



Appeal Decisions

Site visit made on 12 March 2021

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 27 May 2021

Appeal A: APP/Y9507/C/19/3232149

Appeal B: APP/Y9507/C/19/3232150

Land lying to the north of Warren Corner (AKA Warren Barn), Warren Lane, Priors Dean, Petersfield, Hampshire GU32 1BW.

- 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 Raymond Beach (Appeal A) and Amelia Beach (Appeal B) against an enforcement notice issued by South Downs National Park Authority.
 - The enforcement notice, numbered SDNP/18/00103/COU, was issued on 31 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission, and within the last 10 years, the material change of use of the Land from agriculture to use of the Land as a site for travelling showperson(s) and family and the stationing of caravan(s) for the purposes of human habitation.
 - The requirements of the notice are: (i) Cease the use of the Land for a site for travelling showperson(s) and family; (ii) Cease the use of the Land for the stationing of the caravan(s) for the purposes of human habitation; (iii) Remove all caravans from the Land; (iv) Remove all items from the Land that relate to domestic living; (v) Remove all items from the Land that relate to a travelling show person(s) trade; and (vi) Remove any other items and debris that do not relate to the use of the Land for agriculture.
 - The period for compliance with the requirements is 12 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered. Appeal B is proceeding on ground (g) only.
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Decisions

1. It is directed that the enforcement notice be corrected by, in Section 1, the deletion of the words "paragraph (a) of Section 171A(1)" and their replacement by "paragraph (b) of Section 171A(1)"; and in Section 3 the deletion of the alleged breach of planning control in its entirety and its replacement by "The failure to comply with condition 1 of planning permission SDNP/51451/004 dated 9 May 2012 which states: The occupation of the site hereby permitted shall be carried on only by the applicants Mr Raymond Beach and Mrs Amelia Beach and their resident dependants and shall be for a limited period, being the period of three years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter."; and by the substitution, in Section 4, of paragraph 5 (beginning "the Authority is of..") with the following "The Authority is of the opinion that the use of the Land for a site for travelling showperson(s) and family and the stationing of caravans for the purposes of human habitation, by virtue of its location, scale, nature and extent, constitutes an unsustainable and unjustified form of development, which does not conserve or enhance the

National Park landscape. The need for travelling showperson(s) plots does not outweigh the significant harm the development causes to the intrinsic quality and landscape character of this sensitive rural location. The Land is both within and adjacent to important designated ecological areas of the East Hampshire Hangers Special Area of Conservation (SAC) and the Wealden Edge Hangers Site of Special Scientific Interest (SSSI). In the absence of up to date ecological surveys, it has not been satisfactorily demonstrated that there are not harmful ecological impacts caused by the continuing of use of the Land and how this could be appropriately mitigated. In the absence of detailed information in relation to the discharge of foul drainage and the potential for groundwater contamination, it has not been satisfactorily demonstrated to the Authority that there are not harmful impacts on the environment within the vicinity of the Land or how these could be mitigated.”

2. Subject to these corrections the appeals are 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.

Background and preliminary matters

3. The appeal site is a block of land within the South Downs National Park adjacent to, and within or partly, a tract of established woodland of ecological importance. The woodland and part of the site is part of the Wealden Edge Hangers Site of Special Scientific Interest (SSSI) and the East Hampshire Hangers Special Area of Conservation (SAC), with the woodland outside of the site also designated as the Ashford Hangers National Nature Reserve (NNR). The site and adjoining woodland is mapped as Ancient and Semi-Natural Woodland. The site has been owned and occupied by the appellants since 2010, prior to which it was apparently used for growing Christmas trees, with an associated forestry building.
4. The appellants are travelling showpeople. A 3-year planning permission¹ was granted in May 2012 for the “Change of use of land and building for travelling show persons use for one family including the re-siting of caravans.” The residential part of the site was confined to the north-western portion of the site, and conditions restricted the use to the appellants and their dependants and to travelling showpeople. Other relevant conditions restricted the number of caravans and required the submission, approval and implementation of a Restoration Plan for the land owned by the appellant that falls within the. Use of the SAC in connection with the travelling showpeople site was precluded. Commercial activity within the travelling showpeople site was also restricted, being permitted only within the existing barn on the site.
5. Planning permission was refused in February 2018² for the continued use of the site as a travelling showpeople plot. That refusal was not appealed, but the much of the supporting evidence in these appeals was submitted in support of the 2015 application.

Correcting the allegation

6. The notice alleges a material change of use to a travelling showperson(s) site, but where planning permission has been granted for a material change of use

¹ Ref. SDNP/51451/004

² Ref. SDNP/15/01829/FUL

subject to a 'temporary' condition, and, as has occurred here, the use is continued after the expiry of the period specified, enforcement action should be taken against a breach of the condition. It cannot be said that the continuation of the use amounts to the carrying out of a material change of use because the change of use was in fact authorised by the original planning permission. I advised the main parties of the need to correct the notice and no issue was taken, nor do I consider that any injustice would be caused. I shall therefore correct the description of the breach of planning control to the failure to comply with a condition attached to a planning permission, and this necessitates amendment of the relevant provision of the Act in Section 1 of the notice and of the reasons for issuing the notice.

Planning Policy

7. Since the notice was issued the National Park Authority (NPA) has adopted the South Downs Local Plan 2014-33 Adopted 2019 (LP). This has superseded the relevant policies of the East Hampshire District Local Plan: Joint Core Strategy (2014) and the East Hampshire District Local Plan 2nd revision 2006 in so far as they relate to the National Park.
8. The South Downs Partnership Management Plan 2020-2025 (SDPMP) which was adopted on 19 December 2019 is also relevant. It is not a development plan document but it sets out a vision and long term outcomes for the National Park. SDPMP Policy 1 aims to conserve and enhance the natural beauty and special qualities of the landscape and its setting, Policy 3 seeks to protect and enhance tranquillity and dark night skies, while Policy 4 seeks to create better-managed and connected areas of habitat in and around the National Park.
9. National planning policy is set out in the National Planning Policy Framework (NPPF). It expects great weight to be given to conserving and enhancing landscape and scenic beauty in National Parks, areas which have the highest status of protection in relation to those issues. It provides that significant harm to biodiversity should be avoided, and places emphasis on avoiding the loss or deterioration of irreplaceable habitats such as ancient woodland.
10. National policy on traveller sites is contained within Planning Policy for Traveller Sites (PPTS). PPTS, which must be read in conjunction with the NPPF, aims to ensure fair and equal treatment for travellers in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.

Showperson status

11. For the purposes of PPTS, "travelling showpeople" means members of a group organised for the purposes of holding fairs, circuses or shows (whether or not travelling together as such). The appellants are not members of the Showmen's Guild, but Mr Beach has for many years (until 2019 when the fee was not paid due to the Covid-19 situation) been a member of the Association of Independent Showmen and is a regular attendee at fairs and shows. I am satisfied on the evidence provided that Mr Beach meets the PPTS definition.

Appeal A (ground (a) and the deemed planning application

12. I consider that the main issues are:

- the effect of the development on the character and appearance of the area;
- whether there are any effects on sites of ecological importance or protected species, and
- whether there are material considerations sufficient to outweigh any conflict with the development plan or other harm identified.

Character and appearance

13. The appeal site is essentially a clearing on the western edge of an extensive tract of mainly deciduous woodland in the open countryside well away from any settlement. Broadly speaking, LP Policy SD25 seeks to restrict development in the open countryside to that which needs a countryside location, and PPTS advises that 'authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or areas allocated for development'. The PPTS policy does not present an absolute restriction on the location of new traveller sites in the countryside, but the general thrust of the policy goes against the provision of such development in remote or spatially isolated locations. However, the text accompanying the local plan policy on traveller sites, LP Policy SD33, recognises that while sites should be well related to settlements with services and facilities, throughout the National Park sites are often in very rural areas.
14. The appeal site is distant from services, but the site occupants have clearly been able to access essential services such as health and education from the site, and while this most likely involves the use of private vehicles, the nature of travelling showpeople plots or yards is that private vehicle use is likely to always be relatively high and often unavoidable. In the context of a development to support the nomadic way of life where travel and work are inextricably linked, I consider that the location would not result in unsustainable patterns of travel. Similarly, in view of the need for such sites in the area, and that any new sites are quite likely to be in the countryside, I consider that the development does not conflict with LP Policy SD25 in terms of its location outside of settlement boundaries, and there is no clear conflict with LP Policy SD33.
15. LP Policy SD25 nonetheless requires that development in the countryside outside of settlement boundaries, should comply with relevant LP policies and responds to the context of the relevant broad area. Of particular relevance are LP Policy SD4 which seeks to conserve and enhance the natural beauty and special qualities of the landscape, one of the purposes of National Parks, and Policy SD7, whose purpose is to ensure that development does not harm the relative tranquillity of the National Park and to encourage the conservation and enhancement of positive tranquillity factors. These policies reflect SDPMP Policies 1 and 3.
16. On the ground, the site is quite well screened. The land falls away from the roadside with the former forestry barn, now used for equipment storage and maintenance, at a slightly lower level and the residential part of the site at a lower level again, on ground that appears to have been raised significantly. There is a moderately dense strip of trees between the cleared part of the site and the public highway, such that the only visually prominent feature of the development is the relatively wide gated entrance. A discordant feature along an otherwise undeveloped stretch of roadside, the entrance would remain

even if the notice is upheld. Similarly, while the barn might be apparent in winter views, its presence is not dependant on the appeal development. Of the core residential part of the site where the mobile home is sited, little if any would be directly visible from public viewpoints, even in winter, so the visual impact of the development is limited.

17. Nonetheless, the site lies within the National Park's Dark Night Skies Core, the most sensitive zone within the Park, and it is considered to be in one of the highest pockets of tranquillity. It is located within "Section H6: Selborne Hangers to East Meon Scarp" of the Major Scarps division of The South Downs Integrated Landscape Character Assessment 2005 (updated 2011) where a specific management consideration is to conserve the tranquillity of the scarp that results from the presence of semi-natural habitats and absence of human influences. Activity associated with the use and the need to provide lighting at night are likely to harm the relative tranquillity of this part of the National Park and its character generally. Some mitigation of the harm caused by lighting can be achieved through conditions, but the presence of the site and associated activity would inevitably impinge on tranquillity, contrary to the aims of LP Policy SD7, which expects development in highly tranquil areas to conserve and enhance, and not cause harm to, relative tranquillity.
18. Further, despite the limited views into the site I consider that the intrusion of the development into the wooded landscape is jarring and discordant. It does not integrate well with its surroundings, and the significant changes in land levels to accommodate the siting of the mobile home and caravans is a notable disruption of the natural topography. As a consequence it fails to conserve the natural beauty of the landscape and it does not maintain the character and distinctiveness of this part of the countryside. It is therefore contrary to LP Policy SD4.
19. In coming to this view I have noted the conclusion of the Landscape and Visual Impact assessment prepared for the appellant in 2015 which assessed the sensitivity of the landscape and the magnitude of the development on that landscape to be low. On this basis it concluded that the impact on landscape character would be slight. However, in terms of sensitivity I consider that the assessment gave insufficient weight to the differences between the proposal and the landscape in terms of pattern and scale, to the conflict with policy objectives for the landscape and to the condition of the landscape, while consideration of the magnitude of the impact did not give sufficient weight, in my view, to the loss of ancient woodland as a characteristic landscape feature and gave too much weight to contribution to the local landscape character and to the scope for mitigating features.
20. I am also aware that it is possible that ceasing the use of the site in compliance with the notice would not necessarily result in its full remediation, and that some of the operation development undertaken may remain, but its continued use would cement the harm that has arisen and prevent any prospect of eventual assimilation into the landscape. By virtue of its failure to integrate with, respect and sympathetically complement the landscape character, I consider that the development also conflicts with LP SD5 which seeks to conserve and enhance natural features, including woodlands, through design. Conflict with these policies also places the development in conflict with the local policy on sustainable development, LP Policy SD1, which has at its core the National Park purposes.

Habitats and species considerations

21. The potential for effects on the international and national designated sites, the SAC, SSSI and NNR, and specifically on the qualifying features, was considered when the 2012 permission was granted. Although the cleared land in the appellants ownership included parts of the designated sites, the permitted scheme confined the operative part of the site, residential and equipment storage and maintenance, to land outside of the designated sites, save for the access, which is likely to continue to be required in any case and which replaced another that more directly impinged on the SAC and SSSI. The Ecological Impact Assessment of the site prepared in July 2010 found none of the habitats relevant to the designation of the sites present on the overall appeal site at that time, no doubt due to its previous uses, and the 2012 planning permission was granted subject to conditions aimed at restoring or establishing appropriate tree cover on the parts subject to the designations, as set out in a Woodland Restoration Plan. Restoration works were evidently undertaken in accordance with the conditions, but Natural England (NE) noted in 2017 that a site visit found that the restoration did not cover the whole of the SAC area previously lost, and that the area restored had not been maintained. I broadly agree with that assessment. I saw that tree establishment was good over much of the designated area, but I saw evidence of vehicular disturbance at the lower end, the south-east corner, where there was little or no tree establishment. Cypress trees growing along the site boundaries had also not been removed. These represent alien species within the protected habitats, which should be avoided.
22. NE advised that further work is required to demonstrate the extent of the SAC that will be restored and that the loss of SSSI habitat will be mitigated for. It also expressed concern that drainage from the site may have an impact on the SAC and SSSI without measures to prevent it. NE's position is that in the absence of further details on these matters it cannot be ascertained that the development alone or in combination with other plans or projects will not result in a likely significant effect on the SAC or SSSI.
23. However, the restoration works carried out to date, which, while perhaps not complete, go some of the way to restoring damage to the SSSI and SAC that preceded the occupation of the site by the appellants, were a benefit of the 2012 planning permission, as would any further scheme largely be, so far as this application is concerned. Nonetheless, the very close proximity of the residential/storage/maintenance area, and indeed the remainder of the site outside of the designated areas which has the appearance of being used for purposes associated with the use of the main yard, has the potential to affect the integrity of designated areas and their habitat value, either by direct or indirect disturbance, even if unintentional, and, as NE has pointed out, off site effects of drainage, which carries with it a risk of pollution and impacts on local hydrology.
24. It appears that hard-core has been imported to the site to make level changes to accommodate the siting of the mobile home and touring caravans, and run-off from the buildings and caravans is discharged onto this hard-standing. It cannot be assumed that this will cause no harm to the adjacent designated sites. So far as foul water is concerned, it appears that the mobile home at least is connected to a cess pit which is said to be emptied regularly, but no details have been provided about drainage arrangements, if any, for the

touring caravans on the site. Further, the details of the cess-pit, including its origin and design are vague. It is sited close to the southern edge of the yard area and therefore in close proximity to the designated areas, to which the potential for failure is a significant risk in terms of pollution. Since a cess-pit arrangement is essentially a closed system, it should be possible to ensure its safe operation. That could require re-location and better specification, but this is a matter that could be dealt with by condition since there is a high degree of certainty that a secure system could be specified and its implementation secured.

25. That cannot be said about the potential for drainage contamination, particularly from the ground level altered parts of the site, since, in the absence of information or investigation, it cannot be assumed that runoff will not affect the integrity of the designated areas within and outside of the site. In the absence of details on how the designated sites would be protected from the risk of contamination or other hydrological effects from the proposed use, it is not possible to be confident that the development would not result in a likely significant effect on the integrity of the SAC and SSSI, and it follows that there is not sufficient information to establish that the development would not have an adverse effect. Nor, in view of the uncertainty involved, could I be sufficiently confident that this could be satisfactorily resolved by condition.
26. The residential occupation of the site since 2010, along with the associated physical changes, is very likely to have diminished the ecological value of the site as an area of ancient woodland, but continued occupation may well lead to a total loss of the habitat, which is considered to be irreplaceable. The Baseline Ecological Assessment conducted in 2010 makes no mention of ancient woodland. I am also concerned that the impact of residential use of the site in such close proximity to habitats that are known to support protected species appears to have had very limited, if any, consideration in the ecological information put forward in support of the application. The 2010 Baseline Ecological Assessment concluded that no adverse effects on existing site ecology were likely to arise as a result of the change of use of the 'existing buildings' to residential use, though that assessment was predicated on the assumption that there were no proposals to develop or significantly modify the site in any way. Woodland vegetation alongside and outside of the site boundaries was noted as likely to represent habitat used by dormice, a protected species³, but nothing further is said to suggest consideration of any effects of residential use, which could include the keeping of cats or dogs, of the site on the habitat value of the adjoining woodland. Similarly, while the site was assessed for the possible presence of bat roosts, nothing is said about the implications of the change of use on bat foraging and commuting. The assessment was reviewed for the 2015 application. In response to Hampshire County Council's senior ecologist's concern that a review of the current site conditions, and whether any formalisation of development will have on-going impacts to dormouse habitat was necessary, the review merely re-iterated the view that the proposal will not affect any local dormouse habitat, apparently on the basis that there was no suitable vegetation within the site itself.

³ Dormice and bats are protected in the UK under the Wildlife and Countryside Act, 1981. They are priority Species under the UK Post-2010 Biodiversity Framework and are listed as a European Protected Species under Annex IV of the European Habitats Directive.

27. In summary, in the absence of details of materials used for land raising and the drainage pathways through that it is not possible to ascertain with sufficient confidence that the development does not pose a risk to the integrity of the designated areas by contaminated drainage water or altered hydrology, and there is not up to date ecological information to provide confidence that the development as proposed will harm, or pose a risk to, protected species. In addition, the development is likely to lead to the further deterioration or total loss of an area of ancient woodland. It is therefore in conflict with LP Policy SD9, which makes it clear that applicants must provide up-to-date ecological information in order to demonstrate that their development will not adversely affect sites of ecological importance and rare, notable and priority species.

Other considerations

The need for, and provision of, Travelling Showpeople sites, and the availability of alternative sites

28. PPTS requires local planning authorities to make their own assessment of need for the purposes of planning, to set plot targets for Showpeople which address the likely needs, and to identify a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. LP Policy SD33 aims to meet the identified need by the allocation of sites and the granting of planning permissions on currently unidentified sites. No sites have been allocated. A Gypsy and Traveller Accommodation Needs Assessment (GTAA) prepared in 2017 for East Hampshire identified a need for 9 plots within the South Downs National Park part of East Hampshire in the period 2017 to 2036. This need all arises from the appeal site. No sites have yet been identified to meet this need, nor has the SDNPA been able to point to any suitable and available alternative sites for the appellants within the National Park or the wider area. The appellants themselves have been looking for sites within a distance limited search area, but none that they have found has turned out to be considered suitable in planning policy terms.

Personal circumstances

29. Mr and Mrs Beach have 9 children, 8 of whom live on the site. The 5 children under 18 attend, or will attend, local schools. One of the older children has special educational needs and has been home schooled. He now works with his father, which is stated to be essential for his well-being. Mr Stokes himself suffers from stress for which he is under medical supervision.
30. I have no doubt that the best interests of the children on the site would be served by living there. They would continue to have good access to education and health care and a stable home. This is a primary consideration that weighs strongly in favour of a grant of planning permission, particularly since there are no alternative sites available.

Intentional unauthorised development

31. It is government planning policy that intentional unauthorised development is a material consideration that should be weighed in the determination of planning applications and appeals. However, the development itself, while unauthorised, took place prior to the introduction of the policy, hence the originally unauthorised nature of the development does not weigh against it.

Planning balance

32. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. While there is no clear conflict with the criteria based LP policy for the provision of traveller sites, I have found conflict with key development plan policies concerned with protection of the landscape and its special qualities, including tranquillity, which places the development in conflict with the statutory purposes of the National Park designation to conserve and enhance the natural beauty of the area and promote opportunities for the public's understanding and enjoyment of the special qualities of the park. There is also conflict with policies aimed at protecting biodiversity and avoiding the risk of adverse effects on protected sites. The relevant policies are consistent with national policy. These are all matters to which I attach very substantial weight, and I consider that there is clear conflict with the development plan as a whole.
33. At present, the National Park and wider area has a significant level of unmet need for travelling showpeople sites, and this carries significant weight. There is not a 5-year supply of sites and there is no clear prospect of sites being allocated through the development plan, or indeed of coming forward through applications, so there must be considerable doubt that the current approach to future provision is likely to see the shortfall overcome in the short term, and there is no alternative site available. These are matters to which I attribute significant weight.
34. In view of the lack of an alternative site, the personal circumstances of the family are material planning considerations that they are worthy of very significant weight, particularly so as there are a number of children living on the site which has enabled them to access full time education and health care. The best interests of the children are a primary consideration, and it is in their best interests in the circumstances to continue to reside at the appeal site with their parents.
35. In balancing these opposing considerations and their respective weight, however, I consider that the harm to important characteristics and functions of the National Park and the risk of harm to sensitive and important habitats and species that I consider would arise through continued use of the site as proposed, are not outweighed by the weight of the other considerations. It follows that there are not material considerations to outweigh the conflict with the development plan and planning permission must be refused. I have also considered whether a temporary permission would be justified, given that the overall harm would be reduced. The principle justification for a temporary permission in a case such as this is that at the end of it there would be a realistic likelihood of the occupants being able to move to suitable alternative accommodation. That was the main justification for the grant of permission in 2012, but it has not transpired, despite evidence of recent efforts and engagement with the National Park Authority, so in view of the current position regarding future site availability I do not consider that a further temporary permission is justified. The reduced harm of a time limited permission would still not reduce the overall harm to a level where it would be outweighed by the considerations in favour of the appeal. I have reached this conclusion having borne in mind my public sector equality duty throughout.

Human rights

36. Dismissal of the appeal deprives the Beach family of their home on the appeal site, which represents an interference with their rights under Article 8 of the First Protocol of the European Convention on Human Rights. However, the aim of preserving and enhancing landscape and scenic beauty in National Parks and of protecting and enhancing biodiversity are important aims of local and national planning policies, underpinned by statutory duties, and are therefore legitimate objectives in the public interest with a clear basis in the relevant planning legislation. In these circumstances, some interference with Article 8 rights is permissible, and I consider that the protection of the public interest cannot be achieved by means which are less interfering with the families' rights. They are proportionate and necessary and hence would not result in a violation of rights under the Convention.

Overall conclusion

37. For the reasons set out above, I conclude that the appeal development conflicts with the development plan, read as a whole, and there are not material considerations to justify a grant of planning permission, even on a temporary basis. The appeal on ground (a) is therefore dismissed and planning permission is refused on the deemed planning application.

Appeals A and B - Ground (g)

38. This ground is that the period for compliance falls short of what should reasonably be allowed. A period of 3 years is sought to look for a suitable alternative site and gain planning permission. However, such a period would be tantamount to a temporary permission, which I have found not to be justified on the planning merits. The period allowed is a reasonable period to search for an alternative site and comply with the requirements of the notice. The appeal on this ground fails accordingly.

Paul Dignan

INSPECTOR