



Appeal Decision

Hearing held on 13 November 2007

Site visit made on 13 November 2007

by **Claire Sherratt** DipURP MRTPI

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

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Decision date:
19 December 2007

Appeal Ref: APP/U2235/A/07/2037800

The Mellows, Marley Road, Harrietsham, ME17 1BS

- 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 Bridget and John Cash against the decision of Maidstone Borough Council.
- The application Ref MA/06/1508, dated 8 June 2006, was refused by notice dated 19 September 2006.
- The development proposed is the stationing of 2 mobile homes for occupation by 2 No traveller families, erection of polytunnels, retention of stable building & access road / hardstanding & drainage works & entrance gates.

Summary of Decision: The appeal is allowed.

Preliminary Matters

1. Notwithstanding the description of development, permission is sought for one mobile home and one touring caravan (to be used as ancillary residential accommodation) for one family. The polytunnels are no longer proposed. The Council did not consider its case would be prejudiced if I were to determine the appeal on this basis. I agree. The main parties also agreed that the description of development should be amended to reflect these changes.
2. Part of the development for which planning permission is sought has taken place, namely the stationing of one (double unit) mobile home, the erection of a stable building (currently used as a utility and storage area), together with extensive areas of surfacing, drainage and the entrance gates. Permission is sought to regularise this development.
3. I consider the proposed development would be more accurately described as the retrospective change of use of land to a gypsy site for one family involving the stationing of one mobile home and one touring caravan, the retention of and use of the former stable building for purposes incidental to the residential use of land, access, hardstanding, drainage works and entrance gates. I have determined the appeal on this basis.
4. Although the application was originally made by Mrs Bridget Cash and John Cash (her brother), permission is now only sought by Mrs Bridget Cash who would occupy the site with her children, Anne (aged 13), Eileen (12) and Patrick (7).
5. Enforcement Notices were issued in March 2006 which took effect in April 2006 in respect of the use of the site and former stable building and the associated operational development. Stop Notices were also issued. Enforcement action is currently being held in abeyance pending the outcome of this appeal.

Development Plan

6. The draft Regional Spatial Strategy has only recently been through the Public Examination Stage and does not yet form part of the development plan. The Kent & Medway Structure Plan 2006 (SP) is the most up to date element of the development plan. I have also been referred to policies contained within the Maidstone Borough-Wide Local Plan (LP). All the LP policies relevant to this appeal have been saved under a direction by the Secretary of State under Schedule 8 to the Planning and Compulsory Purchase Act 2004. I have been referred to a number of policies of which I have summarised those I consider to be particularly pertinent to this appeal below.
7. Policy HP9 of the SP gives advice on the location of gypsy sites. It stipulates that where a need for gypsy accommodation is established, provisions should be made in accordance with the SP policies for protecting the countryside. Sites should be located first within the major urban areas or defined rural service location centres in preference to the countryside. In the absence of such sites, locations with good accessibility to the major / principal urban areas or rural service centres and with easy and safe access to primary and other main roads will be preferred. LP Policy H36 stipulates that planning permission will not be given for gypsy sites unless evidence of a travelling way of life is available, the site should be capable of satisfactory screening and the development should not lead to an over concentration of sites, such as to affect the character or amenity of the area. It was agreed at the hearing that the first limb of this policy would not be consistent with Circular 01/2006 'Planning for Gypsy and Traveller Caravan Sites', the site could also be satisfactorily screened and that the development would not lead to an over concentration of sites. As such, the proposal would not conflict with this LP policy.
8. SP Policy EN1 seeks to protect the countryside for its own sake and Policy EN3 protects, inter alia, land free from urban intrusion and seeks to safeguard and enhance landscape character and assets. LP Policy ENV28 limits development in the countryside to certain specific categories of development including that which is reasonably necessary for the purposes of agriculture and forestry, or mineral working, recreational uses and public or institutional uses. Gypsy caravan sites may be considered as an 'exception' to the policy provided they meet other development plan policies.
9. SP Policy EN4 relates to Areas of Outstanding Natural Beauty (AONBs) and confirms that the primary objective is to protect, conserve and enhance the landscape character and beauty of the nationally important landscapes. This is reflected in LP Policy ENV33 which confirms that within the Kent Downs AONB the conservation of the natural beauty of the landscape will be given priority over other planning considerations.
10. The primary objective of the North Downs Special Landscape Area (SLA) is the protection, conservation and enhancement of the quality of its landscape, whilst having regard to the requirement to facilitate the social and economic well-being of the communities situated within them. This is set out in Policy EN5 of the SP and reflected in Policy ENV34 of the LP. Policy T23 of the LP confirms that the Council will consider the impact of traffic generated by a development on the transport system and on the environment.

11. The Council is in the process of preparing its LDF. It is still within the very early stages. The Council has to carry out further consultation on the Core Strategy early next year (2008). This will delay the production of a Land Allocations Development Plan Document (DPD) which is now expected to go to its first consultation stage late in 2009. Adoption of the DPD(s) is currently envisaged by the end of 2010. Allocated sites are therefore anticipated to be identified in about 3 years.
12. A Gypsy Housing Needs Assessment (GTAA) has been commissioned jointly with the adjoining local planning authorities of Ashford, Tonbridge and Malling and Tunbridge Wells Councils. It has now been finalised and accepted by the Council (Document 2).

Main issues

13. The appeal site is situated within the Kent Downs AONB and the North Downs SLA. I consider the main issues are the effect of the development on:
 - (a) the character and appearance of the area having regard in particular to the nationally recognised designation;
 - (b) highway safety;
 - (c) the need for gypsy sites in the area; and
 - (d) the appellant's need for a site.

Reasons

Character and Appearance of the Area

14. National Parks, the Broads and AONBs have been confirmed by the Government as having the highest status of protection in relation to landscape and scenic beauty. Planning Policy Statement 7 'Sustainable Development in Rural Areas' (PPS7), at paragraph 21, advises that the conservation of the natural beauty of the landscape and countryside should be given great weight in planning policies and development control decisions in these areas. The statutory purpose of AONBs is to conserve and enhance the natural beauty of their area. Circular 01/2006 confirms that in areas with nationally recognised designations, as with any other form of development, planning permission for gypsy and traveller sites should only be granted where it can be demonstrated that the objectives of the designation will not be compromised by the development. Local Landscape Designations such as the North Downs SLA carry less weight and are only of limited importance compared to national landscape policies. PPS7, paragraph 25, supports this view. Circular 01/2006 confirms that local landscape designations should not be used in themselves to refuse planning permission for gypsy and traveller sites.
15. The site is situated on the outskirts of Harrietsham, outside the defined settlement boundary of the village. There are residential properties on the opposite side of Marley Road in the immediate vicinity of the site. There are also properties adjacent to the site to the south and south-west. These surrounding properties are detached dwellings occupying substantial plots. There is a public bridleway immediately to the north of the appeal site.
16. The perimeter of the site is defined by a close boarded fence. The fencing is largely concealed from Marley Road by a mature hedge situated along the

frontage. Brick pillars with fencing either side and ornate iron gates define the site access which is set back from the road. Part of the appeal site is surfaced with hardcore or tarmac, part is a formal lawn and the remainder left rather unkempt in appearance with no particular purpose. A former stable structure is used as a utility area and storage. Its overall external appearance remains as a stable block.

17. Land to the north rises up to Pilgrims Way, beyond which the land rises more steeply to the ridge of the escarpment. Whilst public views into the site are limited from Marley Road and the adjacent bridleway by the existing boundary treatments, the site can be seen from Pilgrims Way. I heard that views into the site can also be gained from the property opposite.
18. Generally, the boundaries of surrounding properties are defined by vegetation. Although I saw some examples of fencing or walls in the curtilages of surrounding properties these were not dominant or prevailing features of the area. The existing fencing and defined access together with the considerable extent of hard surfacing within the site result in a rather stark, regimented and harsh appearance. In my view, these elements are incongruous features in the surrounding landscape which bear little relationship to the rural setting. No vegetation in the site serves to soften the impact of the development. In my view, the overall site lacks a sense of cohesion and fails to integrate satisfactorily with its surroundings. The caravan and domestic paraphernalia associated with the use clearly and unacceptably encroach into the open countryside.
19. To conclude on this issue, I consider the proposed development unduly harms the character and appearance of the area and fails to protect or conserve the landscape character and beauty of the surrounding nationally important landscape. It therefore conflicts with national and local policies in this regard.

Highway Safety

20. The Council is concerned that there are inadequate visibility splays at the site access. The intensified use of the access generated by the development would, the Council asserts, give rise to conditions prejudicial to highway safety.
21. It was accepted that the visibility to the north of the site could be improved to a satisfactory standard. However this would involve the removal of a substantial part of the hedge (some 16 metres) along the site frontage which would be of further detriment to the character and appearance of the area. Visibility to the south can not be improved with the access in its present position. I consider it is most likely that most traffic leaving the site will turn right (south) and a greater proportion of vehicles will also approach from this direction given that this is the most direct route to the main road network.
22. If the position of the access is relocated some 9 metres or thereabouts north of its current location, adequate visibility would be achieved in both directions. The appellant's representative considered this would not be unreasonable given the extent of works that would be required in any event to improve the visibility to the north. I am also mindful that the enforcement notices require the removal of the entrance gates and brick pillars so the appellant would not be in a worse position than either of these scenarios. The occupier of Greensleaves, the property opposite, raised no objections to the repositioning of

the access. He saw this as beneficial as the access is directly opposite his own at present. However, a new access was not proposed as part of the original application. It has not been considered and other than those parties present at the hearing other interested parties have not had the opportunity to comment on any revised entrance. I agree with the Council's representative that such an amendment would be material and would go beyond the remit of this appeal.

23. I note that two separate taxis collect the children and take them to school, therefore resulting in 8 traffic movements per day during the week. A local resident had recorded some 16 movements in one day earlier in the year. This broadly corresponds to the upper level of traffic the highway authority would expect to be generated by one 'dwelling'.
24. The section of Marley Road, in the vicinity of the appeal site, is a narrow lane. I would not expect vehicles to be travelling at speed. Indeed a speed check confirmed vehicle speeds of about 20mph. Furthermore, I saw little evidence that this section of Marley Road would accommodate any significant amount of traffic. It would generally serve residential properties situated beyond the site and provide access to Pilgrims Way. Even having regard to the taxi movements, the occupation of the site by the appellant and her children would result in only a modest increase in traffic throughout the day on a lightly trafficked road.
25. Concerns were raised that the site has been used for commercial use in the past, in particular a paving business. It seems to me that the restricted visibility available together with the rural and narrow nature of the surrounding roads and its location in an AONB are all compelling reasons why the site would not provide a suitable location for any form of commercial use. This is a matter that could be reasonably controlled by condition. Any subsequent breach of a condition could be enforced by the Council providing it is considered expedient to do so.
26. Interested parties raised concerns about the increased use of the junction where Marley Road meets Dickley Lane. However, this view is not shared by the highway authority which raises no objections in this respect. Although I consider most vehicles coming to and from the site are likely to turn right and therefore use this junction, I consider that the amount of traffic generated by the development would be modest.
27. Circular 01/2006 states that proposals should not be rejected if they would only give rise to modest additional daily vehicle movements and / or the impact on minor roads would not be significant. As such, I do not consider the increase in traffic using this junction or the access would be unacceptable or unduly prejudice highway safety. I do not find any conflict with Policy T23 of the Local Plan in this respect.

The provision of and general need for & availability of gypsy / traveller sites

28. There is no dispute between the parties that there are no current vacancies on the two council-operated sites in Maidstone. Both sites are currently the subject of studies which seek to rationalise the site layout and would result in a total net increase of 6 pitches. It was accepted at the hearing that pitches on the council-operated sites tend to be offered to relatives of the existing

occupiers. In addition, the sites are currently occupied by Romany gypsies. The appellant, it was established, is an Irish traveller

29. There is no dispute that there are, within Maidstone and the wider area of Kent, a considerable number of unauthorised caravans on sites without the benefit of planning permission. The number of unauthorised sites within Maidstone has not increased materially over the last 3 years and on average, during that period, an average of 10 pitches per year have been made available through the planning system, albeit most have been allowed following an appeal.
30. The GTAA indicates a current shortfall of some 70 pitches in the sub-region. An additional 24 pitches would be required to address family formation over the next 5 years (2007-2011). Having regard to a supply of 30 pitches (6 per year) available over the 5 year period, the data suggests there will be a need for 64 additional pitches between 2006-2011. The distribution of those pitches would be informed by the RSS. However, it was accepted by the Council's representative that based on a distribution informed by both existing and ideal locations expressed by respondents, a large proportion (some 32 pitches) would be required in Maidstone. There is also support from the surveys carried out that the preference would be for more privately owned sites (some 73% of respondents said their ideal site would be a private authorised site).
31. I am satisfied that there is an immediate need for the provision of further gypsy sites in both Maidstone and the wider area. This is a consideration I give considerable weight.

Personal need and circumstances of the appellant

32. Prior to moving onto the appeal site some 18 or so months ago, Mrs Cash rented a property in the village known as Tara. She lived here for over 2 years. Prior to this she has also lived in a council-owned house in High Wickham and on a plot on a council-owned gypsy site in Milton Keynes.
33. The appellant is from a traditional gypsy family and has travelled around the Kent area with her family. Whilst the local planning authority does not dispute her gypsy origins it initially expressed concern that she had ceased a pattern of travelling contrary to the first limb of LP Policy H36. However, at the hearing, in light of Circular 01/2006 which confirms it is no longer necessary to travel to retain gypsy status, it was agreed that the appellant and her family would meet the definition of a gypsy as set out in paragraph 15 of Circular 01/2006.
34. To live in a house is, the appellant told me, against her cultural gypsy traditions. However, she is a single mother and has to provide suitable accommodation for her youngest child Patrick. Living in a house contributed to the breakdown of her relationship with the children's father and I heard she experienced prejudice towards herself and her family as a result of her gypsy origins. It has not been possible for her to continue a travelling existence since having her son Patrick and in any event, she wants her children to receive an education and therefore needs a settled base. I agree that the appellant is a gypsy as defined in the Circular and that there are genuine reasons why it has been necessary for her to cease a travelling lifestyle.

35. Patrick is registered disabled, epileptic, partially sighted and has speech problems. He attends a special needs school for children with profound and severe disabilities in Maidstone and a taxi service is provided. A cross agency team of health workers and social workers are assisting with Patrick's care. I heard that he has a complexity of needs. He is unable to develop a normal pattern of skills due to delayed mental development and visual impairment. He needs assistance with general mobility and any organised activities such as dressing. He is seen by various consultants approximately 6 times per year. It is hoped to secure a disability grant to adapt the mobile home to provide wheelchair access, hoists and a ramp or step lift.
36. In assessing whether alternative accommodation is suitable for Patrick, I heard that a site would need to be reasonably level with enough room for a practical sized garden as Patrick does not enjoy the same access to public facilities. The appellant considers that she can cater for his needs well on the site as it is a more controlled environment than for example a housing estate. She is aware of vehicle movements and general comings and goings in the site and can supervise Patrick accordingly. She has received some play equipment for Patrick from a charity and is waiting for a specially adapted swing seat for him. She has been advised it would be beneficial to enclose the garden area to separate it from vehicles within the site.
37. The appellant's daughter, Eileen, attends a High School in Maidstone where I heard she is making good progress. A taxi is provided (on medical grounds) to take and collect her from school. Due to a problem with her lungs she needs to use an inhaler and gets tired quickly. Although not on any regular medication she has to attend Maidstone hospital for check-ups about twice per year.
38. Anne also attends the same High School. She is the eldest daughter and has missed some schooling while the family still travelled. She attended school while the family were settled on the council-owned gypsy site. However when the appellant experienced problems on this site and had to leave, Anne missed some further schooling. She now has some extra tutorials at school to assist her.
39. I heard that the appellant was given notice, by the owner, to leave Tara. This property was coincidentally in the same ownership as the appeal site at that time. Tara was sold to the previous occupier of the appeal site and the appellant purchased this site. This was clearly an arrangement that suited the circumstances of all the parties involved. The relationship of the three parties involved in these transactions has, in my opinion, little bearing on the land use planning considerations of this case. The Council could not direct me to any alternative sites that may be suitable for the appellant. The new Circular has been necessary because evidence shows that previous advice has failed to deliver adequate sites for gypsies and travellers in many areas of England. The appellant claims she was not aware of the enforcement notices. There is clearly a high demand for sites in the Maidstone area and I doubt if there were other sites that did have the benefit of planning permission available at the time.
40. I consider the personal needs of this family are pressing and that there is a clear need for a gypsy site for this family. There are no alternative sites available for her at present. Circular 01/2006 recognises the benefits arising

from a settled base both in terms of access to health care and education. The alternatives available to the family at present would appear to be a road side existence. I have no doubt that this would not be beneficial for the children both in respect of their continued education and the on-going health requirements of Eileen and Patrick. I give the needs of the appellant and the personal circumstances of her family considerable weight.

Other Matters

41. Various commercial activities have taken place on the site in the past including a paving business operated by the appellant's brother. There was no evidence of any continued commercial activity on the site when I visited it. No commercial use is sought on the site. As I have previously stated, it would not be an appropriate location for commercial activities and this could be controlled by a suitably worded condition.

Overall Balancing Exercise

42. The harm that I have identified to the AONB, a landscape of national importance, must be given great weight. I find the site suitable in terms of highway safety. Considerations weighing in favour of the appellant are the general need for further gypsy sites in the area and the personal needs of the appellant and her family. I give these matters considerable weight. However, in my view, these considerations would not outweigh the harm that I consider would arise to the AONB.
43. Advice on the use of temporary permissions is contained in paragraphs 108 – 113 of Circular 11/95. Paragraph 110 advises that a temporary permission may be justified where it is expected that the planning circumstances will change in a particular way at the end of the period of the temporary permission. Paragraph 45 of Circular 01/2006 confirms that where there is an unmet need but no available alternative gypsy and traveller site provision in an area but there is a reasonable expectation that new sites are likely to become available at the end of that period in the area which will meet that need, local planning authorities should give consideration to granting a temporary permission.
44. Sites are not likely to be identified for at least 3 years after which time it will be necessary to obtain planning permission and implement those permissions. A 4 year period was therefore felt to be appropriate by the main parties if I were to consider a temporary permission. In response to a question I put to the parties at the hearing, and contrary to what I heard at the time, I have subsequently been informed by Maidstone Borough Council that any grant to carry out works to adapt the mobile home (to accommodate the needs of Patrick) would normally only be offered in cases where an applicant had both a site licence and planning permission of at least 5 years duration. Bearing in mind the weight I give to the personal circumstances of the appellant, I consider any temporary permission should therefore reflect this requirement.
45. Whilst the harm to the AONB is significant, some improvements could be made such as the internal screening of fencing or its replacement; the replacement of the ornate gates and brick piers; and a reduction in the extent of hardstanding. Although these mitigation measures would not be sufficient to render a permanent permission acceptable, they would nevertheless lessen the harm.

With these measures in place, I consider the general need for further gypsy sites in the area and the personal needs of the appellant and her family would outweigh the harm to the AONB subject to that harm being limited to a temporary period only.

46. I recognise that a temporary permission would result in an interference with the appellant's home and family life. However this must be weighed against the wider public interest. For the reasons given above, I have found that this proposal would be harmful to the character and appearance of the AONB which enjoys the highest status of protection in relation to landscape and scenic beauty. Nevertheless, in light of the unmet demand for gypsy sites in the area, I intend to allow the continued use of the site for a temporary period until such time as the Council has prepared a DPD to identify suitable alternative sites and having regard to the minimum duration of a permission that would facilitate grant assistance to adapt the mobile home. I consider a temporary permission would not therefore be a disproportionate response in this case.

Conditions

47. The Council suggested a number of conditions which I discussed at the hearing. As well as a condition restricting the permission to a temporary period, I agree that the permission should be personal to the appellant as it is the lack of available sites and the personal circumstances of the family that justify a temporary planning permission. To safeguard the character and appearance of the area from further harm, I agree that the number of caravans should be limited, no commercial activities should be permitted, the existing perimeter fence should be screened or replaced with a means of enclosure or planting in keeping with the area, lighting and satellite equipment should be first agreed and the internal layout approved. Although visibility can be improved to the north of the site access, I am mindful that any replacement hedge would take sometime to mature. Given the modest increase in traffic over a day and that I only intend to permit a temporary permission, I consider the benefits arising from improved visibility would be outweighed by the additional environmental harm that would arise due to the removal of the mature hedge which is an important and characteristic feature along Marley Road. I do not therefore consider a condition requiring improvements to visibility necessary in this instance. Mrs Cash confirmed she would be happy to replace the ornate gates at the entrance to the site. I consider this would be reasonable and further mitigate against the temporary harm that would arise to the AONB.

Conclusions

48. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed for a temporary period of 5 years.

Formal Decision

49. I allow the appeal, and grant planning permission for the retrospective change of use of land to a gypsy site for one family involving the stationing of one mobile home and one touring caravan, the retention of and use of the former stable building for purposes incidental to the residential use of land, access, hardstanding, drainage works and entrance gates at The Mellows, Marley Road, Harrietsham, ME17 1BS in accordance with the terms of the application, Ref

MA/06/1508, dated 8 June 2006, and the plans submitted with it, subject to the following conditions:

- 1) The use hereby permitted shall be carried on only by Mrs Cash and her dependants and shall be for a limited period being the period of 5 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 2) When the premises cease to be occupied by Mrs Cash and her dependants or at the end of 5 years, whichever shall first occur, the use of the land and former stable building hereby permitted shall cease, all materials and equipment brought on to the premises in connection with the use, shall be removed and the land restored to its former condition.
- 3) Notwithstanding the application plans, no commercial activities shall take place on the land, including the storage of materials and the erection of polytunnels.
- 4) The former stable building shall be used for purposes ancillary to the residential use of the site only.
- 5) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan or mobile home) shall be stationed on the site at any time.
- 6) 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 for:
 - external lighting on the boundary of and within the site;
 - any existing and proposed satellite receiving equipment;
 - the internal layout of the site, including the siting of caravans, areas of hardstanding, access roads, parking and amenity areas and any means of boundary treatment proposed to define these areas;
 - proposed measures to screen the existing close boarded fence around the perimeter of the site or details of any replacement means of enclosure including the replacement of the existing entrance gates and brick pillars.
 - tree, hedge and shrub planting and seeding of any former areas of hardstanding which shall include details of species, plant sizes and proposed numbers and densities;(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.
 - ii) within 11 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.
- 7) Any tree, hedge or shrub that forms part of the approved site development scheme that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, within a period of 5 years or during the period which the premises are occupied by Mrs Cash and her dependants, whichever is shorter, shall be replaced with another of the same species and size as that originally planted in the first available planting season.

Claire Sherratt

INSPECTOR