
Appeal Decision

Hearing Held on 12 March 2019

by Tim Wood BA(Hons) BTP MRTPI

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

Decision date: 9 April 2019

Appeal Ref: APP/U2235/W/18/3197191

Maplehurst Paddock, Frittenden Road, Staplehurst, Kent TN12 0DL

- 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 Mr John Lee against the decision of Maidstone Borough Council.
 - The application Ref 17/502997/FULL, dated 5 June 2017, was refused by notice dated 12 October 2017.
 - The application sought planning permission for permanent use of land as a home for a gypsy family, with a mobile home, touring caravan, dayroom and stables without complying with a condition attached to planning permission Ref MA/12/1793, dated 19 September 2013.
 - The condition in dispute is No 2 which states that: "*The use hereby permitted shall be carried on only by Mr Lee, his wife and children*".
 - The reason given for the condition is: "*Due to the lack of alternative sites available to meet the applicant's personal needs*".
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Decision

1. The appeal is allowed and planning permission is granted for permanent use of land as a home for a gypsy family, with a mobile home, touring caravan, dayroom and stables at Maplehurst Paddock, Frittenden Road, Staplehurst, Kent TN12 0DL in accordance with the application Ref 17/502997 dated 5 June 2017, without compliance with condition number 2 previously imposed on planning permission Ref MA/12/1793 dated 19 September 2013 and subject to the conditions set out in Schedule 1 of this decision.

Application for costs

2. At the Hearing an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Since the planning application was refused by the Council in June 2017, it has adopted the Maidstone Borough Local Plan (LP) on 25 October 2017. The main parties have agreed that some of the policies referred to in the decision notice within the previous local plan are no longer relevant.
4. I undertook an unaccompanied site visit to the area prior to the Hearing. It was agreed by all at the Hearing that this was sufficient to enable me to properly consider the appeal.

5. The Council accepts that the appellant satisfies the definition of a gypsy.

Main Issue

6. The main issue in this appeal is the effects of the proposal on the character of the surrounding area.

Reasons

7. The appeal site comprises around 1.4 hectares of land on the east side of Maplehurst Lane, which is a single track road leading from Frittenden Road. The site is about 1.2km to the east of Staplehurst. The site contains a mobile home, a day room and a stable building, located on the western part of the site.
8. Access to the site is gained from Maplehurst Road at the northern end of its frontage. Hedges with close-boarded timber fences behind enclose the west (road frontage), north and south boundaries.
9. Policy DM 15 of the LP states that planning permission for gypsy and traveller accommodation will be granted if the site is allocated for that use or if a number of criteria are met; these include, most relevant to this appeal, that there is no significant harm to the landscape or rural character; the Council confirmed at the Hearing that the other criteria are not contested. In relation to the effects on landscape, the policy makes reference to the cumulative effects of existing lawful caravans and to screening of the development by existing landscape features.
10. The site is well screened from views at its frontage. The dense hedge, which is referred to in previous application documents, has obviously matured over time. This and the close-boarded fence to the rear of the hedge means that the site has little visual effect for the most part, adjacent to its frontage. The access point allows views into the site but it must be accepted that this is from a very restricted area on the road, just outside the access. In addition, paragraph 26 of the Planning Policy for Traveller Sites (PPTS) indicates that it is undesirable to create the impression that sites and its occupants are deliberately isolated from the rest of the community. I accept that some views of the site are available from the south and north but these are very limited in their extent and I consider that the structures on the site do not dominate the views from these areas and represent only glimpses. Therefore, I consider that the visual effects of the site are very limited and only have an effect when adjacent to the access point. In relation to the requirements of Policy DM 15, I consider that this does not represent significant harm.
11. I have taken account of the presence of other gypsy and traveller development nearby as Policy DM 15 requires an assessment of any cumulative effect. However, it should be born in mind that the development at the appeal site has been in place for a number of years and pre-dates these other sites. In addition, I can see that the cumulative effect was taken into account, and found to be acceptable, when permission was given for land nearby. Furthermore, the existing planning permission at the appeal site would allow the site to be occupied by the appellant/wife/children and it must be accepted that this could see the site occupied in this manner for several decades, a point acknowledged by the Council at the Hearing. Therefore, regardless of the

outcome of the current appeal, the site could be occupied lawfully for many years to come. I consider that this must add weight in favour of the appeal.

Other Matters

12. There was some discussion at the Hearing in relation to the supply of gypsy and traveller sites within the Borough and whether the Council can demonstrate a suitable supply. I have concluded that the proposal would be in accordance with the provisions of the development plan and is acceptable, regardless of the supply of such sites in the Borough. Therefore, there is no need to examine the detail of the demand and supply of such sites as, it would either be a neutral factor or weigh in favour of the appeal, and so would not affect its outcome in this case.

Conditions

13. I have taken account of the advice in the Planning Practice Guidance in relation to the use of conditions. The effect of allowing the appeal is to create a separate planning permission and so the imposition of a full spectrum of conditions is necessary, rather than simply removing/omitting the condition in dispute. So that the use of the land accords with the provisions of Policy DM 15 it is necessary to include a condition which restricts the occupiers to gypsy and travellers as defined in the PPTS. In order to limit the effects of the development on the area conditions relating to the number of caravans, lighting and no commercial activities are justified. The hedge at the frontage has been planted and maintained so that it forms an effective screen; a condition requiring that it is maintained to a minimum height of 3m is justified so that it remains so. I shall include a condition which identifies the approved plan so that the scope of the permission is clear.
14. There was discussion in relation for the need for a condition which restricts permitted development within Schedule 2, Part 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015. This covers various temporary structures and uses and, in my view, would not be relevant or strictly applicable to this development. Therefore, I shall not include such a condition.

Conclusion

15. I have concluded that the proposal would have no significant effects on the character of the area and in all other respects, complies with Policy DM 15. It is notable that, even in the absence of this appeal, the site could be legitimately occupied in the same manner for several decades to come. I find that the proposal would give rise to no harm and the appeal is successful.

S T Wood

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

P Brown...Planning Consultant
J Lee...Appellant

FOR THE LOCAL PLANNING AUTHORITY:

G Parkinson...Senior Planning Officer

INTERESTED PERSONS:

J Perry...Borough and Parish Councillor
S Forward...Parish Councillor

DOCUMENTS

- 1 Plan showing development in the surrounding area

SCHEDULE 1, CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan as received by the Council on 7 June 2017.
- 2) 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).
- 3) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.
- 4) No commercial activities shall take place on the land, including the storage of materials.
- 5) No additional external lighting shall be erected at the site unless details have previously been submitted to and approved in writing by the local planning authority. Any additional lighting shall be erected in accordance with the approved details and retained in that manner thereafter.
- 6) The existing hedgerow fronting Maplehurst Lane shall be allowed to grow and be maintained to a height of no less than 3m. Any part of the hedgerow which becomes dead, dying, diseased or removed shall be replaced within the first available planting season with plant(s) of the same species.