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# Appeal Decision

Site visit made on 12 November 2024

**by J Bowyer BSc(Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 November 2024**

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**Appeal Ref: APP/C1435/W/24/3341189**

**Barn Gate Meadows, Lewes Road, Laughton, Lewes BN8 6BN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Henry Dennard against the decision of Wealden District Council.
  - The application Ref is WD/2023/1264/F.
  - The development proposed is 'three pitch settled Gypsy accommodation site'.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are whether or not the proposal would be in a suitable location having regard to:
  - i) its location outside of any development boundary and access to services, facilities and sustainable transport modes; and
  - ii) flood risk.

## Reasons

*Location, Access to Services, Facilities and Sustainable Transport Modes*

3. The appeal site is located outside of any defined development boundary. In such locations, saved Policy GD2 of the Wealden Local Plan 1998 ('the WLP') indicates that development will generally be resisted unless it accords with specific policies in the Plan. It has not been argued that the proposal for three pitches for settled Gypsy accommodation would be of a type supported by any these policies and it would therefore conflict with saved Policy GD2.
4. Nevertheless, Policy WCS11 of the Core Strategy Local Plan 2013 ('the CS') outlines that proposals for residential sites for Gypsies and Travellers will be supported where specified criteria are met. These criteria do not preclude development outside of development boundaries. However, they include a requirement that sites should be well related to existing settlements with local services and facilities. The policy further states that sites should be within or close to such settlements or close to major roads and/or public transport thus affording good access to local services.
5. In addition, Policy H of Planning Policy for Traveller Sites ('PPTS') sets out that new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan should be strictly limited. The appeal site includes a barn with an access from Lewes

Road. There is some scattered development nearby, but the surrounding area predominantly comprises open fields and areas of woodland and I consider that the proposal would sit within open countryside.

6. The nearest settlement of Laughton is around 1.5km to the west, but much of the route would be along sections of Lewes Road which are subject to the national speed limit and which lack lighting or separate footways, with the roadside lined by uneven verges. There are also no separate cycle paths. These factors would discourage walking or cycling for all but the most willing and able, particularly at night or in poor weather. Moreover, services in Laughton include a village shop, pub and school but are otherwise limited. Occupiers of the site would therefore need to travel to Hailsham which is around 8km away or Lewes at a similar distance to be able to access a range of day-to-day services. Bus stops on Lewes Road are served by a reasonably frequent bus route that would provide connections to these centres and Laughton. However, while these would be within walking distance of the site, I have already noted that conditions along Lewes Road would discourage walking.
7. As a result and noting the distances involved, occupiers of the site would be unlikely to regularly walk, cycle or use public transport in order to meet day to day needs and there would be a significant reliance on private vehicles. Policy WCS11 of the CS does not specifically require services to be within walking or cycling distance, and while it refers to public transport, it also refers to sites being close to major roads. I also appreciate that in principle, the PPTS allows for Gypsy and Traveller sites in rural settings and the National Planning Policy Framework ('the Framework') recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural locations.
8. However, I find having regard to the distances involved and the factors above that the site would be detached and not well related to existing settlements with local services and facilities. Furthermore, while I observed that the site is relatively close to a junction with the A22, the site could not reasonably be described as affording 'good' access to local services. In these respects, the proposal would conflict with Policy WCS11 of the CS. In the terms of Policy H of the PPTS, it would also be 'away from existing settlements' where new traveller site development should be strictly limited and the proposal would be contrary to objectives in the Framework seeking to prioritise walking, cycling and public transport use and to support a move to a low carbon future. I note that a similar view was reached on an appeal decision for a proposal for four pitches on Land adjacent to Lower Vert Wood nearby<sup>1</sup>.
9. The appellant has drawn my attention to other appeal decisions where the accessibility of proposed Gypsy and Traveller sites have been considered but the sites at Hillybarn Farmhouse<sup>2</sup>, Highview<sup>3</sup> and Clackhill Yard<sup>4</sup> are not in Wealden. The relevant development plan context would therefore be different. Moreover, while I have limited details of each proposal, the Hillybarn Farmhouse decision suggests that the site was 2.2km to the closest edge of Crawley while the Highview decision suggests the site was 3.8km from the edge of Warlingham. These distances would be greater than between the appeal site and Laughton, but the settlements are much larger and would

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<sup>1</sup> Appeal ref APP/C1435/W/15/3138920

<sup>2</sup> Appeal ref APP/Z3825/W/20/3265226

<sup>3</sup> Appeal ref APP/M3645/W/18/3205027

<sup>4</sup> Appeal ref APP/Y3940/W/24/3338093

provide access to a greater range of services at markedly closer range than Hailsham or Lewes relative to the appeal site. In addition, the decision for Clackhill Yard indicates that the site would be around 200m from Bradenstoke which would be walkable and that it would not be 'away' from the settlement in the terms of PPTS Policy H. Lyneham was also noted as being a short drive away providing more services. From the information that is before me, these examples are not therefore directly comparable to the particular circumstances of the appeal proposal which I have considered according to its own specific merits.

10. I have no reason to find that the proposal would dominate the settled community or place undue pressure on local infrastructure. I nevertheless conclude for the reasons above that it would not be in a suitable location having regard to its location and access to services, facilities and sustainable transport modes and there would be conflict with saved Policy GD2 of the WLP and Policy WCS11 of the CS. That said, journeys to reach a range of necessary services by private vehicle would not be excessive so as to unduly restrict occupiers' ability to reach them and associated adverse environmental effects would be modest. The degree of harm arising from the accessibility of the site would consequently be relatively limited.
11. The Council's reason for refusal suggests that the proposal would also be contrary to Policy WCS6 of the CS but while this Policy outlines the strategy for additional development within rural areas, it does not explicitly preclude housing development outside of the identified locations. In addition, the proposal is not for a mobile home in association with agricultural or similar rural enterprises which is referenced in saved Policy DC22 of the WLP as a form of residential development that may be permitted outside of development boundaries. However, I note that WLP Policy DC21 referred separately to proposals for Gypsy sites. Irrespective of any lack of consistency with the PPTS, Policy DC21 is not saved and so it no longer forms part of the development plan. Against that context though, I do not find the lack of support from Policy DC22 to weigh against the proposal.

#### *Flood Risk*

12. The appellant maintains that the appeal site is not at risk of flooding and has provided an extract of mapping showing it is in flood zone 1. However, while it is not therefore an area identified as at risk of fluvial or coastal flooding, the Council indicates that the site includes areas identified on Environment Agency mapping as at medium risk of surface water flooding. Concerns may not have been raised about surface water flooding as part of a previous application for conversion of the barn on the site. Nevertheless, while I note the appellant's comments that they have never known the access to be impassable, I have not been provided with any compelling evidence demonstrating the identification of surface water flood risk at the site in respect of the current proposal is mistaken or materially flawed.
13. The Framework sets out that caravans and mobile homes intended for permanent residential occupation would be classified as 'highly vulnerable' to flood risk. It requires a site-specific flood risk assessment where such uses are proposed on land that may be subject to flooding from other sources which would include surface water, and the application of the sequential and exception tests, as applicable.

14. In this case, the pitches may be located beyond the area identified as at risk of surface water flooding but the Council suggests that parking areas along with the sole access to the highway would be within the flood risk area. Noting that these elements would be integral to the development and would put occupiers at greater risk than a site without surface water flooding, the location of the pitches within the site does not negate the requirement for a site-specific flood risk assessment and the sequential and exception tests as applicable.
15. There is no site-specific flood risk assessment before me. In addition, the Framework confirms that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The national Planning Practice Guidance ('PPG') confirms that this applies in respect of all sources of flooding including areas at risk of surface water flooding.
16. It is common ground between the main parties that there is an unmet need for Gypsy and Traveller sites in the district and that the Council is unable to demonstrate a 5 year supply of deliverable sites. Be that it may, the PPG confirms that the absence of a 5-year land supply is not a relevant consideration for the sequential test for individual applications. I note references to a lack of vacancies and long waiting lists at existing gypsy sites in Wealden and surrounding areas, but the appellant has not disputed the Council's comments that there are large areas within the district outside of any flood risk that could comply with the criteria-based policy for Gypsy sites. Nor have I been provided with substantive evidence demonstrating that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. I am therefore unable to conclude that the sequential test would be passed. Given that the outcome of the sequential test is relevant to the location of the development and so would go to the heart of the proposal, this is not a matter that could appropriately be addressed through planning conditions.
17. In addition, the Framework requires that development in areas at risk of flooding should be made safe for its lifetime. It further sets out that development should only be allowed in areas at risk of flooding where it can be demonstrated that, amongst other things, the development is appropriately flood resistant and resilient; any residual risk can be safely managed; and safe access and escape routes are included.
18. The appellant asserts that occupiers of the site would be able to reside in caravans during flood events and advises that they would be agreeable to signing up to flood warnings. However, the PPG indicates that access routes should allow occupants to safely access and exit dwellings in design flood conditions. From the evidence before me and in the absence of any site-specific flood risk assessment, it is far from clear that this would be achievable as part of the proposal. It is also unclear whether a suggested condition to require details of provision for surface water drainage works would be able to effectively address existing surface water flood risk or flows at the site.
19. Given the degree of uncertainty, I am not satisfied that the lack of flood risk information could appropriately be addressed through planning conditions

requiring further detail and I have no cogent basis to determine that the development would be safe for its lifetime.

20. I have noted examples of appeal decisions on sites at Pear Paddock, South of Dunham Road and South of Green Lane Piggeries<sup>5</sup> where further information in respect of flood risk was sought by planning conditions. However, all of these decisions refer to some form of flood risk assessments or analysis already provided which would offer some level of information to be able to consider flood risk that is absent in this case. In requiring a flood evacuation plan by planning condition, the South of Green Lane Piggeries decision also referred to the predictability of flooding from tidal surges which was the source of risk in that case, allowing for flood warning systems to be utilised. In contrast, the risk here is from surface water which is less predictable than tidal surges and it is unclear that there would be any effective flood warning system available. These examples do not therefore alter my view that further detail could not appropriately be sought by planning conditions in this case.
21. Given my findings above that the sequential test has not been passed and that I cannot be sure that future occupiers of the site would not be put at unacceptable risk of flooding, I conclude that the proposal would not be in a suitable location in respect of flood risk. It would conflict with Policy WCS11 of the CS which includes a requirement for sites for Gypsies and Travellers to avoid locations where there is a risk of flooding. It would also be contrary to the Framework which sets out that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, and that where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

## **Other Considerations**

### *Need for Gypsy and Traveller Accommodation*

22. Policy WCS10 of the CS identified that provision would be made for 32 pitches to meet the identified need for Gypsies and Travellers between 2006 and 2016 with sites allocated in a Delivery and Site Allocations Development Plan Document. However, this document was not progressed.
23. More recently, the East Sussex Gypsy, Traveller and Travelling Showpeople Accommodation Needs Assessment 2022 ('GTAA') considered the need for pitches across the study area and provides a more up to date picture than a 2015 report which is also referenced in the appellant's evidence. In Wealden, the GTAA identified a need for 32 pitches between 2021 and 2040 for Gypsies and Travellers meeting the PPTS definition. Over the same period, it identified a total need for 51 pitches taking into account accommodation needs of all ethnic Gypsies and Travellers, rather than just those meeting the PPTS definition.
24. However, the GTAA applied the definition of Gypsies and Travellers within the 2015 version of the PPTS which excluded those who had ceased to travel permanently. The PPTS definition has since been revised to include 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. A

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<sup>5</sup> Appeal refs APP/U2235/W/23/3316176, APP/A3010/C/21/3273252 and APP/L3815/C/20/3256647, APP/L3815/C/20/3256648 and APP/L3815/C/20/3256641

proportion of the Gypsies and Travellers that the GTAA considered to meet only the ethnic definition may also now therefore fall within the PPTS planning definition. This would put the total need figure somewhere between 32 and 51 pitches. I note the appellant's suggestion that an allowance for 66% is commonly applied which would put the figure towards the higher end of the range, but even taking the lowest end of this range, I consider that the need for pitches for Gypsies and Travellers would be significant.

25. The Council referred to a pending application for pitches in Hailsham, but it has not detailed any permissions providing pitches that would go towards meeting the need identified in the GTAA. It also accepts that it is unable to demonstrate a 5-year supply of deliverable sites. Moreover, it acknowledges that there has been historic undersupply of pitches and from the information before me, unmet need has persisted for a considerable period and at least since 2016 when the appeal decision for the nearby Land adjacent to Lower Vert Wood site was issued. The Council indicates that it is progressing a new Local Plan which will set out any future allocations and policy to meet need, but this has not yet been submitted for examination. As a result, provision to meet identified need in future is currently uncertain and it is far from clear that the unmet needs will be addressed in the short-term.
26. The appellant's final comments indicate that they would be agreeable to the Council's suggested conditions which included a proposed condition restricting occupation to persons meeting the definition of Gypsies and Travellers at Annex 1 of the PPTS (or its equivalent in replacement national policy). Subject to this condition, the proposal would contribute to meeting the identified need for those who meet the current PPTS definition.
27. Given the unmet need for pitches, the lack of a five-year supply and the historic failure of policy to meet needs, the provision of 3 pitches on the site which would contribute to addressing the current shortfall in pitches is an important material consideration which attracts significant weight in favour of the proposal.

#### *Future Occupiers*

28. The appellant advised in their final comments that they are part of a longstanding extended Gypsy family and 'have a waiting list of family connections in the Wealden area that would benefit from this plot to avoid doubling up on plots locally'. However, the appeal is not predicated on the personal circumstances of any specific individuals and I have no firm evidence indicating that dismissal would leave anyone without alternative accommodation or that approval would serve the best interest of any particular child. That said, future occupiers of the pitches would be likely to have the protected characteristic of race under the Public Sector Equality Duty contained in the Equality Act 2010 ('the PSED') which sets out the need to, amongst other things, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not. I have therefore had due regard to the PSED. I have also had regard to rights conveyed within the Human Rights Act 1998, including the right to respect for private and family life, and the home.
29. The proposed pitches could offer occupiers a settled base which would provide a home while also facilitating a nomadic way of life. Insofar as the proposal would provide accommodation in an area where the general need for pitches

and lack of supply further indicate that accommodation needs for Gypsies and Travellers are not currently being met, it would also help to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not. The equality implications flowing from this are an important factor in favour of the proposal.

### **Other Matters**

30. The appellant highlights minimal letters of objection to the development, but that is not a factor weighing positively in favour of the proposal.
31. Some additional appeal decisions to those referenced above are included with the appellant's submission. However, there is little to show that their circumstances would be directly comparable to those of the appeal scheme and they do not alter my assessment of the individual merits of this proposal.
32. I have noted reference in the Council's evidence to the Ashdown Forest Special Protection Area ('SPA') and Special Area of Conservation ('SAC') which are European sites designated under the Conservation of Habitats and Species Regulations 2017 (as amended). Had I found the proposal to be otherwise acceptable, I would need to consider potential for any effects on these sites in more detail. However, as I am dismissing the appeal for other reasons and it could not alter my decision, this has not been necessary.

### **Planning Balance and Conclusion**

33. I note that the appeal site is not within the High Weald Area of Outstanding Natural Beauty; the South Downs National Park; or any SPA, SAC, Ramsar site or Site of Special Scientific Interest which the GTAA highlights affect much of Wealden. However, I have found that the proposal would not be in a suitable location in respect of flood risk as well as its location outside of any development boundary and access to services, facilities and sustainable transport modes. There would be resulting conflict with saved Policy GD2 of the WLP and Policy WCS11 of the CS in particular.
34. The weight that I afford to the conflict with saved Policy GD2 of the WLP in respect of the location of the site outside of development boundaries is limited in view of the lack of a 5-year supply of deliverable sites and unmet needs which are not being addressed within these boundaries. In addition, the provisions of Policy WCS11 of the CS in respect of the accessibility of the site would be broadly consistent with objectives in the Framework, but I have identified that the degree of harm arising in this regard would be limited.
35. Insofar as Policy WCS11 of the CS includes a blanket requirement to avoid locations where there is a risk of flooding, it is more restrictive than the Framework which does not preclude development subject to flood risk assessment and consideration of the sequential and exception test as applicable. In isolation, the weight that I afford to the conflict with this policy in respect of the risk of flooding is consequently limited. Be that as it may, the location of the site in an area at risk of flooding could have serious consequences for the safety of occupiers and I afford considerable weight to the failure to demonstrate that occupiers would not be put at unacceptable risk of flooding and to pass the sequential test in conflict with the Framework. Furthermore, the policies in the Framework concerning areas at risk of flooding provide a clear reason for refusing the development proposed. In such

circumstances, footnote 7 to paragraph 11 of the Framework makes it clear that even where the policies which are most important for determining the application are out of date, the presumption in favour of sustainable development would not apply.

36. I acknowledge that Paragraph 13 of the PPTS seeks to ensure that traveller sites are sustainable economically, socially and environmentally and highlights a list of matters to be addressed in policies. These include directing sites away from areas at high risk of flooding, but I have no firm reason to find that the proposal would offend many of the other themes listed. In addition, the provision of pitches in an area of unmet need where there is no five year supply and a historic failure of policy to meet needs would particularly contribute to social aspects of sustainability.
37. Even giving significant weight to the contribution that the proposal would make to addressing the current shortfall in pitches and the consequent equality implications though, I find that the considerations in favour of the proposal would not be sufficient to outweigh the cumulative harm that I have identified.
38. I have considered whether the harm could be reduced or overcome by the imposition of a time-limited condition. This would mean that adverse effects associated with the location of the site and its relationship with settlements, facilities and services as well as flood risk would not be permanent. However, the harm would not be lessened during any temporary period. The harm associated with flood risk in particular is a fundamental concern and in my assessment, the consequences of the resulting harm would still outweigh the other considerations in this case, even if it were not permanent. Furthermore, no other conditions would adequately overcome the harm identified to enable the grant of planning permission.
39. Drawing these matters together, I find that the adverse effects of the proposal, whether permanent or temporary, would significantly and demonstrably outweigh the benefits. As a result, the proposal would conflict with Policy WCS14 of the CS. It would further be contrary to the development plan when it is read as a whole and material considerations including the Framework, the PPTS and the need for accommodation do not indicate that a decision contrary to the development plan should be reached.
40. On that basis, I find that dismissal of the appeal would be in accordance with the law and necessary in a democratic society in pursuance of well-established and legitimate aims to, amongst other things, protect public safety and promote sustainable development in the interests of economic well-being and the protection of rights of others. In these circumstances, I find that there would not be unjustified interference with rights for respect for the home, private or family life. Furthermore, the relevant planning policy objectives could not be achieved by less imposing means. Dismissal of the appeal would be proportionate and the minimum necessary.
41. I therefore conclude that the appeal should be dismissed.

*J Bowyer*

INSPECTOR