
Appeal Decision

Hearing Held on 19 May 2022

Site visit made on 19 May 2022

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th July 2022

Appeal Ref: APP/X1735/W/21/3227101

Southdown View, Long Copse Lane, Emsworth, PO10 7UR.

- 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 Leslie (Les) Madgwick against the decision of Havant Borough Council.
 - The application Ref. APP/18/00929, dated 13 September 2018, was refused by notice dated 18 December 2018.
 - The development proposed is the siting of one additional mobile home and provision of two additional parking spaces.
-

Decision

1. The appeal is allowed and planning permission is granted for the siting of one additional mobile home and provision of two additional parking spaces, at Southdown View, Long Copse Lane, Emsworth, PO11 7UR, in accordance with the terms of the application, Ref. APP/18/00929, dated 13 September 2018, and the plans submitted with it, as amended, subject to the conditions set out in the attached Schedule.

Preliminary matters

2. I have corrected the appellant's name from that specified on the application forms to Mr Leslie (Les) Madgwick. For clarification the proposed mobile home is to be occupied by his son Mr James Madgwick and his family. I note that there is an amendment to Certificate A accompanying the application regarding the ownership of the site but no parties are prejudiced by this and it is not relevant to my decision on the appeal.
3. At the registration stage the Council revised the description of development from that specified on the application forms, however the Council now accepts that this change is not needed and I have used the original description of the development proposed.
4. Three signed Unilateral Undertaking (UU) planning obligations have now been submitted with the appeal documents. The first, dated 8 November 2018, deals with a contribution towards the mitigation of the impacts of the development concerning additional recreation activity on the Solent Special Protection Areas (SPAs). A second UU, dated 7 March 2022, concerns a contribution towards measures to mitigate the water quality impacts of the development on the Solent 'European' Sites. Finally, after the Hearing a

further UU dated 14 June 2022 has been submitted. This specifies additional contributions which are required and offered to mitigate the reassessed effects of water quality impacts on the SPA together with the reassessed effects arising from recreational pressure. I have taken all of the UUs into account including in the Appropriate Assessment set out in paragraph 30 below

Main Issues

5. The main issues are:

- The appellant's status as a Gypsy/traveller with a nomadic habit of life;
- Whether the proposal accords with the development strategy for the area;
- The effect on the character and appearance of the rural landscape;
- The effect on the living conditions of the occupiers of nearby dwellings;
- Whether the proposed development would be 'nutrient neutral' and the effect on the Solent Harbours SPA;
- The need and supply of Gypsy and traveller sites locally and the availability of alternative sites; and
- The appellant and family's personal circumstances.

Reasons

Background

6. Long Copse Lane lies on the northern edge of the village of Emsworth and in part forms the boundary with the developed area to the south and the countryside to the north. The appeal site lies on the northern side of the lane and adjoins an existing detached house Hollybank Cottage. The appeal site is generally square in shape with a vehicle access to the lane and comprises a single pitch traveller site with mobile home along with a modest stable block and paddock to the rear. There are areas of mown lawn, a driveway and turning area surfaced in shingle and some mature trees along the boundary with Hollybank Cottage and also along the lane; these trees are the subject of a Tree Preservation Order.
7. Planning permission was granted on appeal¹ in February 2018 for the change of use of the appeal site from private equestrian yard to a mixed use comprising private equestrian yard and a single pitch private gypsy and traveller site, including a mobile home and single touring caravan pitch. The Inspector found that the then proposal complied with the relevant primary policy in the Core Strategy, when read as a whole, and the other policies did not preclude the type of development. He found that there was also no conflict with other policies for the protection of the landscape and local character and there was an acknowledged need for additional gypsy and traveller accommodation in the area.

¹ Under reference APP/X1735/W/16/3156978

Policy context

8. The development plan includes the Council's Local Plan (Core Strategy) adopted in 2011 (CS) and the Havant Borough Local Plan (Allocations) adopted in 2014 (ALP). An emerging Havant Borough Local Plan 2023 was withdrawn by the Council in March 2022 following initial Examination. I have therefore had no regard to any of its provisions. The Emsworth Neighbourhood Plan was made on the 22 September 2021 but the Council confirmed at the hearing that there are no policies in the neighbourhood plan that are relevant to this appeal.

Gypsy/traveller status

9. Annex 1 to the government's 'Planning policy for traveller sites' (PPTS) sets out that the term 'gypsies and travellers' means "persons of nomadic habit of life whatever their race or origin...". In the previous appeal, the Council did not contest Mr Leslie Madgwick's status as a gypsy and the Inspector said he had no reason to disagree with this conclusion. Accordingly the Inspector imposed a condition on the permission which restricts occupation of the site to 'gypsies and travellers' who meet the Annex 1 definition.
10. In the current appeal it is common ground between the appellant and the Council that he and his family are Travellers in terms of the PPTS and ethnic Romany Gypsies for the purposes of the Equality Act. Even so objectors to the proposal continue to question the status of the appellant and family and whether they lead a nomadic habit of life.
11. At the Hearing Mr Madgwick said that he and his son travelled to the traditional Gypsy/traveller horse fairs for his business in buying and selling horses which are grazed on rented land away from the appeal site. He also trades in vehicles such as lorries at the fairs and elsewhere. However he said he does not run a haulage business. He estimated that he travelled away for work for in total some 3-4 months of the year usually for at least 3 or four days at a time in the touring caravan.
12. This travelling is disputed by the immediate neighbours who say that they have rarely seen the touring caravan moved from the site and doubt that the appellant and his son have a nomadic habit of life. However, neither party produces evidence that can be verified over the time the appellant spent travelling for work away from the site.
13. Dr Murdock for the appellant says that the Covid regulations that have been in operation since early 2020 have restricted movement and travelling around the country and it is only relatively recently that the appellant and family have been able to travel away for work.
14. Written evidence is put forward by objectors which shows that Mr James Madgwick was appointed as a director of Hampshire Truck and Plant Limited in 2017 and at the same time Mr Leslie Madgwick terminated his directorship of this company. There is also evidence of another family business - Portsmouth Truck and Plant Ltd being wound up in 2014. While these formal records are consistent with Mr Leslie Madgwick's evidence of a business buying and selling vehicles they do not verify or establish a nomadic habit of life.
15. I have also had regard to the interviews carried out and comments made by the Gypsy Liaison Officer for the county on the appellant's roots, movements

and cultural heritage. Nevertheless while this is detailed evidence it was obtained in 2017 and may not now be wholly up to date.

16. Taking all of the oral and written evidence into account it appears to me that the appellant and his son identify as being of Gypsy ethnicity and that they reasonably and consistently travel away for work to the extent that they have led a nomadic habit of life, notwithstanding the recent restrictions on movement that everyone has had to endure under the Covid pandemic. It is therefore appropriate to consider the appeal in the context of relevant Gypsy/traveller policies in the development plan and national guidance.

Accord with the development strategy

17. LP Policy CS17 focuses new development into the main urban areas of the District and advises that development within non-urban areas will only be permitted where it is consistent with the policies for the countryside set out in national policy. The Council accepts that, having regard to the Inspector's findings in the previous appeal, and that the PPTS does not advise against some Gypsy/traveller sites being located in the countryside, the principle of the development does not conflict with Policy CS17.
18. In terms of Policy AL2, which seeks to protect gaps between urban areas, the site generally lies within a defined gap which the Council describes as between Emsworth and Westbourne. However, the lawful use of the site as a gypsy/traveller pitch has to be recognised along with the stable block. The physical impact of an additional caravan and two parking spaces would be small scale, akin to householder development, and would not be significant in the undeveloped gap, and I find that that the proposal would not breach the aims of policy AL2 and part (9) of Policy CS11 to maintain undeveloped gaps.
19. In terms of Policy CS10 in respect of Gypsy and traveller sites, the Council accepts that there is no conflict with this policy other than criterion (1) concerning the effect on the amenities of nearby residential properties, which I will consider under a following issue.
20. Subject to this latter point and the localised landscape impact of the development in and around the site, overall I find that the principle of the development proposed generally accords with the strategy set out in the development plan.

Effect on the character and appearance of the area

21. The site lies in a countryside landscape on the edge of the settlement. There was much discussion at the hearing about recent planning permissions and pending applications for residential development in the vicinity of the site and which are likely to change the local character of the landscape. However, I cannot be sure that such development is bound to take place and I have considered the impact of the appeal proposal on the surrounding area as it exists at the moment.
22. The effect on the public realm is confined to views from Long Copse Lane. Alongside the appeal site the roadside hedge is generally substantial although there are a few places with small gaps and its screening effect could be improved with further landscaping. Nevertheless, the present form of the roadside hedge means that only the top of the proposed caravan would be visible from the lane and there would only be very limited visual impact on the

public realm. There would be views of the caravan in private views from land to the north², but these would be more long distance and seen in the context of the pattern of equine development in the loose pattern of fields and the context of the existing mobile home on the site. I judge that the wider visual impact of the proposed caravan in the landscape would not be significant or visually harmful, and the proposal does not conflict with the relevant landscape criteria set out in Policies CS11 and CS16.

Effect on the living conditions of occupiers of nearby dwellings

23. The neighbouring property to the appeal site is Hollybank Cottage and at the site visit I considered the proposal from the garden of this property at the request of the owner/occupiers. There are other houses in the loose ribbon of development on the southern side of the Lane but these would not be directly affected by the proposal.
24. There is a mature hedge and trees along the party boundary of the two sites and these provide a good screen to the extent that the presence of the proposed additional caravan would not be visually imposing on the neighbours nor would they suffer from additional overlooking. In terms of noise disturbance, this would largely be confined to the movement of vehicles. When at Hollybank Cottage I did hear a vehicle moving on the loose surface of the driveway at the appeal site. However I would describe the noise generated as limited and not unusual in a countryside area. Moreover, while the use of the additional caravan as a separate household would result in additional vehicle movements I am satisfied that the resultant 'comings and goings' would not be materially different to the those arising from the lawful use.
25. Overall on this issue I find that the proposal would not harm the living conditions of the occupiers of Hollybank Cottage and there is no conflict with criterion (1) of Policy CS10 or part 1(e) of Policy CS16.

Effect on SPAs and Appropriate Assessment

26. Within the appeal scheme there are two relevant effects on the Chichester and Langstone Harbours Special Protection Area: the first relates to the effects of an increase in recreational pressure as a result of development. The second relates to the effect on water quality caused by an increase in nitrogen and phosphate deposition into the protected harbours where the increase in nutrients causes a dense growth in certain plants to the detriment of other species. From all of the evidence submitted it is clear that the SPA is in a unfavourable ecological state.
27. Dealing with the first effect, the Council advises that in accordance with the Solent Recreation Mitigation Strategy, a contribution towards a package of avoidance mitigation measures would meet the requirements of CS Policy DM24 and would address the 'in combination' impact of increased recreation disturbance. Moreover the Council confirms that the contribution set out in the UUs is appropriate and complies with the Strategy. I note that Natural England is now satisfied that the appellant has mitigated against potential adverse effects from recreation activity and raises no objection to this aspect of the proposal.

² Described as Landscape Character Area 21 'SouthLeigh Forest' in the TLSCA.

28. In respect of the second aspect regarding the development being 'nutrient neutral', in addition to the evidence submitted on behalf of the Council, I have also taken account of the Written Ministerial Statement made by the Secretary of State on the 16 March 2022³ and evidence from Natural England.
29. The development proposal is the siting of an additional residential mobile home which would result in additional waste-water being produced. I understand that the waste would be disposed of to a septic tank on site but this would need to be emptied on a regular basis. Depending on where the sewerage would be treated locally the resulting nutrient in the effluent could still reach the SPAs. The mitigation put forward in this case is to make a financial contribution to the mitigation and off-setting of the effects. The contribution is based on the Solent Nitrogen Budget Calculator and I am satisfied that the contribution made would result in the mitigation of the direct adverse effects in accordance with the Council's 'Position Statement on nitrogen neutral development' and Implementation Plan.
30. I have applied the steps necessary for the Appropriate Assessment under the Habitat Regulations 2017 in the context of the 'precautionary principle'. The proposed residential caravan is not connected with the management of the SPA. There is also considerable evidence to demonstrate that the additional overnight accommodation, alone or in combination with other development, would be likely to have a significant adverse effect on the integrity of the SPA. However, it is clear and certain that the funding put forward in the UUs would result in appropriate and necessary mitigation thereby ensuring that the proposal would not adversely affect the integrity of the SPA.

Need for and supply of gypsy and traveller sites.

31. The PPTS indicates that Councils should make provision for a five year supply of deliverable sites set against local accommodation needs. In this case it is common ground between the Council and the appellant that there is an unmet need for one further pitch at the moment although the appellant considers that the need is far in excess of this. The lack of local provision for an additional site for a gypsy/traveller is a factor to which I attach significant weight. Moreover no party at the hearing could point to any alternative site that the appellant and family could turn to.

The personal circumstances of the appellant and family

32. In addition to the circumstances set out in the appellant's statement Mr James Madgwick advised that his wife/partner is expecting a baby. The ability of the appellant's son and family to live on site would help them live a gypsy way of life in a close-knit family group for mutual support is a factor which carries moderate weight.

Other considerations

33. Some of the objectors say that the Holly Woods to the north of the site are a habitat for Bechstein's bats which forage in the line of trees which adjoin the appeal site and that additional lighting at the appeal site may impede or threaten the foraging of the bats. However, the evidence before me on this issue is not substantial and in any event planning conditions have to relate to

³ Statement UIN HCWS688.

the development actually proposed rather than the overall lawful development. Nevertheless, given the present countryside location of the site it is reasonable to impose a condition to limit the external lighting that may be placed on the additional mobile home proposed and the two new parking spaces to help maintain the rural character of the area.

Planning Balance

34. On the evidence before me including the oral evidence given at the hearing, it is clear that the appellant and his son identify as being Romany Gypsies and, on balance, I am satisfied that they have a nomadic habit of life as described in the PPTS. It is therefore appropriate to use relevant policies in the development plan and national guidance on Gypsy and traveller development.
35. On the main issues, I have found that the presence of the proposed additional mobile home and the two extra parking spaces will not have a harmful effect on the existing countryside landscape of the area or materially conflict with the aim of maintaining the open gap between Emsworth and Westbourne. The presence of the additional mobile home together with its use and the additional traffic that would result would also not harm the living conditions of the occupiers of the nearby property Hollybank Cottage.
36. When these aspects are related to the relevant development plan policies I find that there is no conflict with Policies CS11, CS16, CS17 and AL2 regarding the principle and local impact of the development nor with Policy CS10 on the development of a new Gypsy and traveller site.
37. The agreed shortfall of new Gypsy and traveller sites locally and the benefit for the appellant's wider family for mutual support are also factors in favour of the proposal.
38. The proposal and the accompanying planning obligations also make proper provision for the mitigation of the effects on the Chichester and Langstone Harbours Special Protection Area to ensure that the integrity of the SPA would not be adversely affected.
39. All of these factors have to be balanced with other considerations but none are of such importance that they outweigh the accord of the proposal with the development plan when this is read as a whole. The appeal should therefore be allowed.

Conditions

40. The Council recommends the imposition of 8 conditions on any permission which I will consider under the same numbering. In addition to the standard condition on the commencement of the development, I agree to a condition (No.2) limiting the occupation of the mobile home to a Gypsy or traveller who meets the PPTS definition as that is the case put forward by the appellant and the appeal has been considered in relation to the relevant local and national policies. It is also reasonable and necessary to impose a condition (No.3) which specifies the total number of caravans but this should be two static units and one tourer, rather than 4 as originally suggested by the Council.
41. In order to maintain the character and appearance of the area and the living conditions of the occupiers of the neighbouring residential property I will impose conditions 4 and 5 to restrict commercial activities and the storage of

materials, and limit the size of vehicles that may be parked or stored on site to not exceed 3.5 tonnes. However, it is not clear to me that there is clear justification for the removal of 'permitted development rights' as sought by the Council, and in any event such provisions for a residential caravan site are very limited. I will therefore not impose condition No. 6.

42. In terms of the suggested condition No. 7 the proposed Site Development Scheme is too onerous and all that is needed is the submission and agreement of details of additional hedge planting along the boundary with the lane to strengthen the screening effects of the hedge and provide control over external lighting on the new mobile home and I will impose a condition modified accordingly.
43. In terms of foul drainage and the effects on the SPAs a condition is needed to ensure that the additional mobile home is served by a septic tank and that this shall not be brought into use until the funding of the mitigation as set out in the UUs takes effect and I will impose a condition to achieve this.
44. Finally, it is reasonable to impose a condition in the interests of clarity to ensure that the laying out of the site accords with the submitted plans but this need only refer to plan 180912/002/Rev1 showing the layout of the site.

Conclusions

45. For the reasons set out above I conclude that the appeal should be allowed.

David Murray

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of 'Planning policy for traveller sites'.
- 3) There shall be no more than 2 pitches on the site and no more than 3 caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968) shall be stationed at any time, of which only 2 shall be static caravans.
- 4) No commercial activities shall take place on the site, including the storage of materials.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 6) The additional mobile home shall not be occupied until details of the following have been submitted to and approved in writing by the Local Planning Authority.
 - (A) A scheme of additional landscape planting alongside the siting of the mobile home and the boundary with Long Copse Lane;
 - (B) Details of any external lighting to be installed on the second mobile home and the additional parking spaces.

The planting scheme pursuant to (A) above shall be implemented in the first planting season following the first occupation of the mobile home. Any trees or hedge plants that die or are removed within three years of planting shall be replaced with similar species and retained thereafter.

No other form of external lighting shall be installed on the second mobile home or parking spaces.
- 7) The additional mobile home hereby approved shall not be occupied residentially until it is served by a septic tank for the disposal of foul drainage and the requirements of the Planning Obligations linked to this permission have been discharged. A septic tank shall be retained for the lifetime of the residential use of the mobile home.
- 8) The development hereby permitted shall be carried out in accordance with the following approved plan: 180912/002/Rev1.

APPEARANCES

FOR THE APPELLANT:

Dr Murdoch, BA Msc PhD MA MRTPI	Planning Consultant
Mr Leslie Madgwick	Appellant
Mr James Madgwick	Appellant's son

FOR THE LOCAL PLANNING AUTHORITY:

Mr C Christie	Principal Planning Officer, Havant Council
---------------	--

INTERESTED PERSONS:

Dr and Mrs Mason	Neighbours
Mr C Poirrier	Local resident
Cllr R Hitchcock	Chairman Westbourne Parish Council
Alderman R McIntosh	Interested party

DOCUMENTS handed in at or after the Hearing

- 1 Copy of Emsworth Policies Map from the Council.
- 2 Unilateral Undertaking signed and dated 14 June 2022 regarding contribution towards the offsetting of the effects on the development.