



Appeal Decision

Hearing held on 7 June 2022

Site visit made on 7 June 2022

by C Masters MA (Hons) FRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st July 2022

Appeal Ref: APP/C1435/W/21/3288629

Hoadleys Stable, Hoadleys Lane, CROWBOROUGH, TN6 1TH

- 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 T O'Driscoll against the decision of Wealden District Council.
 - The application Ref WD/2021/1086/FR dated 9 June 2021, was refused by notice dated 29 November 2021.
 - The development proposed is material change of use of land for stationing of 3 no. touring caravans for residential occupation with associated development including additional hard standing, retention of fencing, retention of existing timber cabin building for use as shared utility block and installation of package treatment plant (part retrospective).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Wealden District Council at the hearing. This is the subject of a separate decision.

Preliminary Matters

3. As outlined within the statement of common ground, on 26 November 2021 the Council applied to the Courts for an injunction under s187b of the 1990 Act to stop any further development, cease the use of the land and restore it to its previous condition. This injunction was served on 28 March 2022 and required the site to be cleared and returned to its former condition on or before 26 April 2022. The appellant has advised that they have applied for an extension of time until this planning appeal is determined.
4. The Council confirmed as part of their hearing statement that reason for refusal 3 should only refer to the Ashdown Forest SPA and not the SAC or SSSI. I have proceeded to determine the appeal on this basis.
5. The reasons for refusal refer to spatial planning objectives SP01 and SP07. These are objectives of the development plan not policies and I have proceeded to determine the appeal on this basis.
6. There is no dispute that the appellants fall within the definition of gypsy and travellers as set out within the Planning Policy for Travellers Sites (PPTS) 2015.

Main Issues

7. The main issues in this appeal are:

- Whether the site is in a sustainable location providing suitable access to local services and facilities;
- The effect of the proposal on the character and appearance of the area;
- The effect of the proposal on the Ashdown Forest Special Protection Area (SPA).

Reasons

Whether the site is in a sustainable location providing suitable access to local services and facilities

8. The appeal site is located approximately 2km from Crowborough within open countryside. Hoadleys Lane itself provides a very narrow, unlit road with no footpath and challenging topography in places. Whilst this may provide a less than ideal walking route and is unlikely to be used in the dark, once on London Road the route into Crowborough is generally flat and well lit. Crowborough, the nearest settlement, provides a broad range of shops and services. I understand that the appellant walks to Crowborough and I acknowledge that this is an available option for those who may wish to do so. Cycling is unlikely to be an attractive option due to the topography of the lane. Given the above factors, I accept that it is highly likely that most regular journeys would be undertaken by private car.
9. Dependent upon their scale, paragraph 14 of the PPTS does not rule out gypsy and traveller sites in rural or semi-rural settings. My attention has also been drawn to paragraph 13 of the PPTS which seeks to ensure that traveller sites are sustainable economically, socially and environmentally. The appellant has stated that the appeal site affords the appellant the opportunity to reflect traditional lifestyles in terms of horses being kept at the site. However, there have been no horses kept at the site since July 2021 due to a lack of basic facilities.
10. I have also had regard to Policy H of the PPTS concerning decision taking and in particular paragraph 25 which states that Local Planning Authorities should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. The text goes on to explain that Local Planning Authorities should ensure that sites in rural areas respect the scale, of, and do not dominate the nearest settled community, and avoid placing undue pressure on the local infrastructure. In terms of the PPTS, the proposal is not of a scale that it would place an undue pressure on local infrastructure or dominate the nearest settled community. Although located within open countryside, it is not so far away from Crowborough to conflict with this broad policy objective. In this sense, I see no conflict with the PPTS in relation to this main issue.
11. In respect of this main issue the Council's decision notice refers to a number of policies including saved policies GD2 and EN1 of the Wealden Local Plan (WLP)

1998, as well as WCS11 and WCS14 of the Core Strategy (CS) 2013. In my view, the most relevant policy to this main issue is WCS11 which outlines specific criteria for the assessment of sites for Gypsies, Travellers, and Travelling Showpeople. The first bullet point requires sites to be well related to existing settlements with local services and facilities. Sites should either be within or close to such settlements or close to major roads and/or public transport thus affording good access to local services. Taking into account the distances involved, I am content that the site satisfies this policy by being close to a major road which affords good access to local services. I see no conflict with this part of the policy in terms of this first main issue.

12. To conclude on the first main issue, the site is in a sustainable location where occupiers of the development would have suitable access to local services and facilities. There would be no conflict with policy WCS11 set out above. The proposal would also accord with the advice contained within the PPTS in this regard.
13. In reaching the above conclusion, I have also had regard to the other policies contained within the reason for refusal. Policy GD2 is a restrictive policy which advises development will be resisted outside the development boundaries unless it accords with specific policies contained within the Plan. I acknowledge conflict with this policy. Policy EN1 refers to sustainable development having regard to the principles contained within government guidance. As I have concluded that the proposal would accord with the PPTS on this main issue, I am of the view that the proposal would therefore accord with this policy objective. Policy WCS14 refers to the presumption in favour of sustainable development and repeats that planning applications which accord with the local plan (or where relevant, the neighbourhood plan) should be approved without delay. I conclude that the proposal would not conflict with these broad policy objectives.

The effect of the proposal on the character and appearance of the area, including the High Weald Area of Outstanding Natural Beauty (AONB)

14. The Framework advises at paragraph 176 that great weight should be afforded to conserving and enhancing the landscape and scenic beauty of a number of designed areas, including AONB. It notes that the scale and extent of development should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts.
15. The Council's concern in this regard relates to the impact of the proposal when viewed from the rural lane, Hoadleys Lane. The lane is a narrow single track road. In a number of places the road is sunken and there are earth banks either side with well established vegetation. The existing pattern of development along the lane is characterised by sporadic housing interspersed by open fields and paddocks. Any formal boundary treatment to the open fields which does exist is in the form of post and rail fencing which permits glimpsed views through to the fields. In the case of both Hoadley's Cottage and Hawthorne House, the two residential properties nearest to the appeal site, these are clearly distinct residential dwellings with associated boundary treatment to the domestic gardens. These are entirely different in character and appearance to the stable use of the appeal site.
16. The appellant recognises that the fencing is intrusive and incongruous and is therefore harmful to the lane. In my view, the timber panelled fencing

introduces a harsh boundary treatment to this particular stretch of the rural lane. As a result of the height and material used, the fencing provides a suburban feature to this rural lane and does not afford the glimpsed views which the remainder of the lane benefits from. At the hearing, the appellant suggested that all panel fencing could be removed and subsequent boundary treatment agreed by condition. Aside from the fact that this appeal is for the development as a whole, I am not convinced that an alternative boundary treatment could present a satisfactory design solution to overcome the visual harm caused by the new use and associated development. Whilst planting may mitigate the effect of the development on the character and appearance of the area in the long term, even taking into account the elements of established vegetation which are not consistent along the boundary, the short term effects would be significant and harmful.

17. The appellant has explained that the utility block is necessary to provide essential facilities such as a bathroom, kitchen and laundry facilities. From the evidence presented, I concur that the utility block would appear to be an essential part of the use of the land as proposed. The utility block is located parallel to the lane, whilst the existing stable block is set back into the site. The touring caravans are positioned behind the utility block. Although the external materials reflect those on the existing stable block, the utility block presents additional built form which adds to the bulk and massing on the site in this location. Along with the associated domestic paraphernalia, additional hardstanding, and package treatment plant, it does not reflect the existing character and pattern of development along the lane which is characterised by sporadic housing interspersed by open fields and paddocks. Whilst I acknowledge that the site is previously developed land by virtue of the equine use, the proposal as a whole adds significantly to the bulk and massing on the site as well as the activity associated with it. This utility block is currently largely obscured from view by the close boarded fencing on which I have already concluded on above. However, when travelling east along Hoadleys Lane, the utility block presents a prominent feature to the site.
18. The appellant contends that the proposed use is not likely to add noticeably to the activity associated with the approved stables. For the reasons I have set out above, I disagree. In my view the development as a whole including the utility block, touring caravans, hardstanding, and package treatment plant as well as the associated domestic paraphernalia fail to conserve or enhance the natural beauty or character of the landscape in this locality.
19. The appellant has referred to other gypsy and traveller sites which have been approved within the same AONB. This is not surprising given the significant portion of the district which is covered by the AONB. Whilst I do not have the full details of these particular proposals, each proposal must be considered on its own merits. On the basis of the evidence presented, I have reached a different view.
20. In addition to the effect of the proposal when viewed from Hoadleys Lane, a number of local residents have also raised concerns regarding the impact of the proposals when viewed from neighbouring vantage points, including the public footpath which runs along the northern boundary of the site. I was able to walk along this footpath as part of my site visit. As a result of the steep slope and the existing vegetation in place, the development is not clearly visible

along this footpath. I am therefore unable to agree that the proposal causes any additional harm in this regard.

21. To conclude, the proposal results in harm to the character and appearance of the area, including the AONB. As a result, there is conflict with policies EN6 of the WLP as well as WCS11 of the CS. Policy EN6 advises, amongst other things, that development within the High Weald AONB will only be permitted if it conserves or enhances the natural beauty and character of the landscape. Part four of policy WCS11 requires sites for Gypsies and Travellers and for Travelling Showpeople to, amongst other things, not compromise the essential features of nationally designated areas of landscape, historical or natural conservation protection, including but not limited to the High Weald AONB.

The effect of the proposal on the Ashdown Forest SPA

22. The parties agree that the site is located within the 400m buffer zone to the SPA of the Ashdown Forest. Policy WCS12 of the CS sets the parameters for the policy approach to this exclusion zone. The Council state that the use could, in combination with other plans and proposals, have a significant effect on the European site by virtue of additional recreational disturbance and additional traffic generation/ airborne pollutants. Whilst the appellant has questioned the overall approach to the Ashdown Forest SPA, the development plan remains the policy framework against which proposals need to be assessed.
23. The appellant advises that given the gypsy traveller status, they have no interest in visiting or using the Ashdown Forest for recreational purposes. I have no reason to doubt this view. However, a condition preventing such a use would be neither reasonable nor enforceable. It would therefore fail to meet the statutory tests.
24. It was also suggested that the failure to allow the appeal would result in the appellants returning to the use of public car parks within the Ashdown Forest for unauthorised roadside encampment. However, reference to an alternative unauthorised use is not sufficient justification to allow the appeal to succeed.
25. I conclude that the proposal would cause material harm to the Ashdown Forest SPA. It would therefore conflict with policies EN7 and EN15(i) of the WLP, as well as policies WCS11, WCS12 and WCS14 of the CS. Policy EN7 requires development to, amongst other things, conserve the landscape and historic character of the area. Policy EN15 sets out, amongst other things, how the Council will seek to safeguard designated nature conservation sites and identifies that the development which would be likely to have an adverse effect on nature conservation interest will not be permitted. WCS11 requires at the 4th bullet point that provision for gypsies, travellers and travelling showpeople should not compromise essential features such as the Ashdown Forest SPA. Policy EN1 which is also referred to is not directly relevant to this main issue.

Personal needs of the occupiers

26. I have had due regard to the personal circumstances of the appellant. I shall not detail the personal circumstances of any of the occupiers, however I have had regard to the substantial personal information submitted within the appeal. In particular, I have noted the medical needs of the appellant and those of the children. I have also had regard to the needs of the children and in particular

the child who attends school locally. These factors carry weight in favour of the proposal.

Need for and provision of gypsy sites

27. It is agreed between the parties that the Council does not have a 5 year supply of deliverable sites. I was provided with some limited information at the hearing regarding the Council's future plans to update the needs assessment in conjunction with neighbouring authorities, as well as details concerning a current planning application for an 18 pitch site. In accordance with the PPTS, in these circumstances, lack of supply should be a significant material consideration in relation to a planning decision when considering the grant of a temporary planning permission. However, the PPTS makes it clear that this does not apply to sites within, amongst other things, the AONB.

Other Matters

28. A number of residents have raised issues concerning highway safety and the effect on living conditions of neighbouring properties. In accordance with paragraph 111 of the Framework, given the scale of the use, I do not consider the number of vehicle movements associated with the use would lead to an unacceptable impact on highway safety, or that the residual impacts on the road network would be severe. In terms of living conditions of neighbouring properties, in light of the separation distances involved between the appeal site and the neighbouring dwellings, I conclude that the proposal would not result in any material harm in this regard. These additional issues do not lead me to reach a different conclusion on the main issues before me. I am aware that refusing the appeal will leave the appellant without a fixed home which would be an interference with their right for private family life and home and this also needs to be weighed in the balance.

Overall Balancing and Conclusion

29. The proposal would be in clear conflict with the development plan policies which seek to protect the character and appearance of the area. They would also conflict with the development plan policies which seek to protect the Ashdown Forest SPA. As a result, both of these factors weigh heavily against the proposal.
30. On the other hand, there are specific health considerations associated with the appellant and his family to be taken into account as well as the education needs of the children. I have had due regard to the obligations placed on me by the Public Sector Equality Duty and I have also considered the best interests of the children which are a primary consideration. The proposal would provide accommodation for the appellant and his family. The lack of 5 years supply, lack of alternative sites and the uncertainty about the Council's future strategy to address need all weigh in favour of the proposal. I have apportioned weight to these factors in favour of the appeal proposal.
31. In accordance with paragraph 28 of the PPTS, I have also considered the use of conditions. However, I am not convinced that conditions requiring details of additional soft landscaping, external lighting, external storage, size of vehicles, electric charging points, waste water disposal or controlling the number and type of caravans would satisfactorily address the main issues I have outlined within this decision.

32. The appeal before me is not for a temporary or personal permission however the appellant has requested that I consider these options. The positive obligation to facilitate the gypsy way of life has to be balanced against national policy. In light of the clear policy conflict and taking into account the personal circumstances of the appellant, I am not convinced that in these circumstances, granting a permission on either a temporary or personal basis would be a justified approach.
33. Taking all of these considerations into account, I conclude that the harm I have identified above which would arise from the development outweighs the other considerations, and that this refusal is both necessary and proportionate.
34. For these reasons, I therefore conclude the appeal should be dismissed.

C Masters

INSPECTOR

APPERANCES

On behalf of the Council:

Mr R Bewick Wealden District Council

Ms S Wood Wealden District Council

On behalf of the Appellant:

Ms A Heine Heine Planning Consultancy

Mr & Mrs T O'Driscoll Appellant

Third Party Participants (attended virtually):

Mr N Catliff Local Resident

Mr M Taverner Local Resident

Documents submitted at the hearing:

1. European Site Conservation Objectives: Supplementary advice on conserving and restoring site features, Natural England, February 2019
2. Extract of policy EN27
3. Application for costs made by Wealden District Council