



## Appeal Decisions

Hearing held on 12 January 2016

Site visit made on 12 January 2016

**by Simon Hand MA**

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

**Decision date: 22 February 2016**

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### **Appeal A: APP/Y9507/C/15/3062034**

#### **Land to the east of Market Garden (known as Conifers), Clappers Lane, Fulking, West Sussex, BN5 9ND**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr & Mrs N Mitchell against an enforcement notice issued by South Downs National Park Authority.
  - The Council's reference is SDNP/15/00057/ENNOT.
  - The notice was issued on 12 May 2015.
  - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from pasture to a mixed use of pasture and use for the stationing of 2 caravans occupied for residential purposes (the Unauthorised Change of Use).
  - The requirements of the notice are: (1) cease the use of the Land for the stationing of the caravans occupied for residential purposes; (2) remove from the Land the 2 caravans, which are located for identification purposes only within the approximate area edged in blue on the Plan; (3) remove from the Land the portaloo, located for identification purposes only within the approximate area edged blue on the Plan, together with all other residential paraphernalia brought on to the Land, which are in connection with the Unauthorised Change of Use; (4) break up and remove from the Land the area of hardstanding in its entirety, shown for identification purposes only in the approximate area edged blue on the Plan and created in connection with the Unauthorised Change of Use, to an authorised place of disposal and stop up any drainage and water connection on the Land; (5) remove from the Land any other materials and debris resulting in steps (2), (3) and (4) above; (6) restore the Land to its condition before the breach took place by the reseeded of grass in the approximate area shown for identification purposes only edged blue on the Plan.
  - The period for compliance with the requirements is 9 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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### **Appeal B: APP/Y9507/C/15/3062035**

#### **Land to the east of Market Garden (known as Conifers), Clappers Lane, Fulking, West Sussex, BN5 9ND**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mrs D Mitchell against an enforcement notice issued by South Downs National Park Authority and is the same as Appeal A.
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### **Appeal C: APP/Y9507/W/15/3005938**

#### **Land to the east of Market Garden (known as Conifers), Clappers Lane, Fulking, West Sussex, BN5 9ND**

- 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 N Mitchell against the decision of South Downs National Park Authority.
  - The application Ref SDNP/14/03055/FUL, dated 20 May 2014, was refused by notice dated 2 March 2015.
  - The development proposed is the change of use of the land to a private gypsy and traveller caravan site consisting of 2 No pitches each of which to contain 1 No mobile home, 1 No touring caravan, 1 No amenity building, hardstanding and associated development.
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### **Decisions**

#### **Appeals A and B - The Enforcement Appeals**

1. The appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

#### **Appeal C – The Planning Appeal**

2. The appeal is allowed and planning permission is granted for the change of use of the land to a private gypsy and traveller caravan site consisting of 2 No pitches each of which to contain 1 No mobile home, 1 No touring caravan, 1 No amenity building, hardstanding and associated development at Land to the east of Market Garden (known as Conifers), Clappers Lane, Fulking, West Sussex, BN5 9ND in accordance with the terms of the application, Ref SDNP/14/03055/FUL, dated 20 May 2014, subject to the following conditions:
  - 1) The occupation of the site hereby permitted shall be carried on only by the following: Mr Naly and Mrs Delia Mitchell; Shane Mitchell; and Shirley-Anne Mitchell and her resident dependants only.
  - 2) 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, 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.
  - 3) No more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 2 shall be a static caravan) shall be stationed on the site at any time.
  - 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
  - 5) No commercial activities shall take place on the land, including the storage of materials.
  - 6) Notwithstanding the details of any schemes provided in accordance with condition (7) below, no impermeable hardstanding shall be laid on the site at any time; any mobile homes and day rooms on the site shall only be finished in colours that have first been agreed in writing by the Local

Planning Authority and; no trees or shrubs shall be felled or removed from the site without the express permission of the Local Planning Authority.

- 7) 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 28 days, of the date of failure to meet any one the requirements set out in (i) to (iv) below:
  - i) within 3 months of the date of this decision a scheme covering the following: (1) the layout of the site including details of the two day-rooms and positioning of the mobile homes and touring caravans as shown on the plan provided with the TDA Landscape statement; (2) the landscaping of the site, including details of any new trees and shrubs and measures for the protection and replacement of any existing and new trees and shrubs on the site for 5 years and any hardstanding to be laid on the site; (3) the means of foul and surface water drainage of the site; (4) any proposed external lighting within the site; (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
  - ii) within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if 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 site development 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.

### **Main Issues**

3. The main issues for both the ground (a) and the planning appeal are whether there is an unmet need for gypsy sites, whether the site is locationally sustainable, the harm the occupation of the site would cause to the National Park and to the village of Fulking and the personal circumstances of the appellants.

### **Reasons**

4. The site lies in the South Downs National Park just outside the village of Fulking at the foot of the downs and is overlooked from the Fulking Escarpment and Devil's Dyke. The adjacent site, known as Market Garden has been occupied by a single gypsy family for many years and was recently granted a permanent planning permission as a single pitch gypsy site.
5. The appeal site is occupied by Mr and Mrs Mitchell and their adult daughter Shirley-Anne. Their adult son, Shane, was away travelling but would also be likely to live there from time to time. Shirley-Anne has two children, Italia and Johnny, who are nearly three and one years old respectively. The family has strong local connections. One plot would be for Shirley-Anne and her children

and one for Mr and Mrs Mitchell and Shane if necessary. It was agreed at the Hearing that Mr Mitchell had not given up travelling, even temporarily, and would be continuing to do so in order to look for work in the region, albeit from a settled base to which he would return. For welfare and educational reasons it is likely that at least one of the occupiers of the site would remain behind with the children. In my view at least one and possibly several occupiers of the site are gypsies as defined in Annex 1 of PPfTS and I have dealt with the appeal on that basis.

### *Policy matters*

6. The National Park was created only a few years ago and the new South Downs National Park Authority (SDNPA) are in the process of drafting a local plan. Their somewhat ambitious time table is to publish the draft plan in October 2016 and proceed through examination to adoption in 2017. At the moment they are relying on the saved policies of the Mid Sussex Local Plan (2004) of which H14, a criterion based gypsy site policy, is the most relevant. They also rely on paragraph 115 of the NPPF which requires great weight to be given to conserving the landscape and scenic beauty in National Parks, and the contents of Planning Policy for Traveller Sites (PPfTS).
7. The SDNPA are the planning authority for the area, but they rely on Mid Sussex DC to deal with general planning matters such as applications and appeals that the SDNPA do not consider to be strategic. The history of the site is intertwined with the efforts (or failure as the appellant would characterise it) of both Mid Sussex and the SDNPA to plan for gypsy sites over many years and I shall refer to the Council throughout this decision as shorthand for either Mid Sussex or the SDNPA unless it is important to differentiate between the two.

### *The provision of gypsy sites*

8. The Council have relied in the past on a criteria based gypsy policy and have not sought to identify specific sites. They have a Gypsy and Traveller Accommodation Assessment (GTAA) from 2013, which concluded that in the next 20 years there was a need for only one pitch in the area of Mid Sussex DC that was overlapped by the National Park. When permission was granted for the Market Garden site that requirement was fulfilled.
9. In fact the GTAA identifies a need for 42 pitches in Mid Sussex, but separates out the area covered by the National Park. As there was at that time only one site in the park area (the Market Garden site) this was disaggregated from the totals, leaving 41 and 1 pitches. I am not convinced that the need for gypsy sites can be so definitively constrained to what is, after all, a landscape designation. If the SDNPA area is to be counted as a separate designation for gypsy sites then demand for sites across the whole park would need to be considered and those figures do not seem to be available.
10. The Council accepted the figure of 1 site might be an underestimate as there were lengthy waiting lists at all the authorised sites. The simple fact is there is a significant shortfall of sites across Mid Sussex as a whole, so if this site is not granted permission there is nowhere else in the area for the appellants to go, whether within or outside the park boundaries. Paragraph 27 of PPfTS makes clear that the lack of a 5 year supply of sites should not be a significant material consideration for temporary planning permissions in National Parks. In this case the appeal is for a permanent site, but the fact that the Council

cannot point to any other possible sites and have no plans to allocate any is still a material consideration of some, albeit little, weight.

*The locational sustainability of the site*

11. Policy H14(d) requires that a gypsy site is "readily capable of being serviced and is in a reasonable distance of local services...". PPfTS has no specific requirement for sites to be within a "reasonable distance of local services" but at paragraph 4(j) suggests sites should be somewhere from where "travellers can access education, health welfare and employment infrastructure". It clearly envisages sites may well be in rural areas and at paragraph 25 advises they should not "dominate the nearest settled community".
12. It was accepted that Fulking has no facilities except for a pub and no bus service. Henfield is the nearest settlement with doctors, schools and shops which is about 4 miles away. I was told the primary school catchment for Fulking is Albourne school which is about 4½ miles away. Hassocks is a reasonable sized town with secondary schools about 6 miles away. Mr Mitchell said that he got most of his groceries at the store which was part of a garage on the A23 at Pyecombe which is less than 3m miles away and there is a garden centre with a butcher's a similar distance away.
13. I was given a decision letter<sup>1</sup> where the Inspector found that 5km was a reasonable distance and that this had also been suggested in another appeal. 5km is just over 3 miles, and it seems to me in this appeal the site is within 4-7km of most services that are required. For a rural site I consider this to be just about within a "reasonable distance of local services". There is no suggestion that the site, along with the Market Garden site, would dominate the local community and I consider it to be locationally sustainable.

*Impact on the National Park and on Fulking*

14. The site is small rectangle of land lying to the south of Clappers Lane. This lane runs from the village out to the north and as it leaves the village it is lined to the west by a row of houses with open fields to the east. It then bends sharply to the east and back to the north. The appeal site and Market Garden are on the southern side of this 'Z' bend. The local cricket pitch with its clubhouse stands at the end of the 'Z', and there is a scatter of dwellings and buildings in the immediate area. One is clearly outside the village at this point, but in an area of scattered development which contrasts with the open fields to the north and the steeply rising downland to the south. I do not consider this is the "open countryside that is away from existing settlements" referred to in paragraph 25 of the PPfTS, where new gypsy sites should be very strictly limited.
15. The site itself is both surrounded by and contains a scattering of mature trees, a mix of evergreen and deciduous. From the lane views into the site are not readily available, even with the wooden gates open. This contrasts with Market Garden next door which is much more open. During the site visit I went onto the downs above the village and walked along the Fulking Escarpment. There are sweeping views to the north across the landscape and Fulking is prominent at the foot of the downs. The site can be identified by the group of trees but from the Devil's Dyke view point nothing of the existing caravans can be seen,

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<sup>1</sup> APP/L1765/W/3017453

and little of Market Garden is visible either. As one walks along the escarpment the angle of view changes and the brightly painted mobile home at Market Garden can be clearly seen. Part of one of the caravans on the appeal site can also be made out, but you do have to know what you are looking for. The appeal proposal is for 2 caravans, 2 mobile homes and 2 amenity blocks, but also for some additional planting. Even if it would be possible to see more of the structures on the site, and this is by no means certain as it is very well screened, they would not be prominent and would appear from this distance as part and parcel of the scatter of buildings in the area on the edge of the village. There is likely therefore to be little or no impact on the visual quality of the National Park and so the proposal is not contrary to H14(a) which requires gypsy sites to have a minimal impact on the character and appearance of the countryside.

16. The site is outside the core of the village of Fulking, which is described in the South Downs Integrated Landscape Character Assessment (2005) as a nucleated village whose settlement pattern should be conserved. It is a small but very attractive village which is an important part of the scenic beauty of this part of the National Park. In my view the site relates more closely to the scattered development around the cricket club than to the village, and here there would be some consolidation of this development. An important part of the character of the village is its clear nucleated centre, with only a scatter of development around and that scatter is particularly vulnerable to consolidation. Looking at the two neighbouring gypsy sites together, some years ago there was only a small market garden here, but now, if this appeal were allowed, there would be 3 gypsy plots. This clearly represents a consolidation of development in this area and is therefore harmful to the nucleated character of the village and by extension to the character and scenic beauty of this part of the National Park.

#### *Personal circumstances*

17. As described above there would be two, currently under school age children on the site. It is proposed the elder of the two would attend pre-school soon and both will eventually go to primary school. I am aware of the historic under-achievement of gypsy and traveller children in education and that this is not helped if they do not have a settled base. I am also conscious that the best interests of the children should be a primary consideration and it is clear their best interest would be met by remaining at a settled base.
18. It is also the case that there is nowhere else for the family to go if this appeal is refused. They would return to the life they led before which was illegal roadside camping and doubling up on other pitches. This is a material consideration in favour of the appeal.

#### *Other matters*

19. Local residents raised the issue of traffic generation. The site is on the inside of a 'Z' bend, but the highway authority has raised no objection. The number of traffic movements associated with the site is unlikely to be great. The site was apparently turned down as unsuitable for a touring caravan park, but the number of traffic movements generated by touring caravans is likely to be considerably larger than for a gypsy family.

20. Very recently, there has been a serious flood along Clappers Lane, which locals suggested had not happened since roadside drainage had been improved some years before. It was also suggested this was partly to do with the extensive area of tarmaced hardstanding on the Market Garden site. Even if this is the case there is no suggestion of an impermeable surface being installed at the appeal site. This can be controlled by condition and there should be no more run-off from the land once the site is complete than before.
21. Local residents were also very concerned about the precedent effect. There are apparently a number of other small blocks of land around the village where other gypsy families might be tempted to stay, given the success of those at Market Garden and Conifers. It was pointed out the village has a population of only about 100 people and if this appeal were to be allowed about 10% would be gypsies. I have considerable sympathy with the residents' fears. From their point of view they opposed the Market Garden application and were ignored, they have opposed this appeal, and if this is allowed will feel they were ignored again. Why should the next time be any different? Firstly, each case should be decided on its individual merits. In this appeal the site and the appellants have particular characteristics which would differ for other sites and individuals. Secondly, the impact of any further development would also have to be considered. In my view three gypsy plots comes close to but does not dominate the settled community, and that argument becomes stronger with further applications as would the issue of the impact of any more development on the village and on the National Park.

## **Conclusions**

22. The site is within a reasonable distance of local services. It is in the countryside and in a National Park but it is part of a scatter of development, not open countryside. It is well screened and would have a limited impact on the visual quality of the countryside. It is not therefore contrary to policy H14 of the local plan. It would however help to consolidate the scatter of development on the edge of Fulking and so does not conserve the pattern of development of the village and would harm, albeit to this limited extent, the scenic beauty of the National Park, contrary to paragraph 115 of the NPPF.
23. The appellants would benefit from a settled base for the future educational needs of their children. The Council cannot show a 5 year supply of gypsy sites, but more importantly with no other available sites and waiting lists at the lawful sites elsewhere in the District the appellant and his family have nowhere else to go.
24. Great weight should be given to the protection of the scenic beauty of National Parks, but in this case the harm is limited as described above. In my view this limited harm is outweighed by the personal circumstances of the appellants. Consequently, the site is not suitable as a general gypsy site, but would be acceptable for the limited period of occupation by the appellants and their family.
25. There is both a ground (a) appeal and a s78 appeal, but the ground (a) appeal is only for the matters alleged, that is two caravans, whereas the s78 appeal is for the two pitches with the day rooms which is the appellants desired outcome. It does not make sense therefore to allow the ground (a) appeal, but if I were to quash the notice but not allow the ground (a) appeal the 2 caravans could stay on the site without reference to any conditions. I shall

therefore dismiss the enforcement appeal and uphold the notice, but allow the s78 appeal subject to the conditions discussed below and this will override the effect of the notice. The appeals on ground (g) do not need to be considered.

### **Conditions**

26. As the permission is to be made personal a time-limiting personal condition is required, but a general gypsy condition is not as the site is not suitable as a general gypsy site. There was some discussion as to who the permission should be limited to. Naly and Delia Mitchell are the appellants, but their daughter, Shirley-Anne and son Shane are both adults, not dependants. Shirley-Anne has two children and the intention is for her to occupy one pitch and Naly and Delia the other pitch. Shane would stay with Naly and Delia as and when needed. Consequently, I shall limit the permission to all four adults, but to the dependants of Shirley-Anne only. If for example Shane were to start a family another pitch would be required and this might not be an appropriate site for third pitch.
27. The maximum number of caravans and mobile homes should be limited to 4 and the usual conditions restricting commercial activities and lorries over 3.5 tonnes are required. Landscaping, protection of trees and the layout of the site are important and can be linked in part to the plan provided as part of the landscape evidence. Details of foul drainage and surface water disposal should also be agreed and I shall make it clear that no impermeable surfaces should be laid on the site because of the localised flooding fears.
28. The appellant argued that no control was needed over the colour of the mobile homes, but as I saw on the site visit the brightly coloured mobile home on the adjacent site stood out in views from a considerable distance. As the lack of direct visibility of the site is an important consideration control of the colour of the mobile homes and of the dayrooms is required.

*Simon Hand*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

Dr Angus Murdoch	Agent
Rhodri Crandon	Landscape expert
Naley Mitchell	Appellant
Cornelius Mitchell	Appellant's father

### FOR THE LOCAL PLANNING AUTHORITY:

Steven King	Mid Sussex DC
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### INTERESTED PERSONS:

Mark Hind	Fulking PC
Miles Firth	Fulking PC
Patricia Robinson	Local Resident

## **DOCUMENTS**

- 1 Appeal Decision APP/L1765/W/3017543
- 2 Officer's report recommending approval of the adjacent site Market Garden