



Appeal Decisions

Hearing and site visit held on 24 May 2012

by Clive Kirkbride BA(Hons) DipTP MSc MRTPI

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

Decision date: 18 June 2012

Appeal Ref: APP/E2205/C/12/2168321

Three Chimneys Stud, Hareplain Road, Biddenden, Ashford, Kent, TN27 8LW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr C West against an enforcement notice issued by Ashford Borough Council.
- The Council's reference is EN/11/00059.
- The notice was issued on 22 November 2011.
- The breach of planning control as alleged in the notice is the making of a material change of use of the land to a mixed use of horse grazing and a residential caravan site comprising the stationing of a caravan.
- The requirements of the notice are to: (1) Cease the use of the land as a residential caravan site; (2) Remove the caravan from the land; (3) Reinstate the land to its condition before the development took place.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out in the Formal Decision.

Appeal Ref: APP/E2205/A/12/2170379

Three Chimneys Stud, Hareplain Road, Biddenden, TN27 8LW

- 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 Christopher West against the decision of Ashford Borough Council.
- The application Ref 11/00290/AS, dated 10 March 2011, was refused by notice dated 28 September 2011.
- The development proposed is the siting of a mobile home (static) and touring caravan - change of use of land.

Summary of Decision: The appeal is allowed and planning permission is granted subject to conditions set out in the Formal Decision.

Application for costs

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

Procedural matters

2. Prior to the hearing the appellant had withdrawn his appeals on grounds (b) and (f) and I have determined the appeal against the enforcement notice on this basis.

3. A more accurate description of the development for which planning permission was sought and refused is "Change of use of the land to a mixed use for horse grazing and for the siting of a single static caravan and touring caravan for residential purposes." I have determined the s78 appeal on this basis.
4. The submissions made by the parties take into account the Government's new National Planning Policy Framework (the Framework) and Planning Policy for Traveller Sites (PPTS).

Gypsy status

5. The appellant has two sons, Christopher, who currently occupies the appeal site with his father, and Philip who is the registered owner of the land. Philip has given up his gypsy status, runs a driving school and lives in Romford. However, I heard that the appellant and his son Christopher have not given up their gypsy status or traditional lifestyle. They both have an aversion to bricks and mortar although admit to having lived in houses in the past.
6. The appellant states that he did seasonal agricultural work in the past but has lived a traditional gypsy lifestyle, breeding and selling horses and visiting horse fairs around the country for many years. Christopher stated that he has accompanied his father on the road for as long as he can remember and has always lived with horses.
7. There is stabling for about 15 horses on the notice land but the appellant also rents several other nearby rented fields and has access to about 24 hectares (about 60 acres) of grazing land in total. Currently, the appellant is running about 24 horses in total and, typically, buys and sells around 70 horses a year. He has kept upwards of 100 horses on the land on occasion, but only when able to provide them with supplementary feed.
8. When away travelling, usually for two or three weeks at a time but longer when visiting Appleby horse fair, the appellant and his son live in their touring van which they tow behind their horsebox. During these periods of travelling I heard that someone comes in to look after the animals.
9. Local residents questioned the appellant's background, in particular details shown on his birth and marriage certificates which, they assert, do not support the claim that he is a gypsy by birth and tradition. His father's occupation is given as a newspaper distributor when the appellant was born and as a driver when the appellant married in 1968, at which time the appellant was listed as a foundryman living in a house in Sydenham. However, none of these facts necessarily contradict the appellant's claim that he was born and bred a gypsy; nor does the appellant deny that he lived in houses in the past.
10. The fact that the appellant may not be a local gypsy and may only have recently moved onto the appeal following a split with his wife is not material to whether or not he is a gypsy. The appellant accepts that the letter of support from the Gypsy Council is not proof of his gypsy status but evidence of him having stayed on other gypsy sites prior to moving to the appeal site is significant, as is his witness statement which details a typical and nomadic gypsy life.
11. On the evidence before me I am satisfied that, on the balance of probabilities, the appellant falls within the definition of a gypsy as set out in Annex 1 of PPTS.

The ground (a) and S78 appeals

Main issues

12. I consider these to be the effect of the development on the character and appearance of the area and whether there are any material considerations which outweigh the harm identified.

Reasons

Effect on character and appearance

13. The appeal site has a long-standing use for equestrian purposes. There is a permitted stable building on the land, another stable building which has become lawful by virtue of the passage of time and various other ancillary structures, none of which is the subject of the enforcement notice.
14. The site is located in the countryside, outside the boundary of any recognised settlement, where policies of development restraint apply. However, whilst recognising that new traveller site development in the open countryside should be strictly limited, the new PPTS clearly acknowledges that sites in rural areas and the countryside are acceptable in principle, subject to protecting local amenity and environment [paragraph 9e) refers] and ensuring that the scale of such sites does not dominate the nearest settled community (Policy C refers).
15. The notice land is rectangular in shape, extends some distance back from the adjoining minor rural road and is relatively well screened by a tall, dense hedge along its roadside boundary and by mature hedgerow trees along the others. The main parties agreed that it is not the fact that the development may cause visual harm but whether the harm is significant.
16. The existing stable buildings are situated relatively close to the roadside hedge and are constructed predominantly in timber. Even during the late autumn, wintertime and early springtime, it is likely that the buildings would be partially screened by twigs and branches and would blend into the background of trees when viewed from the south west. This is certainly the impression gained when viewing the photographs submitted on behalf of local residents. By contrast, the pale coloured 'metal box' static caravan is sited further away from the road and can be more readily seen in those same photographs.
17. However, it is clear from the PPTS that it is not the Government's intention or expectation that gypsy and caravan sites should be hidden from view; paragraph 24d) states that local planning authorities should attach weight to "not enclosing a site with so much hard landscaping, high walls or fences that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community."
18. Having regard to that advice, and given the degree of natural boundary screening which could be strengthened along south western boundary of the notice land, I am satisfied that the appeal development can be accommodated without causing any material harm to the character and appearance of the surrounding area.
19. The Council argued that the existing tall hedge and mature trees are not characteristic features because the area to the south has low hedges and only scattered trees. However, I note that the 'Hareplain Farmlands' are recognised as a distinctive landscape character area in the Council's recently adopted

Landscape Character Supplementary Planning Document (SPD). The SPD identifies this particular area as being characterised by, amongst other matters, small hedgerow-enclosed pastoral fields and hedgerow trees; overall guidelines include reinforcing the strong sense of enclosure and planting new hedgerow oaks. The 'Hareplain Farmlands' themselves fall within the Low Weald landscape type which the SPD describes as a small scale, intimate landscape enclosed by native hedgerows with mature hedgerow trees.

20. I saw nothing to indicate that these same characteristics are not shared by the notice land and I afford the Council's contrary argument little weight. Nor could I help but notice the extensive range of large, modern agricultural buildings situated on the opposite side of the road to the appeal site which I found to be a particularly intrusive feature of the landscape.
21. I conclude that the appeal development does not result in any material harm to the character and appearance of the area. Consequently, there is no conflict with Policies CC1 (sustainable development) and C4 (landscape and countryside management) of the South East Plan; Policy GP12 (countryside protection and managed change) of the Ashford Borough Local Plan; Policies CS1 (guiding principles) and CS14 (gypsies and travellers) of the Local Development Framework Core Strategy; Policy TRS17 (landscape character and design) of the Tenterden and Rural Sites Development Plan Document (DPD) or the policies, advice and guidance set out in the NPPF and PPTS. The main parties agreed at the hearing that DPD Policy TRS2 (new residential development in the countryside) does not apply to gypsy and traveller sites.

Other matters including conditions

22. Given my conclusions on this issue it is not strictly necessary that I go on to consider other material considerations. However, I note that the Council does not dispute the fact that there is an unmet need for gypsy sites in the borough and it acknowledged that there has been no material change in circumstances since a previous appeal decision was issued earlier this year (Refs APP/E2205/C/11/2154009 and APP/E2205/A/11/2152459). In that decision the inspector concluded that "there is a considerable unmet need for gypsy/traveller pitches within the borough at the present time and that this need is not realistically going to be met in the near future, either through the Council's LDF process or through the provision of sites on Council owned land."
23. Furthermore, a number of existing pitches only benefit from temporary planning permission and these permissions are likely to expire before there is any realistic prospect of sites which the Council might identify through its Sites Allocation DPD being delivered.
24. The Council and local residents considered that the appellant and his son should move onto one of the vacant pitches at the Council-owned site at Chilmington. However, I heard that this is about 18 kms (over 11 miles) away and would be unable to accommodate the appellant's horses. Relocating there would require him to commute back and forth between Chilmington and Three Chimneys on a regular basis which, arguably, would be a less sustainable option. The Chilmington site also suffers from a number of social problems, hence the likely reason why there are vacant pitches but no waiting list. Overall, therefore, I do not consider this to be a suitable alternative site.

25. I have considered the conditions discussed during the hearing in the light of the advice set out in Circular 11/95. It is necessary to restrict occupancy to gypsies and travellers because this is the justification given for the residential use of the land. It is also necessary to restrict the number and type of caravans stationed on the land and to control the siting of the static caravan, to define the nature of the permission and in the interests of appearance. Conditions are also needed relating to the retention of existing hedgerows and trees and supplementary planting along the south western boundary of the notice land, in the interests of appearance.
26. Local residents requested conditions relating to the siting of any future utility block and the touring caravan and for the hedge along the roadside boundary to be regularly maintained. However, such conditions would be neither reasonable nor necessary so would fail the tests set out in the Circular.
27. For the reasons given above I conclude that the appeals should succeed and planning permission should be granted. The appeal on ground (g) does not, therefore, need to be considered.

Formal Decisions

APP/E2205/C/12/2168321

28. The appeal 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 Act as amended for the development already carried out, namely the use of the land as shown on the plan attached to the notice, as a mixed use of horse grazing and a residential caravan site comprising the stationing of a caravan subject to the following conditions:
- 1) The land shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of Planning Policy for Traveller Sites.
 - 2) 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) shall be stationed on the land at any time.
 - 3) The static caravan shall either be retained in its current position or sited in accordance with the details shown on Drawing No. 1059/PL/02 submitted with planning application Ref 11/00290/AS, dated 10 March 2011.
 - 4) The existing roadside boundary hedge and the hedgerow trees along the other boundaries of the notice land shall be retained. No retained hedge or tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard [3998 (Tree Work)]. If any retained hedge or tree is removed, uprooted or destroyed within 5 years of the date of this permission, it shall be replaced in accordance with details submitted to and approved in writing by the local planning authority.
 - 5) Unless within 1 month of the date of this decision a scheme for supplementary planting along the south western boundary of the notice land is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 2 months of the

local planning authority's approval, the use of the site for residential purposes shall cease until such time as a scheme is approved and implemented.

APP/E2205/A/12/2170379

29. The appeal is allowed and planning permission is granted for the change of use of the land to a mixed use for horse grazing and for the siting of a single static caravan and touring caravan for residential purposes at Three Chimneys Stud, Hareplain Road, Biddenden, Ashford, Kent, TN27 8LW in accordance with the terms of the application, Ref 11/00290/AS, dated 10 March 2011, and the plans submitted with it, subject to the above same conditions.

C.S. Kirkbride

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Green	The appellant's agent
Christopher West (snr)	The appellant
Christopher West (jnr)	The appellant's son

FOR THE LOCAL PLANNING AUTHORITY:

Lucy Holloway, BA(Hons) BPL	Planning Team Leader, Ashford Borough Council
Stephanie Viney, BSc MA (pending)	Planning Officer, Ashford Borough Council

INTERESTED PERSONS:

Judith Norris, BSc MSc FRICS IHBC	Consultant representing local residents
Keith Leech	Local resident
A J Furley	Local resident
David and Zoë Perry	Local residents
Charles Hale	Local resident
Neil Bell	Local councillor

DOCUMENTS

- 1 The appellant's signed and dated witness statement



Costs Decision

Hearing and site visit held on 24 May 2012

by Clive Kirkbride BA(Hons) DipTP MSc MRTPI

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

Decision date: 18 June 2012

Costs application in relation to Appeal Refs:

APP/E2205/C/12/2168321 and APP/E2205/A/12/2170379

**Three Chimneys Stud, Hareplain Road, Biddenden, Ashford, Kent,
TN27 8LW**

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr C West for a full award of costs against Ashford Borough Council.
 - The hearing was in connection with appeals against an enforcement notice and a refusal of planning permission relating to the change of use of the land to a mix of equestrian and residential uses.
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Decisions

1. The application for an award of costs is allowed in the terms set out below.

The submissions for the applicant

2. The application is made with reference to Circular 03/2009 paragraphs B15, B16, B20, B22, B25, B27 and B29 in respect of both appeals and with reference to paragraphs B32, B33, B39 and B40 in respect of the enforcement appeal.
3. Contrary to the officer recommendation that planning permission should be granted for the development Members refused permission, having been unduly swayed by objections to the development from local residents and authorised enforcement action to be taken. This was clearly a case where Members should have followed the advice given as there was no good reason not to permit the development. The first reason for refusal is not material and cannot be substantiated in law. No evidence has been submitted to substantiate the second reason for refusal relating to visual harm, which could have been overcome by conditions.
4. Much has been made of the requirement for the appellant to prove that he was a gypsy as a pre-requisite for planning permission being granted. However, it was for the Council to substantiate its claim that he was not. If it had concerns on this matter it was still open to the Council to grant permission subject to the standard gypsies and travellers occupancy condition. Nor was it expedient to take enforcement action in the absence of any material visual harm even where planning permission had been refused. Enforcement action does not automatically have to follow a refusal of planning permission. The Council unreasonably withheld planning permission when it had no good grounds for doing so, thereby causing the applicant to pursue unnecessary appeals.

The response by the Council

5. Members were entitled to come to a different view from their officers: Development plan policies strictly limit new development in the open countryside, visual harm is a matter of judgment and there was no evidence that the appellant had gypsy status, in particular, that he travelled for an economic purpose. Therefore, it followed that enforcement action would be taken against the development once planning permission had been refused.
6. The Council considered that the harm caused could not be adequately addressed by conditions. The new Planning Policy for Traveller Sites (PPTS) requires that sites should be soft landscaped in such a way as to positively enhance the environment, not simply address any harm. Furthermore, had the Council granted permission subject to a gypsy and traveller occupancy condition it would have had to monitor occupancy of the site to ensure continued compliance.

Reasons

7. Circular 03/2009 advises that, irrespective of the outcome of the appeal, 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.
8. Gypsy and traveller sites are clearly acceptable in the countryside, in principle, otherwise there would be no need for Policy C of the PPTS. The correct approach should have been to assess whether concerns about unjustified need and visual harm could be addressed by appropriate conditions.
9. The Council did not submit any compelling evidence as to why conditions, including the model gypsy and traveller occupancy condition and a landscaping condition could not address the harm identified. I do not consider it had any good reason to withhold permission for the development carried out, thereby causing the appellant to incur wasted expense in pursuing appeals which ought not to have been necessary. Therefore, I am satisfied that the conditions for an award of costs as set out in the Circular have been met.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Ashford Borough Council shall pay to Mr C West, the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to Ashford Borough Council, to which a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

C.S. Kirkbride

INSPECTOR