



Appeal Decision

Site visit made on 15 May 2023

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 June 2023

Appeal Ref: APP/C1435/W/22/3310223

The Robins, Stonehurst Lane, Hadlow Down, TN20 6LL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr and Mrs J Moore against the decision of Wealden District Council.
 - The application Ref WD/2022/1719/FA, dated 3 July 2022, was approved on 14 October 2022 and planning permission was granted subject to conditions.
 - The development permitted is Variation or Removal of Conditions 1 and 2 of WD/2019/0208/FA (Variation or Removal of Conditions 1 and 2 of WD/2015/2287/FR Change of use of land for stationing of caravans for residential occupation as a gypsy site with associated development (Alter access, hard standing, utility shed/day room) – Retrospective) to extend or remove the temporary consent period). To renew consent for site first occupied in 2014 on a permanent basis or for a further temporary period.
 - The conditions in dispute are Nos 1 and 3 which state that:
 1. The development and use of land hereby permitted is granted for a limited period only expiring on 14 October 2025. On or before this date, the use carried out in pursuance of this retrospective permission shall be demolished/removed from the site and the land restored to its former condition in accordance with a scheme which shall have been previously submitted to and been approved in writing by the Local Planning Authority.
 3. The change of use of land for stationing of caravans for residential occupation as a gypsy site and associated development (altered access, hardstanding, utility shed/day room) shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within one month of the date of failure to meet the following requirement:-
 - (i) Within 1 month of the date of this Decision, a scheme showing enhanced landscaping and boundary treatments for the site, in particular around the site access and along the northern boundary to include a substantial native hedgerow and trees, is to be submitted to and approved in writing by the Local Planning Authority. The approved scheme is to include all trees and hedges to be retained and the approved scheme is to be implemented in the first planting season following its approval.
- Thereafter, any trees, shrubs, hedges or plants which within a period of five years from the implementation of the approved landscaping scheme, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- The reasons given for the conditions are:

1. Under present planning policy assessment, the use of the site for gypsy and traveller accommodation may not be considered suitable as a permanent form of use to safeguard the sensitive landscape environment, and the temporary planning permission will enable all matters to be reviewed in the light of all future material planning issues, having regard to the availability of Gypsy and Traveller pitches across the District in response to the objectively assessed need. This is have regard to updated advice, including The DCLG updated Gypsy and Traveller Advice Planning Policy for Traveller Sites 2015 (PPTS 2015) particularly Policy H, as well as saved Policy EN6 of the adopted Wealden Local Plan 1998.
 3. In the interest of the visual amenities and natural beauty of the High Weald Area of Outstanding Natural Beauty having regard to saved Policies EN6, EN12 and EN27 of the Wealden Local Plan 1998.
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Decision

1. The appeal is allowed and the planning permission Ref WD/2022/1719/FA for Change of use of land for stationing of caravans for residential occupation as a gypsy site with associated development (Alter access, hard standing, utility shed/day room) at The Robins, Stonehurst Lane, Hadlow Down, TN20 6LL granted on 14 October 2022 by Wealden District Council, is varied by deleting conditions 1 and 3 and their substitution with the following conditions:
 - 1) When the land ceases to be occupied by those named in condition 2, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.
 - 3) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 56 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for:
 - a) Enhanced landscaping and boundary treatments for the site, in particular around the site access and along the northern boundary to include a native hedgerow and trees, including details of species, plant sizes and proposed numbers and densities
 - b) the restoration of the site to its condition before the development took place, (or as otherwise agreed in writing by the local planning authority) at the end of the period the site is occupied by those permitted to do so (hereafter referred to as the site development scheme)shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation and its maintenance for a period of no less than 5 years.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

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

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

Preliminary Matters

Background and Planning History

2. The planning history relating to the current use of the land dates back to 2016 with a planning application for change of use of land for stationing of caravans for residential occupation as a gypsy site with associated development (alter access, hard standing, utility shed/day room). That application was refused by the Council and a subsequent appeal ref: APP/C1435/W/16/3145963 (2016 appeal) was allowed subject to seven conditions. Condition 1 restricted the use to specific individuals and for a limited period until 31 January 2019.
3. An application was submitted to the Council in 2019, reference WD/2019/0208/FA, seeking to vary condition 1 and 2 to make the temporary and personal permission general and permanent. The planning application was approved in February 2021 but for a further temporary period until 4 July 2022. It also remained personal.
4. In 2022 a further planning application, WD/2022/1719/FA was submitted to the Council seeking to vary condition 1 and 2 to make the temporary permission permanent and the personal permission general. The Council approved planning permission on 14 October 2022 but with Condition 1 for a temporary period of three years, expiring on 14 October 2025. It also remained personal.
5. The Council's decision notice gives the description of development as "Variation or removal of conditions 1 and 2 of WD/2019/0208/FA (variation or removal of conditions 1 and 2 of WD/2015/2287/FR (change of use of land for stationing of caravans for residential occupation as a gypsy site with associated development (alter access, hard standing, utility shed/day room) – retrospective) to extend or remove the temporary consent period). To renew consent for site first occupied in 2014 on a permanent basis or for a further temporary period.
6. However, the effect of granting planning permission under WD/2019/0208/FA and WD/2022/1719/FA was to create a second and third permission for the original development and therefore the description of development needed to reflect that. In the interests of both clarity and certainty, I have reverted to the original description of development given planning permission under WD/2015/2287/FR and used this in my formal decision.

Main Issues

7. The appellant has also submitted a duly executed unilateral undertaking and it provides for a contribution to mitigate impacts on the Ashdown Forest Special Protection Area and I have contemplated this further later in my decision.
8. The main issue is whether temporary or permanent permission should be granted for the traveller site having regard to the effect on the character and appearance of the area, including the High Weald Area of Outstanding Natural Beauty (AONB).

Reasons

Character and appearance

9. The site is located off Stonehurst Lane and set back from the highway and comprises a rectangular parcel of land which is adjacent to an existing authorised traveller site. There are other examples of sporadic residential development along Stonehurst Lane. The site is located within the High Weald AONB.
10. The character is very much that of a rural setting, where Policy C of the Planning Policy for Traveller Sites (PPTS) indicates that some sites may be located, whilst ensuring that they do not dominate the nearest settled community.
11. Policy WCS11 of the Wealden Core Strategy Local Plan 2013 (CS) provides criteria for assessment of Gypsy and Traveller sites and includes that they should not compromise the essential features of nationally designated areas of landscape, including the High Weald AONB. However, Wealden District Council is widely constrained by the presence of High Weald AONB, which accounts for over 50% of the District. This limits opportunities for finding suitable sites for Gypsies and travellers.
12. The National Planning Policy Framework (the Framework) places great weight on protecting and enhancing landscape beauty in AONB's which have the highest status of protection in relation to these issues.
13. The High Weald AONB Management Plan 2019 sets out a statement of significance with five defining components of character which it states have made the High Weald a recognisable distinct and homogenous area. When considering, in particular the natural beauty arising from its areas of field and heath, it seeks to maintain the pattern of small irregularly shaped fields bounded by hedgerows and woodlands.
14. The site is small in scale and well contained within its existing landscaped boundaries. The 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 existing landscaping has matured and become more established. The layout of the site has been carefully considered with the static mobile home being located along the boundary of the site, such that views from the access are minimised, to ensure that any visual impact is limited and localised.

15. Whilst the development of the site does not preserve the natural beauty of the AONB, it results in limited harm to the wider character and visual amenities of the area and does not compromise the essential features which are set out within the management plan.
16. Previous decisions on the site have indicated that the harm arising to the AONB was acceptable for a temporary period, but that it would be inappropriate to accept long term harm from a permanent pitch. However, this site has been occupied in its current form since 2015 and could remain occupied until 2025, and this is a length of time that cannot be considered short term.
17. The appellant's final comments note that condition 3, which requires a landscaping scheme to be submitted, including for a native hedge to be provided along the northern boundary, could be justified if permission is granted on a permanent basis.
18. Noting the site's location within the High Weald AONB I consider it both necessary and reasonable to seek further landscaping of the site and details of its restoration should it cease to be occupied by the appellants.
19. The proposed development fails to accord with policy EN6 of the Wealden Local Plan 1998 which sets out that development within the High Weald AONB will only be permitted if it conserves or enhances the natural beauty and character of the landscape and policy WCS11 of the CS which sets out that sites for Gypsy and Traveller sites should not compromise the essential features of the AONB.

Other Matters

Temporary Planning Permission

20. The PPTS requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against locally set targets and identify a supply of specific developable sites. The Council confirms that it does not have a 5 year supply of pitches, with evidence of this provided within the East Sussex Gypsy, Traveller and Travelling Showpeople Accommodation Needs Assessment (May 2022). This sets out that within Wealden District Council there is a need for 32 pitches for those meeting the 2015 PPTS definition and a need for 51 pitches for those meeting the ethnic definition between 2021-40. It concludes that the district has no proposed land supply to meet these identified needs.
21. In accordance with the PPTS, in these circumstances, lack of supply should be a significant material consideration in relation to a planning decision when considering the grant of a temporary planning permission. However, the PPTS makes it clear that this does not apply to sites within, amongst other things, an AONB. It also does not say that the lack of supply is a significant material consideration when considering permanent schemes. It is also of note that the site was also in the AONB when the 3 previous permissions were granted.
22. The Planning Practice Guidance sets out that a temporary planning permission may be appropriate where it is expected that the planning circumstances will change in a particular way at the end of that period. The guidance goes on to state that it will rarely be justifiable to grant a second temporary permission and that further permissions can normally be granted permanently or refused if there is a clear justification for doing so.

23. The Council is in the process of updating its Local Plan and therefore there is a possibility of legitimate alternative sites becoming available through that process, from around the time of its adoption. Nonetheless, I have no indication as to whether a period of three years is likely to be sufficient for the Council to complete its assessment and adopt a new Local Plan, or for any future allocations to come forward.
24. The Council has previously extended the temporary planning permission on two separate occasions, beyond that temporary period which the Inspector in the 2016 appeal considered would be sufficient for the Council to produce its Gypsy site allocations policy and alternative sites to come forward. However, the ongoing lack of certainty over the delivery of alternative sites in the District, resulting from the continuing delay over the adoption of the emerging Local Plan which should allocate sites, leads me to conclude that it would not be appropriate to place a further temporary permission on the site.

Ashdown Forest Special Protection Area

25. The appeal scheme lies within the Zone of Influence of the Ashdown Forest Special Protection Area (SPA). The qualifying features underpinning the SPA designation is the concentration of Dartford Warbler and European Nightjar. The conservation objectives are to ensure that the integrity of the site is maintained or restored as appropriate so that it continues to support the population and distribution of its qualifying features.
26. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SPA. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
27. Having regard to the scale of development proposed, the number of additional recreational visitors would be limited and the likely effects on the SPA from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the designated site. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.
28. The site is within the zone of influence where new residential development is likely to result in recreational pressure, which would, both alone and in combination with other development within the zone of influence, have a likely significant effect on the interest features of the aforementioned site. Therefore, I consider that the development would have an adverse effect on the integrity of the site, but regard can be had to whether these adverse effects can be mitigated.
29. The Council's Strategic Access Management and Monitoring Strategy (SAMMS) for the Ashdown Forest SPA sets out a strategic approach to mitigation across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling to put towards Suitable Alternative Natural Greenspace (SANG), and this approach has been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the SPA.

30. The appellants have submitted a Unilateral Undertaking for the contribution of £1,170 towards the SAMMS and £4768.62 towards the SANGS. Given the evidence before me I am satisfied that the mitigation measures have been secured and would be used for their intended purpose.
31. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the SPA.

Other Considerations

Personal Circumstances

32. Evidence has been supplied by the appellant to demonstrate a nomadic habit of life and the Council has not taken an alternative view or suggested the submissions are inconsistent or inaccurate. Accordingly, there is no dispute that the proposed occupiers are Gypsies and Travellers.
33. The occupants of the site remain the same as at the time of the 2016 appeal, albeit that the number of children have increased to six. There are now three families residing on the site, with the original dependants of the appellant having now formed households of their own. In 2019, it was noted that three children attended the local school. The further three children that have been born are not yet of school age but at least two of the children would be of school age by the end of the current temporary period of 2025. It is not disputed that the site remains occupied as a single pitch with three caravans.
34. The appellants also have extended family members who reside on the adjoining permanent site and they have a wish to remain in close proximity to those family members.
35. If the appeal is dismissed, then the three households would only be able to remain on the site until 2025 and there is a risk that after this they would have to live in temporary locations on the roadside and the children's welfare would be seriously disrupted. In addition, living an uncertain roadside existence would not support the children's welfare and development. Instead, an enduring settled base would enable access to education, healthcare and generally supporting the children's welfare by, for example, attending clubs, making friends and being close to family.
36. The appellants are, as Romany or ethnic Gypsies, an ethnic minority, and thus have the protected characteristic of race under s149(7) of the Equality Act 2010 and so, as required by section 149(1) of the Equality Act 2010, the public sector equality duty is applicable.
37. There is therefore a need to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations. The appeal scheme would support the traditional way of life of families that have a protected characteristic and facilitate the establishment of a settled base for the appellants' families whilst they continued to pursue a nomadic lifestyle for economic purposes.

38. Aside from the best interests of the children, I attach moderate weight to the other personal circumstances as a factor in favour of the scheme.

Best Interests of the children

39. Article 3 of the United Nations Convention on the Rights of the Child requires a child's best interests to be a primary consideration. The best interests of the child must be a primary consideration, meaning that no other issue is intrinsically more important. Another issue might be weightier in the circumstances of the case, but it should not be presented as inherently more important.
40. Accordingly, decision-makers need to consider whether children's best interests are relevant to any planning issue under consideration. In doing so, they will want to ensure the approach is proportionate. Decision-makers need to consider the case before them, but need to be mindful that the best interests of a particular child will not always outweigh other considerations including those that impact negatively on the environment or the wider community.
41. The appeal scheme would provide a settled base for 6 children, and this would be in their best interests and the children of school age attend school locally and having regard to the ages of the children at least some of them would remain in school beyond 2025. For those children that are living on the site but are not yet of school age having the certainty of a settled base before schooling starts would enable them to undertake a smooth transition into the education system.
42. I accept that the best interests of the children, would, in principle, be served by a permanent and secure home, whilst having regard to the fact that their educational needs are currently being met by a school in the local area.
43. The merits of the case presented are such that I afford the benefits, of this development being permitted beyond 2025, to the best interests of the children, considerable importance and weight.

Planning Balance

44. Notwithstanding that the scheme would be contrary to the development plan as a whole, the question remains whether there are material considerations which would warrant a decision in this instance other than in accordance with the development plan.
45. There are several points in favour of the proposal. The Council are unable to meet the permanent accommodation needs of the appellants and their family, all who are Gypsies and Travellers. The appeal scheme would support the traditional way of life of families that have a protected characteristic.
46. The appeal scheme would facilitate the continuation of a settled base for the appellants' families whilst they continued to pursue a nomadic lifestyle for economic purposes. This would allow cultural traditions to be balanced with the practicalities of modern living thereby, advancing equality of opportunity. The unmet need for pitches also indicates inequality in housing opportunities and the proposal would help to offset this in a modest way.

47. 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. Nonetheless, the equality implications weigh notably in favour of permitting pitches at the appeal site because dismissing the appeal would perpetuate the disadvantages currently endured.
48. The accommodation needs and personal circumstances of the intended occupiers are together, significant points in favour of the proposals. Furthermore, the 6 children would benefit considerably from a settled base from which to gain stability and an education. There would also be social benefits to the children with the opportunity to be part of an extended family group, in order to provide mutual support and care. I have attached moderate weight to the accommodation needs and personal circumstances of the appellant's family, and considerable importance and weight to the best interests of the children.
49. I attach considerable weight to protecting and enhancing landscape beauty in AONB's, however the appeal site would afford a stable base for three households and continued access to education for three children and enable future provision for the younger children. There would be wider benefits for the appellants who would remain part of an extended family group, with the associated benefits of mutual support and care.
50. In the overall planning balance, the best interests of the children, added to the benefits of the proposal, including that the development would provide a settled base for three households, are sufficient in this case to outweigh the limited harm to the AONB identified above.

Conclusion

51. I therefore conclude that harm I have identified to the High Wealden AONB is outweighed by other material considerations including the personal circumstances of the occupiers of the site.
52. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed. I will vary the planning permission by varying condition 1 & 3 in order to provide greater certainty that the site will be restored if it is no longer occupied by the appellants as part of the landscaping details to be submitted. The remaining conditions imposed on WD/2022/1719/FA (2, 4, 5, 6, 7 & 8) still take effect.

G Pannell

INSPECTOR