
Appeal Decisions

Hearing Held on 18 August 2021

Site visit made on 9 September 2021

by R J Perrins MA

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

Decision date: 10 November 2021

Appeal Refs: APP/U1430/C/20/3261419/20 & 21

Land to the rear of Fir Tree Cottage, Netherfield Hill, Battle, East Sussex

- 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 Mr Billy Smith, Ms Sherri McCallister and Ms Susan Smith against an enforcement notice issued by Rother District Council.
 - The enforcement notice was issued on 10 September 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from agricultural use to a mixed use of agriculture and the stationing of caravans for residential purposes ("the Unauthorised Change of Use") together with associated works.
 - The requirements of the notice are:
 - i) Cease the use of the land for the stationing of caravans for residential purposes.
 - ii) Remove from the land the caravans in their entirety, which shall include all wires and pipes connected to the caravans.
 - iii) Remove from the land all other domestic paraphernalia connected to or associated with the unauthorised change of use including, but not limited to vehicles, wheelie bins, external steps to the caravans, gas canisters and children's play equipment.
 - iv) Break up and remove from the land the loose gravel used to create the hard surfacing, in the area shown in the approximate position coloured blue on the attached plan, being works associated with the unauthorised change of use, and then seed such area with grass.
 - v) Take up and remove from the land the sewerage package treatment plant, in the area shown in the approximate position coloured pink on the attached plan, together with any connections from it, being works associated with the unauthorised change of use, and then fill in such area with soil to match the level of that part of the land immediately adjacent to the south of that area to allow for natural regeneration.
 - The period for compliance with the requirements is twelve months.
 - The appeal by Mr Billy Smith 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 appeals by Ms Sherri McCallister and Ms Susan Smith proceed on ground (g) alone.
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Decisions

1. The appeal on ground (a) is dismissed as are the appeals on ground (g) and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matters

2. The Hearing was opened at 1000 hrs on Wednesday 18 August 2021. Taking place virtually using Microsoft Teams it soon became clear that the appellants, or their representative, were not present. In the interests of openness, fairness and impartiality I adjourned the hearing and efforts were made to contact the absent parties.
3. One of the appellants was contacted by phone and it was established that the appellants, as is their right, had appointed an agent to represent them at the Hearing. There was no information available¹ as to why the agent had failed to attend. In that light I adjourned the Hearing to consider the best approach.
4. Having reviewed the evidence and reflecting on the fact that the appellants have no intention of attending an event, I wrote to the parties the following day setting out my intention to decide the appeal by the written representation procedure². No substantiated objections were raised to that approach, the Hearing was formally closed on 6 September 2021 and I visited the site with the main parties on 9 September 2021. My decision is therefore based on the evidence submitted for the Hearing and answers to a number of supplementary questions as set out in my procedural note dated 19 August 2021.
5. Local residents represented collectively under the banner of 'the RAUDIN Association' ('the Association') who attended the Hearing also agreed to the written representation procedure. Whilst they also set out that they wouldn't be seeking to submit further highway evidence (as per my post Hearing note) they sought to supplement their evidence with further new material to support their evidence already submitted and described below.
6. However, I was informed by the Council that they had spoken to Mr Smith as I had requested, to ensure the appellants were aware of how the case was being dealt with. Mr Smith confirmed he had not appointed another agent and because of that I am not satisfied any of the appellants would be in a position to respond to new evidence. Moreover, all parties have a responsibility to adhere to the timetable in respect of submitting evidence. In that light, the new submissions made by the RAUDIN Association have not formed part of my deliberations.
7. On 20 July 2021, an update to the National Planning Policy Framework (the Framework) was published. The main parties have had the opportunity to comment on any implications this might have for their respective cases. I have taken those representations into account.

Preliminary Matter – Gypsy Status

8. The glossary to Planning Policy for Traveller Sites (PPTS) includes a definition of gypsies and travellers to whom the PPTS relates, for planning purposes. The Council accept that the appellant and other occupiers of the site meet the definition and points to confirmation from a Gypsy and Traveller Liaison Officer from another County and that such verification is usually accepted as being adequate for confirming status.

¹ Subsequently the agent contacted the Planning Inspectorate and explained sickness was the reason for non-attendance.

² This procedure was requested by the appellants when their appeals were submitted.

9. The Association dispute the Council's findings and submit a whole swathe of evidence concerning occupiers of the site including information from the Land Registry, Electoral Register, County Court judgments and social media. The Association considers that some of the site occupiers may also have access to bricks and mortar property and other sites. In the round, the Association considers there are many questions left unanswered about the occupiers' ability to demonstrate meeting the definition of gypsies and travellers.
10. Against that background the question I must ask is whether the evidence presented shows the appellant and his dependants having a nomadic lifestyle sufficient to meet the PPTS definition. Whether persons fall within the stated definition is a matter of fact and degree to be applied to their way of life at the time of the determination of the appeal.
11. Whilst the evidence from the Association goes undisputed, I have been unable to hear from the appellant or his dependants as to his current lifestyle. In the same way, the evidence put forward by the Association is untested, I cannot simply take it on its face. Therefore, the most compelling evidence currently is, in my view, that of the Council who have cited the evidence of a Liaison Officer from another authority. It seems to me the opinion of the Liaison Officer must be given a moderate degree of weight such is the nature of a Liaison Officer's role and knowledge of the site occupiers.
12. Given that, I see no reason, from the evidence currently available, not to agree with the Council's conclusion and I find that the appellant and his family are gypsies and travellers. In addition, subject to the restrictions that have been placed upon them due to the Covid-19 pandemic, that the members of the family also carry on a nomadic way of life.
13. Therefore, on the balance of probabilities, I find that the family fall within the PPTS definition of gypsy and travellers at the present time. Furthermore, the deemed planning application is for the development alleged. In this case that is the stationing of caravans for residential purposes. However, it is clear that the ground (a) appeal seeks permission for a residential use as a gypsy and traveller site for those meeting the PPTS definition. I have determined the appeal on this basis. The starting point is therefore whether the site is suitable, in principle, as a gypsy and traveller site.

The appeal on ground (a)

Main Issues

14. The main issues in this case are as follows:

- The effect of the development on the character and appearance of the area, designated as an Area of Outstanding Natural Beauty (AONB);
- the effect upon the adjacent Ancient Woodland; and
- whether the appeal site is situated within a sustainable location.

Reasons

Character and appearance

15. The site lies to the South of Netherfield Hill and sits between Fir Tree Cottage to the east and Ashes Wood, a designated ancient woodland, to the west. A

public right of way further to the east links Netherfield Hill to the woodland which is subject to a right to roam. At the time of my visit there were two mobile homes and one touring caravan and I was informed that another tourer was usually kept at the site.

16. The site is located within the countryside and the High Weald AONB. There are open fields to the south which share western and southern boundaries with the ancient woodland. Within view of the appeal site there is little built development save for Fir Tree Cottage. The site is screened from the road by a strip of trees and shrubs running parallel to it. Although glimpsed views of the nearest residential caravan can be found.
17. I accept that Fir Tree Cottage is nearby and has permission for an extension. In addition, the site had stables, shed and open barn with associated hardstanding. However, the previous development on site would have reflected the agricultural use and would not have been out of keeping with the AONB; it would not have come as a surprise to those viewing the site in the context of woodland and agricultural fields. That is unlike the current development.
18. The caravans are at odds with that rural character, they and the site in which they sit are unlike any other development in view. They lead the viewer to question how they came to be. That is not comparable to the extensions permitted within the existing residential setting of the nearby dwelling.
19. Moreover, the addition of domestic paraphernalia further detracts from the rural setting. Whilst screening planting would go some way to reducing that impact, that argument could be repeated too often to justify unacceptable development to the overall detriment of the AONB. For these reasons I find the development has adversely affected the landscape character. As a result, I find the development has led to unacceptable harm to the natural beauty and scenic value of the AONB.
20. That is at odds with Policies RA2, RA3(v), OSS4(iii) and EN1(i)(vii) of the Rother Local Plan Core Strategy 2014 (CS) and Policies DEN1 and DEN2 of the Rother Development and Site Allocations Local Plan (LP). These policies seek to secure development that respects, and does not detract from, the character of the area and conserves landscape character and enhances the AONB. There is also conflict with paragraph 176 of the Framework which indicates that great weight should be given to conserving landscape and scenic beauty in the AONB which is afforded the highest status of protection.

Ancient Woodland

21. Paragraph 180(c) of the Framework states that development resulting in the loss or deterioration of irreplaceable habitats, such as ancient woodland should be refused, unless there are wholly exceptional reasons, and a suitable compensation strategy exists. Policy EN5 of the CS seeks, amongst other things, to ensure development retains, protects and enhances ancient woodland.
22. The site is directly adjacent to Ashes Wood a *Plantation on Ancient Woodland* which is a priority habitat. There is no dispute that the development falls within the 15-meter buffer zone as advocated by the Planning Practice Guidance (the Guidance). The appellant points to an arboricultural report submitted with a

previous application to the Council. However, I have no copy as part of this appeal. Nevertheless, whilst I recognise the existing hardstanding has not changed and the caravans could be moved outside of the buffer zone, or are in positions where buildings previously existed, it is clear the use of the site has changed.

23. The introduction of foul drainage, surface water from the caravans, and human habitation, are areas of concern which may have unacceptable impacts upon the priority habitat. Whilst a water treatment package plant has been installed, it is not clear from the evidence whether this is working or is of a suitable size for the number of occupiers on site. Furthermore, there is no detail of how surface water is to be managed and the concerns of the Forestry Commission regarding sewerage being discharged without a permit remain unanswered.
24. Alongside that, no consideration or assessment has been made concerning the effect of increased domestic activity upon the habitat and no suitable compensation strategy has been submitted. Inevitably, without evidence to the contrary, I must find the development has resulted in unacceptable harm to the ancient woodland contrary to the Framework and CS. A matter that carries significant weight against the development.

Sustainable location

25. The site is in a location away from any settlements. There is no dispute that it is not easily accessible by public transport and that services and facilities including shops, restaurants, schools, hairdressers and the like. The nearest being Battle. It is approximately 1.5 kilometres from the defined settlement boundary of Battle approximately 2.5 kilometres in distance from Battle High Street Site. Occupiers are therefore likely to be reliant on the car as the main mode of transport.
26. Whilst the PPTS anticipates the likelihood of rural sites in the countryside and the Framework recognises that opportunities to maximise sustainable transport will vary from urban to rural areas. The appellant simply points to the number of cars on site being few and a 'huge housing development' nearby. However, I have no detail as to what that development may be, and the number of vehicles does not reduce the reliance upon them. There will inevitably be, given the number of occupiers on site, a good number of trips over and above that associated with a nomadic lifestyle.
27. Thus, the development is also at odds with Policies PC1, OSS3(v), LHN6(iii) and TR3 of the CS which seek to minimise the need to travel and support a transition to a low carbon future. That is reflected by the core principles of the Framework that seek to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling.

Other considerations

Need and Alternative Sites

28. Policy LHN5 of the CS requires provision to be made for five permanent pitches within Rother for gypsy and travellers over the period 2011-2016, and a further six pitches between 2016 and 2028. The Council set out that these requirements have been met either through implemented planning permissions or through the allocation of two sites (totalling six pitches) within the

Development and Site Allocations (DaSA) of the Local Plan, as set out in Policies BEX3, BEX3c & GYP1.

29. The DaSA sites are currently unoccupied and do not have extant planning permissions. Without any evidence to suggest the sites cannot be brought forward I must find that they would be deliverable. A further four pitches were granted planning permission in October 2020 (ref:RR/2020/1181/P), thus meeting some of the identified need. Whilst the appellant maintains there is an ongoing need for sites in the District, that is not quantified in any way.
30. I recognise that one of the two allocated sites may not be big enough for both families and the other may need to be shared with consequences, as discussed below. However, there is simply insufficient evidence before me to come to a robust conclusion that the allocated sites are completely unsuitable, not available or affordable for the appellant or that measures could not be put in place, such as screening between shared pitches, to make them tenable for the needs of the families.
31. For these reasons I find there are sufficient sites to meet the identified need through permissions and sites allocated through the Local Plan. Moreover, it has not been demonstrated that those sites would not meet the personal needs of the appellant and his family for a site.

Personal Circumstances

32. The appellant has confirmed that the site is occupied by five adults and five dependent children of school age, two of those children have disabilities. I also accept that one of the occupants is the sole carer for two of her older children (now adult) as evidenced by a previous social worker. I also recognise that the families need a registered address for school and health care and to live close by to access those services. The alternative of roadside living would not be appropriate.
33. However, I do not have full details of the children, their attendance at schools or where they are registered for health care. The appellant suggests that schools are being sorted as soon as possible but there is simply nothing to indicate where or when that would be, or what the provision would consist of. In the same way there is nothing before me regarding what the disabilities of the children are and what needs arise from them. The appellant has had ample opportunity to present this evidence but has failed to do so. There is also nothing to corroborate the view that there is a lack of alternative accommodation.
34. Whilst case law³ establishes that the best interests of the children are a primary consideration, and a settled base rather than a predominantly roadside existence is clearly in the best interests of the children. There is simply nothing before me to suggest that the alternative sites referred to above could not accommodate the families in a safe and reasonable way.
35. I say that recognising that there may be challenges around unfamiliar surroundings and new people, but that unfamiliarity presumably applies to any site. Thus, on the evidence currently before me, I give the best interests of the children moderate weight.

³ Including *AZ v SSCLG & South Gloucestershire DC* [2012] EWHC 3660 (Admin)

36. I have also considered whether a temporary permission would be justified, but again, given the very real prospect of alternative sites, such a permission would not be justified in any event.

Other matters

37. Given my overall decision I have not addressed all of the many counter arguments, including a number of court judgements, set out in the Association's extensive statement. Needless to say, those arguments, where relevant, have been considered as part of my deliberations.
38. Those deliberations included the matter of intentional unauthorised development. It is government planning policy that intentional unauthorised development is a material consideration that should be weighed in the determination of appeals. The written ministerial statement announcing this policy expressed concern that where the development of land has been undertaken in advance of obtaining planning permission there is no opportunity to appropriately limit or mitigate the harm that may have been caused.
39. In this case, I have found the development has caused harm, although planning permission should not be refused simply on the basis that development was carried out without permission. In this case the appellant sought to regularise the development by applying for a grant of retrospective planning permission. Furthermore, and whilst disputed by interested parties, I accept that the appellant moved onto the land during a Covid-19 lockdown when roadside living would have been more difficult. Although, as I have found above, the lack of available sites would not be a matter to weigh in favour of the unauthorised development.
40. Overall, on the evidence currently available, it seems to me that there was intentional unauthorised development but given the overall circumstances, including the personal needs of occupiers of the site, this carries limited weight against the development.
41. With regards to highway safety, some doubt has been cast on the figures used in the appellant's traffic survey which was commissioned for the previous planning application. However, that survey is not before me and I see no reason to disagree with the Council that visibility splays could be secured by way of conditions. That was reflected by what I saw on site.
42. Finally, turning to the living conditions of those living nearby, I recognise the development is unlike that which existed previously and does not reflect the dwelling at Fir Tree Cottage. Comings and goings may have increased along with noise and disturbance from increased activity. However, I see no reason to disagree with the Council, given the separation distance from the mutual boundary, that the effect is limited and has not resulted in unacceptable harm to the living conditions of occupiers of Fir Tree Cottage.

Balancing exercise

43. I have found conflict with the Framework and Policies RA2, RA3(v), OSS4(iii) and EN1(i)(vii) of the CS and Policies DEN1 and DEN2 of the LP which seek to protect the character and appearance of the AONB and countryside location. In addition, I have found harm to the adjacent ancient woodland contrary to Policy EN5 of the CS. The Framework is clear in respect of AONBs, in that great weight should be given to conserving and enhancing landscape and

scenic beauty in the AONB. With regards to ancient woodland, development should be refused unless there are wholly exceptional reasons; there are not. These matters together attract significant weight.

44. I have also found the site to be in an unsustainable location which adds further moderate weight to the balance in favour of the Council's case. As does the matter of unintentional unauthorised development. The need for additional sites and lack of alternative sites has not been demonstrated and these matters do not weigh in favour of the appellant's case either.
45. One matter does weigh in favour and that is the best interests of the children and personal circumstances. Nevertheless, given the paucity of evidence in that regard, these matters together carry only moderate weight. Therefore, the combination of these factors is not sufficient to clearly outweigh the harm to the countryside location and AONB. The development is at odds with the local plan and core strategy policies as set out and the Framework.
46. The appellant's human rights have to be fairly balanced against the legitimate objective of protecting the nationally important landscape and scenic beauty of the AONB and the adjacent ancient woodland. Dismissal of the appeal would not make any of the occupiers immediately homeless, but it would deprive them of the possibility of establishing a home on the appeal site. Dismissal would represent an interference with their rights under Article 8 of the First Protocol of the European Convention on Human Rights.
47. However, the protection of the AONB and ancient woodland is an important aim of local and national planning policies and has a clear basis in the relevant planning legislation. Furthermore, the availability of alternative sites cannot be ignored. 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 occupiers' rights. They are proportionate and necessary and hence would not result in a violation of rights under Article 8.
48. In reaching this decision and in accordance with the public sector equality duty, I have had due regard to minimising the disadvantages suffered by the appellant and occupiers of the site and to meeting their needs in so far as they are different to those without a relevant protected characteristic.

Overall conclusion on the ground (a) appeal

49. The other considerations do not indicate that the appeal should be determined other than in accordance with the development plan as a whole. The development is contrary to it and the Framework and is unacceptable. Therefore, for the reasons given, and having considered all matters, the appeal on ground (a) fails.

The appeals on ground (g).

50. For all ground (g) appeals, the appellants seek a period of 24 months. The occupants of the site have been given 12 months to leave the site which the appellants consider would mean they would have to live by the roadside. The appellants also seek the longer compliance period due to the pandemic and the medical issues of the occupants.

51. I accept the government has identified some Gypsies and Travellers as being particularly vulnerable and have the potential to be disproportionately impacted by COVID-19, and self-isolation would be particularly challenging if they were at the roadside. However, the response to Covid-19 has moved on considerably since the appeals were made, with the majority of public facilities now open.
52. Moreover, as set out in the ground (a) appeal, I am not convinced there is a lack of alternative sites available for the appellants to consider within 12 months. Furthermore, I simply have no details of what medical issues would require any of the occupiers to live on the site for 24 months. There is nothing to suggest that such medical requirements could not be satisfied on an alternative site. In the same way there is nothing before me to suggest that the children would be disadvantaged in terms of schooling or health care if they relocated to another site.
53. On the evidence before me I see no reason why 12 months is not a sufficient period to comply with the notice.
54. Thus, the appeals on ground (g) also fail.

RJ Perrins

Inspector