



Appeal Decision

Hearing held on 28 February 2023

Accompanied Site Visit made on 28 February 2023

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2023

Appeal Ref: APP/Z3825/C/21/3280649

Downsview Paddock, New Hall Lane, Small Dole, West Sussex BN5 9YJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Tim Bloxham against an enforcement notice issued by Horsham District Council.
- The notice, numbered EN/20/0610, was issued on 12 July 2021.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the land from agricultural and equestrian use to use for the stationing of caravans for residential occupation and associated occupational development of hardstanding.
- The requirements of the notice are to:
 1. Cease the use of the Land for the stationing of caravans for residential purposes.
 2. Remove from the Land all caravans and associated residential paraphernalia.
 3. Remove from the Land all operational development comprising hardstanding incidental to the unauthorised use of the Land.
 4. Remove from the Land all materials and debris resulting from the compliance with the above steps 1 and 2.
 5. Restore the Land to its condition before the breach took place.
- The periods for compliance with the requirements are: Step 1 – ten (10) months and Steps 2, 3 & 4 – twelve (12) months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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. It is directed that the enforcement notice is corrected by adding Step 5 to its Section 6: Time for Compliance, also a period of twelve (12) months, and also varied by allowing a 12-month period for compliance with Step 1 as well, such that Section 6 will now read: 'Steps 1-5 – twelve (12) months from the date this notice takes effect', i.e. 12 months from the date of this decision.
2. Subject to this correction and variation 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.

The Notice

3. The notice as written fails to include a compliance period for Step 5 (the restoration of the land to its condition before the breach took place) and requires correcting as set out above. Notwithstanding that the notice has not been appealed on ground (g), that the period for compliance falls short of what should reasonably be allowed, I consider that, taking into account the main

issues below and my decision to dismiss the appeal resulting from them, the appellant and his family should be allowed a full year in order to comply with all the notice's requirements, including Step 1.

Main Issues

4. The reasons for issuing the notice made no mention of the development's effect on the Arun Valley's nationally designated habitat sites. But this reason was understandably introduced by the Council on appeal following Natural England's (NE) *Position Statement for Applications within the Sussex North Water Supply Zone – Interim Approach* (the PS) issued on 14 September 2021.
5. I reopened the Hearing following the appellant's request to address this issue by submitting a Water Neutrality Statement, which he did on 16 May. The Council and NE responded on 26 and 31 May respectively.
6. The main issues are therefore as follows:
 - The effect of the development on the integrity of the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site (hereafter called the Habitat Sites), specifically in relation to water neutrality;
 - Whether the appeal site is situated in an accessible location and complies with relevant local and national policies including the Council's spatial strategy;
 - The effect of the development on the character and appearance of the area;
 - Whether there are other material considerations that would outweigh any harm identified, such as the need for and supply of gypsy and traveller accommodation within the District, the availability of other sites for the appellant and his family to move to currently, and their personal circumstances.

Reasons

Effect on Habitat Sites

7. The SAC, SPA and Ramsar sites have been designated for their nature value. The SAC includes the Amberley Wild Brooks and Pulborough Brooks Sites of Special Scientific Interest (SSSIs) within which lie two core population centres of the rare and threatened Little Whirlpool Ramshorn snail and its supporting wetland habitats. The SPA includes wetlands which support an assemblage of wintering wildfowl including Shoveler, Teal and Bewick's Swan. The Ramsar site is noted for its wintering birds, rare invertebrates and aquatic plants.
8. Horsham District is supplied water by Southern Water from groundwater sources within the Sussex North Water Supply Zone (SNWSZ), within which the appeal site is located. The Habitat Sites have been shown to be linked hydrologically to the aquifer and layer of rocks from which water is currently being abstracted. The PS¹ advises that it cannot be concluded, with certainty, that such groundwater abstraction is not having an adverse impact on the integrity of the Habitat Sites in terms of their conservation objectives, by virtue

¹ And subsequent updates to it and relevant advice from NE on the Council's website.

of reduced water levels and potential water quality impacts on their important flora and fauna. Monitoring is ongoing and NE awaits a report of its findings before drawing definitive conclusions. However, currently NE advises that water abstraction within the SNWSZ cannot be ruled out as causing an adverse effect on the Sites.

9. NE advise that a review to date shows the Habitat Sites' condition is unfavourable. The SAC is failing its conservation objectives for the range and distribution of the snail species and in the main the SPA and Ramsar are not meeting their conservation objectives in respect of wintering bird population targets. NE is concerned that extra development within the SNWSZ will increase abstraction and further exacerbate the adverse impacts.
10. Consequently, NE advise that any new development must demonstrate water neutrality: that mains water use is the same or lower following the development. NE makes clear that water neutrality may well be required until the Habitat Sites are restored to favourable conservation status and that, in practical terms, this is likely to require the delivery of an alternative water supply, which is only estimated at best to be by 2030. I have seen no plans setting out how this is likely to be delivered.
11. The appeal site is some distance from the Habitat Sites but it lies in the SNWSZ. The appellant's home on the site is connected to mains water and the development has therefore led and would continue to lead to water usage in excess of how the site was used before he and his family occupied it. There was some discussion at the Hearing as to whether a water supply was previously located on the site in connection with horses previously stabled/grazed on the land, but the appellant has accepted in his Water Neutrality Statement (WNS) that there was no baseline water use.
12. Therefore, on adopting a precautionary approach as is required in respect of the Habitat Regulations 2017, I find it likely the development would have a small albeit significant effect on the hydrology of the Habitat Sites and on their qualifying features, either on its own or in combination with other projects. As the conservation objectives of the habitat sites may be undermined, it is necessary for me to conduct an Appropriate Assessment under the Regulations as to the effect of the development on their integrity, bearing in mind my conclusions below on the other main issues in this appeal.
13. The appellant has suggested a planning condition requiring the scheme set out in his WNS to be implemented. The WNS scheme proposes two solutions to achieve water neutrality for the development. First, by introducing rainwater harvesting from the roof of the appellant's mobile home and the use of this harvested water for flushing toilets, doing washing and for external water use, and by using water efficient fixtures and fittings. Secondly, by importing water in tankers from outside the SNWSZ every 14 days and storing it in a 2,200 litre underground tank.
14. The Council and NE are generally satisfied that the first solution will reduce the amount of mains water required. But that would still leave a total amount of at least 123 litres of water a day to be sourced from outside the SNWSZ or offset in some other way. Both the Council and NE say that importing water every 14 days is not a satisfactory solution in perpetuity, which is what this solution could possibly amount to.

15. I agree. There would remain a legal right for the appellant to connect to the mains water supply and if the supply in the storage tank was not replenished in time there would have to be some alternative water supply, probably a mains connection which also seems to be required as a back-up to the rainwater harvesting system. Hence, whether such a solution was secured by condition or by a S106, there would inevitably arise problems of enforceability with such a requirement. Such a solution would also place a heavy monitoring burden on the Council, which would be unreasonable. There could also be health concerns if such a water storage solution was not adequately maintained and cleaned, which would then also necessitate using mains water.
16. Furthermore, simply in terms of overall sustainability, the provision in perpetuity (or at least until a strategic solution to supply water to the region is achieved in the long term, which could take many years) of water supplied to new residences by tanker/bowser would be inherently unsustainable simply in terms of additional lorry journeys alone, let alone building new development without the utility infrastructure necessary for its practical use. For all these reasons, this second solution set out in the WNS is unacceptable and unlikely to ensure that the development would be water neutral.
17. As a result, I conclude the development would or certainly could adversely affect the integrity of the SAC, the SPA and the Ramsar site. In these circumstances and adopting the precautionary principle, Regulation 63(5) of the Habitats Regulations precludes the proposal from proceeding unless there are no alternative solutions or imperative reasons of overriding public interest and compensatory measures. No case is made that such circumstances apply, although I also address potential relevant issues below in the Planning Balance section. As such, the proposal would conflict with the Horsham District Planning Framework 2015 (HDPF) Policy 31 which states development should be refused if it is likely to have an adverse impact on biodiversity sites, unless appropriate mitigation measures are provided. It would also conflict with paragraphs 179 and 180 of the National Planning Policy Framework.

Location

18. HDPF Policy 3 is permissive of development within the built-up areas of settlements including 'Smaller Villages' such as Small Dole, which are defined as villages with limited services but with good accessibility to larger settlements, such as Henfield, which has a good range of services and local employment provision, 4.5km or a 7-minute car journey to the north on the A2037. However, the site lies just outside Small Dole's settlement boundary as set out on Inset Map 15, although adjoining it on its eastern boundary.
19. New Hall Lane is a private road with houses on both sides that runs west off the main A2037 road and contains no dedicated footway, but its surface is tarmacked and well maintained, and it is only a 12-minute walk to the small grocery store cum post office via footways on the main road situated in the centre of the village, and similar to bus stops giving access to Routes 100 and 106. The appellant and his family are registered with the medical centre at Henfield, and his son attends Twineham CE Primary School, which is a 15-minute drive away. As such, although just outside the settlement boundary, the site effectively feels part of the village and it is in a reasonably accessible location, including by local buses, and only a short drive to a range of facilities in Henfield and nearby villages.

20. HDPF Policy 26 requires development to be essential to its countryside location, such as to support agriculture. Policy 4 requires development sites to be allocated in the Local Plan or Neighbourhood Plan, which this site is not. As such there is a technical breach of Policies 3, 4 and 26 because the site lies just outside Small Dole's settlement boundary. However, I consider that the development lies in an accessible and therefore sustainable location and as such complies with paragraph 25 of Planning Policy for Traveller Sites (PPTS) because it is not located in the open countryside away from existing settlements. Most importantly, it complies with all the relevant criteria of Policy 23 (Gypsy and Traveller Accommodation). Consequently, it is acceptable as a gypsy and traveller site.

Character and Appearance

21. As set out above, the site lies near the western edge of the village. To its rear is a small plant nursery but even to its west, also outside the designated settlement boundary, there are a number of dwellings including the substantial New Hall as well as a range of associated outbuildings. As such I cannot see any objection in principle to an additional residential use on this site, simply because such a use is in keeping with the existing character and appearance of the locale.
22. The appellant and his family occupy a mobile home situated at the rear of the site and there is also an adjacent day room containing washing facilities as well as another smaller mobile home adjacent to the site's western boundary (which was on the site as part of the previous lawful use), as well as children's play equipment. The site is surrounded by well-tended laurel hedges as well as a post and rail fence to its frontage and a close boarded fence to its western boundary adjacent to the access track to the plant nursery. Most of the site is laid to lawn with an access track running to the front of the main mobile home through metal gates fixed to brick piers. It is a well-kept and pleasant looking residential plot much like the other detached dwellings on the Lane, albeit many of those are two stories in height.
23. The Council has drawn my attention to the dismissal of three appeals for new residential dwellings, the last dismissed in 2020 and many refusals for such by the Council in recent years. I acknowledge the last Inspector's reasoning for dismissing that appeal, but this proposal is different to that scheme. First, because this appeal concerns single-storey mobile homes, which are less prominent from the Lane than a two-storey house would be and is hardly visible from surrounding public footpaths. And secondly, more fundamentally, for the reasons set out above, that the essential character and appearance of the area, including the houses immediately to the west, is one of dwellings and their gardens rather than open countryside.
24. As such I conclude that it complies with HDPF Policies 25 (The Natural Environment and Landscape Character) and 33 (Development Principles), as well as Policy 23 1. e, which requires development to have an acceptable impact on the character and appearance of the landscape, which this proposal does.

Other Material Considerations

25. It is agreed that the Bloxhams are Romany gypsies and therefore meet the PPTS definition of gypsies and travellers. They travel a lot in the summer including for Mr Bloxham's work – he runs a construction business. Although the PPTS definition has been found to be discriminatory following the judgement in the *Lisa Smith*² case, the Bloxhams would meet this definition and previous iterations of it because of their nomadic habit of life.
26. The Council's *Gypsy and Traveller Accommodation Assessment (GTAA) – Final Report* was published in January 2020, which provides background evidence to the emerging new Local Plan (timetabled to be submitted next summer), suggests a need for 93 pitches for gypsies and travellers between 2019-2036, of which at least 60 are required within the first 10 years of that period. The appellant suggests that the need could be higher following the *Lisa Smith* judgement, although this has not been quantified. The need is therefore undoubtedly substantial.
27. I understand that no sites have yet been provided against this objectively assessed need for traveller sites, principally because of the delay in submitting the emerging Local Plan. The Council accepts that it cannot demonstrate an up-to-date five year supply of deliverable gypsy and traveller sites. PPTS paragraph 27 makes clear that the lack of a 5YHLS is a significant material consideration when considering applications for the grant of temporary permission. But I also consider it to be material in this case, which seeks a permanent permission.
28. The Council argues that there are, however, other sites that the family could move to in the District. In particular, Greenfield Farm in Valewood Lane, Barns Green, which is owned by the appellant's grandparents, and which the Council argues has four unused mobile homes, although Mr Bloxham claims that these are owned by other relatives and that there are no spare pitches. Secondly, the Sussex Topiary site in Naldretts Lane, Rudgwick, owned by Mr Bloxham's parents, which has at least one vacant pitch available. The family apparently lived there for about six months but did not get on with the appellant's sisters who also live on that site, hence their purchase of the appeal site.
29. I understand the Council's arguments in this respect. But, even if I was to side with it and conclude that there are vacant sites on one or both of these sites, I have concluded for the reasons stated above that the appeal site is in principle an acceptable gypsy and traveller site, so the appellant and his family should not be forced to move back onto the sites owned by his parents and grandparents, given that they would rather live here.
30. The Council has alleged intentional unauthorised development (IUD) and the consequent breach of the Written Ministerial Statement³ in this regard. I understand the distress to neighbours in the Lane and damage to some trees that bringing the mobile home onto the site caused at the time and I attach moderate weight to the fact that clearly this did amount to IUD.
31. The appellant's son attends Twineham CE Primary School. They also have a daughter who is 2 years old. The best interests of children are a primary consideration in this appeal. The Bloxhams are keen for their children to have a

² *Lisa Smith v SSHCLG & Ors* [2022] EWCA Civ 1391

³ Green Belt protection and intentional unauthorised development, 17 December 2015

good uninterrupted education. Whether or not their children remain at Twineham school there are other nearer primary schools including at Henfield, which are also only a short car journey away, and so this site is in a relatively accessible location to ensure their children's continuing education needs are met for the foreseeable future.

Planning Balance

32. I have found that the development would be in a suitable location and would not unacceptably harm the character and appearance of the area. The development would beneficially increase the supply of pitches at a time when there is a recognised general shortage and granting planning permission would ensure a settled base for the appellant and his young family.
33. However, following an appropriate assessment, I have found the development would adversely affect the integrity of the Habitat Sites. In such circumstances, the Habitats Regulations preclude me as the competent authority from allowing the development. This is the overriding factor. A temporary permission or a personal planning condition would not address the harm that would be caused to the Habitat Sites, albeit I have altered the requirements of the notice to reasonably allow the appellant and his family a full year to look for an alternative site.
34. The appellant and his family are Romany Gypsies and have protected characteristics of race in terms of the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010. I have also considered the rights of the appellant and his family under the Human Rights Act 1998, in particular Article 8 which affords the right to respect for private and family life as well as a person's home. This is a qualified right, and interference may be justified where in the public interest. The concept of proportionality is crucial. I have taken into account the personal circumstances of the appellant and his family in my considerations and do so again specifically in this conclusion having due regard to the requirements of the PSED and in terms of human rights.
35. The refusal of planning permission is likely to lead to the appellant and his family needing to move from the site which is their home. Dismissing the appeal would interfere with their rights. The best interests of the appellant's children are a primary consideration here and dismissal of the appeal could and probably would result in his son having to move schools, even if the family were to move back to the Sussex Topiary site or to the Barns Green site. Disrupting the child's education would not be in his best interests.
36. However, Regulation 63(5) of the Habitats Regulations precludes the proposal from proceeding unless there are no alternative solutions or imperative reasons of overriding public interest and compensatory measures. No case is made that such circumstances apply. There are alternative solutions in that the appellant and his family can in principle look for and find an alternative site outside the SNWSZ or could come up with an acceptable alternative solution to deliver water neutrality for the residential use of the site.
37. In any case, this is not in itself an imperative reason of overriding public interest. The interference in the appellant's human rights is justified in the public interest and in a proportionate way, specifically in relation to the legitimate aim of protecting the integrity of recognised habitat sites and the

provisions of the Regulations. From the evidence before me, it is apparent that the protection of the public interest in relation to the safeguarding of the habitat sites cannot be achieved by a means less than interfering with the appellant's rights. As such, the dismissal of the appeal is proportionate and appropriate.

Conclusion

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

Nick Fagan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

- Phil Rowe, Agent
- Tim Bloxham, Appellant
- Nicole Bloxham, his wife

FOR THE LOCAL PLANNING AUTHORITY:

- Jennifer Baxter, Case officer
- Helen Sissons, Enforcement Officer
- Adrian Smith, Major Applications Team Leader

INTERESTED PARTIES:

- Cllr Mike Croker, Ward member for the Council
- Amardip Healy, Blake Morgan LLP on behalf of interested parties

DOCUMENTS SUBMITTED AT THE HEARING

1. Appeal decisions APP/Z3825/C/21/3271264 & 3271265
2. Blake Morgan's comments on the Council's suggested conditions

DOCUMENTS SUBMITTED FOLLOWING THE HEARING

1. Water Neutrality Statement (WNS) submitted by appellant 16 May 2023
2. Comments on such by LPA by email of 26 May 2023
3. Comments on such by NE by email dated 31 May 2023
4. Various email correspondence earlier in May 2023 between PINS and the main parties allowing the submission of the WNS and comments on it as per above