

Appeal Decision

Site visit made on 17 January 2017

by John Felgate BA(Hons) MA MRTPI

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

Decision date: 06 February 2017

Appeal Ref: APP/L3815/W/16/3157057

Land west of WSCC Gypsy Site, Cemetery Lane, Westbourne, Emsworth

- 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 B Lamb against the decision of Chichester District Council.
 - The application Ref WE/16/01529/FUL, dated 27 April 2016, was refused by notice dated 20 July 2016.
 - The development proposed is use of land as a single pitch private gypsy plot.
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Decision

1. The appeal is allowed and planning permission is granted for use of land as a single pitch private gypsy plot on land west of WSCC Gypsy Site, Cemetery Lane, Westbourne, Emsworth, in accordance with the terms of the application, Ref WE/16/01529/FUL, dated 27 April 2016, subject to the conditions set out in the attached schedule.

Procedural matter

2. On the application form the proposed development is described as a change of use of the land, as set out above. However, the submitted plans indicate that the proposal would also include the erection of an amenity or utility building. It is evident that the Council has treated this as part and parcel of the development applied for, and I have dealt with the appeal on the same basis.
3. On some of the appeal documents, the appeal site is referred to by the name 'The Meadow'. However the application form uses the address set out above, and in my view this accurately describes the site's location.

Main issues

4. The main issues in the appeal are the effects of the proposed development on the character and appearance of the area, and on the setting of Westbourne Cemetery.

Planning policies

5. In the Chichester Local Plan Key Policies (CLPKP), adopted in July 2015, Policy 36 supports gypsy and traveller sites which meet a number of specified criteria. In the case of the present appeal, the Council does not dispute that these criteria are met, except with regard to the effects on the historic environment. The policy contains no criterion relating to the protection of the landscape, or other matters of character and appearance, except for nationally designated areas, which does not apply to the appeal site.
 6. Policy 47 aims to preserve and enhance the historic environment, and supports developments which respect the settings of heritage assets. It also seeks to
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maintain the district's predominantly open and undeveloped character. Policy 48 supports proposals which maintain the district's rural character and tranquillity, and the distinctiveness of the local landscape.

7. I note that there is also an emerging draft Neighbourhood Plan for the parish of Westbourne. However, it appears that this has not yet reached the stage of being submitted for examination. As such, it has not yet reached the stage where it can be given significant weight.

Reasons for decision

Effects on the area's character and appearance

8. The appeal site lies in the countryside, a few hundred metres from the village of Westbourne. The site comprises a rectangular paddock, bounded by hedges and trees on three sides. The front boundary, alongside Cemetery Lane, is largely open. On its eastern side, the site adjoins a Council-operated gypsy and traveller site with 17 permanent and 2 transit pitches. Immediately beyond this are a series of sites where planning permissions have been granted, in total, for 5 more private gypsy pitches, and 5 travelling showmen's plots. Some of these permissions remain to be implemented or completed. Between and adjoining these sites are various other permanent and temporary buildings and uses, including some of an industrial or commercial nature, some of which I understand may be subject to enforcement investigations. Further to the east along Cemetery Lane is a small cluster of dwellings known as Woodmancote. To the south, on the opposite side of Cemetery Lane, is a site known as 'Folly Foot', which includes stables and equestrian buildings. To the Further west on this side is Westbourne Cemetery. Surrounding all of these is mainly agricultural land.
9. On my visit I saw that the countryside between Westbourne and Woodmancote forms part of a shallow valley between two areas of high quality landscape. To the north there are the South Downs, designated as a National Park and AONB, and to the south there is more high ground beyond the A27, leading to the Chichester Harbour AONB. In the area between, where the appeal site is located, the countryside is flat and low-lying. From my observations, travelling along Cemetery Lane or any of the surrounding roads, the main focus of visual interest is in the views to the hills in the middle and longer distance. The landscape in the foreground of these views is not unattractive, but lacks any particular distinctiveness. It can best be characterised as of average quality.
10. During my visit I also saw that, despite the area's openness, the existing gypsy, traveller and showmen's sites in Cemetery Lane are not prominent. They are seen at close range, from the lane itself, but longer views are generally quite well screened, by tree belts, hedges and other intervening features.
11. The appeal proposal would extend the area given over to this type of development. However, the site's side and rear boundaries are well screened, in a similar way to the existing sites, and if necessary these could be reinforced with additional planting. Although the front boundary is rather more open, a new 5-metre landscaping belt is proposed here, and there is no reason why such planting should not be effective within a timescale of 5-10 years. The proposed development would still be visible from the proposed access point, but in any longer or wider views it seems to me that it would not be unduly noticeable.

12. I appreciate that the development would represent a further erosion of the open gap between the existing gypsy sites and Westbourne. But because of its enclosed nature, the appeal site contributes little to that gap, in terms of what is seen on the ground; rather, it appears as more closely related to the existing sites on its other side. As such, it seems to me that this is a site where small scale development of the type now proposed could take place without undermining the integrity of the larger block of open countryside to the west.
13. I therefore conclude that the appeal proposal would have no significant adverse effects on the area's character and appearance. As such, it would not conflict with any of the relevant policies that have been identified, including CLPKP Policies 47 and 48.

Effects on the setting of Westbourne Cemetery

14. The Westbourne Cemetery is believed to date from the mid-19th century. Its flint and stone chapel, lodge and boundary walls appear to be original features. The origins of the cemetery during this period, and in this location, are understood to reflect the social history of the times, and in particular the requirements of the Burial Act of 1852. These matters are not disputed by the appellant. Although the cemetery is not included on any local list, in the light of the evidence available, I see no reason to disagree that it appears to have some historic interest, and therefore could be regarded as a non-designated heritage asset.
15. The openness of the fields surrounding the cemetery, and the sense of separation, contributes to its setting, and to our understanding of its significance as a heritage asset. The proposed development would lie within this setting. As such, it would bring development closer to the cemetery, and indeed the nearest corner of the appeal site would be directly opposite the cemetery's present vehicular entrance. But, due to its small scale and the existing and proposed vegetation, the development would not be visually intrusive within this setting. Consequently, the character of Cemetery Lane would be largely unchanged. Furthermore, the separation between the cemetery and the village would be unaffected.
16. Given the nature of its function as a place of burial, I agree that the cemetery's setting is also particularly sensitive to noise and disturbance. The proposed development would generate some additional activity, both within the appeal site, and in terms of comings and goings on Cemetery Lane. But the level of such activity, and the number of movements, resulting from one additional pitch are likely to be small. In the context of the other existing and permitted developments nearby, this increase would be negligible.
17. I conclude that there would be no discernible harm to the setting of the Westbourne Cemetery, and thus no adverse effects on its significance as a heritage asset. In these respects I again find no conflict with the policies identified, including the relevant provisions of CKPLP Policy 36 as well as Policies 47 and 48.

Other Matters

18. I appreciate the concerns raised by Westbourne Parish Council, and the strength of feeling behind these. It appears that the number of gypsy and traveller pitches and showmen's plots within the parish has more than doubled since 2012, and now stands at around 40. These are said to represent around

25 per cent of those within the District as a whole. In this context, the Parish Council is concerned about tensions between the travelling and settled communities, and maintaining a proper balance between them.

19. I acknowledge that these concerns have a basis within the national Planning Policy for Traveller Sites (the PPTS), which seeks amongst other things to reduce such tensions, and to ensure that sites within rural or semi-rural settings do not dominate nearby settled communities due to their scale. And the latter aim is also incorporated into CLPKP Policy 36. However, the present proposal is for only one new pitch, and I must consider it on its merits. I accept that incremental changes can have a cumulative impact, and that a point could be reached where a threshold was crossed. But, on the evidence before me I can see no basis for concluding that a single additional pitch would have any appreciable impact on the matters that the Parish raises. In respect of these matters therefore, I again find no conflict with Policy 36, nor with the PPTS.
20. For the same reasons, whilst I agree that the eastern section of Cemetery Lane is in poor repair, and I sympathise with those residents who live on that section, I am unable to accept that the development now proposed would be likely to have any significant impact in this respect. In any event, the appeal site is closer to the western end, which is surfaced to a good standard, and it seems likely that most trips to and from the site would use this route.
21. I agree that any commercial use within the site could have adverse impacts, but this can be precluded by condition. I note the Parish Council's dissatisfaction with the way other conditions have been enforced in the past, but that is not a matter for this appeal. Neither are any matters relating to the behaviour of particular individuals, especially persons unconnected with the present appeal.
22. I note that the site is within or close to a bat corridor based on Cemetery Lane, but there is no clear evidence that the proposed development would have any significant adverse impacts in this respect. The site is also within the designated buffer zone around the Chichester and Langstone Harbour Special Protection Area (SPA), but the appellant has entered into a Section 106 agreement for a contribution towards access mitigation measures within the SPA. This appears to me to be necessary and proportionate to meet the objectives of the Habitats Directive, and I have no reason to doubt that it complies with the relevant provisions of the Community Infrastructure Regulations 2010.
23. In terms of gypsy and traveller provision for the District as a whole, all parties appear to agree that there is a shortfall, albeit possibly a small one, against the most recent GTAA requirement. This does not mean that an unsuitable site should be allowed. But in the present case, given that I have found no significant harm, it adds some further weight in favour of the appeal.

Matters relating to conditions

24. In the light of the above, I have considered the conditions suggested by the Council, having regard for the relevant tests set out in national policy. In general terms I agree with the intentions behind all of the proposed conditions, although I have modified some in the interests of brevity and clarity, and

to omit unnecessary detail. Those that I consider should be imposed are set out in the attached schedule.

25. Condition 2, requiring adherence to the approved layout plan, is necessary for reasons of providing certainty and in the interests of proper planning. Condition 3, limiting occupation to gypsies or travellers, is needed because the provisions of Policy 36 are specifically aimed at meeting the needs of these groups.
26. Condition 4, controlling the size and number of caravans, and Condition 5, which provides for a landscaping scheme and the retention of the existing trees and hedges, are necessary to ensure a satisfactory visual appearance. Condition 6, relating to the amenity building, is needed for the same reason, and to ensure that the building is used only for its stated purpose. Condition 7, regarding car parking, is necessary to avoid obstruction of the highway.
27. Conditions 8 and 9, relating to drainage matters, are needed to avoid flood risks, and also to ensure acceptable living conditions for occupiers both on the site and adjoining land. Condition 10, relating to domestic refuse, is required for similar reasons relating to living conditions, and also to protect the area's visual amenity. Condition 11, regarding contamination, is necessary to protect the health of occupiers and of those carrying out the development.
28. A restriction on any new walls or fences, as provided by Condition 12, is justified to protect the area's rural character, and control of any external lighting is justified for the same reason and to protect wildlife and neighbouring occupiers. Restrictions on commercial uses and vehicles, and on the storage of potentially harmful substances, are needed for the same reasons.

Conclusions

29. For the reasons given above, I find that the proposed development would not cause any significant harm to the area's character and appearance, nor to the setting of Westbourne Cemetery as a heritage asset. In these respects the scheme would not conflict with any relevant development plan policies.
30. In addition, as a result of my findings on these matters and the others that I have considered above, it seems to me that the development would comply with all of the relevant criteria for gypsy and traveller sites in CLPKP Policy 36. It therefore benefits from the positive support that this policy gives to compliant developments such as this.
31. The development would also help to meet the identified need for gypsy sites across the District, and any potential impact on the SPA would be mitigated by the payment made under the executed legal agreement.
32. Having considered all the other matters raised, I find that none is of sufficient weight to outweigh these considerations. The appeal is therefore allowed.

John Felgate

INSPECTOR

SCHEDULE OF CONDITIONS

Land west of WSCC Gypsy Site, Cemetery Lane, Westbourne, Emsworth
Use of land as a single pitch private gypsy plot

- 1) The development hereby permitted shall be commenced not later than 3 years from the date of this decision.
- 2) The site shall be laid out in accordance with the submitted Drawing No. 3B.
- 3) The site shall be occupied only by persons meeting the definition of gypsies and travellers as defined in Appendix 1 of the *Planning Policy for Traveller Sites*, dated August 2015.
- 4) No more than two caravans shall be stationed on the site at any time, of which no more than one shall be a static caravan. All such caravans stationed on the site shall comply with the definition of caravans as set out in Section 29 of the Caravan Sites and Control of Development Act 1960 and Section 13 of the Caravan Sites Act 1968.
- 5) The site shall not be occupied or brought into use until a landscaping scheme has been submitted to the local planning authority and approved in writing. The scheme shall include a planting plan and schedule of plants, including species, sizes, numbers or planting density, details of any hard surfacing materials and boundary treatments, and a timetable for implementation. The scheme shall also include details of measures for the protection of all of the existing trees and hedges on the site. The scheme shall thereafter be carried out in accordance with the approved details and timetable. Within a period of 5 years from the date of planting, any tree, shrub or plant which dies, or becomes removed, damaged or diseased, shall be replaced in the next available planting season with another of the same species and size.
- 6) The site shall not be occupied or brought into use until the proposed amenity/utility building has been constructed and completed, in accordance with the details shown on Drawing No 4. No construction work on the amenity/utility building shall take place until details of the proposed external materials have been submitted to the local planning authority and approved in writing. The amenity/utility building shall thereafter be constructed using the materials thus approved, and shall be used only for that purpose, and not as residential sleeping accommodation.
- 7) The site shall not be occupied or brought into use until the proposed car parking and caravan storage area, shown on Drawing No. 3B, has been laid out and surfaced in accordance with details that shall first have been submitted to the local planning authority and approved in writing.
- 8) The site shall not be occupied or brought into use until a means of foul water and sewage disposal has been installed, in accordance with details that shall first have been submitted to the local planning authority and approved in writing.
- 9) The site shall not be occupied or brought into use until surface water drainage has been installed, in accordance with details that shall first have been submitted to the local planning authority and approved in writing.
- 10) The site shall not be occupied or brought into use until provision has been made for the storage of domestic waste and refuse in suitable receptacles,

- and for regular collections by a licensed contractor, in accordance with details that shall first have been submitted to the local planning authority and approved in writing. Thereafter, all such waste and refuse shall be stored only within the approved receptacles, and shall be removed from the site no less than fortnightly, in accordance with the details thus approved.
- 11) No development shall take place until the site has been investigated for soil contamination, and any such contamination found to be present has been removed or rendered harmless, in accordance with a scheme to be submitted to and approved in writing by the local planning authority. In addition:
- i) If, during the course of construction, any contamination is found which has not been identified previously, no further work shall take place until that contamination has been removed or rendered harmless, in accordance with additional measures to be submitted to and approved in writing by the local planning authority; and
 - ii) If any contamination has been found to be present at any stage, either before or during construction, no part of the proposed development shall be brought into use until a verification report has been submitted to and approved by the local planning authority, showing that all such contamination has been treated, and the site rendered safe for occupation, in accordance with the original contamination scheme and any further measures subsequently agreed.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no walls, fences, gates or other means of enclosure shall be erected anywhere on the site or its boundaries, other than in accordance with any other details that have been submitted to the local planning authority and approved in writing.
- 13) No external lighting shall be installed anywhere on the site, except in accordance with any details that have been submitted to the local planning authority and approved in writing.
- 14) No commercial activities shall take place on the site at any time, including the storage of materials, and no burning of any item or waste materials of any kind may take place at the site.
- 15) No commercial vehicles of more than 3.5 tonnes gross unladen weight shall be parked, stationed or stored on the site at any time.
- 16) No oils, fuels or chemicals of any kind, shall be stored on the site at any time, except within a secure, impervious bund or compound, in accordance with any details that have been submitted to the local planning authority and approved in writing. Any such oils, fuels or chemicals shall be for domestic use only.