



Appeal Decisions

Hearing Held on 24 March 2021

Site visit made on 25 March 2021

by Simon Hand MA

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

Decision date: 09 April 2021

Appeal A: APP/L1765/C/20/3254261

Land at Lower Paddock, Bent Lane, Hambledon, Hampshire, PO7 4QP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Thomas Maloney against an enforcement notice issued by Winchester City Council.
 - The enforcement notice was issued on 5 May 2020.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the land to a residential caravan site for gypsies and travellers (which includes creation of an access and engineering works to create a hardstanding).
 - The requirements of the notice are (i)- cease the use of the land as a caravan site for gypsies and travellers; (ii)- remove the hardstanding and access and take the material off the site; (iii)- reinstate the field to the condition it was in before the development commenced; (iv) replace the hedgerow which was removed to create the access.
 - The period for compliance with the requirements is (i) 1 day; (ii) 2 months; (iii) 3 months; (iv) 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/L1765/W/20/3253413

Land at Lower Paddock, Bent Lane, Hambledon, Hampshire, PO7 4QP

- 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 Thomas Maloney against the decision of Winchester City Council.
 - The application Ref 20/00739/FUL, dated 8 April 2020, was refused by notice dated 6 May 2020.
 - The development proposed is change of use of land to use as residential caravan site for two gypsy/traveller families, each with two caravans including no more than one static caravan/mobile home, together with laying of hardstanding, construction of new access and erection of two ancillary amenity buildings.
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Decisions

Appeal A - 3254261

1. It is directed that the enforcement notice be corrected by deleting the allegation and replacing it with "without planning permission the creation of an access and engineering works to create a hardstanding" and varied by deleting requirement (i), adding to requirement (iv) the words "save for a 3m gap that

shall be filled with a wooden five bar field gate” and by deleting time for compliance (i). Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Appeal B - 3253413

2. The appeal is dismissed.

3254261 – The Appeal on Ground (b)

3. This ground is that the matters alleged have not happened. The allegation is in two parts, a material change of use to a gypsy caravan site and the operations to form that site such as the creation of the access and laying of a hardstanding. There is no dispute the access has been formed and the hardstanding been laid, but the appellant points out no caravans have ever been placed on the site and there has been no material change of use. The Council accept this but argue that the access and hardstanding were works carried out in pursuant of the intended material change of use.
4. This was undoubtedly true, but nevertheless, there has been no material change of use of the land and an enforcement notice cannot anticipate an unlawful action, no matter how firmly held the view is that it will happen. As a matter of fact there has been no material change of use to a gypsy caravan site and so the appeal succeeds on ground (b).
5. It was agreed at the hearing that I could reword the allegation to deal only with the operations and delete the first requirement and the period for compliance relating to the material change of use. There would be no prejudice to either party were I to do so.

3253413 – the Planning Appeal

6. This appeal is for the material change of use of the land to a gypsy caravan site for two gypsy families and to regularise the creation of the access and hardstanding referred to above.
7. The Council have an up to date Traveller DPD, adopted in 2019. This covers the whole area of the district outside of the South Downs National Park. Between 2016 and 2031 19 pitches are required. However, since 2016 18 pitches have been granted planning permission, there are 7 vacant pitches and a further 10 pitches are expected to come forward through the DPD process, providing a surplus of 16 pitches. In addition, 10 permanent and 6 temporary pitches have been granted planning permission since 2019, so supply has significantly exceeded demand.
8. The appellants attacked these figures in a number of ways. I agree, that in March 2021, we fall between the first and second 5 year tranches, so it is best to look at total requirements to be 16 (that is 9 for 2016-21 and 3 for 2021-26 and 4 for Berkeley Farm, identified as post GTAA demand). There is some dispute about the availability of a site at Tynefield which supplied 10 pitches in the original GTAA¹ on which the DPD is based. The Council accepted Tynefield was not currently available and had become overgrown. They therefore have reduced its supply to 7 and discounted it for the time being. It is, however hoped to become available in the future.

¹ Gypsy and Traveller Accommodation Assessment

9. The GTAA also dealt with the issue of the revised definition of gypsies for policy purposes in the PPTS². While the appellants are policy gypsies in that they still travel for work, the revised policy means that some ethnic gypsies in the District are discounted for policy purposes. In the GTAA there were a number of gypsy families whose status was unknown, and the appellant argued, reasonably it seems to me, the GTAA had underestimated their contribution to the need for policy compliant gypsy pitches. The GTAA took a national average figure to make an assumption as to how many unknowns were policy compliant. Had they taken the Winchester specific average it would have resulted in 11 further unknowns being counted as policy compliant. The result of this is that 18 (11 unknowns plus 7 from Tynefield) needs to be subtracted from any theoretical oversupply of 16, leaving a shortfall of 2.
10. However, this seems to me also to be an over-simplification. The shortfall of 2 is based on the whole plan period, 2016-31. It is unreasonable to subtract the 7 from Tynefield from long term supply figures as it remains potentially available in the future, thus giving an oversupply of 5. Alternatively, if we look only at the 2016-26 period, and include the 4 from Berkeley Farm, and all the 11 unknowns (although in reality some of these should actually be counted in the future), then demand is 27 and supply is 18 from the DPD and 10 from the latest figures, giving an oversupply of 1. There are also 6 temporary pitches to be counted, so on balance it seems to me the Council does not have a shortfall of pitches.
11. This is important as the DPD has only two policies for new sites, TR5 which allows for intensification or expansion of existing sites and TR6 which allows new, windfall sites. Because the DPD is designed to provide for all the Council's requirements, and at the moment it seems to be working, there seems to be no reason not to consider these two policies as fully up to date. There is nothing to suggest that the DPD and policies TR5 and TR6 should not continue to provide for the identified and possible future need for gypsy sites in the district.
12. TR6 allows new sites within settlements or through infilling. It also allows rural pitches subject to certain caveats. The caveats are that the gypsies should be policy compliant and they should have a "*personal or cultural need to be located in the area*". The appellant argued that effectively this meant that no new gypsy families could move into the district, which is entirely contrary to the purposes of a gypsy policy as gypsies, are by definition (literally in the case of PPTS), nomadic.
13. I do not agree with this assessment. Firstly, it is not the case that no gypsy sites can be found within settlement boundaries, in my experience this is far from true. There is plenty of debatable land that Gypsies occupy that is not suitable or available for general housing. Whether that is reasonable or not is a different argument, but it remains the case. Secondly, also in my experience, while gypsies travel for work, they often have strong local ties that see them wanting to settle within an area. Consequently, it doesn't seem unreasonable to me for a policy to only allow new sites in the countryside as an exception, where there are compelling personal reason to do so. I also note it is in accord with Policy D of PPTS which allows for rural exception sites only

² Planning Policy for Traveller Sites

where there is a lack of land to meet travellers needs and should be for people with existing local connections.

14. There is no dispute the two families involved in this appeal do not have any local ties and have no personal or cultural need to be located in the area. The definition of the 'area' was also discussed, but the conclusion remains the same whether I consider the whole of the DPD area or, as the Council prefer, just the immediate locality. The two families attend horse fairs around the country and do building work along the south coast, especially in the Southampton and Portsmouth area, but none of this suggests they need to live in Winchester, let alone near to Hambledon. The proposal is thus contrary to TR6.
15. Had the appellants been in accord with TR6 the appeal site would also have had to be in a sustainable location and in accord with TR7, which sets of site-specific criteria to do with, amongst other things, access, boundaries, landscaping, biodiversity and, from CP5, to respect local landscape character.
16. There was some dispute about the relationship of the site to local services. In my measurements it is just over 3km along the roads to Denmead where there is a school and other facilities and 6.5km to Waterloo. A number of appeal decisions were referred to and I am aware that 5km is considered a reasonable travelling distance as a rough rule of thumb for Gypsies. I agree that rural Gypsy sites are often not going to be within walking distance of services and facilities and short car journeys are generally to be expected. However, in my experience, that is usually in areas where there is already a serious shortfall in gypsy sites. In this case there is no such shortfall, and the Council's policies are an attempt to direct such windfall sites as are necessary to the most sustainably located places. There is no suggestion the appellants would be cycling, so they would have to drive everywhere from the site which is not therefore in a sustainable location.
17. The Council were concerned at the proximity of the site to two local SINCS³, Hoe Common to the west and Mill Plain to the south. There was some confusion as the blue line on the application was incorrect and should have extended around the field to the west which lies adjacent to Hoe Common and directly across the road from Mill Plain. However, in my view any measurements should be taken from the red line, which is where any activity that might have an impact on a SINC will take place. The site is thus more than 50m from Hoe Common, but just within 50m of Mill Plain. However, the latter is across the road and separated further by the access drive to large farming unit. It is difficult to see how the appeal site could have an impact on Mill Plain. The Council require an ecology report for any development within 50m of a SINC, but in this case I agree with the appellant that none is required.
18. The access has been created in a hedgerow consisting of mostly trees and shrubs and is about 10m wide. Visibility can be provided up to 43m to the north-east and 50m to the south-west, as long as the hedgerows alongside the site are kept trimmed. The Council point out that Bent Lane is a rural lane with no specific speed limit and so is subject to the 60mph national limit. This would require visibility splays considerably in excess of those possible. The Highway authority view is that without a speed survey it cannot be assumed that speeds are less than 60mph. In this case I agree with the appellant this is

³ Site of Importance for Nature Conservation

a nonsense. Bent Lane, as its name suggests, is full of bends and is narrow, with few passing places. I drove it several times and it would be reckless in the extreme to exceed 30mph, particularly in the vicinity of the appeal site. It was also the evidence of local people, both in writing and at the Hearing, that the lane was slow and heavily used by riders and cyclists and that a long distance footpath runs along the lane outside the site. In my view a speed survey is not necessary to establish that it is a reasonable assumption traffic speeds would be slow and the splays that could be provided would be sufficient for highway safety purposes.

19. It also seems that the boundaries of the site could be strengthened by additional planting which would help screen the site without appearing to deliberately isolate it from its surroundings.
20. The local landscape character is described in the Council's LCA⁴ as ancient, with a network of winding, narrow lanes and a distinctive pattern of irregular fields with hedged boundaries interspersed with small woods and copses. This very much seems to describe the area of the appeal site. One of the key issues identified with this landscape is its increasing suburbanisation. The appellant argues the area, unlike much of the district, is not specifically protected, which is true, but that does not mean that anything is acceptable. The Council's policies DM15 and DM23 are specifically concerned with protecting local character and this is brought into CP5 where gypsy sites should not be unduly intrusive and, once landscaped, should respect local landscape character.
21. To the north and east of the site is Shirmal Farm which comprises a number of agricultural buildings and a mobile home. To the immediate east is Ydal Acres, which has planning permission for a new barn that is under construction. Several caravans are on the site and the Council allege the owners are living there unlawfully. There was some dispute as to whether they are gypsies or not, but whatever, there is an ongoing enforcement investigation on the land. Ydal Acres is somewhat scruffy and forms the backdrop to the appeal site, when seen from Hoe Common and the footpaths in that area and along Bent Lane. Of course, if successful enforcement action is taken against Ydal Acres that land might well improve, but in any event, the introduction of a two pitch site in front of it, with 4 caravans and two amenity buildings, along with vehicles and all the usual domestic paraphernalia would introduce a suburbanising effect that would simply add to the impact of Ydal Acres as it currently stands, or look further out of place if the next door site were to be improved. The proposed landscaping would not completely hide the site and it would not be reasonable to assume it would, so the site would not sit comfortably in the landscape.
22. The impact of the site is reinforced by the large access that has been cut in the hedgerow. I accept that from aerial photographs it seems there was already a section of hedgerow that had been reduced in height, possibly to accommodate electrical cables that cross the land, but nevertheless there does not seem to have been an access onto the field from the road before the works the subject of the notice took place. The access and necessary splays, even for 30mph speeds would open up the site and reduce the sense of enclosure that still persists along Bent Lane.

⁴ Landscape Character Assessment

23. The two families have 8 children between them, and one who is now over 18 so there is definitely a realistic potential for a demand for further caravans on the site. Although TR5 allows for intensification, in this case it would further consolidate the urbanising impact of the proposal and harm the landscape.
24. Conditions could deal with issues of waste and the Solent SPA nitrates strategy as well as lighting. There is no harm to highway safety nor to the SINCs, nevertheless the suburbanisation of the site would be exactly what the LCA warns against and would be contrary to CP5 and TR7.
25. As noted above there are two families proposed on the site with 8 children of school age or younger. There is no dispute that even if the Council has fulfilled its policy obligations towards gypsies and travellers there is still no-where else for these two families to go in the District. The Council argues that is the whole point of their site strategy. Had the two families had a pressing need to locate here they would be catered for by TR6. That may be true, but it remains the case the alternative, as far as the evidence before me suggests, is they would be forced back onto the road. That would not be in the best interests of the children, who would benefit from a settled base to pursue the educational and medical opportunities that arise from a permanent address. This is a significant factor that weighs in favour of the appeal.
26. However, I also note that for the last 18 years, from when the first children came along, the families have pursued a nomadic life and I heard no evidence of any attempt to school the children, either in this District or elsewhere. There is no suggestion they have been trying to get a site in the area in the past or are on any waiting lists locally.
27. I am also aware that refusing to allow the appellants to live here will leave them without a fixed home which would be an interference with their human rights and this also needs to be weighed in the balance.
28. It seems to me that the balance in this case weighs against allowing the appeal. Set against the best interests of the children there are significant harms to the local landscape character and the site is not in a particularly sustainable location. It is also contrary to Council policy, which is up to date and demonstrates the Council have been taking their obligations towards the traveller community seriously. This outweighs the best interests of the children and would represent a proportionate interference with the human rights of the two families.
29. The possibility of a temporary permission was discussed at the Hearing, but it would not seem that anything would be likely to change in the next few years and there is no reason to allow a trial run. I do not consider that condition come overcome the problems I have identified and the planning appeal should be refused.

3254261 - The Appeal on Ground (f)

30. This ground is that the matters alleged are excessive. Following the corrections I shall make as a result of the ground (b) appeal, the requirements are reduced to removing the hardstanding, reinstating the field and replanting the hedgerow. This ground turns on the issue of the access. Originally there was no access to the field from Bent Lane. I was shown the original gate into the back of the field from the farm beyond. Now that ownership of the field

has been severed from the farm, the appellant will need to access the land from the lane. A typical 5 bar field gate would be more than ample to allow access for the grazing of horses, which I assume would be the appellant's primary use of the field. The problem is ensuring this through the requirement, which cannot simply require a scheme to be submitted to the Council. A typical farm gate is 3m wide so I shall add to the fourth requirement "save for a 3m gap that shall be filled with a wooden five bar field gate".

Conclusions

31. I shall dismiss the planning appeal and uphold the enforcement notice following the corrections and variations described above.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Phillip Brown – planning agent

FOR THE LOCAL PLANNING AUTHORITY:

Rose Lister – planning
Neil March – enforcement
Stuart Dunbar-Dempsey – landscape
Steve Opacic – planning policy

INTERESTED PERSONS:

Christine Mayhew
Anne Evans