



Appeal Decision

Hearing Held on 17 November 2021

Site Visit made on 18 November 2021

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd December 2021

Appeal Ref: APP/U1430/W/20/3250142

**Land adjoining High Views, Loose Farm Lane, Battle, East Sussex
TN33 0TG**

- 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 Ms A Searle against the decision of Rother District Council.
 - The application Ref RR/2019/1565/P, dated 27 June 2019, was refused by notice dated 31 October 2019.
 - The development proposed is described as 'change of use of existing agricultural land for stationing of 2 mobile homes for residential purposes by Gypsy family members, together with communal utility/day room'.
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Decision

1. The appeal is allowed, and planning permission is granted for the change of use of existing agricultural land for the stationing of two mobile homes for residential purposes by Gypsy family members, together with the provision of a communal utility day room, at Land adjoining High Views, Loose Farm Lane, Battle, East Sussex TN33 0TG, in accordance with the terms of the application, Ref: RR/2019/1565/P, dated 27 June 2019, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. Since issuing its decision the Council has adopted the Development and Site Allocations Local Plan 2019 (DSALP). The Battle Neighbourhood Plan (NP) has also been made and a revised version of the National Planning Policy Framework (the Framework) published. The Council and appellant addressed these changes in their submissions, and I have had regard to them.
3. Two touring caravans have been moved onto the appeal site and are currently occupied as homes. A small shed has also been erected. As such, the development applied for has commenced. However, the occupants intend to erect a communal utility day room and move two mobile homes onto the site. Throughout my decision I have therefore referred to the impacts the proposal would have rather than is having.
4. It was confirmed at the hearing that the Statement of Common Ground is agreed. Evidence was submitted during the hearing and I accepted this as it was relevant, reasonably brief and capable of being addressed by the parties present. As a result, no one was prejudiced by this course of action.

Background

5. The Planning Policy for Traveller Sites (PPTS) sets out the Government's planning policy for traveller sites and applies when the occupiers of a proposed site would meet the definition for planning purposes of a Gypsy and Traveller.
6. It was confirmed at the hearing that the future occupants of the two pitches applied for would be as follows:

Pitch 1 – Ms Stacey Searle and Mr Danny Kelly and their two children.

Pitch 2 – Mr Darren Penfold and his son.
7. I was advised at the hearing that Ms Searle, Mr Kelly and Mr Penfold all travel for work and this includes attendance and trading at the traditional fairs. However, no documentary evidence has been supplied by the appellant to corroborate this. That said, a letter has been provided by Friends, Families and Travellers and this supports what I was told. Moreover, the Council has not taken an alternative view or suggested the submissions are inconsistent or inaccurate. Accordingly, there is nothing of substance before me to suggest the future occupants of the two pitches applied for do not travel for economic reasons and thus follow a nomadic habitat of life. On balance, I find that they currently meet the definition in the PPTS and consequently the policies within it are relevant to my assessment.

Main Issues

8. The main issues in this appeal are:
 - The effect of the proposal on the character and appearance of the area, including whether it would conserve and enhance the High Weald Area of Outstanding Natural Beauty (AONB); and
 - Whether the appeal site is a suitable location for the proposal with reference to the spatial strategy in the development plan.

Reasons

Character, appearance and the AONB

9. The appeal site encompasses an area of hardstanding and an agricultural building accessed off Loose Farm Lane. To the north of the appeal site is ribbon development consisting in the main of detached dwellings along Hastings Road. These dwellings are not especially prominent in views from Loose Farm Lane due to the size and verdancy of the rear gardens.
10. That said, there is a scattering of buildings located to the east of the appeal site and behind the frontage development along Hastings Road. There is also a further cluster of buildings around Cedarwood House. This cluster of buildings is set amongst an attractive landscape of small rolling fields interspersed with generous areas of woodland and hedging. In this respect the area around Cedarwood House exhibits some of the key characteristics of the AONB as listed in the DSALP.
11. As a result, the character of Loose Farm Lane changes quite markedly when traveling away from Hastings Road, with a built-up suburban context morphing

- into bucolic open countryside. This process is quite gentle due to the spaciousness provided by the rear gardens of the properties in Hastings Road.
12. The siting of two mobile homes and an amenity building along with the other paraphernalia required to occupy the pitches would add visual clutter, some of which would be of a utilitarian appearance. This would intensify development behind the building line of Hastings Road and erode the soft transition that is currently evident between the settlement and open countryside. The visual impact of this would be apparent from Loose Farm Lane and the land to the south of the appeal site. Added to this would be the cumulative impact from viewing the appeal scheme alongside the two pitches at High Views.
 13. I therefore share the view of a previous Inspector¹ that a change from the agricultural character of the appeal site to a residential use would harm landscape character. This is because it would introduce domestic clutter and activity at a sensitive edge of settlement site that adjoins high quality open countryside. Moreover, the High Views approval² was limited to two pitches to minimise the impact on the appearance of the area.
 14. That said, the existing conifer hedges provide reasonably effective year-round screening. They are, however, stark suburban features that appear out of place. Over time the conifer hedges could die or be removed, especially if they become tall and hard to manage. They should not therefore, be relied upon to mitigate the impacts of the proposal. To this end, the appellant proposes a new hedge along the southern boundary of the site. If this was thick and comprised of native species it could provide a necessary added layer of mitigation that could assist in settling the development into its context.
 15. Moreover, the pitches occupy a site that currently contains a low-quality and tired utilitarian building surrounded by hard standing and sandwiched between a house and two approved pitches. In this respect the proposal would not result in the loss of a conventional greenfield site and would have the character of infilling. There are also other buildings and structures in the near vicinity and therefore the pitches would not appear discordantly isolated. The mobile homes would also be arranged side on to the open countryside in a way that would lessen the impact. The spaciousness of the plot would also ensure that the mobile homes and day room would not appear cramped. The position and siting would therefore result in a subtle impact on the landscape.
 16. Thus, for the reasons outlined above, the negative impact of the proposal on the character and appearance of the area would not be of a high order. In fact, the harmful impact would be reasonably subtle and modest. However, this would not result in a proposal that conserves and seeks to enhance the AONB or not detract from the character and appearance of the area. The proposal would therefore result in a conflict with Policies DEN1 and DEN2 of the DSALP and Policies OSS4 and EN1 of the Rother Core Strategy (CS).

The spatial strategy in the development plan

17. Paragraph 25 of the PPTS states that local planning authorities should strictly limit new traveller sites in open countryside that are away from existing settlements or outside areas allocated in the development plan.

¹ APP/U1430/W/17/3188307

² APP/U1430/C/11/2147502 and 2147503

18. The appeal site adjoins, and is not away from, the settlement boundary of Battle as defined in the NP. It is however, outside an area allocated in the development plan. The Council suggested at the hearing that this means areas allocated for Gypsy and Traveller development and the appellant did not disagree. This seems logical as a means of directing development to allocations in the first instance. As a result, the appeal site is in a location where new Gypsy and Traveller development should be strictly controlled. The Council seeks to do this through the CS, including Policies RA3 and LHN6³.
19. Policy RA3 of the CS allows the creation of new dwellings in the countryside in extremely limited circumstances. The policy includes reference to four such circumstances. The appellant and Council agreed at the hearing that this list is not closed and therefore other extremely limited circumstances not listed could occur and be consistent with Policy RA3.
20. In this respect Policy LHN6 of the CS provides a potential pathway for permitting Gypsy and Traveller sites in the countryside. It sets out several criteria and if these are met then it is reasonable to conclude that an 'extremely limited circumstance' for the purposes of Policy RA3 would have occurred. The criteria address several matters such as being close to a settlement, appropriate in scale and accessible by sustainable transport.
21. The criteria in Policy LHN6 are all met save for the requirement that there be no unacceptable visual or landscape impact, especially in the High Weald AONB. As I have already concluded that the proposal would not preserve and enhance the AONB the second criteria is offended. The implication being that there is also a conflict with Policy RA3. As a result, the proposal is at odds with the spatial strategy in the development plan.

Other Harm

22. The siting and occupation of two caravans at the appeal site, and thus the establishment of two pitches, amounts to intentional unauthorised development because it has taken place without the prior grant of planning permission. As such, the 2015 ministerial statement is relevant⁴.
23. There is no evidence before me to demonstrate the works have resulted in the loss of any soft landscaping or other feature of note. In effect, two touring caravans have been sited on an existing hard standing, which appears to have been modified slightly, and a small shed and some fencing erected. It is significant that mobile homes have not been moved onto the site. As such, the physical works are minimal and could be easily remediated. Accordingly, the undertaking of intentional unauthorised development adds only very limited additional weight as a material consideration against the proposal.

Other Considerations

The general need and supply of pitches

24. The PPTS states that local planning authorities should set pitches targets to address the likely accommodation needs of travellers in their area that have PPTS status (because they meet the PPTS definitions). It also states that local

³ The Council also referred to Policy RA2 in its reason for refusal, but this sets out an overarching strategy for development in the countryside rather than specific criteria against which the acceptability of the proposal should be judge. As such, the Council confirmed at the hearing it is not particularly relevant, and I agree.

⁴ Green Belt Protection and Intentional Unauthorised Development 2015

- planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites against their locally set target. The supply can include both approved and allocated sites.
25. Policy LHN5 of the CS sets the target at five pitches between 2011-2016 and six between 2016 and 2028. The Council has approved enough pitches to address the 2011-2016 target. Since 2016 the Council has approved two pitches at the Bexhill allocation, albeit in outline, and four pitches at Bramhill Farm. Added to this, there is a further three pitches allocated at Bexhill and one to the west of High Views. As such, the Council submit that the supply for the next five years is 10 pitches, which exceeds the locally set target.
26. The PPTS states that to be considered deliverable, sites should be available now, offer a suitable location for development and be achievable in the next five years.
27. The Council were unable to advise how the allocation at land west of High Views will be delivered. It is in private ownership and there does not appear to have been recent communication between the owner and the Council regarding their intentions and timescale. There is no extant planning application⁵, and the site is not on the market. The indications are that it is not available now. Moreover, I share the appellant's scepticism over the ability to move a mobile home onto the pitch given its narrow access. As a result, there is some doubt whether there is a realistic prospect of delivery within five years. Based on the evidence before me, the pitch should not currently be considered deliverable.
28. There are similar drawbacks with the three remaining plots allocated on the Bexhill site. The Council were unable to direct me to any communications with the landowner setting out their intentions and there is no extant application. Moreover, the pitches are not on the market. Evidence⁶ provided at the examination of the DSALP suggests that the pitches are achievable. That said, there is no phasing requirement to bring the pitches forward before the allocated housing. The appellant submitted at the hearing that this may result in an incentive not to deliver the pitches, because it could suppress the ability to sell the housing allocated on the remainder of the allocation. Therefore, the pitches are not available now and consequently they should not be considered deliverable. Added to this is the uncertainty over whether there is a realistic prospect of delivery within five years.
29. The PPTS explains that pitches with planning permission should be considered deliverable until permission expires, unless there is clear evidence that they will not be implemented in five years. The outline nature of the planning permission for the two pitches at Bexhill means further submissions would be required before works can commence. The time frame for further applications is unclear. I also understand that the application was not made by the landowner. This is significant because I have already mentioned that the intentions of the landowner are unclear. The evidence before me leads to some doubt over the deliverability of the approved pitches.
30. However, I am not satisfied that the evidence above amounts to *clear evidence* that they *will not* be implemented. In this respect, there is no statement from the landowner confirming that the pitches would not be delivered. Nor is there

⁵ The permission granted in 2015 has lapsed and ownership changed

⁶ A swept path analysis

some form of feasibility or viability assessment suggesting they are unlikely to come forward within the next five years or evidence that there is no longer a demand for the pitches. As a result, the two pitches should be regarded as being deliverable.

31. There was no dispute between the parties that the Bramhill Farm site meets the criteria to be considered deliverable. This alone is sufficient to provide five years' worth of sites. This is because the six-pitch target runs to 2028, which exceeds the relevant five-year period. Therefore, the supply of around 4-6 pitches is sufficient to demonstrate a five-year supply of pitches.
32. That said, I was informed at the hearing that the Council's pitch target is based on a background paper dating from 2011, which in turn uses evidence that informed the preparation of the South East Plan and dates from 2006. The evidence underpinning the Council's pitch target is therefore seriously out of date. The situation regarding the accommodation needs of travellers could have altered considerably in the intervening period. In particular, household formation and in migration could have occurred. The annual caravan count is unreliable in establishing a need as it is a snapshot in time. The Council has not provided any figures relating to waiting lists.
33. The appellant suggests that the accommodation needs could be as high as eighteen pitches. Limited evidence was supplied to support this proposition, although discussions at the hearing suggested it could be a plausible figure. The Council does not accept that the need is as high as this but conceded at the hearing it was probably higher than six pitches.
34. In conclusion, the Council has set a local pitch target and allocated sites to meet this. It also has a five-year supply of pitches. However, there are some doubts regarding the deliverability of the allocated pitches and the locally set target was based on seriously out of date evidence. These latter factors weigh in favour of the proposal.

The accommodation needs of the future occupants

35. Before moving onto the appeal site Ms S Searle and Mr Kelly and their two children were living with Ms S Searle's brother in his pitch at High Views. This situation became untenable given Mr Searle's medical condition. The 'doubling up' also necessitated the need for an additional pitch for Ms S Searle and her family, as otherwise there would be overcrowding and a breach of condition if they lived in their own caravan at High Views.
36. I was advised at the hearing that they have considered several alternatives including the allocated pitch at land west of High Views. They approached the owner but were advised he would only sell at a price akin to a residential building plot. This would be unaffordable. They also looked at the Bexhill pitches (approved and allocated), but were unable to communicate with the owners and considered it would be too expensive for them to develop. Moving to Bexhill would also mean that they are away from family and the children's current school. I will return to the implications of this.
37. Ms S Searle and her family are not on any local waiting list for a pitch, but they consider there is little point in doing so. This is because the local authority run site at Robertsbridge is full and dominated by a single family. It is therefore highly unlikely that they would be able to occupy a pitch there. It was

confirmed that if the appeal were dismissed then they would either live on the roadside or move back onto the High Views site in breach of conditions.

38. I was advised at the hearing that Mr Penfold has no permanent base and would have to return to living on the roadside if the appeal was dismissed. His son would have to come and live with him given his mother's (the appellant's) medical condition. He is also not on a waiting list for the same reasons as Ms S Searle and her family. The allocations are similarly not an alternative given the lack of certainty over availability and achievability.
39. Little corroborating evidence has been supplied by either the appellant or the future occupants. That said, the submissions are plausible and undisputed by the Council. Some of the points made at the hearing were supported by the local knowledge of the representative from Friends, Families and Travellers. The Council were unable to point to any other available sites or a timeframe that would see the allocated sites being delivered. Nor is it clear what the timeframe is for a new Gypsy and Traveller Accommodation Assessment and how long it would take for additional pitches to be identified if required, as is likely. The four pitches at the Bramhill Farm site are already occupied. As a result, I am not satisfied matters would change significantly within a reasonable period (up to five years) to justify a temporary permission. As a result, the occupants of the appeal site are in acute need of permanent accommodation. The appeal scheme would meet their accommodation needs and provide a permanent base from which to pursue a nomadic lifestyle.

Personal circumstances

40. The Council does not dispute that the current occupants of the appeal site are part of an ethnic minority and thus have the protected characteristic of race under s149(7) of the Equality Act 2010. In such circumstances, s149(1) of the Act requires due regard to be had to the need to, amongst other matters, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not. This includes minimising the disadvantages connected to that characteristic.
41. The nomadic habit of life of the occupants of the pitches is linked to their culture. However, without a settled base it is difficult for them to balance their traditional way of life with the practical realities of modern living. Facilitating this balance is an important part of achieving the social sustainability sought by Paragraph 13 of the PPTS, as is the close proximity of the appeal site to the established settled community at Battle, as this fosters interaction.
42. Thus, the equality implications weigh in favour of permitting the pitches in this instance because dismissing the appeal would perpetuate the disadvantages currently being endured by the occupants of the touring caravan, especially so given the absence of alternative accommodation.
43. Moreover, Article 3(1) of the United Nations Convention on the Rights of the Child states that the best interests of a child shall be a primary consideration. This means no other consideration is more important. There are three children in this instance and their best interests need to be carefully considered. The children of Ms S Searle and Mr Kelly attend a local school. They have previously been subject to bullying, but have not at their current school, which has been very accommodating and allows them time to pursue their traditional nomadic way of life.

44. Dismissing this appeal would likely result in them eventually having to move schools with the inherent disruption this would entail. It could also result in them having to live for a period on the roadside or overcrowded accommodation with their uncle. This would not be suitable given their uncle's medical condition. Remaining where they are would allow them to live in an extended family and pursue a traditional way of life. Their best interests would be served by permitting the appeal. Added to this, Ms S Searle is the primary carer for both her mother and brother. Living on site would allow her to fulfil this role by being on hand when needed.
45. Mr Penfold's son is educated at home and therefore could be schooled elsewhere. However, dismissing the appeal would result in him having to be away from his mother and probably living on the roadside. He could not live with his mother because of her health and the subsequent need to isolate.
46. All the indications before me are that if the appeal is dismissed the families would have to pursue a life on the roadside. This would place stress upon the families. Moreover, if they are unable to find a settled base, and there is little evidence that they will, then the children will have a disrupted childhood, and the significant disadvantages this would entail. Thus, their best interests would be served by establishing a permanent settled base now so there is certainty over where they will live and/or go to school.
47. An enduring settled base would also enable access to healthcare and support the children's welfare by, for example, affording them a sense of security and continuity and enabling them to attend clubs, make friends and generally establish themselves in a local community.

Other Matters

48. I have carefully considered appeal decisions APP/U1430/C/20/3261419/20 & 21, which were submitted by the Council at the hearing. The circumstances in that instance were different in several ways, including a lack of evidence from the appellants regarding their personal circumstances and the suitability of alternatives, including the allocations. Moreover, there was harm to an ancient woodland and from the unsustainability of the location. As a result, there is no inconsistency between my findings and those of the other Inspector, which are based on the evidence presented in the respective cases.

Planning Balance

49. The proposal would result in some modest harm to the character and appearance of the area and in so doing would fail to conserve or enhance the AONB. This would be contrary to the development plan. Added to this is the very limited harm that has occurred from intentional unauthorised development. The Framework states that great weight should be given to conserving and enhancing the AONB, which has the highest status of protection. The proposal would also be at odds with the Council's spatial strategy.
50. Balanced against this there are several points in favour of the proposal. Firstly, the current pitch target is based on dated evidence and therefore it is probably lower than what is required. In this context the Council's ability to demonstrate a five-year supply of pitches is not determinative. The future occupants are also in acute accommodation need and the proposal would meet

the best interests of three children. There are also other personal circumstances weighing in favour of the proposal, such as the equality implications and the healthcare needs of the occupants of High Views. These are matters of significant weight

51. Overall, the other considerations would outweigh the cumulative harm. This indicates that the proposal should be determined otherwise than in accordance with the development plan.

Conditions

52. As the development has already commenced it is unnecessary to impose a condition in this regard. However, it is still necessary to impose a planning condition in the interests of certainty.
53. The proposal is acceptable due to the personal circumstances of the intended occupiers. Therefore, it is necessary to impose a personal permission despite the pitches at High Views not being restricted in this way. It is necessary to restrict occupation to those meeting the PPTS definition.
54. As only two pitches have been justified it is necessary to confirm this. It is necessary in the interests of safeguarding the character and appearance of the area and the living conditions of neighbours to limit the size of vehicles and the extent of external lighting, and to prevent commercial activity. For the same reasons it is necessary for a site development scheme to be submitted for approval that addresses the landscaping, boundary treatment and drainage of the site and for the landscaping to be protected.

Conclusion

55. The proposal would not adhere to the development plan but in this instance, there are other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal has succeeded.

Graham Chamberlain
INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr A Heine
Ms S Searle

Heine Planning Consultancy
for the Appellant

FOR THE LOCAL PLANNING AUTHORITY

Mr Carthcart

Rother District Council

INTERESTED PARTIES

Emma Nuttall

Friends, Families and Travellers

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

1. Confirmation email from the appellant's agent that the Statement of Common Ground is agreed
2. Committee report for the Tollgates site
3. Block plan showing two pitches at the Bexhill allocation BEX3 (Land east of Watermill Lane)
4. Committee report for application RR/2020/1672/P
5. 'An overview of unmet need for pitches on Traveller sites in England' by Friends, Families and Travellers
6. 'No place to stop: Research on the five-year supply of deliverable Gypsy and Traveller sites in the South East of England' by Friends, Families and Travellers
7. Appeal decisions APP/U1430/C/20/3261419/20 & 21
8. Policy BA1 of the CS with supporting text.

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 1:1250 scale location (red line) plan titled 'High Views, Loose Farm Lane, Telham, Battle';
 - 1:500 scale layout plan titled 'High views – Extension to existing family group';
 - 1:100 scale floor plans and elevations titled 'provision of communal utility/day- room to serve 2 proposed gypsy residential caravans'
- 2) The site/mobile homes hereby permitted shall not be occupied or used other than by the following:

Pitch 1- Ms Stacey Searle and Mr Danny Kelly and their resident dependents.

Pitch 2 – Mr Darren Penfold and his resident dependents.

When the land ceases to be occupied by those named 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 in accordance with a scheme and timetable that has first been submitted to and approved in writing by the Local Planning Authority.
- 3) The site shall not be occupied by any persons other than Gypsies and Travellers as defined in Annex 1 of the Planning Policy for Traveller Sites (revised version published August 2015) or any subsequent modified or replacement definition.
- 4) There shall be no more than two pitches within the site. On each of the two pitches hereby approved no more than two caravans shall be stationed at any one time, of which no more than one shall be a mobile home or a static caravan as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968.
- 5) No vehicles over 3.5 tonnes shall be stationed, stored or parked on the site and no commercial activities, including burning, shall take place on the land, including the storage of materials, plant or waste.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment, hardstandings and materials brought onto the land for the purposes of such use shall be removed and the land restored, in accordance with a scheme approved by the Council, within 28 days 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, and notwithstanding the submitted details, a Site Development Scheme, hereafter referred to as the 'Scheme', for:
 - (a) external lighting;
 - (b) all boundary treatments and all other means of enclosure (including internal sub-division);

- (c) hard and soft landscaping for the entire red line site area and screen planting including details of species, plant sizes and proposed numbers and planting densities;
- (d) the external finishing materials of the communal utility/day room;
- (e) the management, maintenance and drainage of surface water.
- (f) A timetable for implementing all of the above.

shall have been submitted for the written approval of the Local Planning Authority and the said Scheme shall include a timetable for implementation.

- ii) If within 11 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 be retained.

- 7) Any trees or plants put in place in accordance with condition 6) above which within a period of 5 years from their planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation
- 8) No external lighting shall be put in place or operated on the site at any time other than that which has been previously submitted to and approved in writing by the Local Planning Authority as part of the Site Development Scheme.

End of Schedule