



Appeal Decisions

Hearing Held on 31 January 2023

Site visit made on 31 January 2023

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2023

Appeal C Ref: APP/L3815/C/20/3264513

Land west of Newells Lane, West Ashling PO18 8DD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr F Sibley against an enforcement notice issued by Chichester District Council.
 - The enforcement notice, numbered FU/77, was issued on 28 October 2020.
 - The breach of planning control as alleged in the notice is the carrying out of engineering operations to remove top soil and excavate the ground, followed by the importation of hard-core and gravel to form areas of hardstanding and an access track shown in the approximate positions on the attached plan.
 - The requirements of the notice are:
 - (i) Remove from the land the hard-core and gravel forming the said areas of hardstanding and access track, and
 - (ii) On completion of step (i) above, level the land with top soil and reseed the land with grass.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal D Ref: APP/L3815/W/20/3266164

Land west of Newells Lane, West Ashling PO18 8DD

- 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 F Sibley against the decision of Chichester District Council.
 - The application Ref FU/20/00234/FUL, dated 29 January 2020, was refused by notice dated 4 December 2020.
 - The development proposed is for a material change of use of land, for the stationing of caravans for gypsy families, also to include parking, associated infrastructure and development.
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Appeal E Ref: APP/L3815/C/21/3284975

Land west of Newells Lane, West Ashling, Chichester, West Sussex PO18 8DD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by John Burrows against an enforcement notice issued by Chichester District Council.
 - The enforcement notice, numbered FU89, was issued on 8 September 2021.
 - The breach of planning control as alleged in the notice is the material change of use of the land to use as a residential mobile home/caravan site.
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- The requirements of the notice are:
 - i. Cease the use of the land as a residential caravan site;
 - ii. Remove all mobile homes and caravans from the land;
 - iii. Remove all sheds from the land;
 - iv. Break up the hardstanding in the approximate position shown on the attached plan and remove the resulting debris and tarmac chippings from the Land;
 - v. Break up the access track and remove the resulting debris and tarmac chippings from the Land, and
- vi. On completion of step (iv) and (v) above, level the land with topsoil and reseed the land with grass.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decisions

Appeal C

1. It is directed that the enforcement notice is varied by the deletion of 6 months and the substitution of 12 months, as the time for compliance. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal D

2. The appeal is dismissed.

Appeal E

3. It is directed that the enforcement notice is varied by the deletion of 6 months and the substitution of 12 months, as the time for compliance. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary matters and the notices

4. The appeal site forms part of a wider piece of land that has been subdivided into plots. Consequently, a number of appeals were heard by way of a combined Hearing¹. The wider site already has the benefit of a conditional permission allowed on appeal (APP/L3815/W/19/3220300), for the stationing of five static caravans and five tourers for residential purposes, together with associated operational development. These permitted pitches are sited close to and parallel to Newells Lane.
5. Appeal C relates to operational development comprising the works to create a hardstanding and access track. Appeal D (s78) relates to the stationing of caravans for gypsy families, together with the associated infrastructure. Appeal E alleges a material change of use of land to use as a residential mobile

¹ APP/L3815/C/21/3273750; APP/L3815/W/21/3267885; APP/L3815/C/20/3264513; APP/L3815/W/20/3266164; APP/L3815/C/21/3284975; APP/L3815/W/20/3259313; APP/L3815/W/20/3254259; APP/L3815/C/21/3286063; APP/L3815/C/21/3286065; APP/L3815/C/21/3286064; and APP/L3815/W/21/3285488

- home/caravan site. As appeals C, D and E relate to the same plot and the hardstanding appears to be used ancillary to the residential caravan use, these three appeals have been dealt with together.
6. The parties agreed in the joint Statement of Common Ground (SoCG) that the gypsy status of the appellants and their families is not in dispute. I have no reason to come to a different view.
 7. Following a recent appeal decision (APP/L3815/W/21/3268916) the Council confirmed that they no longer wished to pursue the reason for refusal that related to the location of the development. I have considered the appeal on this basis.
 8. At the Hearing the appellants supplied signed undertakings dated 26 January 2023, to pay the Council the agreed sum for the provision of access mitigation measures in respect of the Chichester and Langstone Harbours Special Protection Areas, as a planning obligation. In view of this, the Council confirmed that they did not wish to pursue this reason for refusal. However, in the event that the appeal was to be allowed, it would still be necessary for the decision maker to carry out an appropriate assessment for this and the potential for the discharge of nitrogen and phosphorous, into the Solent.
 9. The appellant originally submitted appeal C on three grounds namely (a), (e), (f) and (g). At the Hearing it was confirmed that the basis of the ground (e) appeal was that the notice was not properly served on everyone with an interest in the land, including the appellant's appointed Agent. However, he conceded that the notice had been served on all other parties and agreed that there was no requirement for a copy to be served on an appointed Agent. He confirmed that he therefore wanted to withdraw the ground (e) appeal. Appeal C is therefore proceeding on this basis.

Main Issues for Appeals C and E ground (a) and Appeal D s78

10. I consider that the main issues for the combined appeals are:
 - Whether the development represents an acceptable form of development, having regard to the following matters: The character and appearance of the area, having regard to the cumulative impact of the development;
 - The effect of the development on recreational disturbance, water and nitrates; and
 - Whether any harm arising from the above matters is outweighed by any other material considerations.

Reasons

Policy background

11. The emerging Chichester Local Plan 2021 – 2039 sets out a range of mechanisms to meet the needs of the Gypsy and traveller community during the plan period up to 2039, including allocating sites and intensification of suitable existing sites. The latest consultation was completed in March 2023 and therefore it is at an early stage and attracts very little weight. Policies in

the Chichester District Council Adopted Local Plan: Key policies 2014-2029. (2015) (LP) are therefore pertinent to the determination of this appeal.

12. Planning Policy for Traveller Sites (PPTS) in paragraph 25 states that local planning authorities should very strictly limit new traveller site development in open countryside, that is away from existing settlements and ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community. Policy 36 of the LP reflects this position. However, neither document provides any guidance, or define how dominance should be assessed.
13. Policy 36 of the LP specifically deals with the needs of gypsy and travellers and is therefore relevant to the assessment of these appeals. It was originally based on the Gypsy and Traveller and Travelling Showpeople Assessment that was carried out in 2013. However, the Council has carried out a further Gypsy and Traveller Accommodation Assessment (GTAA) (2022) which was published in January 2023, which provides an updated position. The policy sets out that where there is a shortfall in provision, sites will be allocated within the Gypsy, Traveller and Travelling Showpeople Site Allocation DPD. It goes on to set out criteria for assessing the suitability of sites. These criteria will be addressed later in this decision.

Character and appearance and cumulative effect of the development

14. The Council have provided a limited geographical assessment of the ratios of the settled population, compared to the local Gypsy and Traveller population. However, during the discussion at the Hearing, they made it clear that their primary concerns relate more to the cumulative visual impact of the developments. In summary, their position is that the development of this and the other sites subject to this appeal, together with the existing permitted sites result in a cluster of Gypsy and Traveller sites, that harm the prevailing character of this rural area, both in scale and density, such that it dominates the nearest settled community.
15. The representative for Funtington Parish Council and the representative from Genesis Town Planning who was speaking for other residents, referred to Census data in their oral submissions. It is their case that if each pitch, where a static caravan and a tourer is permitted, was occupied by more than one family, then this would represent a disproportionate number of Gypsy and Traveller families, when compared to the settled population. I have no factual, or survey evidence before me, to support the likelihood or scale of this scenario, so it can only be treated as speculation. Moreover, if the evidence indicated that this was likely to occur, then a suitably worded condition could be imposed to restrict the occupation of the pitches to one family.
16. The site is located outside the settlement boundary, in an area characterised by agriculture, open countryside interspersed by some agricultural and equestrian buildings, together with sporadic residential development that includes some existing residential caravan sites. West Ashling lies 0.6 km from the site, where there are some of the local facilities, such as a pub and school that are generally accepted to serve a local community. Accordingly, I do not consider that the sites are 'away from existing settlements' for the purposes of the PPTS.

17. The L shaped appeal site lies to the north-west of Newells Lane, with the main internal access to all of the sites taken from the lane. There are three internal spur roads, that largely run parallel to each other and Newells Lane. The appeal site lies along the furthest of these spur roads, thus being largely screened by the existing hedges, fencing and the previously permitted caravans.
18. The Council advise that the local area has planning permission for some 43 pitches, with a further 10 unauthorised and under investigation. They confirm that these are unlikely to be tolerated. The Block Plan that accompanied the planning application, shows that there would be one static caravan plus one touring caravan on each of the four plots.
19. Whilst the site must be considered on its own merits, it must also be assessed in the context of what is happening with the other appeals before me. In the event that all of these appeals were to be allowed and subject to conditions, there would undoubtedly be an increase in the number of pitches. I also saw that another pitch has been developed, although this is the subject of an outstanding planning application. As the outcome of this application is uncertain, it does not form part of my assessment.
20. Residential caravan development is often designed at greater density than more traditionally built residential schemes and that is the case here. However, this and the other appeal sites are generally well screened from Newells Lane and the existing sites by existing hedging and fencing. I recognise the concern about these sites coalescing with existing sites. However, from my site visit and walk around the general area, save for the 5 pitches already permitted on this piece of Land, the remaining sites to the north and west remain physically separate. Moreover, the undeveloped land on the corner of Newells Lane and Scant Road, retains the physical and visual separation between the sites.
21. The development of any residential caravan site on previously undeveloped land will inevitably result in some change to the character and appearance of the area. I find the change has resulted in harm by the generally unsympathetic use of internal fencing and the extensive hard surfacing on this and the other appeal sites. Nevertheless, even when considered cumulatively with the other appeals, the identified harm could not be said to be of a magnitude that it dominates the settled community. Moreover, I consider that the appearance of the site could be improved through a suitable hard and soft landscaping condition, on this and the other appeal sites.
22. For these reasons, I find moderate harm to the character and appearance of the area which conflicts with Policies 36, 45 and Policy 48 of the LP that seek to ensure that development respects and has minimal impact on the landscape and rural character of the area.

Recreational disturbance and nutrient neutrality

23. It is not in dispute that the development is sited within the 5.6 km 'Zone of influence' of the Chichester and Langstone Harbours Special Protection Area (SPA) and as such has the potential to harm this area of conservation due to increased recreational disturbance. The parties also agree that due to the increase in wastewater from the development, it has the potential to have a significant detrimental effect on the Solent Maritime Special Area of Conservation (SAC).

24. Since the appeal was lodged, the position regarding mitigation measures for nutrient discharge has changed for all residential development. Generally new development will use the off-site purchase of credits to offset any harm. However, the Council confirmed that they, together with the South Downs National Park, where offsetting sites are located, are seeking to come to a new overarching mitigation strategy. This will include a re-calculation of the chargeable fees for monitoring. Consultation with Natural England on this commenced on 23 January 2023. Once this consultation is complete, a report will be taken to Committee to consider whether to adopt this, or any other, agreed mitigation strategy. In essence, this means that for an undetermined period, no further legal agreements for mitigation will be signed, including at these appeal sites and other residential schemes.
25. The various parties have made a number of suggestions to give time to overcome this in the short term. The first is to delay issuing the appeal decisions for an initial period of 3 months. The second would be to grant a temporary planning permission, with all foul sewerage collected and then transported away from the site to Ford, Tangmere or Lidsay, for disposal outside the SAC. The third option is the installation of a water treatment works on the appeal site itself.
26. I accept that this is a very unfortunate and unforeseen position for the appellants. I have considered all of the alternatives in turn. It is clear that there is considerable uncertainty about how long this process will take, whether an agreement will be reached and then adopted. I share the Council's concerns that it would not be possible to enforce where any wastewater is disposed of, once removed from the site by a third party. It was acknowledged that the proposal to install water treatment plants on the sites would not be adequate in the light of the nutrient issues, so they would be prepared to install an alternative. However, I have not been provided with any plans or worked alternative to demonstrate how nutrient neutrality could be achieved.
27. Consequently, given both the sensitive and retrospective nature of the development, I am not satisfied that any of these options would provide an appropriate means to offset any ongoing and significant harm to the SAC. The development is therefore found to be unacceptable in this regard.

Other considerations

28. It is agreed that unmet need is a material consideration for this appeal. The Council has carried out a further Gypsy and Traveller Accommodation Assessment (GTAA) (2022) which was published in January 2023. This indicates a significant unmet need for 158 pitches. This includes 28 from those who did not meet the Opinion Research Services and Planning Policy for Traveller Sites (PPTS), definition at the time. A further 82 pitches for those meeting their definition, will be required over the period 2022 to 2026. Whilst the Local Plan Review is exploring how this unmet need can be addressed, it has increased considerably since the last GTAA and represents a very significant shortfall and, to my mind, represents a failure of policy which weighs heavily in support of the development.
29. From the evidence, three of the four pitches applied for are occupied. The appellant for Appeals C and D occupies Plot 1. Plot 2 is occupied by a family with their five children. Plot 3 is occupied by the appellant for Appeal E and his

family and three children. Plot 4 is unoccupied, although another family with two children will be relocating shortly from a nearby plot. The children vary in age from one to thirteen and those of school age attend nearby schools, or are home schooled.

30. The needs of the children are a primary consideration of substantial weight but are not necessarily determinative. However, as with all those who travel, a settled base would enable the family to have access to medical care and education and this undoubtably weighs substantially in favour of the scheme. Furthermore, I acknowledge that the proposal would provide limited further social and economic benefits and would provide additional Gypsy and Traveller pitches, contributing towards the Council's targets.
31. The Council confirmed at the Hearing, that there are no alternative, suitable and affordable pitches available for the families to move to. The public site maintained by West Sussex County Council, currently has a waiting list of more than 90 names. All of the above factors weigh significantly in favour of the development.
32. Turning to the criteria set out in Policy 36 of the LP, I have found significant harm due to the proximity of the site to the SPA and SAC. However, the site does not lie within any other nationally designated areas of landscape, historic environment or nature conservation. I have found moderate harm to the character and appearance of the area but not to the extent that it dominates the nearest settled community. I note that the Highways Authority have not raised any objection in terms of highway safety or the impact on the operation of the highway network. No objections have been raised or evidence submitted to suggest that the development would be harmful to those living on the site or nearby.
33. The Council have conceded that the location of the site is acceptable and I have no reason to come to a different view. I acknowledge that the site is relatively constrained, but the layout provides sufficient space for parking and manoeuvring of vehicles, together with some amenity space allowing the occupiers to use the available space to satisfy their own requirements. The site is located in flood zone 1 (low risk), and not adjacent to any other incompatible known uses. Matters of surface water disposal can be addressed through a suitably worded condition.

Planning balance

34. The planning balance on this and the other sites is very finely balanced. On the one hand there are a number of factors set out above that weigh significantly in favour of the development. These include the contribution of additional gypsy and traveller pitches, meeting the personal needs for these families for a settled base, the lack of alternative sites alongside other social and economic benefits.
35. However, on the other hand and set against these benefits, is the moderate harm I have identified to the character and appearance of the area and the clearly significant harm, stemming from the uncertain position regarding the mechanism, to offset any harm resulting from nutrient discharge to the SAC. Accordingly, I find that on balance, this identified harm is not outweighed by those matters advanced in support of the proposal.

36. I am very conscious of the appellant's personal circumstances and the effect that dismissing this appeal is likely to have on these families. I have carefully considered the Human Rights issues that are pertinent to these appeals. However, the protection of the public interest cannot be achieved by means which are less interfering of the appellants rights.
37. As set out above, the appellants evidence makes reference to the families personal circumstances and I have had due regard to the Public Sector Equality Duty, contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Nonetheless, for the above reasons, I consider that the decision is proportionate and necessary in the circumstances.
38. I have also considered whether a temporary grant of planning permission would be appropriate for these appeals. The Planning Practice Guidance advises that's temporary permissions may be appropriate where it is expected that the planning circumstances will change in a particular way at the end of the permitted period. I have acknowledged that the matters relating to nutrient neutrality will need to be overcome at some point in the future. However, there is no evidence before me to provide any certainty over either the timescales, or the mechanisms involved. Accordingly, a temporary planning permission, for 3 years as suggested by the appellants, is not justified, given the serious risk to the Solent Maritime SAC.
39. As I am dismissing the appeals for other reasons, there is no need to consider the appropriate assessment for recreational disturbance further.

Other matters

40. Whilst not forming one of the reasons for issuing the notice, the decision for refusing the planning application (Appeal D) cites the lack of protected species surveys for assessing the biodiversity of the site as one of their reasons for refusal. The Council has suggested a condition to provide a scheme of ecological enhancement, including the installation of bat boxes, bird boxes, additional native hedge planting and the planting of a wildflower meadow in the amenity areas. I have no reason to conclude that such a condition would not overcome their objection.
41. Similarly, another reason for refusing the planning application relates to a lack of information, to demonstrate that surface water drainage can be adequately addressed. The appellants referred to the topography of the site and suggested that there would be no risk of surface water flooding due to runoff. Notwithstanding this, if I were to allow the appeal, I consider that this could be secured through the use of a suitably worded condition.

Interim conclusion

42. For all these reasons the appeals on ground (a) and the s78 appeal fail.

Appeal C and E ground (f)

43. The appeal is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purpose of an enforcement notice are

set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)), or as the case may be, to remedy injury to amenity (s173(4)(b)).

44. In these cases, the purpose of the notices is to remedy the breach of planning control, by requiring the unauthorised use to cease and buildings and hardstanding to be removed. An appeal under ground (f) provides some scope for a solution short of a complete remedy as set out above. Any substituted scheme must be precisely defined. The appellants assert that a temporary permission should have been considered, or an alternative scheme may have overcome some, or all of the Council's concerns.
45. I have already found that a temporary grant of planning permission would not be appropriate for these appeals. With regard to an alternative scheme, there are no plans or details before me to give the necessary degree of detail to demonstrate how the harm I have identified, relating either to nutrient neutrality, or arising from the hardstanding could be overcome. Accordingly, there is no 'worked out alternative', whereby the notice could be varied under ground (f) with the necessary degree of precision.
46. For the above reasons, I find that the steps required by the notices do no more than is required, to remedy the respective breach of planning control, and lesser steps would not achieve that purpose. Consequently, the appeals on ground (f) fail.

Appeal C and E ground (g)

47. For an appeal under this ground to succeed, it is necessary to consider whether the compliance period of 6 months is too short. The appellants have suggested that an alternative timescale of at least 3 years would be more reasonable.
48. The development must be considered in the context of the identified harm and the time required to undertake the works. I have identified harm to the character and appearance of the area and harm arising from nutrient discharge to the SAC.
49. I acknowledge the ongoing uncertainty over if and how, appropriate mitigation could be achieved. However, as this is an issue that will affect other development proposals coming forward, it is an issue that the Council will need to resolve as quickly as possible. Accordingly, for these reasons I do not consider that an extension of 3 years would be justified and would amount to a temporary grant of planning permission. Nonetheless, under these unusual circumstances, I am satisfied that a period of 12 months represents a reasonable and proportionate timescale. The appeals on ground (g) therefore succeed to this extent.

Conclusion

Appeal C

50. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal D

51. I have considered all of the matters that have been raised, but for the reasons outlined above, I conclude that the appeal should be dismissed.

Appeal E

52. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Hilary Orr

INSPECTOR

Appearances for Joint Hearing

FOR THE APPELLANTS:

Joseph G Jones	Agent
Christopher Williams	Appellant
Ben Kirk MSc IHBC	Agent
Dr Angus Murdoch	Agent

FOR THE LOCAL PLANNING AUTHORITY:

Callum Thomas	Senior Planning Officer
Martin Mew	Principal Planner Officer
Shona Archer	Planning Enforcement Manager

INTERESTED PERSONS:

Luke Smith Whaleback Planning on behalf of Funtington Parish Council
Chris Mitra MA MRTPI Genesis Town Planning on behalf of local residents.