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## Appeal Decision

Hearing held on 17 May 2023

Site visit made on 17 May 2023

**by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7 August 2023**

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**Appeal Ref: APP/Z3825/W/20/3246486**

**Parsons Field Stables, Pickhurst Lane, Pulborough RH20 1DA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 for the change of use of land to a caravan site for stationing of up to three caravans for occupation by gypsy-traveller family with associated development (timber utility shed, utility trailer, septic tank, hard standing and additional landscaping) for which a previous planning permission was granted for a limited period.
  - The appeal is made by Mr F Keet against the decision of Horsham District Council.
  - The application Ref DC/19/2105, dated 15 October 2019, was refused by notice dated 31 January 2020.
  - The application sought planning permission for the change of use of land to a caravan site for stationing of up to three caravans for occupation by gypsy-traveller family with associated development (timber utility shed, utility trailer, septic tank, hard standing and additional landscaping) granted planning permission for a limited period Ref DC/16/2388 (the original permission), dated 18 January 2017.
  - The condition in dispute is No 2 which states: The two mobile homes, touring caravan, utility trailer and utility block hereby permitted shall be removed and the land shall be restored on or before the 31 December 2019 to a condition which has been previously agreed in writing by the Local Planning Authority in accordance with a scheme of work submitted to and approved in writing by the Local Planning Authority.
  - The reason given for the condition is: The Local Planning Authority would not normally grant permission for such a development in this location but under the circumstances prevailing it is considered reasonable to make an exception in this instance and to allow the development for a limited period in accordance with Policy 23, Policy 26, Policy 27 and Policy 33 of the Horsham District planning Framework 2015 and the guidance within the Planning Policy for traveller sites (August 2015).
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### Decision

1. The appeal is allowed and planning permission is granted for the change of use of land for stationing of up to 3 caravans for occupation by Gypsy and Traveller family with associated development (timber utility shed, utility trailer, septic tank, hard standing and additional landscaping) at Parsons Field Stables, Pulborough, RH20 1DA in accordance with the terms of the application, Ref DC/19/2105, dated 15 October 2019, subject to the conditions in the attached schedule.

### Application for costs

2. An application for costs was made by Mr F Keet against Horsham District Council. This application is the subject of a separate Decision.

## Preliminary Matters

3. This appeal seeks to remove condition no.2, which was imposed on the original permission, time limiting the consent. It is agreed by both parties that the expiration of the time limiting condition imposed on the original permission, occurred at the end of December 2019. Nonetheless, the application subject of this appeal is dated 15 October 2019 and was therefore submitted whilst the original permission was extant. Given the limited time before the expiry of the time limiting condition, it was highly likely that the time limiting condition would expire during the course of the application, and inevitable in the case of any subsequent appeal.
4. Therefore, as the time limiting condition has expired, there is no extant permission to vary. However, where a use continues after the temporary period specified in the condition has expired, s.73A(2)(b) may be used to grant planning permission having retrospective effect. Whilst not disputed, there was an opportunity at the event to make comments on this matter. Additionally, it was established at the event that it is only Policy 23 d. and e. of the Horsham District Planning Framework 2015 (HDPF) that are disputed. I have dealt with the appeal on the basis of the above factors.
5. During the course of the appeal a position statement from Natural England (NE) in respect of all planning applications within the Sussex North Water Supply Zone (SNWSZ)<sup>1</sup> was issued. The position statement outlines NE's concerns about groundwater abstraction within the SNWSZ. It explains that NE cannot, with certainty, conclude that further groundwater abstraction within the SNWSZ will not have an adverse effect on the integrity of the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site. The advice of NE is that no new developments should add to this impact, which means that any new residential development within the SNWSZ should demonstrate water neutrality. The appeal site is located within the SNWSZ and the main parties have had the opportunity to comment on the matter. Additionally, due to the discussions on this issue at the event, the matter of water neutrality has been included as a main issue.
6. Since the determination of the planning application and the submission of the appeal, the Government published the revised National Planning Policy Framework on 20 July 2021 (the Framework). The main parties have had an opportunity to comment on the significance of any relevant changes.
7. Furthermore, and again since the determination of the application, a recent judgment<sup>2</sup> (the Smith judgment) relevant to the appeal has been issued. Although the Planning Policy for Traveller Sites 2015 (PPTS) itself was not the subject of the litigation, and has not been quashed or declared unlawful, the thrust of the judgment was that the PPTS definition of Gypsies and Travellers was unlawfully discriminatory. The main parties were both given the opportunity to comment on this judgment at the event. Thus, no party would be prejudiced if this judgment was taken into consideration in the determination of this appeal.

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<sup>1</sup> Natural England's Position Statement for Applications within the Sussex North Water Supply Zone, September 2021 – Interim Approach

<sup>2</sup> Smith vs Secretary of State for Levelling Up, Housing and Communities and Others [2021] EWHC 1650 (Admin) (31 October 2022)

## **Main Issues**

8. The main issues of this appeal are:

- whether the development would amount to “sustainable development” for the purposes of the Framework, with particular regard to its location;
- the effect of the development on the character and appearance of the appeal site and surrounding area;
- the effect of the development on the SAC, SPA and Ramsar sites in relation to water neutrality; and,
- whether any harm arising from the development would be outweighed by other considerations.

## **Reasons**

### *Location*

9. The site is located within the countryside and approximately 600m from the boundary of Codmore Hill. HDPF Policy 23 d. requires Gypsy and Traveller accommodation to be located in or near to existing settlements, or is part of an allocated strategic location within reasonable distance of a range of local services and community facilities, in particular schools and essential health services.
10. The access to the site is located off Pickhurst Lane, which has the characteristics of a typical rural lane, through its width, grass verges either side and no footpaths or street lighting present. Access to Shane Street (A29) would be via Black Gate Lane, which has similar characteristics to Pickhurst Lane. Due to the A29 being the primary route between Billingham and Pulborough the vehicle movements on this carriageway are greater in frequency, with an increase in the associated speed of vehicles.
11. The parties agree that the nearest settlement where a number of facilities exist is Codmore Hill, although it is acknowledged that Pulborough is likely to provide more shops and essential services. It was established at the Hearing that a bus service runs along the A29 and operates a regular service between Billingham and Pulborough for the majority of the day. This was not disputed by the Council.
12. I accept that Pickhurst Lane and Black Gate Lane would not lend themselves to regular walking, especially during inclement weather or hours of darkness. However, upon reaching the A29, a footpath is provided. Nonetheless, whilst only a snapshot in time, the level of traffic that I experienced on these lanes did not appear overly excessive. Additionally, whilst drivers are easily able to assimilate the conditions on the carriageway when driving along these roads, the verges and the access points provide suitable refuges along these carriageways, should I have needed to step out of the road. Thus, the associated potential likelihood of vehicular/pedestrian conflict is significantly reduced.
13. Furthermore, I acknowledge that the public footpaths (PROWs) in proximity to the site, particularly 1986, 1987 and 1988 would not be suitable for everybody, especially those with mobility issues. However, I am also mindful that such mobility issues would likely result in the use of an alternative method of

transport. Nonetheless, these footpaths still amount to safe alternative routes available to the appellant and his family.

14. The appellant has referenced the Gypsy and Traveller development at 'Oakdene'<sup>3</sup> in his submission, which is approximately 200m away from the site. This application was approved on 13 November 2017 and has similar characteristics to the appeal scheme. Whilst 'Oakdene' is closer to Codmore Hill than the site, the difference in distance is not substantial. Consequently, I consider 'Oakdene' to represent a material consideration in the determination of this appeal. Additionally, the Council has provided an appeal decision<sup>4</sup> for a proposed Gypsy and Traveller scheme in its area on Harbolets Road, West Chilton (Hillside), where the Inspector concluded that the location of the site was suitable. Thus, I consider 'Hillside' to be a material consideration of significant weight, especially as it is further away from a settlement, services and facilities than the appeal scheme.
15. I am also mindful that the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Nonetheless, I consider that alternative transport options exist. Given my own experiences driving/walking in the locality, I find that the site is within a safe and reasonable distance of a range of local services and facilities, with genuine opportunities to walk, cycle or utilise public transport.
16. For the reasons given above, I conclude that the development is in a suitable location with particular regard to access to local services/facilities. Consequently, the development would accord with the strategic aims of HDPF Policy 23 d. which requires sites to be located in or near to existing settlements and within a range of local services and community facilities, amongst other things. The scheme also accords with the requirements of the Framework.

#### *Character and appearance*

17. The area surrounding the site is predominantly characterised by fields for agricultural or equestrian uses. HDPF Policy 23 e. states that development proposals for Gypsy and Traveller accommodation should not have an unacceptable impact on the character and appearance of the landscape and should be sensitively designed to mitigate any impact on its surroundings.
18. A previous appeal decision<sup>5</sup> exists for the site, which granted consent, albeit for a temporary period. I have been directed specifically to comments made by the previous Inspector on this appeal, in relation to character and appearance, where it was concluded that the effect upon rural character and appearance of the countryside was considerable. Similar to the situation of the previous Inspector, I am now considering an appeal, nearly 9 years later, since the site visit was undertaken on 27 August 2014. Thus, it is highly likely that the vegetation planted, and surrounding the site has markedly matured during this period of time, creating a different environment to that which the previous Inspector experienced.
19. Prior to the Hearing I visited the area surrounding the site, and visited a series

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<sup>3</sup> DC/17/2084

<sup>4</sup> APP/Z3825/W/19/3242284

<sup>5</sup> APP/Z3825/A/14/2218650

of locations identified in the Landscape and Visual Issues Statement<sup>6</sup>. In addition to these viewpoints, I also visited the site on the accompanied visit, then walked along PROW 1987 to the rear of the site, picking up PROW 1983, to head back towards Pickhurst Lane. I also viewed the site from Whitehall Cottage at the request of its occupier. Consequently, I am satisfied that I saw everything I need to assess the impact of the development.

20. I saw glimpses of 'Oakdene' from PROW 1987, whereas views of the appeal site from this location were not possible due to the extent of vegetation preventing any noticeable views. Additionally, I consider that there are notable differences between the site for 'Hillside' and the scheme before me, with particular regard to screening, resulting in the site being less visually prominent. The Landscape Character Area for the surrounding area is the Billingham and North Heath Farmlands, where small scale incremental changes eroding character is listed as a key visual sensitivity. Additionally, I note the concerns raised regarding the planting of non-native species in vegetation surrounding the site. However, there are examples of other non-native species at other properties in the locality. Thus, whilst this may be a misgiving on the scheme, it would not justify withholding permission. Overall, the extent of the vegetation surrounding the site, comprises sufficient mitigation to screen the development, preventing any significant harm to the visual amenity of the surrounding area.
21. For the reasons given above, I conclude that the development does not create any significant harm to the character and appearance of the site or the surrounding area. The scheme therefore complies with the design, character and appearance aims of HDPF Policy 23 e. which requires development not to have an unacceptable impact on the character and appearance of the landscape and are sensitively designed to mitigate any impact on its surroundings, amongst other things. The scheme also accords with the requirements of the Framework.

### *Water neutrality*

22. 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 development, either alone or in combination with other projects, that would adversely affect the integrity of the protected habitats. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
23. It is common ground between the main parties that the site benefits from a full-planning permission, through the approval of the original scheme. Thus, in accordance with the guidance within the NE Position Statement, the Regulations cannot be applied retrospectively and the requirement for water neutrality will not apply to any projects with full planning permission prior to the publication of the NE Position Statement on 14 September 2021. Consequently, the development complies with this guidance, as the original permission was approved on 18 January 2017, albeit for a time limited period until 31 December 2019. Additionally, the appellant and his family have been residing on the site since May 2019.

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<sup>6</sup> Appeal Statement of Christopher Jackson: Landscape and Visual Issues by Liz Lake Associates Landscapae Architects dated July 2021.

24. The merits of this situation were discussed at the Hearing, where interested parties raised the issue of the expiry of the time limiting condition on the original permission. However, the planning application to remove Condition no.2 on the original permission, and the subsequent appeal were both submitted in advance of the NE Position Statement, by a considerable period of time. Therefore, given the provisions contained within s.73A(2)(b), I do not consider that the expiry of the time limiting condition to represent a prejudicial factor against the development in this instance. Thus, it cannot be said that the development would have an adverse effect on the integrity of the protected habitat, as no new households would be created.
25. As the proposal would not add to the resident population, there would be an overall neutral effect with regard to water neutrality. In this instance, this could be secured through the imposition of suitably worded conditions, limiting the amount of development allowed, in line with the original permission. Consequently, as the scheme would not have an adverse effect on the integrity of the protected habitat, mitigation or an appropriate assessment is not required in this case.

#### Other considerations

##### *Need for and provision of sites*

26. It is common ground between the main parties that there is not a supply of sites to meet the need for Gypsy and Traveller accommodation in the District. In the Statement of Common Ground (SoCG) it is agreed that a Gypsy and Traveller Needs Assessment in 2020 identified a need for 96 pitches across the plan period to 2036. The status of the emerging Local Plan (the emerging LP) was described as 'paused' at the Hearing, due to various factors, including the administrative changes at the Council. Given the changes at the Council, it was not possible to confirm whether or not the emerging LP in its current form would proceed as envisaged.
27. This alone weighs heavily in favour of the appellant's position. I accept that the ongoing work on the emerging LP would likely address this issue in the long term, although I am unaware as to when the emerging LP would be adopted, given its current status. I am also aware that the Council rejected the appeal site in its emerging LP, but the Officer Report indicates that this was due to a perception of harm to the setting of nearby listed buildings, which was later not considered to be the case. In addition to general need, the availability (or lack) of alternative accommodation for the current occupiers is a relevant consideration of significant weight, as indicated by the PPTS.

##### *Personal circumstances*

28. There is no dispute about the Gypsy or Traveller status of the appellant or other occupiers of the site. Based on the details provided, the representations made at the Hearing and in the absence of any evidence to the contrary, I have no reason to disagree. Additionally, whilst the findings of the Smith judgment have impacted upon the Gypsy and Traveller definition in the PPTS, the appellants met the definition in any event. The site was purchased in May 2019 and the appellant and his family have lived on it since.
29. Because of these circumstances, children have been able to attend school on a regular basis. Access to health care has also been possible. This has resulted in

advantages for the general well-being and state of mind of the appellant and his family, in being settled and being able to provide a stable home, access to basic amenities and a secure living environment for his family.

30. A settled base has allowed children of school and pre-school age to attend local schools and all of the family to access health care more easily. Whilst some of the children have now grown up, it is likely that they have done so on the site. In contrast to the comments contained within the refusal reason, my attention has been drawn towards 3no. children of school and pre-school age living on the site, with ages of 16, 4 and 1 respectively. The benefits of a settled base are well documented in terms of education and access to health care.
31. In particular having a settled base would be in the best interests of the children. In stark contrast, the alternative of an itinerant life would be damaging to the education, health and well-being of the occupiers. Continuing to move from place to place and living by the side of the road would be a likely consequence of dismissing the appeal. However, the balance is in favour of a grant of permission, and there is therefore no need to consider personal circumstances further.

#### *Other Matters*

32. There is agreement between the main parties that the development is not considered to result in any harm to the significance of the nearby heritage assets<sup>7</sup>. In accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), I have paid special regard to the desirability of preserving or enhancing a listed building or its setting or any features of special architectural or historic interest which it possesses. I find the significance of both Whitehall Cottage and Cherry Tree Cottage derive from their 17<sup>th</sup> Century origins, if not earlier in the case of the timber framed Cherry Tree Cottage, and their traditional design, which has largely been maintained, even though some later extensions have been added. Similar to the observations made by the Council, I consider that the existing boundary treatments to the site and the distances maintained to the listed buildings ensures that the development does not harm the setting of the heritage assets. Thus, I find that the development conserves the heritage assets in a manner appropriate to their significance in line with the Framework and the Act.
33. Whilst noting some support for the development, a number of interested parties, including local residents, Toat Valley Residents Group, The Wiggonholt Association and Pulborough Parish Council have also expressed a number of concerns on the planning application and at appeal stage, including but not limited to the following: precedent, flooding, highway safety, sewerage and bonfires, anti-social behaviour, human rights, prematurity of the appeal, animal welfare, amongst other things. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reason for refusal, which I have dealt with in the assessment above. Whilst I can understand the concerns of the interested parties, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

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<sup>7</sup> Whitehall Cottage, which is Grade II Listed (1027352) and Cherry Tree Cottage, which is Grade II Listed (1285958). Both properties were first listed on 9 May 1980.

## **Conditions**

34. The parties have suggested conditions in the SoCG which I have considered, making amendments and minor corrections, where necessary, to ensure clarity and compliance with the tests contained within Paragraph 56 of the Framework and the Planning Practice Guidance.
35. A condition relating to the time limit for implementation is not required in this instance as the development has commenced. A condition surrounding the approved plans is required for certainty. Although, given that I am being asked to determine what is on site and a static caravan is orientated differently to the layout shown on the submitted drawings, I need to be certain of what is being approved. After a discussion and an adjournment, the parties had no objection to the suggested approach contained in Condition no.1 and the Council did not raise any additional concerns towards the different orientation of the static caravan, when it was compared to the orientation shown on the submitted drawings.
36. It is necessary to restrict occupation to those who are Gypsies and Travellers. Although, due to the Smith judgment the wording of the suggested condition required alteration. Controlling the number of mobile and static caravans on the site, the use of the site and vehicles are all reasonable and necessary to define the permission, living conditions of neighbouring occupiers and in the interest of character and appearance.
37. Additionally, I consider that the removal of permitted development rights for additional gates, fences, walls, or other means of enclosure is both reasonable and necessary in the interest of character and appearance. It was established at the Hearing that the drainage for the site has already been implemented in accordance with a scheme approved by the Council. Consequently, I have not included a drainage condition, as suggested in the SoCG.

## **Planning Balance and Conclusion**

38. Given my findings above, the development accords with the development plan when taken as a whole, and there are no other material considerations that indicate otherwise. It also complies with the requirements of the Framework. Additionally, there are numerous considerations that support the case for the appellant. I therefore conclude that the proposed development is suitable for the site and a permanent permission is justified.
39. For the reasons given above, I conclude that the appeal should be allowed.

*W Johnson*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Plan 1 – Location Plan, scale 1:2500 A4 and Plan 3 – Proposed Site Layout scale 1:1250 A4 except in respect of the orientation of the most southerly located static caravan within the site shown on Plan 3 – Proposed Site Layout scale 1:1250 A4.

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 failure to meet any one of the requirements set out in (i) to (iv) below:

(i) Notwithstanding the submitted details within 4 months of the date of this decision a scheme (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority. The scheme shall include:

- An accurate layout of the site, depicting the existing layout.

(ii) Within 8 months of the date of this decision the details to be submitted in (i) shall have been approved by the local planning authority or, if the local planning authority refuse to approve the details, 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 details shall have been approved by the Secretary of State.

(iv) The approved details specified in this condition, shall thereafter be 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.

- 2) The site shall not be occupied by any persons other than gypsies and travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 3) No more than three caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the land at any one time, of which no more than two shall be a static caravan or mobile home.
- 4) No industrial, commercial or business activity shall be carried out on from the site, including the storage of materials.
- 5) No Heavy Goods Vehicles (defined as any vehicle having 3 axles or more and

with a weight exceeding 3,500kg) shall operate to or from the site or be stationed, parked or stored on the site at any time.

- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or Orders amending or revoking and re-enacting the same, no additional gates, fences, walls, or other means of enclosure shall be erected or constructed on the site.

**\*\*End of Conditions\*\***

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mrs A Heine (Agent)

Mr F Keet (Appellant)

Mrs R Keet

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr G Holbrook                      Senior Planning Officer, Horsham District Council

Mr M McLaughlin                  Principal Planning Officer, Horsham District Council

### **INTERESTED PARTIES:**

Mr C Hawley of Counsel          Instructed on behalf of Toat Valley Residents Group

Mrs C Houston                      Local resident

## **HEARING DOCUMENTS**

- Signed/completed SoCG
- Feedback Form (email) from West Sussex County Council dated 16 August 2022.