
Appeal Decisions

Hearing Held on 4 July 2018

Site visit made on 4 July 2018

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2018

Appeal A Ref: APP/L3815/C/17/3179554

Land adjacent to Ham Road, Sidlesham, West Sussex PO20 7NL

- 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 Levi Lee against an enforcement notice issued by Chichester District Council.
 - The enforcement notice, numbered SI/69, was issued on 14 June 2017.
 - The breach of planning control as alleged in the notice is: Without planning permission, material change of use of the land to a mixed use for agriculture and keeping/ breeding horses and use as a residential caravan/ mobile home site.
 - The requirements of the notice are: (i) Cease the use of the land as a residential caravan/ mobile home site; (ii) Remove all caravans and mobile homes from the land; (iii) Disconnect and remove the septic tank (in the approximate position shown on the attached plan) from the land; Remove from the land the hardsurface (in the approximate position shown on the attached plan) forming the parking and turning area; and (v) Following compliance with (iv) above, level the land and reseed with grass.
 - 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. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/L3815/W/17/3179810

Land Adjacent to Ham Road, Sidlesham, West Sussex PO20 7NL

- 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 Levi Lee against the decision of Chichester District Council.
 - The application Ref SI/16/03383/FUL, dated 10 October 2016, was refused by notice dated 09 May 2017.
 - The development proposed is: The use of land as a travellers' caravan site consisting of 2 No. touring caravans, 1 No. amenity structure and associated development.
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Decision on Appeal A

1. It is directed that the enforcement notice be varied by the deletion of the words "Six months" as the time period for compliance at section 6 and the substitution of the following words "Twelve months". Subject to that variation the appeal is dismissed and the enforcement notice is upheld, and planning

permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Decision on Appeal B

2. The appeal is dismissed.

Preliminary and Procedural Matters

3. Two appeals are before me for determination, one made against the Council's decision to issue an enforcement notice and the other against its decision to refuse to grant planning permission. As set out in the banner heading above, I have referred to the appeals as Appeal A and Appeal B.
4. The site was occupied after the application was made but prior to the point at which it was determined. There are notable differences between the development, as proposed in the planning application and that which is the subject of the enforcement notice. The description of the alleged breach in the notice is a material change of use of land to a mixed use for agriculture and keeping/ breeding of horses and use as a residential caravan site/ mobile home site. The land to which the notice relates, as defined by the plan appended to the notice, covers the area upon which the caravans are sited and the adjacent paddocks that are within the appellant's ownership.
5. The planning application also sought permission for a mixed use as a caravan site and for the keeping/ breeding of horses but the red line boundary denoting the land was more tightly drawn to include the access drive to the site and the areas of hardstanding upon which the caravans are located. The paddocks fell outside the application boundary. In addition, the application included the proposed erection of a dayroom. No such building currently exists and the enforcement notice relates purely to a material change of use and not operational development.
6. The planning application was put forward on the basis that two touring caravans would be sited on the land, as opposed to a static unit or mobile home, with the suggestion being that they could be moved more readily in response to potential flood risk. At the time the enforcement notice was served a static unit was located on the land. That difference does not affect the use of land or the description of development because a caravan site remains a caravan site regardless of whether a touring unit or a static unit is used. However, the difference does have implications in terms of the practicalities of dealing with potential flood risk and I have addressed that matter in the main body of my decision.
7. On the morning of the Hearing the appellant submitted a planning obligation¹ in the form of a unilateral undertaking (UU) which would require a financial contribution to be made towards "access mitigation measures in respect of the Pagham Harbour Special Protected Areas". The fourth reason for refusal and the reasons for issuing the notice refer to likely impacts on the Chichester and Pagham Harbour Special Protection Areas (the SPAs). They are, in fact, two separate SPAs; the Pagham Harbour SPA and the Chichester and Langstone Harbour SPA. Both are internationally important wildlife sites, as noted in policies 50 and 51 of the Chichester Local Plan: Key Policies 2014-2029 (2015) (the Local Plan). Those policies identify that a net increase in the residential

¹ Under s106(1) of the Town and Country Planning Act 1990

- population within respective 'zones of influence' could, alone or in combination, have significant effects on the two SPAs.
8. On reading its content, the UU refers only to the planning application which was submitted to the Council in respect of Appeal B. In other words, its contents would not take effect in relation to the deemed planning application made in relation to Appeal A. I shall assess the implications of the mitigation measures put forward in relation to Appeal B, and the lack of mitigation in relation to Appeal A within the main body of my decision letter.
 9. Notwithstanding the differences in the form of the development and the approach to mitigation relating to the SPA, the main issues relating to the ground (a) appeal and Appeal B are the same. Consequently, I have considered both appeals together, making the distinction between the two where necessary before concluding separately on each appeal.
 10. The agent for the appellant made clear at the Hearing that planning permission is sought on a permanent basis in relation to both appeals. However, if I was minded not to grant such permission he seeks permission on a temporary basis. He suggested a period of 3 or 5 years. I have considered that scenario as a discreet element within the balancing exercise in relation to each application.
 11. Within the statement of common ground (SoCG) and at the Hearing, the parties agreed that the appellant and his family fall within the Government's definition of gypsies and travellers, as set out at Annex 1 of the Planning Policy for Traveller Sites (PPTS). On the evidence before me I see no reason to doubt that position. Mr Lee is an ethnic Gypsy who travels for work and, whilst Mrs Lee may have ceased to travel temporarily due to child care arrangements, she remains within the definition. The children who are dependants of Mr Lee are within the family unit.
 12. Shortly after the close of the Hearing the Government published the revised National Planning Policy Framework (the Framework) and I subsequently offered the parties the opportunity to submit written comments, if they considered that the revisions to the Framework had any implications for the determination of the appeals. Neither party submitted anything in response. Given that it represents extant Government policy, I have taken the revised Framework into account as a material consideration in reaching my decisions.

Main Issues in Relation to Appeal A on Ground (a) and Appeal B

13. The main issues in relation to both appeals are:
 - i) The effect of the development on the landscape character and appearance of the countryside;
 - ii) Flood risk;
 - iii) Whether the location of the site is sustainable with regard to its proximity to local services and facilities;
 - iv) The effect of the development on the Chichester and Pagham Harbour Special Protection Areas;

- v) Whether there is a need for additional gypsy and traveller sites in the area and, if so, whether existing and/or planned developments would be available to meet those needs;
- vi) The weight to be attached to personal circumstances of the appellant and his family.

i) *The Effect of the Development on the Landscape Character and Appearance of the Countryside*

The Site and Its Context

14. The site is located within the countryside, beyond the settlement boundary defined by the Local Plan, to the west of Sidlesham and the south of Highleigh. Ham Road and Keynor Lane pass immediately to the west and north of the site. The topography of the area is gently undulating. As noted by the Inspector in relation to the appeal in relation to the adjacent site², the field pattern to the west of Ham Road is dominated by larger arable fields whereas the land to the east of Ham Road contains a patchwork of smaller fields enclosed by hedgerows. The appeal site sits within the latter part of the landscape which has a more intimate character.
15. Notwithstanding that point, wide ranging views of the surrounding countryside are available from Keynor Lane to the north of the site. Those views follow the path of the Keynor Rife as it meanders southwards through the gently undulating farmland. The Rife itself and the unimproved grassland immediately to the side of each bank are characteristic features of the landscape on the Manhood Peninsula, as defined by the West Sussex Landscape Land Management Guidelines (LMG).

Appeal A on Ground (a)

16. When looking south from Keynor Lane, the development at the appeal site is prominently located in the foreground and the caravan, which stands out on account of its bright coloured finish and modern appearance, significantly disrupts the medium range views of the Rife and the surrounding countryside. Parked cars, the areas of hardstanding and associated domestic paraphernalia are also visible from Keynor Lane and at close quarters from Ham Road as it passes the site.
17. Prior to the development at the appeal site, and that on adjacent land, the landscape in the immediate vicinity would have been largely free from buildings or other structures with a distinctly rural feel that would set it apart from the developed parts of the village to the north and east. The development sits in the middle of that landscape and the incursion of domestic features has a jarring effect in the rural context. I note that the site is closer to the village than the site of the previous appeal on adjacent land. Nonetheless, the fringe of the village sits on slightly higher ground and remains distinctly separate from the site by virtue of the physical gap between the two and the visual barrier of the road and hedgerow. Accordingly, the development does not relate well to the established pattern of development and stands out as an insensitive residential incursion in a rural setting.

² References: APP/L3815/C/15/3070020 & 21, & APP/L3815/W/15/3019459

18. For the time being at least, that harm adds cumulatively to the harm identified by the previous Inspector in relation to the adjacent site. I appreciate that site only has the benefit of temporary permission running up until May 2019 but, for the period that the two developments exist in tandem, the cumulative effects are significant as a result of the presence of the caravans, associated development and the fragmentation of the landscape as a result of individual means of enclosure surrounding each site.
19. The suggested mitigation put forward by the appellant was, in effect, to make the development comply with the layout plan and detailed landscape proposal submitted with the planning application³. As described in the preliminary matters above, that scheme is quite different, not only in relation to the proposed use of touring caravans, as opposed to the static unit, but also in relation to the location of the hard standing and the provision of a utility building. To my mind, it would amount to a different scheme and I shall consider that scheme in relation to Appeal B.
20. Notwithstanding that point, I accept that the occupation of a caravan for residential purposes represents a use of land and the broad description of development within the alleged breach would not alter if the caravan was moved to an alternative location to enable the landscaping proposed on the proposed layout plan to be completed. Thus, I am satisfied that the landscaping scheme depicted on the proposed layout plan submitted with the application could be required by condition.
21. That scheme would increase the depth of the hedgerow running alongside Ham Road with native planting and have the benefit of removing the existing laurel hedge which is uncharacteristic and harmful of itself. Moreover, the planting and fencing around the hardstanding would bring a greater degree of enclosure to screen the development within. Nonetheless, the planting would not fully prevent views of the caravan or associated parked vehicles, particularly in the winter months. It is not designed or intended to do so. Thus, the residential area and the caravan would remain visible and the incongruity of that development in the rural landscape would not be fully mitigated.
22. More fundamentally, the landscaping and fencing would not follow any historic or logical field boundary but would form a small and isolated block around the caravan and hardstanding. It would disrupt the sweeping views of the field and serve to highlight the fact that the site is detached from other residential uses. In other words, the landscaping would draw attention to the site and would not overcome the concerns that the development appears incongruous by virtue of its location in the middle of the field.
23. Those effects would be amplified when added to the enclosures surrounding the caravans on the adjacent site. The combined effects would serve to form a fragmented landscape with multiple enclosures that have little regard to the traditional field boundaries.
24. I acknowledge that paragraph 26(d) of the PPTS seeks to avoid sites being enclosed to such a degree that the occupants will appear isolated from the surrounding community. Implicit within that guidance is an acceptance that it should not be the aim to avoid all views of caravans and, one could conclude, that some element of visual impact will be expected.

³ Drawing number TDA.2242.03

25. However, paragraph 25 of the PPTS sets out that new traveller site development in open countryside that is away from existing settlements should be strictly limited and paragraph 26(b) also requires that sites should be soft landscaped in a way as to enhance the environment and increase its openness. The fragmentation caused by the proposed landscaping would have the opposite effect, being harmful of itself whilst failing to adequately mitigate against the harmful visual impact of the caravans.
26. The harm to the character and appearance of the area, as described, is contrary to the aims of policy 48 of the Local Plan, particularly sub-sections 2 and 3 and the second limb of sub-section 1 of that policy and the aims of paragraph 26(b) of the PPTS. It is also contrary to the aims of paragraph 170(b) of the Framework which states that planning decisions should contribute to and enhance the natural environment by recognising the intrinsic character and beauty of the countryside.

Appeal B

27. The Inspector who determined the appeal on the adjacent site found that the introduction of two touring caravans in place of a single static caravan would draw the eye to a greater extent. That would not necessarily be the case in this instance because the current static is higher than a touring unit and also located on a very prominent part of the site, directly in view from Keynor Lane. The proposed layout plan shows that the touring caravans would be sited further into the site and closer to the existing barn. That location would be less prominent from surrounding vantage points and the caravans would be screened to some extent by the proposed fencing and landscaping. They would also be lower than the static unit. Therefore, I am of the view that the two touring units would be less harmful than the current static.
28. However, although the external materials of the proposed day room would be more sympathetic than the white exterior of the caravans, the building would result in an incursion of the built form into the countryside. The building, two touring units and associated parked cars would give the site a residential air and the combined effect of the individual elements would introduce a somewhat cluttered pocket of development in the rural landscape. The site would not relate well in visual terms to the existing built form of the village and, as described above, the landscaping and fencing that would surround the residential area would draw attention to its presence. The means of enclosure would result in the fragmentation of the field pattern, causing harm to the established landscape.
29. Thus, when compared to the 'pre-development' scenario of the barn set within the field, the residential elements would appear incongruous and cluttered and the harm would not be off-set by the proposed mitigation. The harmful effects would be noticeable from surrounding vantage points as a result of the prominent position of the site in the landscape, particularly when viewed from Keynor Lane. At least for the temporary period that harm would be amplified as a result of the cumulative impact in association with the neighbouring site. For all of those reasons, the proposed development would be contrary to the aims of policy 48 of the Local Plan and the aims of paragraph 170(b) of the Framework, as described above.

ii) Flood Risk

30. Helpfully, the key factual background in relation to flood risk was agreed in the 'Flood Risk Statement of Common Ground' which was prepared and signed by Mr Walton on behalf of the appellant and the Environment Agency (EA). The site is located within Flood Zone 3a, as identified on the EA's Flood Map for Planning, which is an area with a high probability of flooding. The primary flood risk arises from the potential for tidal flooding. Where tidal flooding is concerned, the Planning Practice Guidance (PPG) identifies that land within Flood Zone 3a has a 1 in 200 or greater annual probability of flooding.
31. In this case, the site benefits from existing tidal flood defences. Based on modelled flood depths provided by the EA, parts of the site would experience flood depths of below 0.5m in a defended 0.5% (1 in 200) Annual Exceedance Probability (AEP) scenario for the year 2070, rising to a depth of more than 2m for a 0.5% AEP scenario in 2115, taking account of the effect of climate change on sea levels. In the absence of any defences, the site would be vulnerable to flooding from a 5% (1 in 20) AEP event. The modelled flood depths in the undefended scenario suggest that the site would flood to depths of 1.6m, rising to 2.5m in the year 2115⁴.
32. The parties agree that it would not be safe to remain on site during an extreme tidal flood event that breached or overtopped the defences. The future strategy for the management of the sea defences is uncertain at the present time. The 'Pagham to East Head Coastal Defence Strategy' has been published by the EA but no funding has yet been secured for the options presented, one of which is to 'hold the line' in relation to the frontages at Selsey and East Wittering and Bracklesham.
33. In that scenario, the EA considers that it should not be assumed that existing flood defences will be maintained and/ or improved for the lifetime of the development. Accordingly, in its view, the development should be assessed against the undefended scenario. The appellant's flood risk consultant accepts that there can be no guarantee that existing defences will be maintained but considers it likely, given the cost benefit ratio based on the number of residential properties within the effected area. He is also of the view that existing defences will provide an adequate standard of protection for the next 50 years and that any residual risk can be adequately managed by restricting the use of the site to touring caravans that could be evacuated at short notice.
34. Having regard to those matters, I am minded to apply a precautionary approach, based upon the potential threat to property and even to life in a severe event. The PPG advises that the lifetime of a residential development should be considered as a minimum of 100 years⁵. I see no reason to apply a different period in this instance given that a full planning permission is sought. Even in the defended scenario, the risk of flooding over that period is high based on modelled data with existing defences in place. As noted, no funding is yet in place to upgrade or maintain those defences and I cannot make any solid assumptions on the likely level of defence over the lifetime of the development.

⁴ Paragraph 2.4 of the Flood Risk Statement of Common Ground

⁵ Paragraph: 026 Reference ID: 7-026-20140306

35. At the Hearing, Ms Whittaker from the EA gave further details on the nature of sea defences surrounding Pagham Harbour which are made up of concrete walls and embankments. She noted that the north-west embankment, which protects Sidlesham, was constructed in the 1960s and is not maintained at present. Her evidence was that certain elements of the defences were not in a favourable condition and that the EA was currently carrying out survey work to examine the matter. I have not been provided with any details in that respect but it adds to my concerns as to the uncertainty over the degree to which the site will be defended in future and the potential for a breach scenario. In view of those uncertainties, I am minded to agree with the position of the EA that the most appropriate way to assess the proposal is against the undefended scenario, having regard to the lifetime of the development.
36. Starting at first principles, the PPG is clear that planning permission should not be permitted for 'highly vulnerable' development, which includes the permanent residential use of caravans, within areas where there is a high risk of flooding, including Flood Zone 3a⁶. That guidance is consistent with paragraph 13(g) of the PPTS which states that local planning policies should ensure that sites are not located "in areas at high risk of flooding.....given the particular vulnerability of caravans".
37. That advice is directly applicable in this instance. The potential consequences would not only relate to the site and its residents but increased residential use of areas with a high risk of flooding would also place added strain on the emergency services who would need to deal with the implications of a flood and ensure the safety of those resident in the area. Having regard to national and local planning policy it is not a location where highly vulnerable development should be located and I attach substantial weight to those matters, given the potential severity of the consequences.
38. The appellant does not seek to make any argument that the static unit on site is appropriate, given the relative complexity of moving the unit in the event of a flood. For the reasons set out, I concur that the occupation of the static unit is contrary to the principles set out in national policy and would leave residents and their property highly vulnerable to flooding and place additional strain on emergency services. That weighs heavily against an approval in relation to Appeal A on ground (a).
39. The appellant's case is founded on the use of touring caravans in combination with the submission of an agreed evacuation plan in the event of a flood warning. I can find no reference in national planning policy that would recommend such an approach. Table 3 of the PPG identifies that certain kinds of development may be acceptable in flood zone 3a subject to the completion of an 'exception test'. However, that test does not apply to 'highly vulnerable' development which the PPG identifies 'should not be permitted' in flood zone 3a. The PPG does not differentiate between static units or touring caravans in terms of the vulnerability of the use.
40. Purely as a matter of principle, I would be highly reluctant to set aside that precautionary approach which, as noted, is based on the risk assessment that is embedded in national policy. Even if I was to set aside those concerns I have reservations as to the practicality of the suggested approach. No detailed evacuation plan has been presented but a condition is put forward that would

⁶ PPG Table 3: Flood Risk Vulnerability Classification, produced at paragraph 067 (Reference ID: 7-067-20140306)

require such a plan to be submitted to the Council within 3 months of an approval. That plan would then need to be approved within a set period. Given that the use is on-going I see no reason why a detailed plan could not have been worked up prior to the appeal. However, in essence, the plan would require the residents to register with the EA's Floodline Warning Service and to identify a safe location for evacuation in the event of a flood warning alert. A further condition would require residents to be evacuated, along with all caravans and vehicles within 2 hours of a flood warning.

41. As noted in the Flood Risk SoCG the flood warning service aims to provide a minimum 2 hour warning of an impending flood. I appreciate that climatic conditions and tidal patterns may be such that it may be possible to predict the the likelihood of an event earlier than that but, until the actual warning was issued there is no guarantee that any residents would be aware of a potential event.
42. The suggested condition requires evacuation within 2 hours of the warning i.e. 2 hours after the warning has been received. To my mind, that raises the possibility that residents may be on site, trying to evacuate at the point the coast was beginning to flood. In the absence of detailed flood modelling I cannot be satisfied of the length of time that flood water would take to reach the site. The water may take some time to reach the appeal site but it is not clear how other local roads may be affected or how easy it would be for residents to get back to the site in order to evacuate if they were elsewhere when the warning was received.
43. It was noted that Mr Lee travels for work related purposes. If he was away some distance from the site, or if he had travelled to a fair, it may not be possible for him to return within a 2 hour period. I understand that their eldest daughter is required to attend regular medical appointments in hospital at Southampton and that Mrs Lee accompanies her on those visits. It may be difficult to return back to the site immediately if a flood warning was issued in the midst of such a visit. The family could be away from site together, with or without the touring caravans, on holiday for example. As the children reach latter teenage years it is not unreasonable to assume that they may be left unattended at the site if parents are away, potentially leaving them vulnerable to the effects of flooding.
44. Those potential scenarios are merely examples but they demonstrate an inherent risk in the suggested mitigation strategy which is the assumption that a capable driver would be on hand to evacuate the site within a short timescale. I can envisage a whole range of permutations where that may not be the case. Reference was made at the Hearing to the fact that other friends and relatives in the local area may be on hand to tow vehicles away if Mr and Mrs Lee were not present. However, the friends and relatives referred to appear to live in Selsey and may be occupied in protecting and/or evacuating their own properties in time of flood.
45. Thus, I am concerned that the mitigation strategy would rely upon chance and circumstance in order to be effective. In my view, such a high risk strategy would be inappropriate given the potential severity of a flood event at the site. That conclusion reinforces my view that the avoidance of highly vulnerable development in high risk locations, as advised in the PPG, is based upon a calculated logic which seeks to avoid unsuitable levels of risk. Similarly, policy

42 of the Local Plan states that planning permission will only be granted in areas at risk of flooding where the sequential and exception test required by national policy have been met. The development cannot comply with that criterion because the implications of a high risk flood zone and highly vulnerable development are such that national policy advises that permission should not be granted. The sequential and exception tests do not apply. That is not merely a theoretical or 'policy based' constraint. In view of the above, my concerns with regard to flood risk weigh extremely heavily against the grant of planning permission in relation to both appeals.

46. Clearly, the greater the number of years that the use continues, the greater the chances that a flood will occur. However, given the unpredictability of factors involved a flood could occur within the three or five year period suggested by the appellant for a temporary permission. It is not something that anyone is able to predict with any surety. Having regard to that uncertainty, and the potential effects of a flood, my concerns relating to flood risk would not be tempered by any notable degree if considered in the context of a temporary permission.
47. I appreciate that the Inspector in relation to the neighbouring site accepted the suggested condition on the basis of a temporary permission, based on the balancing exercise of material considerations. In doing so, he did note the personal circumstances of the appellants with regard to the ability to evacuate the site and, importantly, noted that the EA had failed to submit written comments in relation to the appeal or to attend the Hearing. That decision does not alter my views on the inherent problems of evacuating the site if Mr and Mrs Lee are not nearby at the time.
48. In addition, the EA provided a full hearing statement and numerous officers attended the Hearing. That was extremely helpful in providing information about flood defences and more information on the way in which a flood warning would operate. That information may not have been before the previous Inspector and it is not clear if he would have drawn the same conclusions if he had the benefit of it. Based upon the information before me the development is clearly contrary to local and national planning policy and I attach the upmost weight to those matters, having regard to the potential consequences.

iii) Whether the location of the site is sustainable with regard to its proximity to local services and facilities

49. Policy 36(1) of the Local Plan requires that sites for gypsies, travellers and travelling showpeople should be well related to existing settlements with local services and facilities, being within or close to such settlements or with good access to major roads and/ or public transport. The Council accepts that policy 36 is out of date insofar as it relates to the assessment of need for additional gypsy and traveller pitches which is based upon the now outdated Gypsy and Traveller and Travelling Showpeople Assessment (2013) (the GTAA).
50. However, in addition to setting numerical targets for the provision of future needs the policy 36 also contains a criteria based policy in relation to the determination of planning applications. I am satisfied that those criteria are consistent with the approach to decision taking advocated in the PPTS and to other advice contained within the Framework. As such, I attach substantial weight to that element of the policy.

51. That said, policy 36 of the Local Plan does not preclude the provision of sites in rural areas and paragraph 103 of the Framework recognises that opportunities for maximising sustainable transport will vary from urban to rural areas. In addition, one of the Government's aims with respect of gypsy and traveller sites, as set out at paragraph 4(j) of the PPTS is to enable provision of suitable accommodation from which occupants can access education, health, welfare and employment infrastructure. Similarly, paragraph 13(c) of the PPTS requires that local authorities to ensure that their policies ensure that children can attend school on a regular basis and 13(d) recognises that a settled base can reduce the need for long distance travelling and possible environmental damage caused by roadside encampment. Those policies should be viewed in the context of the Public Sector Equality Duty (PSED) which requires that decisions should advance equality of opportunity between persons who share a 'protected characteristic' and persons who do not.
52. In that context, Sidlesham Primary School is within walking distance of the site and the appellant is hopeful that his youngest daughter will be able to transfer to the school in the forthcoming academic year. I understand that an officer from the education authority has visited the family in that regard. Clearly, the ease with which the daughter could attend school would be a positive factor with regard to the location of the site, having regard to the policy framework outlined above and the need to promote equal opportunity.
53. However, with the exception of the primary school the site is poorly served by other services, even taking account of the local rural context. The nearest shop is some distance away at the petrol station on the Chichester to Selsey Road and there are no shops or medical facilities available in the village.
54. There was some dispute as to the precise level of the bus service which passes the site but, at best, services are infrequent and there is little doubt that residents will be heavily reliant upon the car for the majority of trips to shops and services. That may often be the case in rural areas but the distance from those services will lead to relatively lengthy trips, even in the local context.
55. Thus, in environmental terms, the site is poorly located and likely to facilitate unsustainable trip generation, contrary to the policies identified above. That is a matter that weighs against the development but the weight I attach to the environmental harm is tempered by the benefits of local school provision and the rural context of the local area.

iv) The Effect of the Development on the Chichester and Pagham Harbour Special Protection Areas

56. Policies 50 and 51 of the Local Plan relate to the SPAs at Chichester & Langstone Harbours and Pagham Harbour. The preamble to the policies identifies that bird species within the designated areas are being adversely affected by disturbance, with human activity a major influence. It also identifies that likely significant effects of new housing within the Solent cannot be ruled out unless mitigation measures are brought forward. Zones of Influence have been drawn up around the two designations and the policies identify that any new residential development within those zones should provide mitigation measures or be subject to an 'appropriate assessment' under Regulation 61 of the Habitats Regulations 2010.

57. Those regulations have now been superseded by the Conservation of Habitats and Species Regulations 2017 (the CH&S Regs). Regulation 63 (1) requires that:

A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which —

(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and

(b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives.

58. As the decision maker, I am the competent authority in relation to the current appeals.
59. As noted above, the UU offers no mitigation in respect of the deemed planning application in relation to Appeal A. The development has led to a net increase in the residential population within the zone of influence of both SPAs and, having regard to the preamble to policies 50 and 51, I cannot rule out the likelihood of significant effects in combination with other residential development. As such, I cannot grant planning permission in relation to Appeal A on ground (a) unless I have carried out an appropriate assessment.
60. The proposed contribution relating to Appeal B would be made in respect of access mitigation measures within the Pagham Harbour SPA. The UU makes no reference of mitigation within the Chichester and Langstone Harbour SPA, despite the fact that the site is within the zone of influence of both. Having regard to information provided by the Council after the Hearing, two schemes of Strategic Access Management and Monitoring (SAMMs) are operational; one in relation to each designation. Where a site falls within two zones, the Council does not seek double the contribution but requests a single contribution that would be split on collection to be directed towards mitigation in both SPAs. The way in which the UU is worded would seemingly preclude the contribution being used towards mitigation in the Chichester and Langstone Harbour SPA because no reference to that area is included.
61. More fundamentally, I raised the issue of a recent European Court judgement with the parties at the Hearing⁷ which has identified the correct methodology for conducting an appropriate assessment. In short, the judgement identified that mitigation measures should not be taken into account at the screening stage when determining whether an appropriate assessment is required. Rather, it is necessary to consider whether the proposal would be likely to have adverse effects on the SPAs, without mitigation. Where significant effects cannot be excluded, an appropriate assessment must be undertaken before planning permission could be granted. The proposed mitigation may be considered as part of that appropriate assessment but not prior to it.
62. Policies 50 and 51 do not reflect the judgement because they note that an appropriate assessment will not be required if appropriate mitigation measures are secured. The upshot of the judgement is that I could not grant planning

⁷ People over Wind & Sweetman v Coillte Teoranta, Court of Justice of the European Union (CJEU), 12 April 2018

permission for either appeal without first undertaking an appropriate assessment, as required by regulation 63 of the CH&S Regs.

v) Need For and Supply Of Sites

63. The issue of the need and supply of sites was considered extensively in relation to the Birdham appeals⁸, which were determined on 02 August 2017, following a Public Inquiry. Extracts from the decision letter have been appended to the SoCG and, at the Hearing, the Council noted that it did not disagree with the conclusions reached. Aside from a grant of planning permission for two pitches following that decision, the circumstances have not altered to any significant degree and I find no reason to diverge from the conclusions of the previous Inspector.
64. In particular, the Inspector concluded that the Council's assessment on need, site provision and 5 year supply was reasonable if judged against the requirements of policy 36 of the Local Plan which identifies a need for 59 additional pitches, of which 37 were required before 2017. That remains the case and the table produced at Appendix I⁹ of the Council's statement is based on the same figures presented in that appeal, with minor alterations to reflect permission granted in relation to a site in Hambrook and other development that had been commenced.
65. Those figures are based upon the findings of the GTAA that was published in 2013. That GTAA no longer provides a robust basis for assessing up to date accommodation needs as a result of changes in legislation, as identified by the Inspector in the Birdham decision¹⁰. The Council accepts that point and is currently in the process of producing a new GTAA which is intended to inform a Development Plan Document (DPD) relating to site need and provision. The Council anticipates that the DPD will be published in January 2019, submitted to the Planning Inspectorate by April 2019 and adopted by March 2020.
66. However, there is some uncertainty as to whether a specific DPD will be produced or whether the Council will take matters forward through a review of the Local Plan, a factor which casts doubt as to the likelihood of that timeframe being met. The 'failure of policy' was a matter that attracted weight in favour of the Birdham appeals and I also attach weight to that matter, given that no adopted strategy is likely to be in place for at least another 18 months.
67. Moreover, there has been no material change in regard to other matters raised in the Birdham appeal. There has been no new provision of permanent public pitches, contrary to the recommendation in the 2013 GTAA, even though the waiting lists in relation to the existing sites continue to grow¹¹. There is nothing to indicate that national and regional need has diminished. Consequently, I find that the Council is unable to demonstrate a robust calculation of need or demonstrate that it can identify a five-year supply of sites to meet that need.
68. The Council's main argument at the Hearing was that there is nothing to suggest there is unmet need because a number of sites with planning

⁸ Appeal references: APP/L3815/C/16/3148236, APP/L3815/C/15/31336977 & 3065780, & APP/L3815/W/15/3132281

⁹ As updated on the day of the Hearing

¹⁰ Paragraph 153

¹¹ The letter from the County Council's Traveller Team manager at Appendix 18 of the appellant's statement identified that there were 71 families on the waiting list as of December 2017

permission have not been implemented. The large number of families on waiting lists for public sites would, of itself, lead me to question that conclusion. In addition, there is uncertainty over the circumstances surrounding the two unimplemented permissions identified within Table 2 at Appendix I of the Council's statement. The site in the parish of Southbourne was granted permission on appeal in April 2013. Assuming that a five year implementation condition was attached, that permission would have expired unless the development was commenced. The Council could not confirm whether a lawful start had been made.

69. The appellant's agent contends that the owner of the site in Westbourne, which has the benefit of permission for 5 pitches, has no intention of it being implemented. It would appear that both sites were submitted speculatively by developers and the fact that the permissions have not been implemented is more likely to be due to the circumstances and wishes of the owners than an indication of a lack of need. In fact, the Council's contention at the Hearing that those 2 sites are available is in contrast to its acceptance in its hearing statement that there are no suitable alternative permanent sites available¹².
70. The transit site at Westhampnett may be a possible source of accommodation but stays are limited to a 12 week period and that would not provide a permanent solution. Whilst the Council has noted that Mr and Mrs Lee have previously lived in bricks and mortar the personal information before me indicates that was not a positive experience for them and they were very clear at the Hearing that living in bricks and mortar is not an option that they would consider if forced to move from the site. In particular, I am mindful of the information provided as to Mr Lee's medical circumstances and have no reason to dispute the conclusions of his agent that he has an aversion to bricks and mortar on account of those circumstances and his Gypsy heritage.
71. Moreover, I am mindful that the planning application sought permission for a mixed use including a caravan site and the breeding and keeping of horses. The breach of control described in the enforcement notice contains the same elements and the Council was clearly of the view that keeping/ breeding horses was an integral part of the use. Therefore, whilst limited detail is available as to any economic purpose relating to the breeding of horses, it would appear that the ability to keep horses on his own land adjacent to residential accommodation is important to the appellant. The keeping and breeding of horses is part of the Gypsy way of life. Consequently, those are factors that are relevant to consider in determining whether suitable sites are available elsewhere.
72. Transit sites and bricks and mortar accommodation would be unlikely to offer associated land for the keeping/ breeding of horses and no sites that would provide such capability have been put forward. It may be that alternative sites would become available within time and the evidence indicates that planning permissions have continued to be granted for private sites across the district. However, in the terms expressed by the PPTS no suitable and affordable alternatives are available now.
73. Thus, I conclude that there is unmet need and that the Council is unable to demonstrate a five-year supply of sites to meet the likely level of need. The family have local connections and family ties in the area and the children are

¹² Paragraph 6.11

enrolled in local schools and receive healthcare locally. I accept that they are in need of permanent accommodation in the local area and no suitable sites are available to meet that need. I attach significant weight to those findings.

vi) Personal Circumstances

74. If I were to dismiss the ground (a) appeal and uphold the enforcement notice the family would be likely to resort to roadside living, assuming that I was also to dismiss Appeal B. The implications of the enforcement notice would have significant consequences for the home and family life of the family and it is clearly a circumstance where Article 8 Convention Rights are engaged¹³. Article 8 imposes a positive obligation to facilitate the Gypsy way of life and, as a minority group, special consideration should be given to their needs and lifestyle.
75. In addition, Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of children must be a primary consideration in all actions made by public authorities. I must consider the Article 8 rights of the children in that context. No other consideration can be treated as inherently more important than the best interests of the children. However, such matters are not necessarily determinative and may be outweighed by other considerations.
76. In other words, rights under Article 8(1) are qualified rights and, in appropriate circumstances, interference may be justified in the public interest. Regulation of land use through development control measures is recognised as an important function of Government and is necessary to ensure the economic well-being of the country. In that sense, the regulation of development for legitimate planning aims can be said to be in the public interest. The aim is to strike the right balance between the general interests and rights of the wider community and the requirement to protect an individual's private rights. Central to the principle of a fair balance is the doctrine of proportionality.
77. I am very mindful of the human rights of the family and must also have due regard to the protected characteristics of Gypsies in relation to the PSED when applying the duties of section 149 of the Equality Act 2010.
78. As noted above, the family have family ties within the area and have a need for accommodation in the form of a caravan pitch, as opposed to bricks and mortar accommodation. I understand that all of the family are registered with the local doctor's practice. The eldest daughter attends secondary school in Selsey and has specific medical needs which require journeys to school to be made by private car. Given those health issues, travelling to and from school on a regular basis would be more difficult if the family did not have a settled base from which to travel.
79. The youngest daughter is enrolled in school and is hoping to transfer to Sidlesham Primary School in the next academic year. I understand that an officer from the education authority has been visiting the family to discuss that move and Mrs Lee was confident that confirmation of a place would be forthcoming. The site is very close to the primary school and the proximity would assist in school attendance, particularly as parents are required to transport the eldest daughter to secondary school.

¹³ Article 8 of the European Convention on Human Rights, enshrined into UK law by the Human Rights Act 1998

80. I have already referred to Mr Lee's health issues and his aversion to living in bricks and mortar accommodation. Continued occupation of the caravan would undoubtedly facilitate a gypsy way of life, particularly considering the mixed use of the site which includes the keeping and breeding of horses.
81. In view of the fact that no alternative sites have been identified, a decision to refuse planning permission and uphold the enforcement notice would have significant implications for the family in terms of continuing the Gypsy way of life whilst also meeting their education and health needs. It seems to me that a settled base, as exists at the appeal site enables that balance to be struck.
82. However, notwithstanding those benefits, I have severe doubts over whether continued occupation of the site could be said to be in the best interests of the family and specifically the children, having regard to the potential implications of flooding and my conclusions on that issue. That risk is not theoretical but real and the parties acknowledge in the SoCG that it would not be safe to remain on site during an extreme tidal flood event that breached or overtopped defences. I cannot rule that out, nor am I satisfied that the suggested evacuation condition would be effective. In my view, the safety of residents and particularly children must be of paramount importance and I do not accept that a highly vulnerable residential use in a high risk area could be said to be in their best interests.
83. Thus, I attach substantial weight to the need to facilitate the Gypsy way of life and am very mindful of the implications for the family if the enforcement notice was upheld. The fact that the family would probably be rendered homeless and forced to roadside living is also a matter to which I attribute great weight. However, even when those personal factors are taken into account I am unconvinced that continued occupation of the site is in the best interests of the family and the children.

Other Matters

84. The site was occupied intentionally prior to the point at which the planning application relating to the site was determined. In line with the Written Ministerial Statement (WMS) of December 2015, intentional unauthorised development was a factor that could weigh against a grant of planning permission because the Government was concerned about the impact of development that took place without an opportunity to limit or mitigate the harm caused. However, upon the publication of the revised Framework in July 2018 pre-existing Written Ministerial Statements no longer form part of Government policy. The elements of the December 2015 WMS relating to intentional unauthorised development are not replicated in the wording of the Framework. As such, I will not address the issue in any further detail.

The Planning Balance

Appeal A on Ground (a)

85. Section 38(6) of the Planning and Compulsory Purchase Act requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
86. I have concluded that the development has caused harm to the landscape character and the appearance of the area and that harm could not be satisfactorily mitigated through the use of conditions. It is contrary to policy

48 of the Local Plan in those respects. In addition, with the exception of Sidlesham Primary School, the site is poorly related to shops and services and residents would be heavily reliant upon the private car, representing an unsustainable pattern of travel, even by local standards, contrary to the aims of policy 36(1) of the Local Plan. I attach moderate weight to those concerns, given the small scale of the scheme and the localised impact.

87. I attach the upmost importance and weight to my concerns relating to the potential for the site to flood and find that the location of the site is unsuitable for residential development having regard to the PPG, the Framework, policies 36 and 42 of the Local Plan and paragraph 13 of the PPTS.
88. Thus, the development is clearly contrary to the relevant policies of the development plan. However, the Council is unable to demonstrate a five-year supply of deliverable sites and accepts that policy 36 of the Local Plan is out of date insofar as it relates to a need for pitches that was identified in the outdated 2013 GTAA. There has been a policy failure to provide sites to meet the identified needs of gypsies and travellers in the district.
89. Where “policies that are the most important for determining the application” are out of date paragraph 11(d) of the Framework states that planning permission should be granted unless:
- (i) The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - (ii) Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
90. Footnote 6 identifies that the policies to which paragraph 11(d)(i) relate include those relating to irreplaceable habitats and flood risk. For the reasons given, the policies of the Framework with regard to flood risk provide a clear reason for refusing the development proposed. Moreover, no mitigation is put forward in relation to the two SPAs and I cannot rule out the possibility of significant effects on bird populations, in combination with other residential development. An AA would be required before granting planning permission. Where an AA is required, paragraph 177 of the Framework identifies that the presumption in favour of sustainable development at paragraph 11 of the Framework does not apply.
91. In terms of matters that weigh in favour of the development, no alternative and available sites have been identified and the policy failure in that regard is a matter that attracts significant weight. In addition, the fact that the family would be likely to have to resort to living by the roadside, with potential disruption to schooling and access to health services for the children and potential health implications for Mr Lee are matters that weigh significantly in favour of the grant of planning permission. An approval would also facilitate the Gypsy way of life which adds weight to those personal circumstances which amount to a social benefit.
92. Notwithstanding those factors I cannot conclude that it would be in the best interests of the children to live at the site having regard to my conclusions on flood risk. Regulating the use of land is in the national interest and national

and local planning policy clearly seeks to protect the character and beauty of the countryside, to locate development in areas with good access to services, and to avoid highly vulnerable development in high risk areas, not only for the safety of occupants and their property but having regard to the implications for emergency services. The weight associated with the environmental harm in those respects is compelling.

93. When all of those factors are combined the harm arising from the development clearly outweighs the benefits in planning terms and the balance of material considerations strongly suggests that planning permission should be refused, in accordance with the relevant policies of the development plan.

Appeal B

94. My conclusions are very similar in relation to Appeal B. Notwithstanding the difference between the proposed development and that carried out, the harm to landscape character and the appearance of the area would be of similar proportions. The environmental harm caused by the unsustainable location of the site would be the same. The flood risk implications are slightly different, given that the development in relation to Appeal A relates to the use of a static caravan whereas touring units are proposed in relation to Appeal B. However, the flood risk classification remains the same and national planning policy does not distinguish between the two types of unit. Moreover, I have serious misgivings relating to the workability of any evacuation plan and attach the upmost weight to my concerns in that regard. As for Appeal A, the development would be contrary to the relevant policies of the development plan.
95. Whilst the use for which planning permission was sought was a proposed use at the time the application was made, that use had commenced at the time the Council determined the application, albeit that the layout of the site was different. It appears to me that the Article 8 is engaged in relation to Appeal B because a refusal to grant planning permission would, in combination with a refusal of Appeal A on ground (a) and the enforcement notice being upheld, result in the appellant and his family having to vacate the site. In that respect, the material considerations in terms of personal circumstances are no different and the balance of material considerations leads me to the same conclusion. The development would be contrary to the relevant policies of the development plan and no material considerations have been put forward that would lead me to conclude that the development should be permitted.

Temporary Permission

96. The suggestion that a temporary permission be granted was made late in the day at the Hearing. A period of 3 or 5 years was suggested. The rationale behind that suggestion was to allow time for alternative sites to come forward through the plan making process. For the reasons set out in relation to my findings on flood risk, the suggestion does not temper my reservations regarding the unsuitable nature of the site for the intended use to any significant degree. The site is classified as highly vulnerable and I could not rule out the possibility that an event would occur within a shortened time frame. The weight I attach to those concerns remains extremely high, given the potential consequences.

97. The environmental harm caused by the visual and landscape effects and the unsustainable location would be mitigated to a degree by the fact that the harm would only be temporary but, even for a temporary period, the development would remain contrary to the relevant policies of the development plan.
98. Equally, any benefits in terms of the personal circumstances of the appellant and his family would also be temporary and the weight I could attach to those benefits would be tempered because uncertainty would still remain as to how their accommodation needs would be met in future. Whilst the approach would have the benefit of giving the family time to search for alternative sites I am reluctant to see that as a benefit, given my conclusions on the unsuitability of the site in relation to flood risk.
99. When all of those factors are put together the outcome of the overall balance remains the same. Thus, the development, either in relation to Appeal A or Appeal B is not acceptable for a time limited period.

Proportionality Assessment

100. The proportionality assessment required by Article 8 necessitates a balancing exercise to ascertain whether the rights of the occupiers would be disproportionately interfered with should planning permission be refused.
101. The family presently have a settled home at the site and are registered with a local doctor's practice. Two of the appellant's children attend school in the area and continued attendance at school is more likely if the family have a permanent home, when compared to roadside living. Mr Lee has specific health issues and an aversion to living in bricks and mortar accommodation. Occupation of a caravan at the site would be beneficial for him in that regard. There is no immediate prospect of an alternative site becoming available. All of those factors attract great weight.
102. However, whilst continued occupation of the site would be beneficial in those respects I have severe reservations regarding the suitability of the site in terms of the risk of flooding. I cannot accept that it would be in the best interests of any of the occupants and particularly the children to reside in a high risk area and am not convinced that any risk could be adequately mitigated by conditions.
103. In making that assessment I have had regard to the personal circumstances described and the positive obligation to facilitate the gypsy way of life. Weighed against that is the public and community interest. Regulation of land through the planning system can be said to be in the public interest with the legitimate aims of protecting the economic well-being of the country and public safety.
104. Economic well-being would encompass protection of the environment through the avoidance development that would cause harm to the character and appearance of the countryside, the protection of the natural environment, including SPAs and the need to regulate the use of land to ensure that development is located in suitable proximity of shops and services. Public safety would encompass risks associated with flooding. For the reasons set out above, the harm arising from the development in respect of those matters is

significant and the legitimate aims of protecting the environment and public safety attract great weight.

105. Having regard to the balance of personal interests against the public interest I find that the interference with the home and family life of the family is necessary and proportionate having regard to legitimate land use planning objectives. My conclusions in that regard would apply equally to a temporary planning permission. I recognise that the harm would be temporary but the development would remain contrary to the aims of the development plan and the implications in terms of flood risk are, by their nature, unpredictable. For the reasons set out above, the weight I attach to concerns relating to public and personal safety arising from flood risk is not tempered to any significant degree by the suggestion of a temporary permission. Whilst the balance is slightly different, I remain of the view that the interference would be necessary and proportionate having regard to legitimate land use objectives.
106. Accordingly, to dismiss Appeal on ground (a) and uphold the enforcement notice and to dismiss Appeal B would not result in a violation of their rights under Article 8.

Appeal A on Ground (g)

107. The enforcement notice allows a period of six months to comply with its requirements. The appellant considers that a period of two years should be allowed in order to minimise disruption to health and education services upon which the family relies. At the Hearing, the Council suggested that a period of one year would be reasonable, having regard to the circumstances of the family.
108. I have concluded that a temporary permission is not appropriate and consideration of ground (g) is not an opportunity to re-run the planning merits in that regard but to consider the practical implications of complying with the notice. I am very mindful of those circumstances and a very delicate balance is required to enable the family to move in a way that enables consideration to be given to how they will plan for their future needs in those respects whilst being mindful of my concerns relating to the suitability of the site from a flood risk perspective.
109. I am reluctant to extend the period for compliance based on those concerns but, equally, it is open to the Council to waive or relax the terms of a notice under section 173A of the Town and Country Planning Act. Given that they have indicated a willingness to extend the period I see no reason to put the appellant in a worse position and, on balance, am minded to extend the period for compliance to 12 months, as suggested by the Council. Having regard to matters of flood risk any extension beyond that would be inappropriate.
110. Thus, the ground (g) appeal succeeds to that extent and I shall vary the terms of the notice accordingly.

Overall Conclusions

Appeal A

111. For the reasons given above I conclude that the development is unacceptable and that the appeal should not succeed. Accordingly I shall

dismiss the appeal, refuse to grant planning permission on the deemed application and uphold the enforcement notice.

Appeal B

112. For the reasons given above I conclude that the appeal should be dismissed.

Chris Preston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Angus Murdoch	Agent, Murdoch Planning Ltd.
Mr Ian Walton	SLR Consulting Ltd.
Mr Rhodri Crandon	Tirlun Design Associates
Mr Levi Lee	Appellant
Mrs Carli Lee	Wife of appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms Emma Kierans BSc (Hons) Environmental Management & Policy	Planning Enforcement Officer
Mr Reg Hawks MATP MRTPI	Assistant Manager Planning Enforcement Team
Mr David Griggs	Environment Agency
Ms Hannah Hyland	Environment Agency
Ms Carrie Whittaker	Flood Risk Advisor – Environment Agency

INTERESTED PERSONS:

Mrs Lesley-Ann Methley	Local resident
Mr David Methley	Local resident
Mr C Merrit	Local resident

Documents and Information Submitted at the Hearing

- 1) Signed unilateral undertaking relating to the planning application ref: 16/03383/FUL.
- 2) Completed and signed Statement of Common Ground
- 3) Completed and signed Flood Risk Statement of Common ground
- 4) Photographs depicting the time period for the establishment of a native hedgerow.
- 5) Fully scaled set of application drawings.
- 6) Table (updated 25 June 2018) relating to the supply of gypsy and traveller pitches, submitted by the Council as an update to Appendix I of its statement