



Appeal Decision

Inquiry held on 22-24 February, 24-25 May and 21 July 2022

Site visit made on 25 May 2022

by C Sherratt DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 November 2022

Appeal Ref: APP/Y9507/W/21/3276708

Land east of New Barn Farm Lane, Blendworth, PO8 0QG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Messrs Eastwood, Eastwood, Ford & Pullen against South Downs National Park Authority.
 - The application Ref SDNP/21/00548/FUL, is dated 29 January 2021.
 - The development proposed is "Change of use from Equestrian to a mixed use, of equestrian and residential, to allow for the creation of 4 Gypsy/Traveller Pitches comprising the siting of 1 mobile home, 1 touring caravan, and the erection of 1 dayroom per pitch."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A Case Management Conference was held on 16 December 2021 to discuss procedural matters relating to the appeal only.
3. Evidence relating to the integrity of the Solent Maritime Special Area of Conservation (SAC) and the Solent and Southampton Water Special Protection Area (SPA), protected species and surface water drainage were presented in writing. At the Inquiry, the evidence relating to living conditions was discussed in a round table session. The formal presentation of evidence was given on all the remaining main issues identified below.
4. After the close of the Inquiry, a Court of Appeal judgment *Lisa Smith v SSLUHC [2022] EWCA Civ 1391* was issued. The parties were invited to comment on the implications of this judgement, if any, on this appeal. I have had regard to these responses in reaching my decision.

Reasons

5. The appeal site is situated to the east of the small rural village of Blendworth, outside a defined settlement boundary. The site is located within the South Downs National Park (SDNP) and within that part of the National Park situated within East Hampshire District.
6. The appeal site comprises existing equestrian land¹, broadly rectangular in shape, with an existing hedgerow running along the western boundary with the

¹ Planning permission reference SDNP/14/03268/FUL establishes the lawful use for equestrian purposes.

road (New Barn Farm Lane). There is an existing vehicular access point to the site from New Barn Farm Lane. The appeal site lies within Flood Zone 1. It is located within the Meon River catchment area for nitrates. There are two public footpaths in the immediate area; one extends to the north-west of the site, extending along an existing track, and the other lies to the south-east of the site running through the adjacent woodland and exiting on the lane running along the south / south-east boundary of the site.

The Policy Framework

7. Planning law requires that applications for planning permission are determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (the Framework) is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements. The Framework should be read in conjunction with the Government's Planning Policy for Traveller Sites (PPTS). The development plan for the area includes the South Downs Local Plan (SDLP) (July 2019).
8. The purposes of the national park designations are to conserve and enhance the natural beauty, wildlife and cultural heritage of the area and to promote opportunities for the understanding and enjoyment of the special qualities of the National Parks by the public. Where there is an irreconcilable conflict between the statutory purposes, the first purpose will be given priority. The National Park Authority (NPA) also has a duty when carrying out the purposes to seek to foster the economic and social wellbeing of the local communities within the SDNP which includes gypsies and travellers.
9. The Framework confirms that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues. This is also reflected in the SDLP with Strategic Policy SD4 setting out how development proposals will be expected to conserve and enhance landscape character in the SDNP.
10. Of particular relevance in this appeal is Strategic Policy SD33 of SDLP that is specific to gypsies, travellers and travelling showpeople. Part 2 confirms that the NPA will seek to meet the need of gypsies and travellers by the allocation of permanent pitches and the granting of planning permission on currently unidentified sites for approximately (c) 6 pitches in that part of the National Park located in East Hampshire District. Part 3 sets out criteria that proposals to meet the needs of the travelling community on unidentified sites should meet. A summary of the need for permanent and transit pitches within the SDNP as of 1 December 2016, together with a summary of the allocations and remaining need, is presented in Figure 7.4 of the SDLP. Any subsequent updates are to be taken into account as appropriate. I was referred to a March 2022 'update' figure of a need for 29 sites across SDNP as a whole, none of which were in the East Hampshire part.
11. Other development plan policies guide the overall location of development, design and other development management considerations. I shall refer to these as relevant below.

Main Issues

12. There is no dispute between the main parties that the appellants and their immediate families would meet the definition of a gypsy and traveller for the purposes of PPTS (as amended in 2015), as set out in the Glossary at Annex 1. Prior to, and during the Inquiry, the main parties were able to reach agreement on a number of the issues previously identified in the Case Management Conference, as follows:

Integrity of the Solent Special Protection Area (SPA) and Special Area of Conservation (SAC)

13. The development would introduce residential development on the site, where foul water would drain towards the Solent. Through work with Solent Recreation Mitigation Partnership (SRMP), it has been concluded that any net increase in residential development will give rise to likely significant effects on the Solent SPAs, either 'alone' or 'in combination' with other development proposals. Accordingly, the proposals engage the provisions of the Habitats Regulations (the Conservation of Habitats and Species Regulations 2017) and thus Policy SD10 because of the likely adverse impacts on the Solent Maritime SAC and Solent Coast SPA by way of nitrate pollution.
14. All new residential development within this zone of influence will be required to mitigate the negative impact. This mitigation can be provided through a financial contribution towards the measures set out in the Solent Recreation Mitigation Strategy. No supporting evidence accompanied the application to enable the NPA to assess this matter. However, based on the evidence produced since for the purposes of this appeal, the main parties are in agreement that the proposed development can achieve nutrient neutrality through the provision of off-site mitigation.
15. In relation to the appeal development the appellant has carried out an up-to-date nutrient budget calculation which demonstrates that with mitigation measures in place, the nutrient neutrality of the residential use can be achieved. A package treatment plant system would be installed. This would pollute no greater than 15.4mg/l of Nitrates which is within the limitations of the Meon Springs agreement.
16. A unilateral undertaking has been provided that undertakes to make the required financial contributions (should the appeal succeed and planning permission be granted), towards the implementation of a planning permission granted for the Whitewool Farm Nitrate Removal project, managed by Meon Springs. The planning permission incorporates a detailed strategy for management and monitoring as part of the Nitrate Neutrality Scheme. A pre-commencement condition requiring the submission of a detailed Drainage Strategy and maintenance plan, to ensure the development can be considered acceptable in terms of nutrient neutrality for the duration of the development, would be required if planning permission were forthcoming.
17. In the event that a temporary permission is granted, the parties agree that an alternative, more temporary, method is achievable, within the limitations of the agreement. This would involve the installation of cesspits as part of the development, rather than a Package Treatment Plant, and would require effluent emptying contractors to dispose of foul waste at agreed Wastewater Treatment Works.

18. I agree with the main parties that the evidence now available, together with the completed unilateral undertaking provided, ensures that the negative impacts of the development on the Solent Maritime SAC and Solent Coast SPA by way of nitrate pollution, can be satisfactorily mitigated. I find no conflict with Policy SD10.

Protected species and habitats

19. The application was not supported by sufficient information in the form of a detailed ecological survey that would have been necessary for the NPA to fully consider avoidance, mitigation, compensation and enhancement measures appropriate for the development and whether there are any protected species and / or their habitats on the site. In the absence of this information, the NPA were not satisfied the development would not have an adverse impact on protected species and / or their habitats. Furthermore, it was not clear whether the development would have an overall positive impact on the natural environment.
20. During the Inquiry, it was agreed that this is a matter which can be addressed by way of an appropriately worded condition, a view with which I agree. As such, the development would not be contrary to Policies SD2 and SD9 of the South Downs Local Plan (SDLP).

Surface water flooding

21. The application was not supported by detailed drainage information. Concerns were raised by Hampshire County Council as the Lead Flood Authority (LFA) that the introduction of 4 pitches, hardstanding and additional structures on the site, may increase the risk of flooding in this location. As such, the development was found to be contrary to Policies SD49 and SD50 of the SDLP which, in brief, seek to reduce the National Park's vulnerability to flood risk and the impacts of flooding associated with climate change. The Authority will seek to manage flood risk through avoidance of risk wherever possible.
22. The appellant had, by the time of the Inquiry, submitted a revised drainage scheme to the LFA. Whilst no confirmation of the LFA's support was available, it was nevertheless agreed by the main parties, that the details provided to the Inquiry indicated that a suitable scheme could be achieved, such that the matter could be appropriately dealt with by way of condition requiring the submission of a scheme for approval, should permission be forthcoming. I agree and find no conflict with policies SD49 and SD50.

Living conditions of neighbouring properties

23. The main concern in respect of impact on living conditions is that there would be a requirement for the use of generators, pumps or other mechanical equipment for the day-to-day activities of the site occupants that would, in turn, negatively impact the occupants of the neighbouring and surrounding residents and those living on the site. There may be opportunities to connect to mains electricity if planning permission is forthcoming. The use of generators in particular could be prohibited unless suitable noise mitigation has been agreed and implemented first. Given the proximity of the site to the nearest residential properties, I am satisfied that noise and disturbance could be acceptably mitigated. Subject to a suitably worded condition to this effect, the development would accord with Policy SD54 of the SDLP.

Dark night skies

24. As agreed by the main parties in the Statement of Common Ground and based on discussions at the Inquiry, the NPA are of the view that any impact on the dark night skies which policies seek to protect within the SDNP, can be appropriately addressed by way of conditions, including conditions to remove/disable external lights attached to or incorporated into the material of caravans, mobile homes, or other pre-built structures. This is a view with which I concur.
25. The remaining main issues are:
- a) Whether the site is suitable for the proposed development, having regard to the countryside location and the development plan;
 - b) Whether the site is suitable for the proposed development, having regard to the accessibility of the site to local services and facilities;
 - c) The effect of the proposal on the landscape character and appearance of the South Downs National Park; and
 - d) the effect of other considerations, including the need for gypsy and traveller accommodation and the personal circumstances of the occupiers on the overall planning balance.

Principle of development

26. National policy makes clear that, as with any other form of development, planning permission for gypsy and traveller sites should only be granted in the National Park where it is demonstrated that the objectives of the designation will not be compromised by the development.
27. Policy SD25 is a spatial policy, seeking to direct development firstly and primarily to settlements and then providing some exceptions to this. It is an overarching policy and so I do not accept the appellants' proposition that Policy SD25 only applies to housing for the settled population. It seeks to promote sustainable development of all types. It should not however be read in such a restrictive way that Policy SD33, which is specifically addressing the provision of gypsy and traveller sites, has no positive affect.
28. Policy SD25 supports development in certain settlements, as defined on the Policies Map, subject to certain provisos. These towns and villages are identified as being able to accommodate growth of a scale and nature appropriate to their character and function. The appeal site is situated in open countryside outside of any defined settlement, the nearest defined settlement being Hambledon. The site is not allocated for development or safeguarded for the use proposed as part of the Development Plan.
29. Policy SD25 confirms that exceptionally, development will be permitted outside settlements where it complies with relevant policies in the SDLP, responds to the context of the relevant broad area or river corridor, and meets one of 4 criteria. I shall return to the first question of compliance with relevant policies later in the decision, having considered all the issues. Of relevance, in respect of this particular issue, is whether (b) there is an essential need for a countryside location; or (d) it is an appropriate re-use of a previously developed site.

30. Turning first to (b), the appellants argue that the prohibitive cost of securing land within settlement boundaries and the level of objection generally taken by the settled community to the presence of traveller sites within or adjacent to settlements essentially prevents the provision of sites in settlement boundaries. Being a residential use of land, it is reasonable to anticipate that caravan sites could be appropriately located in settlement boundaries, subject to considerations such as design. So, in this sense, I agree with the Council, at least from a functional point of view, that there is not generally an essential need for gypsy and traveller sites to be located in a countryside location.
31. However, it would be reasonable in my view, to consider a location outside a defined settlement essential if the alternative is likely to be that, in reality, no traveller sites would then be provided. Supporting text to Policy SD33 which is specific to gypsies and travellers acknowledges the difficulties experienced in identifying sites for allocation in the local plan and explains that, in response to the limited allocations (for gypsy and traveller sites) that have been possible, the policy includes criteria that will be used to determine applications on unallocated sites.
32. Furthermore, PPTS states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. It does not seek to prevent sites in open countryside altogether. There is therefore some acceptance in national policy that sites may be located in open countryside and these need not be strictly limited unless away from existing settlements. There would therefore be some tension between PPTS and Policy SD25, if applied as the NPA suggests, in that Policy SD25(2)(b) would be more restrictive in terms of where sites may be located.
33. Bearing in mind the difficulties encountered by the NPA identifying allocated sites, it does seem unrealistic to expect that sites will generally come forward in settlements. It is considered that the development is not therefore in conflict with criteria (2)(b) of Policy SD25 and so one of the criteria is met.
34. For completeness, I shall consider whether the site could reasonably be described as a previously developed site to which Policy SD25(2)(d) could apply. The explanatory text set out in paragraphs 7.11 and 7.12 make it clear that 'previously developed sites' means 'previously developed land' (PDL) as defined in the Glossary to the Framework, that being "Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure."
35. The appellants' case is that the appeal site is a previously developed site given its lawful equestrian use and in particular the existence of two stable blocks that have been in situ for over 10 years. The two stable blocks referred to, do not have the benefit of planning permission. Whilst the appellant's case is that they are lawful because they have been in situ for so long, no lawful development certificate has been secured certifying such lawfulness.
36. The remit of this appeal is not to establish whether the stables are permanent structures that are now immune from any enforcement action. Nevertheless, I noted they were on skids implying an intention for them to be moveable. However, there was no obvious visual evidence to suggest that they had been moved on any regular basis, if at all. The Council's evidence was that the

appellants had indicated themselves, on a previous site visit, that the structures were moveable and constructed in such a way as to be intentionally moveable. There is therefore, in the absence of any certificate of lawfulness, considerable doubt about whether the stable blocks should be regarded as permanent structures or not. I am unable to conclude that the land is in whole or in part a previously developed site and thus an appropriate re-use of previously developed land (Policy SD25(2)(d)). Sub-section (2)(d) is not therefore applicable. I need not therefore consider what is the curtilage associated with the stable blocks.

37. Whether an “exceptional approach” is justified, as set out in Policy SD25 also requires consideration of other policies in the plan. This is a matter to which I shall return.

Accessibility of the site

38. The Statement of Common Ground suggests that the nearest village of Blendworth is around 1.45 km away by road, although it has no shops or services, only a church. The nearest schools are some 3.38 km away and the closest Superstore is approximately 4.51 km away. Horndean is the closest and largest service centre, some 5.47 km and the Horndean GP Surgery is approximately 2.25 km away. All the stated distances are by road and the nearest bus stop is some 2.41 km away along the A3.
39. It is a matter of judgement whether these distances should be regarded as being ‘away’ from an existing settlement such that the traveller site development should be very strictly limited, as set out in PPTS. Although it has no shops or services, PPTS simply refers to settlements which, to my mind would include Blendworth. It is not “away” from an existing settlement in that respect.
40. There are no footpaths or street lighting within the immediate vicinity of the site and so walking to the nearest bus stop to use public transport would not be an obvious or realistic option. It is reasonable to conclude therefore that occupiers of the site would be heavily reliant on the use of private vehicles to access services and facilities. Whilst I do not doubt that some journeys would be shared by the intended occupiers and some super-market shopping orders may be delivered, the creation of 4 permanent pitches in this location would inevitably result in journeys by private car. It could not be said, in my view, that the development is located and designed to minimise the need to travel and promote the use of sustainable modes of transport. It would conflict with SDLP Policy SD19.
41. I was referred to various other appeal decisions in support of these distances being both acceptable and unacceptable. When considering sustainability considerations “in the round”, it is recognised that a settled base has various social benefits as well as reducing both the need for long-distance travelling and possible environmental damage caused by unauthorised encampments. The wording of Policy SD19 is specific to the need to travel and relates to all development. I have considered this particular issue in the context of the policy wording applicable to it. This is similar to the approach taken by the Inspector in the example decision submitted by the NPA, whereas the

appellants' example² considers sustainability in the round. Again, this is a consideration I shall return to.

Landscape character and appearance

42. As previously set out, one of the core statutory purposes of National Park designation is to conserve and enhance the natural beauty of the National Park; it is the purpose which attracts greater weight in the event of conflict between purposes for designation. This is reflected in Policy SD25 which, requires that the development responds to the context of the relevant broad area (SD25(2)) and, amongst other criteria, requires, proposals to conserve and enhance the special qualities of the National Park (SD25(2)(d)). It is further reflected and carried through into policies SD1, SD4 (landscape) and SD5 (design) comprising part of the landscape-led approach for the SDNP, which requires either conservation or enhancement of landscape character (SD4); and a positive contribution to the overall character and appearance of the area (SD5). That is consistent with the requirement of national policy that conserving and enhancing landscape and scenic beauty in National Parks attracts the highest level of protection that the planning system can confer³.
43. Indeed, national policy makes it clear that *"the scale and extent of development in these areas should be limited, in view of the importance of conserving and enhancing their landscapes and scenic beauty. Its policies for protecting these areas may mean that it is not possible to meet objectively assessed needs for development in full through the plan-making process, and they are unlikely to be suitable areas for accommodating unmet needs from adjoining (non-designated) areas.....All development in National Parks, the Broads and Areas of Outstanding Beauty will need to be located and designed in a way that reflects their status as landscapes of the highest quality..."*⁴
44. The proposal involves the creation of 4 permanent pitches on the site, hardstanding, mobile homes, touring caravans, dayrooms and additional domestic paraphernalia, which the NPA say would have an urbanising and detrimental impact on the rural landscape and the local character and appearance of the area. In addition, the authority consider that the additional planting is not in context and in-keeping with the wider landscape character.
45. I have carefully considered the assessments and conclusions reached by the landscape witnesses. The appellants' own landscape evidence concludes that there will be a moderate adverse impact⁵. However, it is argued that with appropriate mitigation that is in keeping with the local landscape character, the landscape and visual effects could be reduced to an acceptable level. To find no conflict with the development plan, it would be necessary, as is suggested by the appellant, to find that the harm described as being of an acceptable level and "not undue harm" as found to be the case by the appellants' landscape witness, can be regarded as a finding that the landscape and scenic beauty of the National Park is being conserved.
46. Whilst, with the involvement of a landscape architect, it has been demonstrated that some mitigation and improvements can be achieved over and above the original application proposal, the pitches would still essentially

² APP/J1915/W/19/3234671 – Land off Chapel Lane, Letty Green, Little Hadham, Hertfordshire

³ Paragraph 176 of the Framework.

⁴ NPPG ID 8-041-20190721

⁵ POE of Mr Petrow - 4.1 and XX

sit in a relatively central position within the wider site. I find it inconceivable that had the proposal been landscape-led, as required by Policy SD5, from the start, that this would have been the chosen position of the pitches. Paragraph 5.9 of the SDLP emphasises the importance of proposals being based on a meaningful understanding of the context and character of an area and those positive characteristics which define local distinctiveness. Very little regard appears to have been paid to the juxtaposition of pitches to the existing boundary hedges or stables (should they be lawful), let alone to the need for new development to be located and designed in a way that reflects the status of the wider area as a National Park with and its landscapes of the highest quality.

47. Paragraph 5.13 of the SDLP confirms that good design should avoid the need for screening which could appear incongruous in the landscape. I agree with the NPA that the proposed landscaping itself would be wholly out of context in this particular location, quite obviously serving to screen a poorly located development. I do not consider the proposal and associated landscaping are complementary to their context and setting; it would not make a positive contribution to the overall character and appearance of the area.
48. I accept that the development of gypsy and traveller sites outside of settlements in the SDNP, is likely to result in some change. That is not to say however that it cannot be sensitively designed so as to be assimilated into the surrounding landscape whilst still conserving or indeed enhancing a site, say that was previously developed and unsightly. With consideration of an appropriate location and design-led approach, I consider this could be achieved. In this case, the proposal is simply not located and designed in a way that reflects the importance to be given to conserving and enhancing landscape and scenic beauty in National Parks. It cannot be said to conserve landscape character even after the proposed landscaping has matured.
49. The appellant put forward an option to remove the dayrooms from the proposal and to convert one of the stable buildings on the site to provide the essential utilities instead. Whilst any reduction in built form would be an improvement, the dayrooms are still only part of the overall development. The areas of hardstanding, mobile homes, touring caravans and any additional domestic paraphernalia would still be poorly located and be urbanising features within the landscape. The removal of the day rooms would not, in themselves, address the concerns raised.
50. Notwithstanding the quality of hedgerows proposed to be planted in an attempt to assimilate the development, the proposal fails, to conserve the natural beauty of the National Park.
51. To conclude on this issue, the development proposal is not landscape-led and would clearly fail to conserve and enhance the landscape character and appearance of the SDNP. In consequence, the proposed development would not respond to the context of the relevant broad area (SD25(2)) and be contrary to Policies SD4 and SD5 of the SDLP, the core purposes of the National Park and the advice contained within the Framework⁶.

Tranquillity

⁶ (Paragraphs 130 and 174).

52. The creation of 4 permanent pitches would introduce permanent human habitation on the site, associated artificial lighting and increased noise and disturbance from the residential use of the site and all the domestic paraphernalia and activity associated with that. Whilst the existing lawful use would generate some comings and goings, there would not be a continual presence and activity on the site. The presence and general activity associated with the proposed residential development would be very evident in this case, even more so by reason of the poor juxtaposition of the pitches within the context of the site. It would therefore conflict with Policy SD7 that confirms that proposals will only be permitted where they conserve and enhance relative tranquillity.

Identified need for sites

53. Policy SD33 is of particular relevance to proposals for gypsy and traveller sites. It seeks to safeguard existing sites; sets out the number of pitches to be granted planning permission on allocated sites located within specific authority areas within the SDNP; and, stipulates the criteria that unidentified sites shall meet to comply with the policy. The appeal site is an unidentified site and so the policy criteria contained in the third limb apply. These include that a proposal must meet a need as identified in Figure 7.4 of the SDLP (SD33(3)(a)). I agree with the Council that need in the context of this policy does not include personal need since table 7.4 relates to the need assessed to exist as a result of the various assessments of need carried out.

54. Figure 7.4 only shows the need in the SDNP area. It cannot be the case therefore that the wider needs of each local authority situated within the SDNP fall to be considered for the purposes of SD33(3)(a), since that wider need is simply not identified in figure 7.4.

55. There was no dispute that, if the need set out in Figure 7.4 is aggregated, an overall need remains in the SDNP area. However, the supporting text confirms that the assessment of need is established through various GTAA's and that this will be subject to change as Local Housing Authorities update respective studies. It was also explained in evidence to the Inquiry, that GTAA's are undertaken across the SDNP by the local authorities which underlie each 'part' of the National Park. The NPA will input as required into these pieces of work.

56. This carrying out of separate assessments emphasises to me that it is not, for the purposes of Policy SD33(3)(a), appropriate to consider the need across the SDNP as a whole. It seems to me that any supply will in turn, be factored into any update for that particular local authority area, which may or may not be part of a wider assessment. Furthermore, in practical terms, I also agree with the NPA that an overall figure of 'need' for the SDNP, is not (and would not be) reflective of the underlying reality 'on the ground' as a function of the size, span, and extent of the SDNP. It could not therefore be said, in my view, that the 4 pitches that this appeal relates to, would be contributing to a wider need beyond the East Hampshire part of the SDNP.

57. For the purposes of criterion SD33(3)(a), it is considered that the identified need that must be demonstrated is in respect of a need for additional pitches in the specific part of the SDNP within which East Hampshire administration area is part. It was agreed by the main parties that no identified need expressed in figure 7.4 exists here; that identified need has already been met and so there is no conflict with Policy SD33.

58. The considerations of wider need within East Hampshire district, the SDNP as a whole and 'sub-regional need' as it was referred to, across all the authorities within SDNP, and any implications of the Court of Appeal judgement previously referred to, are nevertheless capable of being material considerations which I shall address separately.

Other Matters

General need for and supply of sites (not previously addressed)

59. It was argued on behalf of the NPA that any contribution from unidentified sites intended for occupiers who did not form part of any existing needs assessment; in other words, who were not in the area at the time of the assessment already, would not contribute to the supply of pitches needed to meet the identified need and so this should not be afforded weight. The NPA's witness suggested, in response to my own question about the reasonableness of such a different approach to that undertaken to assess need and supply in the settled population, that it was reasonable given the smaller number of people involved in the needs assessment when compared to the settled community. However, that suggests that the needs assessments make no realistic allowance for inward and outward migration; it assumes that traveller families may never wish to 'move' from one settled base to another, perhaps because their own need for a site change, e.g., a smaller or larger site is needed or for personal reasons they need to be near other family members living elsewhere.
60. The PPTS states in paragraph 3 that 'the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life while respecting the interests of the settled community'. The approach being advocated, would not, in my view, be a fair or equal approach. The appellants' representative also pointed out the practical difficulties with such an approach concerning data protection - the NPA would need to be aware of every family included in the needs assessment in order to determine if any new pitch would contribute to a supply of pitches or not. I do not accept such an approach would be reasonable or that this is the intended purpose of a needs assessment.
61. The *Lisa Smith* judgement found that the 2015 amendment to the definition of a gypsy and traveller for the purposes of PPTS, as set out in the glossary contained in Annex 1 of PPTS, is discriminatory against elderly and disabled Gypsies and Travellers. Gypsies and travellers of nomadic habit of life who have ceased to travel permanently since the amendment for these reasons, and so have been considered outside the scope of PPTS, are therefore likely to have been excluded from needs assessments unlawfully.
62. The March 2022 'Gypsy, Traveller and Travelling Showpeople Background Paper' brings together the results of a number of studies completed in recent years across the National Park and has a base date of 10 March 2022. The SDLP was adopted in July 2019. The background paper refers to the amended 2015 definition outlining the importance of the change when assessing accommodation need in a GTAA⁷. It presents any figures that have been updated since 1 March 2018, the base date of the previous update. It seems to me that, if need were only assessed in the relevant GTAAs in respect of the amended 2015 definition, thus excluding those that have ceased to travel

⁷ Paragraph 4.5

permanently due to age or disability, that the GTAA's may well have underestimated identified need. This is a material consideration.

Need across SDNP

63. Turning first to the wider need across SDNP as a whole, the appellants' representative suggested that the identified need for 29 pitches, referred to in the March 2022 update paper, didn't take account of possible additional need arising from existing appeals, some unauthorised encampments, a percentage of gypsies and travellers where PPTS status is unknown and whatever need might arise from GTAA's. Added to this is any need unlawfully excluded. There was no dispute that at the very least, a need exists when considering the SDNP as a whole as set out in the March 22 Update paper. Before considering, if necessary, the extent of any need in the SDNP over and above that set out in the March 22 update, I shall consider whether in practical terms the proposal would contribute to this wider need.
64. On a simplistic view it can be argued that the figure of 29 (or greater), across the SDNP would be reduced by 4 pitches if planning permission is forthcoming. However, in reality, need has not been assessed across the SDNP as a whole, rather it is a figure accumulated from various assessments. That is not surprising given the number of Councils that have part of their administrative boundary in the SDNP and the overall span of the SDNP. For the same reasons rehearsed above, it seems to me that any provision coming forward in each authority area will in turn, be factored into the supply for any update for that particular administrative area rather than SDNP as a whole. There was no evidence before me to suggest that this proposal might therefore reduce assessed need anywhere other than East Hampshire. I therefore afford only very minimal weight to the unmet need that exists across the SDNP as a whole, even if it were found to be greater, in so far as the contributions these pitches would make to it.

Need arising in East Hampshire and within other authorities within the SDNP (sub-regional need)

65. The January 2022 Statement of Common Ground accepts that the need for sites in East Hampshire, outside the SDNP, is a material consideration weighing in favour of this appeal. I agree that the provision of these 4 pitches would contribute to the supply of pitches in East Hampshire administration area and is a material consideration. For the reasons set out above, that need may be greater.
66. However, I am mindful that national guidance is very clear that the protection afforded to National Parks is such that the Park's own need may require displacement to other authorities outside of the National Park, and that National Parks "are unlikely to be suitable areas for accommodating unmet needs from adjoining (non-designated) areas." The expectation is that development needs arising within National Parks may well be displaced to areas outside of National Parks, not the other way round. Whilst, East Hampshire district falls in part, within the SDNP, the NPA has already made the agreed contribution towards the overall needs of East Hampshire. Given the highest protection afforded to the National Park designations in relation to conserving landscape and scenic beauty, I give the un-met need in the East Hampshire administration area only limited weight.

67. Having regard to the guidance above and the reason rehearsed about how supply in this part of the SDNP would, in reality, be assessed beyond the East Hampshire district area, I afford very little weight to the un-met 'sub-regional' need.

Personal need

68. Turning to personal need, the development of 4 pitches would provide a settled base for eight adults and 12 children ranging from under one to 15 years old. There are no specific health, welfare, schooling, or social reasons relating to either the appellants or their children, but a settled base nevertheless ensures appropriate access to medical facilities and continuity in education, an important consideration. None of the intended site residents have a lawful stopping place. I was not informed of any known available alternative sites for the site residents to move to. It is accepted that the appellants have a personal need for a caravan site, a material consideration I afford great weight.
69. In my judgement, it would be in the best interests of those children who would occupy the site, to have a settled base from which they can not only have some continuity of education and access to health care, but also a safe environment within which to live. The best interests of the children are a primary consideration, meaning that no other issue is intrinsically more important.

Overall Balance

70. The Framework is clear that great weight is to be given to conserving and enhancing landscape and scenic beauty in National Parks, which attracts the highest status of protection in relation to that issue. The proposal fails to conserve or enhance that landscape and scenic beauty. In order to comply with Policy SD25, the development must also accord with other relevant policies in the plan. In this case, of particular relevance is Policy SD33 specific to gypsies and travellers and against which I find conflict. The development is also contrary to those policies that seek to ensure high quality, landscape-led developments and protect the tranquillity characteristic of the area. Whilst compliance can be found to exist with some development plan policies in so far as they relate to specific issues, there is conflict with the development plan overall. It follows that planning permission ought to be refused unless material considerations indicate otherwise.
71. The un-met need in East Hampshire, outside the SDNP and in the SDNP as a whole is a material consideration but one to which I have afforded not more than limited weight. Added to this, is the appellants' personal need for a site and the best interests of those children who would occupy the site. I consider their best interests, in the absence of any alternative, to be of significant weight. When considering sustainability considerations "in the round", it is recognised that a settled base has various social benefits as well as reducing both the need for long-distance travelling and possible environmental damage caused by unauthorised encampments. I give this some limited weight.
72. The material considerations in favour of the development would not however, in the context of this individual case and in particular, the failure to conserve landscape and scenic beauty together with the resultant conflict that would arise with the development plan, indicate that planning permission should be forthcoming. Whilst there are no alternative sites available in the area that

would provide a settled base, those considerations in favour of permission would not justify the resultant and permanent harm to the special qualities of the SDNP. I do not accept the appellants proposition that this scheme would be no more harmful than any scheme in the SDNP; a design-led scheme would, in my view inevitably have less impact with the ability to conserve. The landscape harm would not be sufficiently overcome by simply reducing or omitting the number of day rooms on the site. In any event, no identified need exists for any further sites to be provided in the East Hampshire part of the SDNP and nor do I consider the Court of Appeal decision would undermine that position for the reasons previously set out.

73. It is recognised that the decision affects where the intended site residents can station their caravans which engages Article 8 of the European Convention of Human Rights. But the refusal of planning permission would nevertheless be justified and a proportionate approach in the particular circumstances of this case when considering the grant of a permanent permission; the protection afforded to the SDNP and the policy conflict are weightier in the circumstances of this case even when having regard to the material considerations in favour of the appeal including the best interests of all the children.
74. I have also considered whether a temporary permission should be granted. The conflict with the development plan and in particular the landscape harm arising would then only be temporary, albeit the same level of proposed landscaping would not be justified if it were to subsist only for a temporary period. It would be reasonable for any temporary planning permission to not include the day-rooms to at least mitigate some of that harm. The lack of a 5 year supply of deliverable sites in East Hampshire or the SDNP is not a significant material consideration for a temporary permission as the proposal is on land within a National Park.
75. I have had particular regard to the best interests of the children, when considering a temporary permission which would at least provide an interim lawful stopping place for these families. However, it is necessary to consider whether there would be any change in circumstances at the end of that temporary period. Whilst an un-met need remains in SDNP overall, the SDLP contains no further proposed allocations that will come forward. Any provision to address un-met need would therefore be through planning permissions secured on unidentified sites found to meet the criteria contained in Policy SD33(3). I do not anticipate, if planning permissions were secured by others, those sites would then be made available to the appellants. Those applications are likely to be made by the individuals wishing to live on the site themselves. Accordingly, it is not clear what may have realistically changed at the end of any temporary period. To conclude, given the harm that would arise, albeit for a temporary period, the refusal of a grant of temporary planning permission would be a proportionate response in the particular circumstances of this case.

Conclusion

76. For the reasons given above I conclude that the appeal should be dismissed.

C Sherratt

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr S Cottle Of Counsel instructed by WS Planning and Architecture.

He called:

Mr Brian Woods	WS Planning and Architecture (Agent)
Mr Robert Petrow	Landscape Witness
Mr S Eastwood	Appellant
Mr J Eastwood	Appellant
Mr A Pullen	Appellant
Mr H J Ford	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Stemp Of Counsel instructed by South Downs National Park Authority

He called:

Mr Chris Ward	for the National Park Authority
Mr Steve Jarman	Opinion Research Services Ltd
Mr Timothy Cousins	Landscape Architect

INTERESTED PARTIES:

Mr Charles Matthews on behalf of some 40 residents in the Horndean area

DOCUMENTS RECEIVED AT THE INQUIRY

- 1 Opening Submissions on behalf of the appellants
- 2 Opening Submissions on behalf of South Downs National Park Authority
- 3 NPA Officer Delegated decision report
- 4 List of unauthorised encampments
- 5 March 2022 'Gypsy, Traveller and Travelling Showpeople Background Paper'
- 6 Updated drainage details
- 7 Map showing extent of South Downs National Park in East Hampshire District
- 8 Extract from National Planning Practice Guidance
- 9 NPA Officer delegated decision report relating to the approval for the relocation and replacement of existing mobile home (gypsy and traveller accommodation) new day room and access track at Holly Farm Stables, Linfold Road, Strood Green, Kirdford.
- 10 Signed Statement of Common Ground dated 18 February 2022 between the National Park Authority and the appellants.
- 11 Count of Traveller Caravans – Last six counts
- 12 Closing submissions for South Downs National Park Authority
- 13 Closing submissions for the appellants.
- 14 Signed Unilateral Undertaking