



Appeal Decision

Hearing held on 12 September 2023

Site visit made on 12 September 2023

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th September 2023

Appeal Ref: APP/D3830/W/23/3320110

Land north of Staplefield Road, Slaugham, Haywards Heath, RH17 6AG

- 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 L Nugent against the decision of Mid Sussex District Council.
 - The application Ref DM/22/2015, dated 24 June 2022, was refused by notice dated 13 October 2022.
 - The development proposed is change of use of land to a Transit Site for Gypsy/Traveller's comprising the formation of 6 Touring Caravan Pitches for nomadic use only, and the erection of 6 utility buildings, as well as the formation of a children's play area.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mid Sussex District Council against Mr L Nugent. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this appeal are:
 - whether the appeal site represents an appropriate location for the proposed development, having regard to the Council's spatial strategy for traveller pitches, including an assessment of need;
 - whether the appeal site represents an appropriate location for the proposed development, having regard to the accessibility of services and facilities;
 - the effect of the proposed development on the character and appearance of the area, including the High Weald Area of Outstanding Natural Beauty (AONB); and
 - the effect of the proposed development on biodiversity

Reasons

Spatial Strategy

4. The overarching spatial strategy for Mid Sussex directs the majority of new development to the larger settlements of Burgess Hill, East Grinstead and Haywards Heath. This includes the allocation of permanent sites for Gypsies and Travellers on strategic sites. However, a similar provision has not been made for transit sites.
5. The appeal site is within the countryside, outside of the housing settlement boundary for Slaugham, which is defined as a category 4 settlement, with limited services only serving the settlement itself, under policy DP6 of the Mid Sussex District Plan 2014-2031, adopted March 2018 (MSDP).
6. Policy DP12 of the MSDP permits development in the countryside where it enhances the quality of the rural and landscape character and is supported by a specific policy. One such policy is DP33 which sets out a criteria-based policy for transit sites coming forward for Gypsies and Travellers.
7. Policy DP33 sets out that the Mid Sussex Gypsy and Traveller and Travelling Showpeople Assessment (GTTSA)(updated in 2016) does not indicate a need to consider transit provision at this time due to reliance on a transit site in Chichester. However, the policy sets out that levels of unauthorised encampments in Mid Sussex will be monitored over the plan period to identify any additional requirement for such provision.
8. Policy DP33 allows for new transit sites to be permitted, in the countryside, where a number of criteria are met and relevant to this main issue is that the site satisfies a clearly defined need evidenced by the GTTSA, or the best available evidence.
9. The most recent Gypsy and Traveller Accommodation Assessment (GTAA) was published in April 2022 and the parties agree that this assessment is up to date and on this basis I have had regard to it providing the best available evidence. This assessment indicates that due to historic low numbers of short term unauthorised encampments, and the existing transit site in Chichester, that there was no need for a formal public transit site in Mid Sussex. The GTAA also sets out that any future provision should be considered on a West Sussex wide basis.
10. The Council confirmed that the site in Chichester is outside of the Mid Sussex district, but that along with several other district councils, they provide funding to the County Council for its upkeep. The GTAA acknowledges that the site at Chichester has operated closer to capacity during 2021, than historically and that the situation relating to levels of short term unauthorised encampments should continue to be monitored.

11. At the hearing the Council confirmed orally that evidence was available in relation to monitoring carried out in the period 2021-2022 and that there were 27 recorded incidents of unauthorised encampments in the Mid Sussex district. This is in comparison to the 16 recorded in 2018-19, which the parties agreed represented the best comparison when discounting the evidence for the years where Covid-19 affected travel and transit sites were also closed for short periods. Across the county of West Sussex as a whole, there have been 28 unauthorised encampments this year to date, but it was not possible to provide a break down of how many of these were in Mid Sussex.
12. The Council have demonstrated that monitoring of unauthorised encampments has taken place, but have confirmed that only one annual set of data is available, for 2021-2022 and that further data will be published at the end of 2023 to cover the period 2022-2023. On this basis there is limited evidence before me to indicate that there is a clearly defined need for a transit site, particularly in this location, having regard to the time for monitoring since the last GTAA. The appellant has not produced sufficient evidence to demonstrate that the level of need contradicts that provided by the Council, accepting that the latest update was only provided orally at the hearing.
13. In addition, there is no evidence before me to suggest that the transit site at Chichester is operating at full capacity. Furthermore, there are two other transit sites at Brighton and Lewes where unauthorised encampments could be directed. Whilst I accept the appellants comments that these are not within West Sussex County Council, the Council confirmed that liaison will take place across the County as a whole as to where the most appropriate transit site to relocate Gypsy and Travellers to, depending on vacancies and the needs of individuals at any given time. I have nothing before me to dispute the Council's account of how the three transit sites work together across the County.
14. It has been put to me that the Section 60C-E of the Police, Crime, Sentencing and Courts Act, which came into effect in July, introduces a criminal offence of residing or intending to reside on land, without consent, in or with a vehicle and will increase demand for transit sites. This effectively prevents roadside and/or unauthorised camping and gives the Police powers to seize vehicles and caravans, and to arrest occupiers. On this basis, the appellant considers that any additional capacity should be accepted as there will always be a need for more sites.
15. In addition, the consultation response from the Gypsy and Travellers Team Manager at West Sussex County Council supports additional capacity for appropriate stopping places. However, he notes that if the appellant were not a registered social landlord, then those accessing the proposed site would be voluntary and the Police would not be able to direct unauthorised encampments to the site. Although the appellant's agent set out orally that he thought the appellant would be willing to become a registered social landlord, I do not have any certainty that this would happen and as such whether the site would be one which the Police could direct too. However, I do not consider this point is determinative in reaching a decision on need.

16. In conclusion, the appeal proposal fails to demonstrate that there is a clearly defined need, contrary to Policy DP33 of the MSDP. Whilst incidents of unauthorised encampments may have increased since 2018, insufficient time has passed since the publication of the GTAA to demonstrate where the need for transit sites may occur and what additional capacity may therefore be required. It is important that the county wide approach sought by the GTAA to future provision is allowed to be considered on the basis of a proper evidence base and I am satisfied that both the district and county council are monitoring this and will be seeking to review this during the plan period up to 2031. I have not been provided with any evidence from the appellant to demonstrate that there is currently an unmet need for transit sites within Mid Sussex.
17. Noting the identified conflict with Policy DP33, the development would also conflict with policy DP12 and DP6 of the MSDP as set out above.

Spatial Strategy – access to services

18. The appeal site is located within a rural setting, where Policy C of the Planning Policy for Traveller Sites (PPTS) indicates that some sites may be located, whilst ensuring that they do not dominate the nearest settled community. However, the site is not located within the open countryside where Policy H expects new traveller sites should be very strictly limited, having regard to its proximity to other clusters of development. Furthermore, the link between Policy DP12 and DP33 indicates that transit sites can be located within the Countryside where access to services may be more limited.
19. Policy DP33 requires new transit sites to be reasonably accessible to schools, shops, health and local services and community facilities. However, it does not set out what might be considered reasonable and whether or not this access should be by means other than the private car.
20. The nearest discernible village, to the appeal site, is Slaugham, which has a limited range of services and facilities. It is accepted that future occupiers would need to travel to Haywards Heath, to access a wider range of facilities, such as health care provision and supermarkets.
21. Due to the intervening distance, it is highly unlikely future residents would regularly walk or cycle to Haywards Heath. It is unclear from the differing evidence offered at the hearing as where the nearest bus stop would be located that offers a regular bus service. However, even if this would be an available alternative to the private car, it was agreed that the service operates intermittently and therefore, this leads to uncertainty that it would be a realistic alternative to the convenience of a private car.
22. Thus, future occupiers of the proposed transit site would be predisposed to use private motorised transport when accessing everyday facilities and services. This would result in negative impacts on carbon emissions and from disincentivising healthy travel options such as walking. In addition, the road network in and around the appeal site is also rural in its nature and at times of limited width. As such increased vehicle movements associated with the proposed development would have an impact on the road network, however residual cumulative impacts would not be severe.

23. The occupation of the site would lead to a rise in the level of activity and trips, noting that the previous use of the site as a horticultural nursery has been ceased for some time. However, having regard to the proximity to Haywards Heath, any journeys made by car would be reasonably short when bearing in mind that accessibility needs to be considered in the context that members of the travelling community are generally reliant on vehicles wherever they live given their lifestyle.
24. In wider sustainability terms, a settled base, even for a short period of time such as that envisaged for this site, can reduce incidents of unauthorised encampments, reduce the need for continuous travel and facilitate consistent access to schools and medical services.
25. The Inspector in considering a proposal for three dwellings on the site¹ concluded that the proposal would result in an over-reliance on private motor vehicle use and thus represent an unsustainable form of development with regard to access to local services, and cited a conflict with Policy DP21 of the MSDP. I have had regard to these findings, but am content that I am not bound by these in this appeal as the proposal before me is for a different form of development and furthermore the Council has not sought to rely on Policy DP21 in this appeal.
26. In conclusion, future occupants of the appeal scheme would not be able to access services and facilities by walking, cycling or public transport. However, they would only be a short drive from services and facilities. Given the appeal site's close proximity to a sustainable settlement and the nomadic habit of life of the future occupants and the availability of a transit site would reduce incidents of unauthorised encampments, the development would, on balance, be located in a reasonably accessible location and thus accord with policy DP33 of the MSDP.

Character and appearance

27. The appeal site was previously occupied by Slaugham Garden Nursery and historically contained a number of poly tunnels and areas of hardstanding remain, as well as several small buildings associated with its previous use. At the time of my visit it was generally untidy and neglected with various items not connected with the previous use being stored haphazardly across the site.
28. An existing access would serve the proposed development and views into the former nursery are possible from the road. However, it is extensively screened by existing landscaping, some of which are non-native evergreen species.
29. Whilst the existence of the existing structures on the site and the domesticated character of some of the landscaping has altered the character of the site and results in it having a semi developed nature, the site retains an organic form with a mixture of landscaping present. It does not have the appearance of a domestic setting and retains its rural presence within the landscape.
30. The site does not contribute to the built up linear character of Slaugham which is clustered around the church, approximately 260m from the site and instead forms part of the wider rural landscape which extends beyond the village edge. In this regard the proposed development would not have a direct visual impact upon the built up character of the village.

¹ APP/D3830/W18/3204778

31. The site is located within the High Weald Area of Outstanding Natural Beauty where the National Planning Policy Framework (the Framework) places great weight on protecting and enhancing landscape beauty, with AONBs having the highest status of protection in relation to these issues.
32. The High Weald AONB Management Plan 2019 sets out a statement of significance with five defining components of character which it states have made the High Weald a recognisable distinct and homogenous area. It is agreed by the parties that with reference to the features identified in the Management Plan, the proposed development would not result in harm to any geological features of the surrounding landscape, nor other features that the Management Plan uses to define natural beauty. On this basis the parties have not provided me with a copy of the Management Plan as they do not consider it to be relevant to my consideration of the appeal.
33. The Council accepts for the purposes of Policy DP33 the site is compatible with neighbouring land uses, built form and landscape character, albeit the policy also requires consideration of Policy DP16 due to the sites location within the AONB. Policy DP12 of the MSDP permits development in the countryside where it enhances the quality of the rural and landscape character and Policy DP16 requires development within the AONB to conserve or enhance its natural beauty. Finally, Policy DP26 requires all development to be well designed and sensitive to the countryside.
34. Whilst caravans are not an alien feature in rural locations and can be found in locations such as AONBs for Gypsy and Travellers, tourism or rural workers accommodation, the development of the site would also include the provision of permanent structures in the form of utility buildings, play area and areas for parking. These features would remain even if caravans were not present on the site. The transit site would also be occupied for up to 3 month periods and therefore there would also likely to be elements of residential paraphernalia present on the site when occupied.
35. The proposed layout of the site indicates that there would be two areas for the siting of caravans, one to the left of the access and one towards the rear of the site. Whilst I am not persuaded that only frontage development would be appropriate in this location, as that consideration in the previous appeal decision was made in relation to a proposal for housing, this layout would extend development more widely across the site beyond the area where development has occurred as indicated on the existing site plan. In this regard the scale of development across the site is insensitive to its countryside character.
36. Furthermore, the introduction of a formal surfaced access with associated parking and turning and the changes which would result in the intensification of the site as part of its residential occupation, including visually from the introduction of internal and external lighting would be noticeable within this landscape and intrude into the countryside. There are views of the site from the existing access and therefore, from these localised viewpoints the development would result in a change from the rural setting of the site.
37. Whilst the site is generally degraded and in its current form does little to preserve or enhance the AONB, the proposal before me would not be the only option available to the appellant to tidy it up and remove the materials that are currently stored on the site.

38. The parties disagree as to whether the site should be considered previously developed land, and I note that the previous Inspector concluded that it was not. The appellant suggests that the planning history indicates that the use of the site was that of a horticultural use and as such any reference to an agricultural use is erroneous. The PPTS at paragraph 26 requires the decision maker to give weight to the effective use of previously developed, untidy or derelict land. There is no doubt that the site is untidy and in a state of dereliction and as such it is not necessary for me to reach a finding as to whether the site is previously developed in order to attribute weight to its use. The reuse of the site attracts moderate weight, noting that the site has been allowed to degrade somewhat following the cessation of the nursery use.
39. For these reasons the introduction of a transit site in this location would alter the character and appearance of this rural site and would lead to development which would both fail to enhance the quality of the rural and landscape character and conserve and enhance the AONB. The development would conflict with Policies DP12, DP16 and DP26 which together seek to ensure development enhances the quality of the rural and landscape character, is well designed and sensitive to the countryside and conserves or enhances the natural beauty of the AONB.
40. The development would also conflict with Policy 1 of the Slaugham Neighbourhood Plan (NP) which only supports development which conserves or enhances natural beauty within the AONB.

Biodiversity

41. Paragraph 99 of Circular 06/2005² states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before any planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
42. Paragraph 180 a) of the Framework advises that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less than harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
43. The appellant has provided as part of the appeal an Ecological Impact Assessment (EcIA) (ACD Environmental August 2023). This assessment has dealt with outstanding matters in relation to Bats, Hazel Dormouse and Badgers. However, the development has the potential to have a detrimental impact on Great Crested Newts (GCN), a species which is protected through the Wildlife and Countryside Act 1981.

² Circular 06/2005: Biodiversity and geological conservation - statutory obligations and their impact within the planning system

44. The appellant has indicated that the NatureSpace GCN District Licensing Scheme (DLS) will be utilised, however I have not been provided with any evidence to demonstrate that a licence has been secured or would be granted. Furthermore, the Council's ecologist has confirmed that to be covered by the DLS, a detailed report would need to be provided by NatureSpace, following payment by the appellant.
45. In the absence of this report there is a lack of certainty that GCN mitigation will be secured. The required survey cannot lawfully be secured by condition and this information is required prior to making a decision, in order that I can be satisfied that the development would not have a harmful effect on protected species.
46. Furthermore, the specific conditions that I have been provided with, which have been agreed with Natural England and form part of the DLS, require the report to be in place in order that the appropriate mitigation can be secured.
47. Whilst the appellant has both questioned the need for the report to be prepared upfront and raised the possibility of securing additional time in order for the report to be prepared as I am dismissing the appeal for other reasons it has not been necessary for me to delay my decision in order to allow for further evidence to be submitted on this issue.
48. In conclusion, in the absence of sufficient evidence to the contrary, the proposals would potentially cause unacceptable harm to protected species. This would be contrary to Policy DP38 of the MSDP and Policy 3 of the NP. For similar reasons, the proposal would not accord with the Framework, including paragraphs 174 and 180.

Planning Balance

49. Notwithstanding that the scheme would be contrary to the development plan as a whole and would not thereby be a sustainable development, the question remains whether there are material considerations which would warrant a decision in this instance other than in accordance with the development plan.
50. There are several points in favour of the proposal. The proposed development would result in the effective use of untidy or derelict land, promote opportunities for healthy lifestyles through providing play areas for children and adequate landscaping, whilst not being isolated from the rest of the community. These are matters to which I have attributed moderate weight.
51. The appeal scheme would facilitate the establishment of a transit site which would enable Gypsies and Travellers to continue to pursue a nomadic lifestyle for economic purposes and would support the traditional way of life of families that have a protected characteristic. This would allow cultural traditions to be balanced with the practicalities of modern living thereby, advancing equality of opportunity.
52. These are important points in achieving the social sustainability sought by Paragraph 13 of the PPTS. Furthermore, the equality implications weigh notably in favour of permitting pitches at the appeal site because dismissing the appeal would perpetuate the disadvantages currently endured by Gypsies and Travellers.

53. Nevertheless, I attach considerable weight to the significant collective harm that has been outlined above. In the overall planning balance, the benefits of the proposal are not sufficient in this case to outweigh the harm on the character and appearance of the area, including the weight afforded to protecting and enhancing landscape beauty of the AONB and the conflict with the development plan.

Conclusion

54. In conclusion, the proposal would be contrary to the development plan and this finding would not be outweighed by all other material considerations including all relevant provisions of the Framework and the PPTS. In accordance with section 38(6) of the Planning and Compulsory Purchase Act, 2004, I find no basis for planning permission to be granted.

55. For the above reasons, the appeal is dismissed.

G Pannell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Brian Woods Managing Director, WS Planning Architecture
Peter Brownjohn AssocRTPI Senior Planner, WS Planning Architecture

Mr L Nugent (via Teams)

FOR THE LOCAL PLANNING AUTHORITY:

Gareth Giles FRTPI, Director of Whaleback Planning,
Natalie Sharp MRTPI, Senior Planning Officer

Sue Hooton CEnv MCIEEM BSc (Hons), Principal Ecological Consultant - Place Services (via Teams)

INTERESTED PARTIES:

Stewart Cooper
James Keating
Benjamin Fowler

DOCUMENTS

1. Drawing no F001 A
(Inspector requested in connection with APP/D3830/W/18/3204778)
2. NatureSpace Partnership Planning Conditions and Informatives July 2021
3. Written submissions of 18.09.2023 & 25.09.2023 from Place Services on behalf of the Council
4. Written submission of 21.09.2023 from WS Planning Architecture