



Appeal Decision

Hearing held on 12 December 2024

Site visit made on 12 December 2024

by J Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th February 2025

Appeal Ref: APP/C1760/W/23/3335723

**Brambley Hedge, Latchmore Drove, Lyndhurst Road, Landford, Salisbury
SP5 2BJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr William (Billy) Sherred against the decision of New Forest Park Authority.
 - The application Ref is 22/00455.
 - The development proposed is the change of use of land to provide a single Gypsy and Traveller family pitch consisting of a static mobile home, dayroom, parking for a tourer, 2 vehicle and cycle parking spaces; turning areas together with the laying of other hardstandings.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr William (Billy) Sherred against the decision of New Forest Park Authority. This application is subject of a separate decision.

Preliminary Matters

3. It has been indicated that the appellant is living within a caravan on the site. However, the proposed dayroom and hardstanding have not been built or laid out. These operational elements are significant aspects of the proposed development and, consequently, the appeal scheme has not been considered retrospectively.
4. The appellant has indicated that the caravan has become lawful on the site and provided Council tax records to demonstrate this. However, establishing lawful uses of land requires a comprehensive assessment. There is also an enforcement notice requiring the cessation of residential use on the site and it is not normally the purpose of this type of appeal to make a determination on an existing or proposed use. This is dealt with under sections 191 and 192 of the Town and Country Planning Act 1990.
5. The Authority refused planning permission on the grounds of insufficient information to ascertain the Gypsy status of the appellant. At the hearing, the Authority withdrew this objection, finding that the appellant complies with the definition within the latest revised Planning Policy for Travellers and Showpeople (PPTS). There is no evidence to dispute this finding.

6. The new National Planning Policy Framework (the Framework) and revised PPTS was published on the day of the hearing. Main Parties and the residents' planning consultant agreed further comments on these documents could be considered through written submissions. These further submissions have been considered in the reasoning in this appeal.
7. On 17 December 2024, a revised Unilateral Undertaking (UU) was submitted relating to the mitigation of Habitats Sites, the New Forest Special Protection Area (NFSPA) and New Forest Special Area of Conservation (NFSAC). Natural England (NE) were consulted on the appeal proposal, including a suggested planning condition seeking mitigation to offset nutrient load arising from the development. The appellant's further comments on the NE consultation response have been considered in this decision.
8. At the hearing, alternative sites were considered including those in neighbouring Council areas and following the hearing, a fuller statement was produced by the Authority. The appellant's comments on this statement have been taken into account in this decision.

Main Issues

9. The effect of the proposal on (a) the character and appearance of the area, having regard to the landscape and scenic beauty of New Forest National Park and (b) the integrity of the NFSPA and NFSAC, and Solent Maritime Special Area of Conservation (SMSAC) and Solent and Southampton Water Special Protection Area (SSWSPA).

Reasons

Landscape and scenic beauty

10. The application site comprises land to the rear of housing on Lyndhurst Road and is accessed off a track, known as Latchmore Drove. It comprises a static caravan, small outbuildings and a small hard surfaced area for parking. Surrounding the site, there are fields/paddocks and to the west, woodland. A public right of way (PROW) from Lyndhurst Road is routed along the track, Latchmore Drove, and up to the woodland. There is an area of scrub and trees separating the PROW from the entrance to the site.
11. The New Forest National Park Landscape Character Assessment 2015 details that the site lies within the West Wellow Heaths and Commons character area and component landscape type, Heath Associated Estates. The area is characterised by intermittent frontage residential development within open areas, fields/paddocks and woodland. In the vicinity of the appeal site, there is a barn located in a backland position behind the appeal site. However, behind built-up frontages, this is the exception to the overriding landscaped, open and undeveloped qualities of the area. Such qualities positively contribute to the landscape and scenic beauty of the National Park. The Framework states great weight should be given to conserving and enhancing landscape and scenic beauty of a National Park which have the highest status of protection in relation to these issues.
12. The development, including the dayroom and hardstanding, would result in a noticeable encroachment into the area. Although intermittent in frequency, there would also be vehicles travelling up and down Latchmore Drove and parking within

the site creating further adverse intrusion. The screening, including hedging and fencing around the site, would result in enclosure uncharacteristic of the open nature of the area. The adverse urbanising nature of the development would be noticeable from the PROW, even in summer, when vegetation would be denser in nature.

Conclusion

13. For all these reasons, there would be harm to the character and appearance of the area, including the landscape and scenic beauty of the New Forest National Park. Accordingly, the proposal would be contrary to Policies DP2, DP18, SP7, SP15, SP17 and SP33 of the New Forest Park Authority Local Plan (2016-2036) NFPALP), which collectively and amongst other matters, require high quality design, development enhancing local character and distinctiveness, avoidance of gradual suburbanisation within the National Park, the placing of great weight on conserving and enhancing the landscape and scenic beauty of the Park and the avoidance of noise, visual intrusion and unacceptable impacts in the Park.

SMSAC and SSWSPA

14. These Solent Habitat Sites, SMSAC and SSWSPA, contain internationally important interest features, coastal habitats, wintering and breeding shore bird species populations and are in unfavourable condition. The National Site Network objectives require maintaining or where appropriate the restoration of species and habitats listed in Annex 1 and II of the Conservation of Species and Habitat Regulations 2017 to a favourable conservation status.
15. Wastewater from the development would be dealt with by way of septic tank but there are no guarantees to prevent wastewater entering a watercourse or other pathway, such as the ground to the Habitat Sites. There would also be surface water run-off leaching into ground and watercourses. The appellant's nutrient neutrality assessment¹ details an upgrade of the existing septic tank and calculates less nutrient load from the development, arising from wastewater and land use, compared to the existing situation.
16. However, the assessment assumes an existing situation with a lawful residential use. No comprehensive assessment has been carried out to prove this and therefore, the assessment's conclusions on reduction in nutrient load are ill-founded. Therefore, the development would lead to increased discharges of wastewater causing adverse significant effects on the Habitat Sites, either singly or in combination with development, through nutrient enrichment adversely affecting interest features.
17. The Authority proposes a 'Grampian' style condition securing a mitigation package addressing additional nutrient load onto the Habitat Sites and this was discussed at the hearing. Under the Authority's scheme, developers are required to complete a nutrient calculation and upon completion, find a suitable scheme provider for offsetting the significant adverse effect. Such an arrangement involves finding enough credits from a scheme provider to compensate for the nutrient load calculated. Currently, there is a scheme in Eastleigh with credits available.

¹ Nutrient Neutrality Assessment and Mitigation Strategy, Water Design Engineers – Solving Water in the Landscape, 24 January 2025.

18. However, in the event of planning permission being granted for this development, there is a period of time to implement the permission. In this regard, it is uncertain whether sufficient credits will be available from a scheme provider, at the time the appellant decides to consider payment to secure them. Natural England (NE) has indicated an Appropriate Assessment, under the Habitats regulations, may be required to discharge the condition. Importantly, NE has commented that the competent authority must be satisfied that the proposal meets the standards of certainty beyond reasonable scientific doubt.
19. For all these reasons, an appropriate mechanism has not been demonstrated to secure the mitigation before me. There are no alternative solutions that have a lesser effect, or avoid an adverse effect on the integrity of the Habitat Sites. The development adversely affects the integrity of each site, either alone or in combination with other projects coming forward. Priority habitats and species would be adversely affected and there are no imperative reasons of overriding public interest. Therefore, it cannot be ascertained that the scheme does not adversely affect the integrity of the SMSAC and SSWSPA.

NFSPA and NFSAC

20. The NFSPA and NFSAC, contain internationally important interest features deriving from the heathland, water and meadow features habitats and species, including various breeding and wintering raptors. The National Site Network objectives require maintaining or where appropriate the restoration of species and habitats listed in Annex 1 and II of the Conservation of Species and Habitats Regulations 2017 to a Favourable Conservation Status.
21. The new development would result in an impact through recreational use, for instance walking, within NFSPA and NFSAC, given their proximity. Recreational pressures result in disturbance to birds, especially ground nesting species, and the degradation of habitats, through trampling and the increased risk of wildfires, for example. The use of vehicles could result in nitrogen deposition and changes to the ecological nature of the habitats. The appellant indicates not all areas of the Habitat Sites are subject to disturbance and much of the disturbance is focussed on Forestry Commission camp sites. However, the Mitigation for Recreational Impacts on New Forest European Sites Supplementary Planning Document (SPD) May 2021 identifies adverse recreational effects, based on empirical evidence, and consultation with NE. As consultee on ecological matters, significant weight is attached to their support for the SPD and its findings. Therefore, the development has an adverse impact on the integrity of Habitat Sites. I have therefore gone on to undertake an Appropriate Assessment.
22. The SPD details mitigation measures; publicly accessible alternative natural recreational greenspace; enhancement of existing greenspace and footpaths/rights of way, access and visitor management, including the provision of rangers; and the monitoring of the conditions of habitats and species, visitor patterns and progress in implementing the mitigation strategy. For nitrogen deposition, monitoring would take place along roads and remedial measures undertaken, if necessary.
23. These mitigation measures result in alternative recreational opportunities to deflect potential visits away from the Habitat Sites and would also manage and educate visitors to change visitor behaviour including when visiting designated sites. Mitigation measures would be monitored, and effectiveness evaluated, to provide a

better understanding of the recreational impacts, refine policies and measures. Based on costings and residential occupancy rates, the SPD sets out financial contributions for these measures.

24. In the event of planning permission being granted, NE have indicated appropriate mitigation measures would need to be demonstrated, to avoid impacts on the Habitat Sites. The UU secures mitigation in accordance with the Authority's strategy within the SPD, following comments, and consequently, with the appropriate mitigation in place, the integrity of the NFSPA and NFSAC would not be harmed.

Conclusion

25. Notwithstanding the above comments on the NFSPA and NFSAC, the development would harm the integrity of the SMSAC and SSWSPA. Accordingly, the proposal would be contrary to Policy SP5 of the NFNPLP, which amongst other matters, requires compliance with the habitat regulations and for proposals affecting the integrity of Habitat Sites not to be permitted unless there are imperative reasons of overriding public interest or alternatives.

Other Matters

Personal circumstances

26. The appellant is a Romany Gypsy and refers to being a 'Forest Gypsy', with family ties to the forest. The scheme would support an associated traditional way of life. As an ethnic minority, he would meet the needs of those persons with a relevant protected characteristic by reason of race and so, as required by s149(1) of the Equality Act 2010, the public sector equality duty is applicable. There is need to have regard to eliminating discrimination, advancing equality of opportunity and fostering good relations.
27. Updated medical records show that the appellant suffers from mental and physical health issues and is elderly, around retirement age. His surgery was based in Bitterne in Southampton, but the appellant is now registering to a local surgery on the nearby A36. His family, nearby in West Wellow and Cadnam, provide support and the proposal would provide a settled base. The appellant is indicated to be currently living on the site and thus, turning down this appeal would result in a roadside existence unsuitable for his health. Having regard to Article 8 and Article 1 of the First Protocol, there would be engagement with the appellant's rights in respect of private and family life, and the protection of property.

Unmet need

28. The Hampshire Consortium Gypsy, Traveller and Travelling Showpeople Accommodation Assessment 2016-2036 (GTTSA), published May 2017, represents the most up to date need assessment. For the National Park, this identifies as assessed need for 1 additional pitch within the plan period (2016-2036). NFNPLP Policy SP33 provides an allocation to meet this need at another site in Landford which is occupied with planning permission. Despite the Authority maintaining a 5 year supply of deliverable sites within the Park, there is no supporting analysis to show demand and supply. Furthermore, need has been established with the current application now that the appellant's Gypsy status has been accepted.

Availability of alternative sites

29. The Authority provided information on Gypsy and Traveller site availability (GTSA) for private and public sites within neighbouring areas of local planning authorities listed in the GTTSA. It showed that existing private and public sites were full in those areas. The appellant's property search listed various sites which were not available upon further enquiry due to various reasons, such as price and the appellant's Gypsy status. A previous site occupied by the appellant at Seend in Wiltshire is now occupied by Irish Travellers.
30. The GTSA showed future capacity for Gypsy and traveller sites in Winchester through intensification and expansion, and a local plan allocation (for 8 additional pitches) at a farm in New Forest District. NFPALP Policy SP33 also contains criteria to consider unmet need from windfall. The appellant disputes any availability of such sites and that additionally, these neighbouring Councils do not have a 5 year supply of deliverable sites, a deficiency in supply. The farm site is not available now for occupation due to a lack of planning permission. Not all potential sites will be available due to family and group frictions. Taking all these considerations into account, it has not been demonstrated that alternative sites would be available and significant weight should be attached to this as a consideration in favour of the proposal.

Previous planning history

31. At appeal, a temporary 5 year and personal planning permission for a single Gypsy site was permitted on the site in 2017². The Inspector found against the granting of permanent planning permission due to the effect of the development on the landscape character of the National Park but in the best interests of the child, as a primary consideration in his planning balance, granted temporary planning permission. However, this appeal decision can be distinguished from the current appeal which requires consideration of effects on Habitat Sites. Importantly, there is no child interests to consider here. Consequently, there are strong reasons to distinguish this previous appeal from that before me and only limited weight is attached to it.

Planning Balance

32. There would be harm to the character and appearance of the National Park and the integrity of the SMSAC and SSWSPA in conflict with Policies DP2, DP18, SP5, SP7, SP15, SP17 and SP33 of the NFPALP.
33. The Authority are unable to meet the accommodation needs of the appellant and there is a lack of availability of deliverable alternative sites. The appeal scheme would result in a settled base for the appellant where family can support him in coping with mental and physical health difficulties. It would support a nomadic lifestyle and a traditional way of life for an appellant with a protected characteristic. This would allow cultural traditions to be balanced with the practicalities of modern living thereby advancing equality of opportunity. The unmet need for a pitch also indicates inequality in housing opportunities and the proposal would offset this in a modest way.

² APP/B9506/W/16/3161232 Change of use of land to single pitch caravan site-temporary planning permission sought, Brambley Hedge, Latchmore Drove, Landford SP5 2BJ, Allowed, June 2017.

34. These are important points in achieving the social sustainability sought by Paragraph 13 of the PPTS. The equality implications of PSED weigh in favour of permitting a pitch at the appeal site because dismissing the appeal would perpetuate the disadvantages currently endured.
35. However, these benefits are not great enough to outweigh the harms to the scenic beauty and landscape of the Park, and integrity of the SMSAC and SWWSPA. Such harms would be considerable for the reasons indicated.
36. Having regard to Article 8 and Article 1 of the First Protocol, there would be interference with the occupier's rights in respect of private and family life, and the protection of a home. However, these Articles are qualified rights and there is a legitimate aim in protecting environmental interests, the scenic beauty and landscape of the Park and the integrity of the Habitat Sites, in a democratic society. Dismissing the appeal would be a necessary and proportionate response in all the circumstances and interference is justified under Article 8 and Article 1 of the First Protocol.
37. In accordance with PSED, due regard has been paid to minimising the disadvantages suffered by the appellant as a person without a permanent home. These considerations have been at the forefront of the decision-making process, but they would not outweigh the harms identified which provide a strong reason for refusing the proposed development. In conclusion, there would be conflict with the development plan, taken as a whole, and there would be no material considerations that indicate that it should be determined other than in accordance with the development plan and permanent planning permission should be refused.

Temporary planning permission

38. In considering a temporary planning permission as an alternative, the actual consequences of the development would be short term and therefore the identified harm to the National Park and the Habitat Sites would be temporary in nature due to the time limited duration of the proposal being in place. However, there is nothing before me to suggest that planning circumstances would change in any particular way for the foreseeable future. Consequently, a temporary permission is not justified in this instance. Moreover, even for a temporary period of time, the considerations of unmet need, personal circumstances, Human Rights and PSED would not be so weighty as to clearly outweigh the harms that I have identified.

Conclusion

39. For the reasons set out above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

J Parsons

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr M Lethbridge	Planning Consultant
Mr W Sherred	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Illsley	New Forest Park Authority
Mrs L Cooper	New Forest Park Authority

INTERESTED PARTIES:

Cllr Z Clewer	District Councillor
Mr E Heron	Planning Consultant (representing Objectors)
Mr Hurst	Local resident

Documents

1. Revised New Forest Habitat Mitigation Supplementary Planning Document 2020, Annual Report on Implementation of the Habitat Mitigation Scheme 2022-2023, Bird Aware (Solent Mitigation Recreation Strategy) August 2024, Bird Aware Solent Annual report 2024, Nitrate Neutrality Solent Map, Natural England Water Quality Neutrality Advice Note 2022, Nutrient Neutrality a summary guide, Nutrient Neutrality Principles February 2027; Nutrient Calculation Solent Marine, submitted 10 December 2024.
2. Statement of Common Ground, submitted 11 December 2024.
3. Appellant's Property Search document, submitted 11 December 2024.
4. Appellant's updated medical records, submitted 12 December 2024
5. Two Letters of support for application, submitted 12 December 2024.
6. NFPA required changes to draft Unilateral Undertaking, submitted 13 December 2024.
7. NFNPLP Policy DP8, submitted 16 December 2024.
8. NFNPA Mitigating impacts from nutrients – Solent designated sites December 2024, submitted 16 December 2024.
9. Appellant's comments on new Framework and revised PPTS, together with Council Tax enclosures and Enforcement Notice (November 2023), submitted 16 December 2024.
10. Eastleigh Borough Council nitrate credit scheme and NFPA overarching legal agreement for credits for North East of Park, submitted 16 December 2024.
11. Local Residents comments on the New Framework and revised PPTS, submitted 16 December 2024.
12. A revised Unilateral Undertaking seeking to secure mitigation for NFSPA and NFSAC, submitted 17 December 2024.

- 13.NFPA comments on the new Framework and revised PPTS, submitted 18 December 2024.
- 14.NFPA commentary on alternative sites, submitted 19 December 2024.
- 15.Natural England response on draft Unilateral Undertaking, submitted 9 January 2025.
- 16.Appellant's comments on the NFPA commentary on alternative sites, with comments on Habitat Regulations, with Council Tax, Enforcement Notice and Research on 5 year supply of Gypsy and Traveller sites in SE England (Friends, families and travellers), submitted 9 January 2025.
- 17.Appellant's response to Natural England consultation response, with Water Design Engineers - Solving Water in the Landscape document, submitted 24 January 2025.
- 18.Evidence of title, submitted 31 January 2025.
- 19.Complete document, Water Design Engineers - Solving Water in the Landscape document, submitted 11 February 2025.