Appeal Decision

Inquiry held on 14 – 17 January 2014
Site visit made on 17 January 2014

by Katie Peerless Dip Arch RIBA
an Inspector appointed by the Secretary of State for Communities and Local Government
Decision date: 27 March 2014

Appeal Ref: APP/Z3825/A/12/2188572
Deer Park Farm, Hampers Lane, Horsham

- 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 George Hunt against the decision of Horsham District Council.
- The application Ref DC/10/1974, dated 24 September 2010, was refused by notice dated 9 October 2012.
- The development proposed is the use of land for the stationing of caravans for residential purposes for 1 no. gypsy pitch together with the formation of a dayroom/utility block and additional hard standing ancillary to that use.

Decision

1. The appeal is allowed and planning permission is granted for the use of land for the stationing of caravans for residential purposes for 1 no. gypsy pitch together with the formation of a dayroom/utility block and additional hard standing ancillary to that use at Deer Park Farm, Hampers Lane, Horsham in accordance with the terms of the application, Ref: DC/10/1974, dated 24 September 2010 subject to the conditions attached as annex A to this Decision.

Application for costs

2. At the Inquiry an application for costs was made by the appellant against Horsham District Council and the Hampers Lane Protection Group (HLPG). These applications are the subject of separate Decisions.

Main Issues

3. I consider that the main issues in this case are the effect of the proposed development on
(i) the character and appearance of the AONB,
(ii) the setting of the listed building at St Leonard's Park House,
and, if there is harm arising from the above,
(iii) whether that harm is outweighed by any other material considerations, including the provision and availability of gypsy sites in the District, the needs of the appellant and his family and their human rights.

Preliminary matter

4. There is no dispute that the appellant and his family have gypsy status as defined in the Department for Communities and Local Government document Planning Policy for Traveller Sites (PPTS).

Site and surroundings

5. The appeal site is a parcel of land of about 0.51Ha situated in the High Weald Area of Outstanding Natural Beauty (AONB) on the outskirts of the town of Horsham. It lies within open parkland around the grade II* listed building at St Leonard's Park House and the adjacent development to this building set further up Hampers Lane, and forms part of the wider, historic landscape of St Leonard's Forest. The park is mainly improved grassland interspersed with trees that is divided into fields that are used for grazing horses and deer, but

there are also areas of rougher, less managed land within it.
6. The appeal site is attached to an additional area of pasture land owned by the appellant and, prior to his occupation, it already contained 2 stable blocks, an adjacent open fronted barn and a mobile home (hereafter referred to as the 'original' mobile home) used as a mess/storage facility. There is agreement that the buildings on the site, and their use as stabling, are lawful and a Certificate of Lawful use (CLU) has been issued in respect of the use of the mobile home in connection with them. The site is accessed through an opening in the hedge that runs along Hampers Lane, which at this point is a public bridleway and footpath. Rights of vehicular access are private and restricted to those who have property along the lane.
7. Since purchasing the site, the appellant has moved onto it and is living in another mobile home stationed to the south of the stable blocks and parallel with the lane. He has a number of horses on the site (5 at the time of the site visit) and keeps his touring caravan in the barn at the northern end of the stables. The original mobile home is still on site and was being used for storing tack and equipment associated with the horses and, I am told, for cleaning up in, after working with the horses. Evidence given at the Inquiry indicates that this is similar to the use to which it was put before the appellant bought the site.
8. The appellant has also constructed an extension to the concrete hardstanding at the entrance to the site and there is now a drive of hardcore and road scalpings leading to the mobile homes and stables and an enlarged area of hardstanding in front of the northernmost stables and barn. Parts of the land have been laid out and planted as a garden and the paddocks are separated from the other areas of the site by post and wire fencing.
9. Opposite the appeal site are buildings and installations associated with an adjacent reservoir and the bridleway also gives access to the other equestrian and residential properties further along Hampers Lane. These include St Leonard's Park House which was once a single dwelling but which has now been converted into a number of smaller properties. The conversion occurred after it was listed in 1959 and there are further residential properties to the north, some of which were constructed in the 20th Century. The land in which the appeal site is located is known as St Leonard's Park and is considered to be a non-designated heritage asset, mentioned in policy DC11 of the Horsham District Local Development Framework (LDF) – General Development Control Policies (2007) (GDCP).

The proposed development

10. The plans submitted with the application show a different layout to that which
is on site at present. The existing access way is in a different alignment to that proposed and the application includes the removal of the original mobile home and the relocation of the presently occupied mobile home to a position parallel to and roughly opposite the northern stable block.
11. A new dayroom would be constructed to the rear of that mobile home and would be intended to reflect the design and materials of the existing stables. The touring caravan would be stored in the barn, as at present. The hedge along the lane adjacent to the site would be reinforced with additional planting and new shrubs and trees would be introduced at strategic points within the site to provide screening to the development from a number of viewpoints.

The mobile home is proposed to be connected to a sewage treatment plant which, in turn, would link to a soakaway, all located within the site.

Reasons

AONB

12. The AONB is agreed by all parties to be an extremely important landscape designation which is accorded high levels of protection in both national and local planning policy. The National Planning Policy Framework (the Framework) excludes sites in such areas from the *'presumption in favour of sustainable development'* set out in paragraph 14 and makes clear that great weight must be accorded to the conservation of landscape and scenic beauty in such areas.

13. This does not mean that the restriction on development in AONBs is the same as that which applies in areas included within the Green Belt, where many forms of development are classified as inherently harmful. The Framework notes that planning permission for **major** developments (my emphasis) in AONBs should be refused, other than in exceptional circumstances and this implies that minor development, such as this proposal, can be acceptable in certain circumstances and provided there is no over-riding conflict with other policies in the adopted development plan.

14. Policy DC4 from the LDF–GDCP is in broad accordance with the policy aims of the Framework and resists development that would adversely affect the character, quality, views, distinctiveness or public enjoyment of the landscape. Similarly, policy CP1 of the LDF – Core Strategy (CS) also seeks to protect, conserve or enhance landscape character.

15. The site is located in an area of grassland that is typical of the park and is set against a backdrop of mature woodland. The type of 'horsiculture' use that the appeal site and its associated land were previously in is typical of other land off Hampers Lane in this part of the AONB, where there are similar low-key stable buildings visible from the bridleway. However, views of the site are restricted by the existing vegetation and these would be further screened by the additional landscape planting proposed, which could be secured by condition. The residential mobile home is presently very visible but, once relocated, views of it would be limited, to the extent that it would be unlikely to be discernable other than in brief glimpses along Hampers Lane through the established and new vegetation.

16. I accept that it will be possible to see the dayroom from public viewpoints in Hampers Lane, but this will be in conjunction with the existing stables, which, as previously noted, are agreed to be lawful. The dayroom would have a similar appearance to the stables and, in my opinion, would not stand out as an unexpected or harmful feature in this rural location. The areas of hardstanding would only be seen within the site itself, or from the access point and, even from there, only part of the access way would be visible.

17. Objections have been raised to the proposed landscaping of the site, which is intended to thicken the existing hedge and provide new trees in the areas around the operational development, on the grounds that it would reduce the open views across St Leonard's Park. However, single or small groups of trees

in the grassland of the park are typical of the landscape and the proposals would replace trees that were lost in the storm of 1987. I consider that, apart from helping to screen the new development, the tree planting would have a beneficial impact on the character of the area in its own right.

18. I also saw the site from a second floor window in St Leonard's Park House and from its garden and, while the original mobile home and the stables can be seen, the views are distant and, in summer, would be mostly screened by foliage. The outlook to the proposed development from these points of view would, I consider, be an improvement on the existing. The original, somewhat unsightly, mobile home would no longer be present and would be replaced by the dayroom which, as noted above, would be similar in appearance to the existing stables and, at this distance, the new and existing buildings would be seen as a cohesive group. Consequently, I conclude that any harm caused to public or private views or enjoyment of the surroundings would be so minimal that it would not warrant refusal of the proposed development.

19. A distinction was drawn at the Inquiry between the visual impact that the proposed development would have and the harm that might be caused to the landscape character of the site. It is true that a residential use will, and has already, changed the character of this part of the AONB through the introduction of domestic paraphernalia and a permanent residential presence on the site. I therefore accept that there will be a degree of harm to the character of the surroundings and the quality of the landscape caused by these factors and the introduction of additional built form onto the site.

20. However, this harm relates to a very restricted part of a much larger area and would not contribute to any coalescence with other such development nearby. I am also aware that the newer residential development at the northern end of Hampers Lane has had a similar impact and is now part of the established character of the locality. There would be visual benefits in terms of the removal of the original mobile home and the use of the dayroom to screen the residential mobile home in its new position.

21. It was submitted that the present unauthorised residential use of the land has resulted in the abandonment of the use of the original mobile home used as a mess room, that it is no longer lawful, its use could not resume and that there should consequently be no comparison made between the condition of the site with the original mobile home in place and its character with the proposed development implemented. However, when the original mobile home was brought onto the site it did not facilitate any unlawful use, it was merely stationed on the land and put to an ancillary use in connection with the lawful use of that land. It was not, therefore, development in its own right.

22. The mobile home did not need planning permission or a CLU to authorise it, it did not bring about a change of use of the site and it could not now be required to be removed, even though the use of the surrounding land has changed to an unlawful residential one. The use of the mobile home has not changed since the appellant moved onto the site; it is still used as a mess room

in connection with the lawful stables. The fact that the appellant has made a planning
application which envisages the removal of the mobile home is not evidence of any abandonment prior to the application; all it indicates is that the appellant would give up the use of the mobile home should planning permission be granted. It can therefore, in my view, be considered likely to remain even if the appeal is dismissed, and it consequently contributes to the current character of the site and surroundings against which the proposed development will be assessed.
23. Nevertheless, I have identified a degree of conflict with policies CP1 and DC4 of
the development plan in respect of an adverse effect on the character and quality of the AONB and this will need to be considered together with any other material considerations that may weigh in favour of, or against, the proposal.

Listed building setting and historic parkland
24. This matter was not raised as a reason for refusal by the Council, but the HLPG introduced it as an issue at the Hearing where this case was first considered.

That Hearing was adjourned and a decision was subsequently taken to conduct the case by way of an Inquiry. All 3 main parties then produced witnesses to give evidence on the issue at the Inquiry. The witnesses for the Council and the appellant agreed that there would be no harmful impact on the setting of the listed building at St Leonard's Park House or the non-designated heritage asset of the parkland.

25. There was, however, disagreement between the 3 heritage witnesses as to whether or not the appeal site lies within the setting of the listed building and the impact that it may have on that setting. S66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) makes the requirement to pay special regard to the desirability of preserving the setting of a listed building a statutory duty when considering an application for planning permission. It is therefore important to consider whether the appeal site is within the setting of the listed house and whether the development would have any impact on that setting.

26. I saw at the site inspection that St Leonard's Park House and the appeal site can be only be seen together in a very few instances and the proximity between the two is not, on its own, sufficient to indicate that the site is within the setting of the listed building.

27. However, intervisibility is not the only factor that needs to be taken into account when considering the boundary of the setting of a listed building. English Heritage guidance on this matter makes clear that there is no prescribed limitation on distance and such factors as historic links, uses and ownership can also be indicative of the extent of a setting. Also, setting is not fixed and can contract or expand with a change in circumstances.
28. In this case, there was an historic area of parkland that formed part of the wider St Leonard's Forest, and this area surrounded the house. I consider that historic evidence, in the form of old maps and sales particulars, is sufficient to indicate that this parkland was, for at least some time in its history, directly

associated with St Leonard's Park House.

29. Nevertheless, the relationship between the house and its parkland has altered considerably since the house was listed, and probably even before that time. Ownerships have changed and have subdivided the land, the extent of tree cover has varied over the years, either as a result of woodland clearance or storm damage, and the appeal site is on the periphery of the land that was established as the park.

30. Historic maps document these changes and by the time the Ordnance Survey map of 1976 was produced, several distinctly separate areas are demarcated and the listed building is contained within a clearly defined smaller area of private garden, as exists today. It is also the case that the historic maps show that the western side of the house and its gardens were consistently screened from the wider park, presumably to afford some privacy to the occupants but this also served to separate the areas in which these 2 functions were contained.

31. I consequently consider that while the appeal site could be considered to lie within the former historic setting of St Leonard's Park House, this setting has altered and reduced to the extent that the site now lies beyond the limit where the low key nature of the proposed development would make any appreciable difference to the current setting, which would consequently be preserved.

32. I take a similar view on the effect of the proposed development on the nondesignated heritage asset of St Leonard's Park. This parkland is, as noted above, now largely sub-divided by post and wire fencing and has the appearance of a series of paddocks rather than a designed expanse of parkland landscape intended to create an enhanced setting for the house.

33. The park has not been considered significant enough to be included on the register of historic parks and gardens and this is possibly because of the changes noted above. In the context of the lawful development already on the site, I consider that the restricted visibility of the proposal, its small scale and limited impact mean that it would not cause any unacceptable harm to the character of the historic park and there would consequently be no conflict with policy DC11 of the LDF-GDCP which seeks to prevent such harm.

Other matters
34. The HLPG consider that the proposed development would breach policy DC32 of the LDF-GDCP which sets standards for the location of gypsy and traveller sites. In particular it considers that criterion 2 in the second part of the policy, which requires a suitable access, would not be met as the bridleway is unsuitable to carry any additional vehicular traffic without putting the primary users of the track, which are pedestrians and horse riders, in danger.

35. There has been no objection on this issue from the Council who consulted with the County Highway Authority on the matter. However, many local residents have written expressing concern about the capacity of the lane,

believing that traffic from the appeal site would prove dangerous to its other users.

36. The appellant and his family have been living on the land for almost 4 years and, to date, there have been no reports that vehicle movements from the appeal site have caused any on-going problems. The access to the site is located about half way along the private section of Hampers Lane and, as the lane is a dead end for vehicles, it is not likely that vehicles using this access would have any impact on the lane beyond this point.

37. Most of the existing dwellings served by the lane are grouped around its far end and the owners have to travel its full length to reach their properties. It seems to me that, in comparison to the traffic that is generated by these dwellings and a relatively large stable complex close to them, the movements to and from the appeal site are unlikely to have any significant impact.
38. It is also the case that, even if the appeal proposal did not go ahead, the owners of the land would nevertheless be able to access it in motor vehicles and they would be likely to do so in connection with the stable use. Although the traffic generated by this use may not be great, it nevertheless means that the overall increase in vehicle movements generated by the appeal proposal would be less than those normally associated with a new single dwelling.

39. I therefore find that there is no reason to conclude that the proposed development would be unacceptable or create undue problems in terms of the safety for the other users of the lane. In this respect there is no conflict with the aims of policy DC32.

40. Local residents are also concerned that to allow this appeal would set a precedent for similar development on other parts of the surrounding land. However, any such applications would have to be judged on their own merits and the appeal site has its own individual set of characteristics that are not found elsewhere. These include the existing development on the site, its wellscreened location and its position adjacent to the woodland to the west. In these circumstances, I do not believe that allowing this appeal would set any precedent for the development of other sites in the vicinity.

Other material considerations
41. Should any policy conflict be identified, the appellant claims that other material considerations outweigh this conflict and indicate that planning permission should be granted for it. Specific Government policy for gypsy sites is set out in PPTS and this must be read alongside, and in addition to, the policies of the Framework. PPTS requires local planning authorities to identify a 5 year supply of land for traveller sites, which should be updated annually. There is an unmet need for such sites in the District and the Council agrees that it cannot, at present, demonstrate a 5 year supply of land to meet this need. It also agrees that there are no available sites to which the appellant could move, should the appeal fail.

42. In paragraph 22, PPTS explains how planning applications for traveller sites should be assessed and the relevant issues that should be taken into account.

The first 2 criteria relate to need and the availability of alternative sites. The 3rd criterion relates to personal circumstances and the 4th is not relevant here as it deals with the situation where there is an application for an unallocated site and no identified need. The final matter notes that applications from all travellers, not just those with local connections, should be considered.

43. The emerging CS makes provision for 37 pitches up to 2017, against an identified need of 39. It was agreed between the Council and the appellant at the Inquiry that, if the current assessed levels of need are projected forward, then 4 additional pitches a year are likely to be required in the 5 year period up to 2019, giving an overall requirement of 47 pitches by that date and a deficit of 10, even if the 37 identified sites are all granted planning permission. Also, these figures do not take into account that the CS is not likely to be adopted until the spring of 2015, by which time a further 4 pitches will be required to give a 5 year supply at the date of adoption.

44. I consider that the existing and projected need and the lack of an identified 5 year supply to meet that need, together with the lack of any available sites in the District that the appellant and his family could move onto now weigh strongly in favour of the proposal.

45. Although there is a policy about Green Belt in PPTS, it contains no specific reference to traveller sites within AONBs. However, in the section on decisiontaking, paragraph 23 notes that *'new traveller sites in open countryside that is away from existing settlements'* should be strictly limited. Nevertheless, in this case, this site is within 1.5 miles of Horsham town centre and within walking distance from the nearest bus stop and the secondary school attended by the appellant's 2 younger daughters. It is not, therefore, away from an existing settlement, despite being outside the development boundary.

46. In paragraph 11, PPTS notes that traveller sites should be sustainable economically, environmentally and socially, reflecting the guidance in paragraph 7 of the Framework. Although related to the matters on which planning policy should be formulated, paragraph 11 nevertheless gives an indication of the considerations that should be taken into account when assessing an application on an unallocated site. Of these criteria, there are several that give positive support for the appeal proposal and none that would be directly contrary to it.

47. The site would allow the appellant and his family access to health services, allow the 2 younger children to continue their education at the school they already attend and would provide the family with a settled base, which otherwise they would not have. There are no problems with the environmental properties of the site that would make it unsuitable for residential occupation and, due to the size of the town of Horsham, the development would place no undue pressure on local services. Neither is the site in an area at high risk of flooding. In all these respects, the appeal site is a suitable location for a traveller site.

48. In addition, paragraph 24 of PPTS notes, among other things, that weight

should be attached to the effective use of untidy or derelict land. The Inquiry was told by neighbouring land users and owners that the previous owner of the appeal site had kept it in a very poor condition and had often used it for depositing and storing rubbish. The appellant has tidied the site and I was told that it is now in a much better state than previously.

49. However, although some of the considerations noted above relate to the personal circumstances of the appellant and his family and lend support to the proposal, they are not particularly unusual or specific and are not, in themselves determinative. I have also taken into account that most of the District does not lie within an AONB, so it should be possible to find other sites that do not have this constraint. Nevertheless, I consider that the combined weight that can be attributed to all the factors that weigh in favour of the proposal is clearly sufficient to overcome the limited harm that I have found would be caused to the landscape character and quality of the AONB.

50. I have also considered whether any planning permission should be a temporary or personal one, to take account of the fact that the situation on need and site availability could change in the future and that, in 7 years time, all the appellant's children will have reached maturity and will be no longer be attending school.

51. However, the appellant's unchallenged evidence is that there has been a consistent under-supply of traveller sites in Horsham District since at least 2007 and it cannot, therefore, be assumed that this will necessarily change in the future, given that there is still no demonstrable 5 year supply.

52. A temporary permission would, in any event, need to be for 7 years to allow for the children's education to be completed or for them all to reach adult status. However, a permanent permission would help to reduce the longstanding shortfall of sites and would allow a landscaping scheme to fully mature. It could also secure the provision of the dayroom, which would ensure that the mobile home is well screened from public viewpoints. This would need to be through the imposition of a planning condition, which might be considered an unreasonable requirement on a time-limited temporary permission. In these circumstances, I conclude that these are benefits that weigh in favour of granting a full, rather than temporary, planning permission.

53. Subject to the further conditions that will be discussed in subsequent paragraphs, I therefore find that there are material considerations that outweigh the limited extent of conflict with the development plan and indicate that, on balance, the site would generally be suitable for a small permanent residential travellers' site and that planning permission for it should be granted.

Conditions

54. The Council has suggested a number of conditions that it would wish to be imposed if the appeal were to succeed. The advocate for the appellant was in broad agreement with the aims of these conditions but also submitted that their wording should not assume that the application was partly retrospective or that the development had already commenced.

55. He refers to the differences between the existing and proposed layouts and the

(unreported) opinion of Lindblom J in the case of *Forest of Dean District Council v SSCLG [2013] EWHC 4052 (Admin)* with which he was involved. He says the judge's remarks caused the Council to withdraw one of its grounds of complaint. The Inquiry was told that the judge had decided that a planning permission had not been implemented because the development for which it was sought was different to that enforced against in a parallel appeal. However, the judgement gives no details on this and cannot therefore be held to be a definitive ruling on the subject.

56. In this case, the change of use applied for, that is the stationing of caravans for residential purposes for 1 no. gypsy pitch, has commenced; it is the proposed operational development associated with it that has not yet taken place. In these circumstances, the use of the land has commenced, the application should be considered as partly retrospective and the conditions worded to reflect that situation.

57. I consider that the removal of the original mobile home and the construction of the dayroom to screen the relocated residential mobile home are important, to ensure that the appearance of the site is satisfactory and that the impact on the surroundings is limited. Therefore conditions will be imposed to ensure that these developments are, in fact, carried out within a specified time scale and I have varied the wording of some of the suggested conditions to achieve this aim.

58. For the avoidance of doubt, particularly as the proposed operational development differs from the existing site layout, I shall impose a condition requiring the development to accord with the submitted plans, unless modified by schemes submitted and approved under other conditions.

59. To ensure a satisfactory appearance for the site as a whole, the external materials of the dayroom will be required to be submitted for approval and thereafter implemented, as will a landscaping scheme and details of the entrance gateway and the material for the re-aligned access drive. Also, an application for any proposed external light fixtures will be required to be submitted, to ensure that the local planning authority has control over such development, in the interests of preventing light pollution.

60. The use of the site will be restricted to gypsies and travellers to ensure that it remains available to contribute to the stock of such sites. The number of caravans will be limited in the interests of visual amenity and to ensure the site does not appear overcrowded. For the same reason, the touring caravan is to be kept in the barn and it is not to be used as sleeping accommodation, as its use in this way in a semi-enclosed space would not be environmentally acceptable.

61. To protect the amenities of the surrounding area, no commercial activities will be permitted to be based at the site and the size of vehicles kept on it will be limited. The suggested condition removing permitted development rights in respect of gates, walls and fences is not necessary as an Article 4 Direction covering the wider area of the park has already done this.

62. To ensure satisfactory foul drainage on the site, a condition will be imposed requiring the submission of details of a scheme to be approved by the local

planning authority and thereafter implemented. There is, apparently, a water main crossing the site and details of its exact position are to be submitted and development will be restricted in proximity to it, to ensure it is not damaged.

Conclusions

63. As noted above, although I have found that there would be some detriment to
the character and quality of the AONB caused by the proposed development, I conclude that it would cause no harm to the setting of the listed building at St Leonard's Park House or the non-designated heritage asset of St Leonard's Park. Other than the concerns relating to the AONB, I have concluded that there are no other factors that indicate that the appeal scheme should be refused planning permission and that in all other respects the site is sustainable and suitable for the proposed use.

64. I have considered the material considerations put forward by the appellant in favour of the proposal and find that, on balance, the need for traveller sites in the District and the lack of available alternatives are sufficient to outweigh the limited harm to the AONB and the consequent conflict with development plan policy. This view is strengthened by the personal circumstances of the appellant and his family and my conclusion that the proposed landscaping of the site and the removal of the original mobile home would be welcome improvements on the existing situation. Therefore, for the reasons given above and subject to the proposed conditions, I conclude that the appeal should be allowed.

Katie Peerless

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:
Robin Green Of Counsel instructed by the Solicitor to Horsham District Council
He called
Eimear Murphy BSc(Hons) GradDipUD MRTPI IHBC Murphy Associates
Nicola Brown BA(Hons) BlandArch CertUD CMLI David Huskisson Associates Landscape Architecture
Brian Woods BA(TP) MRTPI WS Planning & Architecture
FOR THE APPELLANT:
Matthew Green Green Planning Studio Ltd.
He also gave evidence
He called
Ruth Reed RIBA MA Green Planning Studio Ltd
George Hunt Appellant
FOR THE HLPS:
Jack Smythe Of Counsel instructed by Tufnell Town Planning
He called
Iain Smith BSc(Hons) GradDipTCP MRTPI Historic Environment and Planning Consultant

Peter Tufnell Dip TP MRTPI Tufnell Town Planning
Clive James Local resident
David Roberts Local resident
Brian Watson Local resident
INTERESTED PERSONS:
David Jeffcoate Local landowner
Trevor Jones Manager of local land holding
Nicola Shunter Tenant keeping horses at Forest Farm, Hampers Lane

DOCUMENTS

1 Letter from David Bangs
2 Signed copy of Mr Hunt's statement
3 File note on previous adjournment
4 *Forest of Dean v SSCLG* judgement
5 Appeals decision 2173024 + 2175502
6 Notification letters and circulation list
7 Statement of Common Ground
8 Appeal decision 2186455
9 Extract from Guidance on Landscape and Visual Impact Assessments
10 Proposed Local Development Document timetables

11 Extract from General Development Order 1977
12 Notes of Mr Smyth's closing submissions
13 *M&M (Land) Ltd. v SSCLG* judgement
14 Notes of Mr Robin Green's closing submissions
15 *Elizabeth Collins v SSCLG* judgement
16 Extracts from the Encyclopaedia of Planning Law and Practice
17 Notes of Mr Matthew Green's closing submissions including comments on the application for an award of costs.
18 Appeal decision 2169543
19 Appellant's written costs application against HLPG
20 Costs response from HLPG
21 Final comments by Appellant on costs response from HLPG

Annex A

Conditions to be attached to planning permission Ref: DC/10/1974

1) Unless prior agreement is otherwise given in writing by the local planning authority or amended by schemes approved under the requirements of the following conditions, the development hereby permitted shall be carried out in accordance with the following approved plans: 10_342_001A, 10_342_003A and 10_342_004.

2) Within 3 months of the date of this permission, or such extended time as may be agreed in writing by the local planning authority, a schedule of materials and samples of such materials for the roof and brick walls of the proposed dayroom/utility building and details of the stain for the timber of the walls of the building shall be submitted to, and approved in writing by, the local planning authority. Construction of the dayroom/utility block hereby approved shall not be commenced until approval of the scheme has been issued by the local planning authority. Thereafter, all materials and stain used shall conform to those approved

and the building shall be maintained accordingly with the approved stain.
3) The exterior of the dayroom/utility block hereby permitted shall be completed using the materials approved in accordance with the scheme to be submitted under condition 2, before the expiration of three years from the date of the approval of the scheme required by that condition.
4) Upon completion of the dayroom/utility block hereby permitted to the standard required in condition 3, the mobile home certified as lawful under reference DC/05/2235 shall be removed from the site and the second mobile home currently on the site shall be relocated to the position shown on drawing 10_342_03A or a location to be agreed in writing with the local planning authority. The size or position of the second mobile home will not thereafter be changed without the prior written consent of the local planning authority
5) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iii) below:
i) within 11 months of the date of this decision the details submitted under conditions 2, 13 and 14 shall have been approved by the local planning authority or, if the local planning authority refuse to approve the details, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
ii) if an appeal is made in pursuance of (i) above, that appeal shall have been finally determined and the submitted details shall have been approved by the Secretary of State.
iii) the approved scheme shall have been carried out and completed in accordance with conditions 3 and 4 above.
6) Within three months of the date of this permission, or such extended time as may be agreed in writing by the Local Planning Authority, a strategy showing details of landscaping works within the site and the adjacent land in the control of the applicant to enhance the setting of the

site within the High Weald Area of Outstanding Natural Beauty shall be submitted to, and approved in writing by, the local planning authority. All landscaping required under the approved scheme shall be carried out during the first planting season (October to March) following the relocation of the mobile home required by condition 4 above. Any plants which within a period of five years from the date of this permission die, are removed or become seriously damaged or diseased shall be replaced in the next planning season with other similar size and species unless the local planning authority gives written consent to any variation.
7) Within three months of the date of this permission, or such extended time as may be agreed in writing by the local planning authority, details of the access drive, including surface materials, and the entrance gateway to the site shall be submitted to, and approved in writing by, the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
8) This permission does not authorise use of the land as a caravan site by any persons other than Gypsies and Travellers, as defined in Annex 1 of Planning Policy for Traveller Sites (Department for Communities and

Local Government 2012).
9) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (or any Act revoking or re-enacting these Acts), of which no more than 1 shall be a static caravan or mobile home and the other a mobile caravan which shall be stored in the northern barn on the site, shall be located on the site at any time. The mobile caravan is not to be used as sleeping accommodation on the site at any time.
10) No industrial, commercial or business activities of any description shall be carried on from the site, including the storage of materials.
11) No vehicle over 3.5 tonnes in gross vehicle weight shall be stationed, parked or stored on the site.
12) No external lighting fixtures shall be erected or placed on the land, without the prior consent of the local planning authority in an application on that behalf.
13) Construction of the dayroom/utility block hereby approved shall not be commenced until details of foul drainage to serve it and to serve the mobile home have been submitted to, and approved in writing by, the local planning authority. Thereafter, the sewage system shall be implemented and maintained in accordance with the approved details thereafter, prior to occupation of the dayroom/utility block.
14) Construction of the dayroom/utility block hereby approved shall not be commenced until the exact position of the water main crossing the site has been identified and agreed in writing with the Local Planning Authority. All existing infrastructure associated with the water main, including protective coatings and cathodic protection, shall be protected during the course of construction works. No excavation, mounding or tree planting shall be carried out within 4 metres of the public water main without the prior written approval of the local planning authority.

Costs Decision

Inquiry held on 14 – 17 January 2014
Site visit made on 17 January 2014

by Katie Peerless Dip Arch RIBA
an Inspector appointed by the Secretary of State for Communities and Local Government
Decision date: 27 March 2014

Costs application in relation to Appeal Ref: APP/Z3825/A/12/2188572 Deer Park Farm, Hampers Lane, Horsham

 The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 The application is made by Mr George Hunt for a full award of costs against the Hampers Lane Protection Society.
 The inquiry was in connection with an appeal against the refusal of planning permission for the use of land for the stationing of caravans for residential purposes for 1 no. gypsy pitch together with the formation of a dayroom/utility block and additional hard standing ancillary to that use.

Decision

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

Procedural matter

2. After the close of the Inquiry, but before the issue of this Decision, the Government published new Planning Practice Guidance (PPG) and withdrew the Circulars 03/2009 and 11/95, to which the appellant had made reference. The

PPG has not made any substantial changes to the advice in the Circulars that is relevant to this decision or to the points relied on by the appellant. Having regard to the submissions put to me, I am satisfied that no party's interests will be prejudiced by my judging the application and response against the PPG. I have therefore taken this Decision with this in mind, but removed the references to the old Circulars from the summary of the parties' cases.

Background

3. This case was originally charted to proceed by way of a Hearing but, due to matters that will be discussed in subsequent paragraphs, the Hearing was aborted and the case was converted to an Inquiry. Prior to the Inquiry, a group of local objectors, the Hampers Lane Protection Group (HLPG), who had also appeared at the Hearing, was given Rule 6 status and was represented by Counsel and 2 professional witnesses at the event. The Council and the appellant produced witnesses to address the historic heritage issues raised by the HLPG and were in agreement that this did not indicate that planning permission for the proposal should be refused.

The submissions for the parties

4. As the advocate for the HLPG at the Inquiry was not available on the last sitting
day, the parties have put their representations in writing and I will not, therefore, reproduce them fully here. However, in summary, the appellant seeks an award of costs on 2 alternative grounds of unreasonable behaviour.

5. Firstly he submits that, as it was professionally represented, the HLPG should have given notice to the Planning Inspectorate and the appellant that it was intending to raise the matter of the impact of the proposed development on the setting of the listed building at St Leonard's Park House and the Deer Park prior to the Hearing. The HLPG's representative should have known that to do so on the day, and to insist on pursuing these matters, would lead to a change of procedure. Secondly, he maintains that it was unreasonable of the HLPG to continue to assert that there was an impact on the heritage assets in its evidence given to the Inquiry.

6. Had the Group taken the first course, the appellant says that the day spent at the Hearing, and the consequential costs, could have been avoided. As he considers that there is no basis for the claim that the development would have an impact on the setting of the listed building, he maintains that to pursue the heritage issue at the Inquiry was unreasonable and the HLPG should bear the costs of the Inquiry from the date of the Hearing.

7. The HLPG notes that, as a 3rd party, it is entitled to raise any matter that is relevant to the planning merits of the case at a Hearing without prior notification. It did not request an adjournment; this was agreed between the 2 main parties at the Hearing. Had the historic heritage issue no merit, then the Inspector could have continued the Hearing, but there were also other reasons that contributed to the decision to adjourn. The HLPG submits that its evidence on the heritage issue is properly arguable.

Reasons

8. The PPG advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

9. Firstly, the local objectors were quite entitled, at the Hearing stage, to raise

any matters that they considered relevant without prior notice, even though they had a professional representative. However, they had, in fact, notified the Council of their concerns on the historic heritage issue almost 2 weeks before the date of the Hearing, but it seems that this information was not passed to the appellant. Objections to a proposed development are not normally made directly to the applicant or appellant and the fact that the HLPG did not do so in this case does not amount to unreasonable behaviour.

10. Nevertheless, as the listed building setting was a matter that had also been raised in a letter of objection to the planning application and the site lies within the non-designated heritage asset of the Deer Park, these facts should have alerted the appellant to the likelihood that such concerns could be raised at the Hearing.

11. In any event, I consider that this was not the only reason that the Hearing was adjourned. The numbers of people attending the event meant that it was likely that it would not have been concluded in one day and this would have led to the need for an adjournment to a later date. It is clear from the originally appointed Inspector's file note that, while she considered that without the historic heritage issue, the Hearing procedure might have been suitable, there is no suggestion that this was inevitable or that there would be no need to adjourn to another day.

12. I also consider that the matter was a perfectly reasonable and, in fact, an essential one to raise, given the statutory duties imposed by the Planning (Listed buildings and Conservation Areas) Act 1990 (as amended) that apply to development that could adversely affect the setting of heritage assets. The site lies within a non-designated historic park that is referred to in local planning policy and there is, in my view, sufficient evidence to indicate that this park was once clearly associated with the grade II* listed building at St Leonard's Park House.

13. It was therefore correct, and in no way unreasonable, that the current extent of the setting, and the potential effect of the development on it, should be explored through the presentation of expert evidence.

14. The 3 witnesses on the issue held differing views on whether the appeal site is in the setting of the listed building and whether there was any harm caused to the setting or to the non-designated Deer Park. Even the 2 parties that considered there was no harm were not in complete agreement on the extent of the setting. It is therefore the case that a judgement on the matter needed to be made and the discussions at the Inquiry aided this procedure.

15. I have concluded that there would be no reason to dismiss the appeal on the ground of harm to the heritage assets but, as noted above, I consider that it was not unreasonable of the HLPG to raise the issue and to continue to argue its case before the Inquiry. The points made were relevant and cogently argued.

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has not been demonstrated.

Katie Peerless

Inspector

Costs Decision

Inquiry held on 14 – 17 January 2014
Site visit made on 17 January 2014

by Katie Peerless Dip Arch RIBA
an Inspector appointed by the Secretary of State for Communities and Local Government
Decision date: 27 March 2014

Costs application in relation to Appeal Ref: APP/Z3825/A/12/2188572 Deer Park Farm, Hampers Lane, Horsham

 The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 The application is made by Mr George Hunt for a full award of costs against Horsham District Council.
 The inquiry was in connection with an appeal against the refusal of planning permission for the use of land for the stationing of caravans for residential purposes for 1 no. gypsy pitch together with the formation of a dayroom/utility block and additional hard standing ancillary to that use.

Decision

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

Procedural matter

2. After the close of the Inquiry, but before the issue of this Decision, the Government published new Planning Practice Guidance (PPG) and withdrew the Circulars 03/2009 and 11/95, to which the appellant had made reference. The PPG has not made any substantial changes to the advice in the Circulars that is relevant to this decision or to the points relied on by the appellant. Having regard to the submissions put to me, I am satisfied that no party's interests will be prejudiced by my judging the application and response against the PPG. I have therefore taken this Decision with this in mind, but removed the references to the old Circulars from the summary of the parties' cases.

The submissions for Mr George Hunt

3. The application for a full award of costs is against the unreasonable refusal of planning permission, without which there would have been no need for the appeal. If costs are awarded against the Council, the appellant considers that any successful claim for costs awarded against the Rule 6 party would not then be implemented.

4. Having refused planning permission, the Council has subsequently failed to substantiate its case. The application was recommended for approval and whilst councillors are entitled to go against the recommendation of their planning officers, in such circumstances, the local planning authority will need to demonstrate reasonable planning grounds for taking a contrary decision and this includes demonstrating that all relevant matters have been taken into account.

5. Officers drew attention to the need for traveller sites and the lack of a 5 year supply of pitches, but misled the councillors on the issue of a temporary consent when they were told, at paragraph 6.12 of the report, that it was not possible to grant planning permission for the dayroom as it was a permanent building. That is clearly wrong, so the councillors cannot have considered whether a temporary permission, which could be secured by condition, would have been appropriate. If either a temporary or permanent planning permission is granted on appeal, this will demonstrate that the Council did not

carry out their duties correctly.
6. The decision to refuse planning permission must be supported in all respects and planning authorities are required to show why development cannot be permitted. There needs to be reference made to all other material considerations. While the Council has made a professional case on the matters they have addressed, that is not all they have to do; they must also show that planning permission should not be granted.
7. The matter of alternative sites was only dealt with in connection with the consideration of a temporary permission, there was no analysis of the 5 year supply or the Development Plan Documents process. There was no discussion of the rationale for a temporary permission or otherwise. The Council has not substantiated why, on balance, planning permission should be refused. It has not shown that it has considered all matters and concluded that, on balance, planning permission should not be granted. The advocate for the Council says that the matters were taken into account but that is not enough, it needs to be demonstrated in evidence. The Council has failed to produce relevant evidence to support its stance although it has had the appellant's statement and appendices, which set out all the relevant material considerations, from before the date of the aborted Hearing. It did not however, deal fully with these issues.

The response by Horsham District Council

8. The committee report gives the councillors advice on a range of matters, including a temporary consent. The members did not accept that approach and it remains the case that a temporary consent is not appropriate. To recover any costs, not only must unreasonable behaviour be demonstrated, but it must also have caused unnecessary expense. Whichever way the planning officer put across the advice on a temporary consent, the members would nevertheless have refused permission.
9. It must be considered whether the Council has made good its case, with reference to the reasons for refusal; no objection has been taken to that terminology. The matter of the AONB was dealt with very fully by the Council's landscape witness and was the most professional and comprehensive assessment given to the Inquiry, which fully justified the views of the Council. The critical question, if any harm is established, is where the balance lies and this is a matter of planning judgement. The judgement of the Council's members and its planning witness is against the grant of planning permission. The planning witness was fully alive to the matters referred to by the appellant but does not accept that they swing the balance in favour of granting planning permission.

10. The disagreement of the members with the planning officers' conclusion was a
matter of judgement on whether these matters outweighed the harm. The Council has presented thorough proofs of evidence to vindicate its stance and there is no merit it the application for costs.

Background

11. This case was originally charted to proceed by way of a Hearing. However, I have concluded, in the Decision relating to the costs application made by the appellant against a group of local objectors, the Hampers Lane Protection Group (HLPG), that the reason the case was converted to an Inquiry was due mainly to the numbers of third parties wishing to attend and the additional

matters they raised.
12. Prior to the Inquiry, the HLPG was given Rule 6 status and was represented by
Counsel and 2 professional witnesses at the event. The Council and the appellant produced witnesses to address the historic heritage issues raised by the Rule 6 party and were in agreement that this did not indicate that planning permission for the proposal should be refused.

Reasons

13. PPG advises that, irrespective of the outcome of the appeal, costs may only be
awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
14. The main thrust of the appellant's claim is that the Council has failed to consider fully all the material considerations that he believed should have been taken into account to inform the balancing exercise that needs to be undertaken if it is considered that any harm would be caused by the development. He considers that this failure led directly to the need to appeal the decision and to the consequent costs that he has incurred.
15. I have found that harm would be caused to the landscape character of the AONB, as did the Council, but have concluded that this harm is outweighed by other material considerations, including the lack of a 5 year supply of land for traveller sites.
16. The officer's report to the planning committee recommended approval and in doing so, took account of the lack of a 5 year supply of sites, the human rights of the applicants, the criteria of policy DC32 relating to gypsy and traveller sites and the landscape character of the High Weald Area of Outstanding Natural Beauty (AONB). He concluded that, on balance, it would be appropriate to grant a full permission for the site. He did, however, advise that a temporary permission would not be an alternative because he considered that this would not be possible for a permanent building.
17. The PPG notes that a condition requiring the demolition after a stated period of
a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness. Conditions requiring demolition of buildings which are imposed on planning permissions for change of use are unlikely to relate fairly and reasonably to the development permitted.
18. However, if a temporary permission were to be granted with such a condition attached, the construction of the dayroom would then be at the appellant's risk because, at the end of the period, there would be no guarantee that he would be able to retain it. This analysis is substantially the same as the previous guidance in Circular 11/95 and was not put before the committee.

19. The officer's advice meant that the planning committee was not correctly informed on the matter of a temporary permission and did not, therefore, have the full facts that it needed to consider this alternative. I consequently consider that, in this respect, the Council's behaviour was unreasonable. However, it has not been demonstrated that, had the committee been correctly advised, a temporary planning permission would necessarily have been granted, or the cost of the appeal avoided.

20. In the evidence given to the Inquiry by the Council's planning witness, some of
the material considerations listed by the appellant are addressed. The lack of a 5 year supply is examined in detail and the need for a site for the appellant and his family and the benefits of them remaining in situ are acknowledged.
21. However, the assessment of the pros and cons of granting a temporary permission are not set out in any detail, although there is a suggestion that the Council might tolerate the site for a further period. This seems to me to be an unsatisfactorily ambiguous statement and the Council's reasons for not considering a temporary permission have consequently not been clearly justified. In addition, although the relevant development plan policy on gypsy and traveller sites is referred to, there is no analysis of whether the proposal complies with that policy. Nor has the statement that the site *'is not readily accessible'* been supported by any other evidence.
22. Therefore, whilst I consider that the Council has produced clear and cogent evidence to support its conclusions that the proposed development would cause harm to the AONB, it has not, to my mind, undertaken the complete balancing exercise that is needed to demonstrate that it has fully considered all the material considerations that were raised by the appellant and which could influence the balance in favour of the grant of planning permission.
23. I consider that this behaviour is unreasonable and has led to unnecessary expense for the appellant, as described in the PPG, in putting this aspect of his case to the Inquiry. I therefore consider that a partial award of costs in respect of this particular matter is justified.

Costs Order

24. 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 Hunt the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in producing evidence to demonstrate that the Council had not undertaken a full balancing exercise to justify its refusal of planning permission.
25. The applicant is now invited to submit to Horsham District Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. 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.

Katie Peerless

Inspector