

Chichester District Council

Planning Committee

14 June 2023

Planning appeal APP/L3815/W/22/3311285 - The Stables Cemetery Lane Woodmancote Westbourne PO10 8QB

1.0 Contacts

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2.0 Recommendation

2.1 That the Planning Committee:

i) notes the information within the report,
ii) agrees that the Council contests the appeal (APP/L3815/W/22/3311285) only in respect of;

- impact upon the Chichester and Langstone Harbours Special Protection Area (SPA) as a result of recreational disturbance (reason for refusal 2), unless and until such time that the necessary mitigation has been secured by S106.

3.0 Background

3.1 In January 2021 planning permission was sought for the *'Increase number of permitted caravans from 1 no. static and 1 no. tourer to 2 no. static and 2 no. tourers and retention of stable block'* under application reference 21/00051/FUL. The application was refused under delegated powers on the 18th May 2022 for the following reasons:

1. The proposed addition of 1 no. Gypsy and Traveller pitch would result in the overconcentration of Gypsy and Traveller pitches within this relatively small area and would result in a level of development considered to dominate the settled community, which would be contrary to criterion 6 of Policy 36 of the Chichester LP and criterion c) of Policy OA3-1 of the Westbourne NP. In addition, the applicant has failed to satisfactorily demonstrate there are no alternative available pitches which could be used in the locality, contrary to criterion b) of Policy OA3-1 of the Westbourne NP.
2. The site is located within the 5.6 km 'zone of influence' of the Chichester and Langston Harbour Special Protection Area where it has been identified that the net increase in residential development results in significant harm to those areas of nature conservation due to increased recreational disturbance. Insufficient mitigation against such an impact has been made and therefore the proposal is considered to be contrary to Policy 50 of the Chichester Local Plan Key Policies 2014-2029. The development would therefore contravene the Conservation of Habitats

and Species Regulations 2017 and section 15 of the National Planning Policy Framework.

- 3.2 A copy of the Case Officers report is attached at Appendix 1.
- 3.3 The applicant has submitted an Appeal, which the Planning Inspectorate confirmed would be heard by way of a Hearing. The Council has to provide its Statement of Case for this appeal by the 7th July 2023.
- 3.4 In light of several recent appeal decisions for similar developments which were received after the Council made its decision on the current appeal proposal, and are therefore new material considerations of significant weight, Officers have considered carefully its first reason for refusal. As a result, Officers are now advising it would not be reasonable to maintain reason for refusal one, with there being a risk of a cost award against the Council for unreasonable behaviour if the Council persists with this argument at appeal.

4.0 Main Issues

- 4.1 The main issue is whether the Council will contest the first reason for refusal, following the receipt of several appeal decisions.
- 4.2 As above, the first reason for refusal reads:

The proposed addition of 1 no. Gypsy and Traveller pitch would result in the overconcentration of Gypsy and Traveller pitches within this relatively small area and would result in a level of development considered to dominate the settled community, which would be contrary to criterion 6 of Policy 36 of the Chichester LP and criterion c) of Policy OA3-1 of the Westbourne NP. In addition, the applicant has failed to satisfactorily demonstrate there are no alternative available pitches which could be used in the locality, contrary to criterion b) of Policy OA3-1 of the Westbourne NP.

- 4.3 On the 16th May 2023 the Council received five Appeal decisions (APP/L3815/W/20/3259313, 3254259, 3267885,3285488 and 3266164) for sites at Newells Lane, Funtington. The neighbouring Parish to Westbourne. These appeals collectively, considered ten additional Gypsy and Traveller pitches, adjacent to the established sites on Newells Lane, West Ashling Road and Scant Road East. These appeals were dismissed, but only because of the absence of suitable Nitrogen Neutrality mitigation and not on the Councils primary reason which was dominance of the settled community.
- 4.4 Regarding the Newells Lane Appeals, Appeal reference 3254259 has been referenced and appended as Appendix 2; however, the remaining four decisions reach the same conclusions as they were collectively determined.
- 4.5 In addition, on the 21st February 2023 the Council received an Appeal decision (APP/L3815/W/21/3267477) which relates to an appeal for three additional Gypsy and Traveller caravans, within an existing site at Meadow View Stables, Monks Hill, Westbourne (Appendix 3). This is within the same Parish as Cemetery Lane, which is significant as both the Meadow View Stable and Cemetery Lane applications were assessed against Policy OA3-1 of the Westbourne NP.

- 4.6 There are several areas of significance within the Inspectors findings, which are set out below:

Gypsy and Traveller Supply – Updated GTAA December 2022

- 4.7 The Newells Lane appeal decisions consider the updated supply position, which was not available at the time of determining the application at The Stables. The updated supply position, with its significant increased need for pitches, indicated a worsening supply position when compared to the figures available in May 2022. The inspector opines in respect of supply:

9. Policy 36 of the LP specifically deals with the needs of gypsy and travellers and is therefore relevant to the assessment of these appeals. It was originally based on the Gypsy and Traveller and Travelling Showpeople Assessment that was carried out in 2013. However, the Council has carried out a further Gypsy and Traveller Accommodation Assessment (GTAA) (2022) which was published in January 2023, which provides an updated position. The policy sets out that where there is a shortfall in provision, sites will be allocated within the Gypsy, Traveller and Travelling Showpeople Site Allocation DPD.

24. It is agreed that unmet need is a material consideration for this appeal. The Council has carried out a further Gypsy and Traveller Accommodation Assessment (GTAA) (2022) which was published in January 2023. This indicates a significant unmet need for 158 pitches. This includes 28 from those who did not meet the Opinion Research Services and PPTS, definition at the time. A further 82 pitches for those meeting their definition, will be required over the period 2022 to 2026. Whilst the Local Plan Review is exploring how this unmet need can be addressed, it has increased considerably since the last GTAA and represents a very significant shortfall and, to my mind, represents a failure of policy which weighs heavily in support of the development.

29. The planning balance on this and the other sites is very finely balanced. On the one hand there are a number of factors set out above that weigh significantly in favour of the development. These include the contribution of additional gypsy and traveller pitches, meeting the personal needs for this family for a settled base, the lack of alternative sites alongside other social and economic benefits

- 4.8 It is clear, the Inspector places significant weight in favor of supporting the appeals at Newells Lane, due to the significant unmet need and what the Inspector considered to be a 'failure of policy'. Similarly, the Inspector for the Monks Hills appeal places a great weight on the unmet need although his comments were made in reference to the previous GTAA 2019. The Inspector for Monks Hill opined:

11. As it stands, though, there is no land allocated for the provision of gypsy & traveller sites in the district, and the Council accepts it cannot demonstrate a five-year supply of deliverable sites for such accommodation. It was put to me at the Hearing that there will be a total unmet need of 39 pitches between October 2021 and March 2027

12. Accordingly, a signed Statement of Common Ground (SOCG), produced at the Hearing, showed an agreement between the main parties that a 5-year supply of viable gypsy sites cannot currently be demonstrated.

13. The unmet need for gypsy & traveller sites within the Chichester district is a matter to which I ascribe considerable weight.

- 4.9 Consequently, it is imperative the Council places significant weight upon the unmet need, which has only increased since the refusal of the application. The unmet need is a significant factor in favour of the appeal proposal. It remains necessary to balance the unmet need against other relevant factors, as explored below.

Dominating the Settled Community & Overconcentration

- 4.10 In assessing the application, Officers had regard to the absolute number of pitches which Westbourne, which equates to around 25% of the total number of pitches within Chichester. The concerns raised by Officers involved the overconcentration of pitches in Westbourne Parish. This was a matter also raised in the Monks Hill appeal, where the inspector opined the following:

*22. NP policy OA3: 'Community Balance' says that development to meet the needs of the gypsy and traveller community will be permitted where, amongst other things, this does not result in sites being over-concentrated in any one location or disproportionate in size to nearby communities and can demonstrate a local connection. **The said over-concentration referred to might be the case within Westbourne as a whole, but in the immediate locality, certainly on this stretch of Monks Hill, I only witnessed the small adjoining site, occupied by the appellant, in such use.***

- 4.11 In considering the above paragraph, whilst the inspector acknowledges the absolute number of pitches within Westbourne, his focus was on the impact of the number of pitches with the immediate area only. This provides clear direction for the interpretation of the Neighborhood Plan policy, in that the Council should be considering the overconcentration in any one location, rather than more widely within the Parish.
- 4.12 The concentration of Gypsy and Traveller pitches within Cemetery Lane is approximately 27 pitches; however, some of these are not lawful. A refused application, referenced within the original Officers report (ref 18/01730/FUL) was not subsequently appealed. It is accepted the number of pitches, would result in a relatively high number of pitches within Cemetery Lane, however not at a level that the LPA could now argue would dominate the settled community.
- 4.13 The concentration of pitches was subject to detailed consideration during the Newells Lane Appeals, which although located in the adjacent parish, provides an indication of what can be considered to 'dominate' or 'overconcentrate'. In the case of the Newells Lane Appeals, the Council considered there the increase of 10 pitches, together with the existing 53 pitches (10 unauthorised) would result in the domination of the settled community. However, in considering the evidence, the inspector opined the following:

*18. Whilst the site must be considered on its own merits, it must also be assessed in the context of what is happening with the other appeals before me. **In the event that all of these appeals were to be allowed and subject to conditions, there would undoubtedly be an increase in the number of pitches.** I also saw that another pitch has been developed, although this is the subject of an outstanding planning application. As the outcome of this application is uncertain, it does not form part of my assessment.*

*19. **Residential caravan development is often designed at greater density than more traditionally built residential schemes and that is the case here.** However, this and the other appeal sites are generally well screened from Newells Lane and the existing sites by existing hedging and fencing. I recognise the concern about these sites coalescing with existing sites. However, from my site visit and walk around the general area, save for the 5 pitches already permitted on this piece of Land, the remaining sites to the north and west remain physically separate. Moreover, the undeveloped land on the corner of Newells Lane and Scant Road, retains the physical and visual separation between the sites.*

*20. **The development of any residential caravan site on previously undeveloped land will inevitably result in some change to the character and appearance of the area.** I find the change has resulted in harm by the generally unsympathetic use of internal fencing and the extensive hard surfacing on this and the other appeal sites. **Nevertheless, even when considered cumulatively with the other appeals, the identified harm could not be said to be of a magnitude that it dominates the settled community.** Moreover, I consider that the appearance of the site could be improved through a suitable hard and soft landscaping condition, on this and the other appeal sites.*

- 4.14 It is notable the inspector did not find 10 additional pitches to be dominating of the settled community, even when considered cumulatively with up to 53 existing pitches. Whilst Offices are not suggesting this number of pitches would be appropriate in this location, it has necessitated Officers to reassess what is an appropriate density for Gypsy and Traveller sites. Similarly, in the wake of this appeal decision, Officers have considered the likelihood of one additional mobile home, on an existing site, in a location where there are only 27 existing pitches, to be found to be 'dominating' or 'overconcentrated', with Officers considering this unlikely to be the case. The Inspector also notes that caravan development is often at greater density than traditional development, which implies a greater number of caravans is typically appropriate for residential caravan sites.
- 4.15 Consequently, whilst Officers were satisfied when refusing the application that it would have been possible to defend the Councils position at appeal, in light of the above referenced Appeal decisions, which are significant material considerations, it would be unreasonable to maintain this this position, as circumstances have changed.

Alternative Available Pitches

- 4.16 The Council, agreed during the Meadow View Stable Hearing there was no alternative, available pitches within the district. This position has been subsequently agreed for all other Gypsy and Traveller appeals within the district. The Inspector for Monks Hill concluded the following in respects of alternative pitches:

31. Given the absence of available gypsy sites in the borough it is hardly surprising that no viable alternative accommodation has been suggested that might be suitable. Indeed, I have received no details as to the existence of any such accommodation. In this connection it was held in the judgement of South Cambridgeshire DC v SSCLG & Brown [2008] EWCA Civ 1010 that in seeking to determine the availability of alternative sites for residential gypsy use, there is no requirement in planning policy, or case law, for an applicant/appellant to prove that no other sites are available or that particular needs could not be met from another site. The lack of alternative sites is therefore a consideration that weighs in favour of the appellants.

- 4.17 It is the view of Officers that it would be highly unlikely that compelling evidence could be provided at the upcoming appeal hearing which could justify the Inspector reaching an alternative view to that previously reached above. As such, it is Officers view the Council would be unable to justify this aspect of the first reason for refusal, which could be grounds for unreasonable behaviour.

Policy OA3: Community Balance

- 4.18 The Inspector in the Monks Hill Appeal considered the following in relation to Policy OA3 of the Neighbourhood Plan:

20. The Westbourne Neighbourhood Plan 2017-2029 (NP) was adopted in June 2021 and now forms part of the development plan. In terms of gypsy and traveller provision paragraph 4.5.17 says that the development of further sites in the Westbourne area for gypsy and traveller purposes would be "premature and disproportionate for Westbourne". In this connection, it was put to me at the Hearing that there are now some 45 pitches in Westbourne, which represents approximately 22% of all existing pitches in the Chichester District Council area. Accordingly, the NP gives the view that dispersal of gypsy and traveller pitches across the Chichester District area would likely minimise the impact of development.

*21. **The stated figure and percentage may be the case, although I note that the NP is incorrect in stating that the Council is able to demonstrate a five year land supply for gypsy and traveller pitches.** This might have been the case at the time the text was written but the Council has confirmed that this is no longer the position.*

- 4.19 Whilst Policy OA3 of the NP remains an important, criterion-based policy to assess Gypsy and Traveller proposals within Westbourne. It is important to note the policy was written at the time when the Council could demonstrate a five-year supply, which is no longer the case. The Council can only demonstrate a 0.75-year supply of pitches. Consequently, in accordance with Paragraph 27 of the Planning Policy for Traveller Sites (PPTS), the absence of a five-year supply 'should be a significant

material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission'. It is therefore Officers view that it is unlikely, conflict with a single criterion with Policy OA3 would be sufficient to outweigh the significant unmet need within Chichester.

Other Matters

Impact upon character, amenity and highways

- 4.20 Officers in determining the application did not raise any impact upon the character of the area resulting from the additional caravan. The additional caravan would be read in the context of the existing caravan and established, private pitch with stable block and open space. The site is physically separated and screened from the neighbouring sites to the east and consequently would not adversely impact the character of the area. The proposal would also result in an acceptable impact upon the amenity of neighbours and future occupiers, would be acceptable in respect of highways impacts.

Nutrient Neutrality

- 4.21 The applicants have satisfactorily demonstrated the development can achieve nitrogen neutrality, by offsetting the addition 0.912kg of nitrogen through onsite re-wilding. The proposed mitigation, which has been tested via Appropriate Assessment and found to be acceptable by Natural England involved the re-wilding (broad leaf tree planting and wildflower meadow planting) of 0.114ha of land, within the applicant's ownership. The proposed development would therefore not have a significant effect on the Chichester Harbour or Solent Maritime Special Area of Conservation.

Recreational Disturbance

- 4.22 A net increase in the number of caravans on the site would have a likely significant effect upon the Chichester and Langstone Harbour Special Protection Area due to an increase in recreational disturbance. The impact could be mitigated via a financial contribution to the Bird Aware Solent Mitigation Scheme, in accordance with policy 50 of the Chichester Local Plan. At the time of writing, the necessary mitigation has not been received, and therefore reason for refusal 2 must be contested. However, the applicants have indicated their agreement to pay the financial contribution and complete the Unilateral Undertaking to secure the mitigation, and this would satisfy the Councils second reason for refusal. Until such time that the financial contribution and legal agreement are received Officers contend that reason for refusal two should be contested.

5.0 Conclusion

- 5.1 The proposal would contribute to meeting the identified local need for gypsy and traveller accommodation. The proposal would provide an additional caravan within an existing site for the applicant's daughter and grandchildren, with the applicants considered to have a satisfactory 'local connection'. There is a significant unmet need within Chichester, which Inspectors, including those from the two above mentioned appeal decisions have placed significant weight upon, in favour of granting permission. The Council also cannot demonstrate a five-year supply of

Gypsy and Traveller Pitches, and significant weight should be given to this in accordance with Paragraph 27 of the PPTS.

- 5.2 The proposal would result in an additional caravan within an area where there is already a high number of residential caravans. However, in light of the Inspectors recent findings, one additional caravan is highly unlikely to be found to be dominating of the settled community or to result in overconcentration within Cemetery Lane. The Council also accepts there are no available, alternative pitches which weighs further in favour of the application.
- 5.3 For the reasons set out above the proposal would be acceptable in all other respects, with the exception of the impact upon the Chichester and Langstone Special Protection Area due to recreational disturbance. Although the appellant has indicated a willingness to pay the necessary financial contribution, until such time that the contribution and associated legal agreement has been provided to the Council, the proposal is not acceptable in this respect.
- 5.4 Consequently, in light of the updates to the GTAA 2022 and the findings of the recent Appeal decisions, it is considered that reason for refusal one cannot reasonably be defended, and the appeal should only be contested in respect of reason for refusal two, unless the necessary mitigation is secured.

It is recommended than Planning Committee:

- i) notes the information within the report,**
- ii) agrees that the Council contests the appeal only in respect of;**
 - o impact upon the Chichester and Langstone Harbours Special Protection Area (SPA) as a result of recreational disturbance (reason for refusal 2), unless and until such time that the necessary mitigation has been secured by S106.**

Background information:

The application, and all submitted appeal documents, can be viewed online at: [21/00051/FUL | Increase number of permitted caravans from 1 no. static and 1 no. tourer to 2 no. static and 2 no. tourers and retention of stable block. | The Stables Cemetery Lane Woodmancote Westbourne PO10 8QB](#)

Appendices:

Appendix 1: Case Officer Delegated Decision – 12th May 2022

Appendix 2: Appeal Decision 3254259 (Newells Lane)

Appendix 3: Appeal Decision 3267477 (Monks Hill)