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## Appeal Decision

Hearing held and site visit made on 6 February 2018

by **John Felgate BA(Hons) MA MRTPI**

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

Decision date: 28 February 2018

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### Appeal Ref: APP/X1735/W/16/3156978

### Stables at Long Copse Lane, Emsworth, Hampshire PO10 7UR

- 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 Leslie Madgwick against the decision of Havant Borough Council.
  - The application Ref APP/16/00021, dated 6 January 2016, was refused by notice dated 29 April 2016.
  - The development proposed is: the change of use from private equestrian yard, to a mixed use comprising private equestrian yard and a single-pitch private gypsy and traveller site, including a mobile home and single touring caravan pitch.
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### Decision

1. The appeal is allowed and planning permission is granted for the change of use from private equestrian yard, to a mixed use comprising private equestrian yard and a single-pitch private gypsy and traveller site, including a mobile home and single touring caravan pitch, at Stables at Long Copse Lane, Emsworth, Hampshire PO10 7UR, in accordance with the terms of the application, Ref APP/16/00021, dated 6 January 2016, subject to the conditions set out in the attached schedule.

### Procedural and Preliminary Matters

#### *Appellant name*

2. The original planning application was made, on 6 January 2016, by Dr Angus Murdoch on behalf of Mr Leslie Madgwick. Shortly after this, on 29 February 2016, a further application form for the same development was submitted by Mr Philip Rowe, on behalf of Mr James Madgwick. The Council appears to have treated both of these as part of the same application. The appeal is made in the name of Mr Leslie Madgwick. Having regard to all the available evidence, I am satisfied that the appeal is duly made.

#### *Site address*

3. On the application form, the address of the appeal site is given as 'Southdowns View', but it is not clear whether this name is officially recognised. For the avoidance of doubt, the site is located immediately to the east of Hollybank Cottage.

#### *Amended description and plans*

4. As originally submitted, the application was for a gypsy and traveller site with two pitches, together with the erection of an amenity block, and the Council's decision to refuse permission was made on this basis. Subsequently, in his

appeal submission, the appellant sought to amend the proposal to a single residential pitch, with one mobile home and one touring caravan space, and no amenity block, as in the revised description set out above. In addition, at the hearing, the appellant tabled a new indicative plan, 'Proposed Site Layout and Detailed Landscape Scheme' (No. TDA.2367.01), which accords with the above description and is proposed to supersede all previous layout plans.

5. At the hearing, local residents objected to the change of description, and to the admission of the new layout plan, on the grounds that they had based their objections mainly on what they saw as the main weaknesses of the original proposal. Had they known that the proposal was to be changed, they would have investigated other possible grounds for objection. But it seems to me that the change from two pitches to one, and the omission of the amenity block, cannot reasonably give rise to any new grounds for objection that would not have been apparent before. The new plan shows the proposed mobile home closer to Hollybank Cottage, but its status is only illustrative. In the circumstances, I do not consider that any of the objectors would be prejudiced. I also note that neither the change of description nor the amended plan are now objected to by the Council.
6. In all the circumstances, I consider that the change of description, and the amended indicative layout plan, should be accepted. I have dealt with the appeal on this basis.

#### *Commencement of the use*

7. The stationing of a mobile home on the site appears to have commenced in December 2015, and the mobile home has been occupied as a dwelling since some time in 2016. At the time of my visit there was visible evidence of continued residential occupation. I have therefore treated the appeal as seeking retrospective permission for the proposed development.

#### *Withdrawal of refusal reasons and Section 106 obligation*

8. The Council's refusal notice gave four reasons for refusal (RRs). Of these, RR2 relating to accessibility, and RR3 relating to traffic, were withdrawn in response to the change from two pitches to one.
9. RR4 relating to the effects on the Chichester and Langstone Harbours Special Protection Area (SPA), was withdrawn in the light of a Section 106 planning obligation, entered into by Mr James Madgwick as the owner of the land. At the hearing, the Council confirmed that in their view the obligation meets the relevant legal tests, and this was not disputed by any other party. I have no reason to disagree, and accordingly, I am satisfied that the requirements of the Conservation of Habitats and Species Regulations 2010 are met in this case.

#### *Second planning application*

10. Subsequent to the application which is the subject of this appeal, a second planning application was made (Ref. APP/16/01234), for a development similar to the appeal proposal, involving a single gypsy and traveller pitch, but including an amenity block. That application was recommended for approval, but was refused by the Council on 6 July 2017. I have been provided with a copy of the officers' report on that application, and where the contents seem to me to be relevant to the present appeal, I have taken them into account.

11. At the hearing, I was urged to accept copies of the 67 letters of objection relating to that second application. However that seems to me to be unnecessary, as the contents of those letters are summarised in the officers' report. I also have copies of the 106 objection letters received by the Council in relation to the appeal application, as well as those sent directly to the Planning Inspectorate. I therefore consider that I have sufficient information regarding the views of local residents.

#### *Returned submissions*

12. The written submissions made on behalf of local residents included an Appendix relating to the personal circumstances of the site occupiers, James Madgwick and Pasha Green. This Appendix contained detailed personal information about Mr Madgwick and Ms Green, based on observations by neighbouring residents. I appreciate the reasons why this information was compiled, and why the authors considered it relevant to the appeal. However, in my view the information was likely to constitute a breach of the rights of the persons concerned, in respect of their privacy and family life. The Appendix was therefore returned to its authors at the hearing, and I have not taken it into account.

### **Planning Background**

#### *The Core Strategy*

13. The Havant Borough Core Strategy (the HBCS) was adopted in March 2011. On the proposals map, the appeal site lies a short distance outside the urban area boundary, and within the 'Undeveloped Gap' between Emsworth and Westbourne. At the hearing it was confirmed that the Undeveloped Gaps are co-terminous with the Borough's countryside.
14. Policy CS11 seeks to protect and enhance the Borough's environment and heritage, including the landscape and the Undeveloped Gaps. Policy CS16 encourages a high standard of design, which respects and responds to the local context.
15. Policy CS17 seeks to concentrate development within the urban areas, and gives priority to previously developed land. In the countryside, development is only to be permitted where consistent with relevant national policies.
16. Policy CS10 states that gypsy and traveller sites will be allocated in a Development Plan Document (DPD), and sets out criteria for such sites. These relate to the effects on neighbouring occupiers, access, traffic, proximity to local facilities, and environmental impacts.

#### *The Allocations Local Plan*

17. The Allocations Local Plan (the ALP) was adopted in July 2014. Policy AL2 reinforces the protection of the Undeveloped Gaps, and defines their role in terms of maintaining the separate identity of settlements and preventing coalescence.
18. With regard to gypsy and traveller sites, the ALP states that, at the date of the plan's adoption, there was considered to be no need arising from within the Borough. The possible need to assist in meeting the needs of neighbouring authorities was left to be considered in a future review.

### *Gypsy and Traveller Needs Assessment*

19. A new assessment of gypsy and traveller accommodation needs in Hampshire<sup>1</sup> was completed in May 2017 (the GTNA). For Havant, the study found a need for one additional pitch. This finding was based directly on the needs of the occupiers of the present appeal site.
20. As a result, it is agreed in the Statement of Common Ground that the Borough has an unmet need, and that there is no 5-year supply of pitches, and that there are no suitable alternative sites available.

### **Main Issues**

21. In the light of the above, the main issues in the appeal are:
  - whether the proposed development would be compatible in principle with the relevant policies for development in the countryside;
  - and the development's effects on the character and appearance of the area and the wider landscape.

### **Reasons for Decision**

#### *Principle of development in the countryside*

22. Policies CS17 and AL2, which protect the countryside and Undeveloped Gaps, make no provision for gypsy and traveller developments in those areas. However, these policies have to be read in the context of the CS and ALP as a whole. Policy CS10, which provides specifically for gypsy and traveller sites, does not exclude locations in the countryside or Gaps, and given that these two designations cover the whole of the Borough outside the urban areas, it seems unlikely that suitable sites could be found anywhere else than within them. In the present case, the Council does not dispute that the Policy CS10 criteria are all met at the appeal site (although other objectors disagree, and I shall therefore draw no conclusion on compliance with this policy until later in my decision).
23. In addition, Policies CS17 and AL2 need to be read in the context of relevant national policies, including the Planning Policy for Traveller Sites (the PPTS). The latter requires that local plans should identify a supply of deliverable sites to meet locally set targets. In Havant, neither the CS nor the ALP sets any such target, or allocates any sites for gypsies and travellers. Although the ALP envisaged no locally-generated need, that situation has now been overtaken by the more recent GTNA. The development plan is therefore silent on how the need now identified is to be met, other than by applying Policy CS10. Moreover, whilst CS10 is particularly directed at choosing sites for future allocations, given that there are now no such allocations, it seems to me that it is clearly also applicable to judging ad-hoc applications; indeed, the ALP expressly recognises this role, at paragraph 2.35.
24. With regard to traveller sites in the countryside, the PPTS requires that sites which are located away from settlements should be strictly limited, but the appeal site is less than 100 metres from the urban area boundary. The PPTS also envisages that sites may be located in rural or semi-rural settings, provided they do not dominate the settled community; in the present case

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<sup>1</sup> The Hampshire Consortium Gypsy, Traveller and Travelling Showpeople Accommodation Assessment, May 2017

there is no suggestion that the appeal proposal would have such an effect. Nothing in the PPTS rules out sites in the countryside as a matter of principle.

25. On the face of it, Policies CS17 and AL2 on the one hand, and CS10 on the other, pull in different directions. But development plan policies must be read together. To my mind, this means that where there is compliance with Policy CS10, that policy must prevail, even though there may be conflict with policies otherwise applying in the countryside and Undeveloped Gaps. Consequently, the relevant policies, read as a whole, do not preclude consideration of gypsy and traveller sites in the countryside or Gaps. But in any event, in the final balance, any perceived conflict with Policies CS17 and AL2 must be weighed against the identified need and the relevant national policies contained in the PPTS.
26. Overall therefore, I conclude on this issue that the appeal site's location in the countryside and Undeveloped Gap does not give rise to any overriding policy objection in principle.

#### *Effects on character and appearance*

27. The appeal site lies on the upper slopes of the Ems valley, part of an attractive stretch of open countryside between Emsworth and Westbourne. In the local Character Assessment report<sup>2</sup>, the site and surrounding countryside fall into LCA21, the Southleigh Forest Character Area, for which the recommended landscape strategy is to conserve and enhance.
28. In this part of the valley however, there is an existing ribbon of development along the south side of Long Copse Lane, and some further sporadic development on the north side, including Hollybank Cottage, and then the appeal site with its existing stables. A mobile home and touring caravan sited close to the stables, sited approximately as shown on the submitted illustrative plan, would relate reasonably well to this existing pattern of development, and would not add to it significantly. As such, the proposed development would not encroach into the more sensitive landscape beyond the road frontage. Nor would it materially erode the gap between settlements, or threaten coalescence.
29. From within the site, there are open views across the valley. In the middle distance there is the ancient woodland of Southleigh Forest itself, and the Grade II listed Monks Farmhouse. Beyond, there are distant views to the ridge line formed by Bow Hill and Stoughton Down, which lie within the South Downs National Park. But little of these can be seen from Long Copse Lane, except where there are occasional gaps in the hedgerows.
30. One such gap occurs at the appeal site entrance, but the view from that point is fleeting in nature, and is limited by the topography, irrespective of any development on the site. Based on the latest layout plan, the proposed mobile home would be potentially visible from there, but only at a narrow angle, and a touring caravan parked as shown would be unlikely to be noticeable at all. A little further to the east there is another partial view into the site, but at the reverse angle, so that the wider landscape context is not seen in the same view. To my mind, these few partial, glimpsed views of the development that would be gained from Long Copse Lane would not be unduly intrusive or

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<sup>2</sup> The Havant Borough Townscape, Landscape and Seascape Character Assessment (Vol.1), February 2007

- harmful. No public views of the site are available from the north or other directions.
31. I accept that the lack of views into and across the appeal site is partly a result of the solid fencing that has been added behind the front hedge. But I give little weight to this argument, because even if that fencing were not there, the owner would be entitled to improve their boundary screening by means of additional planting if desired. In any event, if permission were granted for the appeal proposal, conditions could be imposed with regard to landscaping and boundary treatments, and the Council would thus gain some measure of control over these items in the future.
32. The application, as now amended, is for change of use only, and therefore the design of the mobile home and caravan are not matters for this appeal. I accept that these are not likely to be reflective of nearby permanent dwellings, but the site's local context also includes agricultural buildings in a variety of materials, and to my mind the development would not be out of keeping with structures of this kind. I note that the existing stables development at the site has been carried out and maintained to a high standard, and there seems no reason why the same quality should not be achievable in the present proposal.
33. I therefore conclude that the proposed development could be carried out with no more than a limited visual impact on views from public vantage points. As such, it would not materially affect the character or appearance of the landscape, or of the area generally. In this respect the scheme would not conflict with Policies CS11 or CS16.

## **Other Matters**

### *Effects on Hollybank Cottage*

34. Hollybank Cottage enjoys panoramic and attractive views from its side windows, over the appeal site, and across it to the countryside beyond. From this direction, the proposed development would be clearly visible. But, assuming the mobile home and caravan space were located roughly as now shown, these items would be over 30m away from the shared boundary, and nearer 40m from the house itself. As such, they would occupy only a small part of the overall view, alongside the existing stables and driveway. The existing wider views of the countryside would still remain.
35. Consequently the development would not appear unduly dominant when seen from Hollybank Cottage. There is no evidence of any other likely impacts on living conditions at the property. In this regard, the development would comply with Criterion 1 of Policy CS10, relating to the effects of gypsy and traveller developments on adjoining occupiers.

### *Compliance with other Policy CS10 criteria*

36. I saw on my visit that the appeal site has a safe access to the highway and ample parking and turning space. The traffic generated by one pitch would be well within the capacity of the local road network, and Long Copse Lane is more than adequate for that purpose. Local shops, schools and health facilities are available in Emsworth and Westbourne, and given the site's proximity to both of these settlements, I consider it well located in this respect. Other properties in Long Copse Lane are apparently served by refuse and recycling collections, and there is no reason why these could not also serve the appeal site. No

issues have been substantiated in relation to flooding, nature conservation or contamination issues.

37. In these respects, therefore, the appeal proposal would comply with the relevant provisions in Policy CS10's Criteria 2 - 5.

*Gypsy status and personal circumstances*

38. The identification of a need for one traveller pitch in the GTNA arises directly from the needs of James Madgwick and Pasha Green. Objectors argue that this is misleading, because their occupation of the site is currently unlawful. But their inclusion in the GTAA is based on the proposition that once they become resident in the Borough, their needs should be taken into account. I see no reason to disagree with that approach.
39. Local residents question whether Mr Madgwick and Ms Green meet the planning definition of 'gypsies or travellers' as defined in the PPTS, and whether the appeal site is genuinely the only home available to them. However, I note that interviews have been carried out by the Gypsy Liaison Officer, as well as by the authors of the GTNA, and further evidence was also presented at the hearing, both orally and in documentary form. Despite the submissions of objectors, the weight of evidence on these matters favours the proposed occupiers' account of their situation. The Council has accepted this evidence and raises no issue in respect of either gypsy status or housing need, and I find no reason to disagree.
40. In any event, a condition is proposed, limiting the occupation of the site to persons meeting the PPTS definition, and it was agreed at the hearing that such a condition would allow the situation to be reviewed should the occupiers' circumstances change.

*Emerging draft plans*

41. A new Draft Havant Borough Local Plan was published for consultation in January 2018. Amongst other proposals, the draft plan includes a proposed allocation on land abutting the present appeal site, for 260 dwellings and a convenience store. If this proposed development were to go ahead, although it would not extend any further east than the appeal site, it would encroach significantly into the Undeveloped Gap area. It would also markedly change the character of the appeal site's surroundings, and the overall landscape context. However, in view of its early stage, the draft plan carries limited weight.
42. I also note that the Emsworth Neighbourhood Plan reached the regulation 14 pre-consultation draft stage in December 2017, and that the draft plan seeks to maintain the current gaps between settlements. Again, in view of its early stage, the Neighbourhood Plan carries limited weight.

*Effects on designated green space*

43. Land to the south of the appeal site is designated in the ALP as Local Green Space, which is protected by Policy AL8. However, the appeal site is separated from this land by the carriageway of Long Copse Lane and by the hedgerows on either side of it. The proposed development would not be visible from the land in question, and it therefore seems unlikely that any adverse impacts would arise.

### *Planning status of the existing stables*

44. Objectors suggest that the existing stables development is unlawful, due to alleged discrepancies in siting. If that were correct, it could have some relevance to the present appeal, in that if the stables did not exist, or had to be removed, the site's landscape context would be somewhat different.
45. However, when the building was originally permitted in 2010, the permission was expressed as partly retrospective. It therefore appears that its siting must have been already established at that time. Permission was also granted to extend it in 2014, and clearly its siting would again have been known. In any event, the Council does not appear to have shown any inclination to take any action. In the absence of any other evidence, I can give no weight to the submissions made on this matter.

### *Previously Developed Land*

46. I have taken note of the submissions made by various parties as to whether the appeal site constitutes previously developed land (PDL). However, the provisions relating to PDL in Policy CS17 seem to me to apply only within the urban areas. The issue therefore has no bearing on the present appeal.

### *Ground conditions*

47. The Council contends that the local soil is prone to compaction, and that the development would exacerbate this by reducing the area available for horses, leading to difficulties in establishing new planting. However, I see no evidence that this is likely to be a significant problem, and I have therefore given it little weight.

## **Conclusions and conditions**

### *The planning balance*

48. Although generally Policies CS17 and AL2 discourage development in the countryside and Undeveloped Gaps, the primary policy dealing with gypsy and traveller developments is Policy CS10, and for the reasons given above, I find that the proposed development would comply with all the relevant criteria in this policy. Consequently, when these policies are read together, it seems to me that they do not preclude the type of development now proposed.
49. In addition, I have found no conflict with the relevant policies for the protection of the landscape and local character, CS11 and CS16. Overall, taking the development plan as a whole, I conclude that the appeal proposal is in general accordance with the most relevant policies.
50. In addition, the proposed occupiers have an acknowledged need for a gypsy and traveller pitch in the Borough, which is also recognised in the most recent GTNA. The proposed development would meet their personal needs, and also make up the identified shortfall which would otherwise have to be met elsewhere in the locality. This is a benefit which adds significant further weight in favour. No other material considerations have been identified which weigh against the development.

### *Conditions*

51. I agree with the Council and the appellant that, notwithstanding the submitted indicative plans, further details are required regarding the site layout, boundary

treatments, hardstandings, lighting, and landscaping. These details are needed to ensure a satisfactory standard of development, thus protecting the visual amenity of the area. Details of foul drainage are also needed, to prevent pollution of the ground and nearby watercourses. Following the discussion on these matters at the hearing, I consider that these would be best dealt with through a requirement for a Site Development Scheme. In view of the retrospective nature of the application, the condition relating to these matters should require that the use of the land as a traveller site should cease if the required works are not carried out in accordance with a timetable to be approved.

52. In addition, the occupation of the site should be limited to persons meeting the definition of gypsies and travellers, because the justification for the development arises only as a result of the identified housing need, relating to persons within that group. However, in the light of this condition, and given that on this basis I have found the development to accord with the relevant provisions of the development plan, there is no need for a further condition restricting the occupation to any specific individuals.
53. A condition limiting the number and size of the caravans on the site is reasonable, to protect the appearance of the area, but there is no justification for limiting the size of caravans below that normally permitted in accordance with the relevant legislation.
54. Conditions relating to commercial activities and the size of any commercial vehicles, are needed to protect the amenity of adjoining occupiers and the rural character of the area generally. However, a condition removing permitted development rights is neither needed nor justified.
55. The Conditions imposed are set out in the schedule that follows.

*Overall conclusion*

56. I have taken into account all the other matters raised, but none outweighs the conclusions reached above. The development would accord with the development plan, and would meet a need, and no material considerations support a decision to the contrary. The appeal is therefore allowed.

*John Felgate*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

### **Stables at Long Copse Lane, Emsworth, Hampshire PO10 7UR**

- 1) 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 60 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
  - i) Within 60 days of the date of this decision, a Site Development Scheme shall have been submitted for the written approval of the local planning authority. Notwithstanding the details shown on any of the previously submitted plans, the Site Development Scheme shall include details of:
    - (a) the positioning of the proposed mobile home and touring caravan;
    - (b) all boundary treatments;
    - (c) all parking and hardstanding areas;
    - (d) all external lighting;
    - (e) any proposed new landscaping, planting, seeding or turfing;
    - (f) the proposed means of foul water disposal; and
    - (g) a timetable for the implementation of the above works.
  - ii) If, within 11 months of the date of this decision, the local planning authority refuse to approve the Site Development Scheme, or any part of it, or fails 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 in full, and completed in accordance with the approved timetable.
  - (v) following the implementation of the approved Site Development Scheme specified in this condition, the works thus carried out shall thereafter be retained and maintained , and shall remain in use throughout the lifetime of the development.
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in *Annex 1: Glossary of Planning Policy for Traveller Sites* (or its equivalent in replacement national policy).
- 3) The site shall be used as no more than one gypsy or traveller pitch. No more than two caravans, of which no more than one shall be a static caravan, shall be stationed on the site at any time. All caravans stationed on the site shall comply with the definition of a caravan, as set out in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968.
- 4) No commercial activities shall take place on the land, including the storage of materials.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

## **APPEARANCES**

### FOR THE APPELLANT:

Dr Angus Murdoch BA MA MSc PhD MRTPI	Planning Consultant
Mr Rhodri Crandon BA (Hons) DipLA	Landscape Architect
Mr Leslie Madgwick	The appellant
Mr James Madgwick	Site owner and occupier

### FOR THE LOCAL PLANNING AUTHORITY:

Stephen Andrews BA(Hons) DipTP MRTPI	Principal Enforcement Planner
Michelle Good BA(Hons) CMLI	Senior Landscape Architect

### OTHER INTERESTED PERSONS WHO SPOKE AT THE HEARING:

Mr Philip Woodhams BSc MRTPI	Planning Consultant (on behalf of local residents)
Dr David Mason	Local resident
Mrs Moira Mason	Local resident
Mr Rhodri Mason	Interested person
Mrs Ann Thomas	Local resident
Mrs Bridget Poirier	Local resident

## **DOCUMENTS TABLED AT THE HEARING, AND AFTERWARDS**

- 1 Statement of Common Ground
- 2 Site Layout and Landscape Scheme (Plan No TDA.2367.01)
- 3 Email dated 30 January 2018 from R Crandon, re the proposed layout plan
- 4 Section 106 obligation, dated 9 January 2018
- 5 ALP Proposals Map extract
- 6 Local Plan Housing Statement, December 2016
- 7 Draft 'Local Plan 2036', January 2018 (extract)
- 8 Ordnance Survey extract and aerial photograph, tabled by Mr Crandon
- 9 Council Tax receipts relating to the appeal site
- 10 Email from Dr Murdoch, dated 6 February 2018, re proposed condition
- 11 Email from Mr Andrews, dated 7 February 2018, responding re draft condition