
Appeal Decisions

Hearing held on 16 May 2017

Site visit made on 16 May 2017

by Andrew R Hammond MSc MA CEng MIET MRTPI

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

Decision date: 29 June 2017

Appeal A Ref: APP/L3815/C/16/3158544

**The Woodlands Marlpit Lane, Hambrook, Westbourne, West Sussex,
PO10 8EQ**

- 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 Martin Linn against an enforcement notice issued by Chichester District Council.
 - The enforcement notice, numbered WE/36, was issued on 3 August 2016.
 - The breach of planning control as alleged in the notice is without planning permission, change of use of the land to use for the stationing of a mobile home for the purposes of human habitation.
 - The requirements of the notice are
 - i) Discontinue the use of the land for the stationing of a mobile home for the purposes of human habitation;
 - ii) Remove the said mobile home from the land.
 - The period for compliance with the requirements is six months after the notice takes effect.
 - 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.
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Appeal B Ref: APP/L3815/A/16/3155643

**The Woodlands Marlpit Lane, Hambrook, Westbourne, West Sussex,
PO10 8EQ**

- 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 Martin Linn against the decision of Chichester District Council.
 - The application Ref WE/15/03965/FUL, dated 26 November 2016, was refused by notice dated 21 March 2016.
 - The development proposed is described as retention of 1 no. mobile home to serve the dual purpose of providing a single travelling show persons pitch and a single gypsy pitch.
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Point of clarification

1. The Appeal B application sought planning permission for retention of 1 no. mobile home to serve the dual purpose of providing a single travelling showperson's pitch and a single gypsy pitch. "Retention" is not development for the purposes of the Act and it was also confirmed at the Hearing that what was sought was one single pitch for the dual purpose of accommodating a gypsy and a travelling showperson. Planning Policy for Traveller Sites (PPTS) distinguishes between use as a gypsy and traveller site and use as a travelling

showpeople site, the two uses having different specific requirements. It is not clear, therefore, how use of a single pitch as a dual purpose site could be controlled by condition. The rationale behind the application was that the appellant claimed gypsy status and his wife travelling showperson status. However, it became clear at the Hearing that both the appellant and his wife satisfied the definition of travelling showpeople in Annex 1: Glossary of PPTS and the development carried out was a material change of use from agriculture to use as a single travelling show person plot. Section 73A of the Act makes provision for planning permission for development already carried out. No injustice would be caused by amending the definition of the proposal and Appeal B has been determined on the basis of a material change of use to use a single travelling showperson plot with the description as adopted below in the Appeal B decision and determining the application under the provisions of s73A of the Act.

Decision Appeal B

2. The appeal is allowed and planning permission is granted for a material change of use from agriculture to use as a single travelling showperson plot at The Woodlands, Marlpit Lane, Hambrook, Westbourne, West Sussex, PO10 8EQ in accordance with the terms of the application, Ref WE/15/03965/FUL, dated 26 November 2016, subject to the conditions attached at Annex A.

Decision Appeal A

3. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended. Reliance is placed on section 180(1) of the Act which states that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

Application for costs

4. At the Hearing an application for costs was made by Chichester District Council against Mr Martin Linn. This application is the subject of a separate Decision.

Appeal B

Main Issue

5. The main issue before this appeal was whether the occupiers of the site are gypsies and travellers or travelling showpeople meeting the definitions in Annex 1: Glossary, of Planning Policy for Traveller Sites (PPTS) (2015).

Reasons

6. Prior to the hearing the appellant had supplied copies of a letter confirming that he was born a gypsy and that he carries out work in landscaping, tree surgery and ground works as well as travelling to fairs. He also supplied copies of his wife's birth certificate where her father's profession is described as 'Travelling Showman' and their marriage certificate where the appellant is described as a 'Stonemason' and Mrs Linn as a 'Showman'. The appellant also supplied a letter from the General Secretary of the Association of Independent Showmen, confirming that Mr Linn is a full member of the association.

7. For the purposes of national policy Annex 1 of PPTS defines 'gypsies and travellers' 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, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.*
8. 'Travelling showpeople' are defined as *members of a group organised for the purposes of holding fairs, circuses or shows (whether or not travelling together as such). This includes such persons who on the grounds of their own or their family's or dependants' more localised pattern of trading, educational or health needs or old age have ceased to travel temporarily, but excludes Gypsies and Travellers as defined above.*
9. None of the information listed above provided any evidence of substance that neither the appellant nor his wife satisfied either the definition of gypsies and travellers or of travelling showpeople. However, during the course of the hearing the appellant produced copies of insurance certificates and safety inspection certificates for his fairground rides and sideshows together with pitch receipts for a number of fairs around the country, all covering a number of years prior to the issue of the enforcement notice or the planning application. The rides and elements of the sideshows were present, together with a showman's vehicle containing an electricity generator, at the time of the site visit.
10. The Council agreed with the conclusion that the information provided at the Hearing confirmed on the balance of probability that the appellant and his wife met the definition of 'travelling showpeople' in PPTS. The appellant explained that he had previously been based at a site owned by a relative who had passed away and the site had been sold and was no longer available. There was no evidence that the appellant or his wife met the definition of gypsies and travellers.
11. The Council identified a need for 11 travelling showpeople plots between 2012-2017; 3 plots between 2018-2022; and 4 plots between 2023-2027. 17 plots have been approved since 2012 and hence there is no current unmet need.
12. The appeal site is located near the junction of Marlpit Lane with Common Road, some 2 km from Woodmancote village and 1.8km from Funtington. The site previously benefitted from planning permission for use for the siting of a mobile home for residential use by an agricultural worker for a temporary period, now expired. Within the site there is a pre-existing agricultural barn now used for the storage of fairground rides and equipment and another, smaller, building used for maintenance, together with a mobile home, a caravan used for storage, a number of vehicles and domestic paraphernalia. The site is within reasonable travelling distance from local services and facilities, has adequate vehicular access, is screened by mature hedgerows and trees without being unduly enclosed; and does not directly impinge on the residential amenity of any neighbouring dwellings. As such the proposal is compliant with Policy 36, *Planning for Gypsies, Travellers and Travelling Showpeople* of The Chichester Local Plan.
13. Despite the description of the proposed development in the application, the requirements of the appellant are for a traveller showpeople plot as both he and his wife meet the definition of travelling showpeople but not that of gypsies

and travellers in PPTS. The appeal site can provide such a plot in a sustainable location with adequate enclosed storage and hardstanding for the storage and maintenance of the appellant's fairground equipment without additional development of the site.

Other Matters

Cumulative Provision

14. The Council's reason for refusal 2 was that, being located adjacent to a 12 pitch gypsy and traveller site, and close to another large site on Cemetery Lane, the appeal proposal would be contrary to PPTS policy in that the cumulative provision would dominate the local community and fail to promote integration. The sentiment was shared by the local Parish Council.
15. However, in July 2016 an application for an additional 4 gypsy and traveller pitches in Cemetery Lane was allowed on appeal (APP/L3815/W/15/3005107) with the Inspector commenting "*Westbourne is a village of some 2300 people. While there is another traveller site in Cemetery Lane this and the appeal proposal would amount to amount to 24 pitches. Other sites are dispersed around the local area, but I have seen no evidence that this amounts to a significant number of pitches. I am therefore not persuaded that, with the proposed development, travellers would comprise a disproportionate section of the population so that they could be said to dominate the settled community.*"
16. The appeal proposal comprises one additional travelling showperson plot which, albeit adjacent to a 12 pitch gypsy and traveller site, would not significantly increase the total number of pitches and plots in the area and the Council have withdrawn that reason for refusal. Given the dispersion of sites in the borough, there is no reason to consider that the previous Inspector's reasoning is not applicable in this case where the proposal is for a single travelling showperson plot or that the Council were not correct in withdrawing the reason for refusal.

Special Protection Area.

17. The appeal site is located within the Chichester and Langstone Harbour Special Protection Area where it has been identified that a net increase in residential development results in significant harm to those areas of nature conservation due to increased recreational disturbance. The council's reason for refusal 3 cited the absence of a completed s106 agreement to secure appropriate mitigation.
18. The appellant has subsequently provided a satisfactory unilateral agreement which I am content satisfies the requirements of Policy 50 of the Chichester Local Plan, the Conservation of Habitats and Species Regulations 2010 and the National Planning Policy Framework. The Council confirmed that reason for refusal 3 had been withdrawn.

Conclusion Appeal B

19. The appellant, the occupier of the site, cannot demonstrate status as a gypsy and traveller in accordance with the definition in PPTS. He can, however, demonstrate that he is a travelling showperson. The appeal proposal represents sustainable development in the form of a travelling showperson site with a single plot in a suitable location. The proposal would be in conformity with development plan and national policy, as expressed in PPTS.

20. For the reasons given above I conclude that Appeal B should be allowed.

Conditions-Appeal B

21. A condition restricting the occupation of the site to travelling showpeople as defined in Annex 1: Glossary of Planning Policy for Traveller Sites is necessary as the development in the countryside is only justified given the status of the occupiers of the site.
22. Notwithstanding the drawings submitted with the application, a condition requiring the approval of a site development scheme including foul and surface water drainage; hard and soft landscaping including hard standing; external lighting; and site layout is necessary to protect the rural character and appearance of the area as are conditions restricting the number of caravans on the site, the number and size of commercial vehicles and removing permitted development rights in respect of means of enclosure.
23. A condition restricting the storage of equipment to areas so designated on the approved site layout is also necessary to protect the character and appearance of the area.
24. A condition prohibiting the burning of waste is necessary in the interests of amenity and to prevent pollution.
25. Given that there is claimed potential for ground contamination on the appeal site, albeit that there is no firm evidence of such, a condition requiring the reporting of any contamination identified along with a scheme of remediation is necessary in the interests of the health and safety of occupiers of the site.

Appeal A

26. Appeal A ground (a) seeks planning permission for what is alleged in the enforcement notice, namely the change of use of the land to use for the stationing of a mobile home for the purposes of human habitation, allowing Appeal A and granting planning permission, even with appropriate conditions restricting occupation to persons meeting the definition of travelling showpeople in PPTS, risks the granting of two potentially inconsistent permissions.
27. In order to avoid the potential for inconsistent permissions Appeal A is dismissed and reliance is placed on section 180(1) of the Act which states that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

Andrew Hammond

Inspector

ANNEX A – SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than travelling showpeople, as defined in Annex 1: Glossary 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 as amended (of which no more than one shall be a static caravan) shall be stationed on the site at any time.
- 3) No more than one commercial vehicle shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 10 tonnes in weight.
- 4) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within six months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for the means of foul and surface water drainage of the site; proposed and existing external lighting on the boundary of and within the site; the internal layout of the site, including the siting of caravans, plots, hardstanding, access roads, parking and amenity areas; tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

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

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.

- 5) No commercial activities shall take place on the land, including the storage of materials, except in the area(s) designated for such purposes within the scheme approved under Condition 5. No burning of materials shall take place on the land.
- 6) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Work shall be

suspended and measures for remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved measures and a verification report for all the remediation works shall be submitted to the local planning authority within 10 days of the report being completed; and approved in writing by the local planning authority.

END OF SCHEDULE OF CONDITIONS

APPEARANCES

FOR THE APPELLANT:

Joe Cunnane: Agent
Martin Linn: Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Caitlin Boddy: Senior Planner Chichester District Council
Reg Hawkes: Assistant Manager Enforcement Team Chichester District Council
Maria Tomlinson: Planning Officer Chichester District Council

INTERESTED PERSONS:

Roy Bristow: Westbourne Parish Council

DOCUMENTS

- 1 Notification of arrangements for the hearing, provided by the Council.
- 2 Bundle of insurance certificates and safety inspection certificates, provided by the appellant.
- 3 Contemporaneous note of site visit, provided by the Council.
- 4-7 Details of available/permitted sites and GTAA, provided by the Council.
- 8 Bundle of permits for various fairs, provided by the appellant.