The Planning Inspectorate

Appeal Decision

Hearing held on 17 May 2023

Site visit made on 17 May 2023

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2023

Appeal Ref: APP/Z3825/W/20/3246486
Parsons Field Stables, Pickhurst Lane, Pulborough RH20 1DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 for the change of use of land to a caravan site for stationing of up to three caravans for occupation by gypsy-traveller family with associated development (timber utility shed, utility trailer, septic tank, hard standing and additional landscaping) for which a previous planning permission was granted for a limited period.
- The appeal is made by Mr F Keet against the decision of Horsham District Council.
- The application Ref DC/19/2105, dated 15 October 2019, was refused by notice dated 31 January 2020.
- The application sought planning permission for the change of use of land to a caravan site for stationing of up to three caravans for occupation by gypsy-traveller family with associated development (timber utility shed, utility trailer, septic tank, hard standing and additional landscaping) granted planning permission for a limited period Ref DC/16/2388 (the original permission), dated 18 January 2017.
- The condition in dispute is No 2 which states: The two mobile homes, touring caravan, utility trailer and utility block hereby permitted shall be removed and the land shall be restored on or before the 31 December 2019 to a condition which has been previously agreed in writing by the Local Planning Authority in accordance with a scheme of work submitted to and approved in writing by the Local Planning Authority.
- The reason given for the condition is: The Local Planning Authority would not normally grant permission for such a development in this location but under the circumstances prevailing it is considered reasonable to make an exception in this instance and to allow the development for a limited period in accordance with Policy 23, Policy 26, Policy 27 and Policy 33 of the Horsham District planning Framework 2015 and the guidance within the Planning Policy for traveller sites (August 2015).

Decision

1. The appeal is allowed and planning permission is granted for the change of use of land for stationing of up to 3 caravans for occupation by Gypsy and Traveller family with associated development (timber utility shed, utility trailer, septic tank, hard standing and additional landscaping at Parsons Field Stables, Pulborough, RH20 1DA in accordance with the terms of the application, Ref DC/19/2105, dated 15 October 2019, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr F Keet against Horsham District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. This appeal seeks to remove condition no.2, which was imposed on the original permission, time limiting the consent. It is agreed by both parties that the expiration of the time limiting condition imposed on the original permission, occurred at the end of December 2019. Nonetheless, the application subject of this appeal is dated 15 October 2019 and was therefore submitted whilst the original permission was extant. Given the limited time before the expiry of the time limiting condition, it was highly likely that the time limiting condition would expire during the course of the application, and inevitable in the case of any subsequent appeal.

4. Therefore, as the time limiting condition has expired, there is no extant permission to vary. However, where a use continues after the temporary period specified in the condition has expired, s.73A(2)(b) may be used to grant planning permission having retrospective effect. Whilst not disputed, there was an opportunity at the event to make comments on this matter. Additionally, it was established at the event that it is only Policy 23 d. and e. of the Horsham District Planning Framework 2015 (HDPF) that are disputed. I have dealt with the appeal on the basis of the above factors.

5. During the course of the appeal a position statement from Natural England (NE) in respect of all planning applications within the Sussex North Water Supply Zone (SNWSZ)[1] was issued. The position statement outlines NE's concerns about groundwater abstraction within the SNWSZ. It explains that NE cannot, with certainty, conclude that further groundwater abstraction within the SNWSZ will not have an adverse effect on the integrity of the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site. The advice of NE is that no new developments should add to this impact, which means that any new residential development within the SNWSZ should demonstrate water neutrality. The appeal site is located within the SNWSZ and the main parties have had the opportunity to comment on the matter. Additionally, due to the discussions on this issue at the event, the matter of water neutrality has been included as a main issue.

6. Since the determination of the planning application and the submission of the appeal, the Government published the revised National Planning Policy Framework on 20 July 2021 (the Framework). The main parties have had an opportunity to comment on the significance of any relevant changes.

7. Furthermore, and again since the determination of the application, a recent judgment[2] (the Smith judgment) relevant to the appeal has been issued. Although the Planning Policy for Traveller Sites 2015 (PPTS) itself was not the subject of the litigation, and has not been quashed or declared unlawful, the thrust of the judgment was that the PPTS definition of Gypsies and Travellers was unlawfully discriminatory. The main parties were both given the opportunity to comment on this judgment at the event. Thus, no party would be prejudiced if this judgment was taken into consideration in the determination of this appeal.

[1] Natural England's Position Statement for Applications within the Sussex North Water Supply Zone, September 2021 – Interim Approach
[2] Smith vs Secretary of State for Levelling Up, Housing and Communities and Others [2021] EWHC 1650 (Admin) (31 October 2022)

Main Issues

8. The main issues of this appeal are:

- whether the development would amount to "sustainable development" for the purposes of the Framework, with particular regard to its location;
- the effect of the development on the character and appearance of the appeal site and surrounding area;
- the effect of the development on the SAC, SPA and Ramsar sites in relation to water neutrality; and,
- whether any harm arising from the development would be outweighed by other considerations.

Reasons

Location

9. The site is located within the countryside and approximately 600m from the boundary of Codmore Hill. HDPF Policy 23 d. requires Gypsy and Traveller accommodation to be located in or near to existing settlements, or is part of an allocated strategic location within reasonable distance of a range of local services and community facilities, in particular schools and essential health services.

10. The access to the site is located off Pickhurst Lane, which has the characteristics of a typical rural lane, through its width, grass verges either side and no footpaths or street lighting present. Access to Shane Street (A29) would be via Black Gate Lane, which has similar characteristics to Pickhurst Lane. Due to the A29 being the primary route between Billinghurst and Pulborough the vehicle movements on this carriageway are greater in frequency, with an increase in the associated speed of vehicles.

11. The parties agree that the nearest settlement where a number of facilities exist is Codmore Hill, although it is acknowledged that Pulborough is likely to provide more shops and essential services. It was established at the Hearing that a bus service runs along the A29 and operates a regular service between Billinghurst and Pulborough for the majority of the day. This was not disputed by the Council.

12. I accept that Pickhurst Lane and Black Gate Lane would not lend themselves to regular walking, especially during inclement weather or hours of darkness. However, upon reaching the A29, a footpath is provided. Nonetheless, whilst only a snapshot in time, the level of traffic that I experienced on these lanes did not appear overly excessive. Additionally, whilst drivers are easily able to assimilate the conditions on the carriageway when driving along these roads, the verges and the access points provide suitable refuges along these carriageways, should I have needed to step out of the road. Thus, the associated potential likelihood of vehicular/pedestrian conflict is significantly reduced.

13. Furthermore, I acknowledge that the public footpaths (PROWs) in proximity to the site, particularly 1986, 1987 and 1988 would not be suitable for everybody, especially those with mobility issues. However, I am also mindful that such mobility issues would likely result in the use of an alternative method of

transport. Nonetheless, these footpaths still amount to safe alternative routes available to the appellant and his family.

14. The appellant has referenced the Gypsy and Traveller development at 'Oakdene'[3] in his submission, which is approximately 200m away from the site. This application was approved on 13 November 2017 and has similar characteristics to the appeal scheme. Whilst 'Oakdene' is closer to Codmore Hill than the site, the difference in distance is not substantial. Consequently, I consider 'Oakdene' to represent a material consideration in the determination of this appeal. Additionally, the Council has provided an appeal decision[4] for a proposed Gypsy and Traveller scheme in its area on Harbolets Road, West Chiltington (Hillside), where the Inspector concluded that the location of the site was suitable. Thus, I consider 'Hillside' to be a material consideration of significant weight, especially as it is further away from a settlement, services and facilities than the appeal scheme.

15. I am also mindful that the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Nonetheless, I consider that alternative transport options exist. Given my own experiences driving/walking in the locality, I find that the site is within a safe and reasonable distance of a range of local services and facilities, with genuine opportunities to walk, cycle or utilise public transport.

16. For the reasons given above, I conclude that the development is in a suitable location with particular regard to access to local services/facilities. Consequently, the development would accord with the strategic aims of HDPF Policy 23 d. which requires sites to be located in or near to existing settlements and within a range of local services and community facilities, amongst other things. The scheme also accords with the requirements of the Framework.

Character and appearance

17. The area surrounding the site is predominantly characterised by fields for agricultural or equestrian uses. HDPF Policy 23 e. states that development proposals for Gypsy and Traveller accommodation should not have an unacceptable impact on the character and appearance of the landscape and should be sensitively designed to mitigate any impact on its surroundings.

18. A previous appeal decision[5] exists for the site, which granted consent, albeit for a temporary period. I have been directed specifically to comments made by the previous Inspector on this appeal, in relation to character and appearance, where it was concluded that the effect upon rural character and appearance of the countryside was considerable. Similar to the situation of the previous Inspector, I am now considering an appeal, nearly 9 years later, since the site visit was undertaken on 27 August 2014. Thus, it is highly likely that the vegetation planted, and surrounding the site has markedly matured during this period of time, creating a different environment to that which the previous Inspector experienced.

19. Prior to the Hearing I visited the area surrounding the site, and visited a series

[3] DC/17/2084
[4] APP/Z3825/W/19/3242284
[5] APP/Z3825/A/14/2218650

of locations identified in the Landscape and Visual Issues Statement[6]. In addition to these viewpoints, I also visited the site on the accompanied visit, then walked along PROW 1987 to the rear of the site, picking up PROW 1983, to head back towards Pickhurst Lane. I also viewed the site from Whitehall Cottage at the request of its occupier. Consequently, I am satisfied that I saw everything I need to assess the impact of the development.

20. I saw glimpses of 'Oakdene' from PROW 1987, whereas views of the appeal site from this location were not possible due to the extent of vegetation preventing any noticeable views. Additionally, I consider that there are notable differences between the site for 'Hillside' and the scheme before me, with particular regard to screening, resulting in the site being less visually prominent. The Landscape Character Area for the surrounding area is the Billinghurst and North Heath Farmlands, where small scale incremental changes eroding character is listed as a key visual sensitivity. Additionally, I note the concerns raised regarding the planting of non-native species in vegetation surrounding the site. However, there are examples of other non-native species at other properties in the locality. Thus, whilst this may be a misgiving on the scheme, it would not justify withholding permission. Overall, the extent of the vegetation surrounding the site, comprises sufficient mitigation to screen the development, preventing any significant harm to the visual amenity of the surrounding area.

21. For the reasons given above, I conclude that the development does not create any significant harm to the character and appearance of the site or the surrounding area. The scheme therefore complies with the design, character and appearance aims of HDPF Policy 23 e. which requires development not to have an unacceptable impact on the character and appearance of the landscape and are sensitively designed to mitigate any impact on its surroundings, amongst other things. The scheme also accords with the requirements of the Framework.

Water neutrality

22. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the development, either alone or in combination with other projects, that would adversely affect the integrity of the protected habitats. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.

23. It is common ground between the main parties that the site benefits from a full-planning permission, through the approval of the original scheme. Thus, in accordance with the guidance within the NE Position Statement, the Regulations cannot be applied retrospectively and the requirement for water neutrality will not apply to any projects with full planning permission prior to the publication of the NE Position Statement on 14 September 2021. Consequently, the development complies with this guidance, as the original permission was approved on 18 January 2017, albeit for a time limited period until 31 December 2019. Additionally, the appellant and his family have been residing on the site since May 2019.

[6] Appeal Statement of Christopher Jackson: Landscape and Visual Issues by Liz Lake Associates Landscpae Architects dated July 2021.

24. The merits of this situation were discussed at the Hearing, where interested parties raised the issue of the expiry of the time limiting condition on the original permission. However, the planning application to remove Condition no.2 on the original permission, and the subsequent appeal were both submitted in advance of the NE Position Statement, by a considerable period of time. Therefore, given the provisions contained within s.73A(2)(b), I do not consider that the expiry of the time limiting condition to represent a prejudicial factor against the development in this instance. Thus, it cannot be said that the development would have an adverse effect on the integrity of the protected habitat, as no new households would be created.

25. As the proposal would not add to the resident population, there would be an overall neutral effect with regard to water neutrality. In this instance, this could be secured through the imposition of suitably worded conditions, limiting the amount of development allowed, in line with the original permission. Consequently, as the scheme would not have an adverse effect on the integrity of the protected habitat, mitigation or an appropriate assessment is not required in this case.

Other considerations

Need for and provision of sites

26. It is common ground between the main parties that there is not a supply of sites to meet the need for Gypsy and Traveller accommodation in the District. In the Statement of Common Ground (SoCG) it is agreed that a Gypsy and Traveller Needs Assessment in 2020 identified a need for 96 pitches across the plan period to 2036. The status of the emerging Local Plan (the emerging LP) was described as 'paused' at the Hearing, due to various factors, including the administrative changes at the Council. Given the changes at the Council, it was not possible to confirm whether or not the emerging LP in its current form would proceed as envisaged.

27. This alone weighs heavily in favour of the appellant's position. I accept that the ongoing work on the emerging LP would likely address this issue in the long term, although I am unaware as to when the emerging LP would be adopted, given its current status. I am also aware that the Council rejected the appeal site in its emerging LP, but the Officer Report indicates that this was due to a perception of harm to the setting of nearby listed buildings, which was later not considered to be the case. In addition to general need, the availability (or lack) of alternative accommodation for the current occupiers is a relevant consideration of significant weight, as indicated by the PPTS.

Personal circumstances

28. There is no dispute about the Gypsy or Traveller status of the appellant or other occupiers of the site. Based on the details provided, the representations made at the Hearing and in the absence of any evidence to the contrary, I have no reason to disagree. Additionally, whilst the findings of the Smith judgment have impacted upon the Gypsy and Traveller definition in the PPTS, the appellants met the definition in any event. The site was purchased in May 2019 and the appellant and his family have lived on it since.

29. Because of these circumstances, children have been able to attend school on a regular basis. Access to health care has also been possible. This has resulted in

advantages for the general well-being and state of mind of the appellant and his family, in being settled and being able to provide a stable home, access to basic amenities and a secure living environment for his family.

30. A settled base has allowed children of school and pre-school age to attend local schools and all of the family to access health care more easily. Whilst some of the children have now grown up, it is likely that they have done so on the site. In contrast to the comments contained within the refusal reason, my attention has been drawn towards 3no. children of school and pre-school age living on the site, with ages of 16, 4 and 1 respectively. The benefits of a settled base are well documented in terms of education and access to health care.

31. In particular having a settled base would be in the best interests of the children. In stark contrast, the alternative of an itinerant life would be damaging to the education, health and well-being of the occupiers. Continuing to move from place to place and living by the side of the road would be a likely consequence of dismissing the appeal. However, the balance is in favour of a grant of permission, and there is therefore no need to consider personal circumstances further.

Other Matters

32. There is agreement between the main parties that the development is not considered to result in any harm to the significance of the nearby heritage assets[7]. In accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), I have paid special regard to the desirability of preserving or enhancing a listed building or its setting or any features of special architectural or historic interest which it possesses. I find the significance of both Whitehall Cottage and Cherry Tree Cottage derive from their 17th Century origins, if not earlier in the case of the timber framed Cherry Tree Cottage, and their traditional design, which has largely been maintained, even though some later extensions have been added. Similar to the observations made by the Council, I consider that the existing boundary treatments to the site and the distances maintained to the listed buildings ensures that the development does not harm the setting of the heritage assets. Thus, I find that the development conserves the heritage assets in a manner appropriate to their significance in line with the Framework and the Act.

33. Whilst noting some support for the development, a number of interested parties, including local residents, Toat Valley Residents Group, The Wiggonholt Association and Pulborough Parish Council have also expressed a number of concerns on the planning application and at appeal stage, including but not limited to the following: precedent, flooding, highway safety, sewerage and bonfires, anti-social behaviour, human rights, prematurity of the appeal, animal welfare, amongst other things. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reason for refusal, which I have dealt with in the assessment above. Whilst I can understand the concerns of the interested parties, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

[7] Whitehall Cottage, which is Grade II Listed (1027352) and Cherry Tree Cottage, which is Grade II Listed (1285958). Both properties were first listed on 9 May 1980.

Conditions

34. The parties have suggested conditions in the SoCG which I have considered, making amendments and minor corrections, where necessary, to ensure clarity and compliance with the tests contained within Paragraph 56 of the Framework and the Planning Practice Guidance.

35. A condition relating to the time limit for implementation is not required in this instance as the development has commenced. A condition surrounding the approved plans is required for certainty. Although, given that I am being asked to determine what is on site and a static caravan is orientated differently to the layout shown on the submitted drawings, I need to be certain of what is being approved. After a discussion and an adjournment, the parties had no objection to the suggested approach contained in Condition no.1 and the Council did not raise any additional concerns towards the different orientation of the static caravan, when it was compared to the orientation shown on the submitted drawings.

36. It is necessary to restrict occupation to those who are Gypsies and Travellers. Although, due to the Smith judgment the wording of the suggested condition required alteration. Controlling the number of mobile and static caravans on the site, the use of the site and vehicles are all reasonable and necessary to define the permission, living conditions of neighbouring occupiers and in the interest of character and appearance.

37. Additionally, I consider that the removal of permitted development rights for additional gates, fences, walls, or other means of enclosure is both reasonable and necessary in the interest of character and appearance. It was established at the Hearing that the drainage for the site has already been implemented in accordance with a scheme approved by the Council. Consequently, I have not included a drainage condition, as suggested in the SoCG.

Planning Balance and Conclusion

38. Given my findings above, the development accords with the development plan when taken as a whole, and there are no other material considerations that indicate otherwise. It also complies with the requirements of the Framework. Additionally, there are numerous considerations that support the case for the appellant. I therefore conclude that the proposed development is suitable for the site and a permanent permission is justified.

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

W Johnson

INSPECTOR

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall be carried out in accordance with the following approved plans: Plan 1 – Location Plan, scale 1:2500 A4 and Plan 3 - Proposed Site Layout scale 1:1250 A4 except in respect of the orientation of the most southerly located static caravan within the site shown on Plan 3 - Proposed Site Layout scale 1:1250 A4.

   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 failure to meet any one of the requirements set out in (i) to (iv) below:

   (i) Notwithstanding the submitted details within 4 months of the date of this decision a scheme (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority. The scheme shall include:

   - An accurate layout of the site, depicting the existing layout.

   (ii) Within 8 months of the date of this decision the details to be submitted in (i) shall have been approved by the local planning authority or, if the local planning authority refuse to approve the details, 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 details shall have been approved by the Secretary of State.

   (iv) The approved details specified in this condition, shall thereafter be retained. 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.

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 three caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the land at any one time, of which no more than two shall be a static caravan or mobile home.

4) No industrial, commercial or business activity shall be carried out on from the site, including the storage of materials.

5) No Heavy Goods Vehicles (defined as any vehicle having 3 axles or more and

with a weight exceeding 3,500kg) shall operate to or from the site or be stationed, parked or stored on the site at any time.

6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or Orders amending or revoking and re-enacting the same, no additional gates, fences, walls, or other means of enclosure shall be erected or constructed on the site.

End of Conditions

APPEARANCES

FOR THE APPELLANT:

Mrs A Heine (Agent)

Mr F Keet (Appellant)

Mrs R Keet

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Holbrook	Senior Planning Officer, Horsham District Council
Mr M Mclaughlin	Principal Planning Officer, Horsham District Council

INTERESTED PARTIES:

Mr C Hawley of Counsel	Instructed on behalf of Toat Valley Residents Group
Mrs C Houston	Local resident

HEARING DOCUMENTS

- Signed/completed SoCG
- Feedback Form (email) from West Sussex County Council dated 16 August 2022.

The Planning Inspectorate

Costs Decision

Site visit made on 17 May 2023

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2023

Costs application in relation to Appeal Ref: APP/Z3825/W/20/3246486
Parsons Field Stables, Pickhurst Lane, Pulborough RH20 1DA

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr F Keet for a full award of costs against Horsham District Council.
- The hearing was in connection with an appeal against the refusal of planning permission for the change of use of land to caravan site for stationing of up to three caravans for occupation by gypsy-traveller family with associated development (timber utility shed, utility trailer, septic tank, hard standing and additional landscaping).

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Mr F Keet

2. The costs application was made in writing prior to the Hearing, with additional comments submitted verbally at the event. This case is made in relation to substantive behaviour which includes preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, and failure to produce evidence to substantiate each reason for refusal on appeal. In refusing permission contrary to the Chief Planning Officer's recommendation to grant permission on a permanent basis, Members have failed to determine similar cases in a consistent manner and have relied on vague and generalised assertions about the proposal's impact which are unsupported by objective analysis.

3. The Council fail to justify why they consider this an unsustainable location when they have been willing to grant approval for a greater number of pitches (8 in total) on another site, 200m away on Black Gate Lane. The Council fail to justify how this small site would cause significant harm to the landscape character of the area contrary to the views expressed by an experienced case officer in the committee report. In refusing permission the Council stated that a temporary permission was no longer justified due to the absence of the applicant's education needs now being material to the application. However, in making this sweeping statement they have ignored the personal information submitted with the application, the fact there are now more children living on the site and in education, and the fact the previous appeal decision[1] granted temporary consent without reliance on personal circumstances or reliance on a personal condition.

The response for Horsham District Council

[1] APP/Z3825/A/14/2218650

4. The Council responded in writing prior to the Hearing and declined an opportunity to verbally respond to the applicant's additional comments at the Hearing. The Council advises that its written statement of case explicitly considers the sustainability of the application site. Within the Council's statement it is recognised that the appeal site is not distant from Codmore Hill, as the crow flies, though, that the condition and convenience of available routes is likely to demand a significant reliance on the use of a private vehicle, such as to render the site unsustainable with regard to facilities and services expected to support the development.

5. The Council's written statement of case considers the landscape harm arising from the appeal scheme, and specifically address' components of the use leading to harm in relation to relevant development plan policies. The Council's objections in these respects, therefore, are deemed clear and are material to the acceptability of the development. The possibility of including conditions to achieve improvements to existing landscaping was debated by Members at the committee meeting, though, it was not considered that such a condition could acceptably redress landscape harm arising from the use of land and in light of the "considerable" landscape harm identified by an Inspector on the previous appeal decision. In respect of educational need it is accepted that the reason for refusal incorrectly refers to the absence of an educational need on the published decision notice.

Reasons

6. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. A successful application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense and parties in the appeal process are normally expected to meet their own expenses.

7. The PPG states[2] that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis and not determining similar cases in a consistent manner.

8. The Council refused the application for reasons relating to the location of the site, the effect of the development on character and appearance, with reference to an absence of educational needs. The Council is not duty bound to follow the advice of its professional officers. However, if a different decision is reached then the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.

9. With the exception of the reference to 'educational needs', the Council's refusal

[2] Paragraph 049 Reference ID: 16-049-20140306

reason on its decision notice is complete, precise, specific and relevant to the application. It also clearly states the policies of the development plan which it would be in conflict with. Additionally, an appeal statement has been submitted to support the reason for refusal. I accept that in both the location of the site and character and appearance a degree of judgment is required. Nonetheless, the Council submitted an appeal decision[3] in support of its case regarding character and appearance for a development on Harbolets Road, West Chiltington, but do not appear to acknowledge the comments with regards to its location. Additionally, I am not satisfied at the explanation provided by the Council surrounding the approval of a similar development on Black Gate Lane, when the appeal site is in proximity of this approved scheme.

10. Whilst I reached a different conclusion to the Council, I am satisfied that the Council did not prevent and delay development which should have clearly been permitted, having regard to its accordance with the development plan, as I consider that an appeal was inevitable regarding issues surrounding character and appearance, due to the subjectivity of the issue.

11. However, I note that the PPG lists not determining similar cases in a consistent manner[4] may give rise to a substantive award against a local planning authority. In this instance, there is a lack of consistency in the determination of planning applications and an introduction of a new matter that was not raised on the previous application[5] or appeal. These are significant errors. Furthermore, the incorrect reference to the absence of an 'educational need' on the Council's decision notice and a failure to properly address issues surrounding the best interest of the child is a serious oversight in the determination of the application.

Conclusion

12. For the reasons given above, I find that unreasonable behaviour by the Council, resulting in unnecessary expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Horsham District Council shall pay to Mr F Keet, the costs of the appeal proceedings described in the heading of this decision, incurred in arguing against the Council's view regarding the location of the site and the best interests of the child, such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to Horsham District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

W Johnson

INSPECTOR

[3] APP/Z3825/W/19/3242284
[4] 048 Reference ID: 16-048-20140306
[5] DC/16/2388

The Planning Inspectorate

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 PS[1] 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 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 Statement[3] 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

The Planning Inspectorate

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

The Planning Inspectorate

Appeal Decision

Site visit made on 20 June 2022

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2022

Appeal Ref: APP/Z3825/W/21/3284138
Valewood Farmhouse, Mobile Home, Valewood Lane, Barns Green RH13 0QJ

- 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 Simon Stainer against the decision of Horsham District Council.
  The application Ref DC/20/1488, dated 7 August 2020, was refused by notice dated 14 July 2021.
- The development proposed is a proposed 4 pitch settled gypsy accommodation site.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. This application originally sought planning permission for 6 pitches. However, during the course of its consideration it was reduced to 4, and was determined on that basis. The description above reflects this change and I have considered it accordingly.

Main Issue

3. The main issues in this case are

   a) the development's effect on the character and appearance of the area;

   b) whether its impact on the setting of the listed Valewood Farmhouse would harm the significance of that designated heritage asset;

   c) whether it would have likely significant effects, whether by itself or in combination with other plans and proposals, on the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site and

   d) if harm would be caused to the above issues, whether there are public benefits or other material considerations that would outweigh that harm and justify a development otherwise than in accordance with the development plan.

Reasons

Character and appearance

4. The appeal site lies in the countryside near to the village of Barns Green. It currently comprises part of a sizeable paddock to the west of Valewood Lane

and is bounded on 2 sides by woodland. As a result it makes a positive contribution to the rural character of the surroundings. The site includes a mobile home that stands by the road, and which I understand is there unauthorisedly. There is also a stable block with an associated area for parking near the roadside, but although falling within the application site that is not subject of this decision. The site is not allocated in the development plan for gypsy and traveller accommodation.

5. The proposal seeks to retain the existing caravan, and site 3 further caravans in a row along the site's southern boundary. Although the occupiers of these 3 additional caravans are unknown, it appears to be accepted in the submissions that the development as a whole would be occupied only by those who fell within the definition of a gypsy and traveller found in Annex 1 of *Planning policy for traveller sites* (the PPTS) and I have determined it accordingly.

6. Given its size, there is no basis to find this scheme would dominate the nearest settled community and no evidence to show it would put undue pressure on existing infrastructure and services. Although I understand other traveller sites are in the vicinity, they are sufficiently distant to mean there would not be a cumulative impact.

7. Furthermore, the presence of the 15m buffer between the caravan pitches and the ancient woodland should be sufficient to avoid issues of heavy shading for the future residents, and safeguard those trees from harm either during the initial establishment of the development or subsequently. The scheme would not result in a discordant or alien field pattern, but rather, by moving the paddock's southern boundary northwards and marking it with a strong hedgerow, it would retain the general form and scale of this field. Having regard to paragraph 26(c) in the PPTS I also note each pitch is to have its own external amenity area.

8. In the PPTS there is no objection in principle to caravans in the countryside. Even in the *'open countryside'* it does not say new traveller development should be prevented but rather should be *'very strictly limited'.* Despite this, as the PPTS is to be read in conjunction with the *National Planning Policy Framework* (the Framework) regard still has to be given to the countryside's intrinsic character and beauty. From the public domain, the site is now enclosed to a great extent by the surrounding woodlands, the hedging on the road frontage and the gated entrance. Consequently, the 3 caravans along the southern boundary would be substantially concealed from the lane while views from the footpaths through the woodlands would be filtered, even in winter. However, the sight splays would, to some degree, open up the site from the lane by the removal and trimming required to the planting along the roadside. These works would make the existing caravan on site more prominent. As a result, the rural character of a section of the lane would be diminished.

9. Moreover, the countryside need not be protected from the public domain only. When in the paddock to the north the effect of the development would be limited to some extent by its scale and its location against the backdrop of trees. Despite this though, from this viewpoint there would still be a notable sense of urbanisation because of the caravans and associated paraphernalia that would undermine to some extent the rural character of the area.

10. Accordingly, I conclude that the development would fail to recognise the intrinsic character and beauty of the countryside, thereby causing a limited

harm to the character and appearance of the area, in conflict with Policies 23, 25, 26, 32 and 33 in the *Horsham District Planning Framework* (HDPF), which among other things seek to safeguard the landscape and require development to be attractive and respect its context. It would also conflict with guidance in the Framework.

Listed Building

11. Section 66 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* (the Act) says, in considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be given to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses. The Framework provides further guidance on this, emphasising that heritage assets are an irreplaceable resource and great weight should be given to their conservation. It adds that any harm to the significance of a designated heritage asset from development within its setting should require clear and convincing justification.

12. Valewood Farmhouse is a Grade II listed 2-storey timber-framed former farmhouse that appears to date from round about the 16th Century. Although altered over time, the changes that have taken place have been done with a certain sensitivity, and so it still maintains the impression of a sizeable Low Weald farmhouse from that period. Consequently, its significance is partly historic, partly architectural and partly aesthetic.

13. In terms of its setting, the lane and the railway mean it has little connection to the countryside to the east. Moreover, to the north the landscape has been disrupted by the fishing lakes and the expansion of the village. However, to the west it has largely clear views over the paddock subject of this appeal despite some recent buildings to the south, and the enclosed nature of this means it remains relatively free from any visual encroachment of modern development. As a result, in this direction it maintains a significant link to the surrounding rural landscape, and this helps to appreciate its original purpose. Consequently, the paddock makes a notable contribution to the setting of the building, and so adds positively to its significance.

14. The proposed caravans, together with their associated paraphernalia and activity, would erode the agricultural nature of the view over this paddock. This would mean they would have an adverse effect on the setting by diminishing the strength of the farmhouse's relationship with the rural landscape that was so instrumental in the building's origins. I appreciate that the scheme's effect would be limited to some extent by the caravans being to one side of the paddock when looking from the listed building, and by them being arranged in a row so minimising their prominence. However, by affecting the setting in this way I nonetheless find that the development would cause harm, albeit less than substantial, to the significance of this asset.

    In coming to this view I have had regard to the decision in the Deer Park Farm appeal. That though was for a single pitch and was sufficiently distant from the listed building to mean the site lay beyond the limit where the low-key nature of the development would have made an appreciable contribution to the building's current setting. The case before me though is for more caravans with a stronger relationship to the listed building, and so that decision is materially different.

Water neutrality

15. Under the *Conservation of Habitats and Species Regulations 2017* (the Regulations), any proposals that may affect a designated habitat site should be considered with the aim of maintaining or restoring, at favourable conservation status, its natural habitats and species. Before deciding to give permission for a plan or project that is likely to have a significant effect on a habitat site, the decision-maker must make an appropriate assessment of the implications for that site in view of its conservation objectives. The plan or project can then only be permitted after having ascertained there would be no adverse effect on the habitat site's integrity

16. The site is in the Sussex North Water Supply Zone, which draws its water supply from groundwater abstraction. Natural England expresses a concern that this on-going abstraction has a detrimental effect on the Arun Valley SAC, SPA and Ramsar site. These are low-lying wetland areas that offer a variety of ecological conditions, and provide internationally important habitats with outstanding aquatic and invertebrate fauna supporting significant numbers of winter wading birds. It is considered that the ground water abstraction is putting the conservation status of these wetlands at risk. As a result, unless new development within this zone would achieve a level of water neutrality it cannot be concluded with the required degree of certainty that it would not have an adverse effect on the integrity of these wetland sites. I have no basis to question this position.

17. The appellant accepts that this scheme would not achieve the level of water neutrality and no mitigation is available. Although it was contended that had the Council considered the case expeditiously this would not have been an issue, that is not a matter to which I can give significant weight in determining the case's planning merits. A water neutrality report has also been offered for a different development and so does not have a decisive effect on my consideration of this case

18. Accordingly, having made an appropriate assessment I conclude the development would have a likely significant effect on the integrity of the designated Arun Valley SAC, SPA and Ramsar site for which no adequate mitigation is offered. It would therefore be in conflict with HDPF Policy 31, which seeks to safeguard such sites, the Regulations and the guidance in the Framework.

Other matters

19. Details submitted with the appeal mean the Council has accepted the issue of drainage could be resolved by condition, though nonetheless considers there is still a risk in such an approach as the ground conditions remain unknown. Overall though in principle it has no objection to the details now before me, subject to the requirement of additional information. I appreciate that various measurements and calculations are still outstanding. However, I draw sufficient comfort from what is before me to mean that, with the use of a pre-commencement condition to ensure maximum flexibility in the approach to this matter, it is not, of itself, a justification to resist the development.

20. The lane connecting the site to the village has no pavements or lighting. However, it is not a significant distance to Barns Green and the lane has good forward visibility, and so there is a reasonable prospect of trips to and from the

village being made by means other than by motorised transport. I find the location of the site in this regard is not unacceptable.

21. Being in the countryside it is to be accepted that animals, insects and birds cross the site and use it for foraging. However, there is insufficient basis before me to find the habitat value or protected species would be harmed to any material extent by the works.

Balances

The Heritage Balance

22. The Framework says that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation, with any harm to its significance requiring clear and convincing justification. Under the Act the decision-maker is required to have '*special regard to the desirability of preserving the building or its setting',* while the Framework says that if less than substantial harm is identified to a designated heritage asset, it should be weighed against the scheme's public benefits.

23. In this instance there is an acknowledged and significant shortfall in the supply of gypsy and traveller pitches in the District. Moreover, as the Council has accepted there is a lack of an adopted Development Plan Document concerning this matter and no relevant up-to-date policy, I see no prospect of this situation being turned around in the near future.

24. Although the delivery of 4 pitches amounts to a valuable public benefit, given the thrust of the Framework in relation to protecting designated heritage assets I consider it fails to outweigh the less than substantial harm identified. No other public benefits have been cited that would lead me to a different view in this regard.

25. Accordingly, I conclude that the development would cause less than substantial harm to the significance of the Grade II listed Valewood Farmhouse by reason of its effect on the setting of that designated heritage asset, which would not be outweighed by public benefits. Consequently, the proposal would conflict, in this regard, with the Framework and with HDPF Policy 34 that concerns safeguarding heritage assets.

The Planning Balance

26. Section 38(6) of the *Planning and Compulsory Purchase Act 2004* says development should be in accordance with the development plan unless material considerations indicate otherwise. A development plan conflict has been found in relation to the impact on the character and appearance of the area, the impact on the significance of the listed building and the likely significant effect on the Arun Valley SPA and SAC.

27. The size of the shortfall in the delivery of gypsy traveller sites is clearly a significant material consideration. Given this, mindful that addressing such a shortfall can often involve the use of land in the countryside, and taking into account the scale and relatively concealed nature of the development, to my mind the delivery of 4 further pitches is sufficient to outweigh the limited harm identified to the character and appearance of the area.

28. However, noting the high level of protection attributed to European designated sites and designated heritage assets, and recognising the lasting harm that can be caused to them, I consider this material consideration does not justify a decision otherwise than in accordance with the development plan in relation to those 2 issues. Moreover, I am aware of no other benefits that, taken with the issue of supply, would be sufficient to justify the development in the light of the harm identified. Indeed, even allowing the development for a temporary period, with the conflict being time-limited, would not be sufficient to mean these benefits would lead to a decision other than in accordance with the development plan.

Conclusion

29. Accordingly I conclude the appeal is dismissed.

JP Sargent

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 13 July 2022

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 November 2022

Appeal Ref: APP/Z3825/W/20/3253886
Sussex Topiary, Naldretts Lane, Rudgwick RH12 3BU

- 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 Tim Bloxham against the decision of Horsham District Council.
- The application Ref DC/19/2309, dated 15 October 2019, was refused by notice dated 7 January 2020.
- The development proposed is a change of use to four pitch settled gypsy site along with the formation of hardstanding and utility/day room buildings.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Tim Bloxham against Horsham District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I have used the description of development as entered on the appeal form, as this concisely and accurately described the proposal.

4. Since the submission of the appeal, the Council has provided information in respect of water abstraction and its effect on Special Protection Area, Special Areas of Conservation and Ramsar sites, including submissions from Natural England on this matter. The appellant has had the opportunity to comment on this additional information and as such there would be no prejudice in me taking this into account when reaching my decision.

Main Issues

5. It follows from the above, that the main issues in this case are:

    - the effect of the proposal on the integrity of sites designated for importance to biodiversity,
    - the effect of the proposal on the character and appearance of the area, and
    - The effect of other considerations, including the need for gypsy and traveller accommodation, on the overall planning balance.

Reasons

Biodiversity sites

6. The appeal site lies within the Sussex North Water Supply Zone. Natural England has advised that within this area, it cannot be concluded that groundwater abstraction is not having an adverse effect on the integrity of designated sites, which includes Arun Valley Special Area of Conservation (SAC), Arun Valley Special Protection Area (SPA) and Arun Valley Ramsar Site.

7. These are sites that have been specifically designated for their international importance for nature conservation purposes, in respect of habitats and bird life. Given the location of the site in proximity to these designations and that I find the scheme is acceptable in relation to the other main issue below, such that I would be minded to allow the appeal on that matter alone, I must undertake an Appropriate Assessment (AA), to consider what impacts, if any, the development would have on these designated areas. I have undertaken this assessment on a proportional basis, drawing on the information provided by the Council and adopting a precautionary approach.

8. The Arun valley is identified as being one of the most biodiverse floodplain wetlands in England. The reasons for the designations include:

    - SAC − a rare and threatened snail and its supporting wetland habitat
    - SPA − wintering birds, including winter wildfowl, and the supporting wetland habitats
    - Ramsar site − wintering birds, rare invertebrates, rare aquatic and wetland plants, and the supporting wetland habitats.

    There are also three Sites of Special Scientific Interest (SSSI) that underpin the above designations.

9. The evidence before me indicates that within the designated sites, wildlife is declining. Some of the designated sites are hydrologically linked to the layer of rock from which water is currently being abstracted. Additionally, it cannot be ruled out that other locations are not hydrologically linked. It cannot therefore be ruled out that the existing level of water abstraction is not resulting in the degradation of the environment within the designated sites.

10. Given that it cannot be concluded the existing abstraction is not having an adverse impact on these sites, any development that would result in an increase in water demand, thereby increasing the amount of water abstraction, would also likely result in further detrimental impacts. In this case, the scheme proposes the development of four pitches of accommodation for gypsy travellers. Consequently, there would be new accommodation provided and new occupants. This would inevitably result in an increased water demand, thereby increasing water abstraction. In order to be acceptable, mitigation is required to show that a development is able to demonstrate water neutrality, i.e., the use of water before the development is the same (or lower) than after the development is in place.

11. Following this matter being raised by the Council during the course of the appeal, the views of the appellant were sought. However, no details of any mitigation, for example, a Water Neutrality Statement, were forthcoming. In

response, the appellant has drawn my attention to a recent appeal decision, which permitted a development and which it is claimed shows that the matter of water neutrality is not a bar to new development. However, there is nothing within the decision which convinces me that this matter was raised between the parties at the time of that decision. As such, this does not persuade me that the matter can be appropriately dealt with at this stage.

12. Additional further comments have been sought from the appellant, following the submission of information by the Council, and it has been suggested that the matter could be dealt with through the imposition of a negatively worded condition, requiring the submission of mitigation measures prior to works commencing above slab level. However, taking this approach would not provide me, as the decision-maker, with the necessary information or certainty to be able to conclude that there would be no harm to the protected sites. As such, I find that to deal with this by way of a condition would not be appropriate.

13. It has further been suggested by the appellant that it has not been shown that the water abstraction associated with a single dwelling would result in harm. However, the scheme before me proposes four new pitches, not a single dwelling. Furthermore, in the absence of evidence demonstrating that the proposal would have an acceptable effect on the protected sites, as set out above I have adopted a precautionary approach.

14. In light of my findings above, in the absence of secure and precise mitigation or information demonstrating that this is not required, I cannot be satisfied that the proposal would have an acceptable effect on the integrity of sites designated for importance to biodiversity. Accordingly, the scheme would be contrary to policy 31 of the Horsham District Planning Framework (adopted 2015) (the HDPF), insofar as it seeks to ensure that development protects sites for biodiversity. It would also conflict with the National Planning Policy Framework.

Character and appearance

15. The appeal site comprises part of a field which lies adjacent to a partly constructed, previously permitted site for gypsy travellers, which comprises four pitches. The field within which the appeal site lies is well-defined through the presence of mature boundaries, comprising trees and hedging, as well as post and rail fencing. At the time of my site visit, part of the field was being used as a campsite.

16. I note that the site is located within the Central Low Weald Landscape Character Area as defined by the West Sussex Landscape Character Assessment (the LCA). This describes the area as a mainly pastoral landscape with a well-wooded character. Key characteristics are said to include predominantly small to medium-sized pasture fields, enclosed by woodlands, shaws and tree cover.

17. The appeal scheme would introduce a new development into what is currently a grassed field. However, the site currently has little influence on the wider area and views of it are not generally available from vantage points in the locality. From the nearby road, vegetation as well as distance provide effective screening. Where there may be glimpses of the development, these would be within the context of an already developed site. Any visual effect of the scheme as proposed would therefore be negligible.

18. In terms of landscape character, while noting the description outlined above from the LCA, as well as that there would be some subdivision of the existing paddock, the presence of significant tree-lined boundaries, together with the lack of general visibility and that the site currently has the appearance of a mowed and maintained field used for camping, would ensure that any effect on landscape character would be minimal. Given that there is an acceptance that gypsy traveller sites are, in principle, acceptable within countryside locations, in this case any effect that would arise from the development would not be such that it would rise to an unacceptable level.

19. I note concerns in respect of the severance of land to the south of the site, due to the extent to which development would stretch across the width of the site. However, access to this land would be retained and, in any event, this comprises only a small parcel of land which is well defined within the existing boundaries of the wider site.

20. Mention is also made of an increase in activity that would be a resultant effect of the proposal. It is accepted that the increase in the number of pitches would also result in additional occupiers and consequential activity, such as vehicle movements. However, there is no substantive evidence before me that convinces me that this would have any unacceptable effect.

21. Accordingly, I find that the proposal would have an acceptable effect on the character and appearance of the area. Thus, there would be no conflict with policies 23 and 26 of the HDPF, insofar as they seek to ensure the development of gypsy traveller accommodation does not have an unacceptable effect on the character and appearance of the landscape and that development in the countryside should be of an appropriate scale.

Other Considerations

Local need for sites

22. The Council outlines within the Delegated Report that there is a requirement for 60 pitches to be provided within the district over a 10-year period up until 2027, rising to a requirement of 78 pitches over a 15-year period. The Council also sets out that it is unable to demonstrate a 5-years supply of pitches. This is a matter that carries significant weight.

Personal Circumstances and Need

23. I understand that the proposed pitches are to be occupied by the appellants extended family, which would include children of school age and older relatives. No detailed evidence is provided by the appellant in respect of the personal circumstances of these potential occupiers i.e., whether they currently occupy an authorised site. As such, the personal circumstances and need of intended occupiers, despite there being a general need for pitches in the district, carries little weight in favour of the proposal.

Best interests of the child(ren)

24. It is stated that there would be children of school age occupying the site, although no individuals have been identified. However, I am mindful of the benefits that a secure, private, settled base would afford to children in this case. Nonetheless, in these circumstances given the lack of specific details of

the occupiers, this matter carries no more weight than that of the general need for sites.

Planning Balance

25. While there would be no harm to the character and appearance of the area, it has not been demonstrated that the proposal would not have an adverse effect on sites designated for importance to biodiversity. This matter carries great weight against permitting the proposal.

26. I have had regard to the need for sites in the area, personal circumstances and the best interest of the child, as outlined above. In this case, taken collectively, they carry significant weight. However, on balance, I find that the harm that would result from the proposal is decisive and outweighs the factors in favour of the development. Accordingly, permission should not be forthcoming.

27. I have considered the possibility of a temporary permission. However, even a temporary permission would result in additional water abstraction. As such, I do not consider it appropriate to grant permission for a temporary period.

28. I am mindful that in dismissing the appeal there would be interference with rights under Article 8 of the European Convention on Human Rights, as it would deny individuals the opportunity to establish a home on this site. However, this is not an unqualified right and I consider that any interference would be proportionate in the interests of protecting the environment.

29. In exercising my function on behalf of a public authority I am also aware of my duties under the Public Sector Equality Duty (PSED), contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the appeal involves the use of land as a Gypsy site, occupiers would have a protected characteristic for the purposes of the PSED. However, having due regard to this, and the need to eliminate discrimination and promote equality, in this case the harm resulting from the proposal to the environment, would outweigh this requirement.

Conclusion

30. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Martin Allen

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 13 July 2022

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 November 2022

Costs application in relation to Appeal Ref: APP/Z3825/W/20/3253886
Sussex Topiary, Naldretts Lane, Rudgwick RH12 3BU

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Tim Bloxham for a full award of costs against Horsham District Council.
- The appeal was against the refusal of planning permission for a change of use to four pitch settled gypsy site along with the formation of hardstanding and utility/day room buildings.

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The application relies on both procedural and substantive matters. The applicant contends that the Council have failed to undertake a planning balance, have prevented development that clearly should have been permitted, failed to produce evidence to substantiate the reason for refusal, have acted contrary to established case law, failed to act consistently with consideration of the Council's own gypsy traveller site, and made vague or general assertions without objective analysis. It is alleged that information has been provided that is manifestly inaccurate or untrue and that the application was refused on the basis of matters that could be dealt with by planning condition.

4. There is also reference to members of the Planning Committee acting unreasonably in determining the planning application contrary to officer recommendation.

5. The costs claim is not supported by any substantive explanation of how the Council has acted unreasonably, rather the applicant has relied simply on highlighting passages within the guidance of the Planning Practice Guidance.

6. In respect of the matters raised, the Delegated Report includes a clearly identified "Conclusions and Planning Balance" section and as such has taken reasonable account of the relevant competing interests. There is a clear and reasoned explanation of why the Council consider the development to be unacceptable. While I have not agreed with the findings in respect of the

development's effect on the character and appearance of the area, I find nothing unreasonable in the decision made by the Council. This was clearly a matter of planning judgement and a conclusion that the Council was entitled to reach. In this respect, I do not agree that a development that should clearly have been permitted has been delayed. Moreover, the Delegated Report clearly substantiates the reason for refusal and does not rely on vague or generalised assertions.

7. The applicant has not identified any case law that the Council has acted contrary to. In terms of consistency with other decisions and decisions made on the Council's own gypsy traveller site, I do not have the precise details of those cases and as such I cannot draw any useful comparisons between them and the case that is before me. Consequently, there is nothing that convinces me that the Council has been inconsistent in its decision making.

8. There is no identification of any information that is manifestly untrue or inaccurate and no suggestion of any conditions that could overcome the concerns of the Council. As such, no unreasonable behaviour is proven in these respects. Furthermore, I have been provided with a copy of a "Delegated Applications – Assessment Sheet" which indicates that the application was determined under delegated power, rather than by committee.

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Martin Allen

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 3 March 2023

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2023

Appeal Ref: APP/Z3825/W/20/3265710
Land at junction of Hill Farm Lane and Stane Street, Codmore Hill, Pulborough RH20 1BW.

- 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 & Mrs Chatfield against the decision of Horsham District Council.
- The application Ref DC/20/0636, dated 27 March 2020, was refused by notice dated 1 December 2020.
- The development proposed is change of use of land for the provision of four (4) no. pitches for gypsies and travellers.
- This decision supersedes that issued on 1 March 2022 (the previous decision). That decision on the appeal was quashed by order of the High Court.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The previous decision for this development proposal was quashed by order of the High Court on 13 July 2022 and so is required to be redetermined.

3. An application for costs was made when the Inspector dealt with the now quashed previous appeal decision. As the costs decision was not quashed, I have not dealt with the costs decision. No further costs applications were made as part of the redetermination process.

4. I have taken the description of development from the appeal form as the main parties are in agreement that the scheme changed from the six pitches proposed initially to four pitches during the application process.

Main Issues

5. The main issues in this appeal are:

   a) whether the proposal, together with nearby gypsy and traveller sites, would dominate the settled community;

   b) the effect of the proposal on the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site in relation to water neutrality; and

   c) if harm would be caused to the above issues, whether there are public benefits or other material considerations that would outweigh that harm

and justify a development otherwise than in accordance with the development plan.

Reasons

Effect on settled community

6. Adjoining the A29 Stane Street, the settlement of Codmore Hill is primarily residential, with a restaurant located on Stane Street and housing along Stane Street and smaller roads, including Masons Way. The larger settlement of Pulborough lies some 1.1km away along Stane Street. There are schools, healthcare facilities, shops and a railway station in Pulborough. Bus stops lie some 100 metres from the site and allow access to Pulborough and beyond.

7. Located close to the junction of Hill Farm Lane and Stane Street, the site bounds Codmore Hill's defined built-up area. The site was previously used for storage and car parking. Planning permission DC/19/0845 for two pitches for gypsies and travellers and the erection of a shared day room was granted in September 2019. Two static caravans were on the site at the time of my visit.

8. A residential property at Orchard Cottage adjoins the site to the west, while other houses and a restaurant are to the south and east. On the opposite side of Stane Street, Forge Cottage and The Old Forge are Grade II listed buildings. The nearby residential properties are mixed in design, form, and materials.

9. The site is accessed from a lay-by on Hill Farm Lane over which the appellants have a right of way. With the exception of the vehicular access, the site is bounded by soft landscaping, with trees and vegetation adjoining the eastern boundary to Stane Street, and more recent hedging and post and rail fencing to Hill Farm Lane. Trees along the site's southern boundary are protected by a Tree Preservation Order, although I understand that some protected trees, hedging and shrubs have previously been removed. The site's northern boundary is bounded by soft landscaping and trees outside the site, while the western boundary consists of a close-boarded fence and hedging.

10. The proposal would comprise the change of use of the land for the provision of four pitches. Each pitch would accommodate one static caravan, one touring caravan and two parking spaces.

11. Paragraph 14 of the Planning policy for traveller sites (2015)(PPTS) states that when assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community. Additionally, PPTS paragraph 25 confirms that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. It also notes that local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing undue pressure on the local infrastructure.

12. Policy 22 of the Horsham District Planning Framework 2015 (HDPF) safeguards existing sites and identifies provision of sites through various means, including extending existing sites and redesign of existing sites to make more efficient use of the site to deliver additional pitches. HDPF Policy 23 sets out criteria for allocating land for Gypsies, Travellers and Travelling Showpeople and for assessing planning applications on non-allocated sites. Particular reference has

been made by the Council to criterion e. of HDPF Policy 23, which requires development to not have an unacceptable impact on the character and appearance of the landscape and the amenity of neighbouring properties, and be sensitively designed to mitigate any impact on its surroundings.

13. HDPF Policy 26 looks to protect the countryside, with criteria on suitable types of development and effect on character. HDPF Policy 26 outlines that a proposal must be of a scale appropriate to its countryside character and location, and should not lead, either individually or cumulatively, to a significant increase in the overall level of activity in the countryside, and protects, conserves, and/or enhances the key features and characteristics of the landscape character area in which it is located. HDPF Policies 25, 32 and 33 also expect development to be sympathetic to the character and distinctiveness of the site and to protect, conserve and enhance landscape character.

14. The site is in a semi-rural location proximate to residential properties. The site already has planning permission for two pitches. The proposal would introduce two additional static caravans, two touring caravans and a further four car parking spaces. A further four permitted pitches are located north of the site at Blackgate Lane, but these are some 400 metres away.

15. Notwithstanding the likely increase in the density and presence of caravans and vehicles within the site, the site is partially screened by planting from Stane Street and Hill Farm Lane. Additional screening is proposed along the boundary with Orchard Cottage, as is planting within the site to screen the proposed pitches from one another and surrounding the refuse storage area. The Council's Arboricultural Officer has confirmed that the provision of replacement trees subject to a detailed landscaping and planting plan would satisfactorily conclude the matter of the aforementioned tree and vegetation removal. Accordingly, and given the varied nature of nearby housing, I find that the proposal would neither appear to be visually dominant nor detrimentally affect the character and appearance of this part of Codmore Hill.

16. Concern has been raised by the Council with regard to biodiversity net gain and the provision of soft landscaping on site. This matter would be addressed by condition, if the appeal were to be allowed.

17. In relation to the number of homes in Codmore Hill, there is considerable disparity in the figures provided by the main parties, ranging from circa 15 homes to circa 120 homes. While I do not seek to quantify the exact number of homes in Codmore Hill, it was evident from my site visit that Codmore Hill is significantly larger than circa 15 homes.

18. Though the Council has referred to the absence of a day room, pitches can and do come forward without a day room. If a day room was required later, this would be the subject of a separate application to the Council. Furthermore, the Council has mentioned the need for future residents of the site to use local services and facilities. Although this would undoubtedly be the case, I see no difference between the site's future residents and other local residents in this regard, even if no day room were provided. There is no evidence before me which would indicate any undue pressure on local infrastructure or that excessive noise would be generated. Even accounting for the nearby pitches at Blackgate Lane, I consider that the proposal would not have a dominant effect on the local community and surrounding area within Codmore Hill because of its limited cumulative scale.

19. In conclusion, the proposal, together with nearby gypsy and traveller sites, would not dominate the settled community. It would comply with HDPF Policies 23 and 26 and paragraphs 14 and 25 of the PPTS as set out above.

Water neutrality

20. The site is within the Sussex North Water Supply Zone (SNWSZ), where some supplies are sourced from groundwater abstraction. Natural England has identified that it cannot be concluded that existing abstraction in the SNWSZ is not having a negative effect on the integrity of the Arun Valley SAC, SPA and Ramsar site. This site consists of low-lying grazing marshes protected under the Conservation of Habitats and Species Regulations 2017 (the Regulations). The site provides internationally important habitats for rare and diverse plants, aquatic and invertebrate fauna, and for winter wading birds.

21. Natural England's Position Statement for Applications within the SNWSZ (September 2021 − Interim Approach) advises that plans and projects affecting sites where an existing adverse effect is known will be required to demonstrate, with sufficient certainty, that they will not contribute further to an existing adverse effect. The Position Statement therefore advises that applications will need to demonstrate water neutrality within the SNWSZ. The Position Statement also confirms that the securing of water neutrality is a matter which needs to be resolved at a strategic level and Natural England is working with the relevant authorities to achieve this.

22. This change in circumstances occurred on 14 September 2021 after the planning application was determined by the Council, but prior to the previous decision. The previous decision was later quashed. I have had regard to the grounds upon which the previous decision was quashed and to other relevant appeal decisions[1].

23. Given the two additional pitches proposed, there would be likely to be an effect on water abstraction due to increased demand from residents. This may result in damage to habitat for protected species. The effects would arise from development either alone or in combination with other projects, such as other residential development. Appropriate assessment under Regulation 63 of the Regulations is therefore required. As a part of appropriate assessment, I must consider any avoidance or mitigation measures that might be necessary.

24. The appellants were offered the opportunity to address water neutrality following the quashing of the appeal decision. The appellants confirmed that they are unable to overcome this issue and demonstrate water neutrality on the site as there would be a water demand from the additional static caravans which cannot be offset on site or elsewhere. They consider that until a strategic solution is found that enables applicants to contribute to offsetting schemes, water neutrality cannot be demonstrated in this case. No strategic approach has been provided in this instance. Without adequate mitigation in place, it cannot be demonstrated that water neutrality would be achieved.

25. I conclude therefore that the proposal would have a likely significant effect on the Arun Valley SAC, SPA, and Ramsar site in relation to water neutrality, in conflict with HDPF Policy 31, paragraphs 179 and 180 of the National Planning

[1] APP/Z3825/C/21/3271264 and APP/Z3825/C/21/3271265, decisions issued on 24 May 2022; and APP/Z3825/W/21/3284138, decision issued 18 July 2022.

Policy Framework (the Framework), and the Regulations, insofar as they seek to protect and enhance biodiversity, including protected sites.

c) Other considerations

26. Paragraph 60 of the Framework states that it is important that a sufficient amount and variety of land can come forward for homes where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. Paragraph 62 of the Framework also confirms that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies, including travellers. Footnote 38 to paragraph 74 of the Framework makes it clear that a five year supply of deliverable sites for travellers should be assessed separately, in line with the PPTS.

27. The PPTS confirms that local planning authorities should identify and annually update a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. Although no site allocations plan has progressed locally as outlined in HDPF Policy 22, the Council published its Gypsy and Traveller Accommodation Assessment in January 2020, which identifies a need for 93 pitches from 2019 to 2036. Although no specific figures have been provided, the Council has confirmed that it is unable to demonstrate a five year supply of specific, deliverable sites. Despite the small number of additional pitches proposed, they would contribute towards reducing the identified need. The unmet need for gypsy and traveller pitches is of significant importance. I afford this significant weight.

28. The absence of special circumstances has been referred to by the Council in the reason for refusal, but it is unclear what such special circumstances would consist of. The site does not lie within the Green Belt where it is necessary to establish if very special circumstances would outweigh any identified harm.

29. No alternative sites or particular personal circumstances have been highlighted which might weigh in favour of the proposal. However, dismissing the appeal would represent an interference with the potential homes of the future occupiers of the two additional pitches and with their family life such that Article 8 of the Human Rights Act 1998 is engaged.

30. As required by Section 149(1) of the Equality Act 2010, the Public Sector Equality Duty (PSED) is also applicable as the future occupiers are likely to be gypsies and travellers and would therefore have a protected characteristic. There is therefore a need to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations.

Other matters

31. The Council has referred in its officer report to harm, albeit less than substantial harm, to the setting of Grade II listed Forge Cottage and The Old Forge on Stane Street. The application does not appear to have been advertised accordingly. If I was determining the appeal differently, I would have covered this matter in further detail, but I have not as it would not alter my overall decision.

32. I note concerns from local residents, Codmore Against Rural Decline, The Pulborough Society, and Pulborough Parish Council with regard to matters including overcrowding, importation of soils, living conditions of neighbouring

occupiers, highway safety, drainage, and refuse. However, it has not been necessary to address these matters in detail.

Planning balance

33. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that development should be in accordance with the development plan unless material considerations indicate otherwise. I have found that there is conflict with the development plan with regard to the likely significant effect on the Arun Valley SPA, SAC and Ramsar site in relation to water neutrality.

34. The shortfall in the delivery of gypsy and traveller sites in the district and the provision of two further pitches for gypsies and travellers is a significant material consideration. The effect of the proposal on the settled community is neutral in the balance.

35. Given the importance of protecting the integrity of the Arun Valley SAC, SPA and Ramsar site, I find that the benefits indicated would not be sufficient to justify the proposal in the light of the harm identified and would not justify a decision otherwise than in accordance with the development plan. Furthermore, it would not be suitable to allow either a temporary or a personal permission, as either option would give rise to harm to the Arun Valley SAC, SPA and Ramsar site, which would not be mitigated.

36. The human rights interference associated with my findings is in accordance with the law and is necessary to protect environmental interests which is a legitimate objective. The public interest cannot be achieved by means that cause less interference with human rights. As such, dismissing the appeal is a proportionate response in these circumstances and a violation of rights under Article 8 would not occur.

37. In relation to the PSED, due regard has been paid to minimising the disadvantages suffered by the future occupiers of the additional two pitches insofar as they are different to those without a relevant protected characteristic. Although the appeal is to be dismissed, these considerations have been at the forefront of the decision-making process. The outcome is a proportionate one.

Conclusion

38. For the reasons set out above, the appeal is dismissed.

Joanna Gilbert

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 14 February 2022

by Tim Wood BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1st March 2022

Costs application in relation to Appeal Ref: APP/Z3825/W/20/3265710
Land at Hill Farm Lane and Stane Street, Codmore Hill, Pulborough RH20 1BW

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr and Mrs Chatfield for a full award of costs against Horsham District Council.
- The appeal was against the refusal of planning permission for the change of use of land for the provision of 4 pitches for gypsies and travellers.

Decision

1. The application for an award of costs is allowed.

Reasons

2. The national Planning Practice Guidance (PPG) states that parties will normally be expected to meet their own costs in relation to appeals and costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The site (most of it; see main Decision) has planning permission for a Gypsy and Traveller site with 2 pitches and a day room. The expansion of that proposal for a site with 4 pitches and no dayroom represents only a marginal increase in the number of features on the site. The Council Officers' report to the Members undertook an analysis of the effects of the proposal on the surroundings and concluded that it would be appropriate in nature given the number of pitches proposed, the size of the site and the distances preserved to neighbouring properties, which are considered to be commensurate with the existing relationships between neighbouring properties within the immediate vicinity. Whilst Members are not bound to follow officers' recommendations, it is notable that the case advanced at appeal does not enter into any detailed analysis which demonstrates how a contrary view is arrived at.

4. In relation to the alleged over-dominant effects of the proposal, the Council referred to the effect on 15 dwellings which is a clearly inaccurate representation of the size of the nearest settled community. In relation to the effects on local services and facilities, again there is no analysis to assist in understanding the Council's case. The area contains numerous and good services, including a large supermarket. The suggestion that 2 additional

pitches, as proposed, would over-stretch this or any other service within the area is not credible.

5. In relation to special circumstances, the PPTS states that 'personal circumstances' should be considered as a relevant matter when considering such proposals. The clear indication is that such a consideration is capable of weighing in favour of a proposal; the absence of such could not be taken against a proposal in my judgement. The inclusion of this matter in the Council's reason for refusal indicates to me that they have taken the absence of personal circumstances as counting against the appeal.

6. Taken as a whole, I find that the Council's case amounts to vague and generalised assertions which are not based on evidence of any weight. They have delayed and sought to prevent development which should clearly have gone ahead. In my view, any proper and rigorous analysis of the proposal would have concluded that planning permission should be granted. The appellant has been unnecessarily put through the appeal process and has had to expend resources and finance which should not have been necessary.

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Horsham District Council shall pay to Mr and Mrs Chatfield, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

9. The applicant is now invited to submit to Horsham District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

T Wood

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 3 March 2023

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2023

Appeal Ref: APP/Z3825/W/20/3263152
Fryern Park, Fryern Park Farm, Fryern Road, Storrington RH20 4FF.

- 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 John Smith against the decision of Horsham District Council.
- The application Ref DC/20/0600, dated 14 March 2020, was refused by notice dated 27 July 2020.
- The development proposed is proposed partial Change of Use to Two Traveller Pitches including ancillary accommodation and car parking.
- This decision supersedes that issued on 28 February 2022 (the previous decision). That decision on the appeal was quashed by order of the High Court.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The previous appeal decision for this development proposal was quashed by order of the High Court on 13 July 2022 and so is required to be redetermined.

Main Issues

3. The main issues in this appeal are:

   a) the effect of the proposal on the character and appearance of the area;

   b) the effect of the proposal on the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site in relation to water neutrality; and

   c) if harm would be caused to the above issues, whether there are other material considerations that would outweigh that harm and justify a development otherwise than in accordance with the development plan.

Reasons

a) Character and appearance

4. The site lies in the countryside outside the nearby settlement of Storrington. Located adjacent to an access road and public right of way (No. 2647) which runs westwards from Fryern Road, the site is to the east of the site of a previous appeal[1] for the change of use of yard to two traveller pitches including ancillary accommodation and parking. The site is presently hard surfaced, possibly with tarmac planings. To the north, there are equestrian buildings and

[1] APP/Z3825/W/19/3222341, decision issued 4 November 2019.

facilities beyond timber fencing. Laurel hedging is located along the site's southern boundary adjacent to a post and rail fence, while there are conifers and further hedging on the eastern boundary.

5. Nearby, one pitch was allowed at appeal[2] at land north of Oldfield Cottage, Fryern Road in 2014, Additionally, the appellant has highlighted that two pitches were approved at Oldfield Stables, 11 pitches were approved at Kingfisher Farm, West Chiltington, and three further pitches were approved at land at Oldfield Stables, Fryern Road.

6. Described as character area E1 Parham and Storrrington Wooded Farmlands and Heaths within the Horsham District Landscape Character Assessment 2003, the site is within a Green Gap between Storrington and West Chiltington which is designated in the Storrington, Sullington and Washington Neighbourhood Plan 2018 - 2031 (made September 2019) (NP). The landscape surrounding the site is characterised by a pattern of small fields separated by hedging, many of which are paddocks. Buildings and trees are scattered across the wider landscape. Only limited long views are possible, due to hedging and trees.

7. The proposal would have a shared access with the adjacent permitted pitches onto the right of way and would comprise two gypsy and traveller pitches with space for two static caravans, two day rooms, a parking area and landscaping.

8. NP Policy 8 confirms that new development shall protect the views shown on the Green Gap and Views map. This map includes countryside protection view 3 which is referred to by the Council in their statement. NP Policy 9 seeks to resist development between Storrington and West Chiltington in line with Policy 27 of the Horsham District Planning Framework 2015 (HDPF). HDPF Policy 27 sets out a number of criteria focused on protecting landscapes from development which would result in the coalescence of settlements.

9. HDPF Policy 2, amongst other things, seeks to maintain rural character, while providing for the community's housing needs, including the temporary and permanent needs of Gypsies and Travellers, and retaining and enhancing landscape character. HDPF Policy 23 on Gypsy and Traveller accommodation sets out criteria on allocation of sites and for determining planning applications for non-allocated sites. Criterion e. of HDPF Policy 23 refers to development not having an unacceptable impact on the character and appearance of the landscape and being sensitively designed to mitigate any impact.

10. HDPF Policy 26 looks to protect the countryside, with criteria on suitable types of development and effect on character. HDPF Policy 26 outlines that a proposal must be of a scale appropriate to its countryside character and location, and should not lead, either individually or cumulatively, to a significant increase in the overall level of activity in the countryside, and protects, conserves, and/or enhances the key features and characteristics of the landscape character area in which it is located. HDPF Policies 25, 32 and 33 also expect development to be sympathetic to the character and distinctiveness of the site and to protect, conserve and enhance landscape character.

11. Paragraph 25 of the Planning policy for traveller sites (2015)(PPTS) confirms that local planning authorities should very strictly limit new traveller site

[2] APP/Z3825/W/19/3222341, decision issued 16 April 2014.

development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Criterion d) of PPTS paragraph 26 also notes that sites should not be enclosed with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.

12. Reference has been made by the appellant to the National Planning Policy Framework (the Framework) in respect of sustainable development, supporting a prosperous rural economy, reusing previously developed land well related to settlements, and achieving good design.

13. The Council has noted that the site has undergone substantial change from that suggested by historic aerial imagery. While the site would previously have had a more natural appearance, the site is bounded by trees and hedging to the east and the south which will mature over time and provide greater screening than at present. Notwithstanding this, the day rooms and caravans would be visible from the site access, both on the adjacent pitches and on the site subject to this appeal. However, this effect on the character and appearance of the area would be highly localised as a result of the range of boundary treatments partially screening the site. Though it would be visible to those walking, cycling or riding along the right of way, there would be only a brief and transient visual effect on passing the site access. Even this would be in a context of other caravans and adjacent equestrian structures. As such, I find that the proposal would not have a harmful effect on the surrounding landscape and would have no detrimental effect on the wider Green Gap given the level of containment of the site.

14. The Council has suggested that the cumulative effect of the proposed pitches, permitted pitches, and neighbouring equestrian facilities would give rise to increased vehicle activity, lighting and acoustic effects on the locality. While there would be likely to be an increase in vehicle movements and some noise associated with use of the proposed pitches and movement of vehicles, the effect on the tranquillity of the area would be limited as only two additional pitches are proposed. Furthermore, external lighting columns, cycle stores, and refuse stores could all be addressed by means of condition.

15. In conclusion, the proposal would not have a harmful effect on the character and appearance of the area. It would therefore not be contrary to HDPF Policies 2, 23, 25, 26, 32 and 33, NP Policies 8 and 9, and PPTS paragraphs 25 and 26 as outlined above.

b) Water neutrality

16. The site is within the Sussex North Water Supply Zone (SNWSZ), where some supplies are sourced from groundwater abstraction. Natural England has identified that it cannot be concluded that existing abstraction in the SNWSZ is not having a negative effect on the integrity of the Arun Valley SAC, SPA and Ramsar site. This site consists of low-lying grazing marshes protected under the Conservation of Habitats and Species Regulations 2017 (the Regulations). The site provides internationally important habitats for rare and diverse plants, aquatic and invertebrate fauna, and for winter wading birds.

17. Natural England's Position Statement for Applications within the SNWSZ (September 2021 – Interim Approach) advises that plans and projects affecting sites where an existing adverse effect is known will be required to

demonstrate, with sufficient certainty, that they will not contribute further to an existing adverse effect. The Position Statement therefore advises that applications will need to demonstrate water neutrality within the SNWSZ. The Position Statement also confirms that the securing of water neutrality is a matter which needs to be resolved at a strategic level and Natural England is working with the relevant authorities to achieve this.

18. This change in circumstances occurred on 14 September 2021 after the planning application was determined by the Council, but prior to the previous decision. The previous decision was later quashed. I have had regard to the grounds upon which the previous decision was quashed and to other relevant appeal decisions[3].

19. Given the two pitches are proposed on a site where there was no previous water demand, there would be likely to be an effect on water abstraction due to increased demand from residents. This may result in damage to habitat for protected species. The effects would arise from development either alone or in combination with other projects, such as other residential development. Appropriate assessment under Regulation 63 of the Regulations is therefore required. As a part of appropriate assessment, I must consider any avoidance or mitigation measures that might be necessary.

20. The appellant was offered the opportunity to address water neutrality following the quashing of the previous decision. Despite indicating their intention to engage a specialist to address water neutrality, no further information was provided in mitigation. Without adequate mitigation in place, it cannot be demonstrated that water neutrality would be achieved.

21. I conclude therefore that the proposal would have a likely significant effect on the Arun Valley SAC, SPA, and Ramsar site in relation to water neutrality, in conflict with HDPF Policy 31, paragraphs 179 and 180 of the Framework, and the Regulations, insofar as they seek to protect and enhance biodiversity, including protected sites.

c) Other considerations

22. The PPTS confirms that local planning authorities should identify and annually update a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. Although no site allocations plan has progressed locally as outlined in HDPF Policy 22, the Council published its Gypsy and Traveller Accommodation Assessment in January 2020, which identifies a need for 93 pitches from 2019 to 2036. No specific figures have been provided, but the Council has confirmed that it is unable to demonstrate a five year supply of specific, deliverable sites. Despite the small number of pitches proposed, they would contribute towards reducing the identified need. The unmet need for gypsy and traveller pitches is of significant importance. I afford this significant weight.

23. The site is close to a range of services and facilities and the proposal is also considered by the Council to be acceptable in respect of its effect on living conditions of neighbouring occupiers and on highway safety. I consider these matters to be neutral.

[3] APP/Z3825/C/21/3271264 and APP/Z3825/C/21/3271265, decisions issued on 24 May 2022; and APP/Z3825/W/21/3284138, decision issued 18 July 2022.

24. I also recognise that the appellant sought pre-application advice from the Council and that the site was submitted to the Council as part of the development of the Gypsy Traveller and Travelling Showpeople draft site allocations plan. I understand though that this has not been adopted by the Council.

25. No alternative sites or specific personal circumstances have been highlighted which might weigh in favour of the proposal. While there is no dispute that any future occupiers would be gypsies and travellers, I have only been advised that the two pitches would accommodate members of the same family as for the existing adjoining planning permission.

26. Dismissing the appeal would represent an interference with the potential homes of the future occupiers of the two pitches and with their family life such that Article 8 of the Human Rights Act 1998 is engaged. As required by Section 149(1) of the Equality Act 2010, the Public Sector Equality Duty (PSED) is also applicable as the future occupiers are likely to be gypsies and travellers and would therefore have a protected characteristic. There is therefore a need to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations.

Planning balance

27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that development should be in accordance with the development plan unless material considerations indicate otherwise. I have found that there is conflict with the development plan with regard to the likely significant effect on the Arun Valley SPA, SAC and Ramsar site in relation to water neutrality.

28. The shortfall in the delivery of gypsy and traveller sites in the district and the provision of two further pitches for gypsies and travellers is a significant material consideration. I have not found harm to the character and appearance of the area, but I consider this to be neutral in the balance.

29. However, given the importance of protecting the integrity of the Arun Valley SAC, SPA and Ramsar site, I find that the benefits indicated would not be sufficient to justify the proposal in the light of the harm identified and would not justify a decision otherwise than in accordance with the development plan. Furthermore, it would not be suitable to allow either a temporary or a personal permission, as either option would give rise to harm to the Arun Valley SAC, SPA and Ramsar site, which would not be mitigated.

30. The human rights interference associated with my findings is in accordance with the law and is necessary to protect environmental interests which is a legitimate objective. The public interest cannot be achieved by means that cause less interference with human rights. As such, dismissing the appeal is a proportionate response in these circumstances and a violation of rights under Article 8 would not occur.

31. In relation to the PSED, due regard has been paid to minimising the disadvantages suffered by whoever the future occupiers of the additional two pitches would be, insofar as they are different to those without a relevant protected characteristic. Although the appeal is to be dismissed, these considerations have been at the forefront of the decision-making process. The outcome is a proportionate one.

Other Matters

32. Storrington and Sullington Parish Council and local residents have raised concerns including breaches of planning conditions, the status of Lee Carter Racing Ltd, the absence of race horse rehabilitation, the use of the adjacent land for the storage of rubble, loss of a greenfield site and wildlife habitat, the previous condition restricting use of the adjacent land for two pitches, air pollution, and safety of the public right of way. I have not dealt with these matters further given my overall decision.

33. I also note that letters of support have been submitted in relation to how the land is kept tidy, the appellant's respectful behaviour to others, including walkers, cyclists and horse riders using the right of way, and advocating a diversity of cultures locally. However, none of these matters overcome my concerns in relation to water neutrality.

Conclusion

34. For the reasons set out above, the appeal is dismissed.

Joanna Gilbert

INSPECTOR