



Appeal Decision

Hearing held on 17 May 2022

Site visit made on 17 May 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2023

Appeal Ref: APP/Z3825/W/19/3228245

Land East of Coolham Road, West Chiltington, West Sussex RH20 2LT

- 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 Wayne Ward against the decision of Horsham District Council.
 - The application Ref DC/18/1488, dated 17 July 2018, was refused by notice dated 4 March 2019.
 - The development proposed is described as '*One residential unit and stable block*'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the address of the site from the Council's decision notice as it better describes its location.
3. At my site visit I noted that both the mobile home and stable building have been installed at the site, although they are located differently to the positioning shown on the submitted site layout plan.

Background

4. The appeal site lies within a rural setting. It is accessed from Coolham Road via a shared vehicular track which is positioned at a slightly lower level than the road. The site is also screened from Coolham Road by means of vegetation and fencing. The site contains a single caravan, within which both the appellants reside, and also a stable block and horse box in connection with the appellant's horse related business elsewhere.
5. The appellants, Wayne Ward and Elaine Church, moved onto the land in December 2020, residing in the mobile home. They also have a young son of school age who it is understood has certain health issues.

Main Issues

6. These are:
 - 1) National policy, and the objectives of the development plan in respect of gypsy and traveller accommodation;

- 2) whether the development is in a suitable location with regard to services and facilities; and
- 3) the effect on the Arun Valley Special Protection Area, with particular regard to water usage and the matter of nutrient neutrality.

Reasons

Policy matters

7. National policy is contained in the government's Planning Policy for Traveller Sites, 2015 (PPTS) which states that applications should be assessed and determined in accordance with the presumption in favour of sustainable development. In addition, Councils should very strictly limit new traveller site developments in the open countryside that is away from existing settlements.
8. Policy B of the PPTS says that local planning authorities, in producing their Local Plan, should identify and update annually, a supply of specific deliverable traveller sites, sufficient to provide five years' worth of sites against their locally set targets. In this context 'deliverable' means sites that are available now, offering a suitable location for the development. Policy H of the PPTS goes on to say that Councils should, amongst other things, consider the level of need for additional gypsy and traveller accommodation and the availability of alternative accommodation.
9. In 2018 the Council updated its Gypsy and Traveller Needs Assessment to provide an evidence base to inform the Gypsy and Traveller policies being developed as part of the local plan review. As part of this Horsham Council commissioned Opinion Research Services (ORS) to carry out a housing needs assessment of the Gypsy, Travellers and Travelling Showpeople community in Horsham District, with the aim of addressing their needs through the Local Plan.
10. In the above connection a call for sites exercise was carried out in 2019 and the Council's Gypsy and Traveller Accommodation Assessment (GTAA) final report was published in 2020. This report identified a need for 93 pitches over the forthcoming Local Plan's period (2019 -2036) with a need for 65 pitches over the ten year period (2019-2029).
11. The Council accepts that it cannot demonstrate a five year supply of gypsy and traveller pitches, no alternative sites have been identified, and on this basis the Council says in an update on its Appeal Statement, issued in April 2022, that the principle of the site's use is considered to be acceptable subject to all other relevant considerations.
12. In conclusion on this main issue, the absence of a 5 year supply of sites and an apparent unmet need for gypsy & traveller sites within the Horsham District Council area are matters to which I afford considerable weight.

Location

13. Paragraph 25 of the PPTS says that Councils should very strictly limit new traveller development in open countryside that are away from existing settlements or outside areas allocated in the development plan.
14. The appeal site is an open field which was previously used for agricultural purposes. It is located outside of any defined built-up area and is therefore

located within the countryside in policy terms. That said, it is approximately only 0.77km from the settlement boundary of Thakeham which is identified by the Council as a 'smaller village' where residents are reliant on larger settlements to access most of their requirements. Accordingly, local residents must travel further for the purposes of school and health facilities. There is an infrequent local bus service and the nearest bus stop is approximately 0.4km along Coolham Road, so realistically there is heavy reliance on the private motor vehicle; as is likely the case for existing Thakeham residents.

15. The site is, though, approximately 0.9km from the recent Abingworth Fields development which, along with new housing, includes a retail store, sports and community facilities, and also a children's nursery.
16. The site is not allocated for development within the Horsham District Planning Framework (HDPF) nor within any Neighbourhood Plan. It was, though, assessed in July 2021 as part of the GTAA but any decision on this was put in abeyance pending the outcome of the current appeal.
17. The development is small in scale and does not have an unacceptable impact on the character and appearance of the landscape. The mobile home is set in close to the site's western boundary, and the stable block is of modest dimension. The site is also large enough to provide adequate vehicle parking, including circulation space, along with residential amenity and play areas whilst the residential use does not give rise to significant activity in this rural location. On balance, I consider that the development has not given rise to conditions that run contrary to the objectives of HDPF policy 26, and the landscape's features have not been adversely affected, thereby also satisfying criterion (e) of policy 23.
18. The Council has drawn my attention to a 2018 appeal decision at a site some 3.2 km from the current appeal site, and distanced further from Thakeham. The appeal was unsuccessful and planning permission was refused for the stationing of caravans on a gypsy pitch, with the Inspector finding that the site was in a location which was not within or near to a settlement nor within a reasonable distance of a range of local services and community facilities. Accordingly, the Inspector concluded that the proposal conflicted with HDPF policy 23, criterion (d).
19. Drawing a comparison between the two cases I am satisfied that, in terms of the current case, the limited and low key residential use of the land for gypsy and traveller purposes, which is better located relative to Thakeham and Abingworth, is consistent with the policy's objective that development should be located within reasonable distance of a range of local services and community facilities.
20. Given the identified need for new gypsy pitches, and the realisation that sites in rural locations such as this will likely be identified – as mentioned, it has already been assessed as part of the GTAA – I conclude that, although there will be reliance on the car, the development does not materially conflict with policy 23, criterion (b).

Nutrient neutrality

21. Horsham District is situated in an area of serious water stress, as identified by the Environment Agency Water Stressed Areas Classification. The District's

- water supply is from Southern Water, and is sourced from abstraction points in the Arun Valley. This is a Special Protection Area/Special Area of Conservation and Ramsar site.
22. The basis of nutrient neutrality is that there is no increase from the existing nutrient contribution at a Habitats site as a result of a plan or project. Where a Habitats site is already unfavourable, there is the potential that making a fresh decision under the Habitats Regulation Assessment (HRA) process to sustain the current nutrient contribution could mean that development may inadvertently undermine the achievement of the restore objective by others.
 23. In September 2021 the Council received a Position Statement from Natural England (NE) which shows that water abstraction for drinking water supplies is having a negative impact on the wildlife sites in the Arun Valley. NE has advised that any new development taking place must not add to this negative impact, and to prevent any further such impact all new development should demonstrate water neutrality. This advice was further updated in March 2022 to reinforce the directive.
 24. Accordingly, the correct approach to be taken is that the development needs to be assessed against the requirements of regulation 63 of the Conservation of Habitats and Species Regulations 2017. The consideration of any measures to avoid or reduce the harmful effects upon the Arun Valley and achieve water neutrality can only be taken into account at the Appropriate Assessment stage of Habitats Regulation Assessment. The general advice is that mitigation within such a development site should ideally be considered first to minimise the contribution from the development itself. Where it is not possible to provide or secure the necessary mitigation in this way, then mitigation on land outside the development can be considered.
 25. Attempts to secure a water neutrality strategy by way of a condition imposed on a planning permission is not considered to be acceptable by Horsham District Council nor Natural England as it does not provide for the necessary certainty that the impacts of a development can be mitigated. Any grant of planning permission absent of the up-front certainty that the impact on the Arun Valley can be mitigated would therefore be contrary to the Habitat Regulations.
 26. Paragraph 180 of the Framework is clear that planning permission should be refused for development that would result in significant harm to biodiversity and/or result in the loss or deterioration of irreplaceable habitats. No means of strategic mitigation currently exists.
 27. The appellants have been residing on this former agricultural site since December 2020. The Council maintains that prior to its residential occupation the site had a nil water use. In terms of the development's effect on water neutrality they make the point that occupation took place prior to Natural England's advice in September 2021.
 28. The appellants, for their part, have produced a Water Neutrality Statement and they make the point that the total water usage at the site (85.5 litres per day) was the case before NE's Position Statement was issued. As such, the calculations arrived at are considered by the appellants to demonstrate that the development would not result in increased usage and should be considered as water neutral. Accordingly, the appellants' stance is that their continued

residence does not increase any water usage and would merely maintain the status quo.

29. Notwithstanding this, the appellants have also drawn my attention to two previous appeals, one from 2006 and the other from 2011 where, similarly, the Inspectors were faced with the effects on habitats sites. Both cases also involved gypsy and traveller development. In each case the respective Inspector found that, due to the site having been occupied for a number of years, an additional household would not effectively be introduced and in allowing the appeals the Inspectors concluded that the status quo was being maintained.
30. However, this preceded Natural England's recent advice. Nonetheless, the appellants have also highlighted a more recent appeal decision from September 2022 (*APP/F1610/W/19/3237163*) where, in allowing the appeal, the Inspector granted planning permission, retrospectively, for a single gypsy pitch where the site was within the Zone of Influence of a Special Area of Conservation.
31. Despite NE's directive the Inspector reasoned that, as the occupants had been residing at the site for over six years, the development did not add to the resident population and the proposal would not have an adverse effect on the integrity of the protected habitat. In his reasoning the Inspector also commented that the Council's witness had confirmed at the Hearing that there was no intention to take any enforcement action against the occupiers should the appeal fail.
32. Whether or not this influenced the decision is unclear but I would suggest that the Council would not be legally bound by its witness's apparent intention. It would also appear that NE took little, if any, part in the appeal process for that particular case. That said, given the circumstances, the Inspector reasoned that no mitigation or an appropriate assessment would be required.
33. In the above regard NE, when re-consulted on the current development, took a contrary view to that of the above Inspector and stated:

"Natural England's view is that unless the appellant can demonstrate, to the satisfaction of the competent authority, that the proposed residential occupation has already been granted planning permission or otherwise accounted for, prior to the issuing of our advice in September 2021, it will need to consider water neutrality impacts on the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site and underpinning Sites of Special Scientific Interest (SSSIs)."
34. NE goes on to say that the water neutrality statement should be revised to reflect the water usage from the existing lawful use of the site. It also indicates that, amongst other things, measures should be employed to reduce nitrates through the incorporation of water efficient fixtures and fittings.
35. In conclusion on this main issue, the development does not enjoy planning permission, and neither is it immune from planning control. Irrespective of the Inspector's conclusions in the 2022 appeal decision cited above I am satisfied that NE's contemporary advice should be adhered to and mitigation measures should be identified by the appellants to allow for an Appropriate Assessment to take place.

Other considerations

36. I note the representations received from interested parties, including those from Thakeham Parish Council. The main thrust of the Parish Council's objection is that permitting a residential use in this location is contrary to the spatial strategies of both the HDPF and the Thakeham Neighbourhood Plan (NP). I have already addressed the spatial issue and, with reference to the latter point, I find that the development is not specifically at odds with the NP's policies.
37. Concerns are also raised about the vehicular access to the development, the absence of any pavement along this stretch of Coolham Road, and an opinion that the visibility splays are not adequate for residential use.
38. Paragraph 111 of the Framework says that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety. In this particular instance the access from Coolham Road is an established agricultural vehicle access which is used by other persons and it existed prior to the development taking place. I also note that at the application stage West Sussex County Council, the local highway authority, considered that the proposal would not have severe impact on the operation of the highway network and that there are no transport grounds to resist the proposal.
39. As regards the suitability of the access my site visit observations did not suggest otherwise. Also, the fact there is no pavement for pedestrians to utilise is not in itself sufficient reason to find against the proposal.
40. I have had regard to all representations, both written and oral, but these have not affected my conclusions.

Planning Balance

41. The proposal would contribute to meeting an un-met local need for gypsy and traveller accommodation. No alternative sites have been identified. I have also found that the site is reasonably located in relation to services, shops and facilities so as not to compromise the objectives of policy 23 of the HDPF. I also find the proposal consistent with relevant advice within the PPTS.
42. Allowing the appeal would though be contrary to paragraph 180(a) of the Framework, which states that planning permission should be refused if significant harm to biodiversity cannot be avoided, mitigated or, as a last resort, compensated for.
43. Finally, turning to the stable block erected I cannot see any planning reason why this should be refused permission. However, it has been erected close to the southern boundary of the site, and this does not accord with the submitted Site layout plan. For that matter, the mobile home has also been sited in a different position to that shown. As I have not been provided with an updated layout plan to accurately reflect the situation on the ground I do not intend to draw a distinction between the two physical elements involved.

Conclusion

44. For the above reasons, and having had regard to all matters raised, the appeal is dismissed.

Timothy C King

INSPECTOR

APPEARANCES

For the Appellant

Matthew Green	Agent for the appellant
Wayne Ward	Appellant
Elaine Church	Appellant

For the Council

Amanda Wilkes	Planning Officer, Horsham District Council
Mark McLaughlin	Planning Officer, Horsham District Council
Louise Mathie	Legal Officer, Horsham District Council

Other Interested Parties

Dick Scott	Thakeham Parish Council
Jimmy Frankham Jones	
Jemma Jones	
Afia Oteng	

Documents produced at the Hearing

1. Council's notification letters of appeal and the Hearing event.