



Appeal Decision

Site visit made on 3 July 2023

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 August 2023

Appeal Ref: APP/C3810/W/22/3310331

Cherry Tree Nursery, Eastergate Lane, Walberton BN18 0BA

- 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 James Cole against the decision of Arun District Council.
 - The application Ref WA/39/22/PL, dated 20 April 2022, was refused by notice dated 17 August 2022.
 - The development is described as "continuation of use of land for the stationing of 14 No agricultural workers caravans for a temporary period of 3 years".
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Decision

1. The appeal is allowed, and planning permission is granted for use of land for the stationing of 14 No agricultural workers caravans for a temporary period of 3 years at Cherry Tree Nursery, Eastergate Lane, Walberton BN18 0BA in accordance with the terms of the application, Ref WA/39/22/PL, dated 20 April 2022, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The caravans were in situ at the time of my visit and therefore I have dealt with the appeal on the basis that planning permission is being sought retrospectively for the siting of 14 caravans for occupation by agricultural workers. I have removed the word 'continuation' from the description of development in my formal decision as it is not an act of development under s55 of the Act and I have no information to suggest that the use has been authorised previously through a grant of permission.
3. The submitted plans show a utility building, akin to a portable cabin resting on jacks, which provides facilities for the washing and drying of clothes. This structure was on site at the time of my visit. The Council and interested parties will be aware of its existence, and no party would be prejudiced were I to treat it as forming part of the development. My decision is made on that basis.

Main Issues

4. The main issues are:
 - a) whether the caravans are justified in this location, having regard to the development plan and other material considerations; and
 - b) the effect on the living conditions of the occupiers of adjoining dwellings, with particular reference to noise and disturbance.

Reasons

Principle of development in this location

5. The site is located outside of the Built-Up Area Boundary (BUAB), and it falls within the countryside for the purposes of planning policy. Policy SD SP2 of the Arun Local Plan 2011-2031 (ALP) seeks to focus development within the BUAB. Policy C SP1 of the ALP sets out those circumstances where development will be permitted in the countryside. Amongst other things, it states that development will be permitted where it is for the operational needs of agriculture or horticulture. Policy HP1 of the Walberton Neighbourhood Development Plan 2019-2031 (WNDP) supports development outside of the BUAB where it accords with countryside policies in the ALP.
6. Policy H DM3 of the ALP deals with temporary seasonal horticultural workers' dwellings. Such dwellings will only be granted in exceptional circumstances, where there is clear evidence that the structures are absolutely essential for the provision of staff accommodation to facilitate the economic running of a farm or horticultural holding. The policy stipulates that there should be no alternative means of providing the accommodation and the structures should be approved on a temporary basis only as an interim measure. They should also be acceptable in terms of visual impact, quality of accommodation and compliance with normal planning and technical requirements, including in relation to drainage and services.
7. Although the caravans are occupied by agricultural or horticultural workers, they are not justified in connection with a particular business or enterprise. Rather, they are used by workers with contracts at a number of businesses. The accommodation is managed by Pro-Force which specialises in providing seasonal labour to some of the largest farmers and growers across the country. The term 'seasonal' is misleading as I am told that there is no clear season for many workers, and therefore the accommodation is required all year round; the caravans would thus remain on site for 12 months of the year.
8. The lack of evidence to demonstrate an essential need for the caravans in connection with a particular holding means that there is conflict with ALP Policies H DM3 and C SP1, in addition to WNDP Policy HP1. Under the provisions of s38(6) of the Planning and Compulsory Purchase Act 2004, a grant of planning permission would need to be justified by other material considerations.
9. The Council does not dispute that there is a need for workers to support local growers and farmers. Horticulture is identified in the ALP as a key employment sector, with commercial horticulture having a significant presence in certain parts of the Arun District, including nearby Barnham. The Council's Economic Strategy identifies the horticulture sector as one of four key sectors which are particularly strong in the local economy, with good opportunities for economic development and job creation. The Council has even adopted a Horticultural Local Development Order, to assist the horticulture sector. Paragraph 11.2.4 of the ALP recognises that employment in horticulture is particularly seasonal and consequently there are demands to house transient and/or migrant workers. The local plan does not state it explicitly, but it is reasonable to think that such housing would need to be both affordable and flexible in terms of duration of tenure, given the likely pay and conditions of the employment.

10. The application is accompanied by a supporting letter from Pro-Force, the site operator, which sets out the growing need for seasonal staff within farming and agriculture. The company explains that one of its largest sites, South Downs Worker Village, which housed over 400 staff, was sold by the owner to local developers, resulting in the company being unable to accommodate the required number of staff. These are not essential needs, in terms of a worker needing to be permanently resident on site to deal with emergencies, but they are nevertheless important to the survival of the commercial horticulture sector.
11. The development plan is silent on how the Council expects the labour requirement to be met on sites within the BUAB. The officer report moots the idea of using local rental properties or low-cost HMOs/bedsits, but there is no firm evidence before me on the availability of such properties. Furthermore, I note that there is an acute shortfall of housing land within the District, the published supply position being just 2.36 years. This casts doubt on the ability of the local housing market to function to meet agricultural needs.
12. The rooming list submitted with the planning application showed the caravans being occupied by 30 persons with employment contracts across 6 companies. The workers are transported to and from their workplaces by minibus, reducing the incentive to own a private car. Eastergate Lane is not a location where open market housing would ordinarily be permitted, but it is within easy cycling distance of Eastergate, Westergate and Warlbarton where there is a good range of services and facilities. There is also a regular bus service along the A29 to a number of large settlements, including Chichester, Barnham and Littlehampton. Eastergate Lane lacks footways and lighting and it is not conducive to walking after dark. Nevertheless, residents of the development do have opportunities to use sustainable transport modes, which includes the use of the minibus for trips to local supermarkets.
13. Overall, there is sufficient evidence to demonstrate a pressing need for accommodation for agricultural and horticultural workers, and that such employment is important to the local economy. These factors justify making a departure from the development plan's policies of restraint on development in the countryside. A temporary permission would meet the current demand for accommodation and enable the Council to review the position at the end of the 3 years, having regard to the latest position on housing land supply and the availability of suitable alternative accommodation for workers within the BUAB.

Living conditions

14. The development is accessed from Eastergate Lane using an unmade track leading to the former Cherry Tree Nursery. The site is deep and narrow, and the caravans have been arranged in a single row of 8 units facing towards the access track, with a grouping of 6 units at the northern end. The caravans are some distance from neighbouring residential properties, plus they are set off the eastern boundary and well screened by fencing and trees.
15. The Council contends that the development of 14 caravans with up to 30 rural workers on this site is excessive and an over-intensive use of the land. It argues that the comings and goings of residents leads to an unacceptable level of general noise and disturbance to neighbours in the early hours of the morning and during late evening. However, it provides no substantive evidence to support this assertion. The site has been in operation for around 2 years and, notwithstanding reference within the parish council representation to a visit by

the police, I have seen no concerns from neighbours regarding noise. Moreover, the Environmental Health Officer raises no objections.

16. A temporary permission would provide further opportunity for the impacts to be assessed but based on the information before me I have no reason to consider that the development would be likely to lead to unacceptable levels of noise or disturbance. The nature of the use, whereby a minibus is used to ferry workers to and from the workplace, and local facilities, would minimise the number of vehicle movements.
17. I conclude that there is no conflict with ALP Policies D DM1 or QE SP1 insofar as they seek to ensure that development minimises impact to occupiers of nearby property by avoiding unacceptable noise and disturbance.

Other Matters

18. The Council does not raise any concerns with regard to the quality of the accommodation for occupiers. The site needs to meet the requirements for a Caravan Site Licence, but there is no suggestion that the relevant standards, which are separate from planning, cannot be met.
19. The site lies within the sporadic ribbon of housing and nurseries that characterise Eastergate Lane. The caravans are flanked by existing residential properties and discreetly sited. They are not prominent from the lane and do not represent an incursion into open countryside or erode a gap between settlements. Overall, I am satisfied that there has been no material harm to the character or appearance of the area.
20. I have given careful consideration to other concerns raised, including in relation to contaminated land and highways impacts, but based on the information presented they do not constitute reasons to dismiss the appeal.

Appropriate Assessment

21. The site lies within the zone of influence for the Singleton and Cocking Tunnels Special Area of Conservation (SAC) which is designated for its hibernating populations of barbastelle bat and Bechstein's bats within the former railway tunnels. Policy SD10 of the South Downs Local Plan¹ stipulates that within the outer (12km) zone significant impacts or severance to flight lines should be considered. This includes physical severance of flight lines and severance via impacts such as disturbance which would effectively render it severed if no longer suitable for use by bats, for example, due to lighting impacts. Linear features connected to the wider landscape including mature vegetative features such as woodlands, hedgerows, riverine and wetland habitat should also be considered.
22. The Council did not make reference to the SAC on the decision notice but has raised the subject within its statement of case, more as a matter of fact than an allegation that there would be an adverse impact. The views of Natural England have been sought and this statutory consultee has confirmed that it has no objection to the development on the basis that the nature and location of the development is unlikely to result in significant impacts or severance to SAC bat flightlines, or loss of foraging habitat for any bat species associated with this European site. Having regard to the fact that the caravans are single-storey structures, I am minded to take the same view.

¹ This is not the development plan for Arun, but it is relevant to Habitats Regulations Assessment

23. A condition can be used to secure details of lighting, in order to ensure no unacceptable light disturbance impacts on the SAC buffer area. I am therefore satisfied that there has been no harm to the integrity of the SAC or its qualifying features.

Conditions

24. I have considered the Council's suggested conditions against the tests set out in paragraph 56 of the National Planning Policy Framework. I have attached a condition specifying the approved plans in the interests of certainty. To reflect the basis on which application was considered, and deemed acceptable, conditions are necessary to restrict occupancy of the caravans to agricultural workers, and to limit the duration of the planning permission to 3 years.
25. Although there is no history of drainage problems on the site, this does not guarantee that such problems may not occur in future. Given the advice of the Council's drainage engineer, it is reasonable to impose a condition to secure further details of drainage.
26. The application does not appear to include details of the utility building, even though it is shown on the submitted site plan. It is reasonable to secure details of that building by means of a condition, in order that future changes may be effectively controlled.
27. I have attached a condition to secure details of external lighting in order to prevent harm to bats, and a further condition to secure details of secure cycle storage, to encourage the use of sustainable transport modes. The suggested conditions relating to contaminated land and car parking are not reasonable or necessary and therefore fail the tests.

Planning Balance and Conclusion

28. The development conflicts with the development plan, taken as a whole, as regards its location outside of the BUAB and the lack of justification for seasonal worker accommodation in connection with a particular holding. However, there is evidence of a pressing need to provide accommodation for seasonal agricultural and horticultural workers, in order to support the local rural economy and meet the Council's own economic development objectives.
29. In the absence of any compelling evidence to demonstrate that the need for transient or migrant workers can be met within the BUAB, I am minded to conclude that a temporary permission is justified. Given the lack of identified harm in respect of neighbours' living conditions and other planning and technical matters, the availability of minibus transport provided by the site operator and the site's reasonable proximity to settlements, I conclude that there are no adverse impacts that would significantly and demonstrably outweigh the economic benefits. As such, material considerations exist to justify development otherwise than in accordance with the development plan.
30. For the reasons given above, and having regard to all other matters raised, including the fact that the site was rejected as a potential housing site under the Neighbourhood Plan process, I conclude that the appeal should be allowed.

Robert Parker

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Drawing 2 - Block Plan and Drawing 3 - Site Plan.
2. The caravans which are the subject of this permission shall be occupied by agricultural workers only and shall not be occupied as a person's sole or main place of residence. The site owner/operator shall maintain an up-to-date register of the names and home addresses of the occupiers and shall make this information available at all reasonable times to the Local Planning Authority.
3. The caravans which are the subject of this permission shall cease to be occupied after 3 calendar years from the date of this decision. Thereafter, the caravans and any associated operational development shall be removed from the site and the land restored to its former condition, or to a condition to be agreed in writing by the Local Planning Authority, within 2 calendar months of the cessation of the use.
4. Within 3 months of the date of this decision, full details of the proposed surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The design should follow the hierarchy of preference for different types of surface water drainage disposal systems as set out in Approved Document H of the Building Regulations, and the recommendations of the SuDS Manual produced by CIRIA. Winter groundwater monitoring to establish highest annual ground water levels and winter percolation testing to BRE 365, or similar approved, will be required to support the design of any infiltration drainage. The approved scheme shall thereafter be implemented within 3 months of the approval in accordance with the agreed details and the details so agreed shall be maintained in good working order for the lifetime of the planning permission.
5. Within 1 month of the date of this decision, plans and details of covered and secure cycle parking spaces to serve the caravans shall be provided to the Local Planning Authority for its written approval. The approved scheme shall be implemented within 2 months of the approval and retained for the lifetime of the planning permission.
6. Within 1 month of the date of this decision, full details of the external lighting already in use or required on the site shall be submitted to the Local Planning Authority for approval in writing. The details shall include the type of light appliance, the height and position of fittings, illumination levels and light spillage. The scheme should seek to conform with the recommendations within BS5489:1- 2013 but minimise potential impacts to any bats using nearby trees, hedgerows, or buildings by avoiding unnecessary artificial light spill through the use of directional light sources and shielding. The lighting approved shall then be installed within 2 months of the approval and thereafter maintained in accordance with the approved details. No other external lighting shall be installed at the site without the Local Planning Authority's prior written approval.
7. Within 1 month of the date of this decision, details of the utility building (which may comprise photographs with dimensions) shall be provided to the Local Planning Authority for its records. Should any changes be required to the structure subsequently then these shall be agreed in writing with the Local Planning Authority prior to those changes being carried out.

*** END OF CONDITIONS ***