
Appeal Decision

Inquiry opened on 22 October 2019

Accompanied site visit made on 22 October 2019

by Philip Major BA(Hons) DipTP MRTPI

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

Decision date: 1 November 2019

Appeal Ref: APP/L3815/W/19/3220300

Land to the west of Newells Farm, Newells Lane, West Ashling, Chichester, W Sussex

- 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 Joseph Smith against the decision of Chichester District Council.
 - The application Ref: FU/18/00402/FUL, dated 16 February 2018, was refused by notice dated 11 July 2018.
 - The development proposed is the use of land for the stationing of caravans for residential purposes, together with the formation of hardstanding and utility/dayrooms ancillary to that use.
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Preliminary Matters

1. The Council's decision on the application asserted that it could demonstrate some 10.5 years supply of pitches for gypsy and traveller accommodation. However, there is now agreement that the Council cannot demonstrate that quantum, and that there is less than 5 years supply. It is agreed that there is a significant unmet need. In addition the Council does not now dispute that the proposed occupants of the site fall within the definition of gypsy and traveller set out in the Glossary of 'Planning policy for traveller sites' (PPTS)¹ published in August 2015. I have no reason to take a contrary view on these matters.
2. Reason for refusal No 5 on the Council's decision notice refers to the impact on the Chichester and Langstone Harbours Special Protection Area (SPA). Since that decision the Appellant has, in a S106 Unilateral Undertaking, committed to pay a sum of money in order to mitigate any impact of the development. As a result the Council does not now contest this matter. However, as the competent authority I am required to carry out an appropriate assessment (AA) which I deal with later.
3. The Appellant has submitted a revised layout plan of the appeal site. This addresses the fact that 2 gas pipelines cross the land. The Council did not object to this revised plan and I am satisfied that its contents do not cause prejudice to any party. I therefore accepted the plan as an amendment to the proposal. In light of this amendment reason for refusal No 3 (safety in relation to the pipelines) was no longer pursued.

¹ Published by the then Department for Communities and Local Government

Decision

4. The appeal is allowed and planning permission is granted for the use of land for the stationing of caravans for residential purposes, together with the formation of hardstanding and utility/dayrooms ancillary to that use at land to the west of Newells Farm, Newells Lane, West Ashling, Chichester, W Sussex in accordance with the terms of the application, Ref: FU/18/00402/FUL, dated 16 February 2018, subject to the conditions set out in the schedule at the end of this decision.

Main Issues

5. In light of the fact that some matters of dispute have fallen away the main issues in the appeal are:
 - i) Whether all proposed residents of the site have demonstrated a need for a pitch;
 - ii) The effect of the proposed development on the character and appearance of the surrounding landscape;
 - iii) Whether the proposed development would dominate the local settled community.

Policy Background

6. PPTS is to be read with the National Planning Policy Framework (NPPF). The NPPF indicates that the housing needs of different groups should be assessed and reflected in planning policies. This includes the needs of travellers (NPPF paragraph 61). NPPF Footnote 25 clarifies that traveller needs² should be assessed as set out in PPTS – in other words traveller needs are assessed by Gypsy and Traveller Accommodation Assessments (GTAAs) as indicated in the PPTS and other housing by housing needs assessments as dealt with in the NPPF. Housing needs assessments under the auspices of the NPPF include groups who live in caravans but do not fall within the PPTS definition of gypsies and travellers. PPTS then addresses the situation where there is no 5 year supply of sites (as here). It indicates that this should be a significant material consideration in any subsequent decision when considering the grant of temporary planning permission. It does not address the situation where permanent planning permission is being considered.
7. Given that traveller accommodation has been found by the courts to be housing³ in that it provides homes, it seems to me that the decision maker can then only rely on the NPPF for guidance where there is no 5 year supply and the prospect of a permanent planning permission arises. I note here that paragraph 23 of PPTS indicates that applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the NPPF and PPTS. Not to be able to rely on the NPPF would seem to create a situation where a caravan dweller who does not fall within the PPTS definition of gypsy and traveller can invoke the tilted balance of paragraph 11 of the NPPF (if most important policies are out of date) but a caravan dweller who meets the definition cannot. It surely cannot have been the intention of national policy to differentiate between groups such that it would be prejudicial to the interests of those who meet the definition. It is clear from paragraph 11 of the NPPF that where the local planning authority cannot demonstrate a 5 year supply of

² For those meeting the definition set out in PPTS

³ *Wenman v Secretary of State for Communities and Local Government [2015] EWHC 925 (Admin)*

deliverable housing sites (which must by definition include traveller sites as they provide homes for travellers) then the most important policies for determining the application must be regarded as being out of date. I am not satisfied that footnote 7 of the NPPF should be read in the narrow confines of NPPF paragraph 73 (which deals with the application of a buffer in 'bricks and mortar' housing) and not be applied to all housing. The fact that the appropriate buffer is referred to in parentheses in that footnote just appears to emphasise that a buffer is necessary when considering that particular type of housing.

8. I have noted the submissions made on behalf of the Council that the judgement in *Wenman* specifically referred to the situation of there being no 5 year supply of traveller sites as being outside the scope of paragraph 49 of the NPPF which then existed. The Appellant disagrees and the judgement seems to demur from addressing that point as it was not pleaded. Of course I must in any event deal with the current version of both NPPF and PPTS. For the reasons I set out above it seems to me that a reasonable reading of both documents together (as paragraph 1 of PPTS exhorts me to do) means that the lack of a 5 year supply of traveller sites for those meeting the definition of gypsies and travellers is capable of bringing it within the scope of the housing policies of the NPPF which lead to the tilted balance being applied.
9. Ultimately it is for the Courts to interpret policy but on the face of it there would appear to be a situation here which (if paragraph 11 of the NPPF cannot be invoked) has the potential to be discriminatory towards those who meet the definition of gypsies and travellers in PPTS. Having made that point it is fair to indicate that this is a matter which would benefit from added clarity even though it is not a determinative matter in this appeal because I do not need to invoke the tilted balance, as is clear later in this decision. However, I include the comments above as this was a matter of contention at the inquiry.
10. The development plan includes the Chichester Local Plan: Key Policies (LP) which was adopted in July 2015. It is agreed that the most important policy for determining this application is Policy 36. Other policies of relevance and noted in the remaining reasons for refusal are 2, 45 and 48. There is no overall agreement on whether or not these policies are consistent with the PPTS or the NPPF, which have been published and updated since the LP was adopted. I therefore deal with them in turn.
11. Policy 36 deals specifically with gypsy and traveller development. It is predicated on the findings of the Gypsy and Traveller and Travelling Showpeople Assessment of 2013 (GTTSA) which is now acknowledged to be out of date. The criteria by which sites will be assessed predate the publication of the PPTS and have some divergence from it. In particular the criterion requiring sites to be within or close to existing settlements does not accord with the PPTS recognition that there will be instances where sites may be away from settlements (albeit strictly limited). Policy 36 is not therefore wholly consistent with the PPTS. In any event, because the Council cannot demonstrate a 5 year supply of deliverable sites it is difficult to reach any conclusion other than that this policy is out of date.
12. Policy 2 sets out the development strategy and settlement hierarchy. Amongst other things it indicates that there is a presumption in favour of sustainable development within settlement boundaries. As pointed out by the Appellant the presumption in favour of sustainable development in the NPPF is not restricted by settlement boundaries, but applies to all land. Consequently,

there is an inconsistency with the NPPF, but in its entirety the policy is broadly consistent with it. The policy can therefore still be afforded some weight.

13. Policy 45 is a policy designed to deal with development which requires a countryside location beyond settlement boundaries. It is somewhat prescriptive and lacks the balance inherent in the NPPF. Similarly, Policy 48 has some inconsistency with the NPPF in that it seeks to enhance all landscape character rather than recognising its inherent qualities and reaching a balanced judgement when making decisions. These policies therefore carry reduced weight.

Reasons

Need for pitches

14. The need of 2 proposed residents of the site is uncontested. But the Council remains unconvinced about the needs of the proposed residents of pitches 1, 4 and 5.
15. I do not consider that it is necessary to deal with each circumstance in great detail, but I heard evidence from each of the proposed residents at the inquiry. It is fair to say that all have had the benefit of being able to reside on a pitch in the past, sometimes by doubling up, sometimes with the benefit of a pitch on a site with planning permission as a named occupant. However the principal reasons why each now requires a pitch of their own is related to particular family circumstances. There is no substantive evidence that suggests what I heard is incorrect.
16. With regard to personal planning permissions granted for, or including the names of proposed site occupants, I am satisfied that these are either different but related people, or that it would no longer be appropriate or possible for the named persons to reside at those locations. Indeed I heard that steps are being pursued to enable any named occupants to be removed from individual planning permissions.
17. It is the case that the children of the proposed occupants have settled bases elsewhere with their mothers, but I wholly understand the desire for their fathers to be able to provide a stable base for visits and joint caring responsibilities. In that regard it is relevant that the appeal site is within reasonable travelling distance of both existing locations where children normally reside, and their education facilities.
18. Taking all matters together I am satisfied that it has been demonstrated that all proposed residents of the site have been shown to have a current unmet need for their own pitch. I also accept that there are no suitable alternative and available sites, a matter also agreed by the Council in at least 2 cases. There is little immediate prospect of the development plan being able to address need.

Character and Appearance

19. The appeal site lies within the area described as Ashlings, Halnaker and Fontwell Upper Coastal Plain in the West Sussex Landscape Character Assessment. It has a number of identified characteristics, such as good woodland cover, undulating topography, scattered settlement, small to medium field sizes and winding lanes.
20. The area around the site has some of these characteristics. It is part of an undulating area of land with tree cover and small to medium field patterns. There are restricted views in most directions because of tree cover. The fact

that the South Downs National Park lies a short distance to the north is not discernible. The area has no designation and has no features which set it aside from the ordinary such that it can be regarded as a valued landscape.

21. The overall character of the locality has been affected to a degree by existing lawful gypsy and traveller sites which lie a short distance to the west. These are visible from the appeal site and other nearby locations, but because of topography, tree cover and landscaping are not major features contributing to the defined character of the area. Indeed my observations led me to conclude that the loss of tranquillity resulting from the noise and proximity of the A27 to the south has a greater influence on the character of the area than the presence of traveller sites. I consider that the locality has no more than a moderate sensitivity to change.
22. The appeal site is modest in size and the arrangement of pitches has been compressed in the latest layout proposal. There would be little appreciation of the presence of the site from public areas given the intervening layers of vegetation and the general lack of visibility from the surroundings. There would be intervisibility between the existing gypsy sites and the proposed pitches, but the magnitude of impact on the area generally would be small. Although the Council is concerned that the proposal would interrupt the historic field pattern this does not appear to be the case. The credible evidence before me is that those field patterns would not be affected.
23. PPTS recognises that it will not always be possible to accommodate traveller sites within or on the edge of settlements. It is clear that sites away from existing settlements are to be strictly limited, but the definition of what might be 'away' is lacking. It is a matter of judgement. In this case the proximity of West Ashling (which I deal with more fully below) means that this site cannot be regarded as being away from an existing settlement for the purposes of PPTS.
24. Taking this matter as a whole I am satisfied that the impact on the character of the area would be limited. There would be some adverse impact given the fact that development would be present where none existed previously. However, the particular characteristics of this locality meant that the impact would be of a minor nature. Given the location of the site there would be minor conflict with Policy 2, but this attracts only limited weight.
25. In visual terms the site is well screened and this could be augmented by landscaping. The imposition of appropriate conditions would assist in assimilating the site into its surroundings. I am therefore satisfied that the proposed development would not be unacceptably harmful to the character or appearance of the locality. There is no conflict with the relevant criteria of Policy 36. Given the minor impact on the character of the locality I also find no conflict with criterion 3 of Policy 45. The design and location of the proposal also respects the landscape character, as required by Policy 48.

Settled Community

26. The Council's assessment of the settled community here differs markedly from that of the Appellant. In reality a reasonable assessment lies somewhere between the two.
27. I do find that the Council's approach is rather contrived. It is certainly reasonable to include nearby dwellings as part of the settled community, albeit that they are scattered, but it cannot be sensible to exclude the dwellings at Edith Cottages. These properties are, after all, considerably closer to the

appeal site than some others identified. Inclusion of Edith Cottages would roughly double the assessed size of the settled community on the Council's case.

28. But there is also scope to at least include properties on the west side of West Ashling which lies within about a 15 minute walk. Most of the walk is along a paved footway and this lends credence to the suggestion that West Ashling is part of the natural community to which the appeal site would belong. There are of course many factors which would define a community but I note in particular that West Ashling has a school, village hall and pub. It seems reasonable to me to suggest that site residents would normally look towards West Ashling as the community hub.
29. There are no paved footways leading towards either Hambrook or Funtington from the vicinity of the site. The likelihood of these 2 settlements being perceived as part of the settled community are therefore diminished. As such I reject any assertion that the parish of Funtington (which includes West Ashling, Hambrook and Funtington) should be regarded as the settled community. This was largely conceded by the Appellant at the inquiry.
30. Taking the scattered dwellings identified to the north of the A27, adding to them Edith Cottages and at least the western part of West Ashling, the settled community can therefore be seen to be relatively extensive both in numerical terms and in area. The pitches to be provided on the appeal site would be of minor significance however assessed. There would be a relatively modest number of residents and in my judgement this addition to the locality would not dominate the settled community. In this regard there is no conflict with criterion 6 of Policy 36.

Other Matters

31. I have noted the concerns expressed in relation to the potential for the site to affect water quality. I accept that this is important, particularly given the nearby watercress farm. However, it would be possible to impose a condition to ensure that any drainage facilities and water treatment on site does not compromise water quality. With such a safeguard in operation I am satisfied that the proposal would not adversely affect water quality. I note also that the Environment Agency retains an interest in ensuring that no pollution to groundwater occurs.
32. The site would be accessed from Newells Lane, which is relatively narrow. There are, however, no objections in principle from the highway authority. Given the nature of the existing access, the good visibility achievable on this lightly used road, and the width and positioning of gates, I am satisfied that the proposed development would not be harmful to highway safety.
33. There has been some concern expressed that the proposal would impact on the residential amenity of nearby occupiers. However, given the distance between properties and the appeal site I consider that the potential for any material loss of amenity would be very small. This is not a matter which weighs against the development.

Human Rights and the Public Sector Equality Duty

34. In considering this appeal I have taken account of the human rights of the Appellant, his children and the rights of the other proposed site occupants and their children. Refusal of the proposal would interfere with their Article 8 rights. I do not accept that because they are not currently resident on the site

those rights should not be considered. The best interests of the children are a primary consideration and the provision of a stable home for spending time with their respective parents is a matter of agreed importance. Interference with their human rights would not be proportionate, with particular reference to the best interests of those children. Dismissal of the appeal would result in the Appellant and others being faced with continuing to live in unsuitable conditions and not being able to provide a home for their children.

35. I have also had regard to the Public Sector Equality Duty (PSED). The Appellant and other prospective occupants share a protected characteristic, and I have taken into account the need to avoid discrimination. Although I would have granted planning permission in any case, I share the concerns expressed at the inquiry that there is potential for discrimination in cases such as this where there is a lack of a 5 years supply of sites to meet the needs of those who meet the PPTS definition of gypsies and travellers, if the tilted balance of the NPPF could not be applied.

Appropriate Assessment

36. The appeal site lies within the 5.6km zone around the Solent Special Protection Area (SPA) which includes Chichester and Langstone Harbours. The SPA has been designated to safeguard avian life which frequent the area for feeding and roosting. A net increase in residential accommodation in the zone is likely to lead to increased recreational disturbance.
37. In order to mitigate the effect of disturbance the Solent Recreation Mitigation Partnership has adopted the Solent Recreational Mitigation Strategy (SRMS). This strategy includes a number of measures intended to avoid any net increase in disturbance in the SPA and a key provision is the employment of wardens/rangers. Some of the resource costs require funding through developer contributions.
38. The Appellant has provided a legal undertaking in the form of a Unilateral Undertaking pursuant to S106 of the 1990 Act which would contribute at the required level towards the resource costs of the SRMS. The local planning authority has considered the undertaking and is content that it would provide the appropriate level of contribution.
39. Natural England has been consulted and has confirmed by email on 31 October 2019 that the contributions which would be secured by the undertaking are sufficient to avoid adverse impact on the integrity of the SPA and its relevant features.
40. I am likewise satisfied that the undertaking provided would provide the necessary financial contribution to the SRMS such that adequate mitigation for the likely effects on the SPA can be ensured. There would therefore be no adverse effects on the integrity of the SPA.

Planning Balance and Conclusions

41. There are clear benefits stemming from this proposal. First, the provision of gypsy and traveller sites in an area where supply is acknowledged to be lacking is a significant factor in favour of the appeal. The development would also meet the personal needs of the proposed occupants of the site in a situation where there are no alternative suitable and available sites. This too is significant. Furthermore the best interests of the children associated with the site occupants would be best served by them having a stable home to stay with

their fathers. This is a primary consideration. Set against this is the very limited harm to landscape character.

42. My consideration of the planning balance must start with the development plan. I have determined above that the most important policy in play, Policy 36, is out of date and not wholly consistent with the NPPF. Any conflict with it must attract limited weight. But in this case I find no conflict with it in any event. The proposal also accords with the principles espoused in Policies 45 and 48. There is limited conflict with Policy 2 as I set out above. Taken together I am satisfied that the proposed development accords with the development plan as a whole and can therefore be regarded as sustainable development. It is not necessary in these circumstances to invoke the tilted balance even though the most important policy for determining the appeal is out of date. Had I done so the result would have been the same since any adverse impacts would not clearly and demonstrably outweigh the benefits of the proposal.

Conditions

43. A list of suggested conditions was largely agreed by the parties at the inquiry. It is necessary to specify the appropriate plans to ensure that the development is properly defined. It is also necessary to restrict occupation of the site to those meeting the definition within PPTS, and to restrict the number and type of caravans located on the land.
44. In order to protect the amenities of the area conditions are also needed which restrict commercial activities, control external lighting, and require landscaping to be provided and maintained. Further conditions are necessary to control surface and foul water drainage, waste disposal and any unexpected contamination, in order to prevent pollution. For safety reasons a condition dealing with construction in proximity to the gas pipelines on site is necessary. It is also necessary to require a great crested newt survey be carried out in order to ensure that appropriate mitigation can be achieved if necessary.
45. I have given consideration to whether it would be necessary to restrict occupation to the Appellant and other proposed residents. As I consider this site to be acceptable in its own right this is not necessary. For the same reason it is not necessary to impose a time limited planning permission. I also do not consider that it has been shown necessary to restrict permitted development rights to install hardstanding on the appeal site, or to impose conditions relating to the access to the site.

Conclusion

46. For the reasons given above I conclude that the appeal should be allowed.

Philip Major

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 17_862_001A, 17_862_002A, 17_862_003G, 17_862_004B.
- 3) 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 (August 2015).
- 4) There shall be no more than 5 pitches on the site and on each of the 5 pitches hereby approved no more than 2 caravans shall be stationed at any time, of which only 1 caravan shall be a static caravan.
- 5) No commercial activities shall take place on the land, including the storage of materials.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 7) Prior to first occupation of the site a scheme showing the proposed means of waste and recycling arrangements shall be submitted to and approved in writing by the local planning authority, and shall be implemented and retained as approved.
- 8) Prior to first occupation of the site details of any external lighting shall be submitted to and approved in writing by the local planning authority. No other external lighting shall be installed.
- 9) None of the development hereby permitted shall commence until details of the proposed overall site-wide surface water drainage system has been submitted to and approved in writing by the local planning authority. The design should follow the hierarchy of preference for different types of surface water drainage disposal set out in Approved Document H of the Building Regulations and the SUDS Manual produced by CIRIA. Winter ground water monitoring to establish highest annual ground water levels and percolation testing to BRE 365, or similar approved, will be required to support the design of any infiltration drainage. The surface water drainage scheme shall be implemented and retained as approved and no occupation of any pitch shall take place until the complete system serving that pitch has been implemented in accordance with the approved scheme.
- 10) None of the development hereby permitted shall commence until details of the proposed overall site-wide foul water drainage system has been submitted to and approved in writing by the local planning authority. The approved system shall be installed and maintained in accordance with the manufacturer's instructions at all times thereafter.
- 11) None of the development hereby permitted shall commence until a full construction method statement which outlines the methodology and mitigation measures in constructing within proximity to the high-pressure gas pipelines across the site has been submitted to and approved in writing by the local planning authority. Construction shall be carried out in strict accordance with the approved methodology. The construction

method statement shall include evidence that the proposed works have been submitted on linesearchbeforeudig.co.uk.

- 12) None of the development hereby permitted shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 13) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the site or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 14) None of the development hereby permitted shall commence until a great crested newt survey, which identifies any necessary mitigation measures and a programme for implementation, has been carried out and has been submitted to and approved in writing by the local planning authority. Thereafter any necessary mitigation shall be implemented in accordance with the approved details.
- 15) Any contamination that is found during the course of implementation of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is first occupied.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Mr James Neill	Of Counsel
He called:	
Miss Caitlin Boddy	Senior Planning Officer, Chichester District
BA(Hons) MPlan MRTPI	Council

FOR THE APPELLANT

Mr Michael Rudd	Of Counsel
He called:	
Mr Joseph Smith	The Appellant
Mr Johnnie Carey	Proposed site occupant
Mr William Bath	Proposed site occupant
Mr Matthew Giles	Proposed site occupant
Mr Billy Stanford	Proposed site occupant
Mr Matthew Green	Green Planning Studios

DOCUMENTS HANDED IN AT THE INQUIRY AND RECEIVED AFTERWARDS

From the Council

- 1 Extracts of title relating to the appeal site and surroundings
- 2 Planning Committee Reports for a site at Nutbourne Road, Pulborough, dated 20/02/2018 and 20/07/2010
- 3 List of suggested conditions
- 4 Closing submissions on behalf of the Council

From the Appellant

- 5 Statement of Common Ground
- 6 Bundle of updated witness statements
- 7 Draft S106 obligation
- 8 OS map of early 20th century
- 9 Signed and dated Unilateral Obligation pursuant to S106
- 10 Closing submissions on behalf of the Appellant

Document received on 31 October 2019

- 11 Email from Natural England in relation to the Appropriate Assessment

PLAN

- A Revised site layout – drawing No 17_862_003 Revision G