



Appeal Decision

Hearing held on 1 June 2023

Site visit made on 1 June 2023

by Helen Hockenhull BA (Hons) B.PI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2023

Appeal Ref: APP/M1710/W/22/3313826

The Range, Dean Field, Kingsley, Bordon, GU35 9GF

- 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. J Harty against the decision of East Hampshire District Council.
 - The application Ref 59763/006, dated 1 August 2022, was refused by notice dated 16 November 2022.
 - The development proposed is the change of use of land for the creation of a total of 8 Gypsy/Traveller Pitches (net 2 additional Pitches), comprising 1 mobile home and 1 touring caravan per pitch.
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Decision

1. The appeal is allowed, and planning permission is granted for the change of use of land for the creation of a total of 8 Gypsy/Traveller Pitches (net 2 additional Pitches), comprising 1 mobile home and 1 touring caravan per pitch at The Range, Dean Field, Bordon, GU35 9GF in accordance with the terms of the application, Ref 59763/006, dated 1 August 2022, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal proposal is part retrospective in that the use of the land for the siting of eight caravans has commenced and the second access has been installed. However, the current layout does not entirely reflect that which is proposed. At the time of my site visit there were no touring caravans on the site. I have considered the appeal on this basis.
3. The appellant confirmed at the hearing that personal circumstances of the occupants are not being relied upon in this case.
4. The first reason for refusal stated on the Council's Decision Notice, refers amongst other things, to limited space for surface water drainage. The parties agreed in the Statement of Common Ground that the site is located within Flood Zone 1 and that a suitably worded condition would be sufficient to ensure the provision of an appropriate scheme. I agree with this conclusion and therefore do not address this matter further.

Main Issues

5. In light of the above, the main issues are:
 - the effect of the proposal on the character and appearance of the area;

- whether the development would provide a good standard of accommodation for future occupiers;
- the effect of the development on the living conditions of the occupants of neighbouring residential properties, with particular regard to noise and disturbance;
- whether other material considerations, including the general need for and supply of gypsy sites, outweigh any harm identified, such as to justify the development.

Reasons

6. The appeal site is located to the north of Dean Field, in the village of Kingsley. The site is approximately 55 metres to the south west of the settlement boundary and lies in open countryside. A recently completed rural exception housing development lies to the west and Kingsley Tennis Centre and former golf club buildings are to the east.
7. The site has two extant planning permissions for a total of 6 pitches with a day room. Planning permission is being sought to amend the previously approved layout, by removing the day room, which has not been constructed, and adding two additional pitches, each comprising one mobile home and one touring caravan. There would then be a total of 8 pitches on the site.
8. As the site forms an existing Gypsy and Traveller site in the countryside, the parties agree that the principle of the development is acceptable. I have no reason to disagree.

Character and appearance

9. Policy CP19 of the East Hampshire District Local Plan: Joint Core Strategy 2014 (JCS) concerns development in the countryside and seeks to protect the countryside recognising its intrinsic character and beauty. Policy CP20 aims to protect and enhance local distinctiveness, sense of place and tranquillity and to incorporate new planting to enhance the landscape setting of new development. Policy CP29 Design supports these objectives.
10. The appeal site lies in the countryside to the south of Forge Road. Forge Road has a rural character with mature hedgerows and trees along its length. From this public highway there are very limited views of the site, with the tops of mobile homes just being visible above the roadside planting. Additional landscaping is proposed on this boundary to further screen the site. Entering into Dean Field, the eastern site boundary is screened by an existing 1.8 metre high fence and planting.
11. On the western site boundary with the adjoining residential properties, the submitted plans illustrate a 4.5-metre-wide planting buffer. Measurements taken at the site visit, confirmed that the access at this side of the site is slightly closer to the site boundary than that shown on the submitted plan. Additionally, the short stretch of wall on the western boundary is slightly splayed. A planting belt of between approximately 4 to 4.25 metres in depth would be achievable. I consider this to be adequate to screen the proposal on this boundary.

12. A brick wall of around 1.2 metres in height alongside the site frontage with Dean Field has been constructed. This was approved under planning permission ref 57963/001 for the 6 pitches on the site. An area of planting in front of the wall by the road is shown on the approved plans but has not been put in place. The wall is sited further forward than approved, reducing the area for landscaping to around 80cm. The plans submitted with the appeal scheme show the wall in the 'as built' position. Whilst there is now a narrower area for planting in front of the wall, it is of an adequate width to plant a hedgerow.
13. The approved scheme also granted planning permission for the siting of 6 touring caravans' side on to the front boundary wall extending along the whole site frontage. In contrast, the appeal scheme proposes 8 touring caravans 'end on' to the road, positioned closer together, taking up approximately half of the site frontage.
14. The approved scheme provides a baseline against which the appeal proposal should be assessed. The 8 touring caravans would be more densely packed on the site, though they would take up less of the site frontage. The boundary wall would screen the lower half of the touring caravans, which being positioned 'end on', would be viewed with sloping roofs projecting away from the site boundary. The proposed boundary hedgerow, which I accept will take time to establish, would assist to filter and screen views of the touring caravans from the roadside. I note that the Council's Landscape Officer raised no objections in principle from a landscape and visual amenity perspective.
15. Given the above, having regard to the height of the boundary wall, the height and siting of the touring caravans, together with the proposed landscaping, I consider that the proposal would be acceptable in terms of the character and appearance of the area.
16. The Council have argued that the density of the appeal proposal would be in excess of surrounding development, which would have an adverse effect on the character of the area. I am advised that the rural exception housing site has a density of 28 dwellings per hectare whilst the appeal scheme would have a density of 38 dwellings per hectare. By further comparison another Gypsy and Traveller site, east of 14 Dean Field, has a density of 29 dwellings per hectare.
17. However, the appeal is for the change of use of land and not for the siting of permanent dwellings. A comparison of density can be difficult to make because of the very different nature of the developments. It is important to consider the visual impact together with any mitigation proposed. It is fair to say that the appeal scheme makes the optimum use of the land available. However, I am not persuaded that the proposal results in an overdevelopment of the site.
18. Given the above, I find that the appeal proposal would not cause unacceptable harm to the character and appearance of the area. It would comply with JCS Policies CP19, CP20 and CP29 which seek to protect the character of the countryside and enhance local distinctiveness.

Standard of accommodation for future occupiers

19. The Council raises concern that two additional pitches on the site would result in a cramped development with unacceptable levels of amenity for the occupiers. In particular, concern is raised about the amount of external amenity space and the loss of the dayroom.

20. Planning Policy for Traveller Sites (PPTS) in paragraph 26 provides guidance for considering planning applications for Gypsy and Traveller accommodation. In part c) it states that local planning authorities should give weight to promoting opportunities for healthy lifestyles, such as adequate landscaping and play areas for children. Policy CP15 of the JCS, requires sites to be capable of accommodating the number of caravans/mobile homes proposed.
21. The appeal scheme includes a small, grassed amenity area to the side of each mobile home of approximately 3 by 5 metres and a separate small grassed shared amenity area. I acknowledge that more amenity space would be desirable for sitting outside, drying washing, and for children's play. However, there are no standards or minimum sizes set down in planning policy or legislation¹.
22. The submitted plan indicates cars parked partially alongside the mobile homes clear of the in/out access road. Whilst being for vehicle access and circulation, the access will inevitably be used by children for informal play. The mobile homes will most likely be occupied by family groups or individuals who know each other well. The occupiers will no doubt be aware of the potential presence of children, will be travelling at low speeds and taking care. There should not therefore be a particular safety issue with the shared use of this space for informal recreation.
23. I was advised at the hearing and saw on my site visit, that Kingsley has a children's play area and a football field within walking distance of the appeal site. Future occupiers could make use of these local facilities.
24. I acknowledge that the amount of amenity space on the site would be less than would be expected in bricks and mortar housing. However, this appeal relates to the change of use of land and therefore it is not appropriate to provide the same level of amenity space. Given the above, I am not persuaded that the amount of amenity space provided would result in an unacceptable standard of accommodation.
25. Turning to the issue of the day room, many Gypsies and Travellers would prefer to live on a site that has such a facility as this is important for cultural reasons. Whilst the lack of a dayroom may deter some from occupying the site, it is a matter of choice. The appellant argued that a shared dayroom on a site for eight pitches may not be ideal and could be difficult to manage. Each individual mobile home would have its own washing and cooking facilities etc. Consequently, I do not consider that the failure to provide a day room would result in a poor standard of accommodation for future occupiers.
26. The Council raised concern that the site layout would not meet the 6 metres separation distance required to obtain a site licence under the Caravan Act. This is to maintain privacy for occupiers. The appellant confirmed that the scheme would meet these requirements. As this matter and other site layout requirements would be addressed through other legislation, it is not necessary for me to consider this further.
27. In summary I consider the proposal would meet the requirements of the PPTS and JCS Policy CP15 which seek to ensure adequate play space provision and adequately sized sites for the number of pitches proposed.

¹ Designing Gypsy and Traveller Sites – Good Practice Guide, CLG, 2008, has been withdrawn.

Living conditions of the occupiers of adjoining residential properties.

28. The appeal scheme includes the provision of a second access at the western end of the appeal site, close to existing residential properties. Concern has been raised that the additional two pitches on the site with the associated vehicle movements has the potential to cause noise and disturbance to the occupiers of neighbouring properties.
29. The additional access would facilitate an in/out arrangement on the site and give occupiers a choice of which exit to use. The proposal may in fact reduce the number of turning movements within the site, thereby reducing noise. I have been provided with no data on vehicle movements to and from the site, no noise assessment to demonstrate the existing background noise levels and the anticipated noise as a result of the development. I therefore have no evidence before me to support the Council's view that the amenity of the adjoining occupiers would be adversely affected.
30. As discussed above, there is a landscaped buffer proposed to the site boundary between the access and the neighbouring properties. There is then a double car port before the nearest residential property itself. This separation will assist to mitigate noise and disturbance.
31. I acknowledge that the surrounding rural area is quiet, though noise can be heard from vehicles on Forge Road. Nevertheless, I am of the view that whilst the addition of two pitches would increase the number of vehicles, there would be no significant adverse effects on the living conditions of neighbouring occupiers because of increased noise and disturbance.
32. Consequently, I find that the appeal proposal would comply with paragraph 130 of the National Planning Policy Framework (the Framework) which requires amenity be protected for existing and proposed occupants. It would also comply with Policy CP27 of the JCS which seeks to ensure pollution including noise do not result in unacceptable impacts in terms of amenity.

Need and supply

33. The Council's Gypsy and Traveller Accommodation Assessment (GTAA) dated March 2020, indicates a need for 62 Traveller pitches by 2036 for those who meet the PPTS definition. A further 4 pitches is added to this to take account of 'unknown' Gypsy and Travellers in the District, giving a total need of 66 pitches.
34. At the hearing there was a discussion about the implications of the recent Lisa Smith case², where the Court of Appeal found that the PPTS definition was discriminatory to those who have stopped to travel permanently due to ill health, old age or educational needs. The GTAA found there was no need in the District for those who do not meet the PPTS definition. Consequently, no adjustment is necessary to the overall need figure. Based on the submitted evidence, I consider the GTAA provides a reasonable assessment of the need in the District.
35. The PPTS requires local authorities to identify and update annually a supply of specific deliverable sites to provide 5 years' worth of sites against their locally

² Smith v SSLUHC & Ors [2022] EWCA 31 October 2022

set targets. The Council's 5 year supply evidence³ confirmed that as at 31 March 2022, there was a two year supply of deliverable Gypsy and Traveller sites and a shortfall of 19 pitches over the next 5 years. I give significant weight to this unmet need.

Other matters

36. The appeal site lies within the 400m to 5km buffer zone around the Wealden Heaths Phase II Special Protection Area (SPA), protected under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
37. The Wealden Heaths SPA is made up of four separate Sites of Special Scientific Interest (SSSI) important for breeding bird species. The conservation objectives of the SPA are to achieve appropriate management of disturbance during the breeding season, to control urbanising effects such as fly tipping, arson, cat predation and to maintain water levels and water quality.
38. Increased recreational pressure from residents of new residential development, in combination with other plans and projects, can have significant effects on the conservation objectives of the SPA.
39. I was advised at the hearing that it was determined during the examination of the East Hampshire /South Downs Joint Core Strategy that a strategic prohibition on development within the buffer zone of the SPA was not required. This was because of the small number of windfall housing proposals of schemes of 5 units or less expected within that zone. An assumption of 30 dwellings was made with regard to the number of windfalls likely to be delivered over the plan period. This was later increased to 43. This approach was agreed by Natural England, the District Council and the South Downs National Park Authority. This windfall allowance is monitored by the local planning authority.
40. The proposed two pitches would fall within this windfall allowance. It can therefore be concluded that the proposal would not cause any significant adverse effects on the integrity of the SPA either alone or in combination with other plans and projects. Therefore, no appropriate assessment is required. The appeal scheme would comply with Policy CP22 of the JCS which aims to ensure that new development has no adverse effects on the ecological integrity of a SPA.
41. As the appeal proposal is retrospective, intentional unauthorised development has taken place. It is Government policy this is a material consideration in determining planning applications and appeals. The site comprises hardstanding so that the provision of 2 additional pitches has involved minimal work. Therefore, I afford limited weight to the intentional unauthorised development of the site.

Planning Balance

42. I have found that subject to the proposed mitigation, the appeal proposal would not have an adverse effect on the character and appearance of the area. It would also provide an acceptable standard of accommodation for future residents and cause no harm to the living conditions of the occupants of

³ East Hampshire 5 Year Supply of Deliverable Land for Gypsy, Traveller and Travelling Showpeople Accommodation. March 2022

neighbouring residential properties. Furthermore, it would contribute towards the current need for pitches in the District. Whilst being located within the countryside, the site is appropriate in principle for the use proposed and has reasonable access to services and facilities.

43. Given the above, I conclude that the proposal would comply with the development plan as a whole. Although the proposal represents intentional unauthorised development, for the reasons given, I afford this limited weight against the scheme. This matter does not justify a decision other than in accordance with the development plan. The proposals would represent sustainable development as sought by the Framework and the PPTS, and the appeal should be allowed.

Conditions

44. I have considered the suggested conditions put forward by the Council and discussed at the hearing in light of the advice in the Framework and PPG. I have also taken into account the views of the parties.
45. As the development is retrospective, it is not necessary to impose the normal commencement condition as suggested by the Council. I impose a condition referencing the submitted plans for the avoidance of doubt (condition 1). Condition 2 limits the occupation of the site to Gypsy and Travellers. The Council's suggested condition restricted occupation to those meeting the PPTS definition. In light of the Lisa Smith case, I have redrafted the wording, to permit the occupation of the site by Gypsy and Travellers who have permanently ceased to travel.
46. It is also necessary to limit the number of pitches and caravans on the site in the interests of the character and appearance of the area (condition 3). I have amended the Council's suggested wording which included a restriction on the total number of pitches on the site. This is unnecessary as the description of development clearly states the site is to accommodate 8 pitches.
47. Since works have already commenced on site, condition 4 is necessary to ensure that various matters are approved and implemented in a timely manner. These include drainage to ensure the implementation of an appropriate scheme, a landscaping and planting scheme, boundary treatments, external lighting and details of the bin store and cycle storage. This is required in order to protect the character and appearance of the area; safeguard the amenities of residents, secure cycle parking to promote sustainable travel and ensure adequate refuse facilities in the interests of amenity. Condition 5 is necessary to ensure the landscaping is maintained for a period of 5 years, so it can become established.
48. So that the living conditions of future occupants is protected, condition 6 restricts commercial activities on the site and the storage of materials. Condition 7 is required in the interests of highway safety to ensure on site car parking is provided and retained. I impose condition 8 requiring hard surfacing to be made either of a porous material or provision be made to direct run off water from a hard surface to a permeable or porous surface. This is necessary to ensure sustainable surface water drainage.

Conclusion

49. For the reasons give above, and having had regard to all other matters raised, I allow this appeal, subject to the conditions in the attached schedule.

Helen Hockenhull

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alan Masters of Counsel

He called:

Brian Woods

Managing Director, WS Planning and
Architecture

John Harty

Appellant

FOR THE LOCAL PLANNING AUTHORITY

Scott Stemp of Counsel

He called :

Nicky Powis

Principal Planning Officer, East
Hampshire District Council

DOCUMENTS SUBMITTED DURING THE HEARING

1. Appeal Decision Letter Ref APP/J0405/W/22/3295746 – 3495766, multiple appeals at Sunset Park Homes, Whitfield, Brackley, dated 23 December 2022.

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: Proposed Site Plan Drawing no. J0042-DD-03.
- 2) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of a nomadic habit of life whatever their race origin, including such persons who on grounds only of their own or their family's or dependant's educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of traveling show people or circus people travelling together as such.
- 3) No more than 16 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 8 shall be static caravans) shall be stationed on the site at any time.
- 4) 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 28 days of the date of failure to meet any one of the requirements set out in (i) a)-e), ii), iii) and iv) below:
 - i) Within 3 months of the date of this decision a 'site development scheme' shall be submitted to include :-
 - a) Details of the provision for all surface water drainage from parking areas and areas of hardstanding based on site percolation and infiltration tests;
 - b) Existing and proposed external lighting on the site boundary and within the site ;
 - c) Details of soft landscaping including tree, hedge and shrub planting with details of species, plant sizes and proposed numbers and densities;
 - d) Details of the position, design, and materials of any boundary treatments to be erected;
 - e) Details of the design and materials of the proposed bin store and cycle storage facilities.

(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.

- 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 and retained.

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.

- 5) If within a period of 5 years from the implementation of the Site Development Scheme, any trees or plants which formed part of the approved Site Development Scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.
- 6) No commercial activities shall take place on the land, including the storage of materials.
- 7) The areas shown on the approved plan for the parking of vehicles shall be made available, surfaced and marked out before the occupation of the pitch to which they relate. The parking areas shall then be permanently retained and reserved for that purpose at all times.
- 8) The proposed hard surface shall either be made of porous materials or provision shall be made to direct run off water from the hard surface/s to a permeable or porous surface within the site.