



Appeal Decisions

Hearing Held on 27 April 2022

Site visit made on 27 April 2022

by Tim Wood BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8th June 2022

Appeal A: APP/V2255/W/20/3254539 New Acres, Spade Lane, Hartlip, Kent ME9 7TT

- 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 Frank Mongen and others against the decision of Swale Borough Council.
 - The application Ref 19/503694/FULL, dated 18 July 2019, was refused by notice dated 21 May 2020.
 - The development proposed is the change of use of land for an 8 pitch gypsy and traveller site with facilitating development.
-

Appeal B: APP/V2255/W/20/3244340 New Acres, Spade Lane, Hartlip, Kent ME9 7TT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by S, M and P Maughan and others against the decision of Swale Borough Council.
- The application Ref 18/501667/FULL, dated 26 March 2018, was refused by notice dated 12 December 2019.
- The application sought planning permission for change of use of the land from agriculture to use as a residential traveller site (caravan site) comprising eight pitches with associated hardstanding, together with an access road without complying with a condition attached to planning permission Ref: APP/V2255/C/16/3165246, dated 31 October 2017.
- The condition in dispute is No 4 which states that: *"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 the date of failure to meet any one of the requirements set out in (i) to (iv) below: i) within 3 months of the date of this decision a scheme, hereafter referred to as the Site Development Scheme, shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation. The Site Development Scheme shall include details of: alterations to the site access in line with the details submitted with planning application Ref. SW/13/1485; the internal layout of the site, including the siting of caravans; areas for vehicular access and turning and manoeuvring; proposed and existing external lighting on the boundary of and within the site; the means of foul and surface water drainage or disposal; areas of hardstanding; fencing and other means of enclosure; hard and soft landscaping including details of species, plant sizes and proposed numbers and densities; and details of the condition of the land before the development took place and the works necessary to restore the land to that condition, or some other state as agreed with the local planning authority, and the time period within which the restoration works must be undertaken, ii) within 6*

<https://www.gov.uk/planning-inspectorate>

Appeal Decisions APP/V2255/W/20/3254539, APP/V2255/W/20/3244340

months of the date of this decision the Site Development Scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, 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 Site Development Scheme shall have been approved by the Secretary of State. iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable, and works comprised in the scheme shall be thereafter retained for the duration of the development."

Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for the change of use of land for an 8 pitch gypsy and traveller site with facilitating development at New Acres, Spade Lane, Hartlip, Kent ME9 7TT in accordance with the terms of the application, Ref 19/503694/FULL, dated 18 July 2019, and the plans submitted with it, subject to the conditions set out in Schedule 1 of this decision.

Appeal B

2. The appeal is dismissed.

Application for costs

3. At the Hearing an application for costs was made by the Council against the appellants in relation to Appeal B only. This application is the subject of a separate Decision.

Preliminary Matters

4. In relation to Appeal A, the Council's objections to the development relating to the effects on the Special Protection Area have been met by the appellants paying the necessary mitigation contribution.
5. In relation to Appeal B, after a short discussion at the Hearing, it was agreed by the Council and the appellant that the original permission had now expired and that, in those circumstances, there was no option but to dismiss the appeal. Although the appellant expressed some wish for the merits of the case to be debated, it was accepted that this would not be necessary if the appeal were to be dismissed.

Main Issues

6. The main issues in these appeals are:

Appeal A

- The effects of the proposal on the character and appearance of the area
- Whether there would be an unacceptable loss of Best and Most Versatile agricultural land.

Reasons***The effects of the proposal on the character and appearance of the area***

7. The appeal site is within a flat area of land bounded by the A2 to the north and Spade Lane, South Bush Lane and Meresborough Lane. The great majority of the land is open and free from buildings and structures. Spade Lane contains a few dispersed houses on its eastern side, South Bush Lane has sporadic housing on both sides. More significant development exists adjacent to the A2 including a car business and a storage facility. Notwithstanding the presence of the development along the A2, the other roads are rural in nature, being generally single-track and surrounded by open land. Some hedgerows exist but these allow for open views across the land. I assess the character and appearance of the area as being strongly rural.
8. The appeal site is occupied as a Gypsy and Traveller site with attendant features. Its access is taken from Spade Lane and the site extends for some considerable depth towards South Bush Lane. The site is highly visible from the surrounding area, including from the public footpath which runs across the open land to the north. Within the predominantly open and rural landscape, the existing site appears prominent and discordant. It was suggested by the appellant that landscaping of the site could soften its appearance. In my view, any landscaping that would achieve this would be so significant that it would, in itself, appear incongruous within the area and contrary to the advice in the PPTS at paragraph 26.
9. I consider that the alterations proposed as part of the appeal, compared to the current layout, would have little effect on the overall impact of the development of the site on the surrounding area. It would appear significantly out of place, unacceptably urbanising and in conflict with Policies ST3, DM10 and DM14 of the Swale Borough Local Plan 2017 (LP).

Agricultural Land

10. The development of the site has resulted in the loss of an area of land of the Best and Most Versatile (BMV) category, within its highest grade. The National Planning Policy Framework states that, when considering such issues, any economic and other loss must be taken into account. Submissions at the Hearing indicate that around 70% of farmed land with Swale Borough is BMV and the majority of non-BMV land is within the Kent Downs AONB and the Isle of Sheppey and so constraints to development exist. This would seem to support the appellants' suggestion that it would be very difficult to locate non-BMV land for the use proposed. However, I am mindful that no specific evidence is submitted of the appellants' search for alternative sites. In this instance, I attach moderate weight against the appeal in relation to the loss of BMV.

Other Matters***The need for and provision of sites***

11. The Council indicates that, at the time of the adoption of the LP in 2017, the Council's GTAA suggested a Gypsy and Traveller pitch requirement of 61 over the Plan period, to 2031. Of those, 59 pitches had already been granted permanent planning permission, leaving an outstanding balance of 2 pitches up to the year 2031. As a result, no formal pitch allocations were included within

the Plan. Accordingly, a 'windfall' approach was taken and is embodied in Policy DM10 of the LP. The Council indicates that this means that the 5-year supply requirement is of limited relevance within the Borough and that any shortfall in relation to it should carry only limited weight.

12. However, the Planning Policy for Traveller Sites (PPTS) states that local planning authorities should identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites. In relation to the 5-year supply, the Council indicates that they are able to demonstrate 3.5 years supply. However, and notwithstanding disagreement between the appellants and the Council, the delivery of sites through the Council's windfall approach does seem to be providing sites in excess of the GTAA identified need. Therefore, I see the Council's inability to demonstrate a 5 years supply of sites as counting in favour of the appeal but this is tempered somewhat by the factors set out above.

Personal Circumstances

13. The appeal site is occupied by individual families who are generally part of a wider family group, including 24 children at present. I have been made aware that a number of the adults have health problems and that they would benefit from a stable base from which to access health services. A number of the children are said to attend education establishments locally and I have no doubt that moving from the site could significantly disrupt stable access to schooling. The PPTS sets out as part of the Governments aims to provide suitable accommodation from which travellers can access education and health services. I attach considerable weight to the harmful effects that would arise from the need to vacate the appeal site without the provision of any alternative sites being available.

Balance and Conclusion

14. I have taken account of my duty, in determining this appeal, placed on me by the Public Sector Equality Duty. I have also considered the best interests of the children resident at the appeal site, as a primary consideration. In relation to the environmental effects of the appeal, the development has a significantly harmful effect on the character and appearance of this rural area and has involved the loss of BMV. I give significant weight to this harm and attribute further moderate harm to the deliberate unauthorised nature of the development.
15. In favour of the appeal, the Council is unable to demonstrate a 5 years supply of sites, no alternative sites have been identified. The personal circumstances of the appellants and the best interests of the resident children would be significantly harmed by the need to leave the site. I give these matters significant weight as the consequence of dismissing the appeal would be that the residents would become homeless.
16. In balancing these considerations, I find that the harm is not outweighed by the factors in favour of the appeal and that permanent planning permission should not be granted. The PPTS states that in circumstances where a local planning authority cannot demonstrate an up to date 5 year supply of sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. Taking this into account, along with all other matters, I find that

Appeal Decisions APP/V2255/W/20/3254539, APP/V2255/W/20/3244340

the factors in favour of a temporary permission, with its time-limited effects, means that temporary planning permission is justified in this case. I consider that a temporary permission of 3 years would be an acceptable time period and would enable the residents and the local situation to gain an opportunity for alternative sites. Such a restriction would represent an interference with the right of the occupants, under the Human Rights Act but I am satisfied that it is necessary, proportionate and justified.

Conditions

17. I have taken account of the advice in the National Planning Policy Framework and the Planning Practice Guidance in relation to the use of conditions. In view of the particular considerations of the appeal, it is necessary to restrict future occupiers of the site to gypsies and travellers. As discussed above, the permission is for a temporary period of 3 years and I shall include a condition to that effect and which requires all items to be removed from the site the site to be restored at the end of that time.
18. I shall impose a condition for a Site Development Scheme to be submitted, approved and adhered to which includes measures relating to access, site layout, positioning of caravans, utility buildings/day-rooms, fencing, hard-standings, parking, amenity areas, lighting, surface water and foul sewage disposal, landscaping and boundary treatment and a scheme for the restoration of the site, so that the character of the area and highway safety is not prejudiced. I shall also include conditions which limit the number of pitches, prevents any commercial activities and controls the keeping of commercial vehicles at the site, for the same reasons. I have found that the personal circumstances of the appellants have contributed to allowing the appeal but they are not so exceptional as to require a personal permission to be imposed. I have taken account of the Council's representations about the inclusion of dayrooms/utility buildings and I note the conclusions reached in determining the previous appeals at the site, when an appeal including large buildings was dismissed. In my judgement such facilities are necessary for such a site but their ultimate size, number and appearance could be resolved through the Site Development Scheme, without compromising the character of the area.
19. As a result of my conclusions in relation to Appeal A, the appeal is successful and temporary planning permission is granted.

T Wood

INSPECTOR

Appeal Decisions APP/V2255/W/20/3254539, APP/V2255/W/20/3244340

SCHEDULE 1: CONDITIONS

1. The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
2. The use hereby permitted shall be for a limited period being the period of 3 years from the date of this decision. At the end of this period the use hereby permitted shall cease, all caravans, structures, materials and equipment brought onto, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place.
3. There shall be no more than 8 pitches on the site and on each of the 8 pitches hereby approved no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed at any time, of which no more than 1 caravan shall be a static caravan.
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 the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme, hereafter referred to as the Site Development Scheme, shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation. The Site Development Scheme shall include details of: alterations to the site access in line with the details submitted with planning application; the internal layout of the site, including the siting of caravans; details of the proposed day-rooms/utility blocks (notwithstanding indications on the submitted drawings); areas for vehicular access and turning and manoeuvring; proposed and existing external lighting on the boundary of and within the site; the means of foul and surface water drainage or disposal; areas of hardstanding; fencing and other means of enclosure; hard and soft landscaping including details of species, plant sizes and proposed numbers and densities; and details of the condition of the land before the development took place and the works necessary to restore the land to that condition, or some other state as agreed with the local planning authority, and the time period within which the restoration works must be undertaken,
 - ii) within 6 months of the date of this decision the Site Development Scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, 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 Site Development Scheme shall have been approved by the Secretary of State.
 - iv) the approved scheme shall have been carried out and completed in

Appeal Decisions APP/V2255/W/20/3254539, APP/V2255/W/20/3244340

accordance with the approved timetable, and works comprised in the scheme shall be thereafter retained for the duration of the development.

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 more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight.

6. No commercial activities shall take place on the land, including the storage of materials.



Costs Decision

Hearing Held on 27 April 2022

Site visit made on 26 April 2022

by Tim Wood BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8th June 2022

Costs application in relation to Appeal Ref: APP/V2255/W/20/3244340 New Acres, Spade Lane, Hartlip ME9 7TT

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Swale Borough Council for a full award of costs against S, M and P Maughan and others.
 - The hearing was in connection with an appeal against the refusal of an application seeking to vary a condition attached to a planning permission.
-

Decision

1. The application for an award of costs is refused.

The submissions for the Council

2. The Council's submissions were made in writing prior to the Hearing and were not added to at the Hearing

The response by the appellants

3. The appellants' response was made in writing prior to the Hearing and was not added to at the Hearing.

Reasons

4. The national Planning Practice Guidance (PPG) states that parties will normally be expected to meet their own costs in relation to appeals and costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. The original temporary planning permission was granted by means of an appeal (Ref: APP/ V2255/C/16/3165246) granted on 31 October 2017, as set out in my main decision and running for 3 years. Condition 4 required certain actions within 3 months of the decision date. The Council challenged the appeal decision and the appellants decided to hold-off taking any action pursuant to its requirements in order to await the outcome of the challenge. However, during that process, the Council indicated to the appellant that the 3 months compliance period for condition 4 had expired, contrary to the appellants' understanding that matters would be on hold during the legal process. Without accepting the Council's position, the appellants submitted an application to vary the time limit of condition 4 so that suitable details could be submitted and

<https://www.gov.uk/planning-inspectorate>

Costs Decision APP/V2255/W/20/3244340

resolved. The application was made in March 2018. The Council held off determining the application while the legal challenge to the original decision was on-going. Once that was resolved in January 2019, the Council reported the application to its relevant committee with an officer recommendation for approval. The Council resolved to refuse the application at its committee meeting on 7 March 2019. After some delay, the Council issued a decision notice dated 17 May 2019, indicating that planning permission was granted. Eventually, this error was rectified by the Council seeking to quash its own decision notice. On 27 November 2019, the decision notice was quashed and on 12 December 2019, the Council issued a corrected decision notice refusing the application; this is the subject of this appeal. The appeal was made on 7 January 2020.

6. The Council has indicated that the appellants' benefit from a successful appeal would have been limited in time, due to the expiry of the 3 year permission on 30 October 2020. The appellant has indicated that they had requested that the appeal be determined by the written method in the hope of a swift decision. Unfortunately, for numerous reasons, none of which are the fault of the appellants, including the Covid 19 pandemic, matters did become protracted. However, at the time that the appeal was made, there may have been some realistic hope on the appellants' part that planning permission could be granted and that some benefit may arise from any approval. I understand the appellants stated position that their interests would be maintained if an appeal were to have been successful. In this respect, and notwithstanding the eventual outcome of the appeal, I do not consider that the appellants were unreasonable in exercising their option to appeal against the Council's decision.
7. The appellants had also hoped that some matters of principal would be resolved in the determination of the appeal; including whether matters should be put on hold if a decision is the subject of a challenge. If an appeal had been determined, this would not be an unreasonable hope, in my view. The Council states that this is not the purpose of the appeal process. Whilst it may not be the primary purpose, there are numerous examples of clarity of law and process being provided by appeal decisions as a consequence of the main purpose of determining planning appeals.
8. The Council also comments that the 3 propositions set out by the appellants in their statement are irrelevant and amount to unreasonable behaviour. I consider these as additional arguments for the appellants' case which seek to add strength to comments already made. They provide some background and the appellants views on certain matters. Whilst the Council do not agree with them, they are nevertheless appropriate submissions for this appeal.
9. For the reasons set out above, I find that the appellants have not acted unreasonably in their submission of the appeal and in the contents of their case. Therefore, the conditions necessary for the award of costs has not been satisfied.

T Wood

INSPECTOR