The Planning Inspectorate

Appeal Decisions

Hearing Held on 7 September 2021

Site Visit made on 7 September 2021

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 16 September 2021

Appeal A Ref: APP/L3815/C/20/3256647
LAND TO THE SOUTH OF GREEN LANE PIGGERIES, HAM ROAD, SIDLESHAM, PO20 7NL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Stuart and Mrs Ami Stanbridge against an enforcement notice issued by Chichester District Council.
- The enforcement notice, numbered SI/75, was issued on 17 July 2020.
- The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref APP/L3815/W/15/3019459 granted on 21 April 2016.
- The development to which the permission relates is: On 21st April 2016 planning permission was granted by the Planning Inspectorate (ref APP/L3815/W/15/3019459) for "the material change of use of the land to a mixed use comprising use as a residential caravan site and the grazing of horses, the construction of a hardsurfaced access track and yard and the erection of a day room" on the Land in accordance with the terms of application, ref no.SI/14/04058/COU dated 15 November 2014, subject to conditions. One of those conditions was:-

  2) The use hereby permitted shall be carried on only by Stuart Stanbridge and/or Ami Stanbridge and their resident dependents and shall be for a limited period expiring on 31 May 2019. On the expiry of that period or when the land ceases to be occupied by those named above, whichever shall first occur, the use hereby permitted shall cease, all caravans, materials and equipment brought onto the land and works undertaken to it in connection with the permitted use shall be removed and the land shall be restored to its former condition before the development took place in accordance with a scheme of work which shall previously have been submitted to and approved in writing by the local planning authority.

  It appears to the Council that this condition has not been complied with, because permission for the use of the land as a residential caravan site expired on the 31st May 2019 but such use is continuing on the Land.
- The requirements of the notice are (i) cease the use of the Land as a residential caravan site; (ii) remove the touring caravan from the Land; (iii) remove the day room in the approximate position shown on the attached plan from the Land; (iv) disconnect and remove the septic tank from the Land; and (v) remove the hardsurface materials forming the access track and yard, in the approximate position shown on the attached plan, from the Land.
- The period for compliance with the requirements is: 6 months
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- A similar appeal (APP/L3815/C/20/3256648) minus the ground (a) has been made by Mrs Ami Stanbridge.

Appeal C Ref: APP/L3815/W/20/3256641
LAND SOUTH OF GREEN LANE PIGGERIES, SIDLESHAM, PO20 7NL

- 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 Stuart and Mrs Ami Stanbridge against the decision of Chichester District Council.
- The application Ref 19/03043/FUL, dated 9 December 2019, was refused by notice dated 3 February 2020.
- The development proposed is Change of use of land as private gypsy and traveller caravan site (variation of condition 2 of planning permission SI/14/04058/COU (APP/L3815/W/3019459- to make the temporary permission permanent).

Decisions

3256647 & 3256648

1. 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.

3256641

2. The appeal is allowed and planning permission is granted for the change of use of land as private gypsy and traveller caravan site (variation of condition 2 of planning permission SI/14/04058/COU (APP/L3815/W/3019459- to make the temporary permission permanent). at LAND SOUTH OF GREEN LANE PIGGERIES, SIDLESHAM, PO20 7NL in accordance with the terms of the application, Ref 19/03043/FUL, dated 9 December 2019, and the plans submitted with it, subject to the following conditions:

    1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).

    2) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Stuart Stanbridge and/or Ami Stanbridge and their resident dependants.

    3) When the land ceases to be occupied by those named in condition 2 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.

    4) No more than 2 caravan(s), as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which neither shall be a static caravans) shall be stationed on the site at any time.

    5) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:

        (i) Within 3 months of the date of this decision a scheme containing the details of a flood evacuation scheme as found in appendix 6 of the Hearing Statement of Mr Ian Walton, dated January 2021, reference 407.06251.00002, shall have been submitted for the written

approval of the local planning authority and the scheme shall include a timetable for its implementation.

(ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

(iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

(iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter remain in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected anywhere on the site, and no further hardstanding shall be laid anywhere on the site.

7) The day room hereby permitted shall not be occupied as a self-contained unit of residential accommodation

8) No commercial activity shall take place on the land and no vehicle over 3.4 tonnes in weight shall be stationed parked or stored on the land.

Background to the Appeals

3. In 2015 an enforcement notice was issued requiring the appellants to move from this site which they had recently occupied. This was appealed and in April 2016 the Inspector granted a temporary permission to remain on the site until May 2019. The current appeals concern the breach of the condition that makes the previous planning permission temporary.

4. The Inspector found the area was flat and open and the mobile home on the site was prominent and harmed the character of the countryside. He also found the location of the site was unsustainable because the occupiers were likely to rely on cars for most of their trips. However, he also found there was a limited but significant unmet need for gypsy sites in the area and the Council did not have a 5 year supply of sites. He also noted there had (at 2016) been a prolonged failure to provide sufficient sites and there were no alternative sites available. There were also considerable personal circumstances in favour of the appeal. Both the appellants had health issues and their children were settling into the local school. The school and the local doctor sent letters of support.

5. The most significant issue for the Inspector was the flooding problem. The site lies in flood zone 3(a). Caravans are considered to be highly vulnerable and should not, generally, be allowed in this flood zone. However, the Inspector agreed that the appellants had a sensible site evacuation scheme. The flooding

problem was restricted to tidal waters from Pagham Harbour which was over 3 miles away. Even in a worst case scenario floodwater would take many hours to reach the site by which time the occupiers could have moved to safe ground. He was however concerned the mobile home would be damaged and could potentially be swept away. As a consequence he didn't find any immediate flood risk and given the likelihood of the Council adopting their Gypsy site DPD in the next few years it should be possible for the appellants to then find a better site. Weighing in the balance the appellants' human rights, the public sector equality duty and the best interests of the children, a temporary planning permission was acceptable.

6. None of these conclusions have been challenged except that now, some 5 years later, the situation has changed such that the appellants argue they should have what would essentially be a lifetime permission to stay on the site. I shall discuss these changes below.

Main Issues

7. The main issues are, therefore, the impact of the site on the character and appearance of the area, whether the site is in a locationally sustainable position, whether, in the light of the latest flooding evidence, the site could be said to be safe until 2070 and the latest policy position concerning gypsy sites.

Reasons

Policy background

8. The main policy for gypsy sites is Policy 36 of the Chichester Local Plan which was adopted in 2015. It is accepted this plan is now quite old, and the Council are working on a review. An agreed statement of common ground was provided at the Hearing in which the Council accept policy 36 is out of date, but they argue that its criteria still carry weight. In other words the figures on which it is based are out of date, as they came from a 2013 GTAA, but the criteria, in particular 1 and 5 which say that sites should be well related to settlements and not in areas at risk from flooding, are still relevant.

9. All the relevant policies were considered recently by two different Inspectors. In September 2018 a hearing considered the land next door to this appeal site and the decision[1] was to refuse a gypsy site for two pitches. The Inspector found the development harmed the open countryside contrary to policy 48, which seeks, amongst other things, to protect views in and around the coast and the tranquil and rural character of the area. He also found it was not in a sustainable location contrary to policy 36(1). He found that criterion was in accord with the PPTS.

10. Subsequently, in November 2019 a decision[2] was issued following an inquiry, that allowed a gypsy site for a 5 pitch site elsewhere in the Chichester area. In that decision the Inspector subjected these policies to a rather more forensic examination. He found policy 36 to be out of date in its entirety and policy 48 carried reduced weight. Policy 36 requires sites to be either within or close to existing settlements, whereas the PPTS at paragraph 25 requires sites in the open countryside away from existing settlements to be very strictly limited. It also at paragraph 14 recognises sites may well be in a rural or semi-rural

[1] APP/L3815/C/17/3179554
[2] APP/L3815/W/19/3220300

setting. I am not sure any of these statements are contradictory. Sites that are close to an existing settlement (policy 36) will be the same as those that are not away from a settlement (PPTS). There doesn't seem to be a great deal of difference to me. Paragraph 25 of the PPTS isn't advocating rural sites per se, it merely says where there are rural sites, they shouldn't dominate the nearest settled community. I read this in the context of rural sites not being away from settlements in the first place. However criterion 1 of policy 36 is actually less restrictive that it at first appears as the full quote from it is "*sites should either be within or close to such settlements* ***or*** *with good access to major roads and/or public transport thus affording good access to local services*". Thus the emphasis is on proximity to services, not specifically to settlements. In my view therefore this criterion of policy 36 is not out of date.

11. Criterion 5 is that sites that are at risk of flooding should be avoided but that is not out of date as far as it goes. The NPPF has a rather more detailed approach to flooding. As there are no alternative sites available the exception test is applicable and the appellants accept the site is contrary to the NPPF, and by implication criterion 5 of policy 36.

12. I agree that policy 48 is more restrictive than the NPPF and does not contain the degree of flexibility of national policy, and so carries reduced weight. However, the NPPF still seeks to recognise the intrinsic character and beauty of the countryside, so the practical effect of reducing weight to policy 48 is very little.

Character of the countryside

13. Since the previous appeal the landscaped hedges and trees around the site have matured. The mobile home has been removed and the stable building, it was agreed, is now immune from enforcement action. The previous Inspector found the development, including particularly the mobile home, had significant implications for the ambience of the rural lane and the wider landscape. In my view the changes described above, inevitably reduce those implications. Nevertheless, the site is still away from other development and although now well screened is still visible as an incongruous element in the rural scene. It is contrary to policy 48 and the NPPF, but not as harmful as it was in 2016.

Sustainable location

14. In terms of its sustainable location, nothing has changed. The children attend the local primary school, which is in easy walking distance. There are no footpaths beside Ham Lane which lead to the school, but it is a windy rural lane and as I saw myself traffic speeds are slow and it is not heavily trafficked. I have no reason to disbelieve the appellants' assertion that other householders situated long the lane walk their children to school, albeit they are marginally closer, but in any event the distance is short and achievable. The bus from the stop outside the school provides a link to Selsey for the senior school there, so all the children either walk or use public transport to attend school, but no other facilities are in walking distance. From the school one can walk along Keynor Lane to the bus stops on the main road, but that is considerably further away and I have no reason to doubt the view that for most other facilities the appellants would rely on their motor vehicles.

15. I think it must follow therefore that the site is contrary to criterion 1 of policy 36 as it is not well located with a view to reducing vehicle travel to services and

facilities. Nevertheless, I am aware that as with any rural site, the degree of non-compliance with this criterion will vary, and compared to many sites in my experience, this one is not that bad, given the proximity of schools and bus stops. The harm is not therefore severe.

16. As for paragraph 25 of the PPTS, the site is in open countryside and although close to the ribbon development along Keynor Lane that includes the primary school that development does not amount to a settlement, so the site is away from the nearest settlement and sites that are away from settlements should be very strictly limited.

Flood risk

17. Flooding is the main issue for this appeal. The appellant provided a flood risk analysis which modelled various scenarios. There is very little between the parties in that both agree the site lies in flood zone 3(a), but that it is close to safer ground as Ham Lane is outside this flood zone. The flood risk stems from tidal flooding, not rain fall or flash flooding from the nearby stream, it is therefore inherently more predictable. Pagham harbour is protected by sea defences that currently prevent any dangerous flooding on the site. The variously modelled figures were scrutinised by the Environment Agency and it was agreed without any sea defences the current 1 in a 200 flood would lead to over a metre of water at the site, which would be dangerous.

18. The appellants' expert had produced a model to represent the likelihood of flooding at the site, assuming the flood defences remained in place. This showed that overtopping of the defences in the short and medium term was, not of itself a problem, but was likely to cause a breach of the defences by 2070 and that would lead to serious flooding at the site. Although there was some quibble about the exact figures the EA effectively accepted the model was accurate as far as it went, however, they had serious doubts about the way the model was constructed and so did not think it was fit for purpose. In which case, they argued, the precautionary principle required the modelling to assume no sea defences, and that pointed to immediate danger.

19. The EA provided a list of deficiencies which Mr Walton analysed in a table provided before the Hearing. At the hearing the EA representatives informed me their modelling group had looked at this rebuttal but still considered the model not fit for purpose. However, they were not in a position to say why. Mr Walton had in effect accepted the EA's original comments, but did not think they amounted to a finding that the model was not fit for purpose. For example, the lack of a roughness analysis and the use of 20m grid squares, rather than smaller ones was simply a function of the fact the land between Pagham harbour and the site was basically flat, and so a more detailed model to analyse undulations in the ground on a bigger scale was not necessary. The EA also missed that the breach model was supplied so their criticisms of a lack of breach modelling are unfounded. Some other issues such as not including other sea defences slightly further away and not modelling wave heights were not considered to be vital for this model and sensitivity testing was carried out and was satisfactory.

20. In layman's terms it seemed to me that Mr Walton had provided a relatively simple model for what he considered to be a relatively straightforward analysis. This was bearing in mind the development was only for 2 touring caravans and there wasn't a limitless budget. I was effectively invited to agree that the EA's

demand to dot every 'i' and cross every 't' was unnecessary. To reach this conclusion I need to consider what the actual effect on the occupants of the site would be if there was a breach. The appellants are signed up for the flood warning system which alerts people if there is likely to be a problem coming up and warns them there might be a breach within 24 hours. It was explained that tidal surges are predictable as we know exactly when the higher than normal tides are. If these coincide with a severe weather depression then it can lead to a dangerous tidal surge. Thus there is plenty of warning time available. Also, as the site is some miles from the sea, even if there were a sudden breach, it would take many hours for the floodwaters to reach that far inland.

21. During a recent storm event when a warning was issued the appellants were able to hitch up their touring caravans in order to escape to safety if the need arose. They then drove in a different vehicle to Pagham harbour to watch the weather, but no overtopping materialised and they were able to go home safely. That is the only event since they arrived on the site in 2015. Mr Walton stressed these were regional scale events, danger to Pagham harbour would affect much of this part of the coast. It was not just a single gypsy family that was affected but 1000s of people and there was a correspondingly robust warning system in place. I was advised that flood warning systems were relied on by gypsies in a number of areas and Mr Murdoch had personal experience of them beside the Trent at Newark and beside the Thames.

22. It seems to me therefore that since the last appeal the appellants have taken a sensible approach to managing the risk of flooding. The mobile home has gone and they are reliant on 2 touring caravans which can be easily moved. The day room has been built 1m above ground level and the internal electrics are all at waist height. The evacuation plan can be secured by condition, and such conditions have been shown to work – indeed it is in the appellants' own interest to make sure they do.

23. I have to give weight to the EAs objections to the model, even if I do not know what they are, but that weight is tempered by Mr Walton's convincing defence of his work. But it also seems to me that even if there is some doubt about the efficacy of the model, what that means is there might be some flood water reaching the site sooner than 2070, or the breach might happen quicker than anticipated. I am also aware these figures are not absolute predictions; it is that the likelihood of a breach increases the closer one gets to the 2070 date. But as Mr Walton pointed out the model actually showed the breach would be after 2070, that date was taken as a precautionary measure, so even if the date were to be brought forward it might not have any material effect.

24. All of this is based on the assumption that the sea defences at Pagham are left as they are. The EA pointed out their continued existence could not be assumed. Their latest review was that it was not cost effective to carry out any works at Pagham given the limited resources they had to hand. It is of course equally possible that the defences might be strengthened and the 2070 breach would never happen. We simply do not know. The EA accepted they had not so far had to make a decision to abandon a stretch of defended coast in this manner and given that to do so would affect 1000s of people I assume it would be a political rather than purely financial decision.

25. What can I take from this mass of uncertainty? Firstly I do not think it sensible to assume there are no defences. They exist, and will continue to do so, even if they are not upgraded or maintained. They currently protect the site from a 1in 200 event. Mr Walton's figures suggest they will continue to do so until about 2070. The EA doubt these figures but can provide no other date. If they are right then 2070 might be too far ahead, but it might be fine if between now and then work is carried out on the defences. What if there is a 1 in 200 event - which after all has a 0.5% likelihood of happening this year? Then the appellants are protected by their distance from the sea and the early warning system. They can easily escape to higher land which is very nearby. The actual danger to them is therefore minimal.

26. That doesn't mean that development should be allowed in areas that might flood, it is national policy that they should not, but the harm to this policy is minimal. All the relevant criteria in paragraph 167 of the NPPF are met. The most vulnerable elements are located next to the entrance where flood risk, is least, the permanent development has been designed to be flood resistant, residual risk is safely managed and an evacuation plan is in place. This suggests to me that in certain circumstances allowing a temporary permission would be reasonable. In this case there are strong reasons that point in this direction.

Gypsy sites

27. The Council accept they do not have a 5 year supply of gypsy sites. Their new gypsy DPD is being taken forward as part of the wider local plan review. A call for sites has gone out and the DPD is due to be published for consultation later this year. However, it includes housing and all the issues involved in the wider local plan review, not just gypsy sites. Mr Murdoch pointed out this was exactly the same situation the Council was in back in 2016, and before that in 2014 and before that going back many years. There would seem to have been a sustained failure[3] to provide sufficient gypsy sites.

28. Previous inspectors[4] have found there are long waiting lists and the numbers of pitches identified as needed have been under-estimated, nothing seems to have changed in the interim. It was agreed the appellants have nowhere else to go, and that no alternative sites are available. Again nothing seems to have changed in the last 5 years except the situation seems to have deteriorated somewhat. Given all this I share the appellants' lack of faith that the gypsy issue will be solved in the next few years by the local plan review, which itself may well be delayed by any of the controversial matters it will inevitably have to consider that are not gypsy related. So my view on this is there has been a sustained failure to provide for gypsy sites and there is little chance of that being remedied in the short to medium term. There are no alternative sites and the failure of this appeal will inevitably lead to the family going back on the road.

Other matters

29. The personal circumstances of the appellants haven't changed, except that they are about to increase as Mrs Standridge is pregnant. The children are all

[3] See 2016 DL APP/L3815/C/15/3070020
[4] Original 2016 DL and 2017 DL APP/L3815/W/18/3209147

settled in local schools and there is written support from the primary school and from the local doctor concerning various health issues.

30. The requirement for a payment to help mitigate any potential harm to the nearby Pagham Harbour SPA has been met by a signed s106 unilateral undertaking and this was confirmed by the Council.

Conclusions

31. I have borne in mind throughout this appeal the human rights of the appellants, particularly their right to a home, the public sector equality duty, in particular that the preference to live in a caravan and retain their travelling lifestyle is a protected characteristic and finally the best interests of the children. The latter are clearly best met by the provision of a stable home base from which to benefit from the local educational opportunities.

32. There was some suggestion that the best interests of the children were met by not letting them live in a location made dangerous by the propensity to flood. I agree that would be the case if the site was likely to flood, but even then, it would have to be balanced by the alternative of returning to the road, which cannot be in their best interests. However, in this case I am satisfied the evidence is that the site is unlikely to suffer from serious flooding for many years, possibly not until 2070, and if it does there is likely to be plenty of warning to allow the sensible and pragmatic evacuation plan to be exercised.

33. On balance therefore, although the development does harm the character and appearance of the countryside and is not at a locationally sustainable site, those harms are not severe. The lack of any alternative sites and the appellants personal circumstances are sufficient to outweigh those harms and they should be allowed to stay on the site. The only issue is therefore the length of time. I am not in favour of a short 5 year permission as I am not satisfied the situation regarding gypsy sites will be any different then. Also the granting a temporary permission to 2070, would suggest placing too much certainty on that date. However, the permission will have to be personal to the appellants and their resident dependent children. That will effectively place an end date that is likely to be round or about 2070 anyway. Looked at another way, if the flooding issue is set aside then the likely lack of future sites becoming available and the personal circumstances of the appellants would outweigh the harm caused and would point to a personal permission with no specific time limits. The flooding issue itself suggests a permanent permission is inadvisable, but a temporary one would be acceptable. The evidence suggests there is unlikely to be serious flooding for 40-50 years, by which time any personal permission would likely be approaching its natural conclusion.

Conditions

34. The site should be limited to gypsies only and as discussed above I shall make the permission personal to the appellants and their resident dependants. Other conditions are required to limit the number of caravans to two tourers because of the flood risk issue and to remove permitted development rights for fencing, walls etc and hardstanding in the interests of visual amenity. The flood evacuation plan needs to be agreed and can refer to the draught plan in Mr Walton's appendix 6. Finally a condition to prevent the day room from becoming a separate residential use is needed, and the condition preventing

commercial activity on the site from the original planning permission is still relevant and will be re-imposed.

35. Because the ground (a) appeal is to continue the use without complying with the condition that has been breached, allowing that would leave the planning permission subject to the other conditions on that grant of planning permission. Many of those are not appropriately worded given the new situation. It is therefore easiest to dismiss the ground (a) appeal and uphold the notice but grant planning permission on the s78 appeal for the development subject to the necessary conditions discussed above. The s78 appeal will override the enforcement notice and provide a stand-alone planning permission for the continued occupation of the site.

Simon Hand

INSPECTOR

Appendix 1
List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/L3815/C/20/3256647	MR AND MRS STUART AND AMI STANBRIDGE
Appeal B	APP/L3815/C/20/3256648	MRS AMI STANBRIDGE
Appeal C	APP/L3815/W/20/3256641	MR AND MRS STUART AND AMI STANBRIDGE

APPEARANCES

FOR THE APPELLANT:

Dr Angus Murdoch - Agent
Ian Walton – SLR Consulting (flood risk)
Stuart Stanbridge - appellants
Ami Stanbridge

FOR THE LOCAL PLANNING AUTHORITY:

Emma Kierans – Chichester DC
Tara Long
John Denman – Environment Agency
Sophie Brown

INTERESTED PARTIES:

Mr & Mrs Searle

DOCUMENTS

1. Agreed statement of common ground
2. s106 unilateral undertaking
3. Chronology of interactions with EA