



Appeal Decision

Site visit made on 30 August 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th September 2023

Appeal Ref: APP/L3815/W/22/3303112

Land adjacent to 1 Newfields, Newpound, Wisborough Green RH14 0AX

- 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 Tracy Consentino against the decision of Chichester District Council.
 - The application Ref WR/21/03135/FUL, dated 25 October 2021, was refused by notice dated 24 January 2022.
 - The development proposed is described as a full application for a proposed single pitch settled Gypsy accommodation site.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have taken the appeal site address from the Council's refusal notice. This is more precise than the address that appears on the planning application form. This is because the site is '*adjacent to*' No. 1 Newfields.

Main Issues

3. The main issues are (i) whether the site is sustainably located, (ii) whether the proposal would contribute to an identified need for Gypsy and Traveller pitches in the area, and (iii) the effect of the development on the Arun Valley Special Area of Conservation, Special Protection Area and Ramsar site.

Reasons

Whether a sustainable location

4. The appeal site falls outside the settlement boundary of Wisborough Green and within land designated as countryside. Policy OA3 of the Wisborough Green Post Examination Version Neighbourhood Plan 2014 to 2019 (WGNP) states that '*development outside the Settlement Boundary will only be permitted on the proposed sites allocated in the Plan or in accordance with the Chichester District Local Plan*'.
5. Policy 2 of the adopted 2015 Chichester Local Plan: Key Policies 2014-2029 (CLP) identifies Wisborough Green as a '*service village*'. It is identified as one of several service villages which, outside Chichester City, will be the focus for new development and facilities. The policy goes on to state that '*development in the rest of the plan area outside the settlements listed above is restricted to that which requires a countryside location or meets an essential local rural*

need or supports rural diversification in accordance with policies 45-46'. The proposal would conflict with policy 2 of the CLP in so far that the development would fall outside the settlement of Wisborough Green. However, I do not afford the conflict any material adverse weight given my reasoning below in respect of policy 36 of the CLP which does not prohibit Gypsy and Traveller sites in parts of the countryside.

6. Policy 46 of the CLP permits alterations, changes of use and/or re-use of existing buildings in the countryside. The proposal would not meet the requirements of policy 46 of the CLP in so far that the siting of a mobile home for residential purposes would not relate to a change of use or alteration of a building. However, this is a permissive policy and a failure to directly accord with it does not in itself weigh against allowing the appeal. Furthermore, the relevant policy for determining this appeal in terms of the location of Gypsy and Traveller sites is policy 36 of the CLP. Therefore, I do not afford any material adverse weight to conflict with policy 46 of the CLP.
7. Policy 45 of the CLP permits development within the countryside that *'requires a countryside location' and 'meets the essential, small scale, and local need which cannot be met within or immediately adjacent to existing settlements'*. There is no evidence to indicate that the proposed Gypsy and Traveller pitch requires a countryside location, notwithstanding the unmet need position as detailed below, or that any such need could not be met within or immediately adjacent to an existing settlement.
8. However, I do not afford material adverse weight to conflict with policy 45 of the CLP as this planning application should be determined against the criteria in policy 36 of the CLP, including criterion (1) which states that a proposal will be supported where it can be demonstrated that *'it is well related to existing settlements with local services and facilities. Sites should be within or close to such settlements or with good access to major roads and/or public transport thus affording good access to local services'*. Paragraph 17.35 of the reasoned justification to policy 36 of the CLP states that the criteria-based policy is required to ensure that the provision of Gypsy, Traveller and Travelling Showpeople accommodation is in a *'suitable location'*.
9. It is clear from the above that policy 36 of the CLP does not specifically exclude Gypsy and Traveller pitches in the countryside. In other words, a countryside location could be a *'suitable location'*. However, sites must be *'close to'* identified settlements with local services and facilities. While *'close to'* is not defined in the CLP, in my judgement the appeal site is a significant distance from a settlement with local services and facilities. Indeed, the appeal site is not close to either Wisborough Green or Billingshurst (the latter is a settlement in a neighbouring district) which the evidence indicates include a suitable range of facilities, amenities, and services to qualify as settlements. The appeal site is surrounded by a scattering of existing buildings, but there is not the range of facilities, amenities, and services for this area to be defined as a settlement.
10. While the evidence indicates that a school bus passes the appeal site, there is no evidence of any bus stop or frequent public bus service in the vicinity of the appeal site. Furthermore, there is a significant absence of footpaths and streetlights from the appeal site to Wisborough Green and Billingshurst. Consequently, it could not reasonably be said that the appeal site has *'good access'* to local services in the nearest settlements. While cycling from the

appeal site to Wisborough Green or Billingshurst may occasionally be possible, this is not likely to be frequently contemplated given the width of the roads, and hence conflict with vehicles, and the absence of streetlights.

11. The evidence is that public transport and pedestrian access to nearby settlements is very poor. The likelihood is that owing to the location of the appeal site and access arrangements, occupiers of the proposed Gypsy and Traveller pitch would be heavily reliant on the private motor vehicle for most day-to-day journeys.
12. For the above reasons, I find that the proposal would conflict with criterion 1 of policy 36 of the CLP. In addition to the above, there would be conflict with Policy H of the Government's Planning Policy for Travellers Sites 2015 (PPTS) which states that local planning authorities should very strictly limit new traveller site development in the open countryside that is 'away from' existing settlements.
13. For the reasons outlined above, I therefore conclude that the proposal would not be sustainably located. The appellant has referred me to examples of allowed appeals for Gypsy and Traveller sites where this matter was considered. Some of the decisions are in other areas and include different issues considered in the overall planning balance. In any event, I am not bound by previous appeal decisions. I have determined this appeal on its individual planning merits and using my own professional judgement. The examples of other allowed appeals on other sites do not alter or outweigh my conclusion on this main issue.

The need for Gypsy and Traveller sites

14. The evidence is that in terms of Gypsy and Traveller pitch provision, the CLP took into account need arising from the Gypsy and Traveller and Travelling Showpeople Assessment 2012/13 (GTAA 2012/13). The local planning authority (LPA) accepts that the GTAA 2012/13 cannot be relied upon in terms of the most up to date position regarding the need for Gypsy and Traveller sites in the district. Furthermore, Policy B of the PPTS states that LPAs should identify and update annually, a supply of specific deliverable sites sufficient to provide five years' worth of sites against their locally set targets. There is no dispute between the main parties that the LPA cannot demonstrate a five-year supply of deliverable sites based on up-to-date need.
15. The evidence indicates that a new GTAA was prepared in 2022 (GTAA 2022). It is being used to inform the review of the development plan for the area. While it has not been tested as part of an Examination, unmet need has been identified in respect of an earlier 2019 GTAA from the point of view of several relatively recent appeal decisions¹.
16. The evidence is that there is therefore a significant unmet need for Gypsy and Traveller sites in the district based on the GTAA 2022. The LPA state that the GTAA 2022 identifies a requirement for a further 121 pitches for those that meet the definition of Gypsy/Traveller in the PPTS and 34 pitches for those Gypsies/Travellers that do not meet the PPTS definition for the period 2022-2039. The LPA state that 82 pitches need to be provided in the first five-years of the emerging plan period and that while the emerging plan has not yet been

¹ Appeal decisions APP/L3815/W/20/3254057, APP/L3815/W/20/3257880, APP/L3815/W/21/3272950 and APP/L3815/C/21/3270919

tested by way of an Examination, it '*provides a strong indication of unmet need*'. I have no reason to disagree with this view.

17. Until a new development plan has been examined and adopted, the evidence is that the CLP will not provide a suitable strategy and/or enough allocations to meet the required need over the remaining plan period. Indeed, until this point unmet need will be required from windfall sites. Notwithstanding this position, the LPA states that as the proposal is made on a speculative basis, it cannot be determined if any need arising from occupation of the site would be from a Traveller that had already been planned for arising from the results of the GTAA 2012/13.
18. While it is true that the proposal does appear to have been submitted on a speculative basis, and a case has not been advanced by the appellant relating to personal circumstances, or the name of those that would occupy the site, these are not matters which negate the fact that there is significant unmet need for Gypsy and Traveller sites in the district. There is no doubt that approval of planning permission would make a positive step in addressing the current unmet Gypsy and Traveller need. An absence of personal circumstances or details about who would occupy the appeal site does not change this finding. Furthermore, occupation of the site could be controlled by imposing a planning condition requiring that the site is occupied by someone that leads a nomadic lifestyle, i.e., a Gypsy or Traveller.
19. In respect of the first part of the Council's reason for refusal, I therefore conclude that while no personal circumstances or information concerning occupancy of the site has been submitted by the appellant, these are not matters which in themselves weigh against allowing the proposal. Contributing to a significant unmet need for Gypsy and Traveller sites in the district is a matter to which I afford positive weight in the planning balance. In this regard, and notwithstanding the view expressed by the LPA, there is justification for providing a Gypsy and Traveller pitch on the appeal site from a need point of view.

Arun Valley SAC, SPA and Ramsar site

20. The evidence is that the appeal site falls within the Sussex North Water Supply Zone as shown on the map that accompanies 'Natural England's Position Statement for Applications within the Sussex North Water Supply Zone September 2021 Interim Approach' (NE Position Statement). Within the water supply zone, the evidence is that some water supply is sourced from groundwater abstraction and that this is having some adverse effects on the integrity of the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site. These protected sites consist of low-lying grazing marshes and internationally important habitats for rare and diverse plants, aquatic and invertebrate fauna and for winter wading birds. The sites are protected under the Conservation of Habitats and Species Regulations 2017 (the Regulations).
21. On 14 September 2021, Natural England directly advised the relevant Local Authorities that the existing abstraction within the Sussex North Water Supply Zone could not be ruled out as causing an adverse effect on the Habitats Sites. Furthermore, it was stated that if further development were to be consented within the relevant zone (with the requirement for additional abstraction) such development was likely to have an adverse effect on the Habitats Sites.

22. As the Competent Authority, it falls to me to undertake an Appropriate Assessment having regard to the Regulations. Considering the information that is before me, the proposal would both on its own and in combination with other projects, be likely to have significant effects on the protected sites arising from water abstraction due to increased demand from one or more resident. This is not a matter in dispute between the main parties and is a view held by Natural England who have been consulted as part of this appeal. In the absence of appropriate mitigation, I find that the proposal would have an adverse effect on the integrity of the SAC, SPA and Ramsar site.
23. The NE Position Statement provides an interim solution in terms of mitigating likely significant effects to achieve '*water neutrality*'. This is based on minimising water use from new developments and water offsetting through, for example, retrofitting buildings located within Sussex North. The definition of water neutrality is the use of water in the supply area before the development is the same or lower after the development is in place.
24. The appellant does not propose any retrofitting proposals. She has submitted a Water Neutrality Statement dated 10 May 2023. Measures are proposed to reduce the amount of water abstracted from the area including mobile home water efficiency fixtures and fittings as well as rainwater harvesting. The Water Neutrality Statement also proposes off-setting proposals to achieve water neutrality in terms of importing water by tanker from outside the Sussex North Water Supply Zone (SNWSZ) and regularly storing it in an underground 2200 litre tank.
25. I consider that it would be possible to ensure that water efficiency measures and rainwater harvesting were in place prior to first use of the mobile home, and thereafter permanently retained. This is a matter that could be controlled and enforced by planning condition. However, and notwithstanding the views expressed by the appellant, I find that controlling the regular importation of water from outside the SNWSZ would not be enforceable. Even if one were to disagree with my planning judgement in respect of this matter, it is noteworthy that, in any event, the appellant has not completed a planning obligation which would have been needed were I to have found that it was enforceable to control the importation of water from outside the SNWSZ.
26. Given the above, I conclude that adverse harm would be caused to the integrity of the SAC, SPA and Ramsar site. Therefore, the proposal would not accord with the biodiversity requirements of policy 49 of the CLP, paragraph 180 of the Framework and the Regulations.

Other Consideration

27. Occupiers of the site would provide some economic support to existing facilities and services in nearby settlements. However, I afford this economic benefit only limited weight given that only one pitch is proposed.

Planning Balance

28. The proposal would on its own and in combination with other projects cause harm to the integrity of the SAC, SPA and Ramsar site. This is a matter to which I afford significant adverse weight in decision making terms.
29. Policy 46 of the CLP is a permissive policy and I do not find that the proposal conflicts with it. There would be conflict with policies 2 and 45 of the CLP,

although I do not afford such conflict with these policies any material adverse weight given that the relevant policy for determining the planning application is policy 36 of the CLP which specifically controls Gypsy and Traveller sites in the district.

30. Policy 36 of the CLP does not prohibit Gypsy and Traveller sites in the countryside. Nevertheless, I have found that the proposal would conflict with criterion 1 of policy 36 of the CLP in so far that the appeal site is not within or close to an identified settlement and does not have good access to local services. To be acceptable, the proposal would need to meet all the criteria in policy 36 of the CLP.
31. In so far that there would be conflict with policy 36 of the CLP, there would accordingly be conflict with policy OA3 of the WGNP. In addition, there would be conflict with paragraph 25 of Policy H of the PPTS which states that '*local planning authorities should very strictly limit new traveller site development in the open countryside that is away from existing settlements or outside areas allocated in the development plan*'. These are matters to which I afford significant adverse weight in the planning balance.
32. Weighed against the adverse harm above, is the fact that the LPA cannot demonstrate a five-year supply of deliverable Gypsy and Traveller sites. The evidence indicates that there is significant unmet Gypsy and Traveller need in the district, and, to this extent, there is a failure of policy which weighs in support of the proposed development. In this case, the collective weight that I afford to the conflict with policies in the development plan and Policy H of the PPTS, when considered alongside unmet Gypsy and Traveller need and the other consideration identified above, is such that permanent planning permission is not, on balance, justified.
33. It is necessary that I also consider whether a temporary planning permission would be justified. It is noteworthy that paragraph 27 of the PPTS states that if an LPA cannot demonstrate an up to date 5-year supply of deliverable sites, '*this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission*'. The LPA states that the emerging local plan is likely to be adopted in 2024. Given that it is now at a relatively advanced stage, i.e., Regulation 19 stage completed, there is nothing to suggest that adoption would not be likely sometime in 2024.
34. The adoption of a new development plan therefore looks likely within a relatively short period of time. In this regard, unmet need looks likely to be met soon by means of a new plan-led strategy including allocations. It therefore remains likely that policy compliant sites, to meet unmet need, would be available for the Gypsy and Traveller community within a short period of time.
35. While I accept that the grant of temporary planning permission would address unmet need in the very immediate term, and until a new development plan has been adopted and pitches provided, this would not alter the fact that there would be conflict with the PPTS, Framework and the development plan for the area. Indeed, the grant of temporary planning permission would not overcome the fact the site is away from surrounding settlements. I find, even on a temporary basis, that owing to the location of the site it would not reasonably

afford occupants of the site with an acceptable and sustainable choice of means of transport for day-to-day travel purposes.

36. I reach the above view in the knowledge that paragraph 105 of the Framework states that '*opportunities to maximise sustainable transport solutions will vary between urban and rural areas*'. The appeal site would nonetheless be away from existing settlements and where the evidence indicates that public transport provision is poor. Furthermore, given the travel distances involved, and the absence of footpaths and lighting to reach settlements, it would mean that occupants did not have a genuine choice of sustainable transport modes on a day-to-day basis. This is a matter that weighs against justifying the grant of temporary planning permission.
37. In addition to the above, and, in the absence of suitable mitigation, I find that significant harm would be caused to the integrity of the SAC, SPA and Ramsar site. Temporary planning permission cannot therefore be justified for this reason alone as paragraph 180 (a) of the Framework states '*if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused*'.
38. I accept that in dismissing this appeal, it would interfere with the rights of a Gypsy/Traveller under Article 8 of the European Convention on Human Rights as it would deny the opportunity for the establishment of a new home on the site. Nonetheless, such rights are qualified, and interference may be permissible when the rights are balanced against those of the community. In this instance, and, given my overall conclusion below, I find that the interference would be proportionate and necessary in the public interest.

Conclusion

39. For the reasons given above, I conclude that the development would not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

D Hartley

INSPECTOR