



Appeal Decisions

Hearing held on 16 April 2013

Site visit made on 16 April 2013

by C L Sherratt DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 September 2013

Land to the South West side of Burr ridge Road, Burr ridge Road, Burr ridge, Hampshire SO31 1BY

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeals are made by Mrs Anita Barney against the decision of Fareham Borough Council.

Appeal A: Reference APP/A1720/A/13/2191454

- The application Ref P/12/0778/CU, is dated 14 September 2012.
 - The development proposed is the use of land for the stationing of caravans for residential purposes for 1 no. gypsy pitch together with the formation of additional hardstanding and utility / dayroom ancillary to that use.
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Appeal B: Reference APP/A1720/A/13/2186874

- The application Ref P/11/1063/CU, dated 15 December 2011 was refused by notice dated 3 May 2012.
 - The development proposed is change of use of agricultural land to Private Gypsy Site for one family, siting of one mobile home and a touring caravan.
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Decisions

Appeal A: Reference APP/A1720/A/13/2191454

1. The appeal is allowed and planning permission is granted for the stationing of caravans for residential purposes for 1 no. gypsy pitch together with the formation of additional hardstanding and utility / dayroom ancillary to that use at land to the South West side of Burr ridge Road, Burr ridge Road, Burr ridge, Hampshire SO31 1BY in accordance with the terms of the application, Ref P/12/0778/CU, dated 14 September 2012, and the plans submitted with it, subject to the conditions set out in the attached Schedule of Conditions.

Appeal B: Reference APP/A1720/A/13/2186874

2. The appeal is dismissed.

Application for costs

3. At the Hearing an application for costs was made by Mrs Anita Barney against Fareham Borough Council. This application is the subject of a separate Decision.

Main Issues

4. The main issues are:
 - (a) Whether the use of the site as a residential gypsy site is acceptable in principle;
 - (b) The effect of the development on the character and appearance of the surrounding area;
 - (c) The effect of the development on ecological considerations;
 - (d) The need for, and provision of, gypsy and traveller sites in the area;
 - (e) The personal needs of the appellant and her family for a pitch and availability of alternatives; and
 - (f) The effectiveness of policies to date to deliver sites (failure of policy).

Policy Framework

5. Since the appeal was lodged, the South East Plan has been revoked (at least in so far as it relates to this development), together with the Structure Plan policies. The development plan now comprises saved policies in the Fareham Borough Local Plan Review (LP) and the adopted Fareham Borough Core Strategy (2011) (CS).
6. CS Policy CS4 requires habitats that are important to the biodiversity of the Borough, including Sites of Importance for Nature Conservation (SINC) to be protected in accordance with a hierarchy of nature conservation designations with international sites being of highest importance, then national sites, local sites including SINC and finally sites of nature conservation value. CS Policy CS14 confirms that built development on land outside the defined settlements will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Policy CS17 requires all development, buildings and spaces to be of a high quality of design and be safe and easily accessed by all members of the community.
7. CS Policy CS19 is specific to proposals relating to accommodation for gypsies, travellers and travelling showpeople. It confirms that pitches will be permitted or allocated in accordance with current government policy to meet the needs identified in accommodation assessments. Planning permission will be granted where specific criteria can be met. These include that the site is accessible to shops, schools and health facilities by public transport, on foot or by cycle and the site is capable of being provided with adequate on site services.
8. Policy C18 of the Fareham Borough Local Plan Review (2000) (LP) does not permit development that would adversely affect species, or their habitats, protected by the Habitats Regulations 1994, the Wildlife and Countryside Act 1981 or other legislation.
9. The National Planning Policy Framework ('the Framework') and Planning Policy for Traveller Sites (PPTS) were published by the Government in March 2012. They are important material considerations in the determination of this appeal. Paragraph 215 of the Framework confirms that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

Reasons

10. The key difference between each appeal proposal is the size of the sites. They occupy part of a relatively small field that has been left unmanaged. The front boundary of each site abuts Burr ridge Road. The field is bounded on the three remaining sides by residential properties.
11. Appeal A relates to an area that extends into the field by less than half of its length. It is a similar depth to the gardens of nearby properties to the south east of the site along Burr ridge Road (numbers 71 – 73a). It includes an area of hardstanding to accommodate a mobile home and touring caravan together with a utility / day room. The application was accompanied by an Extended Phase I Habitat Assessment and subsequent Reptile and Botanical Surveys.
12. The Appeal B site is of the same width along the frontage with Burr ridge Road but extends the full depth of the field thereby occupying approximately half of it. The application plans show the appeal site subdivided into a residential area with a paddock to the rear. Hardstanding to accommodate a mobile home and touring caravan is proposed.

Principle of development

13. The site is outside a settlement as defined in the CS. Accordingly, it is in an area where new built development would normally be restricted, in accordance with CS Policy CS14. The Framework confirms that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances (*my emphasis*). The Framework is therefore less restrictive in its approach. Policy CS19 stipulates that pitches will be permitted in accordance with government policy to meet an identified need for additional accommodation. The PPTS confirms that local planning authorities should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan (*my emphasis*).
14. Burr ridge is not a settlement identified in the CS. It was put to me, on behalf of the Council, that it was not a settlement at all, but rather a ribbon of houses and that all settlements in Fareham Borough are defined as such in the CS. There is no definition of what is a settlement for the purposes of the PPTS but it does not refer to a settlement specifically identified as being suitable for development. From my own observations, although a ribbon development, Burr ridge is not insubstantial. It is more than a small grouping or scattering of otherwise isolated properties. It is perceived by a local resident who attended the hearing as a village. This is a view with which I would concur. In any event, the junction of Burr ridge Road and Botley Road is very close to the edge of Whiteley which is identified as a settlement in the CS and Swanwick to the south of the M27, similarly identified within the CS. The appeal site is not in a location considered to be 'away' from existing settlements.
15. Furthermore, the appeal site is a small field with residential development immediately adjacent to it on three sides and the grounds of a fourth property opposite. It is not in 'open' countryside. The appeal site is not divorced from other residential development or isolated. As a matter of principle, the appeal site is not in a location where the PPTS requires local planning authorities to strictly limit new traveller site development. The proposed development would not be out of step with the PPTS or the Framework in terms of its location.

16. Policy CS19 requires a number of other criteria to be met. The site is accessible to shops, schools and health facilities by public transport. A bus stop is located at the end of Burr ridge Road, some 600m from the site which provides access to a reasonably regular bus service with buses travelling in either direction at less than 2 hour intervals on week days. In any event, the Framework requires sustainability to be considered in a wider sense.
17. The PPTS requires local planning authorities to ensure that traveller sites are sustainable economically, socially and environmentally. Local planning authorities should ensure that their policies meet a number of objectives. Authorised sites are more likely to promote peaceful and integrated co-existence between the site and the local community. In this particular case, the family have not sought to occupy the site without first applying for the appropriate planning permission.
18. In general terms, the provision of a settled base promotes access to appropriate health services and ensures that children can attend school on a regular basis; it reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment. The appeal site would provide such benefits. It would provide suitable living conditions for future occupiers of the site and its use as one family pitch for residential purposes only would not compromise the living conditions of those living nearby. Services are available and it is not in an area at high risk of flooding. Consequently all the sustainability criteria contained in PPTS would be met.
19. The site is capable of being provided with adequate on-site services for water supply, power, drainage, sewage disposal and waste disposal facilities. Whilst previously developed land and sites on the edge of urban areas are the preferred locations for allocated sites, the appeal site would nevertheless meet the considerations set out in Policy CS19 that are applicable to the determination of planning applications.
20. To conclude on the first issue, the site is situated in a location that would not conflict with Policy CS19, the PPTS or the Framework.

Character and appearance

21. One of the core planning principles set out in the Framework is to take account of the different roles and character of different areas by, amongst other requirements, recognising the intrinsic character and beauty of the countryside. The site is part of a field, situated towards the end of Burr ridge Road. For the most part, Burr ridge Road comprises a relatively close knit pattern of ribbon development. Just before the appeal site, it narrows and the properties beyond this point are situated in extensive grounds, providing a more rural feel.
22. Clearly the introduction of a residential pitch on part of the field would alter its appearance. However the field boundaries on either side already incorporate substantial lengths of close boarded fencing associated with existing residential properties. There is a further property to the rear. A residential use would not therefore be out of context in this location. Properties in the immediate area are of varying scales and design. The introduction of residential caravans as a further variation in style would not detract from any uniform design of residential development common to the surrounding area. The visual impact must be assessed in the context of the site being in a location that is acceptable in principle. The site is well screened from any distant public views

by the built development either side. Generally, it would only be readily apparent to someone passing the field frontage. It is not the intention of the PPTS that sites should be hidden from view in any event.

23. Appeal A corresponds to the pattern of development to the south east of the site in respect of the site depth. In the case of Appeal A, the impact that a well planned and landscaped pitch for one family would have would not adversely impact on the intrinsic character of the surrounding area. In contrast, the residential area associated with Appeal B draws no relationship with the depth of plots in the immediate vicinity of the site. The Framework confirms that the Government attaches great importance to the design of the built environment, stating that good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. The site proportions that form Appeal B would not reflect the surrounding pattern of development and thus detract from the intrinsic character of the area. I find conflict with relevant policies in this regard.

Ecological considerations

24. Since the close of the Hearing the wider field, within which the site is located, has been designated as a Site of Importance for Nature Conservation (SINC). This is a local non-statutory designation. I have had regard to the additional representations submitted after the close of the hearing on this matter¹ which simply reflect those arguments already rehearsed at the hearing. In accordance with the Framework, the protection of sites should be commensurate with their status.
25. The initial Extended Phase I Habitat Survey of the wider field area identified that habitats exist within it that could potentially support some reptile species. There is also some potential for the field to be used by bat species for foraging and commuting behaviours. Further reptile and botanical surveys were carried out over the field, including the appeal site areas.
26. During the Reptile surveys, very low numbers of common reptile species were recorded on the field – two slow worms and one common lizard. It concludes that the field is used for commuting as well as occasional foraging and refuge purposes. Subject to careful clearance of vegetation by either avoiding periods of reptile activity or a phased approach to clearance and the retention of a vegetation buffer zone along the edges of the development in order to retain key habitats and maintain habitat connectivity, the report predicts that no negative impact to a protected reptile species or their conservation status will be sustained as a result of the proposed works. Accordingly, in the case of Appeal A, a 3 metre buffer is shown around the perimeter of the appeal site. It was accepted at the Hearing that this would address concerns about loss of habitat and habitat connectivity for reptiles. The proposed development would not conflict with LP Policy C18.
27. The Council's remaining concerns relate primarily to the loss of botanically diverse semi – improved marshy grassland on the site. The appellant suggests that the designation as a SINC should be afforded minimal weight as the fall back position is that the field could be ploughed or grazed without requiring any form of consent to do so, irrespective of the designation.

¹ Document 6.

28. The Botanical Survey concludes that a minor loss of Common Orchid abundance and reduction in the area of MG4 grassland is anticipated. It states that neither are species or habitats of principal concern and are not listed under the local or national biodiversity action plans. As such, no negative impact is anticipated beyond those at site level. The Council raises concerns in respect of the survey suggesting it contains errors due to references to the loss of Common Orchid abundance and MG4 grassland. In particular, the loss of MG4 grassland would, the Council asserts, be significant as it is Priority Habitat and rare in Hampshire. However, the Council's own assessment, although supporting the designation of the site as a SINC, did not support the specific findings of the appellant. Given the inaccuracies highlighted in the appellant's survey, the weight I afford its conclusions are diminished.
29. In the case of Appeal A, less than a quarter of the field, designated as a SINC, comprises the appeal site. Whilst the Proposed Site Plan indicates the land to the rear separated from the remainder of the field by post and rail fencing and depicted as 'proposed paddock', this does not form part of the appeal site or proposal before me.
30. Appeal B comprises a larger area in total and no wildlife mitigation measures form part of the proposal. It includes an area shown as paddock. It is acknowledged that the designation as a SINC would not prevent the fencing being erected and the grazing of livestock may not constitute development. Nevertheless, the Framework requires local planning authorities to take account of local sites when formulating local plans and when considering planning applications. Its designation is therefore a material consideration in the determination of this appeal.
31. The likely loss of botanically diverse grassland on approximately half of the field, as a result of the proposals would undermine the botanical interest of the locally protected site. The harm would be far greater and significant in relation to appeal B which incorporates a larger area. I find some conflict with the Framework and Policy CS4 in this respect.
32. The appeal sites are also close to various other habitats designated as SINC's and the Upper Hamble Estuary and Woods SSSI. However, there is no evidence before me to suggest that the proposals would harm these interests.

Need

33. When the application was determined, the appeals lodged and the statements prepared the last assessment of need was the rather dated Hampshire and Isle of Wight Gypsy and Traveller Accommodation Assessment 2006 (GTAA). This identified a need for 1 pitch to 2011 and a further 3 pitches by 2016. Inspectors determining other appeals in Hampshire (referred to by the appellant) have found the figures contained in this GTAA to be an under-estimation of the need arising. Whilst some temporary permissions have been granted, no permanent provision has been made. The temporary permissions cannot be regarded as contributing towards permanent provision and in any event, are due to expire in 2016. This need has not therefore been met, even in part, to date.
34. Shortly before the Hearing, a Study Report 'Travellers Accommodation Assessment for Hampshire 2013' (TAAH) was published. It identifies a need for an additional 6 pitches to 2017, 7 pitches to 2022 and 8 pitches to 2027 in

Fareham. The TAAH readily acknowledges that it does not address those gypsies and travellers currently living in bricks and mortar accommodation that would prefer to live on a pitch. It is almost certainly therefore likely to underestimate the need arising across the Hampshire study area. The appellant and her family are one such 'concealed' family, as she is stationing their caravans at her mother's house.

35. There can be no doubt that there is a clear and immediate need for further pitch provision in both Fareham and Hampshire. The Council remains some way off addressing the accommodation needs of gypsies and travellers. A Local Plan allocating sites is unlikely to be adopted before December 2013. To date, the various stages of the Local Plan preparation have not included issues relating to the provision of gypsy and traveller accommodation as the Council have wrongly assumed no need existed; instead relying on temporary permissions to meet the need. The timetable for adoption of the Local Plan is now optimistic and possibly unrealistic if sites to provide pitches for the gypsy and traveller community are also to be included. Accordingly, the need for additional pitches is a consideration that can be afforded substantial weight in the determination of this appeal. Furthermore the Council cannot demonstrate that a 5-year supply of deliverable sites exists.

Personal needs of the appellant for accommodation & any personal circumstances

36. The gypsy status of the appellants is not disputed by the Council. The appellant and her family have been travelling around the continent before returning to the UK so that their youngest child could attend school. Due to the restricted space available where the appellant is currently living, the appellant's oldest child is living with relatives elsewhere. The family clearly have a need for accommodation that would facilitate their gypsy way of life.

Failure of policy

37. Despite the identified need set out in the 2006 GTAA, no permanent provision was made. Circular 01/2006 sought to increase the number of available pitches over the 3 to 5 years post its publication. The Council failed to do so in accordance with the requirements of that Circular. Unlike housing for the settled population, no permanent provision has been made by Fareham Borough Council to meet the requirements of the gypsy and traveller community for many years. Whilst it is acknowledged that the Council are now actively seeking to address the accommodation needs of gypsies and travellers, the failure of policy to facilitate permanent provision to date is a material consideration that carries some weight in the determination of this appeal.

Other Matters

38. Planning permission has been refused for two dwellings on the field in the past. However, the current policy framework supports the provision of a gypsy site in this location. The housing requirements of the settled population have been assessed and met in the past through specific allocations in the LP. The Council is unable to demonstrate a five year supply of deliverable sites for the gypsy and traveller community and there is an existing shortfall of pitch provision. The impact of a single well landscaped gypsy pitch is likely to have considerably less impact on the surrounding area.
39. No commercial use of the site is proposed. The local planning authority's concerns about employment activities potentially taking place on the site can

be overcome by the imposition of a condition prohibiting commercial use of the site.

Conclusions

Appeal A

40. The site is in a location that is acceptable in principle and would not unduly harm the intrinsic character and appearance of the surrounding area. However, the wider field is designated as a SINC. Some harm would undoubtedly be caused by the use of part of this area for residential purposes. However, the appeal site is only a small proportion of the field and the harm would not be significant. Mitigation measures form part of the proposal in relation to reptiles. The general need for additional sites is pressing and the Council still remains somewhat off allocating sites, despite the initial GTAA identifying a need as long ago as 2006. This alone, without any consideration of the appellant's particular needs for a site, would outweigh the harm that would arise to the locally designated site in the case of Appeal A. Appeal A therefore succeeds on this basis.

Appeal B

41. Appeal B relates to a larger area and has little regard to the existing pattern of development. No mitigation measures are incorporated into the scheme to address any potential harm to reptiles although, in light of the surveys carried out, a suitably worded condition could ensure suitable measures are implemented. The loss of botanically diverse grassland would be significant in the case of Appeal B given that the appeal site is greater in size. The permanent harm caused would not be outweighed by the general need for sites, even when considered in conjunction with the personal circumstances of the appellant. Notwithstanding the failure of the Council to demonstrate a 5 year supply of sites, this harm would not be outweighed even on a temporary basis as the loss of botanically diverse grassland, on the scale proposed, would be irreversible. Appeal B fails.

Conditions

42. A number of conditions were suggested by the parties which formed the basis of discussion at the Hearing. As the justification for the development is the need for additional pitches to meet the accommodation needs of gypsies and travellers, a condition restricting the occupation of the site to persons meeting the definition of a gypsy or traveller for planning purposes would be necessary. To ensure the development satisfactorily integrates with the surrounding area, it should be limited to one pitch accommodating no more than two caravans, of which only one can be a mobile caravan and no commercial activities or vehicles exceeding 3.5 tonnes should be permitted.
43. A condition requiring the 3 metre buffer zone, as indicated on the application plans, to be maintained free of any structures and managed in accordance with a scheme to be agreed with the local planning authority is necessary to provide satisfactory mitigation measures to ensure the development does not have a negative impact on common reptiles. External lighting should also be controlled not only in the interests of the amenities of the area but in the interests of wildlife, in particular bats.

Overall Conclusions

44. For the reasons given above I conclude that appeal A should be allowed and Appeal B dismissed.

Claire Sherratt

INSPECTOR

Appeal A - Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 12_499_001, 12_499_002, 12_499_003A and 12_499_004A.
- 3) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of the Planning Policy for Traveller Sites.
- 4) There shall be no more than one pitch on the site.
- 5) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended) (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.
- 6) No commercial activities shall take place on the land, including the storage of materials.
- 7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 8) The 3 metre buffer zone, indicated on drawing 12_499_003 A, shall be maintained at all times free of any obstruction or structures. No development shall take place until details of measures to protect the buffer zone during construction and a scheme of future protection and maintenance have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 9) No development shall take place until samples of the facing and roofing materials for the proposed day room /utility building; the means of foul and surface water drainage of the site; any external lighting on the boundary of and within the site; a scheme of landscaping including details of species, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and within any such timescale as specified by the local planning authority.

APPEARANCES

FOR THE APPELLANT:

Matthew Green	Green Planning Solutions.
Anita Barney	The appellant.
Reuben Barney	The appellant's partner.

FOR THE LOCAL PLANNING AUTHORITY:

Robert Duff	Pegasus Planning Group acting for Fareham Borough Council.
Alex Sebbinger	Senior Planner for Fareham Borough Council.
Sarah Warris-Simmons	Senior Ecologist at Hampshire County Council representing Fareham Borough Council.

INTERESTED PERSONS:

Richard Chambers	Local resident.
John Philipson	Local resident.
Paula Frith	Local resident.

DOCUMENTS

- 1 Statement of Personal Background of Robert Duff of Pegasus Planning Group.
- 2 Signed Witness Statement of Reuben Barney.
- 3 Representation from R Chambers, a local resident dated 5 April 2013.
- 4 Copy of appeal notification letter regarding date and venue for the Hearing.
- 5 Appeal decision reference: APP/E0915/A/12/2182881.
- 6 Email response from appellant's agent concerning designation of site as a SINC after the close of the Hearing.