
Appeal Decisions

Date of Hearing 23 April 2024

Site visit made on 23 April 2024

by Grahame Kean B.A. (Hons) Solicitor, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2024

Appeal A: APP/L3815/C/23/3333619

Land adjacent to Tranjoeen, Bracklesham Lane, Bracklesham Bay, West Sussex PO20 7JE

- 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 Mr Tony Castle against an enforcement notice issued by Chichester District Council.
- The notice was issued on 26 October 2023.
- The breach of planning control as alleged in the notice is without planning permission: the material change of use of the Land to use as a residential mobile home/caravan site.
- The requirements of the notice are:
 - i. Cease the use of the Land as a residential mobile home/caravan site,
 - ii. Remove from the Land all mobile homes and caravans,
 - iii. Break up and remove from the Land the hard standings and access track(s),
 - iv. Remove from the Land the metal entrance gates and gate posts, kerbing, wooden planters, gas bottles and motor vehicles; and
 - v. Following compliance with steps (i) to (iv) level the Land and reseed with grass.
- The period for compliance with the requirements is 8 months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B: APP/L3815/W/23/3333603

Land adjacent to Tranjoeen, Bracklesham Lane, Bracklesham Bay, West Sussex PO20 7JE

- 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 Tony Castle against the decision of Chichester District Council.
- The application Ref 23/01064/FUL, dated 25 May 2023, was refused by notice dated 17 August 2023.
- The development proposed is: change of use of land as a travellers caravan site consisting of 3 no. pitches and associated development.

Summary of Decision: The appeal is allowed, and planning permission is granted subject to conditions set out in the terms set out below in the Formal Decision.

Appeal A on ground (a) and Appeal B

Main issues

1. The Council's reason for refusal relating to alleged harm to areas of nature conservation, has fallen away due to the completion of a section 106 obligation providing for access mitigation measures that are acceptable to the Council.
2. The main issues are:
 - whether the development is acceptable in its location outside settlement boundaries;
 - the effect of the development on the character and appearance of the area;
 - the need for and supply of traveller sites;
 - personal circumstances of the appellant and family including whether alternative accommodation is available to them; and
 - intentional unauthorised development;

Whether development in an acceptable location

3. Policy 36 of the Chichester Local Plan: Key Policies 2014-2029 (CLP) supports the location of traveller sites where they avoid dominating the nearest settled or travelling communities, are well related to existing settlements having accessible services and facilities with safe and convenient vehicular access, and provide a reasonable visual and acoustic privacy for occupiers on site and nearby. Other criteria in the policy relate to addressing flood risks, impact on residential amenity, on-site provision of any necessary infrastructure, and avoidance of impacts on nationally designated areas of landscape, historic or nature conservation importance.
4. Bracklesham Lane lacks a footway and is unlit in this location. Therefore, some residents may have a reliance on the private car. Cycling is a viable option for experienced cyclists. The Council does not dispute that the development complies with CLP Policy 36 in so far that it is in a sustainable location with access to facilities and complies with all the other criteria, save that its location is argued not to be physically well-related to other settlements due to its physical detachment from other built form and the nearest settlement.
5. The site is close to the village of Bracklesham Bay, an existing settlement with local services and facilities. Policy 36 acknowledges in effect that traveller sites are acceptable in rural and semi-rural areas like the appeal site. Furthermore, paragraph 25 of Planning Policy for Traveller Sites updated in December 2023 (PPTS), in stating that new traveller site development should be very strictly limited in open countryside that is away from existing settlements or outside areas allocated in the development plan, is recognised as a national policy that does not preclude development of traveller sites in the open countryside, subject to other criteria set out in the PPTS. Therefore, the fact that the appeal site is detached from designated settlements within the hierarchy of the local plan is not a compelling argument against the development.
6. The development comprises a 3-pitch site on an area of some 0.3ha adjacent to the main road leading to Bracklesham Bay some 0.73 miles to the south where there is access to services via the road network. No reasonable case

could be made that the site or the development taking place on it dominates the nearest settled community or would place undue pressure on local infrastructure.

7. There is no adopted allocations policy for Gypsy and Traveller sites in the CLP. Policy H of the PPTS states that the locally specific criteria used to guide allocation of sites in plans or which form the policy where there is no identified need for pitches, should be used to assess applications on unallocated sites, ie in this case CLP Policy 36. I find on this main issue that the development is in an acceptable location in compliance with CLP Policy 36.

Character and appearance

8. The proposal in the s78 appealed application has already been carried out. The written evidence includes a landscape statement made on behalf of the appellant by a landscape consultancy practice, which I have considered along with the other more general statements from the parties and comments made at the hearing.
9. The appeal site is separated from other built form by surrounding agricultural land and itself is former agricultural land within the rural area, mainly characterised by open fields and native hedgerows along Bracklesham Lane. The larger field of which it formed part, was subdivided into five separate sites with individual accesses, hardstanding and means of enclosure. This produced a piecemeal approach to the development of the field as shown in the images supplied by the Council and as I saw when viewing the site and surroundings.
10. The appeal site is not on the periphery of the nearest settlement but sited on the road leading to it, however, the development is relatively modest in scale. The site is narrow at the front, widening at the rear and the caravans appear prominently from the roadside as a form of urbanising development that at present undermines the open and rural character and appearance of the area. There is also substantial hardstanding to the front of the site and along the northern boundary. The surrounding land is fairly flat, and at present the site is not optimally screened to mitigate the visual impact of the vans, associated hardstanding and domestic paraphernalia visible from outside the site and along the road.
11. Vegetation has been planted subsequent to the destruction of the attractive established hedgerow that extended for a significant length of the road. It is proposed to plant native hedgerow along the boundaries of the site and between each pitch. The front area next to the entrance and highway would have ornamental grass areas with native trees and flower beds. The planting could be secured by a condition to provide adequate screening and softening of the site, however it would be important to ensure that the details of planting, species, together with the hardstanding and means of enclosure would not unacceptably erode the rural qualities of the surrounding area.
12. I am satisfied that in this way the visually dominant hardstanding could be reduced and not cause any undue harmful impacts on the local landscape character. The visual harm due to the prominence of the caravans could equally be adequately mitigated with landscaping and planting conditions, assimilating the structures on the site into their surroundings. Although the current layout is somewhat cramped in that the 3 pitches afford little amenity space or space for touring caravans, this could be improved through a site

- development scheme required by condition that would ensure more space within the overall site is given over to amenity space.
13. Gypsy sites do not have to be hidden or invisible to be acceptable and any rural gypsy site will detract in some degree either from the character or the appearance, or both, of the countryside. In this case the impacts are very localised and there are no nationally designated areas of landscape value that fall to be considered.
 14. I saw that mobile homes for gypsies and travelling showpeople are a common feature in the landscape on Bracklesham Lane. Subject to a robust site development scheme being in place, an appropriate development could be accommodated without harming the overall quality of the area or undermining the character and appearance of the local environment, in accordance with the aims of section 15 of National Planning Policy Framework (NPPF).
 15. I note the appeal decisions Ref APP/L3815/W/22/3296239 that dismissed an appeal relating to the means of access, citing the previous removal of the native hedgerow and use of tarmac, and Ref APP/L3815/D/22/3290812 which also related to means of access on a site nearby, I would agree that by itself those developments would be an urbanising form of development detracting from the rural surroundings. However, in relation to the current proposal, the imposition of a development scheme by condition would in my view reduce the overly formal appearance at the entrance to the site together with a reduction of the hardstanding and provision of landscaping.
 16. Thus, suitably conditioned, the development would achieve an acceptable standard of design and living environment in keeping with local character landscape setting, in accordance with CLP Policies and 33 and 48, and be of a scale, siting, design that would have minimal impact upon the landscape and rural character of the area in compliance with CLP Policy 45. It would also, by the provision of appropriate hard and soft landscaping, reconfiguring the layout to provide more amenity space for children, and altering the means of enclosure to reduce the impression of isolation from the rest of the community, satisfactorily comply with the aims of paragraph 26 of PPTS.

Need for and supply of traveller pitches

17. CLP Policy 36 identifies from the Gypsy and Traveller and Travelling Showpeople Assessment (2013) (Phase 1) the potential need for permanent pitches and plots for the period 2012 to 2027, however, it is agreed that the pitch targets in the policy are out-of-date. The more recent assessment (2022 GTAA) forms the basis for assessing the level of need, prepared for the emerging local plan 2021-2049 (ELP).
18. A Gypsy and Travellers accommodation assessment, updated in December 2022 (GTAA 2022) produced for the emerging local plan identifies a requirement for a 104 additional pitches in the first five-year period (December 2022 – December 2027). The development would make a contribution to meeting that need. I was referred to several appeal decisions which considered the updated supply position in recent years. They consistently make the point that there has been a continuing shortfall in provision for many years and in this respect I would agree that there has been a sustained failure of policy to provide sufficient gypsy sites to meet the needs of the district.

19. Some pitches have been approved and others remain to be completed. Further analysis of the figures suggests that there is currently a residual requirement of 74 pitches to be provided to April 2028. There is no adopted allocations policy for gypsy and traveller sites. It is undisputed that there is a clearly an identified need for additional pitches in the district as a whole. Where there is a shortfall in provision, the Council stated that sites would be allocated within the Gypsy, Traveller and Travelling Showpeople Site Allocation DPD and "*annual monitoring will ensure provision is provided at the appropriate time.*"
20. No alternative sites have been provided as part of a local pan allocation. It is common ground that there is unmet need for traveller sites in the district and that the unmet need should be given significant weight.
21. In the officer's report, it is accepted that the need and supply situation has deteriorated, the ELP would improve the supply position, but that would not help in the short term and in any case, even once adopted there will be a high residual need, meaning there will be a significant reliance on windfall sites coming forward to meet the identified need. This factor is significant in relation to the determination of this appeal.
22. The Council states that it does all it can to meet the identified need, including by the strategic allocations in the ELP, a draft policy requirement for 3 pitches on any allocated site for 200 dwellings or more, and a draft policy that would seek to intensify development on existing traveller sites. I have no doubt that the Council takes its responsibilities seriously, however, the ELP is unlikely effectively to address the significant shortfall between need and provision in the near future. The unmet need for gypsy and traveller sites in Chichester district is a matter to which I give considerable weight.

Personal circumstances of the family and alternative accommodation

23. It is undisputed that the appellant and his family who occupy the site are of gypsy origin. The accommodation provides for the appellant's extended family, ie a single family unit occupying the 3 static caravans, namely the appellant's wife and children, his sister and her children, and his father. The best interests of the children in terms of protecting and promoting their welfare and education, are a primary consideration. Accessibility to health care that settled accommodation brings, benefits the family as a whole and in particular the appellant's father.
24. There is an undoubted personal need for accommodation of the type now sited on the appeal site and the Council accepts that the personal circumstances of the appellant and his family carry significant weight. Continued occupation of the appeal site would permit the family to live together and provide support for each other, an acknowledged and important cultural aspect of the Gypsy and Traveller lifestyle.
25. Of the potential sites identified and discussed at the hearing, none were available to the appellant and his family, unsurprisingly given the shortfall of such gypsy sites in the district. It is accepted that they have nowhere else to live that would meet their accommodation needs.
26. The overall benefits of the site's ability to afford a permanent and settled base to meet the needs of the extended family and the lack of a suitable alternative accommodation site should be given significant weight in favour of the appeals.

Intentional unauthorised development

27. The appeal site is owned by the appellant who bought the land on or around 23 August 2023. He does not own adjoining land and there is no evidence that he is responsible for its prior subdivision. He and his family had been on several transit sites, the last being during the months February to April 2023. Other than that they had stayed with friends and family and sometimes just chose to go to a layby. They were often moved on after a week or so. Regarding the appeal site the appellant had some planning people look at it and considered that due to his father's health condition they should stop travelling. It is undisputed that he did not occupy the site in advance of the planning application being submitted despite having no authorised site to reside on, and that that he and his family moved on to the site, having run out of temporary places to stay.
28. The government's planning policy of 31 August 2015 made intentional unauthorised development (IUD) a material consideration in determining planning applications and appeals. It was laid in the House of Commons on 1 December 2015 as a written ministerial statement (WMS). A concern of the Government was that there is no opportunity appropriately to limit or mitigate harm that has already taken place. The WMS refers to such development involving local planning authorities having to take expensive and time consuming enforcement action. The policy applies to the settled and the traveller community equally. Emphasis is placed on protecting GB land.
29. The appellant accepts through his agent that the development is unauthorised and was intentional, although it is significant in my view that they had nowhere else to go. The application was made on 25 May 2023 and refused on 17 August 2023 after which the appellant entered the land. A temporary stop notice was served on him on 24 August 2023. I note that the Council did not seek to extend the scope of the temporary stop notice to occupation of the site. Despite this, in the days or weeks following, and without planning permission, the appellant created the unlawful access to the site by destroying the well-established hedgerow and proceeded to cover a very considerable part of the field with hardstanding.
30. I note the comments made at the hearing, however overall, I attach more than minor weight to IUD in the overall planning balance.

Other matters

31. I have considered the written representations made from interested persons. Some concerns raised could be resolved through the use of conditions discussed below. The local highway authority for the area did not object to this proposal. I am satisfied from their comments and my site inspection that the site has a safe and convenient vehicular access. NPPF/115 states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. In the absence of any technical evidence there are no grounds on which permission should be refused for such a reason.
32. The flood risk assessment (FRA) includes maps from the Environment Agency (EA) and the Council's mapping corresponds with this information. The area of habitable accommodation has been placed outside flood zones 2 and 3. The EA

was concerned that the FRA should take the impacts of climate change into account. The applicants responded to the objection but no further comments from EA were received. The Council's Coastal and Drainage engineers did not object on flood risk grounds. I have no good reason to disagree with the Council's assessment that the site is not impacted by climate change according to its flood risk information and that accordingly, an updated FRA would not be required. I acknowledge the concerns of interested parties relating to the treatment of wastewater in the area, however I am satisfied that a suitably worded condition would ensure that a satisfactory means of surface and foul drainage could be achieved on site including that the site's ground surface remained permeable.

33. The change of use from arable farmland was raised as a concern but no supporting evidence, for example on the quality or scarcity of such land, was received that would mean any appreciable weight could be given to this factor.
34. Other appeal decisions cited by the Council (APP/L3815/C/20/3256647/3256641 and Ref APP/L3815/W/20/3261808) were dismissed on grounds that were not comparable with the circumstances of the current appeals and therefore they do not carry any significant weight here.

Planning balance and conclusion

35. The appellant's case involves consideration of the best interests of children who occupy the appeal site, Article 8 of the European Convention of Human Rights and the Public Sector Equality Duty which I have taken into account in this decision.
36. I have found that the form of development is in principle acceptable in its location outside settlement boundaries and complies with CLP Policy 36 and Policy H of PPTS. The appeal site is agricultural land in open countryside, outside settlement boundaries as identified by the CLP. The prior subdivision of the larger field has produced a piecemeal form of development, however the fact that it is detached from the nearest settlement does not itself preclude consideration of its acceptability as a location the countryside.
37. Furthermore, there are no nationally designated areas of protection that would be affected by the use of the site. Although there are some impacts that undermine the character and appearance of the open countryside, these impacts may be mitigated satisfactorily by means of conditions including a site development scheme which would adequately screen the site and assimilate the structures into their surroundings without unacceptably harming local landscape character, in accordance with CLP Policies 33, 45, 48, NPPF/section 15 and PPTS/26.
38. The appellant acknowledges that IUD has occurred. Given the circumstances which include the lack of suitable alternative accommodation but also the egregious nature of the inception of the use, some weight is given to this factor.
39. Paragraph 27 of PPTS states that the inability to demonstrate an up-to-date 5 year supply of deliverable sites should be a significant material consideration. It is common ground that there is unmet need for traveller sites in the district and that the unmet need should be given significant weight. No alternative sites have been provided as part of a local plan allocation. The ELP is unlikely in

the near future effectively to address the significant shortfall of provision. The unmet need for gypsy and traveller sites in the district and the ongoing failure in policy terms to address it, are matters carrying very considerable weight.

40. The lack of any suitable, affordable and available alternative accommodation for the appellant and his family is accorded significant weight.
41. Drawing these matter together I find that the benefits of the development outweigh the harms and planning permission should be granted. The site is suitable in principle, subject to successful implementation of a site development scheme, for a caravan site for gypsies and subject to the other conditions described below, meet the aims of Policies 36, 45, 48 and 49 of CLP, section 15 of the NPPF and paragraphs 25 and 26 of the PPTS.
42. By s70(2) of the 1990 Act, regard is to be had to the development plan, so far as material to the application, and to any other material considerations. By s38(6) Planning and Compulsory Purchase Act 2004, if regard is to be had to the development plan in any such determination, that must be made in accordance with the development plan unless material considerations indicate otherwise. The development complies with the specific development plan policies for traveller sites as well as those other CLP policies key to the determination of the appeals. None of the other considerations raised indicate that permission should not be granted in accordance with the development plan.
43. Accordingly I shall grant planning permission in respect of Appeal A (the deemed application under s177(5)) and in respect of Appeal B.

Conditions

44. A condition is required to specify the appropriate plans in accordance with which the development should proceed. Permission is granted for the use on the basis of the PPTS and local plan policies relating to traveller sites, therefore a condition should be imposed to restrict occupation to persons with PPTS status. It is also necessary to restrict the number and type of caravans sited on the land in order to protect the character and appearance of the area. The use of the site would be acceptable for any traveller, therefore there is no need to attach a personal condition, or a time limited condition.
45. Conditions are necessary to restrict commercial activities, manage external lighting and require landscaping to be provided and maintained, in the interests of protecting the amenities of the area. Conditions are also required to control surface and foul water drainage and waste disposal in order to prevent pollution and minimise risks of flooding, to include monitoring of the drainage test pit. A condition is required to provide ecological enhancements on site to safeguard the biodiversity value of the site. Also, in the interests of protecting wildlife and the character of the area a condition controlling external illumination should be attached to the permission.
46. Condition 5 is imposed is to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. It should be based on the outline landscape scheme submitted by the Appellant's landscape architect (cf Condition 1) which would include the configuration of the vans to avoid broadside views of the vans and planting around and within the site to enable the various structures to have minimal

impact on the landscape setting. There must be a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matters before the development takes place.

47. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

Appeal A on ground (g)

48. Since planning permission will be granted on the deemed application it is unnecessary to consider the appeal on ground (g).

Conclusion on Appeal A

49. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

Conclusion on Appeal B

50. For the reasons given above I conclude that the appeal should be allowed.

Formal Decisions

Appeal A

51. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the use of the Land adjacent to Tranjoeen, Bracklesham Lane, Bracklesham Bay, West Sussex PO20 7JE as a residential mobile home/caravan site as shown on the plan attached to the notice subject to the conditions in the attached Schedule.

Appeal B

52. The appeal is allowed and planning permission is granted for the use of the Land adjacent to Tranjoeen, Bracklesham Lane, Bracklesham Bay, West Sussex PO20 7JE as a residential mobile home/caravan site in accordance with the terms of the application Ref 23/01064/FUL dated 25 May 2023 subject to the conditions in the attached Schedule.

Grahame Kean

INSPECTOR

Schedule of conditions (Appeals A and B)

- 1) The development hereby permitted shall be carried out in accordance with the plans: 2210BR_R0_000 site plan, and TDA.2912.01 Proposed Site Layout and Outline Landscape Scheme November 2023.
- 2) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 3) No more than 6 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 3 shall be static caravans) shall be stationed on the site at any time.
- 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site and no commercial activities shall take place on the land, including the storage of materials unrelated to the residential use of the land.
- 5) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for: the means of foul and surface water drainage of the site including the monitoring of the drainage test pit for the cesspit; proposed and existing external lighting on the boundary of and within the site; the internal layout of the site, including the siting of caravans, plots, hardstanding, access roads, parking and amenity areas; tree, hedge and shrub planting and where appropriate earth mounding including details of species, plant sizes and proposed numbers and densities; ecological enhancements comprising the installation on the site, including the precise location of: a) a bat box facing south/south westerly 3- 5m above ground; b) a bird box; and c) a hedgehog nesting box (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained in accordance with each of the approved details.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 6) At the same time as the site development scheme required by condition 6 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of 5 years of the proposed planting beginning at the completion of the final phase of implementation as required by that condition. The schedule shall make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order) no external illumination shall be provided on the site other than in accordance with a scheme that shall first have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the proposed location, level of luminance and design of the light including measures proposed to reduce light spill and the impact on protected species. Thereafter the lighting shall be maintained in accordance with the approved lighting scheme in perpetuity.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected within the site other than any such that are expressly permitted pursuant to the approved site development scheme.

APPEARANCES

FOR THE APPELLANT:

Dr Angus Murdoch	Director of Murdoch Planning Limited
Mr Crandon	Landscape Architect
TC	Appellant
LC	Appellant's partner

FOR THE LOCAL PLANNING AUTHORITY:

Ms Kieron	Planning Officer
Andrew George	Planning Officer
Martin Mew	Planning Policy Officer