



Appeal Decision

Site visit made on 15 July 2019

by **Nicola Davies BA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 September 2019

Appeal Ref: APP/Z3825/W/17/3188057

Whiteoaks, Shoreham Road, Small Dole BN5 9SD

- 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/17/1375, dated 19 June 2017, was refused by notice dated 25 September 2017.
 - The development proposed is described as a proposed settled gypsy accommodation site.
 - This decision supersedes that issued on 11 September 2018. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. Following the successful challenge of the decision dated 11 September 2018 under section 288 of the Town and Country Planning Act 1990 my role is to redetermine the case and not to review the previous appeal decision.
3. By way of background, the original section 78 appeal proceeded together with appeals against two enforcement notices. Notice 1 (Appeal A)ⁱ related to operational development pertaining to summerhouses, trenches, laying of concrete and hardstanding. Notice 2 (Appeal B)ⁱⁱ was against a change of use to a mixed use of agricultural and stationing of caravans for human habitation. The section 78 appeal at the time of the first decision was not proposed for a named or existing gypsy occupier(s).
4. Subsequent to the original appeal submissions made by the appellant a further updated planning appeal statement has been provided. This indicates that the site has been owned by the Tingey family since November 2013. Since shortly prior to March 2018 one of the two caravans stationed at the appeal site has been occupied by Sam Tingey and the other by Charlie Tingey, along with their respective partners and young children. The update provided by the appellant indicates that the caravans are now intended for the continued occupation by the Tingey family.
5. It appears to be accepted by the Council that the Tingey family are gypsies and travellers. On the available evidence I have no substantive reason to come to a different view on this matter. It is advised that Sam and Charlie Tingey travel for work. Therefore, I consider the Tingey family satisfy the gypsy and

traveller definition set out within Annex 1 of the Government's 'Planning Policy for Traveller Sites' (August 2015).

6. A revised version of the National Planning Policy Framework ('the Framework') has been published since the planning application was determined by the Council. The appellant and the local planning authority have had the opportunity to address the revised Framework when submitting their additional statements. I have had regard to the revised Framework in reaching my decision.

Main Issue

7. The main issue relating to this appeal is whether the site is a suitable location for gypsy and traveller accommodation.
8. In exercising my function on behalf of a public authority I am 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 gypsies and travellers, they have a protected characteristic for the purposes of the PSED.

Reasons

9. The appeal site does not fall within any defined built-up area boundary. The closest settlement, Small Dole, is approximately 620m south of the appeal site with the larger settlement of Henfield around 1.7km north of the appeal site.
10. Horsham District Planning Framework 2015 (HDPF) Policy 3 classifies Small Dole as a 'Small Village' with limited services, facilities and social networks but with good accessibility to larger settlements, or settlements with some employment but limited services, facilities or accessibility. This Policy also acknowledges that residents of small villages are reliant on larger settlements to access most of their requirements. I observed that the services and facilities at Small Dole are limited to that of a public house and a post office/shop and that the village is accessible by private vehicle and bus.
11. Policy 3 of the HDPF defines Henfield as a 'Small Town/Larger Village' and defines these as having a good range of services and facilities, strong community networks and local employment provisions with reasonable access to rail and/or bus services. This Policy indicates that settlements, such as Henfield, act as hubs for smaller villages to meet their daily needs.
12. Policy 26 of the HDPF indicates that outside built-up area boundaries, the rural character and undeveloped nature of the countryside will be protected against inappropriate development, unless the countryside location is essential to the proposal. The appeal site is beyond any defined built-up area boundary and therefore is within the countryside. Paragraph 25 of the Planning Policy for Traveller Sites (PPTS) stipulates that new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan should be very strictly limited. That said, the proposal would be situated to the west of, and behind, existing ribbon road frontage development. As such, it is not spatially isolated or remote from existing built development. In my opinion the site would not be considered to be one of

- those PPTS sites where development should be strictly limited. The countryside location does not, as such, weigh significantly against the proposal.
13. The appeal site is not allocated within the HDPF as a Gypsy and Traveller site. In such circumstances Policy 23 of the HDPF sets out criteria to be taken into consideration when determining planning applications for non-allocated sites. The Council's decision notice makes it clear that the Council's concerns centre around the unsustainable location of the appeal site, its remoteness from local services and facilities, and the limitation placed upon occupiers to access modes of sustainable transport. I, therefore, consider the proposal first needs to be assessed against criteria (b) and (d) of Policy 23 of HDPF.
 14. Criterion (b) of Policy 23 requires that the site is served by a safe and convenient vehicular and pedestrian access and should not result in significant hazard to other road users.
 15. Turning firstly to vehicular safety, I am aware from those representations received that some local concern has been raised in respect of the safety of the access onto Shoreham Road. Although residents highlight incidents of accidents on this stretch of Shoreham Road, I have not been directed to any substantive evidence that would indicate that these accidents were linked to the appeal site access. West Sussex County Council, the responsible Highway Authority, has not raised an objection to the proposal. Furthermore, there is no substantive technical highway evidence before me that would lead me to conclude that the access would compromise highway safety.
 16. Turning secondly to pedestrian safety, the highway does not host pavements or street lighting. To the north, and close to the access, there is a highway bend that limits visibility of on-coming traffic. Just before the bend the speed limit changes between 40 and 60mph. I saw that both cars and large vehicles travel at speed, in both directions, along this stretch of Shoreham Road and with a high degree of frequency. Indeed, some of those making representation highlight the busy and fast-moving nature of the traffic travelling along this stretch of Shoreham Road and that the volume of traffic has increased over the years. Without pavements along the highway, pedestrians accessing or egressing the site would be faced by challenging highway traffic and this would put them at a significant safety risk, particularly on days with poor visibility, as well as during the hours of darkness.
 17. Criterion (d) of Policy 23 requires consideration as to whether the site is located in or near to existing settlements, or is part of an allocated strategic location, within reasonable distance of a range of local services and community facilities, in particular schools and essential health services. I am of the opinion that given the very limited services and facilities available at Small Dole, the closest settlement that could support the occupiers' day-to-day needs would be Henfield. However, given Henfield is around 1.7km from the appeal site it is highly likely that occupiers would be reliant on the private vehicle to access the services and facilities at Henfield.
 18. The risk to pedestrians discussed above also needs to be considered in the context of criterion (d) of Policy 23. For occupiers that do not have access to a vehicle it would be unrealistic to anticipate walking to services and facilities given the limitations of the highway to provide safe pedestrian access. Furthermore, services and facilities are some distance from the appeal site and beyond a reasonable walking distance. I saw that there are bus stops serving

buses in both directions just beyond Horn Lane to the south and at Henfield Business Park to the north of the appeal site. However, these bus stops are also some distance from the appeal site and to access buses would require occupiers walking along the busy and heavily trafficked carriageway of Shoreham Road.

19. I acknowledge that Policy 3 of the HDPF accepts that residents of 'Small Villages' are reliant on larger settlements to access most of their requirements. As such, residents that live close to Small Dole, including the occupiers of the appeal site, would also be reliant upon larger settlements. For occupiers of the appeal site that do not have access to a private vehicle, walking along the carriageway to the nearest bus stops would be an extremely hazardous prospect, particularly for those with young children, elderly people and those with disabilities. It would also be an unattractive prospect for those carrying heavy shopping, particularly during winter months and inclement weather. As such, this would discourage occupiers from utilising public transport. This would also increase the reliance on private vehicle to access services and facilities at larger settlements by those who have access to private vehicles.
20. For the above reasons, the proposed development conflicts with criteria (b) and (d) of Policy 23. Policy 40 of the HDPF, amongst other matters, requires development to provide safe and suitable access for pedestrians. For the same reasons, the proposal also conflicts with this policy. Although the HDPF pre-dates the revised Framework, I consider the objectives of these policies are consistent with the revised Framework. These policies are also in line with the PPTS that seeks to enable provision of suitable accommodation from which travellers can access services and facilities.
21. I acknowledge that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. I have been advised that each of the adults that presently occupy the site are drivers and car owners. As I see it, the proposal would not limit the need for travel, even if access to schools, services and facilities would be done as part of a round trip. Furthermore, the occupiers, or future new occupiers, would not be offered a genuine choice of transport modes. Therefore, the location of the site conflicts with the requirements of Policy 40 of the HDPF and the Framework that require development proposals to ensure safe and suitable access can be achieved for all users.
22. In addition to those policies referred to above the Council has also referred to Policies 1, 2 and 4 of the HDPF in its reason for refusal.
23. Policy 1 is a strategic policy that pre-dates the revised Framework. Overall this policy reflects the previous wording of the 2012 Framework's presumption in favour of sustainable development in decision making. The revised Framework has modified the precise wording and Policy 1 does not reflect some of those modifications and as such, cannot be considered to be consistent with the revised Framework. This, therefore, significantly reduces the weight that can be applied to this policy and I give it limited weight.
24. Policy 2, amongst other strategic development matters, supports the specific temporary and permanent needs of the Gypsies and Travellers and requires the needs of these communities to be met through suitable access to services and employment. However, I have found that suitable pedestrian access would not be achieved, and this would restrict access to services and employment.

25. Policy 4 deals with settlement expansion to meet identified local housing, employment and community needs. It appears to me that Policy 4 does not differentiate between gypsy/travellers and the settled community. As this policy is directed towards the settled community, I do not consider Policy 4 to be specifically applicable to the proposal before me.
26. With regard to the main issue, for those reasons given further above, I conclude that the appeal site is not a suitable location for gypsy and traveller accommodation when assessed against the development plan policies, and specifically criteria (b) and (d) of Policy 23, as well as Policy 40 of the HDPF.

Other considerations

27. Policy 21 of the HDPF indicates that provision shall be made for 39 net additional permanent resident pitches for Gypsies and Travellers within the period 2011 to 2017. This Policy also requires the Council to make provision for further pitches during the remainder of the Plan period from 2017 to 2031 in a Site Allocations DPD.
28. My attention has been drawn to the 2018 Kingfisher Farm appeal decisionⁱⁱⁱ that concluded 78 pitches was an indication of the level of District need up to 2032 and that this was likely to be a minimum requirement. The Council has not disputed the findings of the Kingfisher Farm appeal. The Council initially advised that a number of the sites allocated through Policy 21 of the HDPF have yet to come forward. Although the Council has not provided any up-to-date evidence in regard to shortfall figures, it advises that it still cannot demonstrate an up-to-date five-year supply of deliverable sites. However, a lack of a five-year supply does not directly lead to the application of the tilted balance albeit it adds weight to the proposal for pitches^{iv}.
29. There is a general national and regional need for pitches to which I attribute significant weight. Although the Council has not provided a definitive District need up to 2032, it nevertheless acknowledges that it currently cannot demonstrate an up-to-date five-year supply of deliverable sites. Referring to policies 10 and 24 of the PPTS it appears to me that a clear unmet need exists for pitches in the Horsham District and this weighs significantly in favour of the development. The appellant advises that there are no alternative site(s) to which the occupiers could relocate. Although some third parties have directed me to an established Gypsy and Traveller site within Small Dole, I have not been provided with any information relating to pitch availability at that site. I therefore cannot say with any degree of certainty that pitches would be available at that site that might accommodate the Tingey family.
30. The most relevant development plan policies relating to the proposed development are Policies 23 and 40 of the HDPF. I have found these policies to be consistent with the Framework and the PPTS, therefore these Policies can be given full weight. I shall deal with the development plan policies and the shortage of pitch supply within my planning balance section below.
31. As noted earlier, the appeal site is located behind existing ribbon development that fronts onto Shoreham Road. In terms of the scale of the development, I consider the proposal would not have a significant impact on the landscape character of the area. I therefore consider the proposal would comply with criterion (e) of Policy 23 of the HDPF which requires development not to have an unacceptable impact on the character and appearance of the landscape. In

addition, I have found that that the proposed development would not conflict with Policy 26 of the HDPF that seeks to protect the rural character and undeveloped nature of the countryside outside of the built-up settlement boundaries.

32. Neighbouring dwellings are positioned some distance from the appeal site and are separated by the vegetated boundaries of the site. I consider the separation and intervening landscaping would ensure that no significant harm would arise to the living conditions of the existing adjoining occupiers. Some third-party concern is raised to potential noise and disturbance. I do not consider the proposal, which is domestic in nature, would give rise to significant levels of noise and/or disturbance. I therefore consider the proposal would comply with criterion (e) of Policy 23 of the HDPF which requires development not to have an unacceptable impact on the amenity of neighbouring properties. Noise relating to dogs barking at this site has also been raised by third-parties, but I have been advised that this is being investigated by the Council's Environmental Health Department under the provisions of the Environmental Protection Act 1990.
33. I have been referred to a number of appeal decisions by the appellant relating to gypsy and traveller sites, including that at Kingfisher Farm and Millers Mead^v, however, I note that the Millers Mead appeal has been withdrawn and will not be subject to an appeal redetermination. In some of these cases cited by the appellant I accept those proposals host similarities to the development before me, particularly in regard to access to sites being along unlit country lanes, that have been found to be acceptable in those cases. There is also similarity in terms of distances to the nearest settlement with some having lesser distance than that of this case. However, I have not been provided with the full details of those cases and therefore the full circumstances relating to those cases and their policy context is not before me.
34. Notwithstanding this, those proposals have been determined on their own particular merits and individual circumstances. The circumstances of the highways will have different characteristics in each case in respect of width, speed limit, bends, visibility, type and amount of traffic. There is also variation between cases regarding pitch numbers and, in some cases, pitch shortfall. I also note that, apart from the Millers Mead and Kingfisher Farm appeals, none of the other examples cited by the appellant relate to Horsham District and, therefore, different development plan policies will have applied to those cases. Consequently, the considerations relating to those cases will be different. I, therefore, consider the proposal before me can and should be considered on its own merits and on the evidence before me, together with my observations at my site visit.
35. I have considered those other examples drawn to my attention at Millers Mead and Kingfisher Farm. In the case before me, because of personal safety all residents in effect would not have a choice of travel mode and would have to travel by private vehicle, which would impact most on the more vulnerable and disadvantaged. In regard to the Kingfisher Farm, that proposal would have been located near to Barns Green, categorised as a 'medium village' by Policy 3 of the HDPF that would provide some day-to-day needs. However, the nearest settlement to this appeal site, Small Dole, hosts very limited services, facilities and accessibility. This proposal should, therefore, be considered in relation to the circumstances of this case and on its own individual merit.

36. The appellant has also directed me to the Council's traveller site at Cousins Copse, Billingshurst. However, I am not aware of the full details of the circumstances relating to that site such as to enable me to judge whether it is directly comparable to this case. This development is a different proposal and therefore can and should be considered on its own merits.
37. My attention has been drawn to Use Class B8 (storage or distribution) and commercial storage activities that have taken place at the site that would pertain to this Use Class. The appellant contests that the Council has under-enforced these activities. It is suggested that if enforcement Notice 2 (Appeal B) is complied with that would result in unfettered storage use. It is contended that this provides a 'fallback' as this use could create vehicle movements that would have a greater impact on the openness of the countryside than that of this redetermination appeal proposal. However, enforcement action was taken only against a mixed use of agriculture and the stationing of caravans for human habitation. Therefore, the notice could not have required a storage activity to cease. The provisions of section 173(11) would not apply and no planning permission for a storage use would result. The suggested fallback, therefore, holds no weight in favour of the proposal.
38. It was evident to me that the layout of the site at the time of my site visit was considerably different to that shown on the plans that form part of this section 78 appeal. The previous Inspector found likewise. However, I consider that the details of the site layout, numbers of caravans, ancillary structures, numbers of touring caravans, landscaping, amongst other matters, could reasonably be controlled by imposing appropriately worded planning conditions.
39. The appellant has referred me to paragraph 13 d) of the PPTS, but that policy relates to development plan-making rather than decision-taking. Nevertheless, I recognise the benefits of having a settled base and the social, environmental and economic costs associated with unauthorised camping.

Planning Balance

40. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that determinations must be made in accordance with the plan unless material considerations indicate otherwise.
41. I have found that the proposal would be acceptable in regard to character and appearance. I have also found that the proposal would not harm the living conditions of existing neighbouring occupiers. Although these are merits of the proposed development, as these aspects of the proposal would need to be acceptable in their own right to make the development acceptable, they do not hold any additional weight in favour of the proposal.
42. I accept that the two pitches the application proposes would contribute to the pitch supply within the District. This carries significant weight in favour of the proposal, especially given the lack of a five-year supply identified by the Council and the likely level of need identified by the Inspector in the Kingfisher Farm appeal. Nonetheless, there is conflict with the development plan in relation to pedestrian safety and the occupiers' reliance upon private vehicle to access services and facilities that are some distance away at Henfield. I have found that occupiers that would not have access to a private vehicle would be required to place themselves at a significant highway risk on a regular basis in order to access public transport and the settlement of Henfield to meet their

- day-to-day needs and requirements. Given this, I consider that these would override the contribution made by the proposed development to the unmet need for pitches that might justify a departure from the development plan.
43. The proposal would not comply with Policies 23 and 40 of the HDPF and, as such, the proposal would not be in accordance with the development plan when read as a whole. Furthermore, the proposed development would not comply with the aims of the PPTS for new traveller sites to be of suitable accommodation from which travellers can safely access services and facilities by foot and public transport and in turn this may disadvantage the vulnerable most. In addition, as well as the personal safety of the occupiers, there would also be a risk to other highway users if they collided with a pedestrian. I do not consider there to be any other material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan. Given this significant risk to the occupiers' pedestrian and other highway users safety, as well as the site's location in terms of proximity and accessibility limitations to services and facilities, and the conflict with the development plan the appeal should not be allowed and planning permission should not be granted.
44. I have considered those conditions put forward by the Council, including a condition limiting the development to the stationing of two caravans at the site and their occupation limited to Gypsies and Travellers that meet the Annex 1 definition of the PPTS. I do not consider that any of the conditions put forward would overcome the harm that I have identified. Whilst the conditions could limit the number of caravans at the appeal site, if the development were to take place significant risk to pedestrian safety would arise to the occupiers of the two caravans.
45. Policy 27 of the PPTS indicates that if a local planning authority cannot demonstrate an up-to-date five-year supply of deliverable sites, as is the case here, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of a temporary planning permission. Neither party has put forward a suggested period of time for a temporary planning permission that might allow time for an alternative site to come forward and/or to enable the occupiers to find another site.
46. I have given consideration to the grant of a temporary planning permission. However, the significant risk to the occupiers' pedestrian safety would exist over the time the caravans at the site would be occupied. The fact that a timeframe to occupy the caravans would be less than that of a permanent planning permission would not diminish the harm to the occupiers' safety as pedestrians over that period that the caravans could be occupied. Furthermore, my concerns in respect of the site's location would not be overcome. As such, temporary planning permission should not be granted.
47. I have also considered the imposition of a personal permission that would allow the current occupiers to remain resident at the site. It is advised that the Tingey family children living at the site either attend a local school or are registered to attend in the future. If the Tingey family were to remain at the site whilst their children attend local schools this would be so for the foreseeable 16 years until the youngest child finishes schooling. The family is also registered at a local medical practice. The occupiers having been brought up in the gypsy tradition are acutely aware, through their own experiences

whilst growing up and travelling with their parents, of the importance of a settled base as opposed to being moved on from site to site. Whilst I sympathise with the occupiers' particular circumstances this would not obviate the harm to the Tingey family's safety over the period that the caravans would be occupied by the family. Therefore, personal or personal temporary planning permission should not be granted.

48. The appellant advises that the occupiers have no other site(s) to relocate to and, as such, are loath to leave this site. I have not been directed to any options of suitable alternative sites/accommodation within the District or the wider area that would be available to the Tingey family. This carries significant weight in favour of the proposal. Whilst third parties suggest that the Tingey family own houses elsewhere in the area, on the available evidence I cannot be certain that this is the case and/or that such accommodation would be suitable given the Tingey family's traditional way of life.
49. Dismissing this appeal would result in the occupiers of the caravans losing their homes and this would be an interference of the occupiers' rights under Article 8 of the Human Rights Act 1998. In particular, their rights under Article 8 (right to respect for private and family life, home and correspondence) and Article 1 of the First Protocol (right to respect to property) would be interfered with. With regard to the upheld enforcement Notice 2 referred to at paragraph 2 above, the compliance period for the cessation of the residential use and the removal of the caravans is six months. Therefore, there is already a notice in place. This has the effect of increasing the potential interference with the occupiers' human rights.
50. Both of the above are qualified rights, and interference with them may be justified where lawful and in the public interest. I have concluded that the proposed development conflicts with policies within the HDPF and the PPTS. Highway safety for all highway users is an important public interest. I find the harm to the occupiers' pedestrian safety, along with the site location and the limitations of the occupiers to access services and facilities, is so significant and that the arguments advanced by the appellant and the other considerations do not clearly outweigh this harm. I have considered whether a lesser requirement would overcome the harm. For those reasons given above I have ruled out the possibility of imposing a temporary or personal/personal temporary permission. Dismissing this appeal would be an interference of the appellants' human rights but because of harm that I have identified to the occupiers this is proportionate and necessary in the public interest.
51. In consciously thinking about the aims of the PSED I have had regard to the traditional way of life of the occupiers. I acknowledge that the Tingey family have a need for a settled base and that no other suitable alternative accommodation has been identified to be available to the family in the area. There are children living on the site who are either at school or who are about to or will start school in the future. Their best interests include living on a settled and secure site with access to their schools and to local healthcare facilities. This is a primary consideration in my reasoning on a personal permission.
52. However, I have identified that due to the harm to the occupiers' pedestrian safety the site cannot be considered a safe place for them to live and this carries significant weight against the proposal. The site is not suitable for this

use and I conclude that the pedestrian safety and limitations to access services and facilities outweighs the rights of the site owner and occupiers.

53. Interested parties raise additional objections to the proposal, including drainage and impact on wildlife, amongst other matters. I consider these matters could be satisfactorily controlled by the imposition of appropriately worded planning conditions. I have also been directed to the unregulated use of an adjacent land fill site. However, that land falls beyond the appeal site and, as such, is not a relevant consideration to this appeal.

Conclusion

54. Having regard to the above findings, the appeal should be dismissed.

Nicola Davies

INSPECTOR

ⁱ Appeal Ref: APP/Z3825/C/18/3199688

ⁱⁱ Appeal Ref: APP/Z3825/C/18/3200872

ⁱⁱⁱ Appeal Refs: APP/Z3825/C/16/3153910, 3153915, 3188942 & 3188945 – Land known as Kingfisher Farm, West Chiltington Lane, Billingshurst, West Sussex RH14 9DR

^{iv} National Planning Policy Framework paragraph 73 and footnote 36, and paragraph 11 footnote 7

^v Appeal Refs: APP/Z3825/C/18/3193063 & 3202116 – Land at/rear of Millers Mead, Nuthurst Street, Horsham RH13 6RG