Policy for Traveller Sites (PPTS) were updated in December 2024. I invited the parties to consider whether the revised Framework and/or PPTS had relevance to this appeal and have taken account of their responses in my decision.

Main Issues

5. The main issues are:
 - whether the proposal represents an acceptable form of development having regard to its flood zone location; and
 - the effect of the development on the Thanet Coast and Sandwich Bay Special Protection Area (SPA).

Reasons

Flood zone location

6. The development comprises caravans and mobile homes intended for permanent residential use, which are classified as highly vulnerable to flood risk in Annex 3 of the Framework. I shall assume the 100-year lifetime for residential development noted in Planning Practice Guidance (PPG)¹, as no specific justification has been put to me for a different period.
7. The appellant's site-specific Flood Risk Assessment dated April 2022 (FRA) draws on Environment Agency (EA) flood risk modelling and mapping data available at that time. This identifies the appeal site within Flood Zone 3a, which means there is a high probability of flooding. The principal source of the risk is found to be tidal flooding, for which there is a 1:200 or greater annual probability. There is also a risk of surface water flooding, managed through drainage ditches that border the site.
8. The site is currently protected from tidal flooding by sea defences, but the FRA identifies a residual risk of inundation by up to 0.29m of floodwater at the present day if these defences are breached. Once the effects of climate change are factored in, the site could be inundated with up to 1.7m of floodwater in 2115 even with the current flood defences. There is no pertinent evidence of plans to upgrade flood defences in the area to mitigate these risks.
9. Recently updated EA flood risk maps for the appeal site were discussed at the hearing. These do not include the detailed modelling of potential flood water depths at the appeal site noted above. Nevertheless, the parties agreed the maps suggest no improvement in the level of flood risk affecting the site and, if anything, a worsening of impacts compared to those set out in the FRA. I see no reason to disagree with this assessment.
10. The Framework states a sequential risk-based approach should be taken to individual applications in areas known to be at risk now or in the future from any form of flooding, having regard to potential changes in flood risk and the effects of climate change. This involves applying the Sequential Test and then, if necessary, the Exception Test. Further advice is provided in PPG. This approach is reflected in Policy CC5 of the Dover District Local Plan 2024 (LP) and the Site-Specific Guidance for Managing Flood Risk referenced therein.
11. Given the risks identified above, a Sequential Test is required for the appeal scheme, whether or not the EA's comments about the application confirm this.
12. The appellant argues the Sequential Test is met based on the assessment of Potential Gypsy and Traveller Sites by arc⁴ dated March 2020 (PGTS), which was commissioned by the Council to support preparation of the LP. I find the borough-wide coverage of that study provides an appropriate area of search for the type of development proposed, bearing in mind LP Policy H4's borough-wide approach to windfall accommodation for Gypsies and Travellers. However, the PGTS is over five years old and there is little before me to demonstrate there are now no other reasonably available sites than those it identifies, or that the sites considered could accommodate 8 pitches. In addition, the PGTS states the site immediately adjacent

¹ Paragraph: 006 Reference ID: 7-006-20220825

to the appeal site on Ash Road ('Site D') avoids flood risk areas, which is not consistent with the evidence on flood risk before me.

13. Consequently, the PGTS does not provide a sufficiently comprehensive assessment of reasonably available sites appropriate for the proposed development, or a sufficiently up-to-date assessment of their level of flood risk, to satisfy me the Sequential Test has been passed.
14. Given this, the Exception Test should not be applied according to PPG². In addition, in its assessment of flood risk vulnerability and flood zone 'incompatibility', PPG states highly vulnerable development should not be permitted in Flood Zone 3a³. These factors alone are sufficient to preclude the development in this case from application of the Exception Test. Even if I were to apply it, I would need to be satisfied that the development would provide wider sustainability benefits to the community that outweigh flood risk; and that the development would be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere.
15. There is no pertinent evidence in relation to the first requirement. In relation to the second, increased flood risk to neighbouring land would be mitigated via the proposed surface water drainage strategy, which could be secured by condition were I to allow the appeal. However, bearing in mind the assumed lifetime of the development and the level of flood water that could inundate it within that period, allowing for the effects of climate change, I find there would be a significant risk to life for site occupants. I note the EA made similar comments in April 2024.
16. I have considered the mitigation measures put forward in the FRA, but I am not persuaded these would practicably address up to 1.7m depth of water in a flood event or that they factor in the vulnerability of current site users, many of whom are children and/or have disabilities. Even 0.29m of flood water could be dangerous for the very young and disabled. I am also mindful that areas behind flood defences are at particular risk from rapid onset of fast-flowing and deep-water flooding, with little or no warning if defences are breached⁴. If the flood defences were overtopped due to exceedance of the flood defence level, the FRA describes the speed of onset of flood water in similar terms. Therefore, I do not find the appellant's suggestion that flood warning systems would give two days' notice to be realistic for all potential flood risk scenarios. Nor am I persuaded that warnings from neighbours would suffice, however good their relationship with the current occupants of the appeal site.
17. The appellant's regular payments to the Internal Drainage Board (IDB) support upkeep of the nearby drainage ditches and thereby help address current surface water flood risk at the site. However, there is no compelling evidence these ditches are sufficient to mitigate the risks from tidal flooding outlined above.
18. There is also no pertinent evidence that safe evacuation routes could be maintained or that vehicles could be safely moved in time, even in the present-day breach scenario. This and the other factors above lead me to find the Exception Test would not be passed, even if it were to be applied.

² Paragraph: 035 Reference ID: 7-035-20220825

³ Paragraph: 079 Reference ID: 7-079-20220825

⁴ PPG Paragraph: 042 Reference ID: 7_042-20220825

19. I recognise planning permission has recently been granted for a nearby caravan park also within Flood Zone 3a. Nonetheless, that site is intended for visitor accommodation rather than permanent residential use, so the considerations in relation to flood risk and scope to rely on emergency plans are different to those that apply in this case. It was also put to me that Gypsy and Traveller sites have been allocated and/or granted planning permission in Flood Zone 3a in other parts of the country, but no compelling evidence has been provided of such cases, or to demonstrate their circumstances are directly comparable to those before me. Consequently, these considerations do not outweigh the significant concerns about risk to life on the appeal site that I have identified.
20. For the above reasons, I conclude the proposal does not represent an acceptable form of development, having regard to its flood zone location. It conflicts with LP Policy H4, which does not permit Gypsy and Traveller accommodation in Flood Zone 3. It also conflicts with LP Policy CC5 and the Framework as set out above; and with PPTS paragraph 13, which states Traveller sites should not be located in areas at high risk of flooding, given the particular vulnerability of caravans.

Thanet Coast and Sandwich Bay SPA

21. The appeal site falls within the Zone of Influence (Zol) of the Thanet Coast and Sandwich Bay SPA/Ramsar site (the SPA) as defined in Figure 11.1 of the LP. The appellant's agent questions the validity of this designation, based on alleged inconsistencies in digital 'shape files' used by different government agencies to define the SPA's boundary. He also raises concerns regarding information about the SPA in the Council's Local Land Charges (LLC) system; and with the preparation of/supporting evidence for the Council's Strategic Access Mitigation and Monitoring Strategy (SAMMS) for the part of the SPA that falls within its area.
22. I have considered the numerous supporting documents provided, which include *inter alia* various measurements for nature conservation sites in the area. There is little to explain the relative status of these materials and no conclusive evidence to substantiate the concerns raised about the roles and responsibilities of the various agencies involved. Answers to my questions at the hearing shed little meaningful light on the matter. Even if I were to accept that discrepancies around the area of the SPA exist, there is no sufficiently compelling evidence to persuade me this would inevitably undermine the validity of its designation in the LP. I am also unconvinced the Council's LLC system has a direct or material bearing on this.
23. On the evidence before me, the emerging LP was assessed under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), which included the required consultation with Natural England (NE). The SAMMS, which was finalised in 2023, also refers to Habitat Regulations compliance. The appellant's agent has confirmed he did not raise his concerns when the LP was undergoing examination. I see no pertinent evidence the LP's examining Inspectors identified insurmountable problems with either the SPA or the SAMMS approach, and I find no convincing reason to reach a different conclusion in this appeal. Accordingly, I give full weight to the SPA designation, its Zol and LP Policies SP13 and NE3. I shall also have regard to the SAMMS as a material consideration.
24. The conditions put forward by the appellant's agent around updating the Council's LLC and reviewing its taxation requirements are not directly relevant to the development because they concern Council-wide responsibilities well beyond the

scope of the appeal scheme. The broad extent and nature of the measures proposed also render the conditions practicably unenforceable. Consequently, they fail to satisfy the tests for use of planning conditions⁵ and my findings above are unaltered.

25. The SPA is a European site protected under the Habitats Regulations, which require an appropriate assessment in relation to the effect of the development on the integrity of the site. This responsibility falls to me as competent authority in the context of this appeal.
26. The SPA comprises a long, sweeping bay spanning the River Stour estuary, Pegwell Bay and Sandwich Bay. The beach is largely shingle backed by sand dunes, with sandy flats revealed at low tide. This provides overwintering habitat and food for internationally important populations of Turnstone and Golden Plover, and breeding habitat for Little Tern in the summer. The SPA's conservation objectives are to ensure its integrity, including the extent, distribution, structure, function and supporting processes of the habitats, and population and distribution within the site of each of the qualifying features, is maintained or restored.
27. According to the SAMMS, there is a threat to the SPA from increased recreational activities, such as walking and dog-walking, which disturb the birds' habitats and behaviour. It is likely occupants of the development visit the SPA, thereby increasing levels of recreational disturbance. Such an increase, alone or in combination with other plans and projects, is likely to have a significant effect on the integrity of the protected European site.
28. The SAMMS sets a tariff per new dwelling, to be paid towards a programme of strategic mitigation measures for recreational disturbance, such as information and monitoring. The appellant has said he is willing to pay the tariff in the event I give weight to the SPA and SAMMS. However, no mechanism to secure such a payment is before me, and there would therefore be little merit in my seeking the opinion of NE about the scope and effectiveness of the SAMMS.
29. For the above reasons, I conclude the development has had a significant adverse effect on the integrity of the Thanet Coast and Sandwich Bay SPA. This is contrary to LP Policies SP13 and NE3, which reflect the Habitats Regulations and set out the required mitigation approach. It is also contrary to paragraph 193 of the Framework, which states planning permission should be refused if significant harm to biodiversity resulting from a development cannot be adequately mitigated.

Other Considerations

Existing provision, the need for sites and alternatives available to the appellant

30. The Council's Gypsy and Traveller Needs Assessment 2018, as updated in 2020, (GTNA) identifies a need for 26 pitches between 2020 and 2040. This is included as a locally set target in the LP, which allocates existing sites with potential to provide additional pitches and includes windfall Policy H4. The Council's most recent Annual Monitoring Report states the identified need had been met in full by April 2023, taking account of additional pitches granted planning permission on windfall sites and the remaining potential for intensification of existing sites. On this

⁵ See Framework paragraph 57

basis, the Council says it can demonstrate a five-year supply of sites sufficient to meet its LP pitch target.

31. This position was accepted by an Inspector in March 2025⁶. There is little compelling evidence to persuade me circumstances have since changed, such that the sites listed by the Council now fail to meet the test of deliverability at PPTS footnote 4. Even if I were to find a five-year supply of sites cannot be demonstrated, policies in the Framework that protect areas at risk of flooding and habitat sites provide strong reasons for refusing the development. Accordingly, under Framework paragraph 11d) and footnote 7, the presumption in favour of sustainable development is not engaged.
32. That said, I understand the surveys underpinning the GTNA were undertaken in 2017 and early 2018. Whether or not those data include the appellant and his family, it is reasonable to assume circumstances affecting the need for pitches will have changed in the eight or so years since then. Another Inspector made a similar observation in May 2024⁷ (although other appeal decisions brought to my attention are older so are not directly comparable⁸). There is evidence before me suggesting a degree of overcrowding at some sites. In addition, whilst I accept cultural need was factored into the assessment, it has not been demonstrated to my satisfaction that all aspects of the most recent 2024 PPTS Gypsy and Traveller definition are included. Taking all this together, I find it likely there is a level of unmet need in the area, whether or not there is a five-year supply of pitches.
33. The Council has suggested several alternative sites for the appellant. However, there is no definitive evidence these sites are currently available, or that they would be suitable for the appellant by accommodating his extended family in one place. I am also mindful cultural factors can affect the practicality of site sharing between different Traveller communities, and I understand this to be a significant consideration for the appellant in relation to some of the sites suggested. This was acknowledged by the Council at the hearing. Thus, I do not find the suggested alternatives would currently provide a realistic long-term solution for the appellant's accommodation needs.
34. I give the likely unmet general need and lack of current alternatives for the appellant moderate weight in favour of the development.

Personal circumstances and the best interests of the children

35. The Traveller status of the appellant and his family 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, several family members have 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.
36. The appeal scheme supports the traditional way of life of, and facilitates the establishment of a settled base for, some thirty Travellers within an extended family, including about fourteen children. This allows cultural traditions to be balanced with the practicalities of modern living. It also enables family members

⁶ Appeal Ref APP/X2220/W/24/3354851

⁷ Appeal Ref: APP/X2220/W/23/3332801;

⁸ Appeal Refs: APP/X2220/W/23/3319129, APP/X2220/C/22/3313856, APP/X2220/W/22/3305480, APP/X2220/W/18/3196788, APP/X2220/C/21/3269950, APP/X2220/C/18/3199973, APP/X2220/W/18/3199968

with disabilities and health conditions to access local healthcare and be cared for by others within a close network of relatives. Further, the absence of suitable and available alternative sites indicates inequality in housing opportunities, which the development helps to offset in a modest way. Together, these factors advance equality of opportunity and add significant weight in support of the development.

37. 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.
38. The appeal scheme provides a settled base for several children, some of whom are enrolled at local schools and nurseries. I understand the children are thriving and some take part in local extra-curricular activities. 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.

Other

39. I note the reasons why the appellant purchased the site in 2021 and that he sought to regularise the situation through prompt submission of a planning application. I also recognise the appellant's efforts to enhance the appearance of the site and foster good community relations. The development does not dominate the nearest settled community, and I see no reason to find it places undue pressure on local infrastructure or jeopardises highway safety, subject to conditions were I to allow the appeal. However, an absence of harm in these regards is a neutral factor.

Planning Balance

40. The harms I have found arising from the risk to life from flooding and the effect of the development on the integrity of the SPA lead to a conflict with the development plan read as a whole, and with the Framework as set out above. I attach substantial weight to these harms.
41. I have identified several considerations above, which together add considerable weight in favour of the appeal scheme. However, the weight of these factors, alone or in combination, is not sufficient to outweigh the harms I have found.
42. I have considered the option of granting permission for a temporary period. 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.
43. The substantial harm to the SPA would still occur, albeit for a limited time. The risk from flooding would prevail for as long as the site is occupied. Even if the probability of a severe flood event is low, its effects could be sudden and

catastrophic for permanent caravan dwellers as I have outlined. As the FRA does not factor in the most up to date flood risk modelling, I cannot be sure how soon the effects of climate change will be felt at the site. There is also no clear prospect that local flood defences will be strengthened within the next few years.

44. A temporary permission would enable the children on the site to remain in local schools, but educational insecurity would recur after that period, which would not be in their best interests. There is also no suggestion the disabilities affecting some site occupants are likely to abate soon. As the Council has no immediate plans to undertake a new land availability assessment, there is no imminent prospect of an alternative authorised site becoming available. I have also had regard to the appellant's concern, expressed at the hearing, that a temporary consent would simply delay a permanent resolution to his family's accommodation needs.
45. 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 appellant and his family.
46. Dismissing the appeal would represent an interference with the homes of the appellant and his family 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 harms I have found is such that the public interest cannot be achieved by means that cause less interference with the appellant's rights. Therefore, dismissing the appeal is a proportionate response and a violation of rights under Article 8 would not occur.
47. 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 harms identified means the outcome is a proportionate one.

Conclusion

48. 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

APPEARANCES

FOR THE APPELLANT:

Stuart Carruthers	Planning agent
A Gentle	Appellant
Phien O'Phien	Traveller Coalition

FOR THE LOCAL PLANNING AUTHORITY:

Amber Tonkin	Senior Planning Officer
Karen Evans	Principal Planning Officer
Claire Dethier	Planning and Development Manager
Carly Pettit	Planning Policy Team Leader

ADDITIONAL DOCUMENTS ACCEPTED DURING AND AFTER THE HEARING

DOC1	Aerial photograph of the appeal site dated 17 April 2025
DOC2	Extracts from GOV.UK EA Flood Map for Planning dated August 2025, including maps showing flood risk scenarios affecting the appeal site
DOC3	Costs application by Dover District Council against Mr A Gentle
DOC4	Updated list of conditions dated 21 August 2025, with associated email exchange between the parties setting out those agreed and not agreed