



Appeal Decision

Hearing Held on 12 July and 3 November 2022

Site visits made on 11 and 13 July, and 2 November 2022

by Philip Major BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th November 2022

Appeal Ref: APP/M1710/W/20/3249161

Land north of Lower Park Farm, Abbey Road, Medstead, Alton

- 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 R Walls against the decision of East Hampshire District Council.
- The application Ref: 58352, dated 12 July 2019, was refused by notice dated 19 February 2020.
- The development proposed is the change of use from agricultural to 8 pitches for residential accommodation for 8 gypsy families incorporating 1 mobile home, 1 touring caravan and 1 utility/day room per pitch, along with the formation of hardstanding and associated car parking.

Preliminary Matters

1. The hearing opened on 12 July 2022 as arranged. However, because it would not have been possible for the Appellant's team to be present the following day it was necessary to adjourn the proceedings. The first subsequent available date when all the necessary participants could attend was 3 November 2022.
2. There is a single Appellant in this case, albeit that there is a known group of gypsies and travellers who would wish to take up residence in the event of planning permission being granted. I have taken into account the personal circumstances of all the group. The Council has not challenged the gypsy status of the members of the group and I have no reason to disagree with that assessment.
3. In addition to the Council and Appellant, many local residents were represented by the Medstead, Beech and Wivelrod Rural Group (the Rural Group). Their representations, together with all other representations both at the hearing and in writing, have been taken into account by me when reaching my decision.
4. Just before the hearing opened the Council received ecological advice from the County Council and as a result did not pursue the third reason for refusing planning permission. Ecological matters were also not pursued by the Rural Group. It was agreed that a suitably worded condition would address ecological and biodiversity matters in the event of planning permission being granted.
5. The development plan in this case is the East Hampshire District Local Plan: Joint Core Strategy. Within that document the policy most referred to is CP15,

which specifically addresses the provision of traveller sites. This is a most important policy. I also consider that Policy CP 20, relating to landscape, is important. The latter is generally consistent with the National Planning Policy Framework (NPPF). Similarly Policy CP29 is important and seeks to achieve good design in line with NPPF advice.

6. Although the emerging Local Plan has been briefly referred to this is at an early stage in its preparation and cannot be afforded any weight in this appeal.
7. A Court of Appeal decision¹ was handed down on 31 October 2022, shortly before the resumption of the hearing. This is an important judgement which deals with the definition of gypsies and travellers set out in Planning Policy for Traveller Sites (2015) (PPTS) and more particularly with the exclusion from the definition of those who have ceased to travel permanently. The parties had the opportunity to address this judgement at the hearing. However, I agree with the Council that as the status of the Appellant group is not in dispute, and that they meet the terms of the definition in PPTS, this is not a matter which goes to the heart of my decision in this case.

Decision

8. The appeal is dismissed.

Main Issues

9. The main issues in the appeal are:
 - (a) The need for gypsy and traveller sites generally, current provision, and the specific needs of the Appellant group;
 - (b) The impact of the proposed development on the character and appearance of the surrounding area;
 - (c) Whether the proposed development would be in a suitable location;
 - (d) Whether the proposed development would be acceptable in relation to traffic generation and highway safety;
 - (e) Human Rights, Public Sector Equality Duty, and the planning balance.

Reasons

General need, current provision and specific needs

10. The latest Gypsy and Traveller Accommodation Needs Assessment (GTAA) for East Hampshire was published in March 2020. For those meeting the planning definition of gypsy and traveller as set out in PPTS need is assessed as being some 62 pitches in the period 2020 to 2036, with some 48 pitches in the period 2020 to 2025. It is common ground between the Appellant and the Council that the supply of pitches within East Hampshire is currently below the 5 year objective set in PPTS, and sits at around 2 years.
11. There is disagreement in relation to whether the actual need is as set out above as assessed on behalf of the Council, or even higher, as claimed by the Appellant. There is also disagreement on whether the Appellant's group was identified as being in need at the time the GTAA was updated. From my perspective these 2 matters do not add much to the arguments. This is principally because the need, by whatever measure, is of high magnitude.

¹ *Lisa Smith v SSLUHC [2022] EWCA Civ 1391*

Whether or not the Appellant's group is within the identified need of the GTAA is not crucial, since individual needs can in any event be addressed in 2 ways – either as part of the development plan allocation process, or as a reaction to planning applications being assessed against development plan policies. In any event it is clear to me that the need for gypsy pitches in East Hampshire is substantial, and this carries significant weight in favour of the proposal. But on the basis of the submitted information I am minded to agree with the Appellant that the general need for sites is likely to be higher than the GTAA suggests.

12. The updated GTAA recently reversed the position on the 5 year supply (from about 14 years to about 2 years). I also bear in mind that the Council has granted permission for a number of sites in recent years. In these circumstances I do not consider that it would be fair to characterise the current lack of provision as a failure of policy. It seems to me that Policy CP15 is capable of permitting new sites subject to compliance with the criteria set out there. It is not suggested that those criteria are unreasonable.
13. In relation to the specific needs of the Appellant's group I heard evidence on their situation at the resumed hearing. I do not need to address the needs of each proposed occupant family in detail here but there are a number of important themes which cut across many of the potential site residents.
14. The occupation of the appeal site would enable the proposed residents to avoid the current necessity to double-up on other sites without proper authorisation, or avoid a roadside existence. I accept that this is a significant factor and stems from the lack of an acceptable supply of sites generally, both in this District and the wider region.
15. Furthermore, there are a number of proposed site occupants who have children of school age (and younger) who currently have little opportunity for benefitting from educational facilities which are commonplace in the settled community. It is self-evident, and not disputed, that a settled base from which to access education and other services would be in the best interests of children. It is also not disputed that this is a primary consideration in the appeal which is not outweighed by other individual considerations, albeit that it does not mean that planning permission will automatically follow.
16. Similarly a number of potential residents have ongoing medical conditions which require regular attendance at surgeries and hospitals for treatment. Although it seems that such attendance is currently being managed, clearly a settled base at the appeal site would make life easier in that regard. Likewise the potential for caring for other family members would be assisted by being able to have a settled base.
17. Taken together the needs of the proposed residents of the site are an important material consideration in favour of the proposal. That is not to say that the needs of all are of the same nature. There is a variation in how urgent the need is depending on individual circumstances. Nonetheless the needs of the proposed site residents are of significant weight. No alternative sites have been identified as being available, acceptable, affordable or suitable.

Character and Appearance

18. The appeal site lies in the gap between the villages of Medstead and Beech. There is no dispute that it is a countryside location. At present it is a field which has been used for grazing and hay crops in the past. The site and wider area are located in the Clay Plateau landscape character area (LCA) identified

in the East Hampshire Landscape Character Assessment of 2006, and more specifically in the Four Marks Clay Plateau landscape character type (LCT).

19. Many of the characteristics of the LCA and LCT are evident both on the appeal site and its surroundings. For example, the appeal site is pastureland, with hedgerow boundaries and trees which lead to a sense of enclosure (with the exception of the western boundary). In the wider area the land is undulating, particularly to the immediate north, and mixed woodland is evident nearby. This leads to the notable characteristic identified which is described as a secluded and enclosed landscape.

20. Settlements to the east and west (Beech and Medstead) are supplemented by smaller areas of development such as the hamlet of Wivelrod, as well as isolated farmsteads and Alton Abbey. Despite the fact that Abbey Road runs west to east alongside the southern site boundary, the locality has a deeply rural ambience which is experienced within the site and along the byway to the west (Jennie Green Lane) and in public rights of way such as that a short distance to the north. The proximity of Beech and Medstead built development does not impinge to any degree on the tranquil nature of the area which includes the appeal site. Indeed the perception of development beyond the site boundaries is extremely limited. The only urban intrusion results primarily from traffic on Abbey Road.

21. With this background in mind, and noting that the area does not have the benefit of any formal landscape designations, it is my judgement that the area has a medium sensitivity to development overall. However, the appeal development would substantially impact on the character of the landscape. It would introduce a significant area of hardstanding, 8 permanent buildings, and would see the stationing of 8 mobile homes, with a further 8 touring caravans parked there at least some of the time. When the activity associated with the 8 pitches and the domestic paraphernalia to be expected, is added, then it is clear to me that the character of the area would be changed from an open rural field to an intensively developed tract of land akin to a small urban area in its own right. Given the sensitivity of the landscape here this leads to my judgement that the magnitude of effect would be major and adverse.

22. The Appellant has suggested that a landscaping scheme would be able to mitigate any effects successfully. I disagree. In the first instance any landscaping scheme here would almost be bound to be appropriate only if it included native species which are likely to be deciduous. The impact of development would therefore be evident at the times of year when leaves have fallen. I appreciate that PPTS envisages such development being in rural areas, and that it would not be realistic to expect sites to be hidden, rather that they should be integrated into their surroundings. But I see no prospect that such an outcome would be possible here which would avoid the major adverse effect I have identified above. Secondly, whatever mitigation was carried out it would still be likely that the activity on site, the comings and goings of vehicles, and the inevitable noise and lights (even if only relating to buildings, caravans and vehicles) associated with 8 families living here would be a significant detractor from the character of the area.

23. Turning to visual effects there is agreement that those most sensitive to change brought about by development are recreational users of local footpaths and lanes. The 2 most prominent views of the site would be from Jennie Green Lane to the west, and from Wivelrod Road/Abbey Road to the east. The site is

seen across the adjacent field from Jennie Green Lane and the development would be prominent in the near to middle distance. Given the proposed layout of the site there would be little scope for landscaping to mitigate these views. The presence of buildings, caravans, vehicles and the trappings of domestic life would be in stark contrast to the pleasant and undeveloped quality which is experienced now. Although the extremity of Medstead village is close by to the west this has little influence on users of the lane, which retains its rural character. The intrusion of the proposed development would be a significant detraction from the experience of walking, cycling or horse riding along the lane.

24. At present there are some uninterrupted views into the site from the area around the junction of Wivelrod Road and Abbey Road. I acknowledge that this could be mitigated to a degree with landscaping, though the effect would be likely to be limited. Of significant importance is the view into the site through what would be the site access point. Here it would be possible to see the line of buildings and caravans as well as the length of the access drive. Even if gates of an appropriate nature were fitted there would inevitably be views into the site, at least when the gates were open. Whilst not likely to be used by as many walkers as Jennie Green Lane I do accept that some walkers use this route (as I observed at my site visits). In any event it is also clear that this part of the local network of lanes is also used by leisure cyclists (also observed) and they are rightly to be regarded as highly sensitive receptors to change. The experience of cycling on these lanes would be significantly harmed by the clear presence of the proposal.
25. I accept that the views from Abbey Road would be filtered to some extent by vegetation, but this would not rule out the perception of residential development on the appeal site. This is particularly so during winter months when foliage is less dense or non-existent. But these views are of a lesser significance as road users here are more likely to be concentrating on their journey given the road characteristics (to which I refer later). Hence this moderates any harm to some degree. Similarly, although I would expect there to be some perception of residential development from the public right of way to the north this would be partly mitigated by distance and the boundary hedge/trees. Even so the presence of domestic life would be likely to be noticeable in lighting, noise and activity.
26. Drawing these threads together it is my judgement that the proposed development would lead to a major and adverse impact on the character of the landscape, and a moderate to major visual detraction, with unavoidable major adverse effects from some locations.
27. The fact that PPTS clearly envisages some gypsy and traveller developments will be appropriate in rural areas does not mean that all such proposals would be acceptable, or could be made acceptable. In this District I accept that new sites are likely to be located in the countryside, but I consider that this site is fundamentally unsuited to the use proposed and therefore the harm I have identified attracts substantial weight. There is clear conflict with Policy CP15e) of the development plan², which seeks to ensure that gypsy and traveller sites can be adequately screened or landscaped to blend the site into the surroundings. There is also clear conflict with Policy CP20b) which amongst

² The East Hampshire District Local Plan: Joint Core Strategy adopted by the EHDC in May 2014 and by the South Downs National Park Authority in June 2014.

other things sets out the objective of protecting local distinctiveness, sense of place and tranquillity. Likewise there is conflict with Policy CP29d) in that it would fail to contribute to local distinctiveness and sense of place, and would be unsympathetic to its setting in terms of scale, massing and density.

Location

28. There are numerous decisions on appeal and elsewhere which deal with this matter. However, as was rightly observed at the hearing, each case is different and must be assessed on the basis of its own circumstances. That said, I recognise that it is often held that gypsy and traveller sites, by their very nature, are often acceptable in rather more remote locations that might otherwise be unsuitable for residential use.
29. There are of course a number of facets to making a judgement on such matters. Distance is just one of them. It is also important to consider the range of facilities which can be reasonably reached, the likely method of transport and the routes to be followed. I do accept that gypsy and traveller sites are inherently more likely to rely on private transport, especially as they are more likely to be in more remote locations.
30. The appeal site is located a relatively short distance from Medstead, which has a restricted range of facilities. It is far more likely that day to day needs would be met in Four Marks or Alton. Whatever the destination I have no doubt that a private motor vehicle would be used in the majority of trips (if not all). The prospect of walking along the road to Medstead is not attractive given the road configuration, paucity of footpaths and lack of lighting. Cycling is possible but would not be without risk, especially when children are present.
31. Taking a rounded view of the location I am not satisfied that it is so inaccessible that it should be regarded as unsuitable. In my judgement it could successfully accommodate the families without creating unacceptable numbers of trips by private vehicle of significant distance.
32. However, it must also be borne in mind that location is just one factor to be considered when assessing sustainability in the round. As set out in the National Planning Policy Framework (NPPF) sustainability has 3 dimensions; environmental, social and economic, and this is mirrored in PPTS. I set out my judgement on this in the planning balance later.

Traffic Generation and Highway Safety

33. I have no information on the likely numbers of vehicular trips which would be generated from this site. However, 8 pitches is a significant number and it can be expected that the residents on each pitch would own vehicles and use them regularly. I note the traffic count which took place on Wivelrod Road, and that seems entirely consistent with its function as the access to the small settlement of Wivelrod. As such I have no difficulty accepting that the appeal site would not, *per se*, generate traffic levels which would be likely to cause difficulty at the site access itself.
34. The Rural Group and others, however, take a wider outlook which includes the approaches along Abbey Road, and Kings Hill, Beech, as well as the nature of the traffic using the network generally.
35. During my site visits, before, during and after the hearing, I was struck by the levels of traffic flowing between Medstead and Beech. At different times of day it is clearly well in excess of the traffic count on Wivelrod Road (albeit there are

no traffic counts available for Abbey Road). I am also acutely aware of the road configuration on Abbey Road and Kings Hill. Each of these roads has pinch points which make it difficult for 2 vehicles to pass and I have no doubt that such occurrences are commonplace. The alternative route through Wivelrod (should Kings Hill be closed or blocked) is even narrower and contains a greater likelihood of vehicles being obstructed. Furthermore, the roads through Medstead, Beech and Wivelrod are badly served by footpaths usable by pedestrians within or between the settlements. Walking, when necessary, is likely to be hazardous. Similarly, cyclists or horse riders may well find themselves in a precarious situation.

36. The residents of the villages have expressed their concerns that adding further traffic, especially of a larger nature (light goods vehicles and/or caravans) would exacerbate the difficulties that have been indicated to me. I can well understand those concerns. Although I accept that the numbers of vehicles added to the network as a result of the proposed development would be modest and of little numerical import, this must be balanced against the configuration of the roads giving access to the site. I consider that to permit a situation in which extra traffic of the nature likely to be generated by site occupants on this local network, with its clear limitations, would not be in the best interests of highway safety. The potential for conflict between vehicles, or between vehicles and pedestrians, cyclists or horse riders seems to me to be significant. Taken in the round, and on balance, I disagree with the position of the Highway Authority, and conclude that the proposal would be likely to have a detrimental effect on highway safety despite the limited numbers of vehicle movements which might be generated. In the wider sense, therefore, the development would not provide adequate provision for access and servicing, leading to conflict with Policy CP15c). This matter carries moderate weight against the proposal.

The Planning Balance, Human Rights and Public Sector Equality Duty

37. There is a demonstrable need for gypsy and traveller pitches in the Council area and this carries significant weight. At present the Council can demonstrate only about 2 years supply, well below the 5 years required by PPTS.
38. The personal needs of the intended occupants of the site, although variable to a degree, also carry significant weight.
39. The needs of children of intended site occupants are a primary consideration of substantial weight, but not necessarily determinative if other considerations of equal and other weight cumulatively carry greater force.
40. The appeal site would clearly perform a social role in providing a stable base for the families concerned. That is a matter which carries significant weight. Economically a stable base is likely to make the carrying out of business easier to achieve. It is also likely to lead to some spending in the local area, albeit this is a matter of limited weight as it would apply to any site.
41. Of more fundamental importance, in terms of the environmental strand of sustainability, is the finding in the first issue above that the site is unacceptable for the reasons set out there. So whilst I would not suggest that the location of the site alone should rule out development, and therefore do not find conflict with Policy CP15b) of the development plan, the impact on the character and appearance of the area would be wholly unacceptable and the proposal would therefore fail to satisfy all 3 strands of sustainability as set out in PPTS. Put

simply the proposal would introduce very serious and substantial detriment to the character and appearance of the locality. There is conflict with Policy CP15e) since the site could not, in my judgement, be adequately screened or landscaped in order to blend with its surroundings. In addition there is conflict with Policy CP20b) and Policy CP29d) as set out above. It is also necessary to add the lack of suitable provision for access and conflict with Policy CP15c). In my judgement this leads to conflict with the development plan as a whole.

42. In considering this appeal I have taken account of the human rights of the Appellant group as the proposed site occupants, and their children. Refusal of the proposal would interfere with their Article 8 rights and in all probability lead to further periods of doubling-up and/or roadside existence. Those rights have to be balanced against the legitimate aims of what is necessary in a democratic society, including the protection of the countryside and public safety on the highway.
43. I have also considered my duty under the Public Sector Equality Duty (PSED) to have regard to consider the 3 aims set out in the Equality Act 2010. The Appellant and prospective occupants share a protected characteristic, and I have taken into account the need to avoid discrimination, advance equality of opportunity and foster good relations.
44. To summarise, my judgement in this case is that the serious and substantial harm which would be caused by this proposal would not be outweighed by the matters which are in its favour. Even though no other consideration would be more important individually than the needs of the children who would reside on the site, other considerations cumulatively outweigh the positive support for the proposal. Whilst I recognise that the needs of the prospective site occupants are important and significant, this is a case where the level of harm would be simply too great for permanent planning permission to be granted either restricted to the travelling community in general or the Appellant group personally. The interference with human rights is proportionate in this instance, and my consideration of the PSED does not lead me to a different conclusion.
45. I have given consideration, as necessary, to whether or not a time limited permission would be acceptable. Where there is the lack of a 5 year supply of sites, as here, that is a matter which PPTS indicates is a significant material consideration when considering whether to grant a temporary planning permission. I acknowledge that in such circumstances the level of harm I have identified would be expected to come to an end at the end of the time limit, and consequently less weight can be attributed to the harm. However, this is a case where I cannot agree that a time limited permission would be appropriate. The extent of development proposed would still, even if restricted as suggested, lead to substantial harm which would not be outweighed by the matters in support of the proposal. This is simply not an acceptable site for this proposal, either permanently or temporarily.
46. There was also some consideration given early in the hearing to whether a split decision could be issued in this case, which would remove permanent buildings from the proposal, especially if a temporary permission were to be granted. I have given consideration to that point, but if a temporary permission were to be granted the Appellant group would not be bound to erect permanent buildings, in the knowledge that they may have to be removed subsequently. Hence in my judgement there would be no advantage to a split decision being

issued. Even if the permanent elements of the proposal were to be omitted the level of harm would still be too great to justify the proposal.

Other Matters

47. A number of other appeal decisions have been brought to my attention. It is trite but accurate to indicate that each case has its own circumstances. I do not consider that those decisions can be read as giving a definitive indication of where my judgement or conclusions should lie in this case.

Overall Conclusion

48. For the reasons given above I conclude that there are no reasons to make a decision other than in accordance with the development plan, and therefore the appeal should be dismissed.

Philip Major

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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|----------------------------|--------------------------------------|
| Mr A Masters | Of Counsel |
| Mr B Woods BA MRTPI | WS Planning and Architecture |
| Mr R Petrow BA(Hons) PGDip | Managing Director, Petrow Harley Ltd |
| (Hons) CMLI | |
| Mr R Walls | Appellant |
| Mr G Cawt | Intended resident |
| Mr B Smith | Intended resident |
| Mr J Cole | Intended resident |
| Mr L Ockenden | Intended resident |
| Mr R King | Intended resident |
| Mr J Hughes | Intended resident |

FOR THE LOCAL PLANNING AUTHORITY:

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| Mr S Stemp | Of Counsel |
| Mr M Harding | Principal Planning Officer, E Hants District Council |
| Ms B Morrison-Wise | Landscape Officer |
| Mr S Jarman | Opinion Research Services |

INTERESTED PERSONS – THE RURAL GROUP and Others:

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|----------------------------|--|
| Miss A Williams | Of Counsel |
| Mr P Weatherhead BA MRTPI | Weatherhead Planning |
| Mr A Milne | Medstead, Beech and Wivelrod Rural Group |
| Mr S Gregory | Medstead, Beech and Wivelrod Rural Group |
| Mr W Gardner BSc(Hons) MSc | Environmental Dimension Partnership |
| CMLI | |
| Mr M Greenwood | Medstead, Beech and Wivelrod Rural Group |
| Mr G Ware | Medstead, Beech and Wivelrod Rural Group |
| Mr G Webb | Chair of Beech Parish Council |
| Mr C Clark | Chair of Medstead Parish Council |

DOCUMENTS HANDED IN

- 1 Opening note from the Council
- 2 Opening submissions from the Rural Group
- 3 Note on the Rural Group objectives
- 4 Map of routes around the locality
- 5 Closing submissions of the Rural Group
- 6 Closing note from the Council