Planning Inspectorate

Appeal Decision

Hearing held on 16 July 2026

Site visit made on 16 July 2026

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2026

Appeal Ref: 6008129
Land at Kingfisher Farm, West Chiltington Lane, Billingshurst RH14 9DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by James Carthy & Kathleen O'Driscoll against the decision of Horsham District Council.
- The application Ref is DC/25/0934.
- The development proposed is the change of use of land to provide 10no gypsy pitches with dayroom, associated parking, access and services (part retrospective).

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form states that works on site started on 1 August 2024. The 10 pitches have been provided with an access from the drive to the north. Pitches 2 and 3 are not yet occupied, have not been surfaced and are overgrown with vegetation. On the other pitches there are a variety of caravans and other domestic paraphernalia associated with the residential use. As the land has been subdivided into pitches with occupation taking place, the scheme in those respects is retrospective, although elements of the proposal, such as the dayrooms, have not been constructed.

3. On 31 October 2025, Natural England withdrew its previous statement concerning water neutrality requirements within the Sussex North Water Supply Zone. Developments in this catchment, including the appeal development, are now no longer required to demonstrate water neutrality. At the time of the decision this was an issue and the water neutrality issues formed the fourth reason for refusal. With the withdrawal of Natural England's requirement to demonstrate water neutrality I am satisfied that this reason for refusal falls away and is not an issue in this appeal.

4. The evidence and related commentary I heard at the hearing indicate that the occupants of the pitches are gypsies and travellers as defined in Annex 1: Glossary to the Planning Policy for Traveller Sites December 2024 (the PPTS).

Main Issues

5. The main issues are;

    - the effect of the development on the character and appearance of the area,

- whether or not the measures for the disposal of foul and surface water are adequate, and
- whether or not the development would have an adverse effect on protected species and their habitats.

Reasons

Character and appearance

6. The area falls within the Character Area G2 Itchingfield and Barns Green Wooded Farmlands as identified in the Horsham District Landscape Character Assessment (October 2003) (the Character Assessment). The distinctive blocks of deciduous woodland, interspersed with a strong linear field pattern, narrow country lanes, gently undulating ridges and valleys, all underlain by Weald Clay, are evident in the vicinity of the appeal site and characteristic of this Character Area. There is a strong sense of enclosure within the landscape with only limited long distance views and a scattering of properties, with the settlement of Barns Green to the north east.

7. In terms of the immediate vicinity of the appeal site, the area of land to the east of West Chiltington Lane and north of Valewood Lane is characterised by a number of gypsy and traveller sites, which have a complex planning history. To the south, within this area, is Valewood gypsy and traveller site, a development of 14 pitches with mobile homes. Another 5 gypsy and traveller pitches (Greenfield Farm), which would extend this site, was granted at appeal in November 2025[1]. Work is yet to start on these pitches.

8. To their north in the adjoining field, 2 further pitches have been granted retrospectively for gypsy and traveller pitches. These pitches at Greenacres Farm, in separate decisions, were allowed on a personal basis in May 2026[2].

9. On the far eastern side of this field is the original Kingfisher Farm gypsy and traveller site for 11 pitches. These pitches were allowed on appeal in December 2011[3]. Certain conditions attached to this permission, in particular, the condition regarding the submission of a drainage scheme, were not agreed and the appeal decisions in September 2018[4] explained why the permission had not been lawfully implemented and the enforcement notice upheld. A subsequent permission for these 11 pitches was approved in 2019 but again those relevant conditions, including in respect of drainage, were not cleared. That permission has also lapsed.

10. A 2021 application sought to regularise these 11 pitches and this proposal included a detailed drainage scheme with an attenuation area beyond the southern end of the pitches. However, it appears that this application was not able to be registered by the Council and was returned to the applicant. The result is that these 11 gypsy and traveller pitches at Kingfisher Farm, which have been on site and occupied for about 15 years, do not operate under the benefit of a planning permission.

[1] Appeal Ref APP/Z3825/W/25/3367225 – Greenfield Farm, Valewood Lane, Barns Green, West Sussex RH13 0QJ.
[2] Appeal decisions at Land at 1 & 2 Greenacres Farm. APP/Z3825/C/25/3375764-3375767, and 3375768-3375772.
[3] Appeal Ref APP/Z3825/A/11/2150329 – Kingfisher Farm, West Chiltington Lane, Billingshurst, West Sussex RH14 9DR
[4] Appeal Refs APP/Z3925/C/16/3153910, 3153915, 3188942 & 3188945 – Kingfisher Farm.

11. By way of further background, the Council is advancing its new Local Plan and part of that process has been to identify sufficient gypsy and traveller pitches to meet the need. The 11 pitches at Kingfisher Farm have been allocated in the emerging Local Plan. That part of the Local Plan will be examined later in 2026 but at this stage in the process, the Council consider the site as suitable for allocation.

12. At about the same time as the present appeal development took place, 5 further pitches were added to the south of the original 11 pitches at Kingfisher Farm. These are in the space where the attenuation area was proposed in the 2021 returned application. These pitches are unauthorised at the present time.

13. The appeal development of 10 pitches is located on land immediately to the west of the original Kingfisher Farm development of 11 pitches and the further 5 pitches. On the other side of the appeal site, for about half its length, are the 2 pitches recently permitted at Greenacres Farm. Along the joint boundary, and within the Greenacres Farm pitches, is a bund which is now lawful.

14. The appeal site with its pitches and the related mobile homes, touring caravans and associated activity is well-contained when viewed from public vantage points. The site is accessed via the existing vehicular entrance and drive, and the pitches are set well back from West Chiltington Lane. The very gently sloping nature of the general area means that the site is shielded from the east by the existing pitches and established planting along that eastern boundary. There is a mature vegetative screen to the north which separates the site from adjoining fields, and to the south there is a section of an open field and then the gypsy and traveller site at Valewood.

15. From West Chiltington Lane, the established tree and hedge boundary screen along the roadside, together with the recently permitted pitches at Greenacres Farm and the rear bund, mean that the appeal site pitches are not readily appreciable. The panel fence, however, that bounds the drive, where it extends north beyond the screen of the bund, is visible through the boundary vegetation in some views from West Chiltington Lane and is a jarring feature. I will consider and address the impact of this fence later.

16. In visual terms, because of the topography, the boundary vegetation and the position and form of the established gypsy and traveller sites, even when including the unauthorised sites, the 10 pitches at the appeal site do not cause wider visual harm.

17. In addition to any visual effects, it is also necessary to consider the effect of the development on the character of the area. Although gypsy and traveller site development forms an element of the local character, the general area is very rural in nature with hedged and treed boundaries, blocks of woodland and enclosed fields. The Character Assessment identifies key sensitivities to change and this includes further small scale incremental erosion of character, e.g. introduction of suburban features.

18. Just because a development is not visually prominent does not mean that its design should not meet the requirements to achieve well-designed places in the National Planning Policy Framework (the Framework) and the development plan. The Framework, for instance, requires that development is visually attractive as a result of good architecture, layout and appropriate and effective landscaping.

There is also a Framework need for schemes to be sympathetic to local character and history, including the surrounding built environment and landscape setting.

19. Policy 23 of the Horsham District Planning Framework 2015 (the HDPF) sets out criteria for gypsy and traveller accommodation. Criterion (e), in summary, includes that development should not have an unacceptable impact on the character and appearance of the landscape, and is sensitively designed to mitigate any impact on its surroundings.

20. It is accepted that gypsy and traveller development is often found in the countryside and is, therefore, not intrinsically out of character. However, in this case, the site in its present form, is dominated by hard surfaces and solid boundary treatments such that there is virtually no soft landscaping that even to a minor extent helps to reflect some of the character of the rural surroundings. The pitches are reasonably generous in size and well maintained. Nevertheless, the access drive and pitches[5] with their boundary treatments have a functional and hard finished appearance that is unsympathetic within this countryside location.

21. Within and immediately around the site, the development is experienced as a suburban incursion into what was an open section of field. The length of panel fencing with concrete posts that stretches north from the end of the bund is a particularly discordant feature that is also visible from sections of West Chiltington Lane. In its present form, the landscaping of the site is of a harmful character that does not meet with the relevant policy requirements.

22. However, although not shown on the layout plan, from the outset, in the planning application documents, within the appeal statement and at the hearing, the appellant has confirmed the intention to soft landscape the site. This could include removing fences and some areas of hard standing and, in replacement, to plant hedges and trees, and to include grassed and planted amenity areas within the pitches. The pitches and the access drive in front of the pitches are all generous in size and have sufficient space to accommodate such soft landscaping. While this remodelling of the site would be a substantial undertaking, such proposals could significantly soften the appearance of the site and provide a more sympathetic character that would reflect more appropriately some of the rural surroundings.

23. In coming to these judgements, I have had regard to all the landscape evidence including that in the Landscape Appeal Statement (Anne Priscott Associates Ltd). In summary, I am satisfied that with a comprehensive landscaping scheme, once matured, the character of this gypsy and traveller site could integrate and become more compatible with its rural location and the character of the surrounding area.

24. Any approval of the development could be subject to a planning condition requiring the submission of a detailed hard and soft landscaping scheme with a timetable for implementation and maintenance. In these circumstances, while the retention of the 10 pitches would have some localised impact, it could have the structural planting to mitigate the main character change and the impact would be acceptable. In short the scheme, with these changes, would meet the policy test that the development would not have an unacceptable impact on the character and appearance of the landscape and could be sensitively designed to mitigate any impact on its surroundings.

[5] Pitches 2 and 3 are presently undeveloped and overgrown.

25. Accordingly, I conclude that in terms of the character and appearance of the area there would, with a suitable landscaping scheme the subject of a planning condition in any approval, be compliance with Policies 23, 25, 26, 32, and 33 of the HDPF (2015), Policies 1 and 12 of the Barns Green & Itchingfield Neighbourhood Plan (2025) (the Neighbourhood Plan), the Framework and the PPTS in respect of the impact on the character and appearance of the area.

26. In coming to this judgement, I have had regard to the other appeal decisions on the various nearby gypsy and traveller sites and, in particular, the views of those Inspectors regarding landscape and character impacts. In relation to the decisions at 1 and 2 Greenacres Farm, those sites are closer to the road, have views into the site through the new accesses and are more visible than the present appeal scheme, which is served off the existing access, set back in the land and partially screened behind the well-established bund. Consequently, the landscape and character considerations are different in this appeal from those considered by the Greenacres Farm Inspector and other Inspectors and I have judged the development on its merits in its specific context.

Disposal of foul and surface water

27. The Planning Practice Guidance explains that applications for development relying on anything other than connection to a public sewage treatment plant will need to be supported by sufficient information to understand the potential implications for the water environment. The need to properly service a gypsy and traveller site with essential services, including sewerage and drainage, is a requirement of criterion (c) of Policy 23 of the HDPF.

28. There are no mains sewers in the area. Furthermore, a constraint on development is that it is not an option for treated water outflowing from a package treatment plant or surface water to percolate into the ground because of the underlying Weald Clay. By way of background, there have been difficulties in providing foul and surface water drainage to various sites and, in particular, the 11 pitches at Kingfisher Farm.

29. With the 11 pitches at Kingfisher Farm, an agreed drainage scheme has not been approved and implemented, and it is one of the main reasons why the site is still unauthorised. There was a scheme to drain the surface water and outflows from the treatment plants to the road side ditch to the east, but this required upgrades to culverts and the ditches to ensure that flooding would not occur. These off site works, and the related payment to facilitate them, have not been agreed as part of any approval. Furthermore, the five additional pitches to the south of the 11 pitches has covered over the identified space for the attenuation area meaning that undertaking this previously proposed drainage option, in full, is presently not available.

30. The appeal development, sited alongside the original 11 pitches at Kingfisher Farm, has similar drainage challenges. As part of the present appeal scheme a fully worked up drainage strategy[6] (the Drainage Report) has been submitted by suitably qualified consultants. This involves drainage from the treated outflow of the proposed package treatment plants on each pitch, and attenuated surface water from the 10 pitches, to drain to a pipe leading across the field to the west. It would then be culverted under West Chiltington Lane, and water would then drain

[6] Surface Water Drainage Design Summary and Calculations v1.1(09.04.26) – BP Civils

into the ponds, and then onwards into the ditch and river network. Water flow would be attenuated in part by surface water being held within aquacell surface water tanks under a section of the drive. This is a technically feasible solution.

31. However, the Estate owning the land on the west side of West Chiltington Lane, into whose ponds the outflow is proposed to be drained, has made it clear in written submissions at the application stage, that they have no intention of granting consent for this water to be drained onto and through their land. As a consequence, while technically possible, this scheme appears to have no prospect of being deliverable as a drainage solution.

32. The Drainage Report also explains an alternative. The water from the 10 appeal pitches could be combined to drain from the site to the east and then into the highway ditch in Valewood Lane. This would redirect the natural flow of water from the site to the east catchment, which would previously have gone to the west. The Drainage Report explains that this alternative proposal would be reliant on off-site highway culverts/water course infrastructure improvements being implemented.

33. The surface water flooding map shows that there is a flood risk within a section of the road and adjacent land to an eastern part of Valewood Lane and without the necessary improvements it is likely that the additional drainage to the east could increase flood risk in this area. The scheme before me does not include specific details of the improvements that would be necessary and there is no agreement or other arrangements in place to provide any necessary funding to undertake the range of off-site works that may be required. Also, there is no acceptance from the Lead Local Flood Authority (LLFA) that it has examined in detail this approach nor that it agrees that this is an implementable option. In these circumstances, and in the absence of firm details and agreement/contribution to any off-site works, I am far from satisfied that this approach has a reasonable prospect of being delivered as an effective solution.

34. Other options were promoted at the hearing by the appellant as potential solutions. This included draining the appeal site to its bottom south-west corner. From this point, water would be piped through the northern part of the recently permitted 5 pitch scheme at Greenfield Farm. This piped water would then discharge into the highway ditch on the east side of West Chiltington Lane. At the site visit, I carefully examined the highway ditch along this road side. It slopes very gently down to the south, culverts under the road at the junction with Valewood Lane and, then on the west side of the road, the ditch slopes down to a pipe near the entrance with Pear Tree Farm. From that pipe it is assumed that water drains ultimately into the wider river system.

35. There are a number of existing pipes that discharge into the road side ditch on the eastern side of West Chiltington Lane from, it is assumed, gypsy and traveller sites. Some of the pipes appear to discharge partially treated foul water because of the smell and film on the surface of the water. This ditch does not flow very well, in particular because some of the accesses that have been formed over the ditch appear to have partially collapsed culvert pipes or they have poorly positioned pipes at such heights above the base of the ditch so as to hinder water flow. This means that some water appears to back up at these access points and it seems to me the condition of the present ditch could lead to the potential for surface water flooding in times of increased water flows. Furthermore, the pipe near Pear Tree

Farm is also at a reasonably raised level above the base of the ditch and therefore some water does not flow into the pipe at this point, again backing up water.

36. At the hearing, the consultant on behalf of the LLFA expressed concerns with the option of draining into the ditch alongside West Chiltington Lane because it had not been previously investigated as part of this proposal with a related engineering assessment. It was also not clear to her whether or not the flows, although proposed to be attenuated from the appeal site, would lead to a greater risk of surface water flooding on the road to the south of the outflow point. It seems that, although there are pipes draining to this ditch already, the ability of the ditch, culverts and position of the pipe near Pear Tree Farm to function in an acceptable way has not been demonstrated and there is reasonable doubt in my mind as to whether the ditch is appropriate in its present form to take more direct flows. In the same way as the ditch to the east along Valewood Lane needs improvements as part of any scheme, there is a clear prospect in my mind from hearing the evidence and seeing the situation on site that the ditch, related culverts and pipes along West Chiltington Lane would also need work to avoid the possibility of surface water flood risk.

37. Given that these would be off-site works, and it is not known what works may be required or how any issues could be overcome, it is not a drainage option that has, at this stage, a reasonable prospect of being a deliverable and ready solution. I am not satisfied this approach to drainage could reasonably be left to a planning condition, including a Grampian condition, in any approval. To reiterate, in my view it has not been shown that this approach to drainage would not contribute to any surface water flood risks along sections of West Chiltington Lane.

38. It was also proposed at the hearing that another alternative could be for cess pools to be the method of sewage containment on the appeal site. Foul water could then be disposed of by tanker from each pitch. With a cess pool there would be no outflow and therefore no discharge to any water course. However, while a solution for the foul water, this would be an expensive option and pumping out would have to occur on a regular basis. It would also not deal with surface water flows.

39. To deal with surface water, it was then suggested that a perimeter trench to the site could act as a way of dispersing and containing surface water. However, that could affect the proposed layout plan, has not been worked through from a technical perspective and, in any case, would need some form of outflow arrangement to ensure that flooding did not occur on site. Again, I am not satisfied that there is the technical supporting information sufficient at this stage to convince me that this would be an option that would provide a reasonable and deliverable solution.

40. I am also conscious that other Inspectors have looked at drainage issues on other nearby gypsy and traveller sites in the past. This has included the Inspector at the enforcement inquiry in 2018 for the 11 pitches at Kingfisher Farm where she concluded that it had not been shown that the site could be properly serviced with drainage and consequently that the development would not be compliant with criterion (c) of Policy 23 and Policy 39 on infrastructure provision.

41. This site for 11 pitches has now been allocated for gypsy and traveller development in the emerging Local Plan. While it could be assumed from this allocation that the Council would be satisfied that drainage issues can be resolved

there was little evidence from the Council at the hearing to explain how this could be achieved.

42. More recently, the Inspector who allowed the appeal for 5 pitches at Greenfield Farm added a condition for the approval of the details of foul and surface water disposal to be submitted and agreed. It appears from the decision that this was because drainage was not an issue raised by the Council on this site and it does not seem to have been a substantive concern in those appeal considerations.

43. With the appeals at Greenacres Farm, the disposal of foul and surface water was a main issue. The Inspector was satisfied with the fully detailed Drainage Strategy before him. Surface water would be directed to the ditch parallel with West Chiltington Lane and he was content that the Drainage Strategy was sufficient to adequately deal with all foul and surface water drainage. In both appeals that Inspector attached conditions requiring the submission of a drainage scheme for agreement and then implementation.

44. I do not have all the details of that Drainage Strategy nor a full understanding of the nature and details of the discussions that took place at the Greenacres Farm hearing and the full extent of investigations at the site visit. It appears that the Inspector did not have drainage engineers appear before him at that hearing while I have had the ability to question and receive information from both the appellant's drainage engineer and the consultant on behalf of the LLFA. I found this information very informative in understanding the opportunities and limitations of the various options for dealing with drainage. I am also conscious that these were two individual pitches at the Greenacres Farm site rather than the 10 pitches at this appeal, which is a different scale of development. Nevertheless, it is a matter of fact that the Greenacres Farm Inspector, and the Inspector at the Greenfield Farm site, were satisfied that foul and surface water disposal could be dealt with by planning condition.

45. In the case of the appeal proposal before me, I am not satisfied that this would be the case. While there is a detailed drainage scheme as part of the present appeal, this has no real prospect of being deliverable because it involves third party agreements that are stated would not be forthcoming. The other options that are proposed are not worked up in the necessary detail to provide confidence and/or appear to require some form of off-site works. The LLFA is not satisfied with these options at this stage and I attach substantial weight to these views and its reasons for coming to these judgements.

46. It follows that I conclude that the measures for the disposal of foul and surface water have not been found to be adequate. In these circumstances, allowing the scheme without the reasonable prospect of a deliverable drainage solution could lead to the potential for pollution and flood risk. The requirements of the PPG in this respect have not been met and the proposal has not been supported by sufficient information to demonstrate that the potential implications for the water environment would be acceptable. There would also be conflict with Policy 23 of the HDPF, in particular in relation to criterion (c) concerning sewerage and drainage. More generally there would not be compliance with Policies 24, 32, 33, 38 and 39 of the HDPF and the Framework with regard to providing infrastructure to meet the requirements of development.

47. To reinforce the point, I have carefully considered whether a planning condition or conditions attached to an approval would be a way forward to allow details of drainage to be worked through. However, I have concluded, in the light of my analysis above, including because of the uncertainty of delivery and potential for off-site works which are not clearly known, that such a condition or conditions would not meet the test of reasonableness. In particular, a condition that required the cessation of occupation and the removal of all accompanying caravans and other works were an effective drainage scheme not to be submitted, within a reasonably short period, would be unreasonable. This is because, in the circumstances when I am not satisfied that a drainage scheme is likely to be deliverable in the near future, such a condition would have the effect of nullifying the benefits of any approval.

Protected species and their habitats

48. The appeal site lies approximately 7.7km east of The Mens Special Area of Conservation (SAC). It is therefore, as confirmed by Natural England, within the 12km Wider Conservation Area for the SAC (Sussex Bat Special Area of Conservation and Landscape Scale Enhancement Protocol). A qualifying feature of the SAC is Barbastelle bats.

49. At the application stage, the Council's Ecologist raised concerns that bats may be adversely affected by the scheme. In summary this was because the proposed storm drain utility line would be connected across West Chiltington Lane through or beneath the hedgerow and that there are surrounding hedgerows that contain mature trees that could affect roosting, foraging and commuting habitats. The issue was raised that in the absence of ecological surveys it was not clear what the impact of the development would be on the protected species and the SAC.

50. The appeal decisions for Greenacres Farm, a site immediately to the west with a joint boundary and which in the past formed the same field as the present appeal site, explain that ecological surveys were previously undertaken with respect to that site. These surveys concluded that the Greenacres Farm site and adjacent habitats provide suitable potential habitat for hedgehogs, reptiles, Great Crested Newts, badgers, breeding birds and bats. The evidence indicated that the Greenacres Farm site was of site level value for commuting and foraging bats.

51. With the present appeal site there is no detailed survey work to understand the impact on bats and other species. I appreciate that the development of the pitches has gone ahead of the application and this makes ecological surveys more difficult to undertake. Nevertheless, there is not an ecological assessment to form the basis of a conclusion as to the impacts and on the likely mitigation that may then be required.

52. At the appeal stage, a letter from Windrush Ecology explained, on the basis of examining historic and existing photographs of the site, that there were and are no suitable habitats for roosting bats and therefore confirmed that roosting bats are absent from the site. However, this letter makes no assessment of bat foraging and commuting impacts.

53. I have also taken into account the additional details submitted on bat flight lines and the bat movement network. However, it appears that these details do not extend to the Horsham District Council area and are therefore of limited value in this appeal. I appreciate that the site may be on the other side of the urban area of

Billingshurst from the SAC and, it is said, therefore less likely to be a commuting and foraging area for Barbastelle bats roosting in the SAC. However, there is no survey or scientific evidence before me to confirm this proposition.

54. As part of my assessment of these matters, and in accordance with the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitat Regulations), I consulted with the appropriate conservation body, Natural England. Natural England has responded that it concurs with the view of the Council which has stated that they do not have enough information to conclude that there will be no impacts on the designated site. The response from Natural England highlights paragraphs from the Council's appeal statement, to which it agrees, such that there has not been an assessment to consider the impacts upon bat commuting and foraging habitat, particularly in relation to lighting impacts, which is required to allow the decision maker to undertake the Appropriate Assessment and secure any necessary mitigation measures, and thereby to avoid adverse effects on the integrity of The Mens SAC and qualifying species (Barbastelle bats). I place considerable weight on the views of the Council's Ecologist and those of Natural England.

55. In this case, it is reasonable to conclude as a starting point that there is a potential pathway between the site and The Mens SAC in terms of effects on Barbastelle bats because the area, including the appeal site, falls within the 12km Wider Conservation Area for the SAC. Because of its proximity to the SAC and, in the absence of an adequate assessment/survey to demonstrate otherwise, I cannot rule out, either alone or in combination with other projects, that there is or has been a likely significant effect on this European designated site from the development.

56. It would be possible to attach planning conditions with regard to landscaping and external lighting to any approval. However, in the absence of sufficient and detailed information on the requirements of such schemes to provide the required mitigation, I do not have the objective and credible evidence, when undertaking an Appropriate Assessment, to be satisfied that the adverse effects on the integrity of the SAC can be ruled out beyond all reasonable doubt. In these circumstances, the appeal scheme does not meet with the requirements of the Habitats Regulations.

57. In addition to these concerns, in the absence of on-site surveys or detailed analysis, it is not possible to conclude that the biodiversity of the site itself, in addition to potential harm to commuting and foraging routes for bats, has not been harmed by the development of the pitches on what was previously a field. Circular 06/2005[7] explains that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. A requirement for a Biodiversity Enhancement Scheme for Protected and Priority Species could be made the subject of a planning condition in any approval. However, this requirement would be applied to a development of 10 pitches and an access route presently covering virtually the whole of the site. Consequently, even with an extensive landscaping scheme, there would appear to be limited to

[7] ODPM Circular 06/2005 Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System – 16 August 2005.

moderate opportunities for the creation of meaningful new areas of habitat and therefore it remains that the net effect on biodiversity from the proposal is not fully understood nor may it be able to be sufficiently mitigated.

58. I conclude that the scheme has not demonstrated that there would not be an unacceptable and adverse effect on protected species and their habitats, and that the potential adverse effects are capable of being successfully addressed through relevant mitigations. As a consequence, there is conflict with Policy 31 of the HDPF, Policy 2 of the Neighbourhood Plan, the Framework and the Habitats Regulations which seek, amongst other things, to retain and enhance natural environmental resources, including biodiversity.

Other Matters

PPTS considerations

59. It is agreed by the main parties that the site, while in the countryside, is not away from existing settlements in terms of a gypsy and traveller site and therefore is not a site that would fail the requirements of paragraph 26 of the PPTS. I agree. I am also satisfied that the additional 10 pitches, in conjunction with other authorised sites, even taking into account unauthorised sites, would not dominate the nearest settled community or place undue pressure on local infrastructure.

60. In terms of the considerations that should be attached weight in paragraph 27 of the PPTS, the site would not make use of previously developed, untidy or derelict land. The site is not presently well planned or soft landscaped in such a way to positively enhance the environment and increase openness, but I have concluded that with a substantial and effective soft landscaping scheme it would be acceptable within this rural area and this criterion could be met. I attach this modest positive weight because the vast majority of the site would, nevertheless, consist of pitches and the access road and the soft landscaping would be experienced in this context.

61. The site has generous pitch sizes and with an appropriate landscaping scheme this could encourage healthy lifestyles and provide suitable play space for children. I attach this matter moderate weight. Again, with a suitable landscaping scheme including the removal of hard boundary treatments, the site would not be so enclosed and would meet the requirements of criterion d) of paragraph 27. This is important but as a benefit, given the site is set back from public areas, I attach it limited weight.

62. One of the Government's aims as set out in the PPTS is to promote more private traveller provision and this is a site where all 10 pitches are owned by the occupants or potential occupants. It therefore meets this aim of Government.

Existing level of local provision, unmet need, alternative sites and present supply of gypsy and traveller sites

63. The Council own one gypsy and traveller site and the County Council two sites in the area. There are no pitches available on these sites or, as far as the evidence indicates, neither are there any available pitches on any private sites. Consequently, there are no available, suitable, acceptable and affordable alternative sites for the present occupants of these 10 pitches were they required to relocate. This is a matter to which I attach substantial weight.

64. At the hearing it was explained that there is a shortfall of about 41 gypsy and traveller pitches against a requirement of about 74, although this was calculated before the changes to the definition of a gypsy and traveller in the December 2024 version of the PPTS. Consequently, it is likely that the shortfall will be higher. I have also had regard to the figures and related need for sites as set out in the Statement of Common Ground. The Council is unable to demonstrate a 5 year supply of deliverable gypsy and traveller sites. The substantial level of unmet need and lack of a five year supply are matters that carry substantial weight in favour of the development.

Policy progress and any failure of policy

65. The Council has consistently failed to meet the requirements to identify, allocate and permit the required number of gypsy and traveller sites to meet identified need. This has included not delivering a Site Allocations Development Plan Document pursuant to Policy 22 of the HDPF. The Council describe the unmet need as immediate and entrenched. The emerging Local Plan has been subject of delays and while it allocates gypsy and traveller sites, this aspect is yet to be examined. The nature of the planning approach over many years has failed to deliver the required pitches and this should be considered a failure of policy, a separate issue to the present unmet need, and this should be attributed significant weight.

Personal circumstances

66. At the present time 8 of the 10 pitches are occupied and the other two have identified families who will occupy the pitches in due course. I received details of the occupants and proposed occupants of the pitches and their circumstances. The families, including many children, are now well established on the site. Some residents have health issues that continue to require regular visits to medical facilities. The children attend local schools and it was clear from the comments at the hearing that the parents of these children place importance on their children's education.

67. There are also family connections between some of the occupants of these 10 appeal pitches and the occupants of the other pitches at the Kingfisher Farm site to the east. Having such nearby family connections and support is reflective of one aspect of the gypsy way of life and adds to the benefits of the appeal pitches being in this location, although it should also be noted that those other pitches at Kingfisher Farm are unauthorised.

68. One of the Government's aims in respect of traveller sites in the PPTS is to enable the provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure. This site provides a settled base for these important aspects of life and the information indicates that the families on this site are integrating with the wider settled community. There are considerable personal benefits that being resident on the site brings to these families. In the absence of these pitches, and with no others being available, if required to move off the site it is likely to result in a road side existence for these occupants with resulting poor outcomes including for the health of those in need of care and the education of the children.

69. To reiterate the importance of these matters I am conscious of the United Nations Convention on the Rights of the Child and that the bests interests of the many

children on the site must be a primary consideration, meaning that no other issue is inherently more important. As explained above, the settled base is important for the health, well-being and education of all the children on the site, especially with the absence of alternatives that could result in a road side existence. The personal circumstances of the occupants of the site are of considerable importance and weigh to a large extent in favour of the scheme.

Intentional unauthorised development

70. A written ministerial statement was published in August 2015 on intentional unauthorised development. It explained that the Government is concerned about the harm that is caused where the development of land has been undertaken in advance of obtaining planning permission. The statement explains that in such cases, there is no opportunity to appropriately limit or mitigate the harm that has already taken place. Intentional unauthorised development is a material consideration that can be weighed in the determination of planning applications and appeals.

71. The site was developed in the knowledge that permission was required. However, a planning application has been submitted to seek to address the site without the Council having to first consider enforcement action. There has been a willingness shown to address issues such as landscaping and drainage, however, with the development going ahead in advance of the normal consideration process, it appears that biodiversity has not been adequately addressed and harm may have resulted. In these circumstances, I attach low to moderate weight to the intentional unauthorised development that has taken place.

Local representations

72. At the planning application stage, two letters of local objection were received and one from Itchingfield Parish Council. One of the local letters was from the Estate owning the land and the ponds on the western side of West Chiltington Lane and objected to the drainage strategy. The letter confirms that the Estate would not grant consent for drainage onto their land. The other local representation objects on grounds of overdevelopment, drainage concerns and the existing problem discharges emanating from these gypsy and traveller sites, and the detrimental impact on the local community.

73. The Parish Council details, in particular, its concerns with regard to drainage, explaining problems with the existing sites and the concerns with the proposed drainage strategy with the present scheme. The Parish Council consider that the drainage approach for the reasons it has set out in its letter is implausible for the site.

Heritage asset

74. Pear Tree Farm is a listed building and is located someway to the south west of the appeal site. The distance and intervening vegetation mean that there would be no harm to the setting or significance of this designated heritage asset.

Planning Balance and Conclusion

75. The location of the pitches is acceptable in principle being in a sufficiently sustainable location with compliance with the relevant sections of the PPTS. The scheme, even with the other gypsy and traveller pitches in the area, does not

dominate the local community. The scheme does not cause wider visual harm and with an extensive soft landscaping scheme that can be secured by condition in any approval, the localised effects on the character of the area would not be unacceptable. Weight can be attached to three of the four criteria in paragraph 27 of the PPTS.

76. The Council has failed to deliver sufficient gypsy and traveller pitches over many years and there is a substantial level of unmet need. There has been a failure of policy and there are no alternative pitches available for any of the present occupants were they required to be relocated. The Council cannot demonstrate a five year supply of gypsy and traveller pitches. Collectively these failures weigh to a large extent in favour of the scheme.

77. Indeed, the scheme would provide 10 gypsy and traveller pitches making a very worthwhile contribution to supply. The pitches are reasonably spacious in size and, with appropriate updated soft landscaping, would provide attractive environments for gypsies and travellers with good play space for children.

78. The personal circumstances also weigh heavily in favour of approval. The families on the site are integrating with the wider community and a settled base is important for improving outcomes, particularly for health and education. The school age children are enrolled at local schools and some occupants receive medical treatment which may be put in jeopardy if they were required to move from the site. Given that there are no alternative sites available, refusal of planning permission could very likely lead to a road side existence. Retaining the existing families on the site and providing a settled base is very much in the best interests of the children as well as other residents including those with health conditions.

79. The scheme would provide accommodation for gypsies and travellers who meet the definition in the PPTS. From what I heard residents should also be considered an ethnic minority with protected characteristics of race under section 149 of the Equality Act 2010. I am also conscious that occupants of these appeal pitches have relatives and family relationships with other gypsies on the other Kingfisher Farm pitches and living with or close to the extended family facilitates part of the gypsy way of life.

80. Taken together there are real and considerable benefits that accrue from the development. Refusal, and a requirement to leave the site, would have significant negative impacts on the families on the site, and those two families who would then not be able to move onto the site in due course. Collectively all these planning considerations, the key ones which I have summarised above, attract very substantial weight in favour of approval.

81. On the other hand, the ability to provide an adequate drainage scheme for both foul and surface water has not been demonstrated for the reasons explained. I am not satisfied that it would be reasonable or effective to leave this to a planning condition. A suitable drainage scheme is a basic requirement of providing safe and healthy living conditions on site and to protect the wider area. Furthermore, the planning issues with biodiversity are matters of great concern and the works have, or potentially have, caused harm to the natural environment, including, either alone or in combination with other projects, to a European designated site. Importantly, the scheme does not demonstrate compliance with the Habitats Regulations.

82. These drainage and biodiversity harms are of such importance that they raise fundamental concerns with the development of the site and fail related development plan and Framework policies. This includes Policy 23 of the HDPF which sets the planning requirements for new gypsy and traveller sites. The weight and importance that accrue from these harms is such that the scheme conflicts with the development plan when considered as a whole. There is also some additional harm resulting from the scheme being intentional unauthorised development.

83. The Council cannot demonstrate a five year supply of deliverable gypsy and traveller pitches. In normal circumstances this would engage paragraph 11d of the Framework and the presumption in favour of sustainable development. However, in this case, the presumption is not engaged because paragraph 195 of the Framework explains that this does not apply where the plan or project is likely to have a significant effect on a habitats site, either alone or in combination with other plans or projects. My Appropriate Assessment was not able to conclude that the plan or project, either alone or in combination, would not adversely affect the integrity of the habitats site.

84. Consequently, section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the proposal shall be determined in accordance with the development plan unless material considerations indicate otherwise.

85. In this case, very substantial weight should be attributed to the benefits of the development. However, the harms are also very notable and of considerable importance. The drainage issues go to the heart of providing an acceptable scheme in terms of the health and wellbeing of the occupants and those in the area. There is also concerns with the effect on biodiversity and a failure to meet the requirements of the Habitats Regulations so as to demonstrate protection of a habitat site of European importance. Taken together I consider that the harms and the related policy conflicts clearly outweigh the benefits of the scheme such that the decision should be made in accordance with the development plan and material considerations do not indicate otherwise.

86. In coming to this judgement, I have had due regard to the Public Sector Equality Duty (PSED) set out in section 149 of the Equality Act 2010, the best interests of the children on the site and human rights issues. I am sympathetic to the occupants of the pitches because the Council has, over a long period of time, not identified or permitted sufficient pitches. The provision of privately owned pitches are a Government aim.

87. Dismissing the appeal would interfere with the appellant's and their family's rights, and those of the other occupants on the other pitches, to the peaceful enjoyment of their possessions, and to a private and family life and home under Article 1 of the First Protocol and Article 8 as set out in the Human Rights Act 1998. I am conscious that there are families on the site, many children who need to continue their schooling and others with health and other issues. However, the rights that I have highlighted are qualified rights; interference with them in this instance would accord with the law and be in pursuance of well-established and legitimate aims namely the requirements for adequate drainage to help protect from pollution and flood risk, and protection of biodiversity. Even taken account of the weight I afford to the important beneficial interests and related legal requirements, the harm caused by the development still outweighs the benefits. The protection of the

public interest cannot be achieved by means that are less interfering with their rights.

88. It follows that the case made for the granting of a permanent planning permission has not been demonstrated. However, it is also important to consider the merits and planning balance for either a temporary and/or personal permission.

89. In considering a temporary permission, the scheme does not demonstrate adequate drainage and would still result, in the absence of information to demonstrate a deliverable scheme, in the potential for pollution and flood risk during that period. There would still be harm or potential harm to biodiversity and the requirements of the Habitats Regulations would still not be met. However, if the site was returned to its previous undeveloped state then this could reinstate opportunities for biodiversity and the potential ability for foraging and commuting Barbastelle bats that may use the site in conjunction with the wider area. Nevertheless, harm would take place in the meantime. In terms of landscaping, given the significant landscaping works that would be required and the time needed for it to mature, it is unlikely during the temporary period that the soft landscaping would help reduce the adverse character effects that are presently evident.

90. While a temporary period may allow the emerging Local Plan and its gypsy and traveller site allocations to progress, as the examination of this part of the Plan is still to take place, it is not known what the outcome will be. In any case, even if alternative sites were allocated, they would usually need to gain planning permission and that would also take time. There does not appear to be a substantive case in terms of the emerging Local Plan to justify a temporary permission.

91. A temporary permission would allow the occupants to stay for a set period but it would, for instance, still be likely that children would be attending local schools at the end of that permission and the settled base would then be removed at that time. The provision of additional pitches meeting some of the unmet need would not be permanent and the benefits in this respect would not be as substantial.

92. While the drainage and biodiversity concerns would persist only for a temporary period, they are still very serious issues. There would be harm during that period, that in my judgement, would not be outweighed by the benefits of the scheme, including having regard to the personal circumstances of the occupants. The scheme, even on a temporary basis, would still conflict with the development plan when considered as a whole and material considerations do not indicate a decision should be made otherwise. This would be a proportionate decision, when having regard to the requirements of the PSED, the best interests of the children and human rights. The case has not been justified for a temporary planning permission.

93. In terms of a personal planning permission, this would allow the existing occupants to be named on an approval and for them to remain as long as they wished. As some of the occupants appear to be young families with young children, a personal permission could allow the occupation of the site for many decades. A landscaping scheme could be implemented to ensure the site was in character with this rural area. However, in time some pitches would be vacated and would be required to be returned to their previous state, but this would be unlikely to be in a

comprehensive and coordinated way for this linear run of pitches. Furthermore, during that period, and what could be for many years, the drainage and biodiversity concerns would likely persist. Again, this would be a serious matter and in terms of drainage, when a deliverable solution is not readily available, could lead to the potential for some pollution and flooding. The concern with the likely impact on the European habitat site, either alone or in combination with other projects, would likely endure for potentially a considerable time.

94. A personal permission would give certainty for those existing occupants and provide a settled base for an extended period. However, it would not add to the number of pitches on a permanent basis. With a personal permission, the identified harms would still be significant and would persist for some years, potentially a considerable number of years.

95. I conclude that the scheme, even on a personal basis, would still conflict with the development plan when considered as a whole and material considerations do not indicate a decision should be made otherwise. This would be a proportionate decision, when having regard to the requirements of the PSED, the best interests of the children and human rights. The case has not been justified for a personal planning permission.

96. Having regard to all my findings and conclusions set out above, I therefore conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Michael Rudd	Counsel for James Carthy and Kathleen O'Driscoll and instructed by ET Planning
Emily Temple BSc(Hons) MSc MRTPI	ET Planning
Anne Priscott BA (Hons) CMLI	Anne Priscott Associates Ltd
Mark Akmenkalns FIHE	Managing Director, BP Civils

FOR THE LOCAL PLANNING AUTHORITY

Helen Sissons BA MA MRTPI	Principal Planning Officer (Compliance), Horsham District Council
Matthew Porter BA MA MRTPI	Principal Planning Officer (Development Management), Horsham District Council
Inês Watson CMLI	Specialists Team Leader (and in-house Landscape Architect), Horsham District Council
Catherine Walters	WSP on behalf of the Lead Local Flood Authority, (West Sussex County Council) and Horsham District Council

INTERESTED PARTIES

Cllr Ross Dye	Ward Member, Horsham District Council
Cllr Nicholas Yeo	Itchingfield Parish Council
Bernard Doherty	Kingfisher Farm
Joan Brown	Kingfisher Farm
Barney Doherty	Kingfisher Farm
Bridget O'Driscoll	Kingfisher Farm
Miley Doran	Kingfisher Farm
James Casey	Kingfisher Farm
William McCarthy	Adjoining landowner

DOCUMENTS SUBMITTED AT THE HEARING

1. Annotated aerial photograph