The Planning Inspectorate

Appeal Decision

Site visit made on 13 July 2022

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 November 2022

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Tim Bloxham against the decision of Horsham District Council.
- The application Ref DC/19/2309, dated 15 October 2019, was refused by notice dated 7 January 2020.
- The development proposed is a change of use to four pitch settled gypsy site along with the formation of hardstanding and utility/day room buildings.

Decision

1. The appeal is dismissed.

Applications for costs

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

Preliminary Matters

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

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

Main Issues

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

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

Reasons

Biodiversity sites

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

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

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

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

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

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

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

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

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

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

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

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

Character and appearance

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

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

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

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

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

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

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

Other Considerations

Local need for sites

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

Personal Circumstances and Need

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

Best interests of the child(ren)

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

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

Planning Balance

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

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

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

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

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

Conclusion

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

Martin Allen

INSPECTOR