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## Appeal Decisions

Hearing Held on 10 July 2018

Site visit made on 10 July 2018

**by Jessica Graham BA (Hons) PgDipL**

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

**Decision date: 24 January 2019**

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**APPEAL A Ref: APP/Y9507/C/17/3179213 and**

**APPEAL B Ref: APP/Y9507/C/17/3179214**

**Land south of "Braefoot", Southbrook Road, West Ashling, West Sussex PO18 8DN**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr P Watson (APPEAL A) and Ms S Weale (APPEAL B) against an enforcement notice issued by Chichester District Council on behalf of the South Downs National Park Authority.
- The enforcement notice was issued on 14 June 2017.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the land to use as a residential caravan site.
- The requirements of the notice are
  - i cease the use of the land as a residential caravan site,
  - ii remove from the land all caravans and ancillary equipment,
  - iii break up the access track and hardstanding (in the approximate position shown on the attached plan) and remove the resulting debris from the land,
  - iv remove from the land all wooden railway sleepers and cobble edging stones,
  - v break up the walled enclosure (in the approximate position shown on the attached plan) and remove the resulting debris from the land,
  - vi dismantle the shed / summerhouse (in the approximate position shown on the attached land) and remove the resulting debris from the land, and
  - vii following compliance with (i) to (vi) above, restore the area affected by levelling the ground and reseeding it with grass.
- The period for compliance with the requirements is six months.
- The appeals are proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decisions: The appeals are allowed, the enforcement notice is quashed, and planning permission is granted for a temporary period in the terms set out below in the Formal Decision.**

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**Appeal C Ref: APP/Y9507/W/17/3179508**

**Land known as "Bermuda", Southbrook Road, West Ashling, West Sussex PO18 8DN**

- 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 P Watson and Ms S Weale against the decision of South Downs National Park Authority.
- The application Ref SDNP/17/00949/FUL, dated 21 February 2017, was refused by notice dated 26 May 2017.
- The development proposed is the siting of a residential caravan, together with the construction of a timber shed and refuse enclosure, for occupation by Gypsies.

**Summary of Decision: The appeal is allowed.**

***This decision is issued in accordance with Section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 05 December 2018.***

## **Preliminary Matters**

### *Clarification of Terms*

1. The South Downs National Park Authority (SDNPA) is the local planning authority for the area, but for the part of the National Park that falls within the district of Chichester (which includes the appeal site), Chichester District Council (CDC) deals with general planning matters such as applications, appeals and enforcement on the SDNPA's behalf. I shall refer to "the Council" throughout this decision as shorthand for either CDC or the SDNPA, except where it is necessary to differentiate between the two.
2. Although the enforcement notice and planning application referred to different addresses, both concern the same plot of land. In the interests of clarity and consistency, I shall adopt the agreed address "Land known as Bermuda" for all appeals. I can correct the enforcement notice accordingly without injustice.

### *Planning History and the Appeal Development*

3. In August 2016, an application for planning permission was made by the previous owner of the appeal site for "the construction of three bedroom thatched roof dwelling and double garage/car port following clearance of site including a shed and two existing caravans one being residentially occupied, installation of access gate, fences and landscaping." That application was refused by the Council in October 2016 <sup>1</sup>, and subsequently dismissed at appeal in February 2017 <sup>2</sup>.
4. In February 2017, an application for planning permission was made by the current Appellants for "Retention and continued use of mobile home for gypsy family occupation including existing timber shed and refuse enclosure". That application was refused by the Council in May 2017 and is now the subject of Appeal C. In June 2017 the Council issued the enforcement notice that is now the subject of Appeals A and B.
5. Appeals A and B are effectively identical, the only difference being that one is brought by Mr Watson and the other by Ms Weale. Both are proceeding on two grounds: that planning permission should be granted for the matters alleged by the enforcement notice (ground a), and that the time given to comply with the requirements of the notice is too short (ground g).
6. The Appellants' case on ground (a) is, in effect, the same as that argued in Appeal C: that is, that planning permission should be granted for the use of the land for the siting of a residential caravan (together with the construction of a timber shed and refuse enclosure), with occupancy restricted to people who meet the Government's definition of gypsies and travellers set out in its *Planning Policy for Traveller Sites* (PPTS).

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<sup>1</sup> Ref: SDNP/16/04021/FUL

<sup>2</sup> Ref: APP/Y9507/W/16/3162803

7. As agreed at the Hearing, I have therefore made slight amendments to the description of development in Appeal C, and shall determine the two ground (a) appeals and Appeal C together, followed by the two ground (g) appeals.
8. While the enforcement notice and planning application relate to the same land, the plan attached to the notice covers a larger area. The "site edged red" on the application plans is limited to the access road, the hardstanding containing the mobile home and shed, and the walled refuse enclosure; the land that is the subject of the notice also includes the area between the mobile home and Southbrook Road. It was confirmed at the Hearing that notwithstanding the absence of a blue line on the application plan, this additional land is within the ownership of the Appellants, and so could be subject to any planning permission and conditions in the event that the appeals succeed.
9. The Appellants' agent referred to other appeals, including one where the decision had not been made at the time of the Hearing of these current appeals.<sup>3</sup> The authority agreed it would be helpful for me to have regard to that decision when it was issued, and I have done so.

#### *The Enforcement Notice*

10. In the course of the Hearing, questions were raised about the existence of rights of way and usage over the access track which forms part of the appeal site. The Council helpfully obtained, and provided to the Hearing, Official Copies of the Register of Title and Title Plan.<sup>4</sup>
11. The Appellants' agent requested that he be given until the end of the week following the Hearing to review this information and consider whether it gave rise to an appeal on ground (e): that is, that the notice was not properly served on everyone with an interest in the land. I accepted that request, and the agent subsequently confirmed, by email dated 16 July 2018, that the Appellants did not wish to pursue a ground (e) appeal.
12. The agent expressed concern that the requirement to "break up" the access track could be interpreted as a requirement to get rid of it altogether. The Council confirmed that this was not its intention: rather, the notice sought the removal of the hardsurfacing from the track. It was agreed that, if the notice were to be upheld, I could amend this requirement to improve clarity.

#### *"Traveller" Status*

13. The Council contends that the Appellants do not meet the Government's definition of "gypsies and travellers" as set out in PPTS.<sup>5</sup> It should be noted that the first question whenever permission is sought for a traveller site is whether the use is acceptable in planning and policy terms; the status of the applicant is only relevant where the case for permitting the use is dependent on the personal circumstances of the applicant.
14. That said, personal circumstances are a consideration in these appeals, so I will address the question of status. Mr Watson and Ms Weale are or were partners,

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<sup>3</sup> Appeal Refs APP/L3815/C/17/3179554 & APP/L3815/W/17/3179810, decision dated 20 September 2018

<sup>4</sup> Document 8

<sup>5</sup> Defined, at Annex 1 of PPTS, as *Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.*

and have children. It is common ground that Mr Watson is an ethnic Romany Gypsy and Ms Weale is not. Her status would not prevent a grant of permission for a traveller site subject to a personal condition pertaining to the family.

15. To contest the Council's conclusion that Mr Watson is not currently involved in a travelling way of life, he provided copies of a number of signed letters from other Gypsies, confirming that they have travelled with him to horse fairs and for work purposes. He also gave evidence that he has custody of one of his children, but intends to continue travelling in the school holidays, and resume a fully nomadic way of life once the children have completed their education.
16. I have no good reason to doubt Mr Watson's evidence. I shall determine the appeals on the basis that he accords with the relevant definition and has ceased to travel temporarily on the grounds of the educational needs of his dependants.

## **The Policy Context**

### *National Policy*

17. National planning policy in relation to gypsy and traveller sites is contained in the *National Planning Policy Framework* (NPPF) and PPTS. In July 2018, after the Hearing had closed, the Government published a revised version of the NPPF. Since I am obliged to determine the appeals on the basis of the policies current at the date of my decision, the Council and the Appellants were given the opportunity to comment on any implications the revisions had for their respective cases. Future references in this decision to the NPPF are to the revised version dated 24 July 2018.
18. The NPPF advises that to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed. It expects all development to be sympathetic to local character and history, including the surrounding built environment and landscape setting. The PPTS similarly aims to increase the number of traveller sites in *appropriate* locations with planning permission (my emphasis).
19. The NPPF also requires great weight to be given to conserving and enhancing landscape and scenic beauty in National Parks which, along with the Broads and Areas of Outstanding Natural Beauty, have the highest status of protection in relation to these issues. The NPPF goes on to state that the scale and extent of development within these designated areas should be limited. Decision makers are also required to have regard to the statutory purposes of National Parks, which include conserving and enhancing their natural beauty.
20. The PPTS advises that applications for gypsy and traveller sites should be determined with regard to the existing level of local provision and need for sites, the availability or lack of alternative accommodation for the applicants, and their personal circumstances. It states that sites in rural areas should respect the scale of, and not dominate, the nearest settled community. The PPTS also requires that local planning authorities should identify, and update annually, a supply of specific deliverable sites sufficient to provide five years' worth of sites.

### *The Development Plan*

21. The SDNPA, having been established fairly recently, does not yet have its own Local Plan. I have had regard to the Draft South Downs Local Plan (SDLP) published in September 2017, but this will not be subject to Examination until the winter of 2018, and the final version is unlikely to be adopted before the summer of 2019. While policies in the emerging SDLP are material considerations, the NPPF advises that such weight as they may carry must be tempered by the extent to which they have attracted unresolved objections.
22. Until such time as the SDNPA adopts its own Local Plan, the Development Plan for those parts of the National Park which are within the district of Chichester consists of the *Chichester District Local Plan – First Review*, adopted in 1999 (CDLP). This Plan is of considerable vintage, having been formulated well before the introduction of the original NPPF, and I note that in all parts of the Chichester District other than those falling within the National Park, it has now been replaced by a more recently adopted Local Plan.
23. Saved Policy BE11 of the CDLP addresses “New Development”, and is relevant to these appeals. Saved Policy RE1 restricts development within the rural area to that complying with other named policies, including Policy R22 – which addressed “Sites for Gypsies” but was not saved. The Development Plan contains no current policies concerning the provision of sites for gypsies and travellers. It seems to me that Policy RE1 has either ceased to be relevant, or that development would be acceptable under RE1 if it complies with national policy in PPTS, and the outcome of these appeals would be the same either way.

## **APPEALS A AND B ON GROUND (A), THE DEEMED PLANNING APPLICATIONS AND APPEAL C**

### **Main Issues**

24. In the light of the foregoing matters, and everything I have heard and read, I consider the main issues are:
  - The effect of the development on the landscape and scenic beauty of the National Park;
  - The need for, the availability of, and the Council’s provision of gypsy and traveller pitches; and
  - The personal circumstances of the Appellants and their family.

### **Reasons**

#### ***Landscape and Scenic Beauty***

##### *The Site and its Surroundings*

25. West Ashling is a small village within the National Park. The pattern of the settlement is nucleated, with development mainly clustered east of the junction of Down Street with Southbrook Road, and around the Mill Pond further to the east. The historic core is a designated Conservation Area.
26. The appeal site is located to the south of West Ashling; outside, but adjoining, the settlement boundary. It lies on the eastern side of Southbrook Road, a

rural road forming the main route in to the village from the south. To the east of the appeal site, and served by the same access, is an equestrian yard with some timber buildings used for stabling and storage.

27. The land to the south of West Ashling is flat and, consistent with the description of this area in the South Downs Integrated Landscape Character Assessment (ILCA), consists predominantly of small, irregular fields and paddocks enclosed by hedges, such that its character is perceived as secluded and rural. The appeal site is reasonably well screened in views from the wider area. However, its level is a little higher than that of the adjoining road and views of the site, including the mobile home and summerhouse, are available through breaks in the hedgerow along Southbrook Road.
28. The boundary between the appeal site and the dwelling known as "Braefoot" functions as the settlement boundary, and consists of a thick hedgerow containing mature trees. The Inspector who determined the 2017 appeal described it as both representative of the sense of enclosure within the landscape, and as providing a clear boundary between the appeal site and the village. I agree with that assessment.

#### *The Impact of the Development*

29. The mobile home and adjoining timber shed, which provides additional accommodation and storage space, lie on the eastern side of the appeal site. The access, shown in the Council's photographs dated June 2016 as an unsurfaced track with a field gate, has now been finished with compacted shingle and edged with wooden kerbing. It runs along the northern boundary of the appeal site and then turns to run along the eastern boundary, creating a large shingle-covered area of hardstanding, on part of which the mobile home and shed are sited.
30. The rest of the appeal site, between the hardstanding and the roadside boundary, is laid out as a garden with a well-kept lawn enclosed by ornamental hedges, some trees and shrubs, and a walled enclosure for refuse storage in the north-western corner. The verge along the roadside boundary has been widened and mown, a timber post and rail fence installed at its rear, and behind that an evergreen hedge has been planted.
31. The result of all this is that the character and appearance of the appeal site have fundamentally changed. Having previously been part of the pastoral landscape leading up to the edge of the village, this area of land has been thoroughly domesticated, and is now very clearly perceived as residential.
32. I appreciate that the landscaping works have been carried out to a high standard, and in the course of my visit I saw that the site is well-kept and cared for. I also note, as recorded in the decision of the Inspector who determined the 2017 appeal, that part of the site previously had an unkempt appearance. However, it is important to bear in mind that former uses of the site for horticultural activities and grazing, however untidily managed, would have been compatible with its location in countryside outside the settlement.
33. Similarly, I note the Appellants' contention that the sub-division of the large field to the immediate south into smaller pony paddocks, and the untidiness of the yard to the east, have had an adverse impact upon the landscape character and visual amenity of the immediate area, and on sequential views from

Southbrook Road. But again these are uses which, unlike the residential use of the appeal site, are compatible with their location in countryside outside the settlement boundary; they may not be particularly tidy, but they do not undermine the pastoral character of the landscape.

34. In marked contrast, domestic features such as the wide shingle drive, lawn, mobile home and other residential structures, and the replacement of the roadside hedgerow with post and rail fencing backed by an ornamental hedge are at odds with the rural quality of the landscape in which the appeal site lies. The effect of the development is to visually extend the built-up area of West Ashling southward into open countryside, in a ribbon form which is out of keeping with the well-established nucleated form of the settlement. This has a suburbanising effect on the adjacent stretch of Southbrook Road, and detracts from the pastoral setting of the settlement.

#### *Proposed Landscape Mitigation Strategy*

35. In the course of the appeals, the Appellants put forward a Landscape Mitigation Strategy. The main components of this strategy are the retention of all the recently established ornamental hedgerows on the site, and the maintenance of the ornamental hedgerow along the roadside frontage at a height of 1.8m; the reinstatement of the existing paddock to the south of the appeal site; and the creation of two "buffer plantations" of native species.
36. I am not persuaded that the retention of the ornamental hedgerows, in particular that which has replaced the former native hedgerow along the roadside boundary of the appeal site, can properly be regarded as mitigation. I appreciate that if maintained at a height of 1.8m, this evergreen boundary hedge would effectively screen views of the appeal site, and its residential structures, from the adjoining road along its length. However, as discussed above, this hedge is a visibly domestic feature which contributes to the harm caused to the pastoral character and appearance of the appeal site and the surrounding countryside. Increasing its height to provide some additional screening would also increase its prominence in public views. In my judgment, the impact of this measure would be harmful rather than beneficial.
37. As to the proposed buffer plantations, one would be located along the southern boundary of the site, to screen views of the appeal site and its residential structures, and the other would be located along the boundaries of the south-western corner of the paddock to the south of the appeal site, to screen views of the sub-divided pony paddocks, and the equestrian yard / storage area to the east. At the Hearing it emerged that there is now some doubt as to whether the landowner would in fact permit the creation of the proposed buffer plantation in the second location.
38. Even if the proposed planting in this location went ahead, I consider that screening views of the pony paddocks and equestrian yard would be of limited value. As noted above, these uses are not out of keeping with the character of the landscape, so the only potential benefit would be improving visual amenity. That aim could just as well be served by improving the management and maintenance of the land in question, rather than obscuring it from view: an approach that would better accord with the "Landscape Management Considerations" identified by the ILCA, which include the sympathetic integration of horse paddocks and associated paraphernalia.

39. Hiding the sub-divided paddocks and untidy yard is not the same as achieving their sympathetic integration; the ILCA suggests achieving such integration through the “maintenance of hedgerow field boundaries”, rather than the planting of screens.
40. I note that the Landscape Mitigation Strategy includes the proposed “reinstatement” of the paddock to the south of the appeal site, but since this is not land controlled by the Appellants and there appears to be some doubt about the willingness of the landowner to cooperate, it is not clear what form the “reinstatement” would take or how, if at all, it could be achieved.
41. The buffer plantation along the southern boundary of the appeal site would have some benefit in terms of visual amenity, since it would screen views of the appeal site from the southern approach along Southbrook Road. It would not, however, redress the harm caused to the character and scenic beauty of the landscape by the domestication of this part of it. Overall, I consider that the proposed Landscape Mitigation Strategy would not appreciably reduce the adverse impact of the development.

### *Conclusion*

42. The NPPF states that the scale and extent of development within National Parks should be limited, and that would be the case here, given that the proposal is for one traveller pitch. However, the development not only fails to conserve and enhance the landscape and scenic beauty of the National Park, but further, causes significant harm to the character and appearance of this secluded and pastoral area. It would continue to cause such harm even if the proposed Landscape Mitigation Strategy was implemented. The development conflicts with the NPPF and PPTS.
43. The development also conflicts with saved CDLP Policy BE11, which states that new development must not detract from its surroundings, and with draft Policies SD4, SD5 and SD6 of the emerging SDLP, which seek to ensure that development proposals in the National Park will only be permitted where they demonstrably conserve and enhance the landscape character, and preserve the visual integrity, identity and scenic quality of the National Park.
44. I can understand why the Appellants’ agent describes CDLP Policy BE11 as antiquated, given that it pre-dates the first version of the NPPF by more than a decade. In requiring that new development “must not detract” from its surroundings it is also at odds with more recent national planning policy advice<sup>6</sup> that Local Plan Policies should include provision for the balancing of competing considerations, an approach that is now reflected in the drafting of emerging Policy SD1.
45. This lessens the weight that I attach to the conflict with saved Policy BE11, and the weight I attach to the conflict with draft Policies of the emerging SDLP is limited by the fact that they have not yet been tested or adopted as part of the Development Plan. However, it is important to emphasise that attaching reduced weight to the conflict with these policies does NOT equate to attaching reduced weight to the actual harm caused. In accordance with the NPPF, I attach great weight to the identified harm to the National Park.

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<sup>6</sup> First set out in the original NPPF in 2012

46. Draft Policy SD1 of the emerging SDLP states that planning permission will be refused where development proposals fail to conserve the landscape and natural beauty of the National Park, except where the benefits of the proposals demonstrably outweigh the great weight to be attached to those interests. I shall return later to the balance of benefits and harm in this development.

***The Need For, Provision Of, and Availability Of Gypsy and Traveller Pitches***

*Need*

47. There is no single overall assessment of the need for gypsy and traveller pitches in the South Downs National Park. Gypsy and Traveller Accommodation Assessments (GTAAAs) have instead been prepared for six areas, each of which covers part of the National Park and land outside it: Brighton & Hove, Coastal West Sussex, East Sussex, Hampshire, Horsham and Mid Sussex.
48. Strategic Policy SD33 in the emerging SDLP concerns Gypsies, Travellers and Showpeople and was prepared on the basis of these GTAAAs. It sets out the need for pitches in such parts of each of the six areas as fall within the National Park. The appeal site lies within the area covered by the Coastal West Sussex GTAA ("the GTAA 2013"), which identified a need for six pitches within this part of the National Park.
49. The supporting text to Policy SD33 notes that, since the GTAA 2013 was published, 16 pitches have been provided in this part of the National Park, and two more are expected to become available through the movement of people to bricks and mortar accommodation. It is said that 12 more pitches have been provided than the identified need for the period to 2027/28.
50. Based on the six GTAAAs listed above, the SDLP indicates that there is a total need for 32 pitches within the National Park to 2027/28, but allocations will be made through the plan process for 13 such pitches. Thus, there is a remaining unmet need for 19 permanent traveller pitches as a whole within the South Downs National Park. Since the SDLP is not yet adopted it follows that no pitches have yet been allocated, let alone permitted for use as traveller sites. I also note that the Council provided no information on the extent of any need for pitches in those areas of Coastal West Sussex outside the National Park.
51. In a recent decision concerning a site in the district of Chichester, outside the National Park, the Inspector found that the GTAA 2013 "no longer provides a robust basis for assessing up to date accommodation needs as a result of changes in the legislation.... 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 relating to site need and provision."<sup>7</sup>
52. The Inspector in that case further held that there had not, in fact, been any provision of new public pitches; that waiting lists for existing sites had continued to grow; and that an adopted strategy to meet the need for pitches was unlikely to be in place for at least another 18 months. He concluded that there was unmet need, and that CDC was unable to demonstrate a five-year supply of sites to meet the likely level of need.
53. The parties also provided copies of other appeal decisions concerning sites *within* the National Park. The Inspector who determined appeals in Fulking in

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<sup>7</sup> Appeal Refs APP/L3815/C/17/3179554 & APP/L3815/W/17/3179810, decision dated 20 September 2018

2016<sup>8</sup> noted that the Mid Sussex GTAA, which also dates from 2013, identified a need for just one pitch in the part of Mid Sussex that is within the National Park, but for 41 pitches in the rest of Mid Sussex. The Inspector was "...not convinced that the need for gypsy sites can be so definitively constrained to what is, after all, a landscape designation. If the SDNPA area is to be counted as a separate designation for gypsy sites then demand across the whole park would need to be considered." He went on to conclude that the significant shortfall of sites across Mid Sussex as a whole weighed in favour of permitting traveller sites in the SDNP.

54. A more recent decision<sup>9</sup> concerns a site in Bury which, like the current appeal site, lies in the part of the National Park which falls within the Chichester district. The Council contended in that case, as it does here, that there was a surplus of pitches for this part of the National Park. The Inspector held that "...the approach taken in this case considers a very small part of the overall local planning authority area. The Council has...studies that cover the whole National Park area but...it would appear that the need figures are not necessarily based on the best available evidence." She concluded that there was a wider unmet need across the Chichester district, and that the Council was unable to show a five year supply of deliverable gypsy and traveller sites, which weighed in favour of the appellant.
55. I conclude, from the evidence before me, that the appeal site is unlikely to fall within an area where no pitches are needed as the Council suggests. There is likely to be, as a minimum, an outstanding need for 32 pitches in the National Park to 2027/28. It is also probable that neither the SDNPA nor CDC has a supply of land to meet the needs of travellers for deliverable sites over the next five years.
56. Adding weight to that finding, a letter from the Traveller Team Manager at West Sussex County Council dated 29 December 2017 confirms that, at that date, there were 71 families on the waiting list for a pitch on a public traveller site in West Sussex. The Council may well be right that the needs of families on the waiting list are difficult to monitor, but it does not follow that this letter should therefore carry little weight. If anything like 71 families were on this waiting list just under a year ago, that strikes me as fairly persuasive evidence of unmet need for pitches in and around the SDNP area.

#### *Availability*

57. The Appellants contend that no suitable alternative sites are available in the area. They have made enquiries among friends and associates in the gypsy and traveller community, a number of whom have provided written responses about the lack of available pitches known to them or on land owned by them.
58. At the Hearing, Mr Watson confirmed that the Appellants registered to join the West Sussex waiting list described above. The letter from the West Sussex Traveller Team Manager advised that there was one vacancy in December 2017, but that was to be allocated to one of the families on the waiting list in January 2018.
59. The Council argues that the Appellants ought to have conducted a search of planning permissions for sites, or contacted owners of unoccupied land which is

<sup>8</sup> Appeal Refs APP/Y9507/C/15/3062034 & 3062035, decision dated 22 February 2016

<sup>9</sup> Appeal Refs APP/Y9507/C/15/3132202 & APP/Y9507/W/15/3019486

subject to a planning application or an extant permission for traveller use. However, there is no requirement for an applicant to prove that no other sites are available or that particular needs could not be met from another site.<sup>10</sup>

60. Moreover, the Council did not put forward any evidence itself that such sites might actually exist. It did not identify any alternative sites which might be available to, and suitable for, the Appellants. Its evidence in this respect was limited to pointing out that the Transit Site in Westhampnett is accessible throughout the year, but a Transit Site is by its very nature limited to providing temporary pitches, and would not provide a suitable home for the family.
61. It was suggested in the delegated officer's report on the application that is now the subject of Appeal C that the Appellants would be willing to live in a bricks-and-mortar dwelling, which would clearly broaden the choice of available homes. At the Hearing, the Authority clarified that Ms Weale had indicated that she and Mr Watson would have had first refusal for the thatched dwelling on the site proposed by the previous owner (see paragraph 3 above).
62. However, at the Hearing Mr Watson made it very clear that he did not, and could not, contemplate occupying a dwellinghouse as opposed to a caravan. It is well established that many ethnic Gypsies have a strong aversion to living in bricks and mortar accommodation, and I accept that it would not be suitable for Mr Watson. The overarching aim of the PPTS is to ensure fair and equal treatment for travellers, in a way which facilitates their traditional and nomadic way of life.
63. In the absence of any conflicting evidence from the Council, I consider the evidence provided by the Appellants sufficient to establish that on the balance of probabilities, there are currently no other suitable alternative sites available to them in the area. This reinforces my view that there is likely to be a general need for pitches in this area.

#### *Provision*

64. Draft SDLP Policy SD33 seeks to safeguard permanent lawful sites, establish the need for new sites, and set the criteria against which applications will be considered. However, it is important to bear in mind that Policy SD33, and the evidence on which it is based, have yet to be examined as part of the SDLP process. Since there is evidence that there are unresolved objections to this emerging policy, it carries limited weight as a means for the Authority to address its need for sites.
65. As indicated above, since the SDLP is not yet adopted, it is not certain that the authority will be able to allocate land for 13 pitches as proposed in Policy SD33. Even if that were to prove possible, the supporting text acknowledges that the SDNPA could not identify land for the remaining 19 pitches said to be required, because very few sites were put forward by land owners or other interested parties for consideration, and the SDNPA does not itself own any land on which sites might be provided. The Appellants have shown that additional sites which were put forward as potential allocations are already occupied by travellers.
66. It follows that the SDNPA might have an even greater problem identifying sufficient sites if it is found, in the plan process, that the need for pitches has

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<sup>10</sup> Per the Court of Appeal's judgment in the case of *South Cambridgeshire District Council v SSCLG and Julie Brown* (2008)

been underestimated. That assessment might be unduly pessimistic, but even if all concerns regarding the provision of traveller sites are resolved, the SDLP is unlikely to be adopted before mid-2019 and sites allocated for gypsy pitches would still then have to be developed on the ground.

67. I also note that the Inspector who determined the Chichester appeals in September this year recorded that it was uncertain whether CDC would provide for traveller sites through the production of a Development Plan Document or through a review of the Chichester Local Plan; in either event, he concluded that no adopted strategy was likely to be in place for at least another 18 months.
68. I find that there is uncertainty as to whether and when the SDNPA and CDC will provide traveller sites so as to meet their needs. That finding weighs in favour of the appeals, as does my observation that the development complies with all of the criteria set out at section (3) of draft Policy SD33.

### *Conclusions*

69. I conclude that there is likely to be an outstanding need for gypsy and traveller pitches within both the SDNP and Chichester areas. There are no suitable alternative sites available to the Appellants, and the existing shortfall in provision is unlikely to be addressed through planning policy in the near future. My findings in relation to the need for, availability of, and provision of pitches together carry significant weight in favour of permitting the appeal development.

### ***The Personal Circumstances of the Appellants and their Family***

70. The Appellants have separated and Ms Weale did not attend the Hearing. I understand that she has lived in a Council-owned bricks-and-mortar dwelling in Chichester since 14 August 2017, after being given temporary accommodation by CDC on 3 July 2017. Since that was shortly after the enforcement notice was issued in June 2017, and shortly after the birth of Ms Weale's youngest child, I do not dispute Mr Watson's evidence that she left the site due to anxiety and uncertainty. I cannot speculate as to whether or not Ms Weale would ever return to the appeal site, but Mr Watson stated it to be his dearest wish, and I note that she did not withdraw Appeal B or move very far away.
71. The Appellants have three children between them: K1 and H, who are of primary school age, and K2, who was born in 2017. I am not clear as to whether both Appellants are the birth parents for all three children, but that is the case for K2; in any event it is reasonably certain that all three children are siblings or half-siblings, and have previously lived together with the Appellants as a family.
72. K1 and K2 live with Ms Weale, and K1 attends a school near to their current accommodation. Mr Watson expressed concern as to the quality of that accommodation and, whether he is their father or step-father, his feeling on the matter is relevant. However, it could not be a decisive consideration because there is no objective evidence that Ms Weale's current home is of a poor standard, or that she herself considers it unsatisfactory for K1 or K2.
73. Mr Watson lives in the mobile home at the appeal site, which is his only home. He has custody of H, who attends a primary school nearby (although not the

most local primary school, which is in West Ashling) and lives with Mr Watson for most of the week.

74. H and K2, along with Mr Watson, are registered at the same local GP Surgery. None of the children have any particular problems with their health.
75. If the appeals were dismissed, the requirements of the enforcement notice and the lack of other pitches being available elsewhere would mean that Mr Watson would be made homeless, and so would follow a roadside existence. It would also adversely affect such chance as he may have of persuading Ms Weale to resume their relationship and live with him and their children as a family. He would have no realistic prospect, at least in the short term, of finding another site where he could live with Ms Weale, and K1 and H could stay at their current schools, or where he would be close enough to Ms Weale's house to at least have regular contact with K1 and K2.
76. Refusing permission would also mean that H would lose the settled base where he lives with his father. It is not clear whether or not dismissing the appeals would necessarily make H homeless, but if it did, that would plainly be highly damaging to the health, wellbeing and continued education of a small child. I have no doubt that Mr Watson would make every effort to ensure H's schooling was not interrupted and general welfare did not suffer, but an inevitable consequence of having no fixed address is that education and health services become much harder to access.
77. If it proved possible for H to live with mother rather than father, the child would still suffer disruption and lose at least some contact with Mr Watson. The same would be true if it proved possible for H to move in with another relative, and then the child might also have reduced contact with K1 and K2.
78. Establishing the best interests of the children in this particular case, and the impact that the outcome of the appeals would have upon them, is hampered by the absence of up-to-date evidence from Ms Weale. However, I see no scenario in which a refusal of permission would not have adverse consequences for all three of the children involved. The relationships between Mr Watson and Ms Weale, Mr Watson and some or all of the children, and between the children themselves, would be likely to suffer; it must be in the best interests of the children to have a relationship and regular contact with their (step) father and siblings.
79. I conclude that the personal circumstances of the Appellants and their children carry considerable weight in favour of allowing the appeals.

## **Other Matters**

### *Living Conditions and Community Cohesion*

80. A number of local residents have expressed concern about activities carried out on the appeal site, and have described incidents of unsociable behaviour. The PPTS seeks to promote peaceful and integrated co-existence between traveller sites and the local settled community. It seems to me that any tension between the appellants and neighbouring occupiers is due in large part to the fact that the development that has taken place is currently unauthorised. Travelling and settled residents are more likely to co-exist peacefully when traveller sites have the benefit of planning permission.

81. If the appeals were to be allowed the development on the appeal site would not be so large, or close, as to dominate the nearby settlement, but would be near enough that interaction could occur and shared interests develop. It would give a home to one family and, subject to a condition preventing commercial activities or storage, it would not be expected to generate more noise or anti-social behaviour than any other residential development of the same scale.
82. I conclude that permitting the development would be unlikely to cause any harm to the living conditions of nearby occupiers, or to community cohesion.

### *Accessibility*

83. The appeal development is sufficiently close to West Ashling that there is no conflict with paragraph 25 of the PPTS, which advises that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements. But the settlement is poorly served by public transport, and has only a limited range of facilities: there is a primary school and a village hall, but no shops. It is likely, then, that occupiers of the appeal site would be reliant on the use of a private car to access facilities and services such as shops and healthcare, which conflicts with national planning policy to promote sustainable transport.
84. However, the NPPF also recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. The PPTS advises that providing a settled base for gypsies and travellers can reduce both the need for long-distance travelling and possible environmental damage caused by unauthorised encampment, and I have found above that there is a need for traveller sites. I conclude that the lack of accessibility via sustainable modes of transport is a consideration which, in these circumstances, does not carry any appreciable weight against permitting the development.

### *Intentional Unauthorised Development*

85. The Council contended that, in accordance with the Government's Written Ministerial Statement of December 2015 ("the WMS"), the fact that the matters here at issue constitute intentional unauthorised development is a consideration that weighs against a grant of planning permission.
86. I note that while the elements of the WMS which relate to intentional unauthorised development are not replicated in the revised NPPF published in July 2018, the Secretary of State has subsequently confirmed<sup>11</sup> that the WMS is still a potential material consideration in a planning case.
87. The WMS explains that the Government is concerned about the harm that is caused where the development of land has been undertaken in advance of obtaining planning permission, because "In such cases, there is no opportunity to appropriately limit or mitigate the harm that has already taken place. Such cases can involve local planning authorities having to take expensive and time consuming enforcement action."
88. In this particular case, the development at issue was undertaken without planning permission first having been obtained, and it therefore amounts to intentional unauthorised development. However, planning permission has now been sought, which provides the opportunity to limit or mitigate such harm as

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<sup>11</sup> In response to a Written Parliamentary Question asked on 19 October 2018

has taken place: either through imposing appropriate conditions on any grant of permission or, if the harm is too great, refusing planning permission and upholding the requirement of the enforcement notice to return the land to its former state.

89. Further, in the light of my findings above about the need for pitches in the area and the lack of any available alternatives for the Appellants, it seems to me that it would be unfair to place the blame for enforcement action solely upon them. The failure of local policy to make sufficient provision, in accordance with national policy, for gypsy and traveller sites has clearly played a significant role.
90. In my judgment, the consideration that the residential use of the appeal site amounts to intentional unauthorised development does not, in these particular circumstances, carry any appreciable weight against a subsequent grant of permission for that use.

### **The Overall Planning Balance**

91. I have found that the appeal development fails to conserve and enhance the landscape and scenic beauty of the National Park, and causes significant harm to the character and appearance of the surrounding rural area, in conflict with the NPPF, PPTS, saved CDLP Policy BE11 and draft SDLP Policies SD4, SD5 and SD6.
92. I have also found that there is likely to be an outstanding need for, and no five year supply of land for, traveller sites. There are no alternative available sites, and no immediate prospect of land being provided through the planning process to remedy these problems. These factors carry significant combined weight in favour of granting planning permission for the development, but it is important to bear in mind that the existence of unmet need does not mean that every site should be regarded as acceptable, irrespective of its merits.
93. The personal circumstances of the Appellants and their children carry considerable weight in favour of allowing the appeals. However, taking all of the relevant material considerations into account, I consider that they do not outweigh the great weight that attaches to the harm that would be caused to this part of the National Park by granting permanent planning permission.
94. In cases where a permanent planning permission is not justified it may nevertheless be appropriate to grant temporary planning permission, limited by condition to a specified period of time, if it is expected that planning circumstances will change by the end of the period granted. The Council suggested at the Hearing, without prejudice, that any such permission should be granted for a maximum of two years. The Appellants' agent suggested a period of five years.
95. The PPTS provides that a local planning authority's inability to demonstrate an up-to-date five year supply of deliverable sites should be a significant material consideration in favour of a grant of temporary planning permission – *except* [my emphasis] where the proposal is within a National Park. However, the shortfall in the provision of traveller sites is not the only consideration in favour of these appeals.
96. It is clear that the planning policy context is likely to change during the next few years. Following its Examination by an Inspector, and resolution of current

objections to the policy addressing gypsy and traveller sites, the emerging SDLP will be adopted (possibly with significant alterations) and the National Park will for the first time have its own Local Plan. CDC will also be carrying out its new assessment of need for, and making arrangements for the provision of, traveller sites in its area (see paragraphs 51 and 67 above). While two years would not in my judgment provide sufficient time for the new policies to bed in and sites to come forward, there is at least a reasonable prospect that suitable alternative accommodation for the Appellants and their family will become available within the next five years.

97. Granting a temporary permission for a period of five years would also provide the appellants with a settled base, at least for the immediate future, and the opportunity to try to live together as a family again; it is likely that by the end of that period all three children would be in school, and whether together or apart, the family would have more settled relationships.
98. The harm that the development would be causing to the National Park throughout a five year period remains a concern, but would be of lesser extent than the harm caused by a grant of permanent permission, since it would eventually cease: a condition could be imposed requiring that the site then be returned to its former state. The need to relocate to an authorised site elsewhere in the area at the end of the five year period may involve some disruption to the lives of the children, but far less than if Mr Weale and H were obliged to relocate now, with no certainty as to where they may find any accommodation.
99. On balance, I find that the considerations in favour of granting temporary permission for a period of five years are sufficient to outweigh the harm that would be caused to the National Park. Since personal circumstances are a critical consideration in this balance, it follows that permission should be granted subject to a "personal" condition, restricting occupancy of the site to the Appellants and their resident dependents.
100. I have considered the rights of the Appellants under the Human Rights Act 1998 (HRA). Article 8 affords the right to respect for private and family life, including the traditions and culture associated with the gypsy way of life. This is a qualified right, and interference with it may be justified where in the public interest. The concept of proportionality is crucial. The best interests of the child are a primary consideration, meaning that no other consideration must be regarded as more important or given greater weight, merely by virtue of its inherent nature apart from the context of the individual case.
101. Granting a time-limited permission would interfere with the Appellants' rights under Article 8, since the consequence would be that they would no longer be able to live on the appeal site once the permitted period had expired. However, the interference would be in accordance with the law and in pursuit of a well-established and legitimate aim: the conservation of the landscape and beauty of the South Downs National Park.
102. Given the circumstances overall, I find that a grant of personal permission limited to a period of five years would be proportionate and necessary. It would protect the National Park in posterity, whilst avoiding a violation of the Appellants' rights under the HRA. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

103. The Public Sector Equality Duty (PSED) as set out under the Equality Act 2010 concerns the need to eliminate unlawful discrimination, harassment and victimisation, and to foster good relationships between people who share a protected characteristic and people who do not. Since Mr Watson is a Romany Gypsy, he has a protected characteristic for the purposes of the PSED.
104. I consider that a refusal of permission for the development when it is acceptable in planning terms – on the basis of a personal permission limited to a period of five years – would fail to foster good relations between the family and the settled community. The PSED adds weight to my conclusion that Appeals A and B on ground (a), and Appeal C, should be allowed on the basis described.

### **Conclusion**

105. For the reasons set out above, and with regard to all other matters raised, I conclude that Appeals A and B should succeed on ground (a); the deemed planning applications should be approved; and Appeal C should be allowed. It follows that Appeals A and B do not fall to be considered on ground (g).

### **CONDITIONS**

106. Since it is proposed that the appeal site would be occupied by a traveller, and the development has been justified by matters relating to the special accommodation needs of this demographic group, it is necessary and reasonable to impose a condition limiting occupation to gypsies and travellers as defined in PPTS. That permission is to be granted on a personal basis does not alter the need for Mr Watson to remain a traveller in planning terms.
107. I shall also require that the use is ceased and the land is restored on the expiry of the temporary permission. I shall limit the residential use to one pitch, and limit the numbers and types of caravans, in order to protect the character and appearance of the landscape.
108. In the course of the appeal process a Landscaping Mitigation Scheme was submitted by the Appellants, but for the reasons set out above I have found that some of the proposed works would be neither necessary nor desirable. I shall therefore impose a condition requiring the submission of a revised scheme, for approval by the Council. To clarify the slight discrepancies between the plan attached to the enforcement notice and the plans submitted with the planning application, this should include the provision of a detailed layout plan. Since the use has already commenced, but approval of the scheme is necessary to make the development acceptable, the condition will set out a timetable for compliance and a sanction that the use must cease if this is not complied with. As discussed at the Hearing, it is also necessary to require details of external lighting and surface water drainage, and it will be appropriate to include these as part of the same condition .
109. I will impose other conditions to prevent the carrying out of commercial activities, the storage of materials, the stationing, parking or storage of vehicles over 3.5 tonnes, and also the installation of external aerials without the prior approval of the Council. These conditions are necessary to protect the character of the area, highway safety, and the living conditions of nearby residents.

## **FORMAL DECISIONS**

### ***Appeals A and B***

110. It is directed that the enforcement notice be corrected by, in paragraph 2, the deletion of the words "Land south of Braefoot" and their substitution with the words "Land known as "Bermuda" ".
111. Subject to this correction, the appeals are allowed, the enforcement notice is quashed, and planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the change of use of the land to use as a residential caravan site at land known as "Bermuda", Southbrook Road, West Ashling, West Sussex PO18 8DN subject to the eight conditions set out in Appendix 2 to this Decision.

### ***Appeal C***

112. The appeal is allowed and planning permission is granted for the siting of a residential caravan, together with the construction of a timber shed and refuse enclosure, for occupation by Gypsies at land known as "Bermuda", Southbrook Road, West Ashling, West Sussex PO18 8DN, in accordance with the application ref: SDNP/17/00949/FUL dated 21 February 2017 and the plans submitted with it, and subject to the eight conditions set out in Appendix 2 to this Decision.

*Jessica Graham*

INSPECTOR

## **APPENDIX 1: LISTS**

### **APPEARANCES**

#### **FOR THE APPELLANTS:**

|              |                        |
|--------------|------------------------|
| Dr A Murdoch | Chartered Town Planner |
| Mr R Crandon | Landscape Architect    |
| Mr P Watson  | Appellant              |

#### **FOR THE COUNCIL:**

|             |                            |
|-------------|----------------------------|
| Mr D Price  | Principal Planning Officer |
| Ms S Archer | Enforcement Manager        |
| Ms H Walton | Landscape Architect        |

#### **INTERESTED PERSONS:**

|                       |                 |
|-----------------------|-----------------|
| Mr C J & Mrs J Barker | Local residents |
| Mrs E Adams           | Local resident  |
| Mr A Gambier-Parry    | Local resident  |

### **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Letters from Mr D J P Adams (dated 27 June 2018) and emails from Ms S Amesbury (dated 9 July 2018) and Mrs W Cook (dated 10 July 2018), submitted by the Council
- 2 Copy of the Council's letter (dated 3 July 2018) notifying interested parties of the details of the Hearing
- 3 Set of photographs featuring Mr Watson and his children and horses, submitted by the Appellant
- 4 Copies of the Council's response to the Appellants' Statement, and the Council's response to the Appellants' Landscape Statement of Evidence (sent to the Planning Inspectorate, but not previously seen by the Inspector) together with a copy of the Planning Inspectorate's email (dated 8 March 2018) acknowledging receipt of those documents
- 5 Statement of Common Ground signed by the Appellants and the Council and dated 10 July 2018
- 6 Copy of letter from Mrs W Cook dated 26 April 2017 (referenced by her email at Document 1)
- 7 Copy of Land Registry MapSearch for postcode PO18 8DN, provided by the Council
- 8 Land Registry Official Copy of register of title, together with Title Plan, for title no. WSX188395, provided by the Council

## **APPENDIX 2: SCHEDULE OF CONDITIONS**

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 2) The use hereby permitted shall be carried on only by Mr Paul Watson, Ms Sarah Weale and their resident dependants, and shall be for a limited period being the period of five years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 3) When the premises cease to be occupied those named in condition no. 2 above, or at the end of five years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, and works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
- 4) There shall be no more than one pitch on the site, and no more than one static caravan and one touring caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, shall be stationed on the site at any time.
- 5) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within three months of the date of failure to meet any one of the requirements set out below:
  - i) Within three months of the date of this decision a scheme for the site (hereafter referred to as the Site Development Scheme) shall have been submitted for the written approval of the local planning authority, together with a timetable for its implementation. The Site Development Scheme shall include: a detailed site layout plan showing the siting of the mobile home, hardstanding, timber shed, refuse enclosure, parking and amenity areas and access road; details of the means of surface water drainage of the site; details of existing and proposed external lighting on the site; a revised landscaping scheme showing proposed tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities; and a scheme for the future management and maintenance of the proposed landscaping and planting.
  - ii) If within eleven months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - iv) The approved Site Development Scheme shall have been carried out and completed in accordance with the approved timetable.
  - v) The Site shall thereafter be occupied and used only in accordance with the approved Site Development Scheme.

- 6) No commercial activities or storage of materials shall take place on the site.
- 7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 8) No external aerials shall be installed on the site other than in accordance with a scheme which has first been submitted to and approved in writing by the local planning authority.