



Appeal Decision

Hearing Held on 27 February 2024

Site visit made on 27 February 2024

by H A Orr MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th April 2024

Appeal Ref: APP/Y9507/C/22/3313813

Land on the southeast side of Clappers Lane, Fulking, Henfield and Land lying to the south of Clappers Lane, Fulking, Henfield BN5 9NH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Russell Owen against an enforcement notice issued by South Downs National Park Authority.
- The enforcement notice was issued on 23 November 2022.
The breach of planning control as alleged in the notice is:
Unauthorised operational development by the importation and laying of approximately 0.3 hectares of chalk and hardcore material to create hardstanding; and
The material change of use of the Land from agriculture to use of the Land as a site for settled gypsy accommodation by the placement and residential occupation of two (2) caravans (mobile homes) on the Land and three (3) further touring caravans stationed on the Land, and siting of a portable toilet, and the erection of external lighting and all associated paraphernalia and/or additional caravans.
- The requirements of the notice are:
 - i. Cease the use of the Land for settled gypsy accommodation;
 - ii. Cease the use of the Land for the stationing of the caravans for the purpose of residential occupation;
 - iii. Remove all caravans and associated paraphernalia including, portable toilet and lighting from the Land;
 - iv. Remove from the Land all the deposited material through the correct waste disposal methods. Copies of the completed Environment Agency Duty of Care Waste Transfer Note is to be sent to the SDNPA. All waste shall be removed by machines which can be operated with a good degree of accuracy and sensitivity with regards to ecology;
 - v. Remove any other items and debris from the Land that do not relate to the use of the Land for agriculture; and
 - vi. Return the Land to the pasture that was existing prior to the importation of the inert waste material, by a programme of grass seeding in the next available planting season.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The appeal succeeds in part on grounds (d) and (g).
2. It is directed that the enforcement notice is corrected by adding the words 'as shown hatched black and crossed on the attached plan' after the word

'hardstanding', and the deletion of the words 'and/or additional caravans' in Paragraph 3 of the notice. In addition, varied by the replacement of the plan attached to the notice, with the plan labelled 'enforcement notice alternative plan' that is attached to this decision; and by the deletion of all of the steps at Paragraph 5 of the notice and their replacement with the following steps:

- i. Cease the use of the Land for the stationing of caravans for the purpose of residential occupation;
 - ii. With the exception of the stored touring caravan, circled in black on the attached plan, remove all caravans and associated paraphernalia including, the portable toilet and lighting from the Land; and
 - iii. Remove from the Land all the deposited material and restore the land to its previous condition before the breach took place.
3. The notice is also varied by the substitution of 12 months as the period for compliance. Subject to these corrections and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background and preliminary matters

4. It was noted that the address of the site has been referred to in several different ways in the evidence. At the Hearing the address was clarified and this is reflected in the above banner heading.
5. Since the notice was issued, a day room has been constructed on the appeal site. Plans of this have been provided by the appellant. However, as this building did not form part of the allegation in the notice, it cannot be considered as part of this appeal and will not be considered further.
6. The definition of gypsies and travellers is set out in the glossary to Planning Policy for Traveller Sites (PPTS), as amended in 2023. The gypsy status of the current occupiers of the site, are not disputed by the Council and I have no reason to take a different view.
7. A number of corrections and variations to the notice were identified prior to, and at the Hearing. I shall return to these after consideration of the ground (d) appeal, as my findings on this have a bearing on the notice.

Ground (d)

8. The appeal is proceeding on ground (d). Planning Practice Guidance (the Guidance) sets out an appellant is responsible for providing sufficient information to support an application for a Lawful Development Certificate, which is the equivalent of ground (d) in an enforcement appeal. Thus the onus of proof lies with the appellant with the relevant test of the evidence, being on the balance of probability.
9. The appellant's claim is that part of the development enforced against, namely part of the hardstanding and one of the touring caravans has become lawful through the passage of time. The relevant time for the hardstanding is 4 years, and 10 years for the siting of the touring caravan, prior to the enforcement notice being issued.

10. The Council accepts that part of the hardstanding targeted by the notice, has been in situ for more than 4 years. They also conceded that there has been a small touring caravan, now disused, sited in the southern paddock for more than 10 years. Accordingly, they confirmed that they no longer wished, to dispute the lawfulness of either of these matters.
11. I am satisfied that the notice can be corrected and varied, with an alternative plan substituted, to exclude the hard standing the Council no longer wishes the notice to target and the location of the lawful touring caravan, without causing injustice. To this extent the ground (d) appeal succeeds.

The notice

12. Turning now to the notice, as a result of my findings above, a number of corrections and variations are required, firstly to the allegation and secondly, the steps required by the notice.
13. Looking first at the allegation, the 'alternative plan' provided by the Council now identifies the location of the targeted hardstanding in black hatching and a cross. Thus, it is necessary to correct the notice in the first paragraph at section 3, by adding the words 'as shown hatched black and crossed on the attached plan', after the word 'hardstanding'.
14. Similarly, the 'alternative plan' indicates the location of the disused touring caravan (the subject of the ground (d) appeal), circled in black. This particular caravan no longer forms part of the alleged breach. The remaining caravans are all accepted to be sited on the land in connection with the residential use and are thus part of the allegation. Therefore, in the second paragraph at section 3. The words 'and/or additional caravans' need to be deleted.
15. As a consequence, to reflect my finding on ground (d), it is necessary to insert the words 'with the exception of the touring caravan circled in black on the attached plan' at the beginning of step iii., at paragraph 5.
16. Turning to the remaining steps at paragraph 5. It is clear that step i. and step ii. essentially repeat each other. They can both be replaced with a single step and the words 'Cease the use of the Land for the stationing of the caravans for the purpose of residential occupation'.
17. The nature of the requirements at step iv. are overly detailed and reliant on the involvement of a third party (The Environment Agency) to verify material and produce a Waste Transfer Note. As such this leads to some uncertainty for the appellant and imposes more onerous requirements than to restore the land to its previous condition. The wording of steps v. and vi. should therefore be deleted and replaced by the words 'restore the land to its previous condition before the breach took place'.
18. For the sake of clarity and to reflect the above findings, I shall delete all of the steps at paragraph 5 of the notice and replace them with the following three steps:
 - i. Cease the use of the Land for the stationing of caravans for the purpose of residential occupation;

- ii. With the exception of the stored touring caravan, circled in black on the attached plan, remove all caravans and associated paraphernalia including, the portable toilet and lighting from the Land; and
 - iii. Remove from the Land all the deposited material and restore the land to its previous condition before the breach took place.
19. I am satisfied that I can carry out the above corrections and variations without causing injustice.

Ground (a) and the deemed application

Policy context

20. It is the policies of the adopted planning policy documents which prevail, alongside Government's planning policies set out in The National Planning Policy Framework (the Framework) and any relevant Planning Practice Guidance (PPG), which are of particular relevance to this appeal. It is for the decision-maker to determine the weight to be attributed to any conflict of those policies with National Policy. The development plan comprises the South Downs Local Plan (2014–33) (Adopted 2019) (the LP).
21. The purposes of national park designations are to conserve and enhance the natural beauty, wildlife and cultural heritage of the area and to promote opportunities for the understanding and enjoyment of the special qualities of the National Parks by the public. Where there is an irreconcilable conflict between the statutory purposes, the first purpose will be given priority.
22. The Framework confirms that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and National Landscapes, which have the highest status of protection in relation to these issues. The scale and extent of development within all these designated areas should be limited, while development within these settings should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.
23. The LP confirms the Council's approach to development within such designated landscapes. Policy SD25, requires that the development responds to the context of the relevant area and, amongst other criteria, requires proposals to conserve and enhance the special qualities of the National Park. Policies SD1, SD4 (landscape), SD5 (design) and SD6 (safeguarding views), form part of the landscape-led approach for the SDNP. Policies require the conservation or enhancement of landscape character and a positive contribution to the overall character and appearance of the area. This is broadly consistent with the requirements of national policy, in so far as conserving and enhancing landscape and scenic beauty in National Parks which attract the highest level of protection that the planning system can provide.
24. Policy SD33 of the LP is relevant to this appeal and is a criteria-based policy, that specifically deals with the needs of gypsy and travellers. It sets out that the assessment of need will be identified through Gypsy and Traveller Accommodation Needs Assessments (GTAA) carried out in partnership with all of the Councils across the SDNP. It seeks to identify and allocate permanent pitches and sets criteria for assessing unidentified sites that come forward. However, the figures identified in Figure 7.4 of the SDLP (SD33(3)(a)) have

been superseded. This is because they were based on an earlier assessment of need from 2016. I shall return to this later.

Main Issues

25. Given my findings on the ground (d) appeal, my deliberations under this ground, in respect of the hardstanding and caravans will focus solely on those matters which are not agreed to be lawful.
26. The appeal site lies within the South Downs National Park (SDNP). The main issues in the appeal are therefore:
 - The effect of the development on the character and appearance of the area and the SDNP;
 - The effect of the development on the settled local community; and
 - Whether any harm arising from the above matters is outweighed by any other material considerations.

Reasons

Landscape character and appearance

27. The appeal site is located within the SDNP, on the southern side of Clappers Lane. It is adjacent to two permitted gypsy and traveller sites with a total of 6 permitted pitches. The site is some 0.3 ha in total. The appeal development has been largely located into the northern paddock which is divided by post and rail fencing from the paddock to the south, which remains laid to grass with a small, dilapidated touring caravan. I have nothing before me to suggest that the two paddocks should not be considered as a single planning unit, which is consistent with the plan attached to the notice.
28. The nearest residential dwelling is The Cabbage Patch sited along the northern boundary, with the Cricket Club beyond. The remaining dwellings to the west in Clappers Lane, appear as a linear form of development with the dwellings in moderate front gardens that generally face the road. To the south and providing a striking backdrop to the site, is the steep chalk scarp foot slope of the South Downs with the viewpoint of Devils Dyke clearly visible. The remainder of the small springline village of Fulking, lies to the south and east.
29. There are limited public views of the site from Clappers Lane due to the existing vegetation and the location of the land, which is set back from the road on a sharp bend. Vehicular access to the site is from Clappers Lane, so views of the appeal development from here are at an oblique angle through the main entrance. At my site visit, I took the opportunity to view the site from other public vantage points, including Devils Dyke public car park. I acknowledge that this is some distance away. However, from the carpark there are clear views of the appeal site, together with the two existing sites.
30. The appeal development now fills a previously undeveloped gap that helped to add a sense of transition, between the village and the more open countryside beyond. It therefore has the effect of extending the built development towards the cricket ground. This is particularly apparent from the various public paths and viewpoints including Devils Dyke, cumulatively making the sites more prominent in this highly sensitive landscape.

31. Fulking is a small, tight knit rural village with a generally linear residential development. In contrast, although still a form of residential use, the appeal development and the existing sites have a very different and more dispersed domestic character. The development together with the extensive hardstanding, vehicles and the residential paraphernalia normally associated with a residential use, has an unacceptably and overly urbanising effect, that jars with the general character of the linear dwellings on Clappers Lane, the nucleated village of Fulking and the rural character of the wider area. The proximity of the adjacent sites exacerbates its presence in the landscape, such that it fails to conserve and enhance the natural beauty of the area, or promote opportunities for the public understanding and enjoyment of the special qualities of this part of the SDNP.
32. The comments from the Council's Landscape Officer suggest that some of the harmful effect of the development could be mitigated by requiring the siting of the caravans closer to Clappers Lane and the removal of some of the hardstanding. I acknowledge that this might help the development follow the character of Fulking. However, I have no plans before me, to assess how this could be achieved, or how it would mitigate the quantum of development and the cumulative effect of the development, on the wider views from other important public vantage points.
33. The existing dayroom was not included in the notice and therefore does not form part of the deemed application. However, it seems reasonable to assume that if planning permission were to be granted, then there would be increased pressure to retain this, or another day room, adding further to the harm to the SDNP.
34. For the above reasons and in the context of this particular site, I find that the developments clearly fail to conserve and enhance the landscape character and appearance of the SDNP. In consequence, the proposed development does not respond to the context of the relevant broad area (SD25(2)) and causes significant harm to the character and appearance of the area. The development is therefore contrary to Policies SD4, SD5 and SD6 of the LP that, in summary, seek to support development in areas where they conserve, and enhance the existing landscape and SDNP.

Effect on existing settled community

35. Planning Policy for Traveller Sites (PPTS) 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 and ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community. There is therefore some acceptance in national policy that sites may be located in open countryside. Policy SD33 (3b)) also sets out that proposals for gypsy and traveller sites should not result in an overconcentration of sites in any one location or be disproportionate in size to nearby communities. However, neither document provides any specific guidance or defines how dominance should be assessed.
36. There are no highway objections to the development in terms of either highway safety, or pressure on the local road network. However, the Council's objections to the development appear to be two-fold: Firstly, the number of gypsy and traveller pitches compared with the number of dwellings in Fulking; Secondly, the harmful cumulative effect the development has on the landscape

of the SDNP. There is therefore some cross over of considerations with that of landscape, character and appearance dealt with above. Taking this point first, I have already found above that the cumulative effect of the development on the character and appearance of the SDNP to be harmful.

37. Turning now to the Council's other concern. The Council and interested parties provided a limited assessment of the numbers of dwellings in Fulking, compared to the number of local gypsy and traveller pitches. From this it is understood that there are some 55 dwellings in the village (47 in Clappers Lane), compared with 8 gypsy and traveller pitches, if the appeal was to be allowed.
38. I note that the previous inspector in appeal APP/Y9507/W/19/3225109 considered that the development subject to that appeal, would have caused limited harm to the spatial cohesion of the hamlet, but fell short of dominating the local settled population. He did, however, note that it would be a notable proportion of any community and I have no reason to disagree. To my mind the cumulative effect of the three sites, all located in one area of the village, tips the balance and results in an over concentration of sites, although due to the scale of the increase I give this limited weight.
39. Overall and for the above reasons, I do not consider that the development adversely affects either the living conditions of local residents, or local infrastructure and services. Nevertheless, in my judgement these additional pitches in such close proximity to those already permitted, result in a cluster of caravan sites, that fail to respect the scale and pattern of development of this small rural village, such that to a limited degree, it dominates the nearest settled community. The development is thus in conflict with Policy SD33 of the LP that seeks to ensure that sites do not result in being over concentrated in any one location or disproportionate to nearby communities.

Other considerations

Personal Circumstances

40. At the Hearing the appellant made it clear that they were not intending to wholly rely on the families' personal circumstances. Nonetheless, they have provided both written and oral evidence, so I shall address this in my decision.
41. Prior to the Hearing the appellant advised that the occupancy of the site had changed. One caravan is occupied by the appellant and his wife. They moved to the site after doubling up with his sister on a County Council run site near Brighton. The second caravan is now occupied by the Aunt of the co-owner of the appeal site. She is understood to have been on site for the last year. A Doctor's letter has been provided that supports the evidence given at the Hearing regarding her health. Her sister and grandchildren live on the adjacent site and are understood to provide her with support.
42. I acknowledge that as with all those who travel, a settled base would enable these families, to have better access to both medical care and other essential support and services. I accept that the land has been developed for the purposes of providing two gypsy and traveller families with a permanent home. However, from the evidence I have, there is little to suggest that this needs to be provided at this particular site, rather than one in a more appropriate

location. For these reasons I give the personal circumstances of the occupiers limited weight.

The need for sites and alternative sites

43. There is no single overall assessment of need for the SDNP, instead each of the Councils that cover part of the SDNP, carry out their own Gypsy, Traveller and Travelling Showpersons Accommodation Assessment (GTAA). The need calculations provided as part of this appeal are, thus derived from a number of GTAA's carried out by various Councils at different times.
44. The Mid Sussex District Council GTAA April 2022 is the most up-to-date assessment of need for this District and therefore provides an appropriate baseline for assessing need. At the Hearing there was some discussion regarding the scale of unmet need and whether it is more appropriate to consider the scale of need across the SDNP, rather than for each administrative area. The appellant suggests that the combined shortfall across the SDNP is likely to be nearer to 84 pitches, rather than the 31 put forward by the Council.
45. The Council accepts that they do not have a 5 year supply of deliverable sites, although not of the magnitude suggested by the appellant. They are unable to suggest any suitable, affordable, alternative sites available, either now or in the foreseeable future. Accordingly, there is a recognised outstanding need for additional gypsy and traveller pitches and this weighs in favour of the development. There is in that light, no need for me to forensically assess the GTAA numbers and any recent permissions.
46. For these reasons. I find that the need for additional pitches and the lack of suitable, alternative sites in the District, are matters that attract significant weight.

Planning balance

47. These two pitches would undoubtedly make a positive contribution to the provision of pitches, both in the Mid Sussex District area and SDNP as a whole. There are also the personal benefits of providing a settled base with better access to essential medical and other services, given the lack of alternative sites. There are also associated social benefits for example reducing long distance travelling and the various economic impacts caused by unauthorised encampments. In combination these carry significant weight.
48. However, balanced against these benefits, the Framework makes clear that great weight is to be given to conserving and enhancing landscape and scenic beauty in national parks, which attracts the highest status of protection. I have also found that the appeal development in addition to the existing permitted sites, result in a cluster of sites, that fail to conserve or enhance the landscape and scenic beauty of the area, or to respect the scale and pattern of development of this small rural village, such that it dominates the nearest settled community. In combination I have attributed significant weight to this combined harm.
49. Overall, in my judgement, the combination of factors in favour of the development are not sufficient to clearly outweigh the significant harm I have identified to the character and appearance of the SDNP and the settled community.

50. I am very mindful of the appellant's personal circumstances and the effect that this decision is likely to have in dismissing this appeal. I have carefully considered the Human Rights issues that are pertinent to this appeal. However, the protection of the public interest cannot be achieved by means which are less interfering of the appellant's rights.
51. As set out above, the appellant's evidence makes a reference to one of the resident's medical conditions. I have therefore had due regard to the Public Sector Equality Duty (PSED), contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Nonetheless, for the above reasons, I consider that this decision is both proportionate and necessary in the circumstances.
52. It follows that it is still necessary to consider whether a temporary grant of planning permission would be appropriate for this appeal. The Planning Practice Guidance advises that temporary permissions may be appropriate where it is expected that the planning circumstances will change in a particular way at the end of the permitted period. When compared to permanent permission, the conflict with the development plan and in particular the landscape harm would then only be temporary.
53. Lack of five year supply of deliverable sites in mid Sussex or the SDNP is not a significant material consideration for a temporary permission, as the proposal is on land within a National Park. The appellant has suggested that 5 years would be appropriate. However, I have no evidence before me to suggest that the circumstances are likely to change during this, or any other temporary period. To conclude, given the harm I have identified, a temporary permission would not be appropriate in the particular circumstances of this appeal.

Other matters

54. Local residents have expressed concerns about the effect of artificial lighting on dark night skies and surface water flooding at nearby dwellings including The Cabbage Patch. From the evidence, the materials used for the hard standing are understood to be permeable with gravel laid over chalk. Notwithstanding this, if the appeal was to be allowed, it would be possible to impose a suitably worded condition to control drainage, external lighting and to ensure that the materials used in the hard standing do not result in an additional risk of surface water run-off.

Interim conclusion

55. For all these reasons the appeal on ground (a) and the deemed application fail.

Ground (f)

56. The appeal under ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purpose of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)), or as the case may be, to remedy injury to amenity (s173(4)(b)). In this case, the purpose of the notice is to remedy the breach of planning control, by requiring the unauthorised use to cease, removal of the caravans, (save for the one indicated on the notice plan) and a significant part of the hardstanding to be removed.

57. An appeal under ground (f) provides some scope for a solution short of a complete remedy as set out above, but any substituted scheme must be precisely defined. The appellant asserts that one of the pitches meets an identified need in this District, such that one pitch, rather than two could be granted permission under the deemed application.
58. I acknowledge that a single pitch would reduce the amount of development on the site. However, I have no plans or details before me to give the necessary degree of detail to demonstrate how the harm I have identified, relating to the landscape, character and appearance of the SDNP, together with the cumulative effect of the development on the settled community, could be overcome. Accordingly, there is no 'worked out alternative', whereby the notice could be varied under ground (f) with the necessary degree of precision.
59. For the above reasons, I find that the steps required by the notice does no more than is required, to remedy the respective breach of planning control, and lesser steps would not achieve that purpose. Consequently, the appeal on ground (f) fails.

Ground (g)

60. For an appeal under this ground to succeed, it is necessary to consider whether the compliance period of 6 months is too short. The appellant has suggested that an alternative timescale of at least 12 to 36 months would be more reasonable to allow for an alternative site to be secured and planning permission granted.
61. The development must be considered in the context of the identified harm and the time required to undertake the works. I have identified harm to the landscape, character and appearance of the area and limited harm to the settled community. However, I am mindful that the residents of both pitches will need to secure alternative homes in a more appropriate location. Furthermore, I accept that it will take some time to submit and secure planning permission.
62. Accordingly, for these reasons, whilst I do not consider that an extension of up to 3 years would be justified and would amount to a temporary grant of planning permission, I am nonetheless satisfied, that a period of 12 months represents a reasonable and proportionate timescale to allow the families to secure alternative sites. The appeal on ground (g) therefore succeeds to this extent.

Conclusion

63. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Hilary Orr

INSPECTOR

Appearances

FOR THE APPELLANT:

Mr Alan Masters

Mr Philip Rowe

Agent

Mr Russell Owen

Applicant and resident

Mr John Hearne

Adjacent site resident

Ms Bluebell Hearne

Resident on appeal site

FOR THE LOCAL PLANNING AUTHORITY:

Ms Stella New

Planning Officer

Mr Robert Cambell

Senior Planning Enforcement Officer

INTERESTED PERSONS:

Ms Laura Marshall

For Fulking Parish Council

