



Appeal Decisions

Hearing held on 17 October 2023

Site visit made on 17 October 2023

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State

Decision date: 1st November 2023

Appeal A Ref: APP/M2270/C/22/3292576

Land Part O/S Plot 3771, Standen Stables, Standen Street, Benenden, Cranbrook, TN17 4LA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Adam Taylor against an enforcement notice issued by Tunbridge Wells Borough Council.
 - The notice, numbered PF/T016506, was issued on 1 February 2022.
 - The breach of planning control as alleged in the notice is Without planning permission the material change of use of land from a mixed use of agricultural and private equestrianism to a mixed use of agriculture and private equestrianism and the stationing of a mobile home for residential use.
 - The requirements of the notice are: 1. Cease the residential use of the Land. 2. Cease the use of the Land for the stationing of a mobile home for residential purposes. 3. Permanently remove from the Land the mobile home shown in its approximate location hatched black on the attached plan. 4. Remove all paraphernalia associated with the residential use of the mobile home from the Land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) & (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/M2270/W/21/3287995

Standen Stables, Standen Street, Benenden, Cranbrook, TN17 4LA

- 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 & Mrs A Taylor against the decision of Tunbridge Wells Borough Council.
 - The application Ref 21/02714/FULL, dated 6 August 2021, was refused by notice dated 12 November 2021.
 - The development proposed is material change of use of land to a mixed use for agriculture, equestrian and to include stationing of caravans for residential occupation with associated operational development (additional hard standing, repositioned manure store) - retrospective. (2 caravans).
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Decisions

Appeal A: APP/M2270/C/22/3292576

1. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of land at Part O/S Plot 3771, Standen Stables, Standen Street, Benenden, Cranbrook, TN17 4LA from a

mixed use of agricultural and private equestrianism to a mixed use of agriculture and private equestrianism and the stationing of a mobile home for residential use as shown on the plan attached to the notice and subject to the conditions attached as Annex A to this Decision.

Appeal B Ref: APP/M2270/W/21/3287995

2. Appeal B is allowed and planning permission is granted for a material change of use of land to a mixed use for agricultural equestrian and to include stationing of 2 caravans for residential occupation with associated operational development (additional hard standing, repositioned manure store)(retrospective) at Standen Stables, Standen Street, Cranbrook, TN17 4LA in accordance with the terms of the application, Ref 21/02714/full, dated 6 August 2021, and the plans submitted with it, subject to the conditions attached as Annex B to this Decision.

Main Issues

3. I consider that the main issues in this case are:

On Appeal A ground (a) and Appeal B:

- (i) whether the proposal is accordance with the policies in the Development Plan that aim to direct residential development to sustainable locations;
- (ii) the effect of the development on the character and appearance of the site and its setting within the High Weald Area of Outstanding Natural Beauty (AONB);
- (iii) whether there are any material considerations that outweigh any policy conflict that may arise from the previous issues.

On Appeal A ground (g):

- (iv) whether the time for compliance is reasonable.

Site and surroundings

4. The appeal site is located about 1.7 miles from the village of Sandhurst in the High Weald AONB. It is part of a plot that has planning permission¹ for a mixed equestrian and agricultural use. In connection with that permission, a barn/stable block has been built and an area of hardstanding laid. There is a field shelter in one of the paddocks and the site is accessed via a driveway from Standen Street. Landscaping has been planted in several areas of the site in accordance with the conditions attached to the permission.
5. The appellants have moved a single unit mobile home onto the hardstanding created under the planning permission and are living there with their 3 young children. They moved onto the site after their previous site was sold and they were required to leave. There is also a touring caravan parked adjacent to the barn/stable block on the area designated for the muck store. This has meant that the site proposed for the muck store has been moved towards the hedge bordering the road.

¹ Ref: 20/02226/FULL

Procedural matters

6. The Statement of Common Ground confirms that there is no dispute between the parties that the appellants and their family meet the definition of gypsies and travellers as set out in Planning Policy for Traveller Sites (PPTS) and that the principle of gypsy and traveller accommodation outside the development boundary and within the AONB can be acceptable.
7. It is also confirmed that, despite some issues raised by interested parties, the Council has no objections to the development of the grounds of highway safety, residential amenity or drainage and flooding.

Reasons

Sustainability

8. The site is in a rural area outside of any of the development boundaries delineated in the Tunbridge Wells Borough Local Plan 2006 (LP). Paragraph 25 of Planning Policy for Traveller Sites (PPTS) notes that new traveller site development should be very strictly limited in open countryside that is away from existing settlements or outside areas allocated in the development plan.
9. However, such development is not completely prohibited and, in this case, the site is already developed for equestrian uses and forms part of a small enclave of other residential, commercial and agricultural development. I also note that the Council has recently allowed conversion of some redundant barns into dwellings in a location that is further from the available facilities in Sandhurst. Whilst I recognise that this application was assessed under a different policy context, this nevertheless suggests that there were factors that outweighed any concerns about the travel distance to the village.
10. Sandhurst is served by a convenience store and post office as well as a general store attached to a petrol station and I saw that these shops offer a wide range of products that are able to provide for most everyday needs. The village is served by public transport and has a primary school which is attended by one of the appellants' children. A school bus serves the secondary school attended by another of the appellants' children.
11. It is often the case that gypsy sites are located further from settlements than bricks and mortar housing, sometimes due to affordability or the need for gypsies and travellers to be close to their livestock and this is recognised in planning policy. In this case, the facts that the appellants would be living on a site that is within a reasonable distance of services and they would also not have to travel to tend to their horses are factors that improve the sustainability credentials of the development. For these reasons, I consider that the location of the site is not a matter that adds any significant weight against the grant of planning permission on grounds of lack of sustainability.

Character and appearance

12. Paragraph 176 of the National Planning Policy Framework (the Framework) notes that great weight should be given to conserving and enhancing the landscape and scenic beauty of AONBs and policy CP4 of the Tunbridge Wells Borough Local Development Framework Core Strategy Development Plan Document 2010 reflects this requirement.

13. LP policy H4, which deals with the location of gypsy sites, requires such development, if within an AONB, not to be located within an exposed position. It should also not be visually intrusive and should be well-screened by existing vegetation and physically contained by landscaping. Standen Street is part of the rural lanes network and LP policies also seek to prevent unsympathetic change to the character of rural lanes where this is of landscape or other importance.
14. In this case, I saw that the mobile home is not readily visible from public viewpoints, particularly whilst the trees and hedgerows are in full leaf. It is also seen in the context of the existing stable block against which it does not, to my mind, stand out as a particularly alien or intrusive feature. It is similar to the type of small, low-key developments typically found in rural areas such as this. There has already been planting on and around the site undertaken under the terms of the equestrian permission in order to reinforce the existing vegetation.
15. I consider that the residential use is not having any greater impact on the landscape quality of the AONB than the permitted development, as it is contained within an existing curtilage and surrounded by land managed for the equestrian use. The entrance to the site and the driveway are already authorised and have not changed to accommodate the residential development. There has been no further intrusion into undeveloped land and, provided the area of residential occupation is restricted to the area of hardstanding shown in the application plans, I consider there would be no harmful change to the quality or character of the surroundings.

Other Matters

Five Year Gypsy and Traveller Site supply and alternative sites

16. The emerging Local Plan (ELP) has been considered by the Examining Inspector and his '*Examination of the Tunbridge Wells Borough Local Plan: Initial Findings*' report was published in November 2022. The ELP does not anticipate that permission would be granted for gypsy sites except within areas allocated on the Proposals Map, and notes that the need for additional pitches has been identified as mainly coming from existing local families, mainly living on small, family run sites. It consequently recommends that planning policy is focused on providing a framework for the intensification, expansion, and/or regularisation of these sites.
17. The Council considers that great weight should be given to this document and notes that the Inspector made no criticism of the strategy for providing sufficient gypsy and traveller pitches. Since then, in July 2023, the Council have published their latest update to the Five-Year Gypsy and Traveller Supply Statement 2023 which concludes that the Council can demonstrate a 5 year supply.
18. However, the appellants have made detailed criticism² of this Statement, submitting that the basic data on which it relies is out-of-date and flawed and they have cited a number of areas where mistakes were said to be evident or information was considered incorrect. The Examining Inspector did identify areas of the ELP that required modification before it could be considered sound and I am told the Council are now considering these before they are submitted in the first part of 2024. There will then be further Hearings into the ELP proposals and the Initial Findings do make reference to the fact that further discussion is expected to take place on some matters that have are not yet been covered in detail.

² Appellants' updated Statement of Case dated 21/9/2023

19. I do not propose to pre-empt any further discussion that may take place on whether or not the Council can demonstrate a 5 year supply of gypsy and traveller sites through this Decision, save to say that there do appear to be some unresolved matters relating to the evidence base and, at the time the planning application the subject of Appeal B was refused, the Council agreed it could not demonstrate a 5 year supply.
20. It seems to me likely that the criticisms of the Supply Statement 2023 may be put before the Inspector at the re-convened Hearings and it is therefore not yet confirmed that the Council's submissions on the matter will be accepted. In the circumstances, I will accord greater weight to the adopted LP policies when reaching my decision.
21. It is also the case that I have seen nothing to indicate that the Examining Inspector has been addressed, or given his views, on the implications of the judgement in *Lisa Smith v Secretary of State for Levelling Up, Housing & Communities [2022] EWCA Civ 1391*, which was published on 31 October 2022.
22. The Council suggests that the appellants have not contacted them to explore the possibility of alternative sites being available nor have they demonstrated that there is a need for them to live in this locality. However, at the Hearing it was confirmed that the appellants had contacted Kent County Council in a search for sites and were told that there was nothing available at present. The Council suggested some alternatives including one site in Ashford but I am told there is a general shortage of available sites in neighbouring authorities with a waiting list of over 50 in Sevenoaks and a need for about 300 sites in Maidstone.
23. As noted above, 2 of the children are settled in local schools and the appellants need to be within reasonably easy access of their land to tend to their horses. Therefore, it would be preferable for them to remain in the locality rather than moving out of the area. The Council were not able to suggest a suitable, available site within the Borough at present and I therefore consider that it seems unlikely that the appellants would be able to find alternative premises in the near future.

Conditions

24. Conditions that it would be necessary to attach to any planning permission, should it be granted, were discussed at the Hearing. It was agreed that the plans showing the layout of the site should be identified and incorporated into the permission for Appeal B, to ensure that the development is restricted to the areas of hardstanding proposed. For Appeal A ground (a) a site development scheme reflecting the drawings submitted for Appeal B will be required to be formally approved.
25. The residential use of the site would be restricted to occupants who are gypsies or travellers, in order to comply with the advice in PPTS, and the number of caravans limited to one mobile home and one touring caravan to ensure the site is not over-developed. Use of the mobile caravan would also be restricted to the occupants of the mobile home, to prevent sub-division of the site in to 2 separate occupancies.

26. The planning permission for the equestrian use has a condition limiting that use to private equestrian purposes but I consider that an additional condition to prevent any additional commercial use and over-development of the site is required as a new permission, which will already have been implemented, would supersede the equestrian permission. The Council agreed to a change to the suggested wording to increase the size limit of the vehicles that can be kept on site from 3.5 tonnes to 7.5 tonnes, to allow for the appellants' existing horse box.
27. I consider that a condition preventing the use of the paddock areas as part of the residential use is necessary to ensure that encroachment into these areas, where a residential use would be more obvious and harmful to the character of the area, does not take place. Also, part of the reasoning that supports a grant of planning permission is that the sustainability of the site is improved by the removal of the need for the appellants to travel to tend their horses. This land should therefore be kept free for this purpose.
28. Although conditions in respect of site landscaping, fencing and lighting were imposed on 0/02226/FULL granted in 2020, these would need to be repeated on a further mixed use permission as the later permission would supersede this use as noted above. Ecological enhancements have already been secured through that permission and I consider the further measures are not therefore required.
29. The possibility of a temporary or personal permission was raised but I consider that if the site is considered suitable for this use against adopted policy, there is no reason to restrict it to this particular family or limit the timespan of the permission.

Conclusion

30. Although there is some policy conflict with paragraph 25 of PPTS, in that the site is not within a settlement boundary, I consider that the development does not harm the landscape character of the AONB or the rural lane in which it is situated. Neither is the location so unsustainable that planning permission for it should necessarily be refused. It consequently meets the requirements of policy H4 of the adopted LP.
31. There are also a number of factors in favour of the grant of planning permission on this site and I consider that these outweigh any limited policy harm. The appellants' family are settled in the area, there appears to be no other sites available to them at present and living on the land where they keep their horses reduces the need to travel. Therefore, for the reasons given above, I conclude that the appeals should succeed. The appeal on ground (g) for appeal A does not therefore need to be considered.

Katie Peerless Dip Arch RIBA

INSPECTOR

Appendix A

Conditions to be attached to planning permission

Appeal A Ref: APP/M2270/C/22/3292576

- 1) Unless within 3 months of the date of this decision a site development scheme has been submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval the occupation of the site for residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the occupation of the site for residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

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.

- 2) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 3) No more two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be a static caravan or mobile home) shall be stationed on the site at any time. Any touring caravan on site which is not a static caravan or mobile home shall not be separately occupied.
- 4) No commercial activities shall take place on the land, including the storage of materials. No commercial vehicle over 7.5 tonnes shall be stationed, parked or stored on this site.
- 5) No structures, vehicles or caravans shall be sited, parked or stored within the agricultural and paddock land to the south of the hardstanding on the site as existing or as approved pursuant to a condition attached to this permission.
- 6) Unless within 3 months of the date of this decision a hard and soft landscape scheme designed in accordance with the principles of the Council's landscape character guidance has been submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented in accordance with the programme of implementation, the occupation of the site for residential use shall cease

and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

The scheme shall show all existing trees, hedges and blocks of landscaping on and immediately adjacent to, the site, including highway trees and land and shall indicate whether they are to be retained or removed along with details of surfacing and boundary treatments. It shall detail measures for protection of species to be retained, provide details of on-site replacement planting to mitigate any loss of amenity and biodiversity value together with the location of any habitat piles and include a planting specification, a programme of implementation and a 5 year management plan.

All planting, seeding and turfing specified in the approved landscape details shall be carried out during the planting season (October to February). Any seeding or turfing which fails to establish or any trees or plants which, within five years from the first occupation of a property, commencement of use or adoption of land, die or become so seriously damaged or diseased that their long term amenity value has been adversely affected shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape scheme unless the local planning authority gives written consent to any variation.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the occupation of the site for residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

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.

- 7) Prior to the installation of any external lighting, details of the external lighting of the site shall be submitted to, and approved in writing by, the Local Planning Authority. External lighting shall be installed in accordance with the approved details, and no further external lighting shall be submitted at any subsequent time.
- 8) No gates, fencing or other boundary structures are to be erected other than those shown on the plan hereby approved unless otherwise approved in writing by the Local Planning Authority.

Appendix B

Conditions to be attached to planning permission 21/02714/FULL

Appeal B Ref: APP/M2270/W/21/3287995

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Site Plan, Manure Store
- 2) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 3) No more two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be a static caravan or mobile home) shall be stationed on the site at any time. Any touring caravan on site which is not a static caravan or mobile home shall not be separately occupied.
- 4) No commercial activities shall take place on the land, including the storage of materials. No commercial vehicle over 7.5 tonnes shall be stationed, parked or stored on this site.
- 5) No structures, vehicles or caravans shall be sited, parked or stored within the agricultural and paddock land to the south of the hardstanding on the site as existing or as approved pursuant to a condition attached to this permission.
- 6) Within three months of the decision notice a hard and soft landscape scheme designed in accordance with the principles of the Council's landscape character guidance shall be submitted to and approved in writing by the local planning authority. The scheme shall show all existing trees, hedges and blocks of landscaping on and immediately adjacent to, the site, including highway trees and land and shall indicate whether they are to be retained or removed along with details of surfacing and boundary treatments. It shall detail measures for protection of species to be retained, provide details of on site replacement planting to mitigate any loss of amenity and biodiversity value together with the location of any habitat piles and include a planting specification, a programme of implementation and a 5 year management plan. The approved scheme shall be implemented in accordance with the programme of implementation.
- 7) All planting, seeding and turfing specified in the approved landscape details shall be carried out during the planting season (October to February). Any seeding or turfing which fails to establish or any trees or plants which, within five years from the first occupation of a property, commencement of use or adoption of land, die or become so seriously damaged or diseased that their long term amenity value has been adversely affected shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape

scheme unless the local planning authority gives written consent to any variation.

- 8) Prior to the installation of any external lighting, details of the external lighting of the site shall be submitted to, and approved in writing by, the Local Planning Authority. External lighting shall be installed in accordance with the approved details, and no further external lighting shall be submitted at any subsequent time.
- 9) No gates, fencing or other boundary structures are to be erected other than those shown on the plan hereby approved unless otherwise approved in writing by the Local Planning Authority.

APPEARANCES

FOR THE APPELLANT:

Alison Heine BSc MSc MRTPI
Adam Taylor
Leanne Taylor

Heine Planning Consultancy
Appellant
Appellant

FOR THE LOCAL PLANNING AUTHORITY:

James Moysey MRTPI

Principal Planning Officer
Tunbridge Wells Borough Council

INTERESTED PARTIES:

Dr Margaret Sharp

Neighbour

DOCUMENTS

Doc 1 Statement of Common Ground
Doc 2 Appeal Decision APP/M2270/W/20/3257410
Doc 3 Planning Application Decision 23/01327/FULL
Doc 4 Officer report for application 23/01327/FULL
Doc 5 Planning Application Decision 23/02056/FULL

PLANS

Plan A Site Plan for Hopehouse Hens application Ref:21/00777/FULL
Plan B Site Plan for Bankside Farm
Plan C Site Plan for Anderina Queen Street Paddock Wood