
Appeal Decisions

Hearing held on 22 March 2022

Site visit made on 22 March 2022

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2022

Appeal A Ref: APP/Z3825/C/21/3271264

Appeal B Ref: APP/Z3825/C/21/3271265

Land on the north west side of Junipers, Harbolets Road, West Chiltington, West Sussex RH20 2LG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Michael Casey and appeal B by Mr Paddy Maloney against an enforcement notice issued by Horsham District Council.
- The notice, numbered EN/20/0471, was issued on 9 February 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to use for the stationing of caravans for residential occupation and associated operational development (hardstanding, utility pipes and septic tank).
- The requirements of the notice are to:
 1. Case the use of the Land for the stationing of caravans for residential purposes.
 2. Remove from the Land all caravans and associated residential paraphernalia.
 3. Remove from the Land all works of operational development incidental to the unauthorised residential caravan site use of the Land (comprising hardstanding, drainage and septic tanks)
 4. Remove from the Land all materials and debris resulting from compliance with the above steps 1, 2 and 3.
 5. Restore the Land to its condition before the breach took place.
- The periods for compliance with the requirements are: Steps 1 and 2 ten (10) months from the date this notice takes effect, steps 3, 4 and 5 twelve (12) months from the date this notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(e), (f), (g) of the Town and Country Planning Act 1990 as amended. In addition, appeal A is proceeding on the ground set out in section 174(2)(a) of the Act. 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.

Summary Decision: The appeals are dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. Since the enforcement notice was issued a close boarded fence has been erected behind the hedge next to the road and to the side boundaries of the land. This is not subject of the enforcement notice, the development subject of the appeal under ground (a) or the deemed planning application.
2. A draft Local Plan was published for consultation under Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012. A revised draft Local Plan was prepared for publication under Regulation 19 of those regulations. However, that was never published and the process of

preparing the Local Plan has been paused. Consequently, I give limited weight to the policies within the draft Local Plan.

3. A draft West Chiltington Neighbourhood Plan has been submitted to the Council. It is at an early stage in preparation, such that its policies can only be given limited weight.
4. A planning application was submitted for the change of use of the land to a caravan site for residential occupation. However, that was made invalid by the Council as part of the land, including the access, appeared not to be in the ownership of the appellant and notice was not served on any other landowner. I understand this may be due to incorrect records at the Land Registry. However, the application has not been determined and is not subject of this appeal.

The Appeals on Ground (e)

5. Appeals on this ground relate to whether the enforcement notice was served as required by section 172 of the Act. The appellants suggest that the Council quoted the incorrect fee on the guidance attached to the enforcement notice. This is required to be provided by section 173 of the Act. As such, there is no suggestion that the notice was served other than in accordance with section 172 of the Act, such that the appeal on this ground must fail.
6. I note that the incorrect fee was noticed prior to submission of the appeal and the correct fee was paid for the appeal such that it was able to proceed. As a result, no substantial prejudice was caused to the appellants and I am able to proceed with determining the appeal, including under ground (a) for which the fee was required.
7. For these reasons, I conclude that the appeals under ground (e) should fail.

The Appeal on Ground (a) and the Deemed Planning Application

Main issues

8. The main issues are:
 - the effect of the development on the Arun Valley Special Areas of Conservation, Special Protection Areas and Ramsar sites in relation to water neutrality;
 - the effect of the development on the intrinsic character and beauty of the landscape;
 - the effect of the development on highway safety with regard to the access to the site from Harbolets Road; and
 - whether there are other material considerations that would outweigh any conflict with development plan policies, such as the personal circumstances of the appellants and the need for gypsy and traveller accommodation within the District.

Reasons

Water neutrality

9. The site is located within the Sussex North Water Supply Zone where Natural England have indicated that groundwater abstraction may have an adverse effect on the integrity of the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar Site. They have advised that developments within this zone must not add to this impact.
10. I understand that water is abstracted from the ground close to the Arun Valley SAC, SPA and Ramsar Site and this may lower the water table. As a result, this may result in damage to the habitat for certain protected species.
11. The SAC, SPA and Ramsar Site is an internationally important habitat that provides habitat for the qualifying species of Lesser Ramshorn Whirlpool Snail. It is protected in legislation by the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). The proposal would not be directly connected with or necessary to the management of the protected site. As set out above, Natural England suggest that additional development in the area is likely to affect the integrity of the Arun Valley sites. This effect would be through water abstraction to meet the needs of residents of development, including at the appeal site. It is necessary to consider any effects on a precautionary basis. The effects would arise from development either alone or in combination with other projects, such as other housing development in the area.
12. As a result, and taking account of case law, as the competent authority were I to consider allowing the appeal it would be necessary for me to carry out an appropriate assessment to determine the extent of those effects, whether they could be avoided or whether mitigation measures could remove or reduce the effects. I will return to this after considering whether there are other material considerations that would need to be taken into account and could affect an appropriate assessment.

Landscape

13. The land to the north-west of Junipers comprises a long but shallow site that fronts Harbolets Road. To the front is a mature treed hedge behind a narrow verge on the road edge.
14. The surroundings comprise a fairly flat landscape of small fields interspersed with development. There are a number of houses around the junction of Harbolets Road with Broadford Bridge Road, including the neighbouring dwelling of Broadford. There is sporadic development along Harbolets Road comprising predominantly houses, including the other neighbouring dwelling of Junipers. The fence on the appeal site is visible through the frontage planting from the road and through the access.
15. To the rear of the site are open fields, with a public footpath a short distance away. A bund or small hill is located between that footpath and the site, which restricts views from this footpath such that the caravans on the site are not visible, except for a brief glimpse at a corner in the path. A further public footpath runs from Harbolets Road at an angle over the fields opposite the site. Due to the hedges between the footpath and site, there are few glimpsed views of the site from this path.

16. The development has resulted in a substantial amount of hardsurfacing of the site and introduction of caravans and utility trailers as well as the drainage and septic tanks. This has introduced additional development into the landscape. I note that caravans are not a wholly alien feature of the countryside, with at least three other mobile homes in the vicinity. Neither are they an urbanising feature. Given the restricted views into the site, the visual effect of the development is limited. Nevertheless, the use of land for stationing caravans for residential occupation has resulted in a change to landscape character of the area.
17. An Anderson shelter is located in the centre of the site. This has undergone some repairs as it was previously in a poor condition, with substantial vegetation partially covering it. It had not blended into the landscape, such that it and its curtilage constituted previously developed land. However, the definition of previously developed land in the National Planning Policy Framework (NPPF) states that it should not be assumed that the whole of the curtilage should be developed.
18. It was suggested that a condition requiring a landscaping scheme could be provided. Such a scheme could result in the removal of a substantial proportion of the hardstanding and provide additional landscaping, which would reduce the effect of the use of this land on the character and beauty of the landscape. Additional landscaping should include ensuring the frontage hedge is retained or replaced with a similar hedge that screens views into the site from the road to a large extent.
19. Despite the ameliorating effect of the proposed condition, I conclude that the development would continue to cause some modest harm to the intrinsic character and beauty of the landscape. As such, it is contrary to Policies 2, 23, 25, 26, 31, 32 and 33 of the Horsham District Planning Framework (HDPF) and the NPPF. These policies seek development to protect, conserve and enhance the rural character and landscape of the area. Gypsy and traveller sites should not have an unacceptable impact on the character and appearance of the landscape and should be sensitively designed to mitigate any impact on their surroundings.

Highway safety

20. The access to the site is located in the corner of the site closest to the neighbouring dwelling at Broadford. The extent of the highway in this location appears to be on the road edge. The appellants do not control the land on the narrow verge beyond the site boundary. Given the location of the access to the side of the site, visibility splays would be required over land outside the control of the appellants in order to provide safe access and egress to and from the site. On this basis, the development has not been provided with safe and suitable access to the site.
21. I note that there is some uncertainty of the ownership of the access itself. However, I have considered the appeal based on the development carried out. Whether or not the access itself is within the ownership of the appellants, there is no dispute that the adjacent verge over which the visibility splays would be required is outside their control.
22. It is suggested that a condition could require provision of appropriate visibility splays, potentially through the access being moved to the centre of the site.

This would enable appropriate visibility splays in both directions on Harbolets Road within land in the control of the appellants. A suitable condition was discussed at the hearing and could be attached to any planning permission. Subject to compliance with such a condition, this would overcome any harm I find to highway safety.

23. Subject to that condition, I conclude that the development would not harm highway safety with regard to the access to the site from Harbolets Road. As a result, it would not conflict with Policy 40 of the HDPF and the NPPF that seek safe and suitable access to development sites.

Other material considerations

24. It is common ground that the appellants and their families living on the site meet the definition of gypsies and travellers set out in the Glossary to the planning policy for traveller sites (PPTS). I see no reason to disagree.
25. The Gypsy and Traveller Accommodation Assessment (GTAA) provides background evidence to the draft Local Plan and suggests a significant need for pitches for gypsies and travellers, with 93 required in the period 2019-2036 of which 65 are required within the first 10 years of that plan period.
26. The appellants suggest that the GTAA underestimates need. This is partly due to concerns about the methodology, but also because they weren't interviewed as part of the assessment. It is not realistic to expect that every gypsy or traveller wishing to live in an area will be identified and interviewed. I accept that the assessment would have been more robust had they been interviewed, but I understand they weren't staying in the district at that time. It is clear that there is, in any event, a significant unmet need in the district for gypsy and traveller sites. The lack of site allocations to meet that need means that the problem is continuing.
27. I understand no sites have yet been provided against the need, except two sites for a total of six pitches allowed on appeal¹. The Council are seeking to quash these decisions, nevertheless for the purposes of this appeal they are planning permissions that should be taken into account in the provision of sites to meet the needs of gypsies and travellers.
28. Even taking account of those decisions, the Council accept that they cannot demonstrate an up-to-date five year supply of deliverable sites. The PPTS states that this should be a significant material consideration in any planning decision when considering the grant of temporary planning permission. However, there are exceptions where sites are protected by the Habitats Directives. Given the effect on the Arun Valley SAC, SPA and Ramsar site, subject to the appropriate assessment, that would apply in this instance.
29. The site is occupied by two families who, between them, comprise four adults with three children plus three grandparents and siblings of one of the adults. Both families were previously moving around and staying on temporary sites or doubling up with other families. They did not have permanent pitches prior to moving onto this land. Two of the adults on site suffer from anxiety, one of whom suffers from seizures and panic attacks.

¹ Appeal references APP/Z3825/W/20/3263152 and APP/Z3825/W/20/3265710

30. The children are all currently pre-school age, although the oldest should begin school in September 2022. I understand that child may have learning difficulties relating to communication, speech and language skills and is currently being assessed by the NHS, including for Autism Spectrum Disorder and has Special Educational Needs. At present they attend two local nurseries for five days a week. The nurseries are supporting the parents in finding appropriate schools in the area to meet their needs.
31. The best interests of children are a primary consideration in considering this appeal. No other consideration is inherently more important than their best interests in safeguarding and promoting their welfare.
32. Should this appeal be dismissed, I understand it is likely the site occupants would become homeless and would need to return to travelling, including possibly staying on the roadside. It would be likely to remove the children from their current education provision that could have a significant effect on their development.
33. My attention has been drawn to other appeal decisions² for caravan sites for occupation by gypsies and travellers in the local area. These were both appeals under section 78 of the Act where the Inspectors concluded there would be harm to the landscape and this harm was not outweighed by the identified need for gypsy and traveller pitches or the personal circumstances of the appellants in those instances. That at Hillside was more remote from surrounding development and more visible from the public footpath to the rear of this appeal site.
34. I note the support of the occupier of a neighbouring property to the continued occupation of the land by the appellants and their families. I have taken this into account in support of the development.
35. The appeal has been made on the basis of permanent occupation of the appeal site, but I am aware that a temporary or personal planning permission would be possible. The reasons for that would be to allow time for the provision of alternative sites through the Local Plan process or in the best interests of the children, to allow the oldest child to be of an age to move to secondary school when their needs may change. On that basis, the appellants have suggested a period of up to six years. However, given the issues arising from the impact of development on the Arun Valley SAC, SPA and Ramsar site, the Council were unable to indicate a timescale for the Local Plan process to complete or whether alternative sites may become available within a reasonable period. On that basis, a temporary consent would not be appropriate.

Appropriate assessment

36. The appropriate assessment needs to consider the effect of the development on the integrity of the SAC, SPA and Ramsar site and its qualifying features and species. Whilst the modest residentially occupied caravan site would be likely to have a limited effect on the integrity of the SAC, SPA and Ramsar site, in combination with other developments in the area those effects could be substantial. I understand that the Council is currently not approving proposals for new dwellings for that reason. I note the reason for possible High Court challenge of the two other appeal decisions referred to above is because they

² Appeal references APP/Z3825/W/17/3192171 and APP/Z3825/W/19/3242284

did not consider the effects of those proposals, in combination with other development, on the SAC, SPA and Ramsar site.

37. In order to mitigate the effects of the development, it would be necessary to demonstrate water neutrality of the development, i.e. that use of water by the development is the same or lower after the development has taken place as before. It was suggested at the hearing that a scheme to provide that could be required by condition, possibly by delivering water to the site by tanker that had been abstracted elsewhere. However, it is unclear what mechanism would provide that mitigation and it is likely to include a planning obligation under section 106 of the Act. Planning Practice Guidance suggests a condition limiting the development until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Given the uncertainty as to what is required, this would not be appropriate in this case. In the absence of any other solution, it would not be possible to mitigate the effect of the development, in combination with other schemes, on the SAC, SPA and Ramsar site.
38. The development comprises the use of the land for stationing of caravans for residential use for two families. Given the nature of the proposal, there are no reasonable alternatives that I am able to consider that may have a lesser effect. Imperative reasons of overriding public interest may outweigh the harm to the integrity of the SAC where it is essential for the development to proceed and serve a public interest. These can include reasons relating to human health, public safety or beneficial consequences of primary importance to the environment.
39. In this case, there are reasons to allow the development relating to the personal circumstances of the occupiers of the site and to meet the needs of gypsies and travellers set out in the other material considerations. Nevertheless, they are not imperative reasons of overriding public interest that would be needed to outweigh the harm to the integrity of the SAC. It is not essential for the development to proceed to serve a public interest.
40. Taking all the above into account and applying the precautionary principle, I conclude that there is an unacceptable risk of harm on the integrity of the Arun Valley SAC, SPA and Ramsar site such that the proposal would be likely to conflict with Policy 31 of the HDPF and the NPPF. These policies seek to protect the Arun Valley SAC, SPA and Ramsar site, including requiring adequate measures are put in place to avoid or mitigate any potential adverse effects on the ecological integrity of the site.

Conclusion

41. I have concluded that the use of the land for the stationing of caravans for residential occupation and associated operational development has resulted in modest harm to the intrinsic character and beauty of the landscape. Although the existing access has resulted in risk to the safety of the highway, this could be mitigated by requiring it be moved toward the centre of the site by condition. The personal circumstances of the occupiers of the site and needs of gypsies and travellers for accommodation within the district carry significant weight, such that they outweigh the harm I have found to the intrinsic character and beauty of the landscape.

42. However, the conflict with Policy 31 of the HDPF, Habitats Regulations and NPPF arising from an unacceptable risk of harm to the integrity of the Arun Valley SAC, SPA and Ramsar site as set out in the appropriate assessment outweighs all other considerations.

43. For the reasons set out above, I conclude that on balance the development does not accord with the development plan. The appeal on ground (a) therefore fails.

The Appeals on Ground (f)

44. Appeals on this ground are that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek to cease the use of the land, remove residential paraphernalia and remove all works of operational development relating to the use of the land, in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.

45. The appellant suggests that an alternative layout, adjustments to the scale of the site or an alternative access would overcome the objections. However, these would not remedy the breach of planning control. I note that it is suggested that a temporary consent may reduce the impact of the development, but again this would not remedy the breach of planning control and is better considered under the ground (a) and (g) appeals.

46. I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeals fail on ground (f).

The Appeals on Ground (g)

47. Appeals on this ground are that the period specified in the notice for compliance falls short of what should reasonably be allowed. The notice requires the use of land to cease and removal of all caravans and residential paraphernalia within ten months of the notice taking effect. Further works to remove the associated operational development need to be completed within twelve months.

48. The appellants suggest that it would be difficult to find an alternative place to live within the ten months specified to do so. A period of up to six years has been suggested.

49. I accept that it would be difficult for the occupiers of the site to find alternative accommodation that meets their needs, particularly taking account of the health conditions of some of the occupiers and the needs of the children. However, a period of up to six years would essentially be equivalent to a temporary planning permission. I have considered that under ground (a) and concluded a longer period would not be appropriate in this case, so I do not need to consider it again here. Nevertheless, I shall amend the period specified for compliance to twelve months for both ceasing the use and completing the operational development to allow more time for the occupiers to find alternative accommodation and as it is unlikely to take two months after ceasing the use to remove the operational development required by the notice.

50. For these reasons, I conclude that the appeals under ground (g) should succeed.

Formal Decision

51.It is directed that the enforcement notice is varied by:

The deletion of "Steps 1 and 2 ten (10) months from the date this notice takes effect, steps 3, 4 and 5 twelve (12) months from the date this notice takes effect" and the substitution of "Twelve months from the date this notice takes effect" as the time for compliance.

52.Subject to the variation, 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.

AJ Steen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Joseph G. Jones	BFSGC
Paddy Maloney	Appellant
Michael Casey	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Angela Moore BA(Hons) MSc MRTPI	Senior Planning Officer, Horsham District Council
Mark McLaughlin	Principal Planner, Local Plan Team, Horsham District Council

INTERESTED PARTIES:

Limara White	Neighbour
Derrick Edward Frost	Local resident
Karina Alun-Jones	Local resident
Nicholas Alun-Jones	Local resident

DOCUMENTS SUBMITTED AT THE HEARING:

Document 1: Health Information Update

Document 2: Office of National Statistics Gypsy Traveller Caravans Count

Document 3: Email from Giles Holbrook, Horsham District Council dated 16 October 2020

Document 4: Land Registry plans

