



Report to **Planning Committee**  
Date **11 November 2022**  
By **Director of Planning**  
Local Authority **SDNPA (Mid Sussex District area)**  
Application Number **SDNP/22/04317/FUL**  
Applicant **Russell Owen**  
Application **Change of use of land to provide two pitch settled gypsy accommodation site, including erection of utility building**  
Address **Small Acre, Clappers Lane, Fulking, West Sussex**

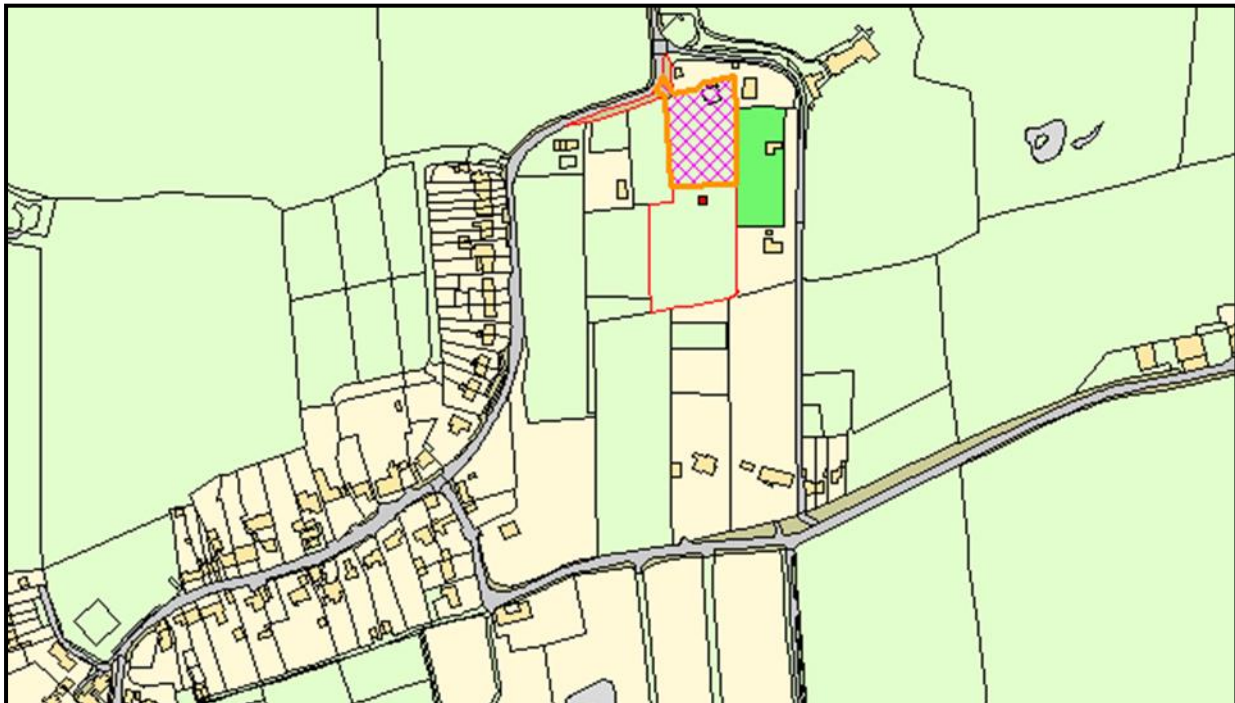
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**Recommendation:**

**That planning permission be refused for the reasons outlined in Paragraph 9.1 of this report.**

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**Site Location Map**



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## **Executive Summary**

The proposal is part retrospective given that two mobile homes have been brought onto the site and are being occupied by the applicants, and an approximate 950sqm area of porous hardstanding (chalk base and gravel) has been laid down. Some services have also been provided.

The latest available evidence from Mid Sussex District Council (MSDC) suggests there is an identified need for two Gypsy and Traveller pitches that will arise in the Mid Sussex area of the National Park within the MSDC local plan period (2021-38). One of these will be required between 2031-35. This takes the overall need identified within the South Downs National Park over the South Downs Local plan period (2014-33) to 30 pitches.

The proposal would result in a net increase of two Gypsy and Traveller pitches, however only one of these would definitely meet an identified unmet need. The other pitch would provide alternative accommodation for a Gypsy and Traveller household whose housing need has already been met via an earlier planning permission. Although named rights to the pitch provided through the earlier permission could be relinquished via a S.106 agreement, the vacated pitch could be lawfully occupied by any person(s) meeting the definition, regardless of where they derive from.

The proposal would result in the spread and consolidation of residential development, albeit in the form of mobile homes, touring caravans and day rooms within two pitches, with associated hardstanding and paraphernalia, which would be harmful to the more dispersed rural landscape character in this location.

Furthermore having regard to previous concerns raised by Inspectors it is considered that an additional two pitches would result in an over concentration of pitches in the locality that would be disproportionate to the small settlement of Fulking, contrary to Policy Sd33 3 b). The proposal is therefore recommended for refusal.

### **1. Site Description**

- 1.1 Small Acre is located on the southern side of Clappers Lane north east of the village of Fulking, which does not have a settlement boundary. The site is located adjacent to The Conifers and Market Gardens, both of which are established Gypsy and Traveller sites in private ownership. The nearest dwellings are The Cabbage Patch, which is a Grade 2 listed building, Pantiles and Hale Green that adjoin the eastern boundary of the site, and Lower Kents to the west of Market Gardens.
- 1.2 The 0.3ha application site comprises the northernmost of two small grassed fields, both of which have a lawful agricultural use, and are understood to have been previously associated with a dwelling to the south now known as Meadow House. There is a pre-existing, dilapidated shed and area of broken up hardstanding close to the northern site boundary, and a small dilapidated caravan is located within the field parcel to the south. The site is accessed from Clappers Lane from the north via a small gated field access. I
- 1.3 The site lies within the scarp foot slope area as defined by the South Downs Integrated Landscape Character Assessment (ILCA) (J2): Adur to Ouse Scarp Footslopes. Fulking is a characteristic spring line hamlet located at the steep chalk scarp which forms a dramatic backdrop to the south, at the top of which runs the South Downs Way, with sporadic development at the edges as one leaves the central area. The site is visible from the scarp slope to the west of Devil's Dyke which is approximately 1km distance away and comprises open access land criss-crossed by public rights of way. It is bounded along the northern roadside boundary by thick vegetation and a field gate that has been reinforced with close board panels for reasons of privacy. Other close range views are largely screened by trees and tall hedgerow.

### **2. Proposal**

- 2.1 The application seeks to provide a new private Gypsy and Traveller site with 2No pitches, each comprising 1No mobile homes, 1No touring caravan and 1No day room, as is standard. No commercial activities are proposed.

- 2.2 The application is part retrospective given that the mobile homes have already been brought onto the site, and are currently being occupied by the applicants. Aside from the pre-existing hardstanding, most of the site has been laid with a permeable chalk base with a gravel top. There are also some services including water and electricity. The southernmost field would remain in an agricultural use.
- 2.3 The proposal would provide a private site for occupation by persons meeting the definition of Gypsy and Traveller under the Planning Policy for Traveller Sites (PPTS) 2015, in accordance with their traditional way of life. The site is in the joint ownership of the applicant and John Hearne, and would be occupied by
- Mr John Hearne (aged 23), his wife Savannah and their two young children (ages 2 and 3yrs)
  - Mr Russell Owen and his now wife Teresa.
- 2.4 John and Savannah Hearne and their children already have a named pitch at the Market Gardens site provided under permission SDNP/17/03762/CND, but now wish to make independent provision for their family. The pitch they formerly occupied at Market Gardens is personal to them, and cannot be occupied by anyone else. The Hearnese have offered to progress a Section 106 agreement to relinquish their rights in relation to their pitch at Market Gardens, effectively releasing it for occupation by other person(s) meeting the definition.
- 2.5 Prior to moving onto the site Russell and Teresa Owen were doubling up at a family member's pitch in the Brighton area of the National Park.
- 2.6 Restriction of the use of the pitches to the personal use of the Hearne and Owen households, is not proposed. However, this could be secured by the SDNPA via suitably worded conditions, as could the return of the site to its former condition should the pitches cease to be occupied.

### 3. Relevant Planning History

- 3.1 The following planning history is relevant to the application site:
- FK/010/75 Outline application. 2 detached houses with garages. Refused 05.05.1975
  - FK/014/96 Outline application. 2 detached houses with garages. Refused 27.06.1975
  - FK/004/80 Renewal of application for existing residential caravan. Approved 22.07.1980
  - FK/015/81 Renewal. Permanent permission to replace 5 year licence on existing mobile home. Approved 20.1.1981
  - FK/008/80 Outline application for bungalow to replace residential caravan. Refused 27.01.1981
  - FK/009/83 One Dwelling and Garage to Replace Existing Residential Caravan. Refused 22.12.1983. Appeal dismissed.
  - FK/002/85 Renewal of Temporary Permission for Mobile Home. Refused 15.03.1985
  - FK/006/86 One Dwelling to Replace Permanent Mobile Home and Adjoining Outbuildings. Refused 21.11.1986
  - FK/003/88 Use of Land as Caravan Site. Refused 24.03.1988
  - FK/014/96 Proposed Bungalow and Associated Out Building. Withdrawn 23.12.1996
  - FK/06/01191/FUL Siting of a temporary container. Refused 14.11.2006
  - FK/01/01533/FUL To site a mobile home. Refused 21.12.2001. Appeal dismissed Dismissed at appeal 25.11.2002. The Inspector's decision on this appeal is appended at **Appendix 3** of this report. Salient points are referred to in the Planning Assessment below.

- SDNP/21/04747/DINPP Establish the designated use of each parcel of land, and whether there is any agricultural restriction on either piece. Advice provided 20.09.2021 to confirm land use is agricultural.
- 3.2 There is also enforcement history relating to the site, including an injunction served by Mid Sussex District Council in 2001 upon the landowner at the time (who was not either of the current applicants) to secure removal of the mobile home on site, which was not being occupied as a Gypsy and Traveller dwelling. A Temporary Stop Notice has also been served in relation to the development that has been partially carried out on site.
- 3.3 There have also been a number of recent planning and appeal decisions relating to adjoining and nearby sites, which are relevant material considerations. The following recent planning history relates to the Market Gardens site:
- SDNP/15/04159/FUL Use of land for the stationing of caravans for residential purposes for 1 No. gypsy pitch together with a utility/dayroom along with the retention of existing storage sheds ancillary to that use. Approved 19 November 2012 (for permanent use)
  - SDNP/17/03762/CND Variation of condition 2 on planning consent SDNP/15/04159/FUL to increase the number of caravans to 2 mobile homes and 2 touring caravans and ancillary dayroom. Approved by SDNPA Planning Committee 18 January 2018. The second mobile home approved was for John and Savannah Hearne, and their dependents
  - SDNP/18/05963/FUL Material change of use of land for stationing of caravans for residential occupation with facilitating development (hard standing). Refused by SDNPA Planning Committee 17.02.2015 for reasons of landscape harm.  
Allowed on appeal 08.02.2021. The Inspector's decision on this appeal is a material consideration, and appended at **Appendix 4** of this report. The Inspector gave significant weight to landscape impacts and cumulative harm, but found that the best interests of the children involved was a material consideration that justified a departure from the development plan. Salient points are referred to in the Planning Assessment below.
- 3.4 The following planning history relates to the adjacent site The Conifers:
- SDNP/14/03055/FUL Change of use of land to private gypsy and traveller caravan site consisting of 2No pitches, including hardstanding and associated development. Refused 17.02.2015 for reason of landscape harm and poor location in terms of local services.  
Allowed on appeal 22.02.2106. The Inspector's decision on this appeal is a material consideration, and appended at **Appendix 5** of this report. Salient points are referred to in the Planning Assessment below.
- 3.5 The following recent planning history relates to the Lower Kents site:
- SDNP/17/00844/FUL Change of use and conversion of existing building from office to residential. Refused 27.06.2017. Allowed on appeal 27.11.2018.

#### 4. Consultations

- 4.1 **Drainage:** No objection, subject to conditions.
- 4.2 **Ecology:** No objection, subject to condition.
- 4.3 **Environmental Health:** No comments to make.
- 4.4 **Fulking Parish Council:** Objection
- Residents have not objected directly due to fear of reprisals;
  - Seven members of the public objected via a show of hands at the parish council meeting;
  - Recent appeal decisions have given more weight to the interests of applicants than the harm to the National Park and the local settled community;

- There is a history of planning applications from 1952 and a High Court Injunction (HQ 101289) granted on 20 July 2001 to Mid Sussex District Council “to prevent the use of the land in question for the stationing of vehicles, mobile homes and caravans;”
- A need for the sites was not identified by the recent Gypsy and Traveller Accommodation Assessment (GTAA);
- At least one of the families has somewhere else to live;
- Development has been carried out unlawfully that is harmful to the National Park;
- If approved will set a precedent for retrospective Gypsy and Traveller applications;
- Mobile homes are conspicuous from Fulking Escarpment and South Downs Way;
- Legislation protecting great crested newts has been breached;
- Site is prone to flooding and 950sqm of hardstanding has increased risk of flooding;
- Services already installed have created environmental, health and safety hazard to occupants and neighbours;
- External lighting is harmful to protected species and dark night skies.

**4.5 Historic Buildings:** No objection, subject to conditions.

- The site appears to not have any historic or visual association with the listed building, or curtilage listed outbuilding, which are oriented away from the application site;
- There is some potential for inter-visibility (and therefore visual impacts) in the southern part of the site.

**4.6 Landscape Officer:** No objection, subject to conditions.

- Development at depth (i.e. in the southern part of the site) would not be characteristic of the nucleated settlement pattern of Fulking;
- Re-location of the development closer to the road within the northern part of the site would follow the tight knit, road-edge settlement pattern and mitigate negative visual impacts when viewed from the Downs;
- Hardstanding should be removed from the southern part of the northern parcel and planted with orchard trees;
- To further minimise impacts the following should be secured by condition:
  - Mobile homes to be painted mute colour or timber clad;
  - Tree planting between the northern and southern land parcels and along the eastern boundary to offset tree loss from ash dieback; mitigate impacts upon the listed building setting; and mitigate visual impacts from the scarp;
  - External lighting to be low key and on timers/motion sensors.

**4.7 Mid Sussex District Council:** Comments:

- The Mid Sussex District Council Gypsy and Traveller Accommodation Assessment (GTAA) April 2022 is the most up to date assessment of need and best available evidence at this time;
- Concern regarding the further development and loss of a green field along this section of Clappers Lane, whereby the village transitions into more open countryside.

**4.8 Southern Water:** No objection

**4.9 WSCC Highway Authority:** No objection.

## 5. Representations

5.1 Seven letters of objection have been received, raising the following concerns:

- There are strict planning restrictions to protect the National Park, the proposal fails to protect and discriminates against the settled population;
- The SDNPA Gypsy and Traveller Background Paper 2018 update states there is no need for Gypsy and Traveller pitches in the Mid Sussex area of the SDNP;
- The 2022 Mid Sussex GTAA does not identify a present need for sites in the Mid Sussex area of the SDNP;
- The neighbouring councils have increased their provision of Gypsy sites;
- No essential need for a countryside location;
- The Local Planning Authority should have declined to determine the application given the previous planning history [of refused mobile homes and caravans];
- The only planning permissions granted recently have been for Gypsy and Traveller development;
- The Planning Inspectorate have abrogated responsibility for protecting the National Park;
- Will represent an over concentration of gypsy sites in one location and cumulatively dominate the local settled community;
- Will harm the special qualities of the National Park;
- Will harm the nucleated character of Fulking and erode the transition to open countryside;
- Unsympathetic design will have overbearing impacts on the Grade 2 listed cottage, and cause substantial harm to its setting and significance given proximity and visual linkages;
- Cabbage Patch has ground floor windows which directly look into Small Acres, and development will look directly into the listed building;
- Development should be moved further south away from the listed building;
- The unauthorised occupation of land should count against the application;
- The cricket club wanted the site for playing facilities but could not afford it;
- The site is Grade 3 agricultural land;
- Mobile homes and caravans are alien to the landscape and will harm the openness, visual amenities and character of the area;
- Will set a precedent for destruction of agricultural land in local beauty spot;
- Will not conserve or enhance natural beauty, scenic quality and landscape character;
- The site is prominent in the landscape and clearly visible from the South Downs and landscaping will not mitigate harmful impacts;
- Recommendations for mitigations mean that the site is sensitive and impacts difficult to minimise;
- Can be seen from the Fulking Escarpments including the South Downs Way, Devils Dyke and National Trust open access land;
- Will negatively impact amenity of visitors to the area;
- Will be over concentrated and disproportionate in size to nearby dwellings and dominate the settled community;
- The utility rooms will be clearly visible from the Downs and are close to the Grade 2 listed dwelling;

- Adverse impact on the character of the Grade 2 listed dwelling the Cabbage Patch;
- The mobile homes are visually intrusive to the amenity of Pantiles;
- Impacts from noise, odours and light pollution to surrounding occupiers;
- External lighting is harmful to neighbours, wildlife and dark skies;
- Bat, owl and badger habitat and flora have been harmed and net gain cannot be achieved;
- Fields function as a wildlife corridor;
- The fields absorb spring line water and the hardcore and covering will increase flood risk on Clappers Lane;
- Will result in significant road safety risk to unsafe access and increased vehicle movements.
- Delivery of mobile homes damages verges and hedges and will damage the culvert;
- Health and safety hazards from unauthorised provision of services;
- Nearest local shops, schools and medical facilities are more than 5 miles away, there is no public transport, and no footpaths on the lanes.

5.2 A letter of objection has also been received from the Ward Councillor, raising the following:

- There is no demonstrable need in the case of the Hearnies, so the issues are cumulative harm to the countryside and the settled community;
- Previous Inspectors raised concerns regarding the consolidation of development on the edge of the village, and individual and cumulative visual impacts;
- Further similar development would fail to enhance the natural beauty, scenic quality and landscape character of the National Park, contrary to Purpose 1;
- There is increasing tension between the settled and Gypsy and Traveller communities in Fulking;
- Further Gypsy and Traveller development could impact both communities.

## 6. Planning Policy Context

6.1 Applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory development plan in this area is the **South Downs Local Plan 2014-2033**.

6.2 The development plan policies and other material considerations considered relevant to this application are set out in section 7 below.

### National Park Purposes

6.3 The two statutory purposes of the SDNP designation are:

- To conserve and enhance the natural beauty, wildlife and cultural heritage,
- To promote opportunities for the public understanding and enjoyment of the special qualities of their areas.

6.4 If there is a conflict between these two purposes, conservation takes precedence. There is also a duty to foster the economic and social wellbeing of the local community in pursuit of these purposes.

## 7. Planning Policy

### Relevant Government Planning Policy and Guidance

7.1 Government policy relating to National Parks is set out in English National Parks and the Broads: UK Government Vision and Circular 2010 and The National Planning Policy Framework (NPPF), updated July 2021. The Circular and NPPF confirm that National Parks have the highest status of protection, and the NPPF states at paragraph 176 that great

weight should be given to conserving and enhancing landscape and scenic beauty in national parks and that the conservation and enhancement of wildlife and cultural heritage are also important considerations and should be given great weight in National Parks.

#### National Planning Policy Framework (NPPF)

7.2 The following National Planning Policy Framework documents have been considered in the assessment of this application:

- NPPF02 - Achieving sustainable development
- NPPF05 - Delivering a sufficient supply of homes infrastructure
- NPPF11 - Making effective use of land
- NPPF12 - Achieving well-designed places
- NPPF15 - Conserving and enhancing the natural environment
- NPPF16 - Conserving and enhancing the historic environment

7.3 The development plan policies listed below have been assessed for their compliance with the NPPF and are considered to be compliant with the NPPF.

#### Other Statutory and National Policy Requirements

7.4 Human Rights are also a material consideration in planning applications for Gypsy and Traveller sites as legislated for in the European Convention on Human Rights and incorporated by the Human Rights Act 1998. Of particular relevance are Articles 8 (Respect for your private and family life, home and correspondence) and 14 (Protection from discrimination in respect of these rights and freedoms). Under the Human Rights Act (1998) case law has established that Local Authorities have a duty to “facilitate the gypsy way of life” for ethnic Gypsies and Travellers. The Equality Act 2010 also recognises Gypsies and Irish Travellers as ethnic groups and protects them against discrimination. Article 3(1) of the United Nations Convention on the Rights of the Child states that the best interests of the child shall be a primary consideration.

7.5 Planning Policy for Traveller Sites (PPTS) (2015), which sets out the Government’s Guidance for the provision of Gypsy and Traveller sites, should be read in conjunction with the NPPF (2021), and is a material consideration relevant to the determination of this application.

7.6 The Best Practice Guidance: Designing Gypsy and Traveller Sites (2008) was withdrawn by Government in 2015, however still provides useful guidance for the design of Gypsy and Traveller sites.

#### The Development Plan

7.7 The following policies of the **South Downs Local Plan** are particularly relevant to this application:

- Strategic Policy SD4 - Landscape Character
- Strategic Policy SD6 - Safeguarding Views
- Strategic Policy SD33 - Gypsies and Travellers and Travelling Showpeople

7.8 A full list of policies is included at **Appendix 2**.

#### Partnership Management Plan

7.9 The Environment Act 1995 requires National Parks to produce a Management Plan setting out strategic management objectives to deliver the National Park Purposes and Duty. National Planning Policy Guidance (NPPG) states that Management Plans “contribute to setting the strategic context for development” and “are material considerations in making decisions on individual planning applications.” The South Downs Partnership Management Plan as amended for 2020-2025 on 19 December 2019, sets out a Vision, Outcomes, Policies and a Delivery Framework for the National Park over the next five years. The relevant policies include, 1, 3, 9, 48 and 50.



## 8. Planning Assessment

8.1 The main issues for consideration are:

- The principle of development, including the need for sites and availability of alternative sites;
- Human Rights and the personal needs and circumstances of the applicants;
- Landscape and visual impacts;
- Impact on the settled community and amenity of neighbouring properties;
- The suitability of the site;
- Ecology and Dark Night Skies.

### Principle of Development

8.2 Policy SD1 promotes a presumption in favour of sustainable development where development proposals accord with other relevant policies in the South Downs Local Plan and with National Park Purposes. Policy SD25 of the Local Plan directs new development to within settlement policy boundaries. Exceptionally, proposals outside settlement boundaries may be supported under SD25 2) where these comply with other relevant development plan policies, respond to the context of the relevant broad area; and

- b) There is “an essential need for a countryside location” or
- d) The proposal would comprise “an appropriate reuse of a previously developed site... and conserve[s] and enhance[s] the special qualities of the National Park.”

8.3 In this case, the site is located in the designated countryside, and has a lawful agricultural use. It is predominantly undeveloped, with a small pre-existing dilapidated shed and area of approximately 120sqm of hardstanding near the northern boundary. Ordinarily, residential development in such locations is contrary to SD25 and the principle of limiting development in the countryside and avoiding landscape harm.

8.4 Concerns have been raised by the Parish Council and other third parties that the proposals would not meet an identified local need, and that the Hearnese already have a pitch nearby.

8.5 Gypsy and Traveller sites are sometimes located within countryside locations and may be considered as an exception to the general restraint imposed on development outside of settlement policy boundaries under SD25, subject to certain considerations. SD33 2) seeks to meet the need for a limited number of pitches identified in specific districts in the National Park but not Mid Sussex District. SD33 3) support proposals for new, windfall Gypsy and Traveller sites providing they meet the following criteria:

- a) Meet a need as identified in Figure 7.4 (which sets out a need of nil pitches within the Mid Sussex area of the National Park);
- b) Do not result in sites being over-concentrated in any one location or disproportionate in size to nearby communities;
- c) Are capable of being provided with infrastructure such as power, water supply, foul water drainage and recycling/waste management without harm to the special qualities of the National Park;
- d) Provide sufficient amenity space for residents;
- e) Do not cause, and are not subject to, unacceptable harm to the amenities of neighbouring uses and occupiers;
- f) Have a safe vehicular and pedestrian access from the public highway and adequate provision for parking, turning and safe manoeuvring of vehicles within the site; and
- g) Restrict any permanent built structures in rural locations to essential facilities.

- 8.6 Paragraph 4 of the Planning Policy for Traveller Sites (PPTS) (2015) states the overarching aim of Government is to ensure fair and equal treatment for Gypsies and Travellers in a way that facilitates their traditional and nomadic life, whilst respecting the interests of the settled community. In pursuance of this aim, the Government seeks to promote more private traveller sites; increase the number of sites in appropriate locations to address under-provision and maintain an appropriate level of supply; and for Local planning authorities to have due regard to the protection of local amenity and environment. Paragraph 24 of the PPTS states that consideration of planning applications for traveller sites must also consider:
- The existing level of local provision and need for sites;
  - The availability (or lack) of alternative accommodation for the applicant(s);
  - Other personal circumstances of the applicant(s).
- 8.7 It is also important to consider the above in light of the views of the Inspectors in their respective decisions regarding the Market Gardens site in 2021 (see **Appendix 4**) and Conifers site in 2016 (see **Appendix 5**).

#### *Identified Local Need*

- 8.8 As acknowledged in the 2019 Gypsies and Travellers Government briefing paper, there is a national shortage of suitable permanent and transit Gypsy and Traveller sites. To identify local need, Local Planning Authorities are required to provide up-to-date Gypsy and Traveller Accommodation Assessments (GTAAAs). There is no single GTAA covering the South Downs National Park (SDNP), and the supporting evidence for the South Downs Local Plan (SDLP) takes a proportionate approach in collating the findings of GTAAAs prepared for the Local Housing Authority areas within the SDNP, each of which covers part of the National Park and land outside it. GTAAAs are based on survey evidence, however para 7.109 of the supporting text of SD33 sets out that there can be inherent difficulties in obtaining accurate data given the transient activities of some Gypsy and Traveller groups and the level of statistical information available at a National Park level. Nonetheless GTAAAs provide evidence that can be relied upon as a starting point for assessing a future need for sites over a period of time.
- 8.9 SD33 3) a) requires proposals for Gypsy and Traveller sites on unidentified sites to meet the need identified in Figure 7.4. It identifies a need for nil Gypsy and Traveller pitches for the Mid Sussex area of the National Park based on a GTAA produced by Mid Sussex District Council (MSDC) in 2016.
- 8.10 The updated SDNPA's Gypsy, Traveller and Travelling Showpeople Background Paper (GTTSBP) was published in March 2022, and identifies a 'new' unmet need of 29 permanent pitches for the National Park within the South Downs Local Plan period (2014-33), including 11 pitches in Brighton and Hove, one pitch in East Sussex; 11 pitches in Arun; and six pitches in Chichester. The need identified in MSDC in this document is also nil.
- 8.11 However, following publication of the SDNPA's GTTSBP, MSDC independently produced a new GTAA dated April 2022 for the new Mid Sussex Local Plan period (2021-38). The MSDC 2022 GTAA identifies a need for four pitches within the National Park, two of which would be for persons meeting the PPTS definition, and arise from new (future) household formation i.e. for children that will reach adult age. According to this information, one of the pitches will be required between 2031-35. This takes the overall need identified within the South Downs National Park for the SDLP period (2014-33) to 30 pitches.
- 8.12 Figure 7.4 of SD33 may therefore be considered as out of date, given that more recent evidence of need has become available since the adoption of the SDLP. In the Market Gardens appeal decision, the Inspector also found that caution should be applied to the consideration of SD33 with regard to Figure 7.4 and the strategy that windfall sites should **only** meet the need it identifies. He concluded that lack of ability to meet SD33 2) and 3)a) therefore carried limited weight (see **Appendix 4** paras 24 and 47).

- 8.13 Paragraph 27 of the PPTS confirms that a lack of a 5 year supply of Gypsy and Traveller sites is not a significant material consideration in National Parks. Notwithstanding, consideration of the overall need within the National Park (rather than that of separate, individual districts within it) should be afforded weight. This accords with the view of the Inspector in the Conifers appeal decision (see **Appendix 5** para 9) that “the need for gypsy sites can[not] 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.” The Inspector took the same approach in the Market Gardens appeal decision, where he considered the wider unmet need within the National Park (see **Appendix 4** para 22) and concluded that a 5 year supply of pitches could not be demonstrated by the SDNPA (para 26.) This implies that the National Park’s need does not have to be strictly met within the district within which it arises.
- 8.14 In this case the two pitches provided through the current proposals would not ostensibly meet the need identified by the MSDC GTAA 2022 arising from new household formation as this is essentially a future need that has not yet materialised. One of the pitches would provide alternative accommodation for an established Gypsy and Traveller household who are already based in the area, and whose housing needs have already been met. This pitch would therefore not meet any identified need within the SDNP. Moreover, the pitch that would be vacated at Market Gardens could lawfully be occupied by any person(s) meeting the definition, regardless of where they derive from. The other pitch would meet the needs of a Gypsy and Traveller household deriving from the Brighton and Hove area of the National Park.
- 8.15 The proposals would therefore result in a net increase of two pitches within the National Park, only one of which would meet the SDNPA’s overall identified unmet need for 30 pitches (including the further pitch identified in the MSDC GTAA 2022).
- Human Rights and Personal Needs and Circumstances of the Applicants*
- 8.16 The provisions of Articles 8 and 14 of the European Convention on Human Rights as incorporated by the Human Rights Act 1998 are important material considerations, and under Article 8, the applicants have the right to respect for their private and family life, and homes. Article 14 protects the enjoyment of human rights and freedoms without discrimination on any ground such as race, social origin or other status. Under S.149(7) of the Equality Act the applicants as ethnic travellers have the protected characteristic of race, and due regard must be had to advance equality of opportunity, including minimising disadvantages that are connected to that characteristic. Paragraph 24 of the PPTS also makes it clear that the personal needs of the applicant must be taken into consideration when determining planning applications for Gypsy and Traveller sites. It is also of primary importance to consider the best interests of the children who are currently occupying the site, in accordance with Article 3(1) of the United Nations Convention on the Rights of the Child.
- 8.17 Concerns have been raised by the Parish Council that the Hearne family already has a pitch at the nearby Market Gardens site, and it is therefore not the case that they have nowhere else to go.
- 8.18 In the Conifers and Market Gardens appeal decisions, both Inspectors gave weight to the personal circumstances of the appellants, and the fact that their options were limited. Both Inspectors also give significant weight to the primary (and therefore overriding) consideration of the best interests of the children involved, which they judged outweighed any harm to the National Park, when carrying out the Planning balance.
- 8.19 The personal circumstances of the applicants, who are stated as never having lived in bricks and mortar, are evidenced in the detail of the application. Concerns have been raised that the land registry titles for the application site list bricks and mortar addresses for both John Hearne and Russell Owen, which casts doubt on the veracity of claims made as to where the families were living prior to making the application. However addresses given for the purpose of land registry are for the service of documents, and not conclusive proof of residency, and does not in any case affect the Gypsy and Traveller status of the applicants.

- 8.20 Both pitches would provide a settled base for two Gypsy and Traveller households, and in the case of the Hearnese a settled base for their two young children. The Owen household have to date been doubling up at Mr Owen's sister's pitch at the Horsdean site, located within the Brighton area of the National Park, and prior to that Mr Owen was living a roadside existence in the locality. However, the Hearne family already have a settled base at the Market Gardens site under permission SDNP/17/03762/CND, and whilst their claim on it could be effectively relinquished via a S.106 legal agreement, the pitch would not be extinguished.
- 8.21 The needs of the children involved is a matter that should be given significant weight when considering Gypsy and Traveller applications. However in this case the children involved already have a settled base very nearby, and their access to education and health care would not be affected. Only the Owen household appears to have limited options, and they do not yet have any dependents. For the purposes of this application, the needs of the children involved carries limited weight.

*Principle of Development Summary*

- 8.22 In summary, the proposals would result in a net increase of two pitches, which represents a modest increase in the overall provision of pitches within the National Park. There is also lack of any other alternative options for the Owen family, who do not have any dependents. However the pitch for the Hearne family, who already have an established pitch elsewhere in the locality, would not meet any identified need, and the pitch that would be left vacant at Market Gardens could lawfully be occupied by any person(s) meeting the definition, regardless of where they derive from. The proposals would therefore result in a net increase of two pitches within the National Park, only one of which would definitively meet the SDNPA's overall identified unmet need for 30 pitches.
- 8.23 There are some benefits arising from the provision of one settled base in the case of the Owen family, however the personal needs and circumstances of the Hearne family and dependents do not justify the provision of an alternative, second pitch in the locality, and the needs of the children cannot be considered overriding. The principle of development has therefore not been established and is therefore contrary to SD1, SD25 2) b) and d), and SD33. Matters relating to landscape and heritage impacts, impacts on the settled community and suitability of the site in terms of services, and ecology are considered in more detail below.

Landscape, Visual and Heritage Impacts

- 8.24 Policies SD4 and SD5 support development where the design, layout and scale of proposals conserve and enhance the existing landscape character, and the individual identity of settlements is not undermined. SD6 supports development that conserves and enhances views from publically accessible areas within, into and out from settlements which contribute to the viewers' enjoyment of the National Park, and views from public rights of way, open access land and other publically accessible areas. Policies SD12 and SD13 require proposals to conserve and enhance the historic environment, and preserve and enhance the significance of listed buildings and their setting.
- 8.25 Paragraph 26 of the PPTS (2015) also states that local planning authorities should attach weight to layout and landscaping that will positively enhance the environment, and increase its openness, rather than seek to enclose sites with so much hard landscaping, high walls or fences that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.
- 8.26 Concerns have been raised by the Parish Council and other third parties that the mobile homes are conspicuous from Fulking Escarpment and the South Downs Way, and will cause harm to the landscape character and setting of the grade 2 listed building. There will also be harm from overlooking into and views from ground floor windows of the listed building.

### *Landscape and Visual Impacts*

- 8.27 In this instance, the site is well screened from close range views along Clappers Lane and the footpath to the east. Internal views of the site may be seen from the gate when open, otherwise the existing vegetation along the site's northern boundary provides a good level of screening. The eastern and western boundaries are also well vegetated, with limited intervisibility.
- 8.28 The application is not supported by any assessment of landscape impacts, which is a shortcoming of the submission. Assessment of the visual impact is necessarily subjective. The case officer and landscape officer have separately assessed visual impacts from the rights of way and publically accessible viewpoints along the scarp. The site can be seen relatively clearly from the criss-cross of public footpaths and bridleways approximately half way up the scarp slope, and less so from the South Downs Way which is somewhat set back from the edge of the ridge near the application site.
- 8.29 In the 2001 appeal decision the Inspector finds that the mobile home (which was not a Gypsy and Traveller dwelling) appeared as an "*incongruous and alien feature in the landscape... wholly at odds with the character of the houses in the immediate area*" (see **Appendix 3** paras 15). He also found that the surrounding residential paraphernalia was "*obtrusive and at odds with the countryside location*" and "*visually intrusive and out of character with the rural character of the locality.*"
- 8.30 Across the other appeal decisions relating to different sites closer to the settlement centre Inspector's commented on visual impact. The general thrust of all considerations were that there was some landscape harm and limited impact on the settlement form but was moderate and was outweighed by other considerations. However this site has different characteristics and there is less to outweigh the harm as evidenced above.
- 8.31 The Landscape officer has no objection to the proposal however identified some concerns with the layout of development and extent of hardstanding as proposed, which occupies a large part of the northern land parcel. Siting the mobile homes and other structures closer together in the northern part of the site, and restricting the amount of hardstanding and the provision of green buffers along the boundaries could further mitigate visual impacts. This lack of an in-principle objection is based on the view that the whilst the historic core of Fulking village has spread out in a linear fashion along Clappers Lane as it extends northwards away from the village, it nonetheless remained nucleated (not dispersed) in its character, with more recent dwellings located tight knit and close together along the road edge. Therefore a new 'infill' location along the road edge would follow the characteristic nucleated settlement pattern of the village as it has evolved.
- 8.32 However, turning the corner of Clappers Lane, it is clear that the settlement character becomes immediately more dispersed, with agricultural fields to the north, and a mix of residential and Gypsy and Traveller dwellings that terminate with the large cricket pavilion to the east. There are also dispersed residential dwellings along Poynings Road to the east of the settlement. To the south of Clappers Lane, more recent development is also characterised by green paddocks to the west, south and east.
- 8.33 There is not considered to be any landscape benefits that could potentially be derived from moving a pitch from a location deemed to be acceptable by a Planning Inspector at Market Gardens, to a new greenfield location, deemed unacceptable by another Inspector, which affects the more dispersed character of the area and which does intrude upon some views. In any case this is hypothetical, as extinguishment of the 'spare' Market Gardens pitch is not being offered, and legal advice provided to Officers is that it could not be secured by a S.106 agreement, given the wording of the conditions attached to permission SDNP/17/03762/CND. Furthermore it is not just one but two pitches being proposed.
- 8.34 The proposal would result in the loss of a green paddock which currently contributes positively to the dispersed, rural settlement character in this location. It would also result in the consolidation of residential development, with associated hardstanding and paraphernalia of a different domestic character that would adversely affect the landscape character.

### *Heritage Impacts*

- 8.35 The site is located within the setting of the adjacent Grade 2 listed residential dwelling known as Cabbage Patch, the garden of which wraps around the northern and eastern boundaries of the application site.
- 8.36 The application is not supported by any assessment of heritage impacts, which is also a significant shortcoming of the submission. The Historic Buildings officer has advised that neither the dwelling nor the curtilage listed outbuilding, which are both oriented away from the site, appear to have any historic association with the site. Although there is some capacity for inter-visibility in the southern part of the site, any harm to the setting of the heritage asset is considered to be minimal, and capable of being mitigated by relocation of development to the northern part of the site, and reinforcement of the northern and eastern treed boundaries.

### *Landscape, Visual and Heritage Impacts Summary*

- 8.37 In summary, the proposal would result in the loss of a green paddock which currently contributes positively to the dispersed, rural character of the settlement in this location and was the subject of a failed appeal on landscape grounds. Cumulatively it would also result in the consolidation of residential development, with associated hardstanding and paraphernalia of a different domestic character that would adversely affect the landscape character, and impact the visual amenity of users of the public rights of way on the Fulking Escarpment.
- 8.38 The proposal would result in less than substantial harm to the significance of the listed building and its setting, and a revised site layout restricting development to within the northern part of the site, with appropriate buffers, would mitigate any harm arising from intervisibility. However the landscape concern remains. The proposal is therefore contrary to policies SD1, SD4, SD6 SD25 and SD33.

### Impacts on the Settled Community and the Suitability of the Site (in terms of services)

#### *Impacts in Respect of the Settled Community*

- 8.39 Policy SD33 b) and e) support Gypsy and Traveller development proposals that do not result in sites being over-concentrated in any one location or disproportionate in size to nearby communities; and do not cause, and are not subject to, unacceptable harm to the amenities of neighbouring uses and occupiers. Respect for the interests of the settled community is also an overarching aim of PPTS (2015), which states at para 15 that when assessing the suitability of sites in rural or semi-rural settings, Local Planning Authorities should ensure that the scale of such sites does not dominate the nearest settled community.
- 8.40 Both SD33 and the PPTS are concerned with ensuring that the scale and/or intensity of Gypsy and Traveller development does not dominate the nearest settlement or result in unacceptable harm to neighbouring amenities. Supporting text para 7.118 sets out that observing this principle can help with community cohesion.
- 8.41 Concerns have been raised by Fulking Parish Council and other third parties that recent appeal decisions have given more weight to the interests of applicants than to the local settled community. The proposals would also result in the over concentration of gypsy sites in one location and cumulatively dominate the local settled community, and harm the amenity of nearby settled residents.
- 8.42 Both Inspectors raised concerns with regard to the potential for disproportionate overconcentration due to the effects of the proposals on the spatial cohesion of the small, nucleated settlement of Fulking. In the Conifers decision the Inspector considered that three pitches “comes close to but does not dominate the settled community”, and that the argument would become “stronger with further applications” (see **Appendix 5** para 21.)
- 8.43 In the Market Gardens decision the Inspector considered that the cumulative size of six pitches and associated paraphernalia would be a “large residential area relative to the nucleated footprint of village with a distinctly different domestic character” and “intensify the presence of scattered and sporadic development on the village edge” in a way that “would erode the nucleated form and character of Fulking” (see **Appendix 4** paras 19 and 8.) However, the development

would not “*appear dominant or stark*” and the total number of pitches would “*remain clearly subservient to the number of bricks and mortar homes*” (see **Appendix 4** para 20.) He nonetheless concludes that the proposal would result in a disproportionate over-concentration of pitches in one location that would “*result in some limited harm to the spatial cohesion of the village... [that would] not dominate the settled community, but... would fail to respect its modest scale*” (see **Appendix 4** para 21.) The fact that the intended occupants had already been resident in the village for many years was a “*significant mitigating factor.*”

- 8.44 Residents of Gypsy and Traveller sites in sparsely populated, rural areas will generally form a higher percentage of the local population than average. In this case the proposal would result in a total of eight pitches in the locality, which in household terms could be considered subservient to the number of bricks and mortar homes in Fulking (around 55). However, the proposal would result in a new Gypsy and Traveller site and an increase in an already concentrated number of pitches and associated hardstanding and paraphernalia on the edge of a small settlement. Furthermore, the previous mitigating factor does not apply in this case given that the Owen family is new to the area, and the Hearne family already have a permitted pitch nearby. The proposal would therefore result in an overconcentration of sites and pitches that would be disproportionate in size to the nearby village of Fulking and dominate the settled community which has already met its limits in terms of accommodating this type of development.

*Amenity of Neighbouring Uses and Occupiers*

- 8.45 In terms of neighbouring amenity, the site sufficiently screened along its boundaries such that issues of privacy/overlooking with adjoining land uses is considered to be minimal, albeit many of the mature trees appear to be ash. The applicant has offered to reinforce the treed boundaries with additional planting, which is supported by the Landscape and Heritage officers, and this could be secured via a suitably worded landscaping condition. Although the provision of the additional pitches will result in some additional traffic movements, given that the site is only used for residential purposes, noise impacts are not considered to be significant. Concerns raised regarding external lighting could also be addressed by a condition requiring a dark skies compliant external lighting scheme.

*The Suitability of the Site in terms of Services*

- 8.46 Policy SD33 3) c), d) and f) support development proposals for Gypsy and Traveller sites where the site is capable of being provided with infrastructure without harm to the special qualities of the National Park; that provide sufficient amenity space for residents; and have a safe vehicular and pedestrian access from the public highway and adequate provision for parking. Paragraph 25 of the PPTS (2015) states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan.
- 8.47 Concerns have been raised by the Parish Council and other third parties with regard to increased flood risk due to the 950sqm of hardstanding already laid, environmental and health and safety hazards to occupants and neighbours unauthorised installation of services, and road safety.
- 8.48 The MSDC Drainage officer has raised no concerns, subject to conditions securing details of foul and surface water drainage, and a site protection plan to prevent silt and water run-off during construction. It is acknowledged that the hardstanding has already been laid, and mobile homes stationed on site, however it is gravel over a chalk base, which is porous and unlikely to result in additional run-off from the site over that existing. Any further physical development is limited to the construction of the day rooms, and associated services. MSDC Environmental Health have also not raised any concerns.
- 8.49 There is no shop or school in Fulking, and the village scores very low in the SDNPA’s Settlement Facilities Assessment (2015) in terms of access to local facilities and services. The site is generally remote from local services, shops, and means of public transport. However, in the Conifers appeal decision the Inspector considered the area to be “*just about within a “reasonable distance of local services”* and not “*open countryside that is away from existing settlement*” (see **Appendix 5** paras 13 and 14.)

8.50 The proposal would require occupants to travel by private vehicle, however the level of traffic generation would not be substantial, and the Highway Authority have advised that it is unlikely that any adverse impacts will result from the proposal. There is adequate parking and turning space within the site to accommodate the additional pitches. The site is of a sufficient size and space to allow sufficient distance between caravans to comply with licensing requirements, and would broadly accord with the (now withdrawn) Best Practice Guidance: Designing Gypsy and Traveller Sites (2008.)

8.51 The site is therefore considered to be suitable for use as a private Gypsy and Traveller site in terms of services and distances to them.

#### *Impacts on the Settled Community and Suitability of the Site Summary*

8.52 In summary, the proposal would result in a new Gypsy and Traveller site on the edge of a small settlement, in addition to two existing sites, with associated hardstanding and paraphernalia of a different domestic character to the rest of the village. When assessed cumulatively, the proposals would therefore result in an overconcentration of sites and pitches that would be disproportionate in size to the nearby village of Fulking and dominate the settled community which has already met its limits in terms of accommodating this type of development. The proposal would therefore fail to meet the requirements of SD33 3) b) and the PPTS 2015.

#### Ecology, Trees and Dark Night Skies

8.53 Policies SD2, SD9, SD11 and SD45 support proposals that conserve and enhance biodiversity, trees and woodland, and green infrastructure; retain, protect and enhance features of biodiversity and supporting habitat, and identify and incorporate net gains for biodiversity and green infrastructure.

8.54 Policy SD8 requires proposals to take all opportunities to reduce light pollution, and ensure that the measured and observed sky quality in the surrounding area is not affected. The site is located within the Dark Skies Intrinsic Zone of Darkness (E1a), which is classified as 'dark sky' and includes isolated areas that may not be connected to the main core. In these areas, glazing should be kept to a minimum, and external lighting should be limited to timed and/or sensor-controlled lighting designed and shielded to minimise light spillage. External lighting should only be used when needed.

8.55 The Parish Council and other third parties have raised concerns that wildlife and habitat has been harmed, that legislation protecting Great Crested Newts (GCN) has been breached, and that flood lighting installed on the site is harmful to protected species and dark night skies. As observed at the officer's site visit there are also a number of external lanterns along the western boundary, and it is unclear whether these currently meet dark skies guidance.

8.56 The Parish Council's concerns regarding GCN appear to arise from the Authority's ecologist comments, which advise that records show there is a confirmed presence in the area. It is therefore possible that the works already carried out to provide the hardstanding may have impacted protected species or habitat. However there is no evidence that this is the case, or that any breach of legislation has occurred.

8.57 The Authority's ecologist has no objection to the proposals providing a minimum of a 2m buffer is retained between the proposed parking areas, mobile homes and day rooms to protect the native hedgerows and mature treelines on all boundaries. A detailed scheme of biodiversity enhancements should also be secured via condition.

8.58 It is therefore considered that the proposal is capable of complying with SD8 and SD9 subject to conditions securing a scheme of biodiversity enhancements, and details of suitable external lighting.

## **9. Conclusion**

9.1 The proposals would result in a net increase of two pitches within the National Park. The pitch for the Owen family would go towards meeting the need identified within the National Park. However, the Hearne family already have an established pitch elsewhere in the



immediate locality, and their need has already been met. The pitch that would be left vacant at Market Gardens could, subject to a completion of a S.106 agreement, lawfully be occupied by any person(s) meeting the definition, regardless of where they derive from. Therefore, only one of the pitches would definitively meet the SDNPA's overall identified unmet need for 30 pitches.

- 9.2 The proposal would also result in the loss of a green paddock, which currently positively contributes to the dispersed, more rural landscape character in this location. Cumulatively it would also consolidate residential development of a different domestic character in a single location on the edge of a small village. The proposal is therefore contrary to policies SD1, SD4 and SD25, the PPTS (2015), the NPPF 2021 and the National Park's first purpose.
- 9.3 Although there may be some benefits arising from the provision of one settled base in the case of the Owen family, the principle of development based on meeting an identified local need and the personal circumstances of the applicants is not established. Furthermore, the proposal would result in an overconcentration of sites and pitches that would be disproportionate in size to the nearby village of Fulking and dominate the settled community which has already met its limits in terms of accommodating this type of development. The proposal is therefore contrary to SD1, SD25 2) b) and d), and SD33 b) and the PPTS (2015).
- 9.4 The proposal is therefore recommended for refusal.

## **10. Reason for Recommendation and Conditions**

- 10.1 The application is recommended for refusal for the following reason:
1. The proposal would consolidate residential development of a different domestic character that would be harmful to the dispersed, rural landscape character of the settlement edge in this location where open spaces intersperse with limited sporadic development, and would fail to conserve and enhance existing landscape character features or respond to the context of the relevant broad area. It would also negatively impact visual amenity of users of the public rights of way on the Fulking Escarpment. The proposal is therefore contrary to SD1, SD4, SD6 and SD25 of the South Downs Local Plan (2014-33), Planning Policy for Traveller Sites (2015) the NPPF (2021) and the National Park's first purpose.
  2. The proposal, by reason of its nature and location, would result in an overconcentration of sites and pitches in one area that would be disproportionate in size to the nearby village of Fulking, and dominate the settled community. One of the two pitches would also fail to meet any identified local need. The proposal is therefore contrary to SD1, SD25 2) b) and d), and SD33 b) of the South Downs Local Plan (2014-33), and Planning Policy for Traveller Sites (2015).

## **11. Crime and Disorder Implications**

- 11.1 It is considered that the proposal does not raise any crime and disorder implications.

## **12. Human Rights Implications**

- 12.1 This planning application has been considered in light of statute and case law and any interference with an individual's human rights is considered to be proportionate to the aims sought to be realised. The assessment of this application has been carried out without prejudice or discrimination and it is not considered that the proposals would interfere with Human Rights. The proposed development would not infringe the rights of the applicant, the settled community or neighbouring residents to the development.

## **13. Equality Act 2010**

- 13.1 Due regard has been taken of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010.

## **14. Proactive Working**

- 14.1 In reaching this decision the Local Planning Authority has worked with the applicant in a positive and proactive way, in line with the NPPF.

**TIM SLANEY**

**Director of Planning**

**South Downs National Park Authority**

Contact Officer: Stella New

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Appendices

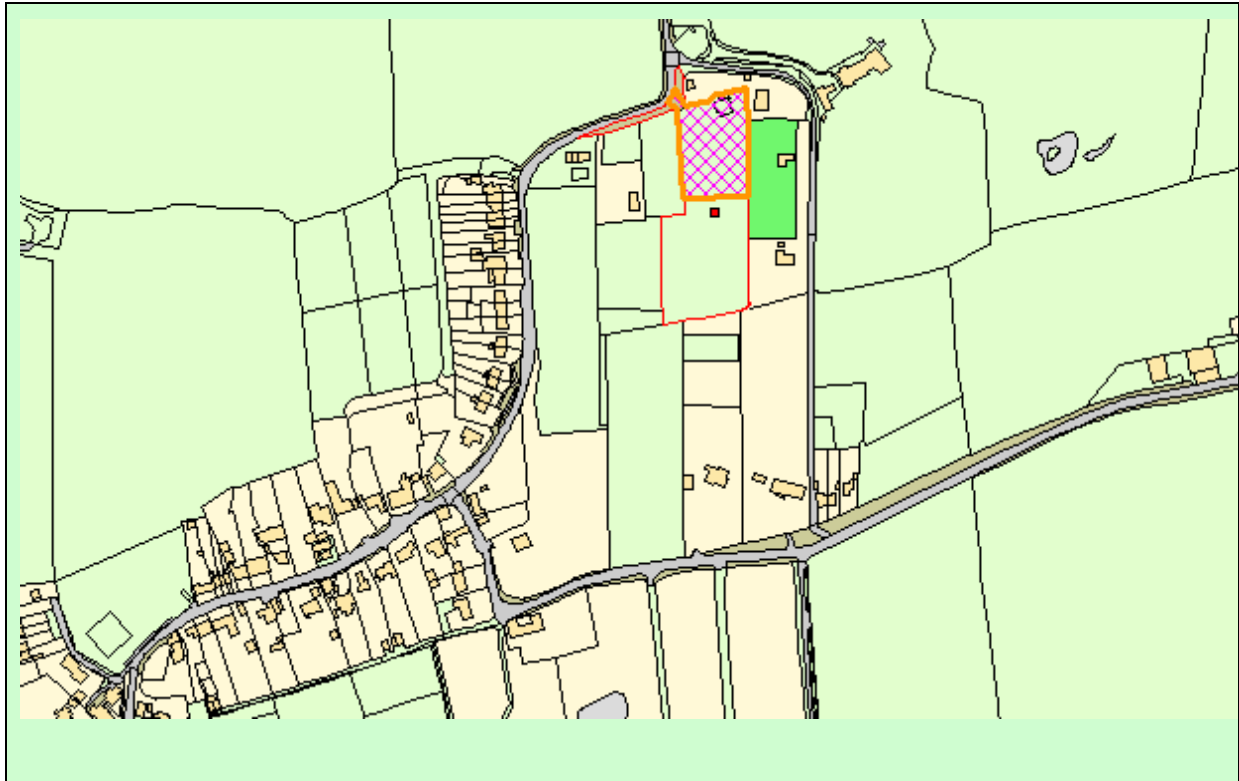
1. Site location map
2. Information for Determination at Committee
3. Appeal Decision APP/D3830/A/02/1093423 for FK/01/1533/FULL (Small Acre)
4. Appeal Decision APP/Y9507/W/19/3225109 for SDNP/18/05963/FUL (Market Gardens)
5. Appeal Decisions APP/Y9507/C/15/3062034 and APP/Y9507/C/15/3062035 for SDNP/15/00057/ENNOT and SDNP/14/03055/FUL (Conifers)

SDNPA Consultees Legal Services, Development Manager

Background Documents: [All planning application plans, supporting documents, consultation and third party responses](#)  
[National Planning Policy Framework \(2012\)](#)  
[South Downs National Park Partnership Management Plan 2020-25](#)  
[South Downs Local Plan \(2014-33\)](#)  
[South Downs Integrated Landscape Character Assessment 2020](#)  
[Mid Sussex Gypsy and Traveller Accommodation Assessment 2022](#)  
[BHCC Gypsies and Travellers Statement of Common Ground](#)  
[Planning Policy for Traveller Sites \(PPTS\) \(2015\)](#)  
[European Convention on Human Rights as incorporated by the Human Rights Act 1998](#)  
[Designing Gypsy and Traveller Sites Best Practice Guide \(2008\)](#)  
[Gypsies and Travellers Briefing Paper \(May 2019\)](#)  
[Update to the Gypsy, Traveller and Travelling Showpeople Background Paper \(March 2022\)](#)

## Appendix I

### Site Location Map



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### **Information concerning consideration of applications before committee**

Officers can confirm that the following have been taken into consideration when assessing the application:-

#### **National Park Purposes**

The two statutory purposes of the SDNP designation are:

- To conserve and enhance the natural beauty, wildlife and cultural heritage;
- To promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public.

If there is a conflict between these two purposes, greater weight shall be given to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in a National Park, whereby conservation takes precedence. There is also a duty upon the National Park Authority to foster the economic and social wellbeing of the local community in pursuit of these purposes.

#### **National Planning Policy Framework and the Vision & Circular 2010**

The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied. It was first published in 2012. Government policy relating to National Parks is set out in English National Parks and the Broads: UK Government Vision and Circular 2010.

The Circular and NPPF confirm that National Parks have the highest status of protection in relation to landscape and scenic beauty. The NPPF states at paragraph 176 that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks and that the conservation and enhancement of wildlife and cultural heritage are important considerations which should also be given great weight in National Parks. The scale and extent of development within the Parks should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.

#### **Major Development**

Paragraph 177 of the NPPF confirms that when considering applications for development within the National Parks, permission should be refused for major development other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest.

For the purposes of Paragraph 177 whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.

For the purposes of this application, assessment as to whether the development is defined as major for the purposes of Para 177 is undertaken in the Assessment Section of the main report.

#### **The Town and Country Planning (Environmental Impact Assessment) Regulations 2017**

A screening opinion has concluded that for reasons of scale, use, character and design and environmental considerations associated with the site, the proposals are not EIA development within the meaning of the relevant 2017 legislation. Therefore, an EIA is not required.

#### **The Conservation of Habitats and Species Regulations 2017**

Following a screening of the proposals, it is considered that a likely significant effect upon a European designated site, either alone or in combination with other proposals, would not occur given the scale, use, and location of what is proposed. Consequently, an Appropriate Assessment under a Habitats Regulation Assessment is not required.

## **Relationship of the Development Plan to the NPPF and Circular 2010**

The development plan policies listed within the reports have been assessed for their compliance with the NPPF and are considered compliant with it.

## **The South Downs National Park Partnership Management Plan 2020-2025**

The Environment Act 1995 requires National Parks to produce a Management Plan setting out strategic management objectives to deliver the National Park Purposes and Duty. National Planning Policy Guidance (NPPG) states that Management Plans “contribute to setting the strategic context for development” and “are material considerations in making decisions on individual planning applications.” The South Downs Partnership Management Plan as amended for 2020-2025 on 19 December 2019, sets out a Vision, Outcomes, Policies and a Delivery Framework for the National Park over the next five years. Relevant Policies are listed in each report.

## **South Downs Local Plan**

The South Downs Local Plan (SDLP) was adopted by the Authority in July 2019. All development plan policies are taken into account in determining planning applications, along with other material considerations.

The Planning and Compulsory Purchase Act 2004 S38 (6) confirms that “If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”.

## **All Relevant Policies of the South Downs Local Plan which are of relevance to this application**

- Core Policy SD1 - Sustainable Development
- Core Policy SD2 - Ecosystems Services
- Strategic Policy SD4 - Landscape Character
- Strategic Policy SD5 - Design
- Strategic Policy SD6 - Safeguarding Views
- Strategic Policy SD7 - Relative Tranquillity
- Strategic Policy SD8 - Dark Night Skies
- Strategic Policy SD9 - Biodiversity and Geodiversity
- Development Management Policy SD11 - Trees, Woodland and Hedgerows
- Strategic Policy SD12 - Historic Environment
- Development Management Policy SD13 - Listed Buildings
- Strategic Policy SD19 - Transport and Accessibility
- Development Management Policy SD21 - Public Realm, Highway Design and Public Art
- Development Management Policy SD22 - Parking Provision
- Strategic Policy SD25 - Development Strategy
- Strategic Policy SD33 - Gypsies and Travellers and Travelling Showpeople
- Strategic Policy SD45 - Green Infrastructure
- Development Management Policy SD50 - Sustainable Drainage Systems

## **Legislation for heritage assets**

The Planning (Listed Buildings and Conservation Areas) Act 1990 places a series of duties on planning authorities when determining applications for planning permission and listed building consent.

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states “in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”

Section 72 of the Town and Country Planning (Listed Buildings and Conservation Area) Act 1990 (as amended) relates to conservation areas. It requires “special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”

### **Human Rights Implications**

These planning applications have been considered in light of statute and case law and any interference with an individual’s human rights is considered to be proportionate to the aims sought to be realised.

### **Equality Act 2010**

Due regard has been taken within this application of the South Downs National Park Authority’s equality duty as contained within the Equality Act 2010.

### **Crime and Disorder Implication**

It is considered that the proposal does not raise any crime and disorder implications

### **Proactive Working**

In reaching this decision the Local Planning Authority has worked with the applicant in a positive and proactive way, in line with the NPPF.







# The Planning Inspectorate

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Tim BARKLEY

Mrs L Wiltshire (Planning Department)  
Mid Sussex District Council  
Oaklands  
Oaklands Road  
Haywards Heath  
West Sussex,  
RH16 1SS

Your Ref: FK/01/1533/FULL  
Our Ref: APP/D3830/A/02/1093423  
Date: 25 November 2002

Dear Madam

**TOWN & COUNTRY PLANNING ACT 1990**  
**APPEAL BY L ELLISTON**  
**SITE AT SMALL ACRES, CLAPPERS LANE, FULKING, BN5 9NH**

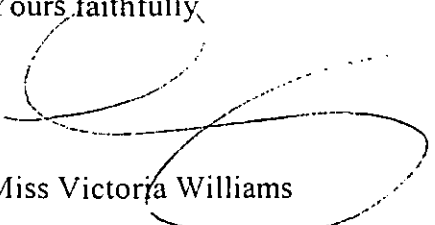
I enclose a copy of our Inspector's decision on the above appeal.

If you have any queries relating to the decision please send them to:

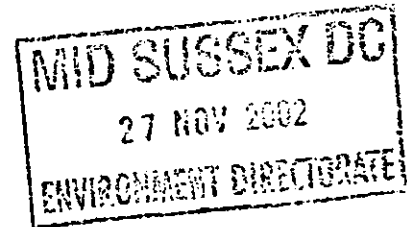
Quality Assurance Unit  
The Planning Inspectorate  
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Phone No. 0117 372 8252  
Fax No. 0117 372 8139  
E-mail: [Complaints@pins.gsi.gov.uk](mailto:Complaints@pins.gsi.gov.uk)

Yours faithfully,

  
Miss Victoria Williams

COVERDL1





# Appeal Decision

Hearing held on 12 November 2002

Site visit made on 12 November 2002

by **Clive Hughes** BA(Hons) MA DMS MRTPI

an Inspector appointed by the First Secretary of State

The Planning Inspectorate  
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Date

27 NOV 2002

**Appeal Ref: APP/D3830/A/02/1093423**

**Small Acres, Clappers Lane, Fulking, West Sussex BN5 9NH**

- 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 Lucia Elliston against the decision of Mid-Sussex District Council.
- The application (Ref. FK/01/01533/FUL), dated 30 July 2001, was refused by notice dated 21 December 2001.
- The development proposed is to site a mobile home.

**Summary of Decision: The appeal is dismissed.**

## Procedural Matters

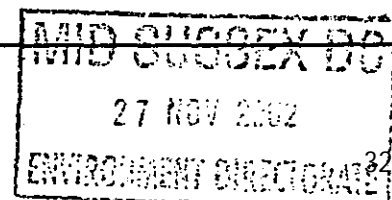
1. The mobile home is already on the site and so I have determined this appeal as being for the retention of the mobile home.

## Main Issue

2. The appeal site is situated within the South Downs Area of Outstanding Natural Beauty (AONB). I consider that the main issue is the effect of the development on the character and appearance of the countryside, taking account of the policies of restraint towards development in the countryside and in the AONB in particular as set out in the development plan and the material considerations advanced in this case.

## Planning Policy

3. The development plan for the area includes the West Sussex Structure Plan 1993 and the South Mid Sussex Local Plan 1990. Policy C1 of the Structure Plan states that the planning authorities will seek to protect the countryside for its own sake from development that does not need a countryside location. It states that development will not normally be allowed outside the built up area boundaries unless it is for certain specified purposes. Policy C2 relates to AONBs, where only in compelling circumstances will development be permitted where it would be harmful to the visual quality and distinctive characteristics of the AONB. Policy H6 relates to social housing outside the built up areas.
4. Policy SH 2/1 of the Local Plan sets out the general presumption against development in the countryside shown on the Proposals Map as a Countryside Area of Development Restraint. It states that development in the countryside will be firmly resisted. It sets out the circumstances in which exceptions may be made.
5. The emerging plans include the West Sussex Structure Plan 2001-2016 Deposit Draft and the Mid Sussex Local Plan Revised Deposit Draft (August 2001). Policy LOC2 of the emerging Structure Plan states that development in the countryside, which does not require



a countryside location, should not be permitted. Policy CH2 relates to AONBs and states that development should not be permitted unless the natural beauty, distinctive character, remote and tranquil character of the AONB will be maintained and, where possible, enhanced. Policy NE2 relates to housing provision. It states that local plans will secure the provision of housing outside the built up area boundaries, as an exception to the general policy of restraint, to meet the proven needs of local people who are not able to compete in the open housing market. This plan is still at a relatively early stage in the process and will be the subject of an Examination in Public later this year. I therefore give it very limited weight in accordance with paragraphs 47-49 of *Planning Policy Guidance 1: General Policy and Principles* (PPG1, 1997).

6. Policy C1 of the emerging Local Plan states that outside the defined built up area boundaries, the remainder of the plan area is classified as a Countryside Area of Development Restraint where the countryside will be protected for its own sake. Outside these boundaries development that would extend the built up area boundaries will be firmly resisted and restricted to certain specified exceptions. Policy C4 states that within the AONB the aim to conserve and enhance natural beauty is regarded as the overall priority. This plan has been the subject of a Local Plan Inquiry and the Inspector's decision is awaited. Objections were raised to the cited policies so I give this plan limited weight in accordance with paragraphs 47-49 of PPG1 (1997).

## Reasons

### *The appeal site and its setting*

7. The appeal site is situated within open countryside to the north east of the village of Fulking. This village is situated at the foot of the South Downs escarpment, which rises steeply to the south. The site is accessed from Clappers Lane, a narrow country road that runs from the centre of Fulking in a generally northerly direction. The village end of this road is fronted by houses to the west and fields to the east. The housing development stops well short of the appeal site.
8. There is a scattering of development around the appeal site with a few houses and a cricket club. The houses include *The Cabbage Patch*, a Grade II Listed Building situated immediately to the east of the mobile home and whose garden abuts the northern boundary of the appeal site. The cricket club, the Preston Nomads CC, has a new pavilion served off a track that runs along the northern boundary of *The Cabbage Patch*.
9. The appeal site itself has an area of about 1.3ha and is roughly rectangular in shape. The boundaries are generally well screened with planting. The southern part is grassed and was formerly used for the grazing of horses. Along the northern edge of the site, separated from the remainder of the field by a row of conifer trees, there is a concrete access drive serving a mobile home, two dilapidated sheds and assorted residential paraphernalia. At the time of my visit this included a swing, various gas canisters, bricks, and the remains of a bonfire. This appeal relates to the retention of the mobile home only.

### *Relevant history*

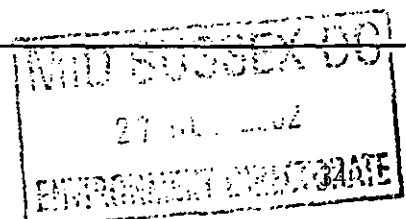
10. The appeal site has a long and complex history. It appears to have been used for the stationing of a caravan, on and off, since at least the mid 1930's, and possibly for a lot longer. A brief history records that between 1952 and 1961 it had the benefit of temporary

planning permissions for the siting of a holiday caravan. In the 1960's and 1970's there were temporary personal planning permissions for residential caravans. In the 1980's temporary personal planning permissions were granted to the Dowsett Family. In 1985, following the refusal of a planning application, an enforcement notice was issued.

11. At a subsequent appeal the notice was quashed and the Inspector allowed the continued occupation of the mobile home without complying with the time condition. The Council interpreted this as also removing a condition limiting the occupation to the Dowsett family (the personal condition), but this interpretation was held to be flawed by an Inspector following a further enforcement appeal in 1997. That Inspector concluded that the personal condition was still extant. Another enforcement notice was issued in 1998 and the subsequent appeal dismissed. Further non-compliance led to court proceedings in the form of an injunction against the then owner, Mr Boyle. On 17 May 2002 the Courts refused an application by Mr Boyle for leave to appeal against the injunction. In reaching that conclusion Lord Justice Laws stated that he considered the Inspector's reasoning regarding the validity of the personal condition to be correct.
12. The appellant, Miss Elliston, appears to have lived in a caravan on the site for a period from August 2000, bringing her mobile home onto the site in December 2000. In August 2001 she stated paying rent to Mr Boyle. In July 2002 the injunction was served giving Mr Boyle 3 months to clear the site. By the time of my visit only the appellant's mobile home, two sheds and the residential paraphernalia referred to above remained on the site.
13. At the hearing it became clear that Mr Boyle has probably sold the site to a person only known as "Matthew". He had told the appellant that the injunction would take effect on 13 November 2002 and to this end the appellant was busy clearing her possessions off the site. Due to the apparent change of ownership, the Council did not consider that the appellant had been correctly advised regarding the immediacy of the effect of the injunction. The appellant has no contract with either Mr Boyle or the new owner.

*Effect on the countryside*

14. The appeal site is outside the built up area boundary of Fulking and therefore the countryside policies apply. The area is defined as a Countryside Area of Development Restraint and the site is within the AONB. In addition, the site is within the proposed South Downs National Park. The policies in the development plan seek the protection of the countryside for its own sake. This policy objective is also set out in Government advice in PPG7: *The Countryside – Environmental Quality and Economic and Social Development* (1997). This advice states that the primary objective of AONB designation is conservation of the natural beauty of the landscape.
15. In this case the appeal site is visible from the public highway, both around the site and from across fields from the road linking Fulking with Poynings to the east. It is also visible in long views from the South Downs, the site being visible from the South Downs Way. Compared to some of the photographs submitted by a neighbour in support of written representations on this appeal, the site appears to have been partly tidied up. However, I consider that the mobile home appears as an incongruous and alien feature in the landscape. Its boxy shape and bright colour make it particularly noticeable in the countryside, its design being wholly at odds with the character of the houses in the immediate area. I have considered whether the imposition of a condition requiring the repainting of the mobile home a different colour could make it acceptable. However, while this could reduce its



obtrusiveness, I do not consider that it would overcome the fundamental objection to its presence.

16. It seems to me that it is not just the mobile home that needs to be considered as there was, at the time of my visit, a significant amount of residential paraphernalia surrounding the mobile home. This appeared to me to be obtrusive and at odds with the countryside location. The mobile home is not used in connection with any use that essentially demands a countryside location. I have found nothing in the cited policies that allow the siting of a mobile home in the countryside in such circumstances. It is visually intrusive and out of keeping with the rural character of the locality.
17. I conclude that the development is harmful to the character and appearance of the countryside. As such it is contrary to the provisions of Policies C1 and C2 of the Structure Plan, Policy SH 2/1 of the Local Plan, Policies LOC2, CH2 and NE2 of the emerging Structure Plan and Policies C1 and C4 of the emerging Local Plan. Having come to this conclusion, I consider that it is necessary to determine whether the personal circumstances advanced in this case are sufficient to outweigh these objections and policies.

*Personal circumstances*

18. I have paid particular attention to the personal circumstances advanced in this case, as the consequences of the appeal being dismissed are significant. The appellant is not a gypsy although she has enjoyed a nomadic way of life. However, no evidence was put forward to suggest that this was an integral part of her life. The appellant and her son moved on to the site initially to help to look after the site owner's two horses, one of which was sick. Having lived in a caravan owned by the then site owner, Mr Boyle, she bought a mobile home that she moved on to the site in December 2000. It appears that the site owner advised her that planning permission was in place and that she did not check the validity of this assertion.
19. Until a few days before the hearing, the appellant lived on the site with her son and their pets. Her son is at primary school and has been statemented for special needs. He has suffered from asthma, but since living on this site he has not suffered a single attack. They gave up their flat in Brighton in May/June 2001 following a notice to quit. If planning permission for the retention of the mobile home is not forthcoming, they will become homeless. At the hearing the appellant stated that she has attempted to find an alternative site for her mobile home, but due to its age the mobile home parks will not accept it. If housed by the Council, their pets would not be able to move with them, as they would initially be placed in temporary accommodation.
20. However, it is clear that the Council had issued enforcement notices in respect of the unauthorised structures on the appeal site prior to the appellant moving there. With hindsight the appellant would have been well advised to ascertain the accuracy of the assurances regarding planning permission that she was given by the site owner prior to investing in the mobile home. I do not consider that the alleged failure by the former site owner to provide correct information justifies the retention of the mobile home on this unsuitable site.
21. While I acknowledge that the appellant undoubtedly finds it very pleasant to live there, I have found no compelling reasons that outweigh the policies in the adopted or emerging plans. With regard to her son's schooling, it was agreed at the hearing that his school is

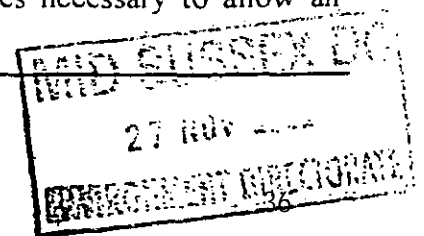
about 12km away, being located near the sea front in Brighton. He has to be driven to and from the school each day. No employment reasons were given for needing to live on the site or indeed in this area. Although the appellant had initially looked after horses for the former site owner, Mr Boyle, by the time of the hearing these horses had been sold and moved from the site. While I have no reason to doubt the difficulty in finding an alternative site for the mobile home, no evidence was produced to demonstrate that there are no suitable sites or that alternative accommodation is not available. I conclude that the personal circumstances advanced in this case are insufficient to outweigh the harm that the development causes to the countryside and to the AONB in particular.

#### *Human Rights Act*

22. The appellant's statement in support of the planning appeal makes reference the European Convention on Human Rights as embodied in the Human Rights Act 1998. Although this was not expanded upon in the appeal statement or at the hearing, I consider that it is important to take it into consideration.
23. As regards the submissions that were made relating to Article 8 of the European Convention on Human Rights, I recognise that the dismissal of the appeal would result in an interference with Lucia Elliston's home and private and family life. However, that interference must be balanced against the public interest in pursuing the legitimate aims stated in Article 8, particularly the economic well-being of the country (which includes the preservation of the environment) and the rights and freedoms of others. The objections to the development referred to in paragraphs 14 to 17 above are serious ones and cannot be overcome by granting a temporary planning permission or one subject to other conditions. The public interest can only be safeguarded by the refusal of permission. In all the circumstances I consider that the refusal of planning permission is necessary in a democratic society in furtherance of the legitimate aims stated. They do not place a disproportionate burden on Lucia Elliston. I therefore consider that the dismissal of the appeal would not result in a violation of her rights under Article 8 of the Convention.

#### **Conclusions**

24. I have taken into account all the other matters raised at the hearing and in the written representations. With regard to the impact on the occupiers of *The Cabbage Patch*, I saw at the site visit that the mobile home is sited very close to the common boundary with that property. While there are no windows at first floor facing the appeal site, the various structures would be visible from the ground floor windows through the boundary vegetation. There would also be likely to be a certain amount of noise associated with the use. Due to the boundary screening I am not convinced that there would be significant harm to the setting of this listed building, but there would be likely to be some visual and aural intrusion. I have found nothing in these other matters to outweigh my conclusions on the main issue.
25. Overall, therefore, I conclude that the development is harmful to the character and appearance of the countryside. This countryside is designated as an AONB and as such the development plan states that it will be afforded long term protection. The development plan states that only in compelling circumstances will development be permitted that is harmful to the nationally important visual quality and distinctive characteristics of AONBs. I do not consider that the personal circumstances advanced in this case are sufficient to outweigh that harm. They do not amount to the compelling circumstances necessary to allow an



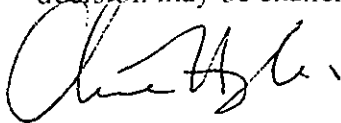
exception to the policies in the development plan. I conclude that the development is contrary to the provisions of the development plan and the emerging Structure and Local Plans. I conclude that this appeal should fail.

**Formal Decision**

26. In exercise of the powers transferred to me, I dismiss the appeal.

**Information**

27. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.



Inspector

**MID SUSSEX DISTRICT COUNCIL**

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 Fax: 01444 477461 DX 300320 Haywards Heath 1 www.midsussex.gov.uk

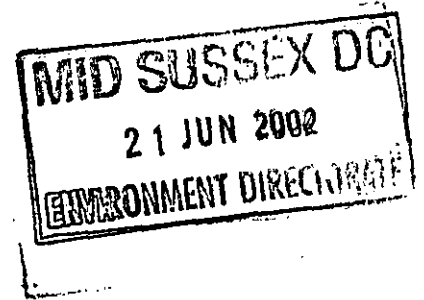
West Sussex

Application Number : FK/01/01533/FUL

**REFUSAL**

TOWN AND COUNTRY PLANNING ACT, 1990

APPLICANT : LUCIA ELLISTON  
 C/O : LUCIA ELLISTON  
 SMALL ACRE  
 CLAPPERS LANE  
 FULKING  
 HENFIELD  
 WEST SUSSEX  
 BN5 9NH



DESCRIPTION : TO SITE A MOBILE HOME

LOCATION : SMALL ACRE CLAPPERS LANE FULKING HENFIELD WEST  
 SUSSEX BN5 9NH

The Council hereby notify you that they **REFUSE** to permit the above development as shown in the submitted application and plans.

The reasons for the Council's decision are:-

1. The land lies within the Sussex Downs Area of Outstanding Natural Beauty. Within such areas Policy C2 of the West Sussex Structure Plan 1993 and 1998 and Policy C4 of the Mid Sussex Local Plan 2000 require that only in compelling circumstances will development be permitted which would be harmful to its visual quality and essential characteristics. The Development harms these features and it is not considered that compelling circumstances exist in this case to justify the Development.
2. The land lies in a Countryside Area of Development Restraint and the Development, being unrelated to the needs of agriculture, forestry, the extraction of minerals, the deposit of waste, the implantation of Policy H6 of the Structure Plan or for quiet informal recreation, conflicts with Policy C1 of the Structure Plan and Policy SH2/1 of the South Mid Sussex Local Plan, which seek to protect the countryside for its own sake from development which does not need a countryside location.
3. The Development constitutes an alien intrusion in the countryside which is out of keeping with and detrimental to the rural character of the locality which forms part of an Area of Outstanding Natural Beauty.



# MID SUSSEX DISTRICT COUNCIL

Agenda Item 10 Reso 11/01/01 Appendix 3  
Oaklands Road, Haywards Heath, West Sussex RH16 1SS Switchboard: 01444 458166  
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West Sussex

Application Number : FK/01/01533/FUL

*R.M. Walker*

DIRECTOR OF ENVIRONMENT

21 DEC 2001

REFULZ



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## Appeal Decision

Site visit made on 25 January 2021

**by Graham Chamberlain BA (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 8<sup>th</sup> February 2021**

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**Appeal Ref: APP/Y9507/W/19/3225109**

**Market Garden Caravan Site, Clappers Lane, Fulking 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 & Mrs J Hearne against the decision of South Downs National Park Authority.
  - The application Ref SDNP/18/05963/FUL, dated 16 November 2018, was refused by notice dated 14 February 2019.
  - The development proposed is described as 'material change of use of land for stationing of caravans for residential occupation with facilitating development (hard standing)'.
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### Decision

1. The appeal is allowed and planning permission is granted for the material change of use of land for stationing of caravans for residential occupation with facilitating development (hard standing) at Market Garden Caravan Site, Clappers Lane, Fulking BN5 9ND, in accordance with the terms of the application, Ref: SDNP/18/05963/FUL, dated 16 November 2018, subject to the conditions set out in the attached schedule.

### Preliminary Matters

2. A mobile home has been brought onto the site and therefore the proposal has commenced. Since the National Park Authority (NPA) issued its decision it has adopted the South Downs Local Plan 2014-33 Adopted 2019 (LP). This has superseded the Mid Sussex District Local Plan in so far as it relates to the National Park. It is incumbent upon me to base my decision upon the most up to date planning policy and this is what I have done. The appellants addressed the change in policy through their appeal submissions.

### Main Issues

3. The main issues in this appeal are: 1) The effect of the proposed development on the character and appearance of the area; and 2) Whether the proposal would result in an over concentration of sites in one location or be of a disproportionate size to nearby communities.

### Reasons

*The effect on the character and appearance of the area*

4. The appeal site encompasses a small grass field set back from the road and enclosed by hedging and a close board fence. Access to the site is through the appellants' existing Market Garden site, which currently includes two pitches

set discreetly back from the road behind a belt of dense landscaping. The landscaping along the frontage of Market Garden is contiguous with that either side and this provides Clappers Lane with a rural character.

5. Housing along Clappers Lane to the west of the appeal site is generally set towards the front of the respective plots with long gardens to the rear. This is typical of Fulking, which is a nucleated 'spring-line' village with limited sprawl beyond its historic centre (designated as a conservation area). This pattern and layout, evident on historic maps, is clearly discernible. Market Garden, the appeal site and the adjoining Conifers site are set apart from the built form of the village due to the presence of a small paddock to the south of Lower Kents.
6. The appeal scheme would introduce mobile homes, areas of hardstanding and other paraphernalia into the appeal site, which is currently an undeveloped grassed field<sup>1</sup>. The siting and nature of the proposal would intensify the presence of scattered and sporadic development on the village edge and this would erode the nucleated form and character of Fulking. Moreover, by projecting away from Clappers Lane the proposal would be arranged in depth behind the Market Garden pitches. This would be out of character with the linear frontage pattern of development in the village. The urbanisation of the grassed field would also diminish the rural character of the area. Accordingly, the appeal scheme would harmfully jar with the form, character and grain of Fulking and the rural character of Clappers Lane and the village edge.
7. These impacts would not be especially apparent in close range views from Clappers Lane and nearby footpaths. This is due to the thick boundary hedging, which is a very effective screen even in the winter months. The planting to the west of the appeal site seems to be outside the control of the appellant, but it is well established and there is nothing to suggest it would be removed in the future thereby exposing the site to Clappers Lane. The appellant has control over the planting to the south of the site so this can be retained, and it seems to be in reasonably good condition despite the amount of rubbish being kept behind the boundary fencing on land belonging to the appellants.
8. Although the perceivable visual and spatial impacts on the settlement and landscape would be reasonably benign from Clappers Lane, it would be particularly apparent from the Fulking Escarpment, which includes the South Downs Way, Devils Dyke, various viewpoints and several trails that criss-cross National Trust owned/managed land open to the public.
9. The proposed mobile homes, touring caravans and hard standing would be visible in isolation, and cumulatively with the existing pitches, in several positions in a sweeping arc from the Devil's Dyke Public House to the steep hill side south of the appeal site. These are identified as being locally important views and the proposal would impinge into them, consolidating development and eroding the sense of transition from a tight village core to open countryside. My findings in this respect are consistent with a previous Inspector's<sup>2</sup>, who was concerned by the consolidation of development on the edge of the village.
10. That said, the appeal scheme would be viewed in the wider context of the village to the west and the existing sporadic development to the east, north

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<sup>1</sup> It would not however introduce a utility building as confirmed in the appellant's submissions.

<sup>2</sup> APP/Y9507/C/15/3062034 and APP/Y9507/C/15/3062035

east and south of the site. In this respect it would not appear isolated. Moreover, the cluster of houses to the south of the appeal site (along Poynings Road) draw the eye in views from the escarpment because it includes large houses separated from the core of the village. In this context the impact of the appeal scheme on the nucleated form of the village would be moderated, as it would not appear as a strident projection of built form beyond the settlement.

11. There would also be scope to provide some mitigation as the mobile homes, particularly the roofs, could be finished or clad in a dark material. The success of this approach is partially evident in the dark roof of the second mobile home in the Market Garden site. It's unlikely the presence of the touring caravans could be mitigated in this way, but these vehicles would have a transient impact. The proposal also includes a landscaped area to the south that will soften the impact of the proposal in views from the escarpment and in glimpsed views from Poynings Lane. There will be a short-term impact whilst the planting matures, but as it is necessary to soften rather than screen the development this is not an overriding limitation in this instance. It will be important to ensure that rubbish, waste and other paraphernalia is not stored in this landscaped area through the imposition of a planning condition.
12. In addition to the landscaped area, and notwithstanding the submitted drawings, the Council and appellants have confirmed that there is additional scope to reduce the extent of hard surfacing and thus provide a 'landscape led' layout with planting provided along the boundaries of the site, between the proposed pitches and along the northern boundary with Market Garden. There is space for this to be quite comprehensive involving trees and understorey hedging. It can also be achieved in a way that accommodates practical requirements such as space to turn vehicles and being low maintenance (thereby reducing care needs why the families are travelling). Enhancing the extent of planting would provide a verdant site that over time would have maturity and a sense of being anchored and assimilated into the area.
13. Neither the NPA's Landscape Officer nor the National Trust raised objections to the proposal for the reasons outlined above. However, whilst acknowledging that the foregoing points would reduce the impacts of the proposal, they would not fully address the inherent limitations in the appeal scheme. These being that it would be visible from the escarpment, positioned in depth and sited where it would consolidate development on the edge of a nucleated settlement. As such there would be a residual harmful impact on the landscape of a moderate order. The proposal would therefore be at odds with Policy 1 of The South Downs Partnership Management Plan.
14. The appellants have laid rubble hard core at the site entrance and a mobile home has been brought onto the land. It appears to be occupied but is not positioned in the location shown on the drawings. The siting of a mobile home at the appeal site and the establishment of a temporary pitch amounts to intentional unauthorised development as it has taken place without the prior grant of planning permission. As such, the 2015 ministerial statement is relevant<sup>3</sup>. The works are not extensive and have not, for example, resulted in hedges being breached or trees and landscaping effected. The mobile home and hard core could be easily removed. Therefore, commencing development in advance of obtaining planning permission has not resulted in irreversible

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<sup>3</sup> Green Belt Protection and Intentional Unauthorised Development 2015

physical harm to the character and appearance of the area. Accordingly, the undertaking of intentional unauthorised development adds only limited weight as a matter against the proposal in this instance.

15. In conclusion, the proposal would fail to conserve and enhance the natural beauty, scenic quality and landscape character of the National Park including the nucleated settlement pattern of Fulking. This would be contrary to the first purpose of the National Park as well as Policies SD4, SD5 and SD6 of the LP, which seek to conserve and enhance the National Park and are therefore consistent with Paragraphs 127 and 172 of the National Planning Policy Framework (the 'Framework').

*Whether the proposal would result in an over concentration of sites in one location or be of a disproportionate size to nearby communities*

16. Policy SD33 of the LP states that Gypsy and Traveller proposals will be permitted subject to criteria. One such stipulation is that sites should not be over concentrated in any one location or disproportionate in size to nearby communities. This is consistent with advice in the Planning Policy for Traveller Sites (PPTS), which states that sites in rural areas should respect the scale of, and not dominate, the nearest settled community. The settled community includes those who do not meet the planning definition of a Gypsy or Traveller in the PPTS i.e. they are not of a nomadic habit of life.
17. The nearest settled community to the appeal site effectively encompasses the village of Fulking. There is no set measure for ascertaining the size of a settled community, but it is not unreasonable to consider this encompasses those permanent properties within a discernible settlement. The NPA have confirmed that there are around 55 dwellings within the village as indicated on a plan in their evidence. This is a sound approach as it is based on the extent of the village when viewed on the ground. Moreover, considering the number of homes instead of the population is less susceptible to periodic fluctuations.
18. The provision of two pitches would not, in itself, result in an over concentration of pitches when considered relative to Fulking. However, this is a matter that needs to be considered cumulatively because small incremental increases in the number of pitches could result in an overall number that may not have been supported if they had come forward in one go.
19. As a result of the proposal the number of Gypsy and Traveller pitches would increase by 50% and make up around 10% of the homes available in the village. This would be a notable proportion of any community, be it comprised of Gypsy and Traveller pitches or conventional bricks and mortar housing. The cumulative size of the six pitches would amount to around 5000 square metres, with the associated paraphernalia including touring caravans and day rooms. This would be a large residential area relative to the nucleated footprint of the village with a distinctly different domestic character. I am also mindful that the Inspector who considered the appeal at the Conifers site found that three pitches came close to an appropriate upper limit in this location.
20. However, for reasons I have already gone into the proposal would not be significantly apparent in a visual or spatial sense and therefore would not appear dominant or stark. The number of pitches at the village would also remain clearly subservient to the number of bricks and mortar homes. Moreover, the two pitches would be occupied by the appellants sons and their

families. They have lived in the village for many years and continue to reside at the Market Gardens site with their wives. Therefore, in many respects the appeal scheme would retain the status quo in terms of community cohesion, as it would not result in new residents moving into the village. It would be possible to secure a personal permission through a planning condition to ensure this remains so.

21. In conclusion, the proposal when considered cumulatively would, in a physical sense, result in a disproportionate over concentration of pitches in one location. This would result in some limited harm to the spatial cohesion of the village. The number of pitches involved would not dominate the settled community, but it would fail to respect its modest scale. This would be at odds with Criteria 3b) of Policy SD33 of the LP. However, in this instance the future occupants are already on site with the appellants' sons having been resident in the village for many years. This is a significant mitigating factor when considering the effect on community cohesion and population. Overall, the harm from the disproportionate over concentration of pitches would be limited in this case.

### **Other considerations**

#### *The need for Gypsy and Traveller accommodation*

22. Policy SD33 of the LP sets out the strategy for addressing the accommodation needs of Gypsies and Travellers in the National Park. The strategy was borne out of the Gypsy, Traveller and Travelling Showpeople background paper which was in turn based on the findings of Gypsy and Traveller Accommodation Assessments, including that covering the Mid Sussex area completed in 2016 (the GTAA). The results informed Table 7.4 in the LP, which explains that there is a need within the National Park for 23 permanent pitches as of 1 October 2018. The LP allocated 10 pitches leaving 14 as the 'remaining unmet need'.
23. The inability to allocate enough sites through the LP is acknowledged in the supporting text to Policy SD33, where it explains that the number of sites advanced by landowners was inadequate to meet the need and neither the NPA nor local authorities had available land. To this end, Policy SD33 of the LP seeks to permit planning permission on currently unidentified windfall sites in three areas of the National Park where a need was identified. Mid Sussex is not one of those areas because the GTAA found no need for pitches there.
24. However, it is unclear whether the GTAA accounted for household formation over the plan period. The fact that it did not identify the needs of the appellants' three sons suggests it did not. This indicates that the GTAA, and by association Policy SD33, have underestimated the need in the Mid Sussex part of the National Park. Therefore, based on the evidence before me, the figure in Table 7.4 relating to the Mid Sussex area of the National Park needs to be considered with some caution. As does the strategy set out in Part 2 and criteria 3a) of Policy SD33, which seeks to permit windfall sites, but only if they would be meeting an identified need in those parts of the National Park in Brighton and Hove, Lewes District and East Hampshire District.
25. On the face of it, the findings in the preceding paragraph jars with those of the Inspector who examined the LP, and their conclusion that the plan makes appropriate provision for Gypsies and Travellers. However, this was a qualified finding as the Inspector was clear it was based on the available evidence. For reasons I go into, the appellant's children, who were residents of Mid Sussex

when the GTAA was prepared, have a clear unmet need for pitches and this was not captured in the GTAA or subsequently factored into Policy SD33. Such evidence was not before the examining Inspector.

#### *Five-year supply of pitches*

26. The PPTS requires local planning authorities (the NPA in this instance) to set pitch targets for Gypsies and Travellers and to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites against this target. At the time of the LP's adoption in 2019 six pitches had been provided in the Coastal West Sussex area. It is unclear what the current picture is in respect of supply and the NPA were unable to clarify this when I asked in writing. I therefore share the view of the appellant that the NPA have failed to demonstrate a five-year supply of pitches. As such, the evidence before me demonstrates that the need identified in the LP, which may be an underestimate, is not being addressed.

#### *Accommodation needs of the future occupants and alternative options*

27. The appellants' two youngest sons (James and Jesse Hearne) have come of age and are now married with young families. They are no longer dependants of the appellants and have no permanent base of their own. They continue to reside at the Market Garden site in a touring caravan and an unauthorised mobile home. This situation cannot endure due to overcrowding and because it is contrary to the extant planning consents, which only permit two pitches with occupancy conditions. As such, they are in immediate housing need.
28. The Mid Sussex District Plan identifies a need for 23 pitches by 2031 and this is to be provided at strategic sites. Strategic sites at Pease Pottage and Hassocks did not include any provision for Gypsies and Travellers. In 2019 a large strategic allocation approved at Burgess Hill included provision for 13 pitches. Phase 2, commencing in 2025 would include 6 pitches and Phase 3, starting in 2029, would accommodate the remaining seven. Therefore, these pitches may not be available for some time and it is unclear how they will come forward in terms of cost, tenure, layout and who would be prioritised.
29. The nearby Small Dole site is occupied by a single family and is to all intent and purposes a family site that the Hearn brothers could not move onto. A site at Withy Beds was redeveloped with four extra pitches but these were immediately taken up. The Hearn family do not own any land elsewhere and the sites allocated in the LP are existing private sites some distance away and therefore it is unlikely the Hearn brothers and their families could move onto them. The Council has not directed me to any other available sites.
30. Therefore, it is unlikely the accommodation needs of James and Jesse Hearn and their families can be met elsewhere in the National Park or Mid Sussex. There is no substantive evidence before me to suggest there is a surplus of provision in other local planning authority areas outside the National Park. It is of note that there is a long waiting list for pitches in Mid Sussex.
31. Given the above, it is clear from the evidence available that the Hearn brothers and their families are in housing need and it is unlikely this can be met locally in the short term. The NPA are due to review the LP/GTAA in the next few years but I have seen nothing of substance to suggest it is unlikely the NPA will struggle again to strategically identify enough sites and therefore it may well



need to rely on windfall sites, such as that proposed. Accordingly, a temporary permission would not be appropriate in this instance as its unlikely circumstances would change at the end of the temporary period.

32. Thus, given that residing at the existing authorised Market Garden pitches is not permitted or desirable, the Hearn brothers and their families would need to take to the road in the short term in search of temporary pitches or other unauthorised ones. As such, there are limited options available for them in seeking to establish a settled base that would facilitate their traditional way of life. They have never lived in bricks and mortar housing and could not do so. Thus, their accommodation needs are a significant point in favour of the proposal given the current absence of a five-year supply and the lack of any viable alternatives.

#### *Personal Circumstances*

33. Being ethnic travellers, the future occupants of the proposed pitches have the protected characteristic of race under s149(7) of the Equality Act 2010. In such circumstances, s149(1) of the Act requires due regard to be had to the need to, amongst other matters, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This includes minimising disadvantages that are connected to that characteristic. This is the Public Sector Equality Duty (PSED).
34. The evidence before me, which I have no reason to doubt, demonstrates that the future occupants of the pitches follow a nomadic habit of life linked to their culture and therefore meet the planning definition of a Gypsy and Traveller in the PPTS. However, without a settled base of their own it is difficult for them to balance their traditional way of life with the practicalities of modern living. For example, a permanent address is often needed for paying bills, dealing with administration and accessing healthcare.
35. Furthermore, a settled base at Fulking would allow them to be anchored in a community and live within an extended family. The unavailability of vacant sites also indicates inequality in housing opportunities. Addressing this is an important aspect in achieving the social sustainability sought by Paragraph 13 of the PPTS, as is the close proximity of the appeal site to Fulking. It does not automatically follow that the appeal should be permitted because the PSED is relevant, but the equality implications weigh in favour of allowing two further pitches at the appeal site. This is because dismissing the appeal would perpetuate the disadvantages currently being endured.
36. Moreover, Article 3(1) of the United Nations Convention on the Rights of the Child states that the best interests of the child shall be a primary consideration. This means no other consideration is more important. Between them, the younger Hearn brothers and their wives have one child and are expecting two soon. The best interests of all three children need to be carefully considered.
37. The three children are not currently of school age and consequently their educational needs are not currently pronounced. However, if the families are unable to find a settled base in the next four to five years, and there is little evidence that they will, then the children will have a disrupted education with the inherent disadvantages this would entail. Thus, their best interests would be served by establishing a settled base now so there is certainty over where they will go to school. A settled base would also enable access to healthcare

and generally support the children's welfare by, for example, attending clubs, making friends in the local area and being close to family for support.

### **Other Matters**

38. Reference has been made by an interested party to the refusal of planning applications in Fulking, including sites at Cannonberries and Cabbage Patch. However, I have seen nothing to suggest the PSED was relevant in those instances, that the applicants were in the same acute housing need as the Hearn brothers and their families and that they were without suitable alternative accommodation. As such, the circumstances do not appear to be the same and therefore my findings are not inconsistent with these decisions.
39. Substantive evidence has not been provided to demonstrate the proposal would place harmful pressure on local infrastructure, including drainage. Photographs provided by local residents demonstrate that flooding can be an issue in Clappers Lane, but the NPA are of the view this would not be exacerbated if permeable surfaces are constructed and I have no reason to disagree.
40. The Highway Authority have not raised objections to the proposal, and I share this expert view because the future occupants already live on site and are using an existing authorised access. Allowing the appeal would not result in any general 'precedent' as applications such as this turn on the specific merits of the case, including personal circumstances. I share the view of the NPA that the separation distance and intervening development between the appeal site and designated heritage assets would be adequate to preserve their setting. There is sufficient separation space between the appeal site and the nearby dwellings to ensure a harmful impact on living conditions would not occur.

### **Conditions**

41. I have considered the advice in the Planning Practice Guide and the conditions suggested by the Council. As the development has already commenced it is unnecessary to impose the standard commencement condition. However, as the proposal has only partially commenced, it is necessary, in the interests of certainty to impose a plans condition. The appeal is acceptable due to the personal circumstances of the intended occupiers and therefore, it is necessary to impose a personal permission. As only two pitches have been justified it is necessary to secure this.
42. It is necessary in the interests of safeguarding the character and appearance of the area, the dark sky character of the National Park and the living conditions of neighbours to limit external lighting and the size of vehicles and to prevent commercial activity, including the storage of rubbish. For the same reasons, and because the development has commenced, it is necessary for a site development scheme to be submitted for approval which will address several matters including landscaping. Following this, it is necessary to protect the approved scheme of landscaping, and exceptionally remove permitted development rights to erect fencing, walls and enclosures. To ensure adequate drainage it is necessary for the scheme to include such details.
43. In the interests of biodiversity, it is necessary for the scheme to include details of enhancements. In the interests of preventing flooding it is necessary to secure details of drainage through the scheme.

44. The future occupants of the three pitches currently meet the PPTS definition of a Gypsy and Traveller and the permission would be personal to them. There is nothing before me to suggest they would seek to cease travelling in the future. This would be highly unlikely in any event given how integral travelling is to their way of life. As such, it is unnecessary to impose a condition requiring the pitches to be occupied by those meeting the PPTS definition. The works required to establish the pitches should be reasonably short lived and should not require any burning of materials and therefore conditions dealing with construction are unnecessary.

### **Planning Balance and Conclusion**

45. The proposal would moderately harm the character and appearance of the area and in so doing would fail to conserve or enhance the National Park. This would be contrary to the development plan and the first purpose of the National Park. To this there is limited harm from intentional unauthorised development. The Framework states that great weight should be given to conserving and enhancing the National Park, which has the highest status of protection in relation to these issues. The proposal would also be at odds with Criteria 3a) and 3b) of Policy SD33 due to it being in Mid Sussex, where the policy identifies no need, and a disproportionate over concentration of pitches.
46. Balanced against this there are several points in favour of the proposal. Firstly, the Council have not been able to demonstrate a five-year supply of pitches. The PPTS states that this should be a significant material consideration when considering applications for the grant of temporary permission. I see no reason why this should not apply to an application for a permanent permission. That said, the PPTS also states that an exception to this is sites in National Parks.
47. Be that as it may, Policy SD33 acknowledges the need for windfall development in the National Park, albeit in areas outside of Mid Sussex. However, for the reasons given the evidence underpinning this approach appears problematic and therefore the conflict with the strategy in Policy SD33 (Sections 2 and 3a) carries limited weight. Moreover, the evidence before me indicates that there does not appear to be any options for the Hearn brothers and their families outside the National Park. Unmet need is therefore an important consideration. Moreover, the impacts on community cohesion from the concentration of pitches can be largely mitigated through a condition securing a personal permission. Thus, the conflict with Criteria 3a of Policy SD33 is limited.
48. The proposal would meet the immediate accommodation needs of the Hearn brothers and their families, all of whom meet the planning definition of Gypsies and Travellers. This is a significant point in favour of the proposal in the circumstances given the lack of alternatives. However, this alone does not outweigh the overall conflict with the development planning and the great weight I afford the harm to the National Park. Nevertheless, when taken with the best interests of three children, which is a primary consideration, I find that the benefits of the proposal would just about outweigh the cumulative harm. This is a compelling point in this instance that indicates the proposal should be determined otherwise than in accordance with the development plan. Accordingly, for the reasons given I conclude that the appeal should succeed.

*Graham Chamberlain*  
INSPECTOR

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### Schedule of Planning Conditions

- 1) Subject to the other conditions set out in this schedule, the development hereby permitted shall be carried out in accordance with the following approved plans and any other approved plans required pursuant to the conditions hereby imposed:
  - Location plan at a scale of 1:1250 received by the National Park Authority on the 19 November 2018;
  - Proposed site plan at a scale of 1:500 received by the National Park Authority on the 19 November 2018.

J003372/CD01, J003372/CD02, J003372/CD03.
- 2) The mobile homes hereby permitted, shall not be occupied or used other than by:

Mobile Home 1- Mr James Hearne and/or Mrs Tammy Hearne and their resident dependents.

Mobile Home 2 – Mr Jessie Hearne and/or Mrs Tiffany Hearne and their resident dependents.

When the mobile homes are no longer required to be occupied by the aforementioned then they shall be removed from the site, which shall be restored to its condition prior to the granting of this planning permission and in accordance with a scheme that is submitted to and approved in writing by the local planning authority within three months of occupation ceasing.
- 3) There shall be no more than two pitches within the site. On each of the two pitches hereby approved no more than two caravans shall be stationed at any one time, of which no more than one shall be a mobile home or a static caravan as defined 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 site including the storage of materials, rubbish and waste, the storage of plant or the storage/parking of vehicles over 3.5 tonnes.
- 5) 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 of the requirements set out in i) to iv) below:
  - i) Notwithstanding the submitted details, within 3 months of the date of this Decision a Site Development Scheme, hereafter referred to as the 'Scheme', shall have been submitted for the written approval of the Local Planning Authority and shall include the following:
    - Details of foul and surface water drainage;
    - Details of the external finishing materials and colours of the mobile homes;
    - Details of the extent, materials and position of hard surfaces, which shall be permeable (aside from the concrete bases for the mobile homes), and any fences, walls, boundary treatment and enclosures;

- Details of a comprehensive soft landscaping scheme, including the species, plant sizes and proposed numbers and densities of planting, and measures for their protection, maintenance and retention;
  - Details of external lighting;
  - Details of biodiversity enhancements; and
  - A timetable for the implementation of the Scheme.
- ii) If within 6 months of the date of this decision the Local Planning Authority refuse to approve the Scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) if an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted Scheme shall have been approved by the Secretary of State.
- iv) the approved Scheme shall have been carried out and completed in accordance with the approved timetable and thereafter maintained and retained as approved.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

- 6) The landscaped areas shall be maintained free from rubbish and other paraphernalia and shall be protected from damage. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the Local Planning Authority.
- 7) No external lighting shall be put in place or operated on the site at any time other than that which has been previously submitted to and approved in writing by the Local Planning Authority as part of the Site Development Scheme.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) or any Order amending or revoking and re-enacting this Order, no enclosures, walls or fences, except those expressly permitted, shall be erected or installed at the site.

**End of Schedule.**



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## 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

