
Appeal Decisions

Site visit made on 19 June 2018

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 02 July 2018

Appeal A - Ref: APP/L3815/C/17/3180903

**Unit 2, Ten Acres, The Old Army Camp, Cemetery Lane,
Woodmancote, Westbourne PO10 8RZ**

- 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 Mark Funnell against an enforcement notice issued by Chichester District Council.
 - The enforcement notice, numbered WE/39, was issued on 24 July 2017
 - The breach of planning control as alleged in the notice is change of use of the land to use as a HGV Operating Centre.
 - The requirements of the notice are as follows:
 - (i) Cease the use of the land as an HGV operating centre.
 - (ii) Remove all heavy goods vehicles, motor vehicles, plant including excavators, wheeled access platforms, trailers, barrels, skips and all equipment from the land.
 - (iii) Dismantle and remove from the land the double stacked metal containers, undercover storage area, toilet block, stable block/store and portacabins shown in the approximate positions on the attached plan.
 - (iv) Disconnect and remove from the land the static caravan (in use as a site office/mess facility).
 - (v) Remove from the land all loose aggregates and break up and remove the concrete and tarmac hardstanding in the approximate position shown hatched green on the attached plan.
 - (vi) Dismantle and remove from the land the concrete 'bunkers' in the approximate position shown hatched grey on the attached plan.
 - (vii) Dismantle and remove from the land the vehicle wash down area in the approximate position shown hatched blue on the plan.
 - (viii) Dismantle the floodlights and take down the supporting poles and remove them from the land.
 - (ix) Remove from the land all motor vehicle tyres.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on grounds (a) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Appeal B - Ref: APP/L3815/W/17/3179768

**Unit 2, Ten Acres, The Old Army Camp, Cemetery Lane,
Woodmancote Westbourne PO10 8RZ**

- 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 Mark Funnell against the decision of Chichester District Council.
 - The application Ref WE/17/00378/FUL, dated 24 February 2017, was refused by notice dated 26 August 2017.
 - The development proposed is for the use of the land as open storage for vehicles and use as HGV Operating Centre with ancillary offices and stores (Retrospective application).
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Application for Costs

An application for costs in relation to both the enforcement (Appeal A) and planning appeal (Appeal B) has been made by Mr Mark Funnell against Chichester District Council. This is the subject of a separate decision.

Decisions

1. Appeal A succeeds to a limited degree on ground (g) only and Appeal B is dismissed. See formal decisions below.

Introduction, background information and relevant policy

The Appeals site and surrounding area

2. The rectangular shaped appeals site lies to the east of Westbourne, outside of the settlement boundary and within open countryside. It is located on the north side of Cemetery Lane, a private road, which leads east from Foxbury Lane (the B2147) to South Lane in the hamlet of Woodmancote. Cemetery Lane is also a designated right of way (ROW) and also gives access to Westbourne Cemetery which lies to the west of the site closer to the B2147 on the south side of the lane. The lane is tarmacked to just beyond the Cemetery. From there it is roughly tarmacked up to the access to the appeals site. Beyond that it is a rough, un-made and uneven gravelled track.

3. The site lies roughly towards the centre of what had previously been an army camp and there are other uses and developments (authorised and unauthorised) within this former site. The access to the appeals site from Cemetery Lane is via a shared road. The first part of this has been hard-surfaced by the appellant; the rest is unsurfaced. Immediately to the south of the site there is an open, overgrown, rectangular site. The shared access also serves an authorised 2 pitch gypsy site and some other mobile home plots to the east. The Council indicates that some these are unauthorised. There is also an agricultural contractor's compound within the former army camp site.

4. To the west of the shared access track there is an authorised Travelling Showperson's plot (No 1) which fronts on to Cemetery Lane. The West Sussex County Council (WSCC) Gypsy and Traveller Site, which provides 19 pitches, is also to the west of the shared access. This has its own access from Cemetery Lane. The land to the south of the lane and to the east of the Cemetery is open agricultural land, mainly laid out to pasture. There are various electricity pylons and lines criss-crossing the land and the ROW and these are visible from the site and the lane.

5. To the east, but still within the former army site, there is an area of land in various commercial uses which includes three large brick-built buildings. At the time of the submission of the Council's statement for these appeals, part of this land was stated to be under enforcement investigation. I understand that this is still the case. Further to the east the land is generally in agricultural use. However part of this land, which bounds the former army camp, has planning permission (Ref: WE/14/01217/FUL) for 5 Gypsy and Traveller pitches (re-design of one pitch plus four others). This permission was granted on appeal in April 2016 (APP/L3815/W/15/3005107).

6. The latest authorised use of the appeals land had been as part of a travelling showman's site and there had been other previous permissions. The last use had extended from part of the current site, via a track to the south and on to the land to the east, which contains the brick buildings. Fairground rides had been stored in one of the buildings. An extension to a 2005 permission, in 2008, allowed further storage of showman's equipment/rides on the land immediately to the east of the northern-most building. However the building itself was not within the application site.

7. The appeals site is bounded by a 1.8m high close-boarded fence and there is a lockable metal gate at the entrance. The overall former army site is bounded by densely planted evergreen screening. The site has a hardstanding surface (laid by the appellant) with drainage points (including oil filters) on its western side. Within the site and shown on the plan attached to the enforcement notice, there are various structures including concrete bunkers; portacabins; a stable block/store; a toilet block; stacked metal containers/under cover storage and a vehicle wash down area. There is also a mobile home unit. I noted that an additional large timber storage shed had been erected against the northern boundary, to the west of the double-stacked containers.

8. At the time of my site visit the eastern part of the site was empty apart from the concrete bunker and vehicle wash-down areas and some vehicles and plant adjacent to the boundaries. The main vehicles which use the site were stated to have left to carry out various works. At the west end of the site (between the new shed and the stable block and portacabins) there were various vehicles parked on the site. These included small vans and cars and HGV vintage tractor units which were stated to be for hobby use only. Close to the northern boundary there were two JCB loader vehicles, a Land Rover, a van and a Street Cleaner. The site was in a very tidy and well-organised condition.

9. Prior to my visit I had been able to walk most of the length of the ROW and noted the dwellings on the north side of the lane to the west of Woodmancote. I also visited the site to the east (with the three large brick buildings); the WSCC Gypsy and traveller site; the residential pitches to the north of the site and the Cemetery. I inspected the road junction at Cemetery Lane and Foxbury Lane. I was able to achieve both near and distant views of the site and its surroundings and noted, in particular, the dense planted screening which surrounded the former army camp site and the high hedgerows to the sides of the lane.

The planning history

10. As referred to above the overall site had been an army camp or barracks. This use ceased sometime before 1977. Planning permission was granted in 1977 for the part use of the former army land as a riding school (WE/00041/77). In 1980 planning permission was granted (WE00088/80) for the use of the site for the parking and storage of cars and civil engineering plant. In 2005 and 2009 various planning permissions (05/00105/FUL; 05/00756/FUL; 09/00091/FUL) were granted for parts or the whole of the site for a *lorry body and storage container; a showman's caravan and storage and an extension of the existing showman's site to accommodate ride storage*.

11. In 2007 planning permission had been refused (WE/07/04513/COU) for a change of use of the land to the east (the site of the three large buildings) for Class B2 (Steel Fabrication) use. In 1999 permission had also been refused (WE/99/01076/COU) for use of the land for the parking of coaches and use of a building on the land for the storage of plant and equipment. In 2016 planning permission (15/04086/FUL) was granted for change of use of land to the north to provide 4 no. travelling snowpersons' plots. Other applications are referred to on the '*wider site*' including an application for two gypsy pitches to the north. The 2016 Appeal decision on land further to the east and outside of the boundary of the former army camp is also referred to by the appellant and the Council. I have read the decision and have noted the Inspector's reasoning and conclusions, particularly where referred to in relation to the appeals now before me.

The appellant's business

12. The appellant moved part of the HGV business, which employs 22 people, from its original Portsmouth site to the appeals site in late in 2016. This followed termination of

the Portsmouth site's lease at short notice. Larger HGV vehicles (in excess of 7.5 tonnes) are catered for at another site in Chichester but that site was unable to accommodate smaller vehicles and other items of plant. The opportunity to purchase the appeals site arose and, due to the timescale, it had not been possible to submit an earlier planning application for change of use. Considering the previous uses it was considered an appropriate risk to start the HGV use and to rely on the retrospective application, now the subject of Appeal B made in February 2017. In support of the appellant's case a Transport Note (TN) dated January 2017 has been submitted, which I have taken into account with regard to the Highways issue (see below). This was prepared by Paul Basham Associates on behalf of C & L Management.

Relevant Policy and guidance

13. The most relevant development plan policies are Policies 1 (*Presumption in favour of sustainable development*); 2 (*Development Strategy and Settlement Hierarchy*); 39 (*Transport Accessibility*); 45 (*Development within the Countryside*); 47 (*Heritage and Design*) and 48 (*Natural Environment*) of the Chichester Local Plan: Key Policies 2014 – 2029 (CLPKP). On behalf of the appellant other CLPKP are referred to and are also relevant. These include Policies 3 (*The Economy and Employment Provision*); 8 (*Transport and Accessibility*); 20 (*Southbourne Strategic Development*); 26 (Existing employment sites) and 36 (*Planning for Gypsies, Travellers and Travelling Showpeople*).

14. Although not yet adopted, the Westbourne Neighbourhood Plan (WNP) is a material consideration, particularly having regard to the advanced stage that it has reached. Relevant policies are OA1 (*Presumption in favour of sustainable development*); OA2 (*Local Economy and Employment*); LD1 (*Local Distinctiveness*) and LD3 (*Heritage*). These are up-to-date with the CLPKP policies but, as indicated above, these policies cannot be afforded the full weight of the development plan policies.

15. The National Planning Policy Framework (NPPF) is a major material consideration. In reaching my decisions in this case I have had regard to the NPPF including the relevant paragraphs relating to 'Achieving sustainable development'; the 'Core planning principles'; 'Building a strong competitive economy'; 'Supporting a prosperous rural economy'; 'Promoting sustainable transport'; 'Conserving and enhancing the natural environment'; 'Conserving and enhancing the historic environment'; 'Determining applications'; 'Planning conditions and obligations' and 'Enforcement'. I have also had regard to relevant Planning Practice Guidance (PPG).

16. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise (section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990). The development plan policies set out above are up-to-date with the NPPF. Although the policies of the WNP are also generally compliant with the relevant CLPKP, they cannot at this stage be afforded the full weight accorded to the adopted policies.

Appeal A on ground (a) and Appeal B

The Main issues

17. The main issues in both appeals are as follows:

- Whether or not the location of the site is appropriate;
- The effect on the character and appearance of the area;
- The effect on residential amenity;
- The effect on the Westbourne Cemetery (a non-designated heritage asset);
- The effect on the local highway network and highway safety.

The location of the site

18. Policy 45 of the CLPKP states that, within the countryside and outside of the settlement boundaries, development will be granted permission where it requires a countryside location and meets essential, small scale, and local need which cannot be met within, or immediately adjacent to, existing settlements. Policy OA1 of the WNP refers to such developments. These are not normally considered to be appropriate or sustainable unless they comply with all other policy requirements of the development plan; that any benefits outweigh any harm; that it is a development which could not reasonably be located within the settlement or that the development is a rural exception to meet a rural need.

The gist of the Council's case

19. With regard to the settlement hierarchy the Council indicates that the appeals site is categorised as being in the '*Rest of the Plan Area*' (RPA) as referred to in Policy 2 of the CLPKP. The RPA refers to development in small villages, hamlets, scattered development and countryside development being restricted to that which requires a countryside location or one that meets an essential need. Policy 45 is then referred to which sets out the criteria required for such developments.

20. In this case the Council does not accept that the HGV use of the land is an essential rural need which could not otherwise be met elsewhere. It is stated that insufficient information has been provided to demonstrate that the use meets the necessary criteria. Although the Council accepts that the appellant was forced to move this part of the business at short notice, it indicates that the appellant has not provided details which demonstrate alternative locations had been considered and why this site in particular, away from key transport networks, is suitable for the HGV use.

21. In addition the Council disputes that the proposal meets the criteria of being a small scale, essential, local rural need. It does not accept that the appellant's contract, (through a third party with WSCC), means that there is an '*essential rural need*' to use this particular site. It is not disputed by the Council that the land is '*Previously Developed Land*' (PDL) in accordance with paragraph 17 of the NPPF. However, it is argued that the HGV use is not an effective use of the land and refers to the harm caused by the effects on the character of the area; on residential amenity and on the non-designated heritage asset, the Cemetery.

The gist of the appellant's case

22. On behalf of the appellant it is contended that the '*essential rural needs*' test is not the correct test to determine acceptability. Policy 2 of the CLPKP is referred to whereby it is indicated that the rural needs are stated as being an alternative (by the use of the word '*or*') to a use for which a countryside location is required, or for a use which supports rural diversification in accordance with policies 45 and 46.

23. It is also stressed that the Council's reasoning does not properly take account of the fact that the land is PDL. Paragraph 17 of the NPPF is referred to where one of the core principles clearly indicates that planning should '*encourage the effective use of land by reusing land that has been previously developed (brownfield land) provided that it is not of high environmental value*'.

24. It is contended that a site was found by the appellant within an authorised '*lorry park*' for the operator's smaller vehicles. It is further indicated that the appellant had been unable to find a suitable site within an existing settlement, which would allow a viable use without detriment to residential amenity. It is stressed that the site is located away from immediately adjacent residential uses; that any adverse effects are

minimal and that, at paragraph 111 of the NPPF, the PDL point is repeated in relation to the conservation and enhancement of the natural environment.

25. The use is considered to be compliant with Policy 45 and that the Council is wrong to consider the site as being '*rural*' rather than being a '*brownfield*' site. It is indicated that Policy 45 sets the criteria for acceptable development within the countryside and the definition of '*need*' differs from Policy 2. It is indicated that whereas Policy 2 identifies a rural need, Policy 45 does not require the need to be '*rural*'. Instead the need is considered to be essential, small scale and local which cannot be met within or immediately adjacent to existing settlements.

26. Reference is then made to the small scale nature of the use and the small number of vehicles (total 8) stated to be operating from the site. Of these 5 weigh 7500kg; 1 weighs 3500kg and the other 2 are roller/compressors. The submitted Transport Assessment/Note and Highways consultation is stated as detailing the minimal impact (see highways issue below). This is a small local business (employing 22 people) and the need could not be more local considering the work for WSCC and the surrounding highway network. It is considered, therefore, that the '*countryside location*' and the '*essential*, small scale, and local tests are met.

27. Turning to the rest of the requirements of Policy 45 it is further contended that all of the relevant criteria are met. Firstly, the HGV use is considered to be well related to an existing group of buildings close to a settlement. The previous appeal decision is relied upon whereby the Inspector stated that the adjacent site '*adjoins existing development and is close to the established settlement of Westbourne*'. Secondly the HGV use does not prejudice any viable agricultural or other operations. And thirdly the scale, siting and material have minimal impact particularly taking into account the natural screening of the development.

The gist of the cases for others including Westbourne Parish Council

28. The Parish Council and others contend that the HGV use is contrary to Policy 45 because the site lies outside of the settlement boundary and within the open countryside. It is contended that the use would be better suited to an urban industrialised site and that there are many such sites available within Hampshire and West Sussex. It is not accepted that the development meets any of the key criteria that allow for sustainable development in the countryside. It is further indicated that the site has planning permission for travelling showpersons' plots and that these should be protected under Policy 36 of the CLPKP.25. The WNP is referred to and particularly policies OA1 and OA2, in respect of its location within the open countryside.

Assessment

29. Policy 2 of the CLPKP identifies the locations within the Chichester District where sustainable infrastructure and facilities will be accommodated and sets out a settlement hierarchy. The appeals site is located within the '*Rest of the Plan Area*' (RPA) and where countryside development is restricted to that which requires a countryside location or meets an essential rural need. This is reinforced by policy 45 which sets out the criteria which need to be met by such developments.

30. Although it cannot be afforded the full weight of a development plan, Policy OA1 of the emerging WNP requires that any development outside of the settlements would not normally be considered sustainable unless it complies with other development plan policies; that the benefits outweigh any harm and that the development could not be reasonably located within the settlement boundary.

31. Having considered this particular use I agree with the conclusions of the Council and Westbourne Parish Council that the appellant has not demonstrated that this

particular HGV Depot use definitely requires a countryside location on planning grounds. It is not a land use which fundamentally requires a countryside location. I agree with the LPA and the WPC that a use such as this would be normally more likely be found on an industrial estate whether that be in an urban or rural location.

32. Whilst accepting that the appellant urgently required a new site for his smaller vehicles, there is no evidence to show that other more appropriate sites within the service hubs, or indeed within the city boundary, might have been available. Nor, in my view, has it been shown conclusively why this particular rural site is considered to be suitable for such a use. It does not appear to be ideally located with regard to the transport network and, other than the fact that the site was readily available and had previously been used for vehicle storage and a lorry park (albeit one with different characteristics and intensity of use), there are no convincing arguments as to why this countryside site was chosen within the RPA.

33. I have noted the appellant's contention that the '*essential rural needs*' test is not the correct test to determine acceptability. I also acknowledge that Policy 2 indicates that rural needs are stated as being an alternative (by the use of the word '*or*') to a use for which a countryside location is required or a use which supports rural diversification in accordance with policies 45 and 46.

34. However, I am not convinced by the argument that this particular use of the land meets a local rural need on the basis that the company (through others) has been contracted to carry out road works for WSCC. As indicated by the Council the WSCC covers an area of 769 square miles. In that context I do not consider that the use of the site is required for, or meets, a local need in this specific part of the District. I also agree with the Council that, although the company carries out work on a county basis, this does not constitute a '*small scale essential local need*' as set out in policy. A small scale essential local need in this case would, in my view, be more likely to be closely related to the settlements of Westbourne and Woodmancote, as opposed to the whole of the WSCC area.

35. Policy 45 requires certain criteria to be met including developments needing to be well related to a group of buildings; those needing being located close to an established settlement; those being complimentary to and not prejudicing any viable agricultural operations and those being proposals which require a countryside setting which would have minimal impact. Although the site is adjacent to the various residential plots and there are large buildings to the east, I do not consider that it can be described as being well-related to those buildings. The site and its physical contents contrast markedly with the low-key residential development and even to the more open nature of the non-residential site to the east.

36. I acknowledge that the appeals site is reasonably close to Westbourne and Woodmancote. I also agree with the Inspector (in the appeal on land to the east) that that site '*adjoins existing development*' and understand the conclusion that the site is also '*close to the established settlement of Westbourne*'. However, in my view, the site is still perceived as being noticeably located between the two settlements, within open countryside (and the RPA) and that the existing developments in the immediate locality mainly comprise residential plots.

37. I conclude, therefore, that physically the area of the HGV site cannot, be said to be well-related to the residential parts of the former army camp. I acknowledge that the HGV use does not prejudice any agricultural operations but neither does it complement any such use. I also consider that it has far from a minimal impact in this particular location (see character and appearance issue later) and that it is distinctly different in character and intensity of usage than the previous parking of vehicles on the land. The

parked showmans' vehicles would not have been likely to have been accessing or leaving the site on a daily basis. The use of the site previously was primarily one of storage rather than a HGV operational use as being carried out by the appellant.

38. With regard to the land having been previously developed (PDL), this is clearly a material consideration in its favour, particularly having regard to the NPPF (paragraph 17, bullet point 8) and the fact that the land is not of high environmental value. However, in considering whether to grant planning permission all of the other core planning principles set out in the NPPF need to be considered. Two of these (bullet points 2 and 4) seek to find ways to enhance and improve the places in which people live and that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. In this case therefore, for further reasons set out below, I consider that the PDL advantages are outweighed by other development plan and NPPF policy considerations.

39. I acknowledge that the site was found by the appellant within what is referred to as an authorised '*lorry park*' and that it had not been possible to find an alternative site at short notice. However, I do not accept that contention that the site is located away from immediately adjacent residential uses. As a matter of fact there are residential sites immediately to the north and west of the site, as well as the one at adjacent to the shared entrance and further along Cemetery Lane.

40. In conclusion I do not accept the appellant's contention that the use is compliant with Policies 2 and 45. I agree with the Council that the site is a rural site, albeit one which is PDL and could, therefore, could also be termed '*brownfield*'. However, even if it is considered to be a '*brownfield site*' it is one which is clearly outside of any settlement boundary, as set out in the development plan and is within a rural, as opposed to an urban area and within the RPA.

41. With regard to the size of the business (numbers of vehicles, employees and other equipment etc), I acknowledge that the business is relatively small when compared to other larger HGV operators. But, although the '*small scale*' criterion might be met, for the reasons set out above I do not accept that the criteria of needing a '*countryside location*' and the '*essential*' criteria are met. On this first issue, therefore, I find the HGV use to be contrary to Policies 2 and 45 of the CLPKP.

The effect on character and appearance

The gist of the Council's case

42. Again the Council refers to the fact that this rural location lies outside of the settlement boundary; that the site lies away from the main transport links and that access is via a partially unmade road. Although it is accepted that the site does not have any special designation, it is contended that it appears rural in nature and that the only residential uses are the sporadic gypsy and traveller pitches. It is indicated that the entrance to Cemetery Lane from the west is characterised by paddock land to the north and the cemetery to the south. The general feel of the area is considered to be rural and the gypsy sites are not readily visible from the wider area due to the mature screening.

43. Policy 48 of the CLPKP is referred to whereby it seeks to ensure that new development protects the tranquil and rural character of the area and seeks to ensure that any new development conserves and enhances the natural environment. It is contended that the appeals site by reason of its boundary treatment, the number of HGV s involved and the various buildings is visible from the roadside which is also a public right of way (PROW). In addition it is considered that the operations on the site;

the increase in traffic movements; general noise and disturbance would be detrimental to the aural character of the area.

The gist of the appellant's case

44. In terms of landscape impact it is stressed that the use is visually contained on land which has previously been developed and that the use is encouraged by the NPPF in relation to the core planning principles and the conservation and enhancement of the natural environment. Again the previous Inspector's decision on the land to the east is referred to. In particular it is stressed that the Inspector accepted that views of this part of the former army camp were, for the most part, constrained by field hedges and that although there were some distant views of the land, the new development would be seen in the context of other developments along the lane.

45. It is indicated that this earlier appeal had established that there was no adverse impact on the character and appearance of the area in relation to a greenfield site on the east side of the former army camp buildings which had been much more open to long distance views. The appeals site on the other hand is pointed out as having been PDL and very well screened by good quality gates and fencing. It is also noted that from long-distance views the site is visually contained by other buildings and that the wider site is screened by evergreen hedging.

46. In terms of Policies 45 and 48 of the CLPKP it is therefore considered that the HGV operator usage has minimal landscape impact in its immediate context and no impact on views into and out of the South Downs National Park. The position of the site, in the middle of the PDL and with the surrounding developments has meant that it has been acceptably assimilated into the wider landscape. In this respect it is considered to accord with the aims and objectives of the relevant policies of the CLPKP as well as those in the WNP. In summary it is not considered to be harmful to the character and appearance of this part of the rural area.

The cases of others including Westbourne Parish Council (WPC)

47. The WPC contends that the development carried out now for over 2 years has damaged the rural character and the setting of the village. It is also stressed that in terms of its visual impact the authorised and unauthorised uses on the former army barracks land have resulted in the area looking like an industrial estate which has resulted in an extremely harmful effect on the countryside setting and the rural charm of the area.

Assessment

48. Having viewed the site and its immediate surroundings from both near and distant viewpoints, I share the Council's and others' concerns about the visual impact of the HGV use on this particular section of the former army camp site. I consider that it has had a detrimental impact on the character and appearance of this part of Cemetery Lane within the open countryside.

49. I accept that long distance views of the site are limited and that the wider site is extremely well-screened by the mature trees which bound the former army camp site. The hedgerows along both sides of the lane are also high and dense and form an effective screen. Despite this screening and the boundary fencing, however, the site is distinctly noticeable when walking along, or driving down, the lane. This is particularly the case when approaching the shared driveway; in the views from the access road to the east and from within the adjacent site to the east.

50. Unlike the relatively low mobile homes and caravans on the nearby sites, some of the structures on the appeal site are distinctly noticeable. Of particular concern are the

new storage shed and the double height container storage units. From the east these are seen as obtrusive and dominating features within the rural landscape. I acknowledge that the three large buildings to the east are also obtrusive. However, these have been in place for some time and appear to have been related to the former use of the army camp.

51. When the double height containers and shed are seen in the context of the rest of the former camp site, the overall result is that the generally well-screened residential plots appear to be positioned within a small industrial estate. In this respect I agree with the Council and the Parish Council that the HGV use has resulted in an extremely harmful visual effect on the countryside setting and the rural qualities of the area.

52. As well as detrimentally affecting the visual character I also consider that the HGV use has been harmful to the aural environment of this rural location. Although no specific noise measurements have been taken or submitted there is clear evidence, from residents and the Parish Council of early morning engine noise as well as noise from the comings and goings of commercial vehicles. I deal with this further below, under the effects on residential amenity.

53. I find that the HGV use is contrary to Policy 48 of the CLPKP which seeks to ensure that new development protects the tranquil and rural character of the area as well as conserving and enhancing the natural environment. I also find it contrary to policies within section 11 (Conserving and enhancing the natural environment) of the NPPF in that the use fails to protect an area of relative tranquillity.

54. In conclusion on this second issue, therefore and irrespective of the fact that the use site could be restricted by condition to smaller vehicles only, I consider that the development carried out (change of use and operational) is contrary to Policy 48 of the CLPKP as well as to policies within the NPPF. Again, therefore, I find in the Council's and other objectors favour in relation to this issue.

The effect on residential amenity

The gist of the case for the Council

55. The Council stresses that the HGV site is located close to the Travelling Showman's Plot on Cemetery Lane, as well as the 19 pitches of the WSCC Gypsy and Traveller site. There are other pitches to the west. It is considered that the noise associated with the business, including the HGV traffic movements has resulted in unacceptable levels of noise and disturbance for residents. The Council's Environmental Officer had raised concerns about the compatibility of the HGV and the residential uses. The Council also indicates that there has been no supporting noise assessment submitted and that currently there are no operating hour restrictions.

56. The Council refers to the appellant's traffic report which indicates that most traffic movements would be between the hours of 6am–8am and 4pm–6pm and that it is likely that engine noise, the use of external lighting and general movements of traffic could commence before 6am and continue after 6pm. Although the Council accepts that these effects could be mitigated by planning conditions (including hours of operation) it is considered that due to the nature of the business and the fact that it may be difficult for the appellant to comply with such conditions, this would make them unreasonable.

The gist of the case for the appellant

57. In terms of the effect on residential outlook, it is contended that the use has not resulted in any adverse impact on the openness of views and that the use respects the landscape character. The previous appeal is referred to and again it is stressed that the development is seen in the context of other developments on the former army camp

site. The previous appeal was considered useful in establishing that there was no adverse impact on the character and appearance of the area in relation to the greenfield site to the east of the camp boundary. It is stressed that apart from the shared entrance visual amenity the site is effectively screened by its surrounding fence and gates.

58. It is considered that in terms of Policies 45 and 48 the HGV use of the site has minimal landscape impact; no impact on views and no impact on views or the setting of the South Downs National Park (SDNP). As PDL it is also argued that the land use has no additional visibility impact on the tranquil or rural character (especially between 8am and 4pm. Nor does it have an adverse impact on open land between settlements since it lies within the old army site.

59. It is argued that there are no '*adjoining permanent residential properties in the area*'. It is also indicated that there have been no objections received from the owners or occupants of the adjacent sites. It is stressed that this is a significant material consideration. It is considered that this is due to the low level of and short term nature of traffic movements confined to the start of the day and late afternoon, when residents are likely to be busy with other tasks. It is also suggested that this could be because residents might expect a certain amount of noise and disturbance when living adjacent to a travelling showperson's quarters on a previously developed site. The use is, therefore considered to be compliant with policies 45 and 498 of the CLPKP and the NPPF

The gist of the case for others including Westbourne Parish Council

60. The Parish Council and other residents refer to the significant number of Gypsy and Traveller and Snowpersons' homes within and close to the former army camp site. It is contended that these residents, as well as others (including the occupants at Cemetery Lodge, on Lark Way and Mallard Close), are affected by the environmental disturbance of the HGV use (noise of engines and airbrakes and fumes) which has been on-going for since 2016. Residents complain of the early morning activity starting well before 6am affecting the peace and quiet which residents should be able to enjoy.

Assessment

61. Having noted all of the submissions relating to the effect on residential amenity and having noted the relative positions of the residential pitches and other houses to the site, I consider there are two issues. The first relates to residential outlook and the second to residents' general living conditions.

62. On the first point I consider that the outlook of some of those living close to the site has resulted in clear views of the high shed; the double-height containers and the machinery/vehicles which are higher than the surrounding close boarded fence. It is these elements which are the most visibly noticeable. Despite the boundary treatments around the appeals site and the nearest residential plots, I consider that the outlook for some residents has been detrimentally affected. Although there is no right to a view, in planning term, residents should be able to have a reasonable expectation that there outlook is not dominated by the close proximity of what is perceived to be a small industrial estate.

63. During my site visit I noted the positions of the mobile homes within their respective plots. Having seen the positions of some of the windows of these units, I consider that the obtrusive elements of the containers and the shed would be distinctly noticeable on the appeals site from some properties and visually harmful. I also noted the locations of the Cemetery Lodge and the dwellings in Lark Way and Mallard Close.

64. On the second point and having taken into account the representations relating to noise and disturbance I consider that the HGV use (as operated over the last two years) has clearly resulted in unacceptable levels of noise and disturbance for some residents. Irrespective of whether or not the nearest residents have made complaints, due to the proximity of the nearest pitches, I consider that the early traffic noise and movements will have caused undue levels of noise and disturbance (early in the mornings in particular) within this generally tranquil and otherwise quiet part of the District.

65. In addition, traffic movements, again particularly in the mornings, will also affect those residents who live at the Cemetery Lodge, Lark Way and Mallard Close. I do not accept the argument that residents living in this generally tranquil area would be likely to expect such noise and disturbance at those early times. In summary on this issue I conclude, therefore that the HGV use is contrary to both local and national policies which seek to protect residential amenity and a good standard of amenity for all existing and future occupants of land and buildings. The appeals also fail therefore in relation to this issue.

66. I have also noted the evidence regarding the use of the site for vehicles larger than those referred to in the Traffic Assessment and refer to this below.

The effect on the Westbourne Cemetery (a non-designated heritage asset)

The gist of the case for the Council

67. The Council's concern is that the HGV use of the site has brought undue levels of noise and disturbance to the Cemetery site which is only around 138m from the shared access road. The cemetery is considered to be a non-designated asset with a setting that is characterised by a tranquil and rural environment which contributes to visitors' time of reflection. It is considered that the noise, activity and traffic movements generated by the HGV, in addition to the traffic which already uses the lane, has resulted in a failure to conserve and enhance the setting of this heritage asset.

68. With regard to the appellants' reliance on the previous appeal decision, the Council stresses that those proposals (for residential plots) are materially different from a HGV use. It is contended that, the HGV traffic movements; the general use of the site and the increase in activity have resulted in unacceptable levels of noise and disturbance in the vicinity of the Cemetery.

The gist of the case for the appellant

69. It is accepted that the Cemetery and associated chapel are designated as non-heritage assets within the emerging WNP. But it is indicated that the Inspector for the 2016 appeal confirmed that traffic from that development would not have a materially discernible traffic generation impact in terms the setting of the Cemetery. It is contended that the use of this HGV site causes no harm to the setting of the non-designated heritage asset and is, therefore, in accordance with Policies 47 and 48 of the CLPKP as well as with section 12 of the NPPF.

The gist of the case for others including Westbourne Parish Council

70. Other objectors to the use of the site for the HGV use and the WPC, in particular, support the Council's case and put forward similar arguments relating to the detrimental effect of this particular use on the setting and the aural environment of the Cemetery.

Assessment

71. Having noted the physical relationships between the Cemetery, the appeals site and the lane, I acknowledge that the use of the lane by more traffic will affect the

peaceful and tranquil nature of the graveyard. However, the pattern of usage of the HGV site, if restricted to that set out by the appellant, would mean that between 8am and 4pm there would not be any significant usage of the lane by vehicles from the site. This of course is on the assumption that the 7.5 tonne vehicles (the maximum for which the site is intended) leave the site in the mornings and return late in the afternoon. It also assumes that the numbers of vehicles are restricted to the figures quoted in the planning application and in the appeal statement.

72. Aurally, therefore, I do not consider that this pattern of usage would have a significant effect on the character of this non-designated heritage asset. Also, due to the distance from the appeals site, I do not consider that the buildings and materials on the site have had a detrimental effect on the visual character and appearance of the Cemetery. It is only after passing the Cemetery boundary (travelling east along the ROW) that the higher elements on the site become obvious. The openness and rural nature of the cemetery is perceived as relating more to the open countryside to the south and east. Overall, therefore, I do not consider that the setting of the non-designated heritage asset is detrimentally affected. It follows that on this issue, therefore, I agree with the case put forward on behalf of the appellant that the HGV use is not harmful to this non-heritage asset.

The effect on the local highway network

The gist of the case for the Council

73. The Council does not oppose the HGV use on highway safety grounds. Their submissions on traffic matters appear to relate to solely to the effect of traffic movements on the character and appearance of the locality and to traffic noise. In the delegated officer report for the retrospective application (the subject of Appeal B) it is stated that the local highway authority (LHA) did not consider that the HGV use of the site would result in any impacts on the highway network that could be considered severe. Subject to appropriate planning conditions and a '*routing agreement*' being put in place the LHA raised no objections to the development.

74. Furthermore, the LPA did not raise any highway safety issues in relation to the enforcement action taken. Prior to the application being considered the LHA had met with the appellant's traffic Consultant and the detailed TN had been taken into account. The delegated report covered matters including the access to the site; visibility at the junction of Cemetery Lane and the B2147; the Vehicle Tracking (VT) diagrams; Trip Generation (TG). All of these matters were considered acceptable and not of such weight that they counted against the granting of permission.

The gist of the case for the appellant

75. The appellant relies on the detailed TN. It is stated that, in terms of traffic impacts, the HGV use is of a type that is located and operated to minimise traffic generation and movement. It is contended that it does not create any safety, congestion, pollution or other negative environmental effects. It is considered to provide a safe and adequate means of access and internal circulation arrangements.

76. It is pointed out that through, amongst other things, car-sharing arrangements; the proximity to a bus route and improvements to the highway surface, the HGV operation encourages sustainable transport. The improvements are considered to have improved the highway experience for users of vehicles, cycles as well as for pedestrians using the ROW. The LHA acceptance of the development is emphasised and the HGV use on this site is considered to comply fully with Policies 39 of the CLPLP and paragraph 17 of the NPPF.

The gist of the case for others including Westbourne Parish Council

77. Most of the highways objections to the use come from nearby residents and the WPC. As well as querying why the LHA has changed its stance (regarding visibility) from a previous appeal (APP/L3815/A/08/20652340) questions are raised about the capacity of the junction to deal with the traffic increase; the types, numbers and weights of vehicles using the site and the damage caused by vehicles to the private road itself and the grass verges. A significant amount of photographic evidence has been submitted to illustrate these points. The WPC considers that the HGV use is contrary to Policy 47 of the CLPKP.

Assessment

78. From my own inspection of the junction between the lane and the B2147, I can understand some of the residents' and the WPC's comments about the situation in 2008 and the current situation. However, that does not alter the fact that both the Council and the LHA, having considered the detailed TN, do not consider that there are any highway safety issues which cannot be overcome by appropriate conditions.

79. Having seen the detailed report and noted the diagrams, plans, tables and figures relating to vehicle types; trip generations; geometrics and visibility I find no reason to disagree with the LHA, the LPA and the appellant's Transport Consultant. Subject to conditions on restrictions of numbers and weights of vehicles; the submission of a Traffic Management Plan (to include specific routing) and a specific condition (No 5 suggested by the Council) that *Vehicles of no more than 7.5 tonnes shall operate from or be stored on the site at all times*, I consider that the HGV use would be acceptable in terms of highway safety.

80. From the WPC and others' photographic evidence it is clear that vehicles in excess of 7.5 tonnes have been used at the site in relation to the overall HGV business. I have particularly noted the photographs of long trailers which have been used to transport equipment, plant and JCB type loaders to and from the site (May and December 2017).

81. These vehicles clearly would not accord with the acceptable '*tracking diagrams*' set out in the TN (for vehicles weighing 7.5 tonnes) or the specification in the application of what was to be kept on site. These larger vehicles are most likely to have caused some of the damage to verges at the main junction, as well as along the lane. I agree that such vehicles and/or any others in excess of 7.5 tonnes are totally unsuitable in terms of access to and from the site; through the village itself and clearly for turning manoeuvres in the nearby residential roads along this part of the B4217.

82. However, again I accept that the imposition of the conditions suggested by the LHA and the LPA would mean that such vehicles were barred from using the site. This, in itself could clearly create operational difficulties for the appellant's company who might well regularly need to transport vehicles and plant (such as JCB loaders) between their larger site in Chichester and the appeals site. The overall weights of such tractor and trailer vehicles could be well in excess of 7.5 tonnes.

83. Nevertheless, I must consider the ground (a) appeal (Appeal A) and the retrospective application (Appeal B) on the basis of what was applied for, subject to the imposition of appropriate conditions. On this issue, therefore, I conclude that if the conditions were imposed and complied with, the HGV use would be acceptable on highway safety and other traffic grounds. I acknowledge that the appellant has already improved the access and it may well be that other repairs could be carried out to sections of this private lane. I therefore also find in the appellant's favour on this issue.

Conclusions and planning balance

84. In reaching my conclusions on the five main issues I have found in the appellant's favour on those relating to the effect on the non-designated heritage asset and on highway safety and the impact on the local highway network.

85. However, with regard to the first three issues I have found against the appellant. Firstly I have concluded that the HGV use is not acceptable in principle and that it is contrary to Policy 45 of the CLPKP. Secondly I have found that it is harmful to the character and appearance of this part of the District and thereby contrary to Policies 45, 47 and 48 of the CLPLP. And, thirdly, I have concluded that it is also to residential amenity due to loss of outlook and noise and disturbance and thereby contrary to development plan policies as well as to the NPPF.

86. With regard to the latter, I have taken as a starting point the presumption in favour of sustainable development. But the NPPF is quite clear that in terms of sustainability the planning system needs to perform a number of roles. These are an economic role; a social role and an environmental role which are mutually dependent.

87. Taking the first role I accept that the business, with 22 employees must contribute positively in helping to build a strong and competitive economy. However with regard to the social role I do not consider that this particular HGV use in this rural location has resulted in supporting a strong, vibrant and healthy community for present and future generations. In my view it has not resulted in a high quality environment. On the last point and the need to perform a positive environmental role, I have concluded that it is harmful to the natural environment which the use neither protects nor enhances.

88. Sustainable development involves seeking positive improvements in the quality of the built and natural environments, as well as in the quality of peoples' quality of life. In this case my overall conclusion is that the HGV use on this site cannot be considered to be sustainable. This particular land use in this location is not, in my view, sustainable and fails to perform two of the necessary roles. Any presumption in favour of development is outweighed by the other material considerations.

89. My favourable findings on behalf of the appellant in the last two main issues are, in my view, far outweighed by my conclusions on the first three. I do not consider, therefore that planning permission should be granted for the use of the land as open storage for vehicles and use as HGV Operating Centre with ancillary offices and stores. Appeal A on ground (a) and Appeal B, therefore fail.

Appeal A on ground (g)

90. On behalf of the appellant it is considered that a 6 month compliance period falls short of what should reasonably be required. A period of 18 months is put forward as being appropriate and necessary. It is indicated that finding appropriate sites for HGV usage is difficult and because of the previous uses (including the parking of 20m long Showmans' vehicles) the appellant had a legitimate expectation that the retrospective application would be successful.

91. It is also argued that the appellant will not be able to sell the appeal land; source a new site and complete a sale within a 6 month period. Any new site would need to be prepared to take the HGV vehicle, equipment and plant and the notice requires the dismantling and removal of buildings plant and surfacing. Operationally and logistically the appellant refers to on-going projects and that without proper programming it is considered that the business would suffer.

92. Having considered all of the details of these appeals, including the business needs and the responsibilities for employees, I agree with the appellant that a 6 month period

falls short of what should reasonably be allowed. An 18 month period would, in normal circumstances, be deemed too long. However, in this case and due to the complexities of finding an alternative site, whilst continuing the business commitments (including employment) already in hand, I consider that 18 months is appropriate and necessary. Appeal A succeeds to this limited degree and I shall vary the enforcement notice accordingly.

Other Matters

Safeguarding of Gypsy and Traveller sites

93. Policy 36 of the CLPKP seeks to safeguard Gypsy, Travellers and Showpersons' sites within the District and there is permission in place on the appeals land for 1 of 4 plots related to a larger site. However, the Council indicates that (at the time of the retrospective application) the Council had a Housing Land Supply of 7.4 years and the loss of just one plot would be regrettable but would not be contrary to policy. In these circumstances I agree and do not consider that the loss of one plot is significant in terms of these appeals, albeit it that this is an established location for such sites.

All other considerations

94. In reaching my conclusions in these two appeals I have taken into account all of the other matters raised by and on behalf of the appellant, by the Council, by Westbourne Parish Council and by others.

95. These include the initial grounds of appeal and statements; the full planning history; the other cases referred to; the contents and findings of the Transport Note; the Council's delegated Report on the retrospective application; the various plans and photographic evidence and the appellant's final submissions dated 2 February 2018.

96. However, none of these matters alters any of my conclusions on the grounds pleaded or on the main issues. Nor is any other factor of such significance so as to change my decisions.

Formal Decisions

Appeal A

97. Appeal A succeeds to a limited extent on ground (g) only. I direct that the notice (WE/39) be varied by deleting the word 'six' at the beginning of section 6 (TIME FOR COMPLIANCE) and by substituting therefor the word 'Eighteen'.

98. Otherwise the appeal is dismissed, the enforcement notice (WE/39) is upheld as varied and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Appeal B

99. Appeal B is dismissed.

Anthony J Wharton

Inspector