The Planning Inspectorate

Appeal Decisions

Site visit made on 13 January 2020

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2020

Appeal A: APP/U1430/C/19/3222918
Telegraph Point, Coldharbour Farm Estate, Battle Road, Dallington, Heathfield, East Sussex TN21 9LQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs J Helliwell against an enforcement notice issued by Rother District Council.
- The enforcement notice was issued on 14 January 2019.
- The breach of planning control as alleged in the notice is:
  Without planning permission the material change of use of the land to use for the stationing of a mobile home, occupied for residential purposes together with associated services including decking and sheds.
  The previous planning application (RR/20147/1203/P) refused by the Council was allowed on appeal (APP/U1430/A/2227208) subject to conditions. Condition 2 stated: *When the premises cease to be occupied by those named in condition 1 (Julie Helliwell and Miles Helliwell) above, or at the end of 3 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.*
  An enforcement appeal (Council re: ENF/66/14/BRI and Planning Inspectorate ref: APP/U1430/C/14/2227209) ran concurrent with the above Section 78 appeal. The ground (a) – deemed planning application was also allowed and granted temporary planning permission subject to conditions, including the same condition as 2) above. The effect of the condition is that the relevant planning permission as a whole has now expired.
  A subsequent application ref: RR/2018/1880/P for the retention of the mobile home (use of land for the stationing
  of mobile home for residential purposes (retrospective) was refused by the Council on 18 October 2018.
  In breach of planning control the mobile home remains on the land and continues to be occupied for residential purposes.
- The requirements of the notice are to:
  Comply with the stated condition by ceasing the use of the static residential caravan (mobile home) on the site and removing it from the site together with all structures, materials and equipment brought on to, or erected on the land, or works undertaken to it in connection with the residential use.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the notice is upheld with corrections

Appeal B: APP/U1430/W/18/3217843
Telegraph Point, Coldharbour Farm Estate, Battle Road, Dallington, Heathfield, East Sussex TN21 9LQ

- 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 Mrs J Helliwell against the decision of Rother District Council.
- The application Ref RR/2018/1880/P, dated 12 July 2018, was refused by notice dated 18 October 2018.
- The development proposed is described as "retention of traveller mobile home, together with utility sheds and associated services including decking".

Summary of Decision: The appeal is dismissed

Preliminary matters

1. In paragraph 1 of the notice, the subject of Appeal A, it is said that there has been a breach of planning control falling within s171A(1)(a) of the Act. That would be for the carrying out of development without planning permission and so would correspond with the start of the alleged breach in paragraph 3 that there has been a material change of use. However, planning permission has been granted for that use but subject to condition 2 which requires it to cease within a specified period. As the use has not ceased, there has been no further material change of use, but rather a breach by failing to comply with that condition.

2. From the remainder of the description of the allegation in paragraph 3 of the notice, it is clear that the breach is a failure to comply with the condition and this is consistent with the step specified in paragraph 5 which requires compliance with the condition. From an ordinary reading of the notice as a whole it is clear that the breach is the continuation of the use in breach of the condition. That breach falls within s171A(1)(b) of the Act. Given that there is no misunderstanding as to the use which the notice is attacking and what is required, the corrections can be made without any injustice arising for either party.

3. With regard to Appeal B, whilst the Appellant might have applied for the continuation of the use without complying with condition 2, it is up to her what she chooses to apply for. There is nothing to prevent her from applying for a traveller mobile home, together with utility sheds and associated services including decking.

Background

4. The appeal site is situated in open countryside to the east of Dallington village within the High Weald Area of Outstanding Natural Beauty (AONB). It is occupied as a residential caravan site by the Appellant and her husband.

5. In 2011, retrospective temporary planning permission was granted on appeal for the use subject to conditions[1]. In particular, occupation was restricted to the Appellant and her husband, dependant relatives and the Appellant's father; and the use was to cease when the Appellant's father no longer resided there. The permission was granted taking into account the Appellant's status as a gypsy for planning purposes and taking into account her father's poor health

[1] Ref: APP/U1430/C/11/2154151 & APP/U1430/A/11/2152544

which prevented a nomadic lifestyle, the Appellant having to care for her father.

6. A further temporary permission was granted in 2012 to re-site the mobile home and this was subject to similar conditions[2]. The Appellant's father died in February 2014 and that event triggered the requirement by condition for the use to cease and the land to be restored to its former condition.

7. However, a further temporary planning permission was granted on appeal on 17 July 2015 to enable the Appellant, her husband and any resident dependants to remain for a further three years[3]. In reaching his decision, the Inspector concluded that the harm to the AONB, the conflict with Development Plan policies and with the aim of promoting more sustainable patterns of development were not outweighed by the outstanding need for more gypsy and traveller sites, the lack of alternative sites or the Appellant's personal circumstances so as to justify a permanent permission. However, he found that temporary harm for a three year period would be outweighed by those matters, and that a temporary permission would allow time for the Development and Sites Allocations Plan to be adopted and for approved sites to come forward.

Changed circumstances of relevance since the 17 July 2015 temporary permission

Planning policy

8. The government's latest *National Planning Policy Framework* (NPPF) was published in February 2019. Insofar as it relates to these appeals its provisions are largely unchanged. Achieving sustainable development lies at its heart. In relation to AONBs, great weight is to be given to conserving and enhancing landscape and scenic beauty. AONBs, along with National Parks and the Broads have the highest status of protection in relation to these issues.

9. In August 2015, the government published a new *Planning Policy for Traveller* Sites (PPTS). The definition of a gypsy and traveller for planning purposes was changed so that those who have ceased to travel permanently, even on grounds of education, health or old age, are excluded.

10. In addition to the Rother District Local Plan – Core Strategy (CS), which was in force when the last appeal was determined, the Rother Development and Site Allocations Local Plan (DSAP) has been adopted by the Council. Both now form part of the Development Plan for the area and I am required to make my decision in accordance with it unless material considerations indicate otherwise.

The main issues

11. The main issues in these appeals remain as identified by the appeal Inspector in 2015, that is: the effect of the development on the character and appearance of the AONB, the location of the site in terms of sustainability, and whether there are any material considerations to outweigh any harm arising from these matters.

[2] RR/2011/107/P
[3] APP/U1430/A/14/2227208 and APP/U1430/C/14/2227209 & 2227210

Consideration of the issues

The AONB

12. Consideration of the residential caravan site use on the AONB has been repeatedly assessed following the Appellant's first occupation of the site. Without exception, it has been found to be harmful. I find no reason to disagree.

13. Whilst there is a cluster of established development to the north (uphill) and south (downhill) of the site, the area in general is predominantly open and undeveloped, comprising undulating farmland and substantial areas of woodland. The residential caravan site is located to the northern end of a former field which separates the development to the north and south of it. The mobile home, occupying an upper slope position, is cut into the hillside and has a large projecting deck which accentuates the height and bulk of the overall structure. Together with a touring caravan, the sheds and other residential accoutrements, the development presents a significant urbanising intrusion and undermines the role the property plays in maintaining separation between built development to the north and south.

14. Notwithstanding that it is well screened from the north and west, the residential enclave, and in particular the mobile home with decking, is highly visible from open farm land to the east and south east. Whilst the view is thus primarily from private land, the quality of the AONB is not derived solely from that appreciated from public vantage points. The landscape and scenic beauty of the AONB which national policy indicates enjoys the highest status of protection is neither conserved nor enhanced by the caravan site use. In addition, the harm to the AONB results in conflict with the Development Plan; in particular with CS policy EN1 which requires protection and, wherever possible, enhancement of the AONB; and CS policy RA2 which aims to conserve the intrinsic value of the countryside.

15. The Appellant suggests that the harm has been overstated and in so doing she makes reference to a Planning Inspector's findings in relation to appeal ref: APP/U1430/A/12/2170444. The Inspector in that case, however, was considering a proposal to re-site the caravan/mobile home on the property. His finding that the proposal would not make any material difference and if anything would have marginally less impact, was made in the context of comparison with the existing temporary permission for a caravan/mobile home on the land. He found the harm to be on a par with that already allowed and the words "no more than considerable" does not suggest no, or little, harm.

Sustainability

16. The Inspector, in determining the 2015 appeal, considered the location of the site having regard to its proximity to services such as health, education and shopping, and the availability of bus services. He noted that it was accepted that the site was remote from many services and that most trips generated by the development would be likely to be by car. This he found, although not unusual in rural areas, was not consistent with the national policy aim of promoting more sustainable patterns of development.

17. It has not been suggested that there has been any material change in the relevant circumstances since that time and thus there is nothing to lead me to

any different conclusion to that of my colleague. I have taken into account that the Appellant's husband's business premises adjoins the appeal site which would reduce the need for journeys to work, but this, in itself does not overcome the remoteness of the site to other facilities and services, its isolation from any community of substance (there are but a few houses within the vicinity) and the environmental damage arising from the harm to the AONB. In overall terms the site does not support the objective of both national and local policies of achieving sustainable development.

Material considerations

18. Relevant planning policies differ depending upon whether the intended occupier meets the PPTS definition of gypsies and travellers or not.

19. The Appellant was unable to pursue a nomadic habit of life whilst caring for her father, but she nonetheless met the planning definition of gypsies and travellers as she had ceased travelling because of his health needs/old age. Since his death, however, there is no evidence of her resuming travelling for an economic purpose. Taking its cue from paragraph 2 of *Annex 1: Glossary* to the PPTS the Council sought relevant information necessary in order to ascertain whether the Appellant met the definition. In response, little information was forthcoming other than that she had been unwell prior to 17 July 2018 so her employment had been interrupted and that she intended to resume her nomadic way of life as soon as she was fit enough. However, in a statement dated July 2018 accompanying the planning application, the subject of Appeal B, she had stated that both she and her husband were in employment.

20. The Appellant's husband's business is run from premises adjoining the appeal site so that he would not need to travel for an economic purpose. The Appellant likens their situation to one of having a live/work unit. She also considers the appeal site should be permitted as her permanent home notwithstanding that it has only ever been granted temporary permissions. With these matters in mind and given that some six years have passed without any evidence of travelling, there is little from which to be able to conclude that the Appellant will resume a travelling way of life. Whilst, prior to the August 2015 PPTS a person who had ceased travelling permanently for health reasons would still have come within the planning definition of gypsies and travellers, that is no longer the case. From the information before me, I have insufficient evidence from which to conclude that the Appellant comes within the PPTS definition.

21. That being the case it is the housing policies of the Development Plan which are of relevance. CS policy OSS2 says Development Boundaries around settlements will differentiate between areas where most forms of new development would be acceptable and where they would not. The appeal site does not lie within any such boundary, it lies within the countryside. CS policy RA3 which addresses development in the countryside indicates that the creation of new dwellings will only be allowed in extremely limited circumstances; none of the examples given are applicable to the development the subject of these appeals. The residential use of the appeal site as a caravan site providing accommodation for a single household is akin to the provision of a dwelling. Whilst its location might be convenient adjoining the Appellant's business, there is no requirement for a countryside location. To

accept an argument that someone should be allowed to live next to their place of work could result in an accumulation of unjustified residential development in countryside locations which would not promote the aim of conserving the intrinsic value of the countryside. There is thus conflict with policies OSS2 and RA3.

22. The Council acknowledges that it does not have a 5 year housing land supply which, it says, means that the Development Boundaries cannot be considered up to date. However, the application of the NPPF policy relating to the protection of AONBs provides a clear reason for dismissing the appeals. For the reasons given the development is not sustainable. Housing provision for a single household might be said to make a contribution to the District's supply of housing but that would be minimal and would not outweigh the harm I have identified.

23. In both appeals the clear intention was for the Appellant and her family to continue to occupy the site such that, for the reasons explained, planning policies relating to gypsies and travellers were not applicable. Nonetheless, the planning application form for the proposal the subject of Appeal B, simply describes use as a generic traveller site and for completeness, therefore, I shall go on to assess the proposal against relevant planning policies relating to gypsies and travellers.

24. The CS includes a criteria-based policy, LHN6, to be applied to all applications for gypsy, traveller and showpersons sites. The policy requires all the criteria to be met. Given my findings in relation to the effect on the AONB and on matters of sustainability, however, it is clear that criteria (ii) and (iii) would not be met. These require that there should not be unacceptable visual or landscape impact, especially in the AONB, and that the site should be located within or close to an existing settlement and accessible to local services by foot, cycle or public transport.

25. Thus, even applying relevant planning policies relating to gypsies and travellers, the proposal remains unacceptable. In addition, there is no evidence of any shortfall in provision of pitches to weigh in favour of the grant of permission, even for a further temporary period. Policy LHN5 of the CS sets out the planned future provision of 5 permanent pitches over the period 2011-2016 and a further 6 pitches between 2016 and 2028 to meet the identified need in the District. Sites to meet that need have now been allocated in the DSAP taking into account permissions granted in the interim. The Appellant suggests that the need for sites will increase over time and that might well be so, but I have no evidence before me of any unmet need for gypsy and traveller pitches not catered for through the provisions of the Development Plan.

26. I have noted the Appellant's comments about the loss that would be suffered if she and her husband were forced to leave the site given the investment they have put into their home. However, it should have been clear to the Appellant from the reasoning in previous decisions where the grant of permanent permission was consistently rejected, that only a temporary grant of permission was justified and then only because of the particular circumstances occurring at the time. There has never been any finding that a permanent permission on this site, which would perpetuate the damage to the AONB, would be acceptable and indeed it would appear that any previous suggestion

that the site might be included as an allocated site for gypsies and travellers has been rejected.

27. Upholding these appeals will result in the Appellant and her family losing their home. However, they have been able to live on land recognised as being unsuitable for permanent residential use for many years taking into account their specific circumstances. Those circumstances are no longer the same and, given no overriding need to be located on the appeal site, the requirement now to leave within a period of 12 months as specified in the enforcement notice is a proportionate response. It achieves the appropriate balance between the private interests of the Appellant's family and the public interest, not least of which is conserving and enhancing the landscape and scenic beauty of the AONB which enjoys the highest status of protection.

28. Having regard to all other matters raised in the representations made, I find nothing of sufficient weight which either individually or cumulatively would outweigh the harm identified so as to warrant a grant of planning permission, even for a further temporary period, and nothing to indicate that the appeals should be determined otherwise than in accordance with the Development Plan.

Formal Decisions

Appeal A: APP/U1430/C/19/3222918

29. It is directed that the enforcement notice be corrected by:

a) The deletion from paragraph 1 of the words "paragraph (a) of section 171A(1)" and the substitution therefor of the words "paragraph (b) of section 171A(1)"

b) The deletion of the whole of the content of paragraph 3 and the substitution therefor of the following:

Planning permissions were granted on 17 July 2015 under reference APP/U1430/A/14/2227208 (Council's ref: RR/2014/1203/P) and under reference APP/U1430/C/14/2227209 for the siting of a traveller mobile home together with utility shed and associated services. Both permissions were subject to condition 2 which states:
When the premises cease to be occupied by those named in condition 1 (Julie Helliwell and Miles Helliwell) above, or at the end of 3 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
The condition has not been complied with in that the use continues and nothing connected to the residential use has been removed from the land.

Subject to these corrections the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/U1430/W/18/3217843

30. The appeal is dismissed.

B M Campbell Inspector