



Appeal Decision

Hearing Held on 24 August 2022

Site visit made on 24 August 2022

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 SEPTEMBER 2022

Appeal Ref: APP/L1765/W/20/3262560

Plot 2, Pony Paddock, 6 Hipley Road, Hambledon, PO7 4QX.

- 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 P Doran against the decision of Winchester City Council.
 - The application Ref. 20/01806/FUL, dated 17 August 2020, was refused by notice dated 21 October 2020.
 - The development proposed is the change of use to one Gypsy/traveller pitch comprising one mobile home; 1 touring caravan, and erection of one dayroom and associated works.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The hearing opened on the 24 August 2022 but was adjourned after dealing with the principal issues in the case as the main parties had not reached a conclusion on the issue of the development being 'nitrate neutral' and I was advised that further work was necessary on this topic. The parties asked for additional time in which to complete this. Further evidence was submitted later in August and September, and I am satisfied that this is sufficient for me to make a final decision on this case. I therefore wrote to the parties on the 26 September closing the hearing in writing.
3. The Council and local residents suggest that a small part of the application site at the entranceway from Hipley Road is owned by a third party, but no notice has been served under Articles 13 and 14 of the procedure Order¹. Moreover, representations were made by Messrs Fuller, Smith and Turner plc, just before the hearing, saying that this company owns the access to the site, adjacent land, and the nearby Chairmakers Arms and that the company had not been notified of the application either by the appellant or the Council. For the appellant Mr Masters was adamant that his client owned all of the land in the application site at the time when the planning application was made and said it was not unusual for the gypsy and traveller community to not register such a land purchase at HM Land Registry.
4. There is conflicting evidence on land ownership submitted on the appeal and the resolution of the ownership issue remains a private and separate matter.

¹ The Town and Country Planning (Development Management Procedure) (England) Order 2015, as amended.

In terms of the notification required by the Order, although the third party (if a relevant landowner) was not notified of the proposal by the appellant, the purpose of the notification is to enable the person/company to make representations on the proposal, which Fuller, Smith and Turner have been able to do, albeit on a limited basis and late in the day. These comments are similar to those made by others in the local community. I find that the third party has not been prejudiced by the lack of notification if that had been required. Moreover, I am satisfied that any potential problems over the implementation of the proposed access arrangements, if over land in other ownership, could be addressed by a 'Grampian' condition restricting the development until the proposed access can be legally secured if all other aspects of the proposal prove to be acceptable.

Main Issue

5. The main issues are:

- The accord of the proposal with the development strategy;
- The effect on the character and appearance of the area of countryside;
- Whether the development can be mitigated to be 'nitrate neutral' and the effects on the Solent Special Protection Areas (SPAs);
- Whether the Council can demonstrate a five-year supply of gypsy and traveller sites to meet local needs and the availability of alternative sites;
- The personal circumstances of the appellants including the best interests of any children.

Reasons

Background

6. The appeal site comprises an elongated area of land which lies close to the access and track leading to the other six gypsy and traveller pitches as described in paragraphs 8 & 9 below. Some of the actual boundaries of the formal application site were difficult to discern at the site visit because of the extensive tipping of waste that has taken place on the land. An area of land to the north-west of the appeal site is in the appellant's ownership. It was previously known as plot 1, however, the current proposal seeks to use this as an open area for biodiversity enhancement.
7. The appeal site lies within an area of countryside including a loose cluster of dwellings in an area known as Worlds End and there is an existing pub, The Chairmakers Arms to the east. The surrounding area is largely open countryside with scattered farmsteads and equine facilities and the Council's Landscape Character Assessment indicates that the local area comprises mixed farmland and woodlands within the Forest of Bere Lowlands.
8. The planning history of the appeal site and neighbouring area is relevant to this appeal. It is apparent that planning permission was sought for 8 gypsy/traveller plots/pitches in 2013 but permission was refused. A subsequent appeal² was dismissed as the Inspector concluded, in summary,

² APP/L1765/A/14/2224363

that while the Council could not demonstrate an adequate five-year supply of sites at that time, the conflict with the development plan and harm to the countryside character and other harms outweighed this factor and so neither a permanent nor temporary permission was justified.

9. In a subsequent appeal in 2019³ against an enforcement notice to cease the residential use of the land, temporary (5 year) permissions were granted for plots 3, 4, 7 & 8. In summary the Inspector concluded that the significant harm to the character and appearance of the surrounding area, and conflict with the development plan, was outweighed in the short term by the lack of alternative sites at that time and the unlikelihood of suitable sites becoming available, together with the appellants' personal circumstances and the best interests of children living on site. Since then, the Council has permitted two further pitches between the four approved at appeal. This was said to be a consolidation of what has already been permitted rather than a physical expansion of the overall site, and the permission is for a limited period expiring in August 2024 to coincide with the 2019 appeal decision.

Accord with development strategy

10. The development plan includes the Council's District Local Plan Part 1 Joint Core Strategy 2013 (now referred to as the CS); District Local Plan Part 2 – Development Management and Site Allocations (DMSA); the Denmead Neighbourhood Plan (NP); and the Traveller Development Plan Document (DPD). Policies relevant to the appeal will be considered in the main issues.
11. The site lies in the countryside well away from any settlement defined in planning policy. CS Policy MTRA 4 seeks to limit development in such a location to specific uses which have a functional need to be located in the countryside together with development associated with the reuse of buildings and also low-key tourist accommodation. The appeal proposal is not of this nature and therefore the proposal conflicts with this main policy as Mr Woods agreed.
12. However, both main parties recognise that other policies could permit development in a countryside location, and such a location is not advised against in the Planning policy for traveller sites (PPTS). In terms of the Policy CP5, dealing with sites for Gypsies and Travellers, the Council agreed that where a need could be established, the only criteria in this policy that was not met by the proposal was in relation to the effect on the landscape where sites should not be 'unduly obtrusive'. I will conclude on this aspect after the second main issue.
13. Policies on the suitability of gypsies/traveller sites are also set out in the Travellers DPD. This contains policies and proposal for the safeguarding of permitted sites and the development of new ones and Policy TR6 deals with new sites within settlement boundaries or by 'infilling'. Outside of these stated parameters the Policy sets out three criteria in bullet points for sites to be considered acceptable along with meeting other site-specific policy in CP5 and TR7.
14. Taking these bullet points in turn, on the appellant's evidence I have no reason to doubt that he and his family are travellers who meet the definition set out in

³ APP/L1765/C/18/3201565

the Annex to the PPTS. Although the Council query the extent to which the appellant has a personal and cultural need to be located in the area, as the appellant's parents live in a residential unit on the adjoining land as permitted by the 2019 appeal, at the moment the appellant has clear personal links to the area. Finally on the issue of other suitable accommodation, the evidence given at the hearing was not clear cut in that while alternative sites had not been shown to be available the Council referred to the range of potential sites set out in the DPD. Nevertheless, these appear to me to be privately occupied sites and there is little evidence that any could be reasonably suitable and available to the appellant and family.

15. Overall, on the written and oral evidence submitted I find that the proposal does not conflict with Policy TR6 of the DPD. I will make an overall conclusion of the accord with the development strategy in the planning balance.

Effect on countryside character

16. In assessing this factor, I have borne in mind that the existing gypsy/traveller pitches have a limited period permission which expire in 2024. Moreover, the present tipped material on the appeal site is unauthorised and I have not placed any weight on its visual appearance or the benefit of its removal that the proposal would result in.
17. Although the eastern edge of the appeal site is open, the southern and western boundaries are generally tree/hedged lined and there is another belt of landscaping along the frontage of Forest Road. Consequently, much of the appeal site and the caravans and day room proposed would be screened from view from the general public realm. There would be a limited view of these elements from Forest Road through the gap formed by the access and below the canopy of tall conifer trees together with views from other private land around the access road to the existing pitches.
18. In terms of the factors set out in Policy DM23 regarding 'Rural Character' I find that the proposed single pitch site would have a significantly intrusive effect on the physical character and landscape of the surrounding countryside which mainly comprises open fields and paddocks with belts of woodland. However, the direct visual effect on the public realm would only be moderately harmful as it is relatively contained by landscaping which could be reinforced.
19. The factors in DM23 also refer to the effect on 'tranquillity'. Although the proposed site would not make much difference to the comings and goings and light spillage associated with the other gypsy/traveller pitches, judged on its own and on a permanent basis I find that the trappings of the use proposed would be at odds with the characteristics of the relative remoteness of this rural area, taking account of the presence of The Chairmakers Arms which I noted at the site visit.
20. Overall, on this issue I find that even taking account of potential new landscaping and enhancement of the land to the north (previously known as plot 1) the proposed residential caravan pitch would harm the character and appearance of the surrounding area of countryside and would not accord with the provisions of Policy DM23. Moreover, it would be 'unduly intrusive' in the general landscape and so conflict with the specific criterion set out in Policy CP5.

Effect on SPAs

21. This issue is concerned with the discharge of foul water from new development in the area into the Special Protection Areas via water treatment plants. Such development is likely to have an adverse 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 overall SPA is in an unfavourable ecological state.
22. 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 2022⁴ and the evidence from Natural England.
23. The development proposal is the siting of a residential mobile home which would result in additional waste-water being produced. I understand that the waste would be disposed of to a small treatment plant on site, but this would need to be emptied on an occasional basis. Depending on where the sewerage would be treated locally the resulting nutrient in the effluent could still reach the SPAs. The extent of nutrient 'load' that is likely to arise has been assessed though a 'Nutrient Neutrality Budget Calculator' and the Council is satisfied that mitigation of the increase in nitrates can be addressed through a Grampian condition, the details of which were discussed at the Hearing.
24. If I was minded to allow the appeal, I would need to undertake an Appropriate Assessment under the Habitat Regulations, however, for the moment I am satisfied that with the condition put forward by the main parties (or Unilateral Undertaking if financial contributions were necessary) this would secure appropriate and necessary mitigation thereby ensuring that the proposal would not adversely affect the integrity of the SPA.

Need and supply of sites

25. The PPTS stipulates that Councils should be able to demonstrate a five-year supply of deliverable gypsy/traveller sites assessed against a locally set target. Policy DM4 indicates that the accommodation needs of travellers who meet the PPTS definition in the plan area will be about 15 pitches within the period 2016 – 2031.
26. The evidence submitted on the supply of sites in this case is varied and conflicting. It is evident that when the Council decided the application (August 2020) it conceded that it could not demonstrate a five-year supply at that time. However, when the appellant's agent submitted the written statement on the appeal (November 2020) the five-year supply was 'not contested'⁵. For more up to date evidence the Council relies on the Inspector's decision on two appeals in Hambledon⁶ issued in March 2021. In these the Inspector concluded that the Council did not have a shortfall of pitches. At this appeal the Council sought to introduce further evidence on the supply of sites from the last annual monitoring report, but this was objected to by the appellant as late evidence.
27. The appellant submits that the base data collected and used in the 2016 GTAA is now out of date and disputes some of the methodology contained within the

⁴ Statement UIN HCWS688.

⁵ As at paragraph 8.15.

⁶ APP/L1765/C/20/3254256 & APP/L1765/C/20/3253413

assessment. Nevertheless, the Traveller DPD is reasonably up to date and has been subject to examination. It should therefore be given the full weight of the development plan. The DPD indicates that the policy requirement set out in DM4 will be delivered with a surplus of 16 sites. This includes about 10 pitches to be delivered through the SPD mainly through the conversion of temporary sites into permanent ones under policies TR2-4 and the intensification of existing sites under policy TR5. Even if the provision at Tynefield is deleted from the calculation, as the Council accepts that the site remains in an uninhabitable state, it appears to me that there is still an adequate supply at the moment.

28. I recognise that when the temporary permissions relating to the adjoining land expire in 2024 there may be a local need arising from the 6 pitches, but I cannot speculate if these would then meet policies TR5 or TR6 because of the harm to the character of the countryside previously identified. The issue of that need would therefore be a matter for the forthcoming Local Plan review.
29. Overall, on this issue I find that at the moment it has not been shown that the Council cannot demonstrate an adequate supply of gypsy/traveller sites to satisfy Policy DM4.

Personal circumstances including best interest of children

30. The appellant and family's personal circumstances are set out in his Statement, and this was added to at the hearing. In essence he and his family have been travelling for work and have to live on the road-side or 'double up' on existing pitches. However, their current pitch expires in October and the family would likely be back living on the roadside if this appeal is not successful. His parents occupy one of the adjacent sites and the family would greatly benefit from living close to the relatives. A permanent address would also help the family access medical and social services.
31. There are four children in the family currently of school age and their itinerant lifestyle means that the children get little formal education. The pitch on the appeal site would give them a settled base from which they would be able to attend local schools which is essential for their educational and social development and is in their best interests. The clear benefits for the grouping of the extended family (at least up to 2024) and the best interest of the children are factors that I give significant weight.

Planning balance

32. At the start of the planning balance, I have borne in mind the requirements of the Public Sector Equality Duty and I have placed no single aspect above the best interests of any child.
33. On the main issues I have found that the proposed residential pitch would harm the countryside character of the area. While the visual harm would be moderate there would be significant harm to the physical undeveloped character of the countryside landscape and the tranquillity of the area so as to conflict with the provisions of Policy DM23 and it would be unduly intrusive and conflict with the criteria in Policy CP5, although I have found that the DPD Policy TR6 is not conflicted with.
34. The proposal would add to the effect caused by discharge of nitrates into the Solent SPA in a minor way, but I am satisfied that a condition could be imposed

- on any permission to ensure appropriate and necessary mitigation so that the proposal would not adversely affect the integrity of the SPA.
35. Overall, I conclude that the proposal conflicts with the strategy and policy of the development plan when this is read as a whole, but this has to be balanced with other considerations.
36. In terms of the need and supply of gypsy and traveller sites, I conclude that it is likely that the Council can demonstrate an adequate supply at the moment and that the requirements of the PPTS are being met.
37. The proposal would provide significant benefits for the appellant and family in finding a permanent base close to other family members for their mutual support and would help secure access to education for the children essential for a secure and stable upbringing.
38. On balance, I conclude that the harm which would be caused by the development and the conflict with the development plan outweighs the other considerations to the extent that permanent planning permission should not be granted. However, it is also necessary to consider whether a time-limited permission could be granted. It is evidence that this should be consistent with that applying to the neighbouring pitches but in practice the period of just over two years would be disproportionate to the degree of work required to make the site ready for the use proposed. It could also hinder rather than support the children's long-term stability particularly for education.
39. On this basis neither a permanent nor temporary permission is justified. Dismissing the appeal could interfere with the appellants' rights under Article 8, since the consequence might be that the family is rendered homeless at some point. However, the interference would be in accordance with the law and in pursuance of a well-established and legitimate aim: the protection of the character and appearance of the countryside.

Conclusion

40. For the reasons give above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr A Masters	of Counsel
Mr B Woods BA (Hons) MRTPI	WS Planning and Architecture
Mr P Doran	Appellant
Mr T Doran	Appellant's father
Mrs E Doran	Appellant's mother

FOR THE LOCAL PLANNING AUTHORITY:

Ms R Chapman	Principal Planning Officer, Winchester City Council.
Mr S Opacic	Strategic Planning and Projects Officer, WCC
Mr Dunbar-Dempsey	Landscape Officer WCC
Ms L Hutchings	Planning Implementation and development Manager WCC

INTERESTED PERSONS:

Cllr P Langford-Smith	Chair – Denmead Parish Council.
Mrs C Hargreaves	Chair – Residents Association.
Ms D Searle	Local resident
J Hollingshead	Denmead PC.
S Settle	Local resident

DOCUMENTS SUBMITTED AFTER THE HEARING

- 1 Revised Solent Nutrient Budget Calculator – sent by email 25 August 2022.
- 2 Response from LPA – sent by email 25 August 2022.

End