



Appeal Decision

Hearing held on 28 February 2023

Site visit made on 28 February 2023

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th January 2024

Appeal Ref: APP/Y9507/W/21/3272030

Three Cornered Piece, Bohemia Hollow, Nyewood GU31 5JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Messrs Searle against the decision of South Downs National Park Authority.
 - The application Ref SDNP/20/02935/CND, dated 14 July 2020, was refused by notice dated 29 September 2020.
 - The application sought planning permission for change of use to a mixed use of land comprising the keeping and grazing of horses and a gypsy and traveller site for one family without complying with conditions 1, 2, 3, and 4 attached to planning permission Ref SDNP/16/06318/FUL, dated 20 December 2016.
 - The conditions in dispute are given in the schedule below.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 21 August 2023.

Decision

1. The appeal is allowed and planning permission is granted for change of use to a mixed use of land comprising the keeping and grazing of horses and a gypsy and traveller site for one family at Three Cornered Piece, Bohemia Hollow, Nyewood GU31 5JJ in accordance with the terms of the application SDNP/20/02935/CND, dated 14 July 2020, subject to the conditions set out in the schedule to this decision.

Preliminary Matters

2. The South Downs National Park Authority (SDNPA) is the local planning authority for the area, but for the part of the National Park that falls within the district of Chichester (which includes the appeal site), Chichester District Council (CDC) deals with general planning matters such as applications, appeals and enforcement on the SDNPA's behalf. I shall refer to "the Council" throughout this decision as shorthand for either CDC or the SDNPA, except where it is necessary to differentiate between the two.
3. I note that a Planning Contravention Notice and Breach of Conditions Notice have been served in respect of the development. However, these are not matters for me, under a Section 78 appeal. My determination of this appeal

does not affect the Council pursuing enforcement action regardless of the outcome of this appeal.

4. Although the appeal is made by Messrs Searle, only one Mr Searle, namely Jimmy Searle, has made submissions at the hearing. He and his partner and their dependants were the people allowed to live on the site under the previous permission, and it is they who want to continue living on the site. Therefore, when I refer to the appellant in this decision, I am referring to Mr Jimmy Searle.

Background and Main Issues

5. In February 2018 planning permission¹ was granted on appeal for a mixed use comprising the keeping and grazing of horses and a gypsy and traveller site for one family. The planning permission was subject to a number of conditions.
6. Conditions 1 and 2 restrict occupation of the site to the appellant and his family for a maximum 3-year period. In imposing the conditions, the previous Inspector came to the conclusion that a permanent permission on the appeal site would harm the character and appearance of the area by consolidating development and activity over a long time. In his judgement a temporary, personal permission would meet the short-term educational needs of the appellant's children and allow the Council a period of time to resolve their need and supply position such that the appellant could find a suitable permanent base.
7. Condition 3 limits the number of caravans on site and Condition 4 requires the development to be positioned in accordance with Drawing Number BP-01-2016. Both conditions were imposed in order to protect the character and appearance of the area.
8. The appellant is seeking to remove conditions 1, 2, 3 and 4 attached to the planning permission to allow permanent occupation of the site by anyone and removing the restriction on the number of caravans permitted on the site.
9. The main issues are:
 - The validity of planning permission SDNP/16/06318/FUL;
 - The effect of the proposal upon the character and appearance of the South Downs National Park (SDNP); and
 - The impact upon the integrity of the Arun Valley Special Area of Conservation (SAC), Arun Valley Special Protection Area (SPA) and Arun Valley Ramsar Site.

Reasons

Validity of planning permission SDNP/16/06318/FUL

10. Condition 1 sets out that the site is to be occupied only by the appellant, his partner and their resident dependents for a 3-year period until February 2021. Condition 2 states in the event that the named occupiers no longer reside at the site, it shall be restored to its condition prior to the development taking place.

¹ APP/Y9507/W/17/3184039

11. The Council contend that the appellant and his family have not been the sole occupiers of the site and therefore question whether the planning permission is still valid. The Council contend that they carried out a number of site visits between March 2019 and March 2021 and found little evidence that the appellant or his family were living at Three Cornered Piece. They advise that officers were met by a third party known as Mr Glen Keet, on a number of occasions, and found mail at the site addressed to him and his partner.
12. The appellant, in response, advises that the mobile home was delivered to site in August 2018 at which point he and his family occupied the site. He went on to state that he and Mr Keet were business partners, but that Mr Keet resides elsewhere. The appellant advised that Mr Keet's post was redirected to Three Cornered Piece due to it not being delivered to or going missing from his address. In respect of this matter and despite the Council's comments I find the appellant's account plausible in relation to this matter.
13. The appellant has provided a number of documents to demonstrate occupation of the site including a Council Tax bill dated December 2018; A DVLA Retention Document dated March 2019; Electoral Registration Letters dated July 2020 and August 2020 respectively and bank statements from October and November 2020 to demonstrate he and his family occupy the site. The Council, on the other hand, contend that the evidence overall postdates their investigation and has been inconsistent.
14. Whilst much of the evidence above postdates the Council's investigations overall, I find that the supporting documents are credible evidence, in demonstrating the appellant's occupation of the site.
15. The appellant advised at the hearing that he frequents Harting Mens Club and local shops but spends time away from home working and returns to the site at weekends. The appellant and his family are Romany Gypsies, and a nomadic habit of life is an integral part of gypsy and traveller culture. Therefore, it is conceivable that the appellant was working away or travelling with his family when Council officers visited the site, which would explain the absence of activity and domestic paraphernalia.
16. I understand that overgrazing was a consideration in respect of the previous appeal on the site. The appellant advised that he kept horses on the site as a favour to friends and associates. However, this has largely ceased, and horses are kept on his grandfather's farm nearby. To me, this explains the cessation of the intensive use of the land for the keeping of horses. I do not, however, find that this is a determinative factor in terms of demonstrating occupation of the site given the Council actively sought to bring an end to over grazing.
17. Overall, the evidence, in my view, demonstrates that on the balance of probabilities the appellant has occupied the site in a residential capacity and continues to do so in accordance with Condition 1.
18. In any event the Breach of Conditions Notice would require the breach to be remedied, in this case, requiring those listed in the condition to resume occupation of the site. There is nothing substantive to indicate that the breach of this condition would be fatal to the planning permission.

Character and appearance

19. The appeal site lies within the Rother Valley Mixed Farmland and Woodland Vales character area of the SDNP. The landscape is dominated by arable agriculture, interspersed with pasture grassland and frequent ancient woodland creating a mosaic of mixed farmland and woodland. The landscape of scattered hamlets and isolated farmsteads of medieval origin creates a sense of isolation and tranquillity.
20. The site comprises a broadly triangular parcel of land at the point where the road from the hamlet of Nyewood splits. Nyewood has a largely linear form along Habin Hill. The site is separated from Nyewood and the surrounding area is rural in nature, displaying a pattern of fields and wooded areas with Public Rights of Way extending across the landscape. The natural landscape and absence of development results in an aura of tranquillity and a sense of remoteness.
21. The entrance into the site is from Bohemia Hollow which leads to the settlement of South Harting. The mobile home, stables and associated structures are positioned against the southern boundary. Along the boundary are trees of varying sizes and spread screening parts of the site.
22. Paragraph 176 of the National Planning Policy Framework (the Framework) states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues. The scale and extent of development within such designated areas should be limited.
23. Whilst there have not been any changes of material significance to this part of the landscape since consideration of the previous appeal in 2016, the development as existing has introduced a mobile home, touring caravan and associated paraphernalia onto the site, in addition to the stables. This residential use has introduced activity and domestic paraphernalia across the site, which is more intensive compared to the use of the land for the keeping of horses. The siting of the mobile home, extensive hardstanding and associated paraphernalia appear as stark and discordant features within the natural landscape, compared to the stables, harming the scenic beauty of the area.
24. The appellant advises that he wishes to site a further static caravan on the site to be occupied by his daughter and has suggested that the existing stables could be demolished with the additional mobile home taking its place. Whilst the quantum of development would be similar, in my view, this would not overcome the harm to the scenic beauty of the area on account of the further domestication of the site and intensification of activities including noise, vehicle movements and light spill.
25. At the time of my site visit, I walked along the Public Right of Way that extends across the land to the south of the site. However, I was unable to make out the site due to the topography and presence of woodland. When travelling along both roads that flank the site the static caravan and associated paraphernalia were visible through gaps in the perimeter planting. The mobile home is visually prominent on account of its white finish drawing the eye and highlighting its discordance with the surrounding rural landscape.

26. I accept that longer range views of the site are relatively limited, yet I observed that the site is clearly visible from nearby roads. Whilst the extent of the area from which the harm is appreciated is localised, I still find that the development as existing adversely affects landscape character. A further mobile home on the site would compound this harm through the introduction of a further residential structure that would appear alien to the local character.
27. The appellant has planted a significant number of native plant specimens and I note that during the summer months hedging and foliage would be prevalent disguising the built form to a degree. However, I anticipate that for at least half the year the development is visible from the roadside when the trees are not in leaf.
28. Whilst the appellant indicated that he is willing to paint or clad the existing static caravan a more sympathetic colour and introduce further planting, I am not persuaded that it would successfully assimilate the development into the landscape or that the conservation of the SDNP is best served through the screening of sites.
29. I am also mindful that previous Inspectors have described development of the site as having an urbanising effect, visually intrusive and incongruous. I acknowledge that each proposal is considered on its own merits, however, they are consistent conclusions in relation to the harmful effect upon the character and appearance of the area.
30. I conclude that the existing development adversely affects the character and appearance of the area and the scenic beauty of the SDNP, and the proposed static caravan would only serve to compound this harm. As such, the proposal is contrary to Policies SD1, SD4, SD5, SD7 and SD8 of the South Downs Local Plan (2017) (LP) which, amongst other things, require developments to conserve and enhance landscape character; integrate with, respect and sympathetically complement landscape character and conserve and enhance relative tranquillity and the intrinsic quality of dark night skies.
31. I note the Council have referred to Policy SD2 in the second reason for refusal, however, I find that with specific regard to this appeal I have given it negligible weight in coming to my decision.

Impact upon the integrity of the Arun Valley SAC

32. Part of the SDNP lies within the Sussex North Water Resource (Supply) Zone where the water supply is from Southern Water. Water is sourced from abstraction points in the Arun Valley, which is a SAC, SPA and Ramsar Site.
33. The Arun Valley contains wetlands that have important water-based fauna including fowl and molluscs. The water levels in the valley are required to sustain species and their populations.
34. Natural England (NE) in 2019 advised Southern Water that it cannot conclude that water abstraction from the Arun Valley is not having an adverse impact on the integrity of the habitats sites, through reduced water levels and potential water quality impacts.
35. Adopting a precautionary approach - the conservation objectives of the habitat sites may be undermined and thus it is necessary for me, as the competent

authority for the purposes of the Habitat Regulations², to conduct an Appropriate Assessment in relation to the effect of the development on the integrity of the Arun Valley Habitat Sites.

36. In order to prevent an adverse effect on the habitat sites development proposals that would lead to a material increase in water demand will need to demonstrate water neutrality. This means demonstrating water efficiency measures and providing offsetting to reduce water consumption.
37. The consequence of removing conditions 1, 2, 3 and 4, in the absence of any suggested replacement conditions, would essentially be an unfettered permission, that could be occupied by anyone from the gypsy and traveller community. This would likely lead to greater water consumption adversely affecting the integrity of the habitat sites through increased water abstraction.
38. As such, I am not satisfied that the impact of the development as proposed could be mitigated and that a likely significant effect on the integrity of the Arun Valley Habitat Sites would not occur.
39. Despite the above, a residential use has been established on the site prior to the position statement published by NE. In the event I am minded to allow the appeal conditions limiting occupation to the existing residents would essentially maintain the status quo, thereby not leading to an additional water connection or abstraction. On this basis I am satisfied that the development would have a neutral effect on the integrity of the Arun Valley Habitat Sites.

Other Considerations

Supply of gypsy and traveller pitches

40. The Planning policy for traveller sites (PPTS) sets out that local planning authorities should use a robust evidence base to establish the accommodation needs to inform the preparation of local plans and make planning decisions. At paragraph 10, it states that local planning authorities should identify and update annually 5 years' worth of deliverable sites for gypsies and travellers.
41. A number of local authorities have worked in partnership to produce Gypsy and Traveller Accommodation Assessments (GTAA's) covering the SDNP area. The relevant GTAA is the Coastal West Sussex GTAA, published in 2018 and updated in 2019. It identifies a need for 6 pitches in the CDC area of the SDNP.
42. Whilst the national park designation is a constraint in terms of development, it is still incumbent on the Council to plan properly for the needs of different groups of the community, including gypsies and travellers. At the hearing the Council advised that except for the appeal site no other proposals for sites have come forward in the area. It is therefore evident that very few, if any, additional private or public sites are coming forward to satisfy the identified need.
43. The previous Inspector, in part, granted permission for a temporary period on the basis that the Council would resolve its need and supply position so that the appellant could gain access to a permanent base from which to travel. It is evident from the oral submissions that these need and supply issues have not been addressed.

² Conservation of Species and Habitats Regulations 2017 (as amended)

44. Despite LP Policy SD33 supporting the provision of gypsy and traveller sites it is clear that the LP is not delivering the required number of pitches on the ground compounding a long-standing failure of policy to address the situation in the SDNP. Accordingly, the on-going and unresolved unmet need attracts great weight in the overall balance.

Personal circumstances

45. Article 8 of the European Convention on Human Rights as enshrined in the Human Rights Act 1998, concerns a right to respect private and family life. Article 8 affords the right to respect for private and family life and home, including the traditions and culture associated with the Romany Gypsy way of life. The Public Sector Equality Duty was introduced under the Equality Act 2010 which requires at section 149 that a public authority or person exercising a public function must, among other requirements, foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
46. Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
47. The appellant's Romany heritage is a protected characteristic. He, his partner and their three children occupy the site. His oldest daughter is 21 and has recently had a baby. The other two children are of school age – the middle child attends school locally and the youngest is enrolled on a beauty course.
48. The appellant advised that his oldest daughter has, what I would class, as significant health needs and requires frequent visits to the hospital. The appellant also indicated that his grandchild was showing signs of the same condition and would most likely need treatment in the future. The appellant explained the difficulties his daughter currently experiences living in the static caravan with the rest of the family and now requires her own accommodation.
49. I acknowledge that in the event of the appeal being dismissed this would have a negative impact on the well-being of Mr Searle and his family. The interests of the school aged children would, in my view, be best served by having a settled base due to their educational needs. Furthermore, access to health services would be assured for the appellant's oldest daughter and her child, while her child would benefit from remaining with her mother where her mother could be appropriately cared for. Taking account of all these factors, these personal circumstances weigh in favour of the appellant.

Alternative sites

50. At the hearing there was some discussion regarding alternative options or land available to the appellant. In support the Council submitted evidence in the form of Land Registry titles relating to a cottage and two parcels of land at Lumbry Park Farm, Alton which list the appellant as the owner. They also provided an e-mail from a developer indicating that in the event planning permission was granted for a dwelling on the appeal site Mr Searle would vacate it and reside on a pitch elsewhere.
51. In the case of the e-mail from the developer the author is a third party, rather than the appellant himself, and does not set out a specific site that Mr Searle

would relocate to. As such, I give limited weight to this evidence presented by the Council.

52. In respect of the Land Registry information, I heard from the appellant that he was in the process of swapping his interest in the land at Lumbry Park Farm for his brother's interest in Three Cornered Piece following a dispute between the two. Even if this was not the case, I give negligible weight to this as there is no evidence to indicate that the land at Lumbry Park Farm benefits from planning permission for a gypsy and traveller pitch, nor am I aware of the submission of a planning application for such a use. In any event there is no certainty that the land would meet the needs of the appellant, despite its current ownership.
53. In respect of the cottage, the appellant went on to explain that it was purchased with his brother on a buy-to-let basis as a business interest and therefore he could not occupy it. On this basis I am content that the cottage is not available to the appellant to reside in.
54. Whether there are alternative options available to the appellant is a matter of fact and degree and based on the evidence provided I am satisfied that there are no alternative sites either public or private currently available to the appellant.

Accessibility to services and facilities

55. The site is located within open countryside, but sporadic development extends along Bohemia Hollow. The nearest settlement is Nyewood a short distance to the north and South Harting is located approximately 1km to the south. South Harting has a number of services and facilities to meet the day to day needs of the appellant.
56. The surrounding roads are largely devoid of footpaths and streetlighting making walking to and from the site impractical and undesirable. Therefore, the appellant most often uses a private vehicle for local trips and trips to larger settlements for larger order goods, health services, and education opportunities.
57. The PPTS does not refer to accessibility to services and facilities by foot and public transport as one of its aims. The more general aim in the PPTS is the provision of suitable accommodation from which gypsies and travellers can access education, welfare and employment opportunities. It is also recognised in the Framework, at paragraph 105, that transport solutions will vary between urban and rural areas. As such, there will be a tension and a balance to be struck between the desirability of supporting sustainable rural development and maximising sustainable transport opportunities.
58. Taking into consideration the relatively short distance between the site and nearby services and facilities and the aims of the PPTS I do not find that the accessibility of facilities and services in this case is unsuitable.

Planning Balance

59. I have found that the continuation of the existing development causes serious and unacceptable harm to the character and appearance of the SDNP, in conflict with Local Plan Policies SD1, SD4, SD5 and SD7, and this would be further exacerbated if an extra static caravan was on the site. The Framework is clear that great weight should be given to conserving and enhancing the

landscape and scenic beauty in National Parks. This factor attracts significant weight in the overall balance.

60. In favour of the appeal, I have found that the Council has an immediate shortage and cannot demonstrate a five-year supply of Traveller sites; there are no suitable and available alternative sites; and the appellant's family have a pressing personal need for a settled base from which the children could regularly attend school and his oldest daughter could attend medical appointments. I also attach significant weight to these considerations.
61. On balance, I am satisfied that the harm which would be caused by the development outweighs the other considerations to the extent that permanent planning permission should not be granted. However, it is also necessary to consider whether a further time-limited permission could be granted. There is a pressing case to do so in order that the children have a secure and stable upbringing and education. Granting a time-limited permission would also give the Council a period in which to increase its supply of land for sites and mean that the harm caused by the use to the character and appearance of the SDNP comes to an end in the foreseeable future.
62. In coming to my decision, I have paid regard to my Public Sector Equality Duty under s149 of the Equality Act 2010. I have had regard to the rights of the appellant under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. It is a qualified right, and interference may be justified where it is lawful and in the public interest. The concept of proportionality is crucial.
63. Dismissing the appeal would interfere with the appellant's rights under Article 8, since the consequence might be that the family has no option but to adopt a roadside existence at some point.
64. Given the circumstances overall, I find that a grant of a temporary and personal permission would be proportionate and necessary. It would protect the appearance of this part of the National Park in the future and the best interests of the children now. It would avoid a violation of the appellants' rights to a private and family life and home. The protection of the public interest cannot be achieved by means that are less interfering with their rights under Article 8.
65. For these reasons, I conclude that the appeal is allowed and planning permission should be granted subject to temporary, personal and other conditions discussed further below.

Conditions

66. I have considered the imposition of conditions in the context of the Framework and the Planning Practice Guidance. Since the conclusions of this decision is that only a temporary, personal permission is justified a condition restricting the occupancy of the site to the appellant and his family is necessary.
67. In order to protect the character and appearance of the SDNP it is necessary to restrict the number of caravans to 2 static caravans to enable the appellant's daughter to live independently and 1 tourer. Similarly, I have imposed a condition restricting the size of vehicles and preventing commercial activities on site.

68. Following on from the conclusions of the previous Inspector and in order to protect the 'dark sky' I have imposed a condition for details of any external lighting and aerials to be approved prior to installation.

Conclusion

69. For the reasons set out above the appeal succeeds.

B Thandi

INSPECTOR

Schedule of disputed conditions

- 1) The use hereby permitted shall be carried out only by the following: James Searle and Rebecca Thompson and their resident dependants and shall be for a limited period being the period of 3 years from the date of this Decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 2) When the premises cease to be occupied those named in Condition 1) above, or at the end of 3 years, whichever shall occur first, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, other than specifically permitted previously, shall be removed and the land restored to its condition before the additional development took place.
- 3) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Site Act 1968 as amended (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.
- 4) The caravans shall be sited only in accordance with the submitted plan number BP-01-2016 Block Plan scale at A4.

Schedule of conditions

- 1) The use hereby permitted shall be carried out only by the following: James Searles, Rebecca Thompson and Vivienne Searle and their resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 2) When the premises cease to be occupied by those named in condition 1 above, or at the end of 3 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
- 3) No more than 3 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 2 shall be static caravans) shall be stationed on the site at any time.
- 4) No external lighting is to be installed other than in accordance with a scheme which has first been submitted to and approved in writing by the Local Planning Authority.
- 5) No external aerials are to be installed other than in accordance with a scheme which has first been submitted to and approved in writing by the Local Planning Authority.
- 6) No commercial activities shall take place on the land, including the storage of materials, other than in connection with the use of the land for the stabling and keeping of horses.
- 7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.

APPEARANCES

FOR THE APPELLANT:

Mr Jimmy Searle	Appellant
Dr Angus Murdoch	Murdoch Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Derek Price	South Downs National Park Authority
Amy Tyler-Jones	South Downs National Park Authority
Shona Archer	South Downs National Park Authority
Hannah Walton	Hampshire County Council Landscape Consultant

INTERESTED PARTIES

Sheila Bramley	Harting Parish Council
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