



Appeal Decision

Hearing held on 3 May 2023

Site visit made on 17 January 2023

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 June 2023

Appeal Ref: APP/R3650/W/22/3305098

Legend Acres, River Lane, Farnham, GU9 8UD

- 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 N Schultz against the decision of Waverley Borough Council.
 - The application Ref WA/2020/1809, dated 27 August 2020, was refused by notice dated 7 March 2022.
 - The development proposed is use of land for an additional 8 pitches for gypsy/traveller accommodation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The hearing was opened and adjourned on 17 January 2023 due to one of the main parties being unavailable on the day. The parties agreed that an accompanied site visit could take place on 17 January 2023. The hearing was reopened on 3 May 2023.
3. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form the description has been changed to the one that the Council used to deal with the proposal. This was agreed with the appellant and I have therefore used this in my formal decision.
4. Since the Council issued its decision and following the adjournment of the hearing, it adopted in March 2023 the Waverley Borough Local Plan Part 2: Site Allocations and Development Management Policies (LP2). It is incumbent upon me to base my decision upon the most up to date planning policy and this is what I have done. The policies in LP2 supersede some of those referred to in the Council's evidence. The parties have had an opportunity to address these changes in policy.
5. I have also dealt with another appeal APP/R3650/W/22/3305096 on an adjoining site. That appeal is the subject of a separate decision.

Main Issues

6. The Council's fourth reason for refusal indicated that future occupiers of the site would be adversely impacted from noise arising from the site's location in proximity to the A31. The appellant had submitted a noise impact assessment prior to the Council's decision, however this had not been reviewed by the Council. During the appeal the Council confirmed that, subject to appropriate mitigation measures which were outlined within the report, the proposal would be adequately protected from the impacts arising from noise and this was no longer a matter in dispute.
7. The appellant has also submitted a duly executed unilateral undertaking in order to overcome the third reason for refusal which I have taken into account. It provides for a contribution to mitigate impacts on the Thames Basin Heaths Special Protection Area (SPA) and I have contemplated this further later in my decision.
8. Therefore the main issues in relation to this appeal are:
 - whether the development would be at risk from flooding
 - the effect of the development on the character and appearance of the area;
 - whether the development would provide acceptable living conditions for future occupiers, with particular reference to air quality.

Reasons

Flooding

9. The Waverley Borough Local Plan Part 1 2018 (LP1) sets out within Policy CC4 that flood zones in Waverley are found both within National Planning Practice Guidance (PPG) and the Council's Level 2 Strategic Flood Risk Assessment. The majority of the site has been identified as being within Flood Zone 2.
10. The National Planning Policy Framework (the Framework) and the PPG indicate that residential development should be directed to areas of lowest flood risk. Paragraph 162 of the Framework states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding and this is on the basis of a sequential, risk based approach to the location of development.
11. Paragraph 167 of the Framework sets out that when determining any planning application, development should only be approved in areas at risk of flooding where it can be demonstrated that the most vulnerable development is located in areas of lowest flood risk. In addition, the PPG requires the appellant to carry out a sequential test first, which steers new development to areas with the lowest risk of flooding from any source.
12. The appellant relies upon the Flooding Sequential/Exception Test Report, prepared in July 2019 in connection with the previous application for 4 pitches (WA/2019/0116). The sequential test looks at the allocations that were proposed within the draft Local Plan Part 2 and not all of these have been carried forward into the adopted plan. The sequential test concludes that there were no available pitches on public sites in the Farnham area and that at the time of the report a search of available land also yielded no alternatives.

13. Of the proposed allocations, whilst sites were identified as being within Flood Zone 1 and therefore sequentially preferable, these were all privately owned and occupied and therefore were not considered available as they are established family sites.
14. During the hearing evidence was provided in connection with the allocations that have been set out within LP2, which provide for a total of 15 pitches, with 4 of the 6 sites being within Farnham. Two of these are currently subject to planning applications, with one pending an outcome at appeal. These sites are all established family sites and there was nothing presented at the hearing to indicate that these would be available to the appellant or for windfall need arising from in migration or newly formed households.
15. In conclusion, despite the time that has lapsed since the original sequential test, I am satisfied that its findings are unlikely to have changed since it was relied upon by the Council to grant planning permission for four pitches in 2019 and there are no sequentially preferable sites available to the appellant.
16. As defined within the PPG the use of a site for caravans, mobile homes and park homes intended for permanent residential use are classified as highly vulnerable. The proposed use of the site is therefore considered to be highly vulnerable as such the exception test is required.
17. The Framework requires that for the Exception Test to be passed it should be demonstrated that the development would provide wider sustainability benefits to the community that outweigh the flood risk, and that it will be safe for the lifetime of the development. Both elements of the test will have to be passed for development to be permitted.
18. Paragraph 13 of the Planning Policy for Traveller Sites (PPTS) sets out that traveller sites should be sustainable economically, socially and environmentally and should not locate sites in area of high risk of flooding, given the particular vulnerability of caravans. However, with regard to wider sustainability benefits, the proposal would provide limited economic and social benefits for the wider community through the spending of future occupiers in the local economy. In terms of environmental benefits, the proposal would provide a settled base that reduces the need for long distance travelling and possible environmental damaged caused by unauthorised encampment. However noting the scale of the proposal the weight I can give to these benefits is modest.
19. On balance, I conclude that the wider sustainability benefits to the community should carry no more than modest weight, and would not outweigh the significant risk to occupants of the site resulting from its location in a flood zone with a high probability of flooding.
20. The second limb of the exception test requires that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere. The Flood Risk Assessment (FRA) was prepared in May 2015 and given the age of the report it is unlikely to be based on the latest climate change allowances. Furthermore, the report was prepared on the basis of the site accommodating one pitch and the proposed development would result in an increased number of households residing on the site which would place additional occupiers at the risks associated with flooding.

21. Notably the report indicates no specific flood risk mitigation measures were considered necessary based on the findings that the proposed pitch was not at risk of flooding from 1% Annual Exceedance Probability (AEP) event including an allowance for climate change. However, I have no evidence before me to suggest that the same would be true for the 8 pitches proposed, or any certainty that the allowances required for climate change remain the same and therefore whether this conclusion is now correct. The appellant has also not provided any measures which would reduce the overall flood risk on the site.
22. The PPG sets out that proposals that are likely to increase the number of people living in area of flood risk require careful consideration, as they could increase the scale of any evacuation required and that even low levels of flooding can pose a risk to people in situ because of, for example, the presence of unseen hazards and contaminants in floodwater, or the risk that people remaining may require medical attention.
23. It also sets out that access routes should allow occupants to safely access and exit their dwellings in flood conditions and that vehicular access to allow the emergency services to safely reach the development will all be required. Wherever possible, safe access routes should be provided that are located above design flood levels and which avoid flow paths.
24. However it is acknowledged within the FRA that the length of River Lane between the site entrance and the A31 would be impassable during such an event but that the site would provide a safe place of refuge. It has been put to me that the access to the site has already been established and therefore deemed suitable for the development, however, the flood risk assessment and associated mitigation measures were based on one household and not for the increased occupation associated with the proposed development.
25. It has not therefore been demonstrated that the development will be safe throughout its lifetime and I therefore conclude that neither element of the exception test has been satisfied.
26. I therefore find that the development significantly harms the living conditions of future occupiers due to the risk of flooding and so undermines wider consideration of public safety contrary to the relevant requirements of policy CC4 of LP1, policy DM1 of Waverley Borough Local Plan Part 2: Site Allocations and Development Management Policies (LP2) and policy FNP1 of the Farnham Neighbourhood Plan 2013-2032 (NP) which together seek to avoid significant harm to future occupants from flood risk. This is a matter to which I attach considerable weight as part of my planning balance to follow.

Character and appearance

27. The landscape character of the wider area is that of a valley floor and floodplain, with rising ground to the south and north, but it is heavily influenced by the presence of the A31 which runs parallel to the boundary of the site. The landscape between the A31 and the river, including the appeal site, is open land but with hedgerows and trees providing visual interest and breaking up the expanse of the landscape. The area has appreciable qualities in terms of its rural character with the extent of the attractive open countryside in between settlements.

28. The site is substantially screened from the A31 by the existing hedgerow and boundary treatment, with glimpsed views possible through the foliage. The views from River Lane are also limited, with the entrance to the site being screened by gates and longer views from further along River Lane from the bridge being distant and partly screened by trees.
29. The site is located within the area defined as Countryside beyond the Green Belt and is outside of any specified settlement boundary where policy RE1 of LP1 states that the intrinsic character and beauty of the countryside will be recognised and safeguarded.
30. The site is also located in an Area of Greater Landscape Value, this is a designation within LP1 and therefore has been adopted since the introduction of the Framework. Paragraph 175 of the Framework requires plans to distinguish between the hierarchy of international, national and locally designated sites and allocate land with the least environmental or amenity value.
31. The Council confirmed that the AGLV has locally designated status, and policy RE3 of LP1 sets out that this area will be retained for its own sake as a buffer to the Surrey Hills Area of Outstanding Natural Beauty (AONB) until such time as there is a review of the boundary of the AONB. It was confirmed by the parties that this review is ongoing, and that the site is not currently being considered as part of the expansion to the AONB. Within the AGLV new development must respect and where appropriate enhance the distinctive character of the landscape in which it is located.
32. The adjacent site has the benefit of planning permission for the erection of a day room and the use of land for stationing of one mobile home pitch and one caravan pitch¹ and this pitch has been implemented. The Council have also granted planning permission for the erection of 2 day rooms, stables and use of land for the stationing of additional 4 mobile home pitches, with the formation of additional hardstanding². The stables have been implemented and 2 mobile homes have been sited, but not as shown on the approved plans. The parties agreed, for the purposes of this appeal only, that the permission is extant and capable of implementation, albeit that the planning permission has recently expired.
33. Therefore, any effect on the character and appearance of the countryside must be considered having regard to the existing lawful development on the adjoining site. The existing site has, given the period of time that it has been occupied as a Gypsy and Traveller pitch, assimilated into the wider landscape and is not unduly prominent within it. The landscaping that has been put in place has matured and now forms part of the rural character of the area.
34. Whilst the proposed development would result in the expansion of the site and an introduction of a further 8 pitches, it would not expand beyond the natural boundaries which have been established as part of the adjoining development and would be served by the existing access.

¹ APP/R3650/W/15/3138088

² WA/2019/0116

35. Views into the appeal scheme would be minimised, to ensure that any cumulative visual impact would be compatible with the rural character and appearance of the area, having regard to the limited landscape value attributed to the site as a result of its siting adjacent to the A31. Accordingly, the introduction of the proposal into the site would not harm and would respect and conserve the character of this part of the countryside having regard to the established lawful use of the neighbouring site and the existing built development which exists or has been permitted.
36. As a result, there would be no conflict with policies TD1, RE1 and RE3 of the LP1 and policy DM1 of LP2 which together seek to ensure development is safe and attractive, whilst safeguarding and respecting the character of the area and not causing harm or damage to areas of landscape value.
37. Furthermore, the development would accord with policies FNP1, FNP10 and FNP11 of the NP which together set out how development should be well integrated into the landscape, protect the countryside from inappropriate development and prevent coalescence between villages.

Air Quality

38. Policy DM1 of LP2 sets out that development should avoid significant harm to the health or amenity of future occupants by way of an unacceptable increase in pollution. The PPG sets out the relevant considerations to be taken into account, including whether the development would expose people to harmful concentrations of air pollutants. The requirement for an air quality assessment (AQA) needs to be proportionate to the nature and scale of the development proposed and the potential impacts.
39. The Institute of Air Quality Management's guidance Land-use Planning & Development Control: Planning for Air Quality sets out that there may be a requirement to carry out an air quality assessment in such circumstances where exposure to residents is a concern. It provides criteria that can be useful in establishing the need for an AQA and includes the presence of a heavily trafficked road, with emissions that could give rise to sufficiently high concentrations of pollutants, that would cause unacceptably high exposure for users of the new development.
40. Although neither party has provided any evidence to set out the baseline air quality in the locality, the Council does have a responsibility to submit an annual status report each year, with diffusion tube monitoring data. However, the Council were unable to provide any evidence from diffuse tube monitoring data and no Air Quality Management Area (AQMA) has been designated within the vicinity of the site, with the nearest AQMA not being located on the A31. This adds to a lack of evidence to demonstrate concerns over possible exceedance of air quality measures in the local area.
41. The appellant provided an Air Quality and Odour Assessment for a similar scheme that was approved in the neighbouring authority of East Hampshire. However, whilst this indicates that there is data available from diffusion tubes within Waverley, I have not given any weight to this evidence as the Council have not had the opportunity to fully consider this evidence or provide a response.

42. Therefore, there is insufficient evidence before me to indicate that the Council's requirement for an AQA is proportionate. In addition, the Council have previously permitted the residential occupation of the adjoining site and furthermore air quality did not form part of its case on the linked appeal for 4 additional pitches.
43. In conclusion the need for an AQA, in respect of this appeal only, has not been adequately demonstrated and there is insufficient evidence before me to conclude that future occupiers of the site would be exposed to harmful airborne pollutants such that an expansion of the site should be refused. The proposed development would therefore accord with policy DM1 of LP2.

Other Matters

44. The appeal site falls within the 'Zone of influence' for a designated habitats site. As the competent decision making authority, if I had been minded to allow the appeal following a consideration of all of the main issues, it would have been necessary to undertake an appropriate assessment before ascertaining if the appeal should succeed overall. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.
45. The appellant has submitted a unilateral undertaking which includes a contribution towards mitigation for the designated habitat. However, as I am dismissing the appeal for other reasons it is not necessary for me to consider whether the contribution is necessary to make the development acceptable in planning terms and is fairly and reasonably related to it in scale and kind or whether it would meet the tests for a planning obligation as set out in regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

Other considerations

Supply

46. The Waverley Borough Council Gypsy and Traveller Accommodation Assessment (GTAA) was published in March 2018 and represents the most up to date reference when assessing need. This identifies an assessed need for 27 pitches within the period up to 2032.
47. The Council have provided a response for the purposes of the appeal which identifies that the need has been revised to 37 pitches following the outcome of a recent appeal. This update sets out that 50 pitches have been approved between 2017 and 2022, although during the hearing it was necessary to rely on evidence produced by the appellant to explore where these pitches have been approved as the Council had not provided any evidence of its own. The parties agreed as part of the hearing that a total of 45 pitches had been granted planning permission since 2017.
48. However, the GTAA has a shelf life of perhaps 3-5 years and in the absence of an updated GTAA, proposals for new pitches should be made in the context of the existing data available. The appellant has provided evidence, which was not refuted by the Council, that a total of 77 pitches have been sought since the publication of the GTAA. This indicates a demand in excess of that anticipated by the GTAA and does give some credibility to the appellant's suggestion that an updated assessment is likely to result in an increase in the need for pitches.

49. The Council have also considered the impacts arising from those who may not meet the current PPTS definition, by making an allowance off 66% of those identified within the GTAA as having unknown status, giving a total additional need of 16 pitches and taking the overall need to 63 pitches up to 2032.
50. The LP2 provides allocations for a total of 15 pitches and these are predominantly expansions to existing pitches, with three pitches also being provided on a former Travelling Showperson site. In addition, two of the allocations are subject to a planning application or pending outcome at appeal. As the sites are all in private ownership it does cast some doubt as to whether they would be available to meet needs arising from in migration or households unconnected to the existing land owners. However, the inclusion of allocations in the newly adopted plan does demonstrate the Council's commitment to providing for the need identified within the GTAA.
51. Therefore, on the basis of the evidence before me, with 45 pitches granted to date and the 15 pitches to come forward as part of the allocation in LP2 this would result in a deficit of 3 pitches. In these circumstances, I afford the absence of a five-year supply of sites significant weight as a matter in favour of the proposal.

Future Occupants

52. The appeal scheme is seeking a general permission for a Gypsy and Traveller site and is therefore not predicated on the personal circumstances of any specific individuals. There is nothing before to suggest that refusal of the proposal would leave anyone without alternative accommodation or that an approval would serve the best interest of any particular child.
53. Nevertheless, the future occupants of the pitches are likely to have the protected characteristic of race under s149(7) of the Equality Act 2010. In such circumstances, s149(1) of the Equality Act required due regard to be had to the need to, amongst other matters, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not. This includes minimising disadvantages that are connected to that characteristic, such as access to suitable accommodation. This is the Public Sector Equality Duty (PSED).
54. The appeal scheme would facilitate the establishment of a base from which to pursue a nomadic lifestyle. This would allow cultural traditions to be balanced with the practicalities of modern living, thereby advancing equality of opportunity. The absence of a five-year supply of pitches also indicates inequality in housing opportunities and the proposal would help to offset this. These are important points in achieving the social sustainability sought by Paragraph 13 of the PPTS. It does not automatically follow that the appeal should be permitted because the PSED is relevant, but the equality implications of allowing the proposal weight moderately in favour of it in this instance.

Planning Balance

55. Notwithstanding that the scheme would be contrary to the development plan, the question remains whether there are material considerations which would warrant a decision in this instance other than in accordance with the development plan. As material considerations, Policy H of the PPTS requires applications for gypsy sites to be assessed in accordance with specific policies in the Framework and the PPTS.
56. The Council is currently unable to meet the identified accommodation needs of gypsies and travellers and addressing this to a by permitting an additional 8 pitches is therefore a significant contribution to the undersupply and attracts weight accordingly.
57. However this is not sufficient to outweigh the harm arising in terms of flood risk. The development would therefore fail to satisfy the requirements of the Framework and the development plan. It therefore follows that the benefits of the proposal would not outweigh the totality of the harm I have identified either. In these circumstances, dismissing the appeal would not amount to an unjustified and disproportionate interference with the right for respect of private and family life under Article 8 of the Human Rights Act.

Proportionality

58. In accordance with the public sector equality duty, due regard has been paid to minimising the disadvantages suffered by the intended occupiers of the site and to meeting their needs in so far as they are different to those without a relevant protected characteristic. Whilst ultimately the appeal is to be dismissed, these considerations have been at the forefront of the decision-making process. Because of the significant objections identified the outcome is a proportionate one.

Conclusion

59. Based on the evidence before me, the proposed development would provide adequate living conditions in terms of air quality and would have an acceptable impact on the character and appearance of the area. However, the development would significantly harm the living conditions of future occupiers due to the risk of flooding. It is therefore contrary to the development plan, and this finding would not be out-weighed by all other material considerations including all relevant provisions of the Framework and the PPTS. In accordance with section 38(6) of the Planning and Compulsory Purchase Act, 2004, I find no basis for planning permission to be granted.
60. For the above reasons, the appeal is dismissed.

G Pannell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

N Schultz
B Wood - WS Planning & Architecture
P Brownjohn - WS Planning & Architecture

FOR THE LOCAL PLANNING AUTHORITY:

C French
D Campbell
M Ellis
R Dovey