



Appeal Decision

Hearing Held on 31 January 2023

Site visit made on 1 February 2023

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2023

Appeal G Ref: APP/L3815/W/20/3254259

Old Allotment Site, Newells Lane, West Ashling PO18 8DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr F Smith against Chichester District Council.
 - The application Ref 19/02939/FUL, is dated 26/11/2019.
 - The development proposed is the use of land for the stationing of a caravan for residential purposes, together with the formation of hardstanding.
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Decision

1. The appeal is dismissed and planning permission refused.

Application for costs

2. At the Hearing an application for costs was made by Mr F Smith against Chichester District Council. This application is the subject of a separate Decision.

Preliminary matters

3. The appeal site forms part of a wider piece of land that has been subdivided into plots. Consequently, a number of appeals were heard by way of a combined Hearing¹. The wider site already has the benefit of a conditional permission allowed on appeal (APP/L3815/W/19/3220300), for the stationing of five static caravans and five tourers for residential purposes, together with associated operational development. These permitted pitches are sited close to and parallel to Newells Lane.
4. This appeal has been lodged under Section 78 of the 1990 Act which provides that an applicant may appeal if the LPA has not given notice of its decision on the application within the statutory period (or within an extended period if agreed in writing). In summary, the Council in their statement confirmed that they would have refused the development due to the location of the development; the cumulative effect of the development on the existing settled community; and the lack of information provided regarding foul sewerage, and

¹ APP/L3815/C/21/3273750; APP/L3815/W/21/3267885; APP/L3815/C/20/3264513; APP/L3815/W/20/3266164; APP/L3815/C/21/3284975; APP/L3815/W/20/3259313; APP/L3815/W/20/3254259; APP/L3815/C/21/3286063; APP/L3815/C/21/3286065; APP/L3815/C/21/3286064; and APP/L3815/W/21/3285488

the effect on the Chichester and Langstone Harbours Special Protection Area (SPA) and the Solent Maritime Special Area of Conservation (SAC).

5. The parties agreed in the joint Statement of Common Ground (SoCG) that the gypsy status of the appellant and his family is not in dispute. I have no reason to come to a different view.
6. Following a recent appeal decision (APP/L3815/W/21/3268916) the Council confirmed that they no longer wished to pursue their first reason for refusal, namely the location of the development. I have considered the appeal on this basis.
7. At the Hearing the appellant supplied a signed undertaking dated 25 July 2022, to pay the Council the agreed sum for the provision of access mitigation measures in respect of the Chichester and Langstone Harbours Special Protection Areas, as a planning obligation. The undertaking is signed by the landowner as shown on the application form. In view of this, the Council confirmed that they did not wish to pursue this reason for refusal. If the appeal was to be allowed, it would still be necessary for the decision maker to carry out an appropriate assessment for this and the potential for the discharge of nitrogen and phosphorous, into the Solent.

Main Issues

8. In their statement of case, the Council confirm that they would have refused the application and set out their reasoning. I have had regard to these and consider that the main issues are:
 - Whether the development represents an acceptable form of development, having regard to the following matters: The character and appearance of the area, having regard to the cumulative impact of the development;
 - The effect of the development on recreational disturbance, water and nitrates; and
 - Whether any harm arising from the above matters is outweighed by any other material considerations.

Reasons

Policy background

9. The emerging Chichester Local Plan 2021 – 2039 sets out a range of mechanisms to meet the needs of the Gypsy and traveller community during the plan period up to 2039, including allocating sites and intensification of suitable existing sites. The latest consultation was completed in March 2023 and therefore it is at an early stage and attracts very little weight. Policies in the Chichester District Council Adopted Local Plan: Key policies 2014-2029. (2015) (LP) are therefore pertinent to the determination of this appeal.
10. Planning Policy for Traveller Sites (PPTS) in paragraph 25 states that local planning authorities should very strictly limit new traveller site development in open countryside, that is away from existing settlements and ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community. Policy 36 of the LP, reflects this position. However, neither document provides any guidance, or defines how dominance should be assessed.

11. 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. It goes on to set out criteria for assessing the suitability of sites. These criteria will be addressed later in this decision.

Character and appearance and cumulative effect of the development

12. The PPTS at paragraph 25 states that local planning authorities should very strictly limit new traveller site development in open countryside, that is away from existing settlements and ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community. Policy 36 of the LP reflects this position. However, neither document provide any guidance, or defines how dominance should be assessed.

13. The Council have provided a limited geographical assessment of the ratios of the settled population, compared to the local Gypsy and Traveller population. However, during the discussion at the Hearing, they made it clear that their primary concerns relate more to the cumulative visual impact of the developments. In summary, their position is that the development of this and the other sites subject to this appeal, together with the existing permitted sites result in a cluster of Gypsy and Traveller sites, that harm the prevailing character of this rural area, both in scale and density, such that it dominates the nearest settled community.

14. The representative for Funtington Parish Council and the representative from Genesis Town Planning who was speaking for other residents, referred to Census data in their oral submissions. It is their case that if each pitch, where a static caravan and a tourer is permitted, was occupied by more than one family, then this would represent a disproportionate number of Gypsy and Traveller families, when compared to the settled population. I have no factual, or survey evidence before me, to support the likelihood or scale of this scenario, so it can only be treated as speculation. Moreover, if the evidence indicated that this was likely to occur, then a suitably worded condition could be imposed to restrict the occupation of the pitches to one family.

15. The site is located outside the settlement boundary, in an area characterised by agriculture, open countryside interspersed by some agricultural and equestrian buildings, together with sporadic residential development that includes some existing residential caravan sites. West Ashling lies 0.6 km from the site, where there are some of the local facilities, such as a pub and school that are generally accepted to serve a local community. Accordingly, I do not consider that the site is 'away from existing settlements' for the purposes of the PPTS.

16. The appeal site lies to the north-west of Newells Lane, with the main internal access to all of the sites taken from the lane. The appeal site is accessed by the nearest of the three internal tracks that run parallel to Newells Lane. There is existing tree and hedge screening from Newells Lane which reduce views of the appeal site from the road.

17. The Council advise that the local area has planning permission for some 43 pitches, with a further 10 unauthorised and under investigation. They confirm that these are unlikely to be tolerated. The Block plan (000 rev 4) that accompanied the planning application, shows that there would be one static caravan plus one touring caravan providing one additional pitch for a single family.
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.
21. For these reasons, I find moderate harm to the character and appearance of the area which conflicts with Policies 36, 45 and 48 of LP that seek to ensure that development respects and has minimal impact on the landscape and rural character of the area.

Recreational disturbance and nutrient neutrality

22. It is not in dispute that the development is sited within the 5.6 km 'Zone of influence' of the SPA and as such has the potential to harm this area of conservation due to increased recreational disturbance. The parties also agree that due to the increase in wastewater from the development, it has the potential to have a significant detrimental effect on the SAC.
23. Since the appeal was lodged, the position regarding mitigation measures for nutrient discharge has changed for all residential development. Generally new development will use the off-site purchase of credits to offset any harm. However, the Council confirmed that they, together with the South Downs National Park, where offsetting sites are located, are seeking to come to a new overarching mitigation strategy. This will include a re-calculation of the chargeable fees for monitoring. Consultation with Natural England on this

- commenced on 23 January 2023. Once this consultation is complete, a report will be taken to Committee to consider whether to adopt this, or any other, agreed mitigation strategy. In essence, this means that for an undetermined period, no further legal agreements for mitigation will be signed, including at these appeal sites and other residential schemes.
24. The parties have made a number of suggestions to give time to overcome this in the short term. The first is to delay issuing the appeal decisions for an initial period of 3 months. The second would be to grant a temporary planning permission, with all foul sewerage collected and then transported away from the site to Tangmere, Ford or Lidsay, for disposal outside the SAC. The third option is the installation of a water treatment works on the appeal site itself or an appropriately lined cesspit.
25. I accept that this is a very unfortunate and unforeseen position for the appellant. I have considered all of the alternatives in turn. It is clear that there is considerable uncertainty about how long this process will take, whether an agreement will be reached and then adopted. I share the Council's concerns that it would not be possible to enforce where any wastewater is disposed of, once removed from the site by a third party. The appellant acknowledges that the proposal to install a water treatment plant on site would not be adequate in the light of the nutrient issues, so would be prepared to install an alternative. However, I have not been provided with any plans or worked alternative to demonstrate how nutrient neutrality could be achieved.
26. Consequently, given both the sensitive and retrospective nature of the development, I am not satisfied that any of these options would provide an appropriate means to offset any ongoing and significant harm to the SAC. The development is therefore found to be unacceptable in this regard.

Other considerations

27. 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 Planning Policy for Traveller Sites (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.
28. The appellant has provided evidence about their personal circumstances. From this the appellant occupies the site with his wife and three children. Previously they were living in a touring caravan either with relatives, or in the general area. The family wish to have a permanent home close to the rest of their family.
29. The needs of the children are a primary consideration of substantial weight but are not necessarily determinative. However, as with all those who travel, a settled base would enable the family to have access to medical care and education and this undoubtably weighs substantially in favour of the scheme. Furthermore, I acknowledge that the proposal would provide limited further

social and economic benefits and would provide an additional Gypsy and Traveller pitch, contributing towards the Council's targets.

30. The Council confirmed at the Hearing, that there are no alternative, suitable and affordable pitches available for the family to move to. The public site maintained by West Sussex County Council, currently has a waiting list of more than 90 names. All of the above factors weigh significantly in favour of the development.
31. Turning to the criteria set out in Policy 36 of the LP, I have found significant harm due to the proximity of the site to the SPA and SAC. However, the site does not lie within any other nationally designated areas of landscape, historic environment or nature conservation. I have found moderate harm to the character and appearance of the area but not to the extent that it dominates the nearest settled community. I note that the Highways Authority have not raised any objection in terms of highway safety or the impact on the operation of the highway network. No objections have been raised or evidence submitted to suggest that the development would be harmful to those living on the site or nearby.
32. The Council have conceded that the location of the site is acceptable and I have no reason to come to a different view. I acknowledge that the site is relatively constrained, but the layout provides sufficient space for parking and manoeuvring of vehicles, together with some amenity space allowing the occupiers to use the available space to satisfy their own requirements. The site is located in flood zone 1 (low risk), and not adjacent to any other incompatible known uses. Matters of surface water disposal can be addressed through a suitably worded condition.

Planning balance

33. 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.
34. However, on the other hand and set against these benefits, is the moderate harm I have identified to the character and appearance of the area and the clearly significant harm, stemming from the uncertain position regarding the mechanism, to offset any harm resulting from nutrient discharge to the SAC. Accordingly, I find that on balance, this identified harm is not outweighed by those matters advanced in support of the proposal.
35. I am very conscious of the appellant's personal circumstances and the effect that dismissing this appeal is likely to have on him and his family. I have carefully considered the Human Rights issues that are pertinent to this appeal. However, the protection of the public interest cannot be achieved by means which are less interfering of the appellant's rights.
36. I have had due regard to the Public Sector Equality Duty, contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected

characteristic and people who do not share it. Nonetheless, for the above reasons, I consider that the decision is proportionate and necessary in the circumstances.

37. I have also considered whether a temporary grant of planning permission would be appropriate for these appeals. The PPG advises that's temporary permissions may be appropriate where it is expected that the planning circumstances will change in a particular way at the end of the permitted period. I have acknowledged that the matters relating to nutrient neutrality will need to be overcome at some point in the future. However, there is no evidence before me to provide any certainty over either the timescales, or the mechanisms involved. Accordingly, a temporary planning permission is not justified, given the serious risk to the Solent Maritime SAC.
38. As I am dismissing the appeal for other reasons, there is no need to consider the appropriate assessment for recreational disturbance further.

Other matters

39. One of the Council's concerns relates to a lack of information, to demonstrate that surface water drainage can be adequately addressed. The parties at the Hearing referred to the topography of the site and suggested that there would be no risk of surface water flooding due to runoff. Notwithstanding this, in the event that the appeals were to be allowed and planning permission granted, I consider that this could be secured through the use of a suitably worded condition.
40. Similarly, the Council in their statement makes reference to the lack of protected species surveys carried out and the need to improve biodiversity on the site. To address this the Council has suggested a condition to provide a scheme of ecological enhancement, including the installation of bat boxes, bird boxes, additional native hedge planting and the planting of a wildflower meadow in the amenity area. I have no reason to conclude that such a condition would not address this matter.

Conclusion

41. I have considered all of the matters that have been raised, but for the reasons outlined above, I conclude that the appeal should be dismissed and planning permission refused.

Hilary Orr

INSPECTOR

Appearances for Joint Hearing

FOR THE APPELLANTS:

Joseph G Jones	Agent
Christopher Williams	Appellant
Ben Kirk MSc IHBC	Agent
Dr Angus Murdoch	Agent

FOR THE LOCAL PLANNING AUTHORITY:

Callum Thomas	Senior Planning Officer
Martin Mew	Principal Planner Officer
Shona Archer	Planning Enforcement Manager

INTERESTED PERSONS:

Luke Smith Whaleback Planning on behalf of Funtington Parish Council
Chris Mitra MA MRTPI Genesis Town Planning on behalf of local residents.