



Appeal Decision

Site visit made on 15 February 2022

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2022

Appeal Ref: APP/Z3825/W/20/3265226

Hillybarn Farmhouse, The Mount, Ifield, Crawley RH11 0LF

- 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 Sammy Bristow against the decision of Horsham District Council.
 - The application Ref DC/20/1993, dated 14 October 2020, was refused by notice dated 11 December 2020.
 - The development proposed is described as "full application for a proposed two pitch settled Gypsy accommodation site".
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal submissions refer to the highway outside the site as both The Mount and Hillybarn Road. For clarity purposes, I confirm that in this decision the name "The Mount" refers to the road directly to the front of the appeal site.
3. The application form states the site is currently used as paddock land and that the development has not started. However, on my visit I saw a single mobile home on the site as well as an adjacent area of laid surfacing used for parking with a connecting drive to the highway access. As such, it appears the development has partially commenced. My decision is based upon the information on the appeal plans which shows the provision of 2 pitches, each containing a mobile home and a utility building.
4. The Council has advised that, since its decision, it has formally made the Rusper Neighbourhood Plan 2021. This is now part of the development plan for the area along with the Horsham District Planning Framework 2015 (HDPF). The appellant has had the opportunity to comment on this change in planning policy context.

Main Issues

5. The Council's decision notice sets out 4 refusal reasons. After the planning application was determined, Natural England (NE) issued a position statement (the PS) on the effects of groundwater abstraction on the integrity of Arun Valley Special Area of Conservation (SAC), Arun Valley Special Protection Area (SPA) and Arun Valley Ramsar site (the Ramsar). The PS formed no basis for the Council's refusal reasons but this does not obviate the need to consider it as part of this decision. The requirements of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) apply. NE as the relevant statutory nature conservation body has been consulted on this appeal

and the main parties have had the opportunity to comment on its response. As such, there is no breach of natural justice.

6. Therefore, the main issues are (i) the effect of the development on the integrity of the SAC, SPA and the Ramsar site (hereafter called the habitat sites), (ii) whether the site would be a suitable location for the development having regard to HDPF policies, the National Planning Policy Framework (the Framework), Planning Policy For Traveller Sites (PPTS) and accessibility, (iii) the effect on the character and appearance of the area, (iv) whether the site would be served by a safe vehicular and pedestrian access, (v) whether appropriate living conditions would be provided for occupiers in terms of noise, and (vi) considerations in favour of the development.

Reasons

Habitat sites

7. The SAC, the SPA and the Ramsar site have been designated for their nature value. The SAC includes the rare and threatened little whirlpool ram's horn snail and its supporting wetland habitats. The SPA includes wetlands which support an assemblage of wintering wildfowl. The Ramsar site is noted for its wintering birds, rare invertebrates and aquatic plants.
8. The PS advises that the effects of groundwater abstraction within the Sussex North Water Supply Zone (SNWSZ) cannot be objectively demonstrated to be compatible with the conservation objectives of the habitat sites, by virtue of reduced water levels and potential water quality impacts. Monitoring is ongoing and NE awaits a report of its findings before drawing definitive conclusions. However, currently NE advise that water abstraction within the SNWSZ cannot be ruled out as causing an adverse effect on the habitat sites.
9. Moreover, 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. The appeal site is a significant distance from the habitat sites but it lies in the SNWSZ. The submissions indicate there would be a connection to mains water and the development would lead to water usage through the introduction of a residential use and utility buildings which would contain toilets and washing facilities. There is no indication that a water supply existed to the site when it was paddock land and so the Gypsy site would lead to an increase in mains water usage and groundwater abstraction in the SNWSZ.
11. Therefore, on adopting a precautionary approach, 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. In arriving at this view, I note the Council's decision that most householder planning applications can be screened out as not having a

significant effect on the habitat sites. However, this has no bearing on the appeal scheme which is not a householder development.

12. The PS advises that new development should achieve water neutrality to avoid a detrimental impact on the habitat sites. The appellant has suggested a planning condition that would require the provision of grey water recycling. However, there are no water usage calculations or other firm evidence to demonstrate that this or any other measure would achieve water neutrality. Therefore, I am not persuaded that this issue could be reasonably addressed through the imposition of a planning condition. Furthermore, a 3 year temporary permission as suggested by the appellant would not prevent an increase in water use and abstraction during the period when occupation is allowed. Also, a permission that would limit occupancy to the appellant would not prevent water usage or achieve water neutrality.
13. As a result, I conclude the development would adversely affect the integrity of the SAC, the SPA and the Ramsar site. In these circumstances, Regulation 63(5) 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. As such, the proposal would conflict with 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.

Suitability of location

14. The site is in the countryside and away from the boundary for Rusper, the closest defined village within the Horsham district boundary. Policy 2 of the HDPF looks to focus development in and around settlements while HDPF policy 26 only permits development in the countryside that is essential and meets one of four criteria. None of these are relevant and so the appeal development would not accord with HDPF policy 26.
15. At the same time, HDPF policy 23 sets out criteria to be considered in the specific assessment of Gypsy and Traveller accommodation proposals. This policy is permissive of sites near to, and not just within, settlements. This is consistent with the PPTS which does not preclude sites in the countryside.
16. Crawley lies outside the Horsham district boundary but its edge is 2.2km along roads to the south and 3.2km to the east. As such, it is the nearest settlement to the site. These fairly short distances would allow a quick and easy drive from the development to a sizeable town where there are health, education and employment services.
17. HDPF policy 23 does not provide a definition for the term "near to existing settlements". However, there is no explicit requirement that Gypsy and Traveller accommodation should be within reasonable walking distance of a town or village, despite the policy requirement for a convenient pedestrian access. Also, the policy and the PPTS do not preclude Gypsy and Traveller sites where occupiers would be highly reliant upon the car for access to services. In light of the short driving distances to Crawley, it is reasonable to find that the development would be near to an existing settlement and so it would comply with HDPF policy 23 in this respect.

18. Residents of the site are unlikely to walk to facilities given the separation distances. Also, only a limited bus service travels along Ifield Wood to Horsham and so it is unlikely to provide a realistic travel option for most trips. The development would be within a reasonable cycling distance of Crawley although this would be an unattractive choice of transport for many journeys, particularly during inclement weather. As such, it is likely that occupants of the development would be highly reliant on the private car.
19. Nevertheless, paragraph 105 of the Framework recognises the opportunity to use sustainable modes of transport varies between urban and rural areas. It is to be expected that occupants of Gypsy and Traveller sites would have less opportunity to travel by foot, cycle or public transport as they are allowed outside settlements under HDPF policy 23 and the PPTS. In light of the policy context, the short car journeys to Crawley adds in favour of the development.
20. Having regard to all factors together, I conclude the site would be a suitable location for the development. It would not accord with HDPF policies 2 and 26 but it would be near to Crawley and so permissible under HDPF policy 23. Most trips to and from the development would be made by private vehicle but journeys to essential facilities would be short. In light of the provisions of the Framework and PPTS, the accessibility of services from the development would be acceptable. The Council's refusal reasons refer to HDPF policy 1 but this contains no provisions that relate to the location of development.

Character and appearance

21. The site forms the corner of a larger field with trees and bushes on the roadside and southern boundaries. It lies in the Upper Mole Farmlands landscape character area as defined in the Horsham District Landscape Character Assessment 2003. The identified key characteristics for this area include pasture land with small to medium and irregular fields, divided by thick hedgerow and occasional blocks of woodland. The settlement pattern is dispersed and located along lanes.
22. The provision of mobile homes, the utility buildings, hardstanding as well as associated parking and paraphernalia would plainly give the appeal site a more developed and domestic character and would reduce its openness. However, in terms of land coverage, the 2 pitches would be modest and of a comparable size to the Hillybarn Farm complex and other nearby properties. As such, the scale of the site would be in keeping with other developments in the locality.
23. Also, nearby houses tend to have smaller outbuildings and so as a group with different elements the development would not be uncharacteristic. The mobile homes would be different in style and appearance to the local houses but it is not unusual to see caravans in the countryside. Indeed, on my visit I saw from the site a nearby caravan at Hillybarn Farmhouse. The proposed utility buildings would be small and of simple form and so they would reflect the appearance of the field shelter on the site as well as other local outbuildings.
24. Access drives, parking and associated paraphernalia are seen at other local residential properties and so such features on the site would not be entirely at odds with the area's character. In the dark, existing properties already provide sources of artificial light and so lighting as part of the development would not be particularly uncharacteristic.

25. The development's position away from but within sight of Hillybarn Farmhouse and the lane would follow the dispersed layout of properties in the locality. It would sub-divide a field but the development would not disrupt a distinctive field pattern.
26. Where seen from the road, the caravans, utility buildings, parking and paraphernalia would partly obstruct vistas of the wider countryside and so would undermine the pastoral nature of the area. However, the development would be set back and so it would not be prominent. Its positioning would allow scope for additional planting to the front of the site, which could be reasonably secured by condition. This would help reinforce the vegetated nature of the lane and so positively enhance the local environment in line with the identified key characteristics of the area. I would not allow the appeal simply on the basis that the development could be concealed but additional planting would reduce its visual impact from the road.
27. The site would also be seen from a public footpath and adjacent fields to the rear. From these vantage points, it would cause a noticeable loss of openness but it would be viewed against the backdrop of much taller trees on the road and field boundaries. Wider views of the countryside to the east of the footpath would be unaffected. Also, no fencing is shown on the appeal plans and the provision of planting would help soften the visual impact of the new rear and side boundaries.
28. In summary, the development would cause a change in the appearance of the site which would affect the pastoral nature of the locality to a modest degree. However, it would generally be in keeping with the key characteristics and features of the wider area. The loss of open pasture would be offset by the opportunity to provide new planting that would add to the landscape value of the site.
29. For these reasons, I conclude the development would not unacceptably harm the character and appearance of the area. In these regards, it would accord with HDPF policies 2, 23, 25, 26, 31, 32 and 33. Amongst other things, these seek to ensure Gypsy and Traveller sites do not have an unacceptable impact on the character and appearance of the landscape.

Vehicular and pedestrian access

30. The access to the development would utilise an existing field gate from The Mount. The highway is a single vehicle width country lane with no pavements, although there are verges on both sides along most of its length. The road is subject to a 40mph speed limit. However, in providing advice on highway matters, West Sussex County Council acknowledge that vehicle speeds are likely to be below this limit. My site visit can only provide a snapshot in time but I saw low traffic speeds due to The Mount's narrow width and a slight curve in the road. I saw only very light traffic movements along the lane.
31. Looking to the right when exiting the site, the road is reasonably straight and so allowing sight of on-coming traffic for a significant distance. Views to the left are curtailed by a curve in the road, although there would be sight of vehicles coming from this direction once they reach the bend. No speed survey information or plans showing achievable visibility splays have been provided. Nonetheless, from my observations, drivers leaving the development would have reasonable views of on-coming traffic from both directions.

32. Moreover, a 2 pitch Gypsy and Traveller site would generate a low number of traffic movements, even though occupants would be highly reliant upon the car. I note that The Mount forms part of a highway network that is used as a rat run and so there may be an increase in traffic during peak travel times. Even so, it is a rural lane that does not lend itself to excessive speeds. As such, I am satisfied traffic generated by the development would not unacceptably affect highway safety.
33. I have already found that occupiers of the development would be highly dependent on the private car and so walking to and from the site is likely to be limited. Pedestrians on The Mount and other local roads need to share the carriageway with vehicles as there are no pavements. However, the roads do not feel unsafe for pedestrians due to the low traffic usage and slow speeds. The carriageways are wide enough to let vehicles pass walkers and verges provide retreats for pedestrians. The highways have no street lighting but this is common in rural areas and it does not follow that the roads are unsafe. As such, I find the site would be served by a suitable pedestrian route.
34. Taking these factors together, I conclude the development would have a safe vehicular and pedestrian access. In these regards, it would accord with HDPF policies 23 and 40. The Council's refusal reason refers to HDPF policy 41 but this relates to parking and so it is irrelevant to this main issue.

Living conditions in terms of noise

35. The site is about 3km from Gatwick airport and it lies in the flightpath. Noise contour information provided by the Council shows the site is affected by aircraft noise. This was confirmed on my visit when I saw and heard aircraft occasionally fly overhead near to the site. The noise generated from each aeroplane gradually increased as it approached and then subsided as it flew away. The aeroplanes could be heard for a short period of time with long gaps in between. When heard, the aircraft noise was sufficiently quiet and unintrusive in nature to avoid significant disruption or annoyance. The site is a sufficient distance from the airport to avoid occupiers hearing aeroplanes taking off, landing and moving on the ground.
36. No survey information or analysis has been provided to illustrate the extent to which occupiers of the site would be affected by noise. However, from my observations, I am satisfied that aircraft noise would not be of a level or nature to create unacceptable nuisance for occupiers of the development when using the mobile homes, utility buildings or external parts of the site.
37. As such, I conclude the development would provide appropriate living conditions for occupiers in terms of noise. In this respect, it would accord with HDPF policy 33, which looks to avoid unacceptable noise effects disturbing occupiers of property.

Considerations in favour of the development

38. HDPF policy 21 identifies sites to address a backlog in supply for Gypsy and Traveller pitches for the period 2011 to 2017. I am advised that some of these have yet to come forward. Also, a Council produced Gypsy and Traveller Accommodation Needs Assessment identifies a requirement to provide 93 pitches between 2019 and 2036. There is no information before me on the number of pitches that have been provided but the Council acknowledge that it

is unable to demonstrate an up-to-date 5 year supply of Gypsy and Traveller sites as required under the PPTS. Therefore, the evidence indicates a un-met need for more pitches.

39. Furthermore, a Site Allocations Development Plan Document which would identify the provision of Gypsy and Traveller Sites to meet need beyond 2017 is at an early stage of production with no predicted adoption date provided. As such, there is significant uncertainty over how a sufficient number of Gypsy and Traveller pitches would be delivered other than through granting planning permission. The development would make a minor contribution towards the supply of sites but this attracts significant weight in light of the recognised need and the lack of any development plan that allocates land for pitches.
40. Representations suggest that there is an oversupply of Gypsy and Travellers' sites in the local parish area. However, there is no policy before me that seeks to limit the number of pitches within any particular parish. Even when considered with existing sites, the development would not dominate the nearest settled community and so it would accord with the PPTS in this respect.
41. The submissions indicate the appellant requires 1 of the proposed pitches while the other would help meet the general need. I am advised that the appellant currently lives on the site with 2 young twins under 1 year of age. Apart from this, there is limited information on the appellant's circumstances and the intended occupants of the site. However, there is no dispute that the appellant would meet the PPTS definition of a Gypsy and Traveller and no alternative site is identified where the appellant and their family could live. Therefore, as well as helping address a general need, the development would be of a particular personal benefit for the appellant.
42. I am conscious that a refusal of planning permission may result in the appellant being made homeless. The lack of a settled base may hinder access to health care and sanitation facilities. Also, while they are not old enough to attend school, a settled base is important for the children for emotional well-being. In paying the highest regard to the best interests of the children, I attach considerable weight to these benefits in my assessment. However, these best interests will not always outweigh other considerations.
43. A number of other appeal decisions have been referred to by the appellant although these relate to developments on other sites where different circumstances apply. Most importantly, none of the other schemes are identified as having an effect on the habitats sites and so they carry little weight in my assessment of this specific proposal.

Planning Balance

44. I have found that the development would be in a suitable location and would not unacceptably harm the character and appearance of the area. It would be served by a safe access and would provide appropriate living conditions in terms of the noise environment. 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 current occupiers of the site.
45. However, following an appropriate assessment, I have found the development would adversely affect the integrity of the habitat sites. In such circumstances,

the 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.

46. The appellant and their family are 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 appellants 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 appellants 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.
47. The refusal of planning permission is likely to lead to the appellant and their family needing to move from the site which is their home. Dismissing the appeal would interfere with the appellant's rights. However, in this case the interference is justified in the public interests 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

48. For the reasons given above, I conclude that the appeal should be dismissed.

Jonathan Edwards

INSPECTOR