



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".
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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



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.
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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



Appeal Decision

Hearing Held on 28 January 2020

Site visits made on 27 & 28 January 2020

by K R Seward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 19 February 2020

Appeal Ref: APP/Z3825/W/18/3198550

Land to the rear of Pear Tree Farm, Furners Lane, Woodmancote, West Sussex

- 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 George Corfield against the decision of Horsham District Council.
 - The application Ref DC/17/1374, dated 21 August 2017, was refused by notice dated 25 September 2017.
 - The development proposed is described as a settled gypsy accommodation site comprising 3 pitches and associated utility building.
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Decision

1. The appeal is allowed and planning permission is granted for a settled gypsy accommodation site comprising 3 pitches and associated utility buildings at land to the rear of Pear Tree Farm Furners Lane, Woodmancote, West Sussex in accordance with the terms of the amended application, Ref DC/17/1374, dated 21 August 2017, subject to the conditions set out in the Schedule at the end of this Decision.

Application for costs

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

Preliminary matters

3. The address given in the planning application form is for Turnhams Gill in Furners Lane which differs from the address of Pear Tree Farm in the Appeal Form. The land is most accurately described as being to the rear of Pear Tree Farm which is how it appears in the Council's decision notice. I have therefore used that address with the appellant's consent.
4. For clarity, I have taken the description of development from the Council's decision notice having noted that amendments were made to the planning application after submission. Originally, the application was for four pitches. It was revised to three pitches with a 15m wide 'buffer zone' to prevent incursion into the designated ancient woodland to the eastern side of the appeal site. The Council's decision was taken on the basis of those revisions and I shall do likewise with one further amendment. The proposal encompasses a utility building on each of the three pitches as shown on the site layout plan rather

- than a single building as the description suggests. The description should refer to "associated utility buildings".
5. The Council's decision notice refers to the application having been submitted on 19 June 2017. The declaration on the application form is dated 21 August 2017 and this is the date I have used.
 6. The appeal was linked to other appeals against the issue of an enforcement notice affecting the same site concerning the stationing of caravans for residential purposes and storage containers on the land. The enforcement notice has since been withdrawn lapsing the other appeals. The appeal proceeds under section 78 only for a gypsy accommodation site.
 7. I undertook an unaccompanied site visit the day before the Hearing opened to observe the surroundings from public vantage points. During this visit I walked along Furners Lane from the High Street and back in Henfield. I did the same the following day after the Hearing had closed. On that occasion I entered the appeal site accompanied by the landowners and representatives of the parties.
 8. The Council refers to the access track being more recently split into two distinct parts. The proposal involves use of the original track as shown in the submitted plans. It was this track which I viewed.

Policy background

9. National policy is contained within the Government's Planning Policy for Travellers Sites, 2015 ('PPTS') and the National Planning Policy Framework ('the Framework') and these are material considerations. Since the date of the Council's decision the Framework has been updated. It is the latest document that falls to be considered. Despite the word 'settled' being used in the description of development, the application and appeal concern a site for gypsies and travellers within the meaning of PPTS.
10. The Horsham District Planning Framework, 2015, ('HDPF') contains the Council's adopted policies on the provision of gypsy and traveller accommodation. Policy 22 thereof states that the provision of sites to meet the objectively assessed needs beyond 2017 will be identified in a Site Allocations DPD. It goes on to say that further sites may be provided in prescribed circumstances including on windfall sites through the planning process in accordance with the criteria in this policy.
11. The Council acknowledges that its Gypsy, Traveller and Travelling Showpeople Draft Site Allocations Development Plan Document ('DPD') has suffered delay and the draft DPD of 2017 will no longer be progressed. Instead, the Council has started afresh with a renewed call for sites which ended in August in 2019. This identified three potential sites which will be assessed as part of the Local Plan Review. However, this is still in the very early stages and adoption is not expected until late 2021 if there is no slippage.
12. It is common ground that the most up-to-date independently tested figure which the Council has for gypsy and traveller need in the district is 39 pitches as set out in HDPF Policy 21, but this figure only covered the plan period until 2017. The draft DPD of 2017 had identified a need for 86 pitches until 2031 including an existing need of 44 pitches as backlog. That document was not tested and has since been abandoned. The last Gypsy and Traveller Sustainability Appraisal of November 2017 identified a total of 78 pitches

required until 2022. Thus, there is no up-to-date figure which has been subject to examination. Nevertheless, it is agreed that the Council cannot demonstrate a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set target, as required by PPTS and envisaged by Policies 21 and 22. The quantum of undersupply is unclear, but on any measure may be regarded as substantial and that has been the position for some time. On the face of it, there will be no allocations for some while so there will be reliance on windfall sites.

Main Issue

13. The main issue is whether the site is in a suitable location for the development proposed having regard to access to services and facilities, accessibility and relevant policies relating to the location of gypsy and traveller sites.

Reasons

14. The appeal site is located in a rural area outside any development boundary. Access would be via an existing vehicular track off Furners Lane. The access passes through a yard known as 'Pear Tree Farm' which is used for tyre storage and is occupied by two profile-sheet barns. It proceeds between fields to reach the main body of the appeal site. Currently there is a row of steel containers on the site, an earth bund and vast quantities of tyres. Other parts of the site are occupied as an unauthorised caravan site which extends beyond the appeal site. I understand the containers and use as a caravan site are the subject to an ongoing enforcement investigation. Two stable buildings on the site would be demolished to accommodate the new development.
15. The proposal is for the site to be sub-divided into three 15m wide pitches each containing a utility building.
16. The Council's reasons for refusal identify the site location as unsustainable due to its remoteness from local services and facilities, poor quality access and failure to provide suitable access to sustainable transport modes.
17. Policy C (paragraph 14) of the PPTS acknowledges that gypsy sites may be located in rural or semi-rural areas provided that such sites do not dominate the nearest settled community. Policy H (paragraph 25) states 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. However, it does not preclude them.
18. HDPF Policy 2 is a strategic policy which seeks to maintain the district's unique rural character whilst ensuring that the needs of the community are met through sustainable growth and suitable access to services and local employment. HDPF Policy 23 is identified as the most relevant development plan policy for gypsy and traveller sites. It sets criteria to be taken into consideration when determining planning applications for non-allocated gypsy and traveller sites. The Council maintains that the proposal fails to meet two criteria; b and d which respectively concern safe and convenient access and the location of development.
19. Criterion 23d. requires that the site is located in or near to existing settlements within reasonable distance of a range of local services and community facilities, in particular schools and essential health services.

Location of development

20. Turning first to location, the appeal site is located approximately 850m to the east of the built-up area boundary of Henfield. In refusing the application the Council's Planning Committee considered the distance to the nearest village was walkable. On the Council's figures, the High Street is approximately 1.2km from the gate leading into the appeal site. It is acknowledged that the village centre provides public transport links, services and facilities sufficient to meet the needs of prospective occupants of the appeal site. Indeed, I noted a wide range of shops along with eating/drinking establishments, post office, pharmacy all in the High Street and a library sign posted off it.
21. In the circumstances, the appeal site cannot reasonably be described as 'remote' from services in terms of the distances involved. The Council contends that the appeal site is not 'near to' an existing settlement or 'within reasonable distance' of local services and community facilities because the access is not convenient. At the Hearing the Council argued that the policy should be interpreted more widely than considering just distance. In its view the appeal site is not near to Henfield as their physical relationship gives a sense of separation.
22. To my mind Policy 23d is clear on its face and the words should be given their ordinary and natural meaning. Whether a site is 'near to' an existing settlement is concerned with distance. The term would ordinarily denote something being a short distance away. To give any other interpretation is seeking to ascribe a meaning which does not reflect the words used. At 850m I am satisfied that the appeal site is located near to the existing settlement of Henfield.
23. In terms of local services and facilities, Policy 23d explicitly refers to them being within reasonable 'distance'. This must surely mean how far away those services and facilities are. The Council calculates that it is 1.4km to a supermarket although I saw a nearer food convenience store. There are two dentists within 1.8km and the medical centre is 1.7km. The primary school is 2km. Nursery and secondary schools are further afield. There is a wide range of services available in Henfield, none of which are far away. They are all within a reasonable distance, so there is no conflict with Policy 23d.

Access

24. Criterion 23b requires that the site is served by a safe and convenient vehicular and pedestrian access and that the proposal should not result in significant hazard to other road users. At the Hearing the parties disagreed on whether it applies and, if so, how.
25. The Council's case was not advanced on safety grounds as such, but the accessibility of Furners Lane. From the explanation given by the Council Officer it is in essence a convenience argument and the likelihood of Furners Lane being used by means other than private vehicle. The issues identified by the Council at the Hearing as contributing towards the conclusion that the lane is inconvenient are its lack of lighting, narrow width including lack of pedestrian refuge, sight lines and surface. Road safety was a matter raised by numerous residents and this also falls to be considered in the context of HDPF Policy 23.
26. In addition, HDPF Policy 40 expects development to provide safe and suitable access for all vehicles, pedestrians, cyclists horse-riders, public transport and

delivery of goods. Policy 40 also promotes development which provides opportunities for sustainable transport and which is located in areas where there is a choice in the modes of transport available. It should also minimise the distance people need to travel and minimises conflicts between traffic, cyclists and pedestrians.

27. The appellant submits that the access in this case is the track linking the main body of the appeal site to Furners Lane whereas the Council say it includes the lane. The only means of access to the appeal site is via Furners Lane, but it is not included within the red line application site. From its junction with the High Street in Henfield the first part of the lane is publicly adopted highway. After a way, Furners Lane becomes a private single-track lane which is also designated as a public footpath. Members of the general public therefore have the right to use the lane on foot. Any other use, including with vehicles, depends upon private rights of way. The appellant maintains those rights exist and whilst that is questioned by third parties, it is not for me to explore and decide.
28. In my view, the access for the purposes of Policies 23b and 40 is the means by which the appeal site connects with a highway suitable for vehicular traffic. The 'access' would logically include a private unadopted road as it is the means by which the appeal site links with the public highway. The policies seek safe *and* convenient access and so both must be met. If an access is safe but inconvenient, then the policy requirement is not met and vice versa. It follows that the safety/convenience of Furners Lane falls to be considered.
29. At the start of Furners Lane there are numerous residential properties with other roads leading off. As the lane narrows much of it is lined with hedgerow and trees and development becomes sporadic with the occasional dwelling and farm buildings.
30. Whilst I noted some potholes, the hard surface appeared in reasonable order. I heard how this was thanks to local residents clubbing together to provide a maintenance fund. The organiser fears that residents will be reluctant to contribute in future if this proposal goes ahead. Furners Lane is in use as a public footpath and if it is maintained by the local highway authority then it would only need to be to a standard required for pedestrian traffic. The future maintenance of Furners Lane for other forms of traffic is a private matter.
31. My unaccompanied site visit was undertaken during rainfall and after a wet spell. Surface water had pooled in several places, but the same had occurred along a number of roads in the area. The following day, the amount of surface water had subsided despite rainfall overnight indicating that the lane does drain. Photographs were produced by third parties showing the lane flooded and muddy. It appears from the photographs that cars were still able to pass. It is not within a flood zone. With any country lane there may be occasion when some level of flooding occurs. When it happens there may be some users who would continue to walk/cycle regardless with the appropriate clothing and footwear. For many others it would be a deterrent and prompt use of their private vehicle in the same way as other residents might.
32. As set out in Paragraph 103 of the Framework, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.

33. Various references are made to Furners Lane as a winding single-track lane. There are some bends, but there are also long stretches with clear sight lines. Vehicular traffic can be heard from some way off given the peaceful locality. The low and thin strip of vegetated bank alongside much of the lane may offer refuge for some pedestrians facing an oncoming vehicle but would not suit everyone. For instance, those with pushchairs. Some of the incidents involving traffic along the lane which were described at the Hearing took place many years ago. I heard how a dog was killed although the full circumstances were unclear. A recent account was given of an elderly horse-rider suffering injury after a fast-moving transit van heading in the opposite direction caused her gelding to buck. Clearly, this will have been a traumatic experience for the individual concerned. However, this incident does not mean that the lane is unsuited to more vehicular traffic. According to the appellant, there have been nor recorded incidents in the past 3 years. This was not contested by the Council who reported that no concerns were expressed by the local highway authority. Whilst I am sympathetic to the concerns of local residents, ultimately there is no substantive evidence to demonstrate a safety risk arising from current use of the lane which would be exacerbated or created by the proposal.
34. Undoubtedly, it is a relatively narrow and unlit lane with no footway and only the occasional passing place for vehicles. There are frequent traffic movements associated with several residential properties located intermittently along the lane which extends for some distance. The Council identified 21 postal addresses along the entirety of the lane. From photographs supplied by third parties the lane can be used by trucks. There are also farms and stables along the lane and so it will be used by some farm traffic, horseboxes and suchlike. This was confirmed by local residents who mentioned tractors and other agricultural machinery using the lane. Clearly, there is occasion when the lane floods and the surface condition may vary. This combination of factors could deter walkers or cyclists, but that is not supported by the evidence.
35. The Woodmancote Parish Council describes the lane as "a well-used footpath". Local residents are also consistent in stating that the lane is regularly used by pedestrians (including dog walkers), cyclists and horse-riders. Those comments were made in objection to demonstrate the impact of more vehicular traffic along the lane, but they nevertheless provide clear evidence of the type and level of use of Furners Lane. Indeed, I saw both dog walkers and a horse rider during my visits along with a pedestrian carrying shopping.
36. If the prospect of encountering road traffic was such a concern, it would not be expected to be as well used as it clearly is. Moreover, if the lane is convenient for the settled community living in houses which it serves then there is no reason why it would not also be convenient for the gypsy and traveller pitches.
37. Therefore, occupants would not be reliant upon the private vehicle to reach the range of services which are not far away in Henfield. They could walk or cycle the relatively short distance along Furners Lane to reach the High Street in the same way that other residents do. There are bus stops conveniently located in the High Street near to Furners Lane. Buses go to a variety of locations including Horsham which is a 30-minute journey. From there, connections can be made by rail to other destinations. Although it is a 10-minute or so walk to the station, it is not so far and provides another option to travel further distances by public transport.

38. Like any resident, the future occupiers may choose to use their own vehicle instead of the more sustainable options available, but they would not depend upon it. There is a choice of sustainable transport modes. If occupiers decide to drive, then it will only be a short trip to reach services and facilities.
39. The appellant sought to argue that the level of traffic movements generated from occupation of the three pitches would reduce from the current use as a caravan site. This is a poor argument because the use as a caravan site is unauthorised and so I cannot be satisfied that it represents a lawful baseline from which to draw comparisons. There is no reason to suppose that the stables which are used for storage would be brought back into use for the stabling of horses or that any such use could be done commercially to generate more trips than the proposal.
40. In my view, the proposal will result in an increase in traffic along Furners Lane, but the amount of vehicular traffic which can be expected to be generated by the occupiers of three pitches will not be significant. In the context of the number of properties served by the lane, not all of which are residences, the increase will be of very limited intensity. Indeed, the Officers report to the Planning Committee described the potential for impact between pedestrians and vehicles as 'minimal'. Third parties question the suitability of the lane for large vehicles and caravans. Given that farm traffic uses the lane this should not be an issue, but precluding the stationing, parking or storage of large vehicles on the appeal site, which can be made the subject of a condition, should ensure that large vehicle traffic generation by the development is low.
41. Moreover, the question of the suitability of the location is not confined to accessibility. Policy B (paragraph 13) of the PPTS reinforces that traveller sites should be sustainable economically, socially and environmentally and lists various other factors pertinent to the sustainability of traveller sites which local planning authorities should ensure are addressed in their policies. These factors are relevant because the Council's policies should be consistent with this national policy. The Council acknowledged that each is met, and the proposal thus fulfils paragraph 13 which includes, at paragraphs 13b) and c), promoting access to health services and ensuring that children can attend school on a regular basis. It does not follow automatically that planning permission should be granted, but compliance with paragraph 13 is an important consideration.
42. PPTS and the Framework must be read together. The Framework has a presumption in favour of sustainable development at its heart. Both documents indicate that there are economic, social and environmental dimensions rather than simply the narrow question of how far the site is from local services and facilities and whether there would be undue reliance on the car.

Conclusion on main issue

43. Occupants are likely to use private cars to access the nearest services at least to some extent. Those journeys will be short. This is a rural location and the accessibility of the appeal site should not be judged by urban standards. Furners Lane clearly can and is used on foot as a public footpath. A broad range of services and facilities are located within walking distance.
44. The Council cannot demonstrate a 5-year supply of specific deliverable sites for gypsy and travellers as required by the PPTS and envisaged by HGPF Policy 21.

In delivering much needed gypsy/traveller pitches, this weighs firmly in favour of the social dimension of sustainability.

45. There will be economic benefits from the use by the future occupiers of local services and facilities albeit limited. Social benefits will accrue from the provision of three gypsy and traveller pitches in circumstances where the Council has a significant shortfall in its supply of gypsy/traveller accommodation. The appeal site is already within gypsy family ownership and the proposal is therefore deliverable within the foreseeable future. The provision of a settled base will help to avoid the harm that arises from unauthorised encampment or roadside existence.
46. Given the wider consideration of sustainability in the Framework and the specific considerations of gypsy and traveller sites in the PPTS, the appeal site is not in an unsustainable location. Furthermore, I have found that the proposal does accord with the development plan in terms of HDPF Policies 2, 23 and 40 which all promote sustainable development.

Other matters

47. Various other matters have been raised by interested third parties and I have taken all of these into consideration.
48. They include matters concerning drainage and amenity areas which are capable of being addressed through the imposition of planning conditions.
49. Whether or not the appellant has a vehicular right of way over Furners Lane in order to access the appeal site is a private law matter outside the scope of this appeal. Similarly, whether it was ever intended that the lane be used in the manner which has evolved is not a matter that can influence my decision.
50. Ancient woodland to the east of the site and other hedgerow/trees around the surrounding fields screen the site from wider view. The proposal does not reflect how the site currently appears with a multitude of caravans and steel containers. Once laid out and landscaped as required by appropriate conditions, there will not be a material adverse effect on the character and appearance of the surrounding area.
51. The appeal site is not within the setting of any listed building or Conservation Area to give rise to harm. Given the distance from dwellings and low number of pitches, there is unlikely to be noise disturbance to residents. There is no substantive evidence that the proposal will affect house prices in the vicinity. This is a private matter anyway.
52. There are overhead powerlines above the appeal site, but there is no reason to conclude that these would present an unacceptable health risk.

Conditions

53. The Council suggested several conditions which were discussed, altered and added to at the Hearing. I have considered those draft conditions in accordance with Paragraph 55 of the Framework and the national Planning Practice Guidance. Where appropriate, I have adjusted the conditions for greater clarity and precision.
54. Apart from the standard time limit for commencement, I have specified the approved plans for certainty. Given the nature of the application, it is

appropriate to limit the occupation of the site to gypsies and travellers as defined in PPTS. It is also necessary to limit the number of caravans per pitch, restrict the size of any commercial vehicles kept on it and prevent any commercial activities on the site, the storage of materials to limit the impact on the surroundings.

55. The Woodland Trust withdrew its objection subject to the imposition of conditions to ensure there is a 15m buffer clear of any development or hardstanding and to ensure no encroachment into the ancient woodland. The condition is necessary to secure compliance with Paragraph 175c) of the Framework which seeks to protect against the loss of ancient woodland.
56. To ensure a satisfactory appearance, details of the external materials for the utility buildings need to be submitted to and approved by the Council.
57. Rather than several conditions dealing with hard and soft landscaping, parking, turning areas, bin storage and drainage, the parties agreed that a single condition for the submission and approval of a site development scheme would suffice. It would allow all factors to be taken into account in the final layout. The appellant opposed any restriction on external lighting, but this is a rural location abutting ancient woodland and open fields. Whilst external lighting was not raised as an explicit concern, if left uncontrolled it could have significant implications for the character and appearance of the area which is a specific concern of residents. For that reason, it is reasonable and necessary to include external lighting within the details required for the site development scheme.
58. The Council seeks to remove permitted development rights for the erection of fences, gates and walls. In accordance with Paragraph 53 of the Framework planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The gates and fencing to be erected can form part of the site development scheme to be approved, which is sufficient control. In the circumstances therefore, I consider that the removal of those permitted development rights is not warranted.
59. A condition should not be used to circumvent enforcement action by prohibiting any development until the existing storage containers, mobile homes and caravans have been removed from the appeal site. They would be incompatible with the development proposed in any event and as there would be a site development scheme anyway, a separate condition is unnecessary. A condition is necessary to ensure that the existing stable buildings are removed as proposed in the interests of the character and appearance of the area.

Conclusion

60. For the reasons given above, and having regard to all other submissions made, I conclude that the appeal should be allowed.

KR Seward

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Alan Masters	Of Counsel
Phil Rowe, BA Hons, BTP	Appellant's agent
Tracey Tingey	Landowner
Charlie Tingey	Landowner
Sam Tingey	Landowner

FOR THE LOCAL PLANNING AUTHORITY:

Nic Pettifer	Senior Planning Officer
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INTERESTED PERSONS:

Councillor Mike Morgan	District Councillor & Ward Member
Richard Boddie	Local resident
David Campion, MRICS	Chartered Surveyor representing interested third parties

DOCUMENTS submitted at the Hearing

1. Notice of Appeal and Hearing including circulation list
2. Statement of Richard Boddie with photographs of Furners Lane
3. Statement of Mrs Jan Ennor
4. Supplemental Statement of David Campion with photographs of Furners Lane
5. Statement of Common Ground
6. Appeal Decisions APP/Q3115/W/16/3156409 & APP/Q3115/W/18/3205628

SCHEDULE OF 11 CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: red line site location plan (dated 13 June 2017); proposed site plan No. PRR1 Rev A; elevations & floor plan; and proposed utility building plan.
 - 3) The site shall not be occupied by any persons other than gypsies and travellers as defined in Planning Policy for Traveller Sites, August 2015, (or any subsequent definition that supersedes that document).
 - 4) There shall be no more than three pitches on the site and on each of the three pitches hereby approved no more than two caravans, shall be stationed at any time, of which only one caravan shall be a static caravan.
 - 5) The existing stable buildings shall be removed from the land before the development hereby approved commences.
 - 6) No development shall take place until a scheme, hereafter referred to as the Site Development Scheme, shall have been submitted to and approved in writing by the local planning authority. The Site Development Scheme shall include a timetable for its implementation and details of:
 - (a) the means of foul and surface water drainage of the site.
 - (b) the facilities for, and location of, the storage and collection of refuse and recycling.
 - (c) external lighting on the boundary of and within the site.
 - (d) the internal layout of the site (notwithstanding application plan No. PRR1 Rev A), including: the siting of caravans and pitches; hardstanding; access road; parking; amenity areas; gates, fencing and boundary treatments; vehicle turning space of sufficient size to accommodate a waste/recycling vehicle and that of emergency/fire services.
 - (e) tree, hedge and shrub planting and where appropriate earth mounding including details of species, plant sizes and proposed numbers and densities.
- The approved Site Development Scheme shall be carried out and completed in accordance with the approved timetable. Upon implementation of the approved Site Development Scheme, that scheme shall thereafter be retained.
- 7) If, within a period of 5 years from the date of planting, any tree or shrub planted as part of the landscaping approved under Condition 6 (or any tree or shrub planted in replacement for it) is removed, uprooted, destroyed or dies or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree unless the local planning authority gives its written consent to any variation.

- 8) No development above ground floor slab level of any part of the development hereby permitted shall take place until details of the materials to be used in the construction of the external surfaces of the utility buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 10) No industrial, commercial or business activity shall be carried on from the site including the storage of materials.
- 11) There shall be no development (including the creation of any hardstanding) or siting of caravans, vehicles or structures within a 15-metre buffer strip, as shown on the proposed site plan No. PRR1 Rev A, alongside the eastern site boundary with the adjoining ancient woodland. The buffer strip shall not be used for grazing or paddock land unless fenced in accordance with details previously submitted to, and approved in writing by the local planning authority, to prevent straying into the adjacent woodland.

-END-

Costs Decision

Hearing Held on 28 January 2020

Site visit made on 27 & 28 January 2020

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 19 February 2020

Costs application in relation to Appeal Ref: APP/Z3825/W/18/3198550 Land to the rear of Pear Tree Farm, Furners Lane, Woodmancote, West Sussex

- 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 George Corfield 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 a settled gypsy accommodation site comprising 3 pitches and associated utility buildings.
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Decision

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

The submissions for Mr George Corfield

2. In the written costs submission, the appellant argues that the Council failed to undertake a planning balance exercise and in consequence prevented and delayed development which should clearly be permitted. The Council also failed to act consistently with regard to the same considerations that would have been applicable to their own traveller site at Cousins Copse.
3. In addition, it is maintained that the Council acted unreasonably and inconsistently by making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis contrary to both national guidance and their own adopted policies.
4. At the Hearing the appellant added to those points by contending that not only had the Council frustrated the development which was entirely consistent with the development plan, but it also failed to apply the tilted balance. It further failed to justify its decision particularly in the absence of any Members of the Planning Committee attending the Hearing to justify it. The Council had tried to bring in new issues of safety causing time and delay at the Hearing.
5. The Council's position had been untenable from the start. Members had taken a political decision rather than a planning decision which often

happens when Members are uncomfortable with a decision. It is not a good reason.

The response by Horsham District Council

6. The response was given in writing before the Hearing. No further comments were added at the event.
7. Cousins Copse is a long-established gypsy site within the district, having been in place in excess of 20 years. As such, any planning decisions would predate current local and national policies to be irrelevant to this appeal.
8. Other Appeal Decisions offered by the appellant for comparison purposes are located outside the district and therefore subject to different local planning policies along with different identified housing needs.
9. The Council collated and produced data on the approach it had taken in determining other applications for gypsy and traveller with a view to demonstrating that it had been consistent in its approach. Of the four Appeal decisions returned in October and November 2018 which all involved sections on sustainability, the Council highlighted that only one of those appeals was allowed with the Inspector finding the site to have reasonable accessibility. In the other three appeals, the identified shortfall in gypsy, traveller and travelling showpeople sites within the district were found to attract significant weight by the Inspectors.
10. Following these Appeal Decisions, the Council has reviewed its stance on applying the tilted balance as prescribed in the National Planning Policy Framework ('the Framework'). The unmet need for gypsy and traveller sites is a significant planning consideration which must be balanced against any conflict with the development plan. The Council considers its reason for refusal was not inconsistent with decisions made on comparable cases at the time.
11. The referral to the Planning Committee was made because of the number of representations contrary to the Officer recommendation of approval.
12. The appellant had opportunity to attend and speak at the Committee meeting. The Planning Officer's role was to advise the Committee which could attach different weight to the planning merits to reach its own conclusions. A clear and robust reason for refusal was given with the proposal considered to conflict with local planning policy.

Reasons

13. Irrespective of the outcome of the appeal, costs may only be awarded where a party has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process, as set out in Paragraph 030 of the *Appeals* section of the national Planning Practice Guidance ('PPG').
14. The Planning Committee was not bound to accept the Officer's recommendation to grant planning permission, but its reasons for refusal and how it arrived at its decision must have been reasonable with proper regard to both local and national policies.

15. In refusing the application the Council's Planning Committee considered the distance of 850m to the nearest village was walkable. It also acknowledged that the village centre provides public transport links, services and facilities sufficient to meet the needs of prospective occupants of the appeal site. Its concern arose over the only means of access being via Furners Lane which is a private single-track lane. There was a large body of local opposition and a recurring theme was the suitability of Furners Lane for more vehicular traffic.
16. The unlit lane is quite narrow with no footway and few passing places. It is regularly used by vehicular traffic with numerous properties served by the lane. In the circumstances, the Committee considered that occupants of the three proposed gypsy and traveller pitches would most likely rely on the private vehicle to access essential services and public transport.
17. That conclusion made a presumption that was difficult to defend when Furners Lane is a recorded public footpath which is in regular use by pedestrians, including local residents. It is also described by residents as regularly used by cyclists and horse-riders associated with the properties and stables along the lane. Those comments were made in objection to the increased impact of vehicular traffic, but they nevertheless provided clear evidence from those with local knowledge of the type and level of use to which the lane is put.
18. In the circumstances it is difficult to see how the Committee could reasonably have concluded that the appeal site is in an unsustainable location. It quite clearly is not remote from services, facilities and public transport when they are within reasonably easy walking distance along a private lane used regularly by such means. In addition, Furners Lane has provided suitable access for housing and farm traffic which should have provided a clear steer that the lane was capable of accommodating the limited traffic that would be generated by the proposal. There was no objection from the local highway authority.
19. Instead a strained approach was taken to the application of its own policies. If Members had taken the Officers advice, the only reasonable conclusion was that the proposal complied with the Council's development plan and its policies on gypsy and traveller provision in particular.
20. The Council acknowledges that it cannot demonstrate a 5-year supply of specific deliverable sites for gypsy and travellers as required by Planning Policy for Traveller Sites ('PPTS'). When the Committee made its decision, it was Paragraph 14 of the previous 2012 version of the Framework which provided for the tilted balance in circumstances where relevant policies are out-of-date. It included, by reference to Paragraph 49, that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable sites.
21. As quoted in the Appeal Decisions¹ produced by the appellant, the judgment in *Mark Wenman v SSCLG*² found that Paragraph 49 was only triggered by a failure to demonstrate the supply of housing on sites other than pitches on

¹ APP/Q3115/W/16/3156409, APP/Q3115/W/18/3205628 dated 13 January 2020

² [2015] EWHC 925 (Admin)

travellers sites. The Government's subsequent Written Ministerial Statement of 22 July 2015 confirmed that the lack of a five year supply of deliverable traveller sites should be considered in accordance with the PPTS. The current Framework makes clear that a five year supply of deliverable sites for travellers should be assessed separately in line with the PPTS.

22. Therefore, the lack of a five-year supply of traveller sites would not have triggered the tilted balance. Under Paragraph 11 of the latest Framework it is necessary to establish if the most important policies for determining the application are out-of-date. If so, the tilted balance applies. However, neither Paragraph 11 nor the judgment in *Wavendon Properties Ltd v SSHCLG & Milton Keynes Council* which establishes the approach were issued at the time of the Committee decision.
23. By section 38(6) of the Planning and Compulsory Purchase Act 2004 the proposal had to be determined in accordance with the development plan unless material considerations indicated otherwise. Having found the proposal to be contrary to its development plan, the Committee should have considered whether there were material considerations to outweigh that conflict. The Officers report contained a section under the heading of 'Conclusions and Planning Balance' which identified the lack of a five-year supply of sites. Members would have been aware of this, but there is no record that it applied any form of balance or considered whether a temporary grant of permission was appropriate.
24. Notably, paragraph 27 of the PPTS provides that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission.
25. In addition, the sustainability of gypsy and traveller sites is not confined to the accessibility of the location. Other factors to be considered are set out within paragraph 13 of the PPTS. These included matters such as promoting access to health services and ensuring that children can attend school on a regular basis. Both health services and a primary school are not far away in Henfield which prospective occupants would potentially be able to benefit from. In construing sustainability narrowly, the Council failed to take into account other relevant factors pertinent to the provision of gypsy and traveller sites.
26. Furthermore, the Council has an acknowledged shortfall in the supply of gypsy and traveller sites to which the proposal would contribute three pitches warranting significant weight to be attached. There were also agreed benefits in economic terms from the use that occupants would contribute from the use of local services and facilities. This is in circumstances where the extra vehicular traffic generated from the use of three pitches would not be significant and trips to reach the village centre would be short.
27. Had all these factors been given appropriate consideration and a balancing exercise undertaken then there could well have been a different outcome.
28. A member of the public who attended the Committee meeting said that the Chairman read out the wording of the balancing exercise required under

Paragraph 14 of the previous Framework. This provided that where the development plan is absent, silent or relevant policies are out-of-date, granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole. However, this differs from the planning balance which forms part of the statutory duty under section 38(6) to consider and weigh up any tensions with policies in the development plan before reaching an overall conclusion.

29. The Council has maintained its stance since and argued that the tilted balance as now set out within Paragraph 11 of the latest Framework is not triggered as its most relevant policies are broadly consistent with the Framework. It has not been necessary for me to address this point in my Appeal Decision and it does not assist the Council in defending this application. Even if the Council is right, it did not negate the need to consider other relevant matters including those found in national policy and undertake a planning balance.
30. There is no requirement for any Member to attend a Hearing when a decision is taken contrary to Officer recommendation. In this case, it may have helped to explain the reasons and what was taken into account. As it was, the Council Officer was left in the unenviable position of trying to defend a decision which simply did not stack up and which was taken at a Committee meeting she did not attend.
31. When new safety issues were raised and the appellant's agent objected, the Officer promptly confirmed it was not a safety argument but one of convenience. Having corrected the position at the earliest opportunity, I find no unreasonableness resulting in unnecessary expense in this regard.
32. My attention has been drawn to previous cases including appeals. None of these are particularly insightful when each and every case will differ including proximity to services. The Council's analysis of previous cases does not provide full details. It illustrates consistency in refusing applications on sustainability grounds, but no more.
33. Where costs were awarded in the Little Boarden Farm case³, it followed a refusal of planning permission for an appeal site that was proposed for allocation as a site for gypsy and traveller development. That is not the position here. The Woodley Farm costs decision⁴ was similarly in circumstances where the Inspector had found the appeal site would be accessible to local services. This was in another area and the Council concerned had also changed its position regarding the appellant's gypsy status. There were procedural issues also which led to the award. Neither decision influences my findings.
34. In this particular case it is clear to me that the appeal could and should have been avoided if policy had been applied correctly as advised by Officers, or if Members, having reached a contrary view, had taken appropriate account of the other key considerations which weighed in the planning balance.

³ Appeal ref: APP/U2235/W/17/3168396 dated 16 October 2017

⁴ Appeal ref: APP/L1765/W/15/3131614 dated 5 December 2016

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

Costs Order

36. 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 George Corfield, the costs of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
37. The applicant is now invited to submit to Horsham District Council details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

KR Seward

INSPECTOR