



Appeal Decision

Site visit made on 18 September 2023

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th December 2023

Appeal Ref: APP/Z3825/W/22/3290615

Redgates, Burnthouse Lane, Lower Beeding, RH13 6NN

- 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 and Mrs Thomas Brazil against the decision of Horsham District Council.
 - The application Ref DC/21/1233, dated 24 May 2021, was refused by notice dated 17 December 2021.
 - The development proposed is described as 'change of use of an area of ground to allow the sitting of a permanent caravan for the Brazil family'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. It is clear from the submissions and my site visit that the caravan is already on site and is being lived in. The decision notice and the appeal form both describe the application as change of use of land to allow for the siting of a single gypsy pitch. Having regard to the submissions, the application is seeking planning permission for the change of use of the land to the stationing of a caravan for residential purposes for occupation by the Brazil family. The Brazil family are accepted to have gypsy/traveller status and I have no reason to question that.
3. There has been a caravan on the site for a considerable period of time. I understand that enforcement notices were served in 1995 and 2017, but none of these are before me. The validity of enforcement notices can only be tested through an appeal against them. The appellant sought a lawful development certificate (LDC) for the use of the land for the siting of a caravan/mobile home for residential purposes and appealed¹ against its refusal. The appeal was dismissed as the development contravened the requirements of the notices.

Main Issues

4. Having regard to the reasons for refusal, the main issues are:
 - The effects of the development on the integrity of the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar Site (European Protected Sites),
 - Whether the site is a suitable location for the development, having regard to accessibility to local services and facilities and the availability of safe and sustainable pedestrian travel options.

¹ Appeal ref APP/Z3825/X/20/3247375

5. The appellants and their family are Romany gypsies and have the protected characteristic of race under s149(7) of the Equality Act 2010. I therefore have a duty to consider the three aims of the Public Sector Equality Duty as part of my decision. If I dismiss the appeal this is likely to have negative consequences for the family, in particular in terms of the aim to advance equality of opportunity and foster good relations.

Effects on Arun Valley European Protected Sites (EPS)

6. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) require competent authorities before granting consent for a plan or project, to carry out an appropriate assessment in circumstances where the plan or project is likely to have a significant effect on an EPS, alone or in combination with other plans or projects.
7. The site falls within the Sussex North Water Supply Zone and Natural England has proved a Position Statement dated September 2021 for all applications within the zone. Natural England has not been able to conclude that the existing water abstraction in the Sussex North Water Supply Zone is not having an adverse impact on the integrity of the Arun Valley EPSs. Thus, any development must not add to this impact. One way of demonstrating that is to show water neutrality, which means that the development would not increase water consumption. The proposal is for a new residential use, and this does not fall within the term 'householder development' for planning purposes. It is not therefore exempt from the need to demonstrate water neutrality.
8. The appellants have not provided a water neutrality statement but argue that the caravan, hardstanding and concrete yard have been in place for 20 years, and thus there is already water consumption. However, the planning history indicates that the use of the site for residential purposes has not been lawful. I accept that previous uses of the land for market gardening and the keeping of horses would have consumed water, but there is no evidence that similar uses could not occur in the future even if this appeal is allowed. It has not therefore been demonstrated that there would be no net increase in water consumption, and therefore that the development would not have an adverse impact on integrity of the EPSs. Mitigation has not been proposed in order to offset any increase in water consumption that may have occurred. This is not a matter that can be dealt with through a planning condition as I need to have certainty that the development is not harmful to the EPS.
9. I cannot therefore conclude that the development would not be harmful to the integrity of the EPS. I can only grant permission if there are no alternative solutions or imperative reasons of overriding public interest and compensatory measures. I have not been advised that any of these circumstances apply.
10. The proposal is therefore in conflict with Policy 31 of the Horsham District Planning Framework 2015 (HDPF) insofar as it sets out the requirements for Appropriate Assessment and any necessary mitigation measures for development affecting the SPA and SAC. The development is also in conflict with the Habitats Regulations and the advice in the National Planning Policy Framework (NPPF).

Suitable location

11. Policy 26 of the HDFP seeks to protect the countryside from inappropriate development. Policy 40 sets out requirements in terms of sustainable transport, including that development should be integrated with the wider network of routes and minimises the distance people need to travel. Policy 23 sets out criteria for considering planning applications for Gypsies, Travellers and Travelling Showpeople. It does not preclude development in the countryside. Criterion (b) requires that the site is served by a safe and convenient vehicular and pedestrian access and should not result in significant hazard to other road users. Criterion (d) sets out that the site should be located within reasonable distance of a range of local services and community facilities, in particular schools and essential health services.
12. The PPTS sets out the government's planning policy for traveller sites and should be read in conjunction with the NPPF. Paragraph 4(j) states that one of the government's overarching aims is to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure. Policy H in paragraph 25 states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Sites in rural areas should avoid placing undue pressure on the local infrastructure.
13. The NPPF in section 9 promotes sustainable transport, with significant development focused on locations which are or can be made sustainable. However, paragraph 105 also recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making.
14. The site is located in the open countryside and is accessed via narrow lanes, which are mostly single track. The lanes give access to the main road network, with the A272 to the south, the A281 to the north and east, and the A24 to the west. The Council states that the nearest main town is Horsham, some 7.8km away. There are villages nearby at Lower Beeding, Cowfold and Maplehurst which provide some local facilities and services. The appellants state that their children attend a local school.
15. The narrow and twisting lanes lack facilities for pedestrians, with no footways or street lighting, although due to their nature, traffic speeds are unlikely to be high. There was very limited traffic at the time of my visit, although flows may be higher at peak times and are likely to include farm vehicles. I have seen no evidence to indicate that there are specific highway safety problems in the area for pedestrians. I note that there are public rights of way that provide shorter routes to nearby villages, but these are unlikely to be readily useable on a daily basis or throughout the year as they are unlit and may not be easily accessible.
16. I have no reason to disagree with the Council that the nearest bus stop is some 2km away on the A281, which is too far to be easily walked to. Due to the location of the site in relation to nearby villages and the lack of alternative options, it is likely that most journeys will be made by the private car. These are likely to be relatively short journeys. Therefore, while the site is not in or near to an existing settlement or part of a strategic allocation, it is within a reasonable distance of a range of local services and community facilities in nearby villages by car. Moreover, as set out above, the PPTS and the relevant

development plan policies do not specifically refer to avoiding reliance on the private car. Paragraph 105 of the NPPF recognises the difference between urban and rural areas in terms of sustainable transport options. Therefore, despite the Council's concerns, I am satisfied that the site is a suitable location for the development, on the basis of its accessibility to local facilities and services.

17. The Council has referred to an appeal decision² at The Spoons, Harbolets Road, West Chilton against refusal of a planning application. I note that there are similarities in terms of the distance of the site from villages, but also that Harbolets Road was a busy rural road with limited or no verges. In this respect it differs from the appeal site, where the lanes are not busy and due to their alignment, topography and width do not lend themselves to high traffic speeds.
18. The parties have also referred to a permission at Whiteoaks³ where the Council has advised that the key issue for the inspector in dismissing a previous appeal was the accessibility of the site for non-car users. Subsequent permission was only granted due to the provision of bus stops outside the site as there had previously been concerns about occupiers accessing bus stops further away from site due to safety concerns. To this extent it differs from the appeal site where there are no specific highway safety concerns.
19. Planning permission was refused at Denver Storage⁴ for failing to provide safe and convenient pedestrian access and due to the isolated location of the site representing unsustainable development in the countryside. I have not been advised whether the characteristics of the site are similar to this appeal, but I note that there were concerns about pedestrian access and safety.
20. Although the development does not have sustainable pedestrian travel options, it is within a reasonable distance of a range of local services and facilities. The development is not therefore in conflict with Policies 23, 26 and 40 of the HDPF insofar as they seek to ensure that gypsy and traveller accommodation is within reasonable distance of a range of local services and community facilities, in particular schools and essential services. It is also not in conflict with the PPTS or the NPPF.

Other considerations

21. A range of considerations have been raised by the appellant. The Council accepts that it does not have a five-year supply of gypsy and traveller sites, as required by Policy B of the PPTS. According to the Gypsy and Traveller Accommodation Assessment (GTAA) published in January 2020 by the Council there is a total need for 118 pitches for the period 2019-2036 and the Council accepts that it has a substantial level of unmet need. This is a significant material consideration particularly when considering the grant of planning permission and this has very significant weight.
22. The appellants' children are at a local school and it could reasonably be expected that it would be in their best interests to remain on the site so that they can continue to access education without interruption. There are also healthcare benefits. I also accept that the site allows the family to live together in a way that is conducive to gypsy culture, and I recognise that the family is

² APP/Z3825/W/17/3192171

³ Ref DC/21/0753

⁴ Ref DC/17/0081

well established in Sussex as part of the Romany community. The appellants wish to continue their nomadic way of life whilst allowing the children to be at local schools and the family to access healthcare. I acknowledge that Mr and Mrs Brazil contribute to the local economy and that there are potential benefits to the rural economy to have sources of local workforce.

23. If the appeal is dismissed the likelihood is that the family would lose their home on this site and there is a probability that this would be disruptive to family life, education of children and access to healthcare. If no alternative site has been identified it may be that the family has to rely on a roadside existence. The family is more likely to be able to access healthcare and education from a settled base.
24. The appellants argue that the site is previously developed land and that this should weigh in favour of the proposal. However, it has not been demonstrated that the lawful use of the site is anything but agriculture, and it therefore would not fall within the definition of previously developed land in the Annex 2 Glossary to the NPPF.
25. It has not been demonstrated that there are elements of the development that will create visual benefits, as suggested by the appellant. A lack of harm to the surrounding area is a neutral consideration that does not weigh in favour of the development.
26. The appellants argue that weight should be given to the emerging Horsham District Plan but has not provided any details or referred to specific policies. I have not been advised that the emerging plan is likely to indicate that a different approach should be taken in relation to this case.

Planning balance

27. Although I have found that the site is not readily accessible by non-car modes of transport, it is within a reasonable distance of a range of local services and facilities. However, adverse effects on the integrity of the Arun Valley EPS, in combination with other plans and projects, cannot be excluded. Consent can only be granted if the remaining tests in the Habitats Regulations can be met, but I have seen no evidence that this is the case. The development is therefore in conflict with the development plan as a whole.
28. The local need for sites exceeds local supply, and the Council has not demonstrated that it will make provision for increased supply in the near future. It is beneficial in terms of having a settled base for education for the appellants and their family to remain on the site. I give these considerations significant weight. However, in view of the potential for the development to have a long-term effect on the integrity of the EPS, in-combination with other plans and projects, I do not find that the conditions are present for a permanent permission to be granted. The 'tilted balance' set out in paragraph 11(d)(ii) does not apply as the EPS are habitats sites as set out in Footnote 7 to paragraph 11(d)(i) and the NPPF provides a clear reason for refusing the development.
29. I have considered whether a temporary and/or personal permission would be appropriate. A temporary permission would allow for a Local Plan to be adopted with allocations for gypsy and traveller sites, although I have not been advised that this is likely to happen in the near future. A personal permission would

ensure that the appellants and their family benefit from the permission in view of their personal circumstances. However, as the development has already been carried out, a temporary or personal permission would allow the adverse effect on the integrity of the EPS to continue.

30. The refusal of permission would be an interference with the rights of the appellant and his family to respect for their home and family life. The interference would have consequences of sufficient gravity as to engage the operation of Article 8 of the Human Rights Act 1998. The right to respect for home and private life are qualified rights, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. The importance of the best interests of the child may alter on analysis of their specific circumstances and their interests can be outweighed by other factors when considered in the context of the case. The interference would be in accordance with the law and in pursuance of a legitimate aim: the protection of the EPS. Given the circumstances overall, I conclude that a refusal of planning permission would be proportionate and necessary. It would not unacceptably violate the family's rights under Article 8. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

Conclusion

31. For the reasons set out above, I conclude that the appeal should be dismissed.

N Thomas

INSPECTOR