



Appeal Decision

Site visit made on 11 July 2022

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 October 2022

Appeal Ref: APP/L3815/W/21/3272950

Hopedene, Common Road, Hambrook, Westbourne PO18 8UP

- 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 & Mrs R Loten against the decision of Chichester District Council.
 - The application Ref WE/20/00047/FUL, dated 8 January 2020, was refused by notice dated 12 March 2021.
 - The development proposed is change use of land to a single private gypsy pitch with associated hardstanding and day room.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of land to a single private gypsy pitch with associated hardstanding and day room at Hopedene, Common Road, Hambrook, Westbourne PO18 8UP in accordance with the terms of the application, Ref WE/20/00047/FUL, dated 8 January 2020, and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. At the time of my site visit, a static caravan was stationed on the pitch and being occupied. An existing polytunnel and farmshop identified in the submissions had been removed. A rectangular brick structure had been partially constructed. This does not appear to align with the position of the proposed day room indicated on the submitted drawings. For the avoidance of any doubt, I have determined the appeal on the basis of the submitted plans.
3. During the course of the appeal, Natural England (NE) issued updated advice on 16 March 2022 in respect of nutrient impacts within the Solent. This advises of an updated methodology for calculating nitrogen neutrality. The parties have been given the opportunity to comment on the implications of this. I have taken those comments into account in my decision.
4. The appellants have submitted a signed Unilateral Undertaking (UU) under section 106 of the Town and Country Planning Act 1990 (as amended) dated 21 October 2021. This secures a contribution towards the provision of access mitigation measures in respect of the Chichester and Langstone Harbours Special Protection Area (SPA). I return to this later in my decision.
5. Since planning permission was refused, the Westbourne Neighbourhood Plan (WNP) was made on 21 September 2021. In accordance with section 3 of the Neighbourhood Planning Act 2017, it now forms part of the development plan for the area. I have determined the appeal on this basis.

6. The Council's statement of case was submitted on the basis of the made WNP and the appellants had the opportunity to respond to this but made no further comments.
7. Policy OA3-1 of the WNP sets out criteria against which proposals for additional Gypsy, traveller and travelling showpeople applications should be assessed. Although not a reason for refusal, since the WNP has now been made, the Council has raised a concern that criterion b) of that policy has not been met. This sets out a requirement to demonstrate that there is no alternative pitch which could be used in the locality. I have therefore dealt with this as a main issue.

Main Issues

8. The main issues are:
 - whether the appeal site is a suitable location for the proposed development, having regard to the effect of the proposed additional Gypsy/traveller pitch, in combination with existing sites, on the settled community;
 - the availability of alternative pitches;
 - the effect on protected habitats sites; and
 - whether any harm identified, including conflict with the development plan, would be outweighed by other considerations.

Reasons

Suitable location

9. Hopedene comprises a mixed agricultural, horticultural and equestrian property with a bungalow and yard area. The appeal site occupies an area of land within this plot. It is located in the parish of Westbourne, within a rural location outside of any defined settlements. It is therefore within the countryside for planning purposes.
10. Hopedene is located adjacent to a cluster of gypsy pitches. This includes the Paddocks which has planning permission¹ for a twelve pitch sites for gypsy accommodation together with additional site warden mobile home pitch and a further area which is permitted² for the change of use of land to form five pitches for touring caravans.
11. The appeal proposal would provide a single pitch gypsy site comprising a static caravan, a touring caravan, a day room, amenity and parking areas.
12. Policy 36 of the Chichester Local Plan: Key Policies 2014-2029 (the Local Plan) deals with planning for Gypsies, travellers and travelling showpeople. It sets out that in determining planning applications, proposals will be supported where it can be demonstrated that all of a number of criteria can be met. This includes that in rural and semi-rural areas such sites should not dominate the nearest settled communities.
13. Policy OA3-1 of the WNP also sets out criteria against which proposals for additional Gypsy, traveller and travelling showpeople applications should be

¹ Council Ref: WE/14/03834/FUL

² Council Ref: 11/05445/FUL

- assessed. This includes criterion c) which requires that development does not result in sites being over-concentrated in any one location or disproportionate in size to nearby communities.
14. Planning policy for traveller sites (the PPTS) paragraph 25 sets out that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements, and should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure.
 15. The site is in the open countryside. The surrounding area includes an airfield, directly opposite the site, and agricultural fields. There is some limited dispersed development within the wider area, with the nearest settlements being the small hamlet of Woodmancote and the larger villages of Funtington, Hambrook and Westbourne, all of which are a short drive away.
 16. The appeal site is located within the immediate vicinity of an established Gypsy and traveller site, The Paddocks. Within the wider area, indicated to be approximately a 2km radius of the site, there are a number of Gypsy and traveller pitches along Newells Lane, Scant East Road and West Ashling Road. The Council has advised these number 41 pitches.
 17. The Council's submissions indicate that within the parish of Westbourne, there are 45 authorised plots. In comparison to the 1,102 dwellings within the parish, taken from the April 2021 Council tax records, this would represent a proportion of 4.08%. The neighbouring parish of Funtington has a higher proportion of 5.54%.
 18. In terms of numbers, the addition of a single pitch would increase the proportion to 4.17% which would amount to a very marginal increase. I do not find this would be disproportionate to the size of the settled population. Moreover, I have been provided with no specific details as to how the existing Gypsy and traveller sites and the proposed additional pitch would impact upon the local settled community such as through pressure on existing 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.
 19. Visually, the pitch is set behind a high evergreen hedge and not prominent from the public domain and would therefore not dominate the settled community through visual intrusion.
 20. In combination with the twelve existing pitches and the five permitted, the addition of a single gypsy pitch would not on its own, or in combination, result in a scale of Gypsy site that would be disproportionate in size, so as to dominate the nearest settled communities.
 21. A recent appeal³ to extend the neighbouring site to include four additional pitches was dismissed because it could not demonstrate appropriate mitigation in relation to harm to habitats sites. The Inspector in that appeal found no harm to the settled community arising from the additional development. The scheme before me is much smaller and there is therefore no reason for me to reach a different conclusion to that Inspector in this regard.

³ APP/L3815/W/20/3259671

22. The WNP sets out at paragraph 4.5.17 that the development of further Gypsy and traveller sites in the parish would be premature and disproportionate. This is on the basis that the broad location of new Gypsy and traveller sites from 2022 will be determined in light of the revised Gypsy and Traveller Accommodation Assessment (GTAA) findings and implemented through the Council's forthcoming Gypsy and Traveller Development Plan Document (the DPD). On this basis, it is not anticipated that any further allocations for plots or pitches will be made in the parish for the next 6-15 year period.
23. Whilst this position is noted, the GTAA has identified a sizeable deficit in the supply of Gypsy and traveller pitches across the District and the timetable for the preparation of the DPD is under review. In view of this, I am unable to reach a firm view as to whether or not further plots or pitches will be allocated within the parish. In any event, I have found that the limited scale of the proposed development would not adversely affect the community balance in the area.
24. My attention has been drawn to a number of outstanding planning applications and appeals for Gypsy and traveller pitches in the locality. Should these be successful, the overall number of pitches in the locality could increase. However, at this stage, these have not been permitted and do not contribute to the overall number of pitches within the area. They would be subject to assessment on their own individual merits as is the appeal before me.
25. I conclude that the appeal site would be a suitable location for the proposed development, having regard to the effect of the proposed additional Gypsy/traveller pitch, in combination with existing sites, on the settled community. It would therefore accord with Policy 36 of the CLP and Policy OA3-1 of the WNP as referred to above.

Availability of alternative pitches

26. The WNP requires justification for additional pitches within the Parish. On this basis, it requires a demonstration that there is no alternative empty lawful pitch which could be used and confirmed by the local housing authority.
27. The appellants are specifically seeking to provide a gypsy pitch for their son and his family and to live as an extended family. The appellants reside in the bungalow at Hopedene. The appellants' son and his wife were previously residing at the neighbouring site but the accommodation was described as 'unpractically small' which forced them to seek alternative accommodation due to the impending birth of their child. The Council has not disagreed with this.
28. There is no dispute that the appellants meet the definition of a gypsy and that they can demonstrate a significant tie to the local area. The appellants intend to take a role in childcare when their son is working away. Living as an extended family group is a characteristic of the gypsy lifestyle. To my mind, these are all factors which indicate a site specific need is required in this instance.
29. The appellants have not submitted any evidence of having undertaken a search for alternative pitches. They have stated that there are no other sites available beyond the parish boundaries. This is not unreasonable given that the proposal was neither refused on this ground and the appeal was lodged prior to the WNP forming part of the development plan.

30. The Council has also not suggested any viable alternative pitches for the family. The Council has acknowledged that there is a total unmet need of 39 pitches within the District between October 2021 and March 2026. Given the lack of pitches, there is limited evidence before me to suggest that there would be available alternative pitches.
31. The Parish Council has indicated that some approved pitches and plots remain vacant locally with five pitches at Cemetery Lane, Westbourne listed as an example. However, I have been provided with no substantive evidence to confirm this. In any event, this would not meet the site specific requirements of the appellants. I therefore attribute very limited weight to this.
32. I am therefore satisfied that there are no alternative pitches available to the appellants. I therefore find no conflict with Policy OA3-1 of the WNP in this regard.

Habitats sites

33. The appeal site is located within the Solent region and within the 5.6km zone of influence of the Chichester and Langstone Harbours Special Protection Area (the SPA). This is a European Site of Nature Conservation Importance and subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Regulations). Regulation 63 prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of the European sites. I am the competent authority for the purposes of this appeal.
34. The Council, in consultation with NE, considers that any net increase in residential development within this area is likely to have a significant effect on the integrity of the SPA, either alone or in combination with other plans or projects. This is due to a potential increase in recreational activity and through nutrients entering the Solent water environment.
35. Both Chichester and Langstone Harbours contain extensive intertidal mudflats and sandflats with areas of seagrass beds, saltmarsh, shallow coastal waters, coastal lagoons, coastal grazing marsh and shingle ridges and islands. These habitats support internationally and nationally important numbers of overwintering and breeding bird species. The sites conservation objectives can be summarised as avoiding a deterioration of habitats and minimising bird disturbance, thereby ensuring the integrity of the sites is maintained.
36. As the competent authority, I am therefore required to carry out an appropriate assessment, in accordance with the Regulations, to consider the implications of the proposal on the SPA in view of its conservation objectives.

Recreational pressures

37. Evidence has shown that increased recreational activity such as walking, boating and water sports is likely to lead to increased disturbance to the birds within the SPA. This interrupts their feeding which can mean they have insufficient energy to survive the winter and complete their migratory journey back to their summertime breeding habitats. If this occurs, this would cause a reduction in the bird population.

38. In order to avoid any such harms, suitable mitigation would be required for new housing development within the zone of influence. This includes permanent Gypsy and traveller pitches.
39. The mitigation proposed for recreational disturbance is through the Bird Aware Solent Strategy, which is delivered by the Solent Recreation Mitigation Partnership. This identifies the key mitigation measure as a team of rangers who patrol the coast, helping to increase awareness and educating visitors about the birds, as well as providing some green infrastructure improvements and monitoring.
40. The proposal would result in an increase in residential development. The appellants are willing to provide the required mitigation and has provided a copy of a signed and dated UU which undertakes to make the required payment for the development. I also have evidence that the payment has already been made in full, based on the flat rate plus monitoring fee required.
41. I am satisfied that the planning obligation is necessary to make the development acceptable and the contribution would be fairly and reasonably related in scale and kind to the development. Moreover, there is no reason to doubt that the Council, as a responsible public body, will spend the money in the way it is intended.
42. As such, I have been able to complete my appropriate assessment and to conclude that the proposal would not adversely affect the integrity of the Chichester and Langstone Harbours SPA as a consequence of increased recreational pressure.

Nutrient neutrality

43. The Solent habitats sites and catchment, which includes the SPA is in an unfavourable condition due to poor water quality caused by nutrient enrichment from elevated nitrogen and phosphorus levels. Excessive levels of nutrients can cause the rapid growth of certain plants through the process of eutrophication. A consequence of this is the formation of dense mats of green algae and other effects on marine ecology, which is impacting on the protected habitats and bird species.
44. Wastewater from new housing development, including the proposed development, which discharges into the SPA contributes to this. On this basis, the proposal is likely to have a significant effect, which in combination with other plans and projects, would harm the integrity of the SPA.
45. Mitigation against such impacts is to achieve 'nutrient neutrality'. To this end, the amount of nutrients generated by the development are calculated which provides a nutrient budget. If it is not possible to achieve a nutrient neutral development, then mitigation is required to achieve nitrogen neutrality.
46. The appellants propose the use of a package treatment plant (PTP), specified as a 'BioBubble Compact'⁴. This would discharge into an area of reedbed which would be provided on land within the appellants' ownership. This would reduce the amount of nutrients that would discharge into the SPA. The effectiveness of the PTP would be reliant on ongoing monitoring and management which should

⁴ Nitrate Budget Report, v2 – Technical Data – BioBubble Compact 6-8PE/Compact 10-30PE Wastewater Treatment Solutions

be secured in perpetuity. A condition would ensure that a PTP, achieving the required standards for reducing the discharge of nutrients, is installed and maintained.

47. Notwithstanding the provision of a PTP, there would be some residual nutrient inputs to mitigate. The appellants have submitted a Solent Nutrient Budget Calculator for the appeal site (version 4) which indicates a total annual nitrogen load to mitigate of 1.54 kg total nitrogen (TN)/year. This accords with NE's calculations.
48. To offset this, it is proposed to provide an area of off-site rewilding. Based on a historic use of the land to be rewilded for horses grazing, an area of 83sq.m through the planting of a native broadleaf woodland would be required. The proposed woodland area would be within the ownership of the appellants but outside the appeal site. It is intended to fence this area off to prevent dogs from entering the area and to prevent any harm to the woodland through composting. The details and management of this area of woodland would be secured by suitably worded planning conditions.
49. Consequently, I am satisfied that the adverse effects of the proposal could be effectively mitigated with regards to nutrient impacts. Thus, I conclude that the proposed development would not have an adverse effect on the integrity of the SPA.
50. As I have found that the proposal would not conflict with the development plan, there is no need for me to consider whether other material considerations justify the proposal.

Conditions

51. The Council has suggested a number of conditions including those which I have already referred to earlier in my decision. I have considered these and imposed where they meet the tests set out in Paragraph 56 of the National Planning Policy Framework, amending where necessary for the sake of simplicity, clarity and precision.
52. A condition restricting occupancy of the site to gypsies and travellers, in accordance with the definition give in the PPTS, is reasonable in accordance with Policy 36 of the Local Plan. I have additionally imposed a condition requiring accordance with plans in the interests of certainty. A condition limiting the number of caravans on the site at any one time is reasonable to protect the character of the area. I have amended the condition suggested by the Council to allow for the stationing of two caravans, of which only one can be static. I have imposed a condition requiring details of the external finishes to the proposed dayroom to be submitted and approved to protect the appearance of the area.
53. In the interests of protecting trees and ecology, conditions requiring tree and hedgerow protection during construction works is necessary. A condition requiring any land contamination identified during construction to be reported, remediated and verified is necessary in the interests of the health and safety of future occupants.
54. I have imposed a condition to secure electric vehicle charging and cycle parking in the interests of reducing carbon emissions and encouraging sustainable

transport. A condition securing car parking is necessary to ensure adequate parking is provided to serve the development.

55. A condition requiring ecological enhancement of the site is reasonable as the site forms part of a proposed landscape corridor which would contribute to biodiversity net gain. A restriction of permitted development rights to restrict the installation of lights is reasonable in the interests of protecting wildlife in the area from intrusive lighting.
56. I have amended the timescales for compliance with conditions requiring the provision of an electric vehicle charging point, cycle parking, car parking and nitrogen mitigation. These conditions are imposed to ensure that the required details where needed are submitted, approved and any approved details are implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted for a development that has already commenced, and so it is not possible to use negatively-worded conditions to secure the approval and implementation of the outstanding matters before the development is occupied. The conditions will ensure that the development can be enforced against if the requirements are not met.
57. I have not included a condition requiring compliance with the Arbtech Preliminary Roost Assessment Survey (14/02/2020) as no bat roosts were identified in that report and all buildings have been removed from the site. I have also not imposed a requirement to comply with the Your Environment Phase 1 Desktop Study and Preliminary Risk Assessment (February 2020) as the requirements of this report relate to potential land contamination and I have imposed a condition in relation to this. I have omitted a requirement for details of wild meadow grassland seed to be provided as this no longer forms part of the mitigation for nutrient impacts.

Conclusion

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

Rachael Pipkin

INSPECTOR

Schedule of conditions

- 1) 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 (or its equivalent in replacement national policy).
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing 1, 2, 3, 4D, 5A, 6, 7A and 9
- 3) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than one shall be a static caravan) shall be stationed on the site at any time.
- 4) Notwithstanding any details submitted no development/works shall commence above slab level to the day room until a full schedule of all materials and finishes and samples of such materials and finishes to be used for external walls and roofs of the building have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved schedule of materials and finishes unless otherwise agreed in writing by the local planning authority.
- 5) The development hereby permitted shall be carried out in strict accordance with the details of tree protection as shown on the approved drawing 9, which shall be implemented and maintained at all times during construction.
- 6) A fenced off buffer strip shall be erected and maintained around all hedgerows at all times during construction.
- 7) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. The day room shall not be first occupied or brought into use until
 - a. An investigation and risk assessment have been undertaken in accordance with a scheme that shall first have been submitted to and approved in writing by the local planning authority, and
 - b. where remediation is necessary a remediation scheme must be submitted to and approved in writing by the local planning authority. Any remediation shall be fully implemented in accordance with the approved scheme before the development is brought into use, and
 - c. a verification report for the remediation shall be submitted in writing to the local planning authority before the development is first brought into use.
- 8) Unless within three months of the date of this decision, a scheme in respect of the provision of one electric vehicle charging point and provision of covered and secure cycle parking spaces is submitted to the local planning authority for approval in writing, and unless the approved scheme is implemented within three months of the local planning authority's approval, the use of the site shall cease and all equipment, materials and vehicles brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within three months of the date of this decision, the use of the site shall cease and all equipment, materials and vehicles brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 9) Unless within three months of the date of this decision, the car parking has been constructed and laid out in accordance with the approved site plan and the details specified within the application form, the use of the site shall cease and all equipment, materials and vehicles brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

The car parking spaces shall thereafter be retained for their designated purpose.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 10) Prior to the occupation and use of the day room hereby permitted, the following ecological enhancements shall have been implemented:
- a. Installation of a bat brick/box to the day room or within a tree sited within the grounds of the property, facing a south/south westerly and positioned 3-5m above ground.
 - b. Installation of a bird box to the day room or within a tree sited within the grounds of the property.
 - c. Infilling of any gaps within the existing hedgerows using native hedge species

Once carried out, the ecological enhancements shall be retained in perpetuity.

- 11) Unless within three months of the date of this decision, full details of the nitrogen mitigation proposal in strict accordance with the Solent Nutrient Budget Calculation V4, drawing 7A (received and held on file 29.07.2022) and the mitigation and management plan have been submitted to the local planning authority for approval in writing, and unless the approved scheme has been fully implemented within three months of the local planning authority's approval or within a timescale agreed in writing by the local planning authority, the use of the site shall cease and all equipment, materials and vehicles brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within three months of the date of this decision, the use of the site shall cease and all equipment,

materials and vehicles brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

Upon implementation of the approved scheme specified in this condition, that scheme of nitrogen mitigation shall be retained and maintained in perpetuity and for the purpose of achieving nitrogen neutrality for the lifetime of the development, in accordance with the approved maintenance scheme.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

The development shall have fully implemented the required nitrogen mitigation, in strict accordance with the Solent Nutrient Budget Calculation V4, drawing 7A (received and held on file 29.07.2022) and the mitigation and management plan. This shall include:

- i. the provision of an area of 83 square metres of existing grassland to be repurposed for rewilding, in accordance with the approved details;
- ii. the installation of a BioBubble Compact 6-8PE wastewater treatment plant (as specified within the submitted Nitrate Budget Report, v2 - Technical Data – BioBubble Compact 6-8PE/Compact 10-30PE Wastewater Treatment Solutions); and
- iii. the provision of an area of reedbed for the absorption of discharge from the BioBubble Compact 6-8PE wastewater treatment plant of a size that shall have first been agreed in writing by the local planning authority.

The details required by this condition shall include, but are not limited to:

- a. tree species, size and spacing to achieve min 20% canopy cover at maturity based upon 100 trees per hectare
- b. plant species and size for the reedbed
- c. timescale for the implementation of the rewilding, including appropriate timings for planting and seeding (i.e. first available planting season)
- d. protective fencing
- e. frequency of cutting of the grassland and disposal of cuttings beyond the mitigation area
- f. maintenance of the land in perpetuity
- g. maintenance and management program for the proposed package treatment plant (PTP), to include details of person(s) responsible for its maintenance and management, a service and maintenance schedule (which accords with manufactures recommendations) and arrangements for the replacement of the PTP or major component parts in the event of major failure of at the end of the manufacturers recommended design life.

- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), there shall be no external lighting anywhere on the dayroom or mobile home, other than in accordance with a scheme that shall first have been submitted to and approved in writing by the local planning authority. Any scheme shall include the detailed design of

the lighting, including the measures proposed to avoid light spillage. Thereafter the lighting shall be maintained in accordance with the approved details in perpetuity.

End of schedule