



Appeal Decisions

Hearing held on 27 February 2024

Site visit made on 27 February 2024

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 4/03/2024

Appeal A Ref: APP/Y9507/C/22/3292440

Land known as Paddock View, adjacent to Quin Hay Farm, Petersfield Road, Froxfield, Petersfield, Hampshire, GU32 1BZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr. B O'Brien against an enforcement notice issued by South Downs National Park Authority.
 - The notice, reference: ENF953, was issued on 5 January 2022.
 - The breach of planning control as alleged in the notice is without planning permission and within the last 10 years, a material change of use of the land for the stationing of caravans for residential purposes.
 - The requirements of the notice are: 1) Cease the use of the land for the stationing of caravans for the purposes of human habitation/residential use. 2) Remove the caravans from the land. 3) Remove all items from the land that relate to domestic living. 4) Removal all other items including hard surfaces (outlined in blue on the attached plan) structures and all fencing from the land that facilitate the residential use. 5) Remove the gates and equipment including all fittings, fixtures and electrical connections associated with the gates from the land. 6) Dig up and remove all electrical connections and equipment that provide electricity, from the land. 7) Restore the land to its condition prior to the breach of planning control taking place.
 - The period for compliance with the requirements is: 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Appeal B Ref: APP/Y9507/W/21/3285377

Paddock View, Petersfield Road, Froxfield, Petersfield, GU32 1BZ

- 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 Billy O'Brien against the decision of South Downs National Park Authority.
 - The application Ref SDNP/21/01338/FUL, dated 8 March 2021, was refused by notice dated 30 September 2021.
 - The development proposed is change of use of Land for the creation of a single pitch Traveller site comprising the siting of 1 Mobile Home and 1 Touring Caravan.
-

Decisions

Appeal A - 3292440

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely material change of use of the land for the stationing of

caravans for residential purposes at land known as Paddock View, adjacent to Quin Hay Farm, Petersfield Road, Froxfield as shown on the plan attached to the notice and subject to the conditions in the attached schedule.

Appeal B - 3285377

2. The appeal is allowed and planning permission is granted for change of use of Land for the creation of a single pitch Traveller site comprising the siting of 1 Mobile Home and 1 Touring Caravan at Paddock View, Froxfield, GU32 1BZ in accordance with the terms of the application, Ref SDNP/21/01338/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

3. Mr O'Brien has moved onto the site in the area of the South Downs National Park with his wife and four children. He has stationed a mobile home there with a large shed used as a day room and various small wooden sheds, as well as parking a touring caravan and various cars and residential paraphernalia, with about a quarter of the site laid to rough hardcore. The rest of the site is grassland which will be a small paddock, but currently seems to be more of a garden with children's outdoor play equipment. The whole site is relatively small for a Gypsy site possibly about the size of half a football pitch.
4. There was an existing entrance to the site and I will consider later whether that has been enlarged, but currently it has visibility splays flanked by close boarded fencing. The fencing continues around the plot to the west, separating the site from a large open field. Adjacent to the site to the east is a small grass covered reservoir with some small brick buildings and beyond that and wrapping round the site to the north is Quin Hay Farm. Next to the farm is a site that has been granted planning permission for a number of houses and adjacent to that is a straggle of houses on the north side of the road. The south side is open countryside.
5. The ground (a) and the s78 appeal are essentially the same and I shall deal with them together. At the Hearing the appellant tentatively argued there was a ground (f) appeal as the requirements went further than the matters alleged. This was not pursued as I was of the opinion that the removal of the hardstanding, fencing, gates and returning the land to its previous state were all incidental to the material change of use alleged.
6. There was also an issue about the date of the notification of the Hearing, but this was resolved to the satisfaction of the appellant when the Authority forwarded him a copy of the actual notification letter.

Main Issues

7. Whether the Authority have a shortfall in the provision of pitches for Gypsies and Travellers; whether there is harm to the landscape; whether the location encourages the use of alternative means of transport, the appellants personal circumstances and the application of the best interests of the children and the appellants human rights.

Reasons

Need for pitches

8. The National Park covers parts of a number of local authorities and the site falls into that part shared with East Hampshire DC. The NP has a figure for gypsy pitches across its entire area and this is disaggregated to each sub area shared with a local authority. Thus, according to its figures, the Authority needs to find 6 pitches in that part of the NP shared with East Hampshire, while East Hampshire needs to find 18 pitches¹ in the rest of the Council's area. The Authority has allocated land for its 6 pitches and so has a requirement of zero within the NP.
9. None of these figures are seriously contested by the appellant and I shall come on to their reservations below. I was given a recent appeal decision² following an inquiry into a gypsy site in Blendworth, a different part of the NP shared with East Hampshire, where these issues were also considered in detail. This is an important material consideration, but I am not bound by the Inspector's conclusions. That Inspector found it was perfectly reasonable for the NP to split up its overall pitch requirements between separate authority areas, which I think is not controversial, but also she gave only limited weight to the shortfall in East Hampshire outside the NP, because the high protection given to the NP meant it was more likely the pitch needs arising within the Park would be displaced to East Hampshire rather than the other way around. The appellant accepted this might be the case when considering policy SD33.3(a), but not when considering the PPTS where the significant shortfall in East Hampshire is a material consideration.
10. SD33 is the Authority's Gypsy and Traveller policy and, at 2(c) sets out a need for 6 pitches in the part of the Park shared with East Hampshire. SD33.3 sets out the requirements an unidentified site should meet and (a) is it should meet part of the need identified in 2 (a-c) above. It would seem there is no dispute the other criteria (b-g) are met. As a matter of fact the Authority has either granted planning permission or allocated land for 6 pitches and so no new sites can meet the requirement of SD33.3(a). However the appellant argues the figure of 6 is out of date because it is based on the 2020 GTAA which itself is based on interviews from 2019. It also pre-dates the Lisa Smith judgement which led the Government to recently revise the definition of Gypsies to include those who had ceased travelling permanently for educational, health and age reasons. These people had previously been left out of GTAA calculations so there was an unknown number of people within the SDNP area who would now meet the new, expanded definition.
11. I agree that the GTAA that underlies the local plan policy is rather long in the tooth. The Authority are conducting a 'light touch' revision at the moment, but that does not make the figures in the policy necessarily out of date. Of greater significance is the impact of the revision to the definition and this does throw doubt onto the veracity of the figure 6 in SD33.2(c). The Inspector in Blendworth accepted this was a material consideration and I agree, except it has more force now the PPTS definition has been changed. As to the wider question of whether the overall shortfall in East Hampshire is a material consideration, I agree that it is, but like the Inspector in Blendworth, I would

¹ According to the latest update in April 2023 and taking into account a recent planning permission for 3 pitches.

² APP/Y9507/W/21/3276708 – issued 30 November 2022

give it only limited weight and for the same reasons. As noted above it is more likely the NP would export its need to areas surrounding it, rather than import need from them precisely because it is a NP and is afforded the highest level of protection.

Landscape harm

12. This brings me onto the question of harm. If the development was consistent with the Authority's policies for the protection of the NP then the question of need would be less significant. Various policies are relevant to this question. SD4 deals with landscape specifically and requires development to conserve and enhance landscape character, which is in line with one of the purposes of including land within NPs. SD5 requires a landscape led approach to development, in particular to integrate with, respect and sympathetically complement the landscape character. Finally SD6 deals with views, and development should preserve visual integrity, particularly conserving or enhancing views from rights of way.
13. The appellant does not seek to argue the development, as it stands, is in accord with these policies. In particular the close boarded fence along the western boundary with views of the mobile home rising above it, the treatment of the access and the introduction of a residential use, various structures and paraphernalia into what was a grassy field, are all contrary to the requirements of SD4, 5 and 6 noted above. There are however, according to the appellant, two mitigating factors, the degree to which these problems can be ameliorated and the actual degree of harm caused.
14. Firstly the western boundary fence. This is seen from a right of way that runs from west to east across a field to the north of the site. This footpath emerges from trees and hedges at the west into a large field that wraps around the site and Quin Hay Farm. The land rises gently up to the road to the south beyond the site and as one begins to cross the field, the fence and mobile home are clearly visible in short range views, where they stand out against the skyline. There are more sweeping views to the north across miles of open rolling countryside but these are unaffected by the site. As one continues along the footpath the land dips down so the site cannot be seen and when it rises again oblique views of the site are dominated by the older fence and hedge screen of Quin Hay Farm.
15. I find it hard to be particularly troubled by the impact of the development on the views from the footpath. I agree it is a sensitive receptor, but the view south is dominated as much by the existing Quin Hay Farm fence which is much longer and more dominant than the appeal site. The appeal fence continues the line of the older fence to the road and so does not look particularly out of place. It stands out partly because it is new and has no softening planting beside it. The older fence is a darker green/brown colour and very much settled into the landscape by the planting behind it. Nevertheless the straight lines of the screening around Quin Hay Farm mark this out as a man-made intrusion, whether or not the appeal site is there. The new fence can be painted green, and planting has been suggested to break it up. Also planting could break up the profile of the mobile home or it could be repositioned to present a narrower aspect to the view. Taking this altogether, the fence and mobile home however softened or aged still stand out and do not conserve the landscape of the NP, but the actual harm is not great.

16. There was some dispute about the access. Local people agreed it had been either moved or widened, though Mr O'Brien was clear there was an 18 foot farm gate that he took over and cut back the hedging. Whatever the actual facts of the matter photographs show there was gate, set into a thick hedge, that runs along the road. The situation is now quite different as the new gate has been set back and splays to the road backed by close boarded fencing and the hedge cut back quite dramatically to either side. It is quite clear to me there has been some removal of hedges either side of the gate to accommodate the splays. There was a suggestion some of this removal may have been by the previous owner, but there is no evidence for this. Whatever the truth of the matter the access as it stands is quite dramatically different from the low-key field gate that used to exist.
17. The thick hedges along this side of the road are a feature of the immediate surroundings and the new access is clearly intrusive and harmful. A suggested landscape plan shows hedging returned to the splays and the close boarded fencing either removed or hidden. This would represent an improvement on the current situation, but still an intrusion compared to what was there before. How harmful I consider this to be rather depends on the wider context.
18. Aerial photos show this was just a grassy field next to the grass covered low mound of the reservoir. It was a completely unremarkable, if pleasant, part of the local scenery. Now it houses a large mobile home, and various other sheds and structures a hardstanding, parked vehicles, domestic paraphernalia etc. I accept there is an injunction preventing further work which means the site has never been properly tidied up so still looks quite temporary. Nevertheless, even in an improved state it still has changed the quality of the landscape from natural to a man-made intrusion, which is precisely what the policies of the SDNP are designed to prevent.
19. The PPTS says that new sites in the open countryside, that is away from existing settlements, should be strictly limited. I agree in the terms of the PPTS it is such a site. However, giving the phrase 'open countryside' its natural meaning I would not say this was open. It is actually at the end of a ribbon of development, houses, the farm and the reservoir. The way the fencing around Quin Hay Farm wraps around the reservoir it creates the truncated triangle that is the appeal site so that it could, if one was being generous, be described as rounding off. Hence, I do not consider its impact on local views or the landscape of the NP is particularly great. It clearly has a harmful impact and so is contrary to policy, but the weight to be given to that harm is reduced by its location and by the opportunity to ameliorate some of that impact through planting.

Encouraging the use of alternative means of transport

20. The site is not located close to facilities or a settlement and this is not disputed and it has not been located in order to minimise the need to travel or to promote the use of sustainable modes of transport, and so is contrary to SD19. This was the same conclusion that the Inspector in Blendworth came to. She went on to consider sustainability in the round and recognised that a settled base reduces the need to travel long distances and the possible damage caused by living on the road and she gave these factors some weight.
21. I would prefer to run these two issues together. The site is 4m from the centre of Petersfield, which has all the necessary facilities, and 2.5m from the local

school attended by the children. These are all well within 10 minutes drive by car. There is no bus route near the site but I note that Froxfield stores and post office is about 2 miles away which could be easily cycled. I was given a number of other appeal decisions where similar distances were considered acceptable in the case of Gypsy sites. A similar strand of argument runs through these decisions that it is unreasonable to expect Gypsy sites to be in locations that would be suitable for housing for the settled population as these would simply be unaffordable and I agree with this. The PPTS does envisage some gypsy sites will be in the countryside but they should be strictly controlled. The wording to policy SD33 at 7.118 says "*sites should be well related to settlements with services and facilities, but it is recognised that throughout the National Park sites are often in very rural locations*". Which suggests to me the Authority accepts some sites will not be sustainably located. Given the distances described above I do not think this site is particularly isolated, certainly no more than the neighbouring dwellings. A somewhat more flexible approach to accessibility in rural areas is consistent both with the NPPF and SD33. Given that SD33 is the specific policy directed towards Gypsy sites I think this should take precedence over the more general transport policy outlined in SD19 in this instance.

Conclusions and personal circumstances

22. At this point I would conclude the use of the site for a gypsy family is contrary to policies SD4, 5 and 6 and paragraph 182 of the NPPF. However, due to the specific circumstances of the site outlined above the amount of harm is not great. The site is not contrary to the local plan in terms of its sustainable location and although the GTAA is somewhat out of date and there is a considerable need for pitches in East Hampshire outside of the NP, I am not convinced this would have significant repercussions for the number of pitches within the NP sufficient to conclude there has been a failure of policy. Nevertheless, while there is this uncertainty over numbers it is equally difficult to conclude the site is contrary to SD33. However, because of the landscape harm the site is not suitable as a Gypsy site.
23. I have been given details of the personal circumstances of the appellant, his wife and four children and these are not in dispute. It was accepted at the Hearing they have nowhere else to go, and that they had no choice when leaving their previous site. The children are well settled in the local school and there are significant familial health issues that would be exacerbated by returning to a roadside existence. I am well aware of the best interests of the children and that these are a primary consideration, and of the family's human rights; the right to a private life and to a home. It is clear these would all be fulfilled by having a permanent base. Interference with these rights is acceptable if it is proportional. I do not believe in this case that it would be. The personal circumstances of the family are of sufficient weight to outweigh the harm caused to the landscape, even bearing in mind the great weight given to the need to conserve and enhance the natural beauty of the NP.
24. I shall quash the notice and allow the appeals subject to the conditions discussed below. There is no need to consider the appeal on ground (g).

Conditions

25. A temporary condition was discussed, but I am not convinced the situation would be different in 3 or 5 years for this family. There is evidence they have

- tried to find elsewhere to stay with no success. Given the numbers of pitches required in the region outside the NP and the understandable reluctance of the Authority to increase numbers within the Park, whatever the outcome of future GTAAs there is no suggestion the appellant and his family will have anywhere else to go.
26. For the reasons outlined above the permissions will have to be personal to the O'Briens and their dependants and limited to a single pitch with one mobile home and one touring caravan. The access needs to be in accord with plan DD-04A and the site lines kept unobstructed.
27. Landscaping is clearly an important consideration and various plans were submitted. It was suggested at the Hearing that a site layout and management document could deal with all the outstanding matters of landscaping, sewage and surface water disposal, the form of the hardstanding and any external lighting required. I agree this is a sensible solution. The landscaping should include proposals to increase planting around the access to reduce the impact of the close boarded fence there and planting along the long western fence boundary as suggested in plan DD-05. I do not think the mobile home needs to be repositioned, the reduction in its impact would be minimal and hopefully it will be reduced by planting in any event. This is a dark skies area so any external lighting will have to be well designed and the minimum necessary. There was some discussion about surface water drainage but this strayed into somewhat fanciful worst case scenario territory, there is no evidence that a simple drainage system would not suffice. I do not think a separate ecological condition is required as that can be included within the site layout scheme.
28. Finally, the appellant carries out horse training, sometimes on site. I agree that an unrestrained equine use would have traffic issues but the potential for this is constrained by the size of the site and the fact that any buildings would require planning permission, as would a material change of use to an equine business if that was ever proposed. I shall attach the suggested "no commercial activities" condition but exclude horse training.

Simon Hand

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Counsel for the Appellant – Steven Cottle
Brian Woods – planning agent
Mr and Mrs O’Brien

FOR THE LOCAL PLANNING AUTHORITY:

Counsel for the Authority – Heather Sergeant
Katherine Pang – Principle Planning Officer
Timothy Cousin – Landscape Architect
Sabah Halli – Development Manager Team Leader

INTERESTED PARTIES:

Vanessa Christie

DOCUMENTS

1. Information on the children’s schooling

Schedule of conditions attached to both permissions

- 1) The occupation of the site hereby permitted shall be carried on only by the appellant Mr O'Brien, his wife Mrs O'Brien and their resident dependants.
- 2) No more than 2 caravans shall be stationed on the land at any time, of which no more than 1 shall be a mobile home.
- 3) When the land ceases to be occupied by those named in condition 1 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.
- 4) Within 6 months of the date of this decision the access to the site shall be provided in accordance with plan DD-04A and shall be retained thereafter. No obstructions over 1m in height shall be allowed within the visibility splays.
- 5) No commercial activities shall take place on the land, including the storage of materials other than those related to Mr O'Brien's horse training activity.
- 6) 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 5 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i. Within 2 months of the date of this decision a site management and layout scheme (the scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. The scheme shall include the following details: proposed ecological improvements; surface water and drainage; foul water disposal; proposed external lighting; the internal layout of the site, including the siting of the mobile home, sheds or other structures; the extent and composition of the hardstanding and provision to deal with any water run-off; landscaping of the site, including details of species, numbers, and plant sizes to improve the visual impact of the access and planting along the western boundary as well as provisions for maintenance of the landscaping for 5 years.
 - ii. If within 6 months of the date of this decision the local planning authority refuse to approve the scheme 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.
 - iii. If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.
- b. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained. No structures, buildings or hardstanding other than those shown in the approved scheme are permitted.

- c. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

End of Conditions