Application Number: ADC/0173/08 Recommendation – REFUSE

Site: **'The Barn' certificated camping & touring caravan site, East side of Old Salts Farm Road, Lancing**

Proposal: **Locate mobile home on land in the sole ownership of a member of the 'gypsy' community (retrospective)**

The Application

This retrospective application relates to the same site as that forming the subject of an enforcement notice requiring cessation of its use for standing a residential mobile home (and a recent prosecution in the magistrates court for non-compliance). Previous applications from the same applicant had been refused in 2001 (L/13/01), 2004 (L/119/04) and 2006 (ADC/0360/06), with an appeal dismissed in October 2007.

The site lies on the south-east side of the lane, 100m north-east of its junction with Freshbrook Road. The frontage of this horse grazing land was granted a Certificate by the Camping and Caravanning Club for its use as a touring caravan and camping site by club members (for no more than 5 touring caravans at any one time). The Club is exempted from planning control by the Government and the use of the site for this purpose constitutes "permitted development". In 2003 temporary permission expiring 30 June 2008 was granted for an ancillary cesspit (for disposal of waste water from the touring caravans) and for a timber store shed (L/83/03).

The Design & Access Statement accompanying the application, as with letters in 2004 and 2006, states that there are exceptional circumstances to justify departing from normal policy because the mobile home is needed to enable a 24 hour presence by Mr and Mrs J Pannell to reside on the touring caravan site in order to control the use of the site, provide security and prevent unauthorised access, because of its remote and secluded nature. Prior to his residing on-site, there were instances of unauthorised visitors pulling onto the site and breaching the certificate and his presence since then has prevented members of the travelling community from occupying the site. There have also been instances where legitimate site users have benefitted from the applicants day and night presence when touring caravans on the site could have been significantly damaged by the prevailing winds whilst their owners were out in the local area; and when valuable windsurfing equipment could have been stolen by intruders.

However, an additional justification now put forward is that the applicant has a gypsy bloodline and wishes this to be taken into consideration. He claims that he has the right to settle on the land and that the application accords with Government policy requiring all local authorities to provide sufficient land to meet the needs of the travelling community (where true gypsy bloodline can be evidenced). It is stated that there is clearly insufficient provision in the Adur

area as the applicants have had their names added to those awaiting gypsy sites for the past 24 months with no pitches having become available in that time. It is stated that he has never lived in a conventional house and has no desire to do so; he has 3 dependants (his wife and 2 young children) and they would become homeless and need to be re-housed by the Council if this application is unsuccessful. A guidance note concerning the rights of gypsies has been submitted which sets out grounds for a petition to the European Court of Human Rights should permission not be granted.

It is stated that the applicants are willing to enter a section 106 Obligation to prevent a subsequent application for permanent dwelling from being granted.

The site has formed the subject of a numerous previous applications and appeals. In 1986 a bungalow was refused and dismissed on appeal (L/169/85). Retrospective applications for an unauthorised sectional wooden building were refused in 1986 and 1987 (L/191/86 and 141/87) and an appeal against the associated enforcement notice was dismissed. In 1992 an appeal against an enforcement notice requiring removal of construction plant and equipment was dismissed. In 1994 a retrospective application for unauthorised stables and store was refused, with the associated enforcement appeal dismissed in 1995. In 1996 an enforcement notice was issued in respect of an extension to the unauthorised stables/store. These buildings were subsequently removed. In 2001 a previous application for a residential caravan for the applicant was refused (L/13/01).

Consultations and Representations

Environment Agency: Object, as before, because the site lies in a zone 3a flood risk area; the submitted flood risk assessment does not adequately consider the flood risk, as it only adequately considers fluvial flooding, not tidal/coastal; and the type of development is classed as 'highly vulnerable' in PPS25. For the 0.5% probability event, there is potential for floodwater 1.6m-2m deep, rising to 2.5m taking account of the effect of climate change.

Lancing Parish Council: Support a 'personal' permission to the applicant and his dependants provided the permission no longer has effect if the use of the land as a caravanning and camping site ceases.

Third Parties: 35 letters have been received of which 14 object and 21 have no objection or support the applicant.

7 of the objections are from residents of Willowbrook Park, 4 are from persons connected with the nearby livery stables and 2 are anonymous and one has not provided an address. The grounds include that it is contrary to planning policy and if granted would lead to further development; impairment of view; loss of privacy; increase in noise and traffic pollution to their quiet residential environment; and effect on property value (NB. the latter is not a relevant planning consideration). One refers to use of the field for horses and by wildlife and, if permitted, questions how long before further proposals of a similar type are made. Another states points out that the applicant's family

state that they are gypsies and travellers but they were born in houses (or similar) and have resided in such domiciles for a large period of their lives and are on the electoral register – this invalidates their claim for gypsy/traveller status. He adds that the security reasons for the proposal are also debatable – the site is within visual sight of their house, there is nothing of value kept on the field, and traffic on the road is easily seen.

3 further residents of Willowbrook Park have no objection provided it does not lead to further development

Residents and owners of 7 properties in Old Salts Farm Road, plus 2 in Freshbrook Rd and one in Kings Rd, have sent letters either stating no objection or fully supporting the application.

The other 8 letters are copies of letters (received from the applicant) from persons (including relatives and the Leader of Lancing Youth Centre) who vouch for the applicant as being of Romany descent and/or state that he travelled during the period 1997-2004, having stayed many times (1997-2002) at Conleys Showman's Yard, Sidlesham, and Old Tiles Caravan site, Slindon (2000-2004). A copy letter from Stevens Amusements of Staines states that he worked with their funfair on numerous occasions during the 2000-2004 touring season.

[NB. submitted with the application is a photocopy of an undated petition with 200 signatures of people mainly living in Adur stating support for siting a mobile home west of The Barn. However, it is undated; no original has been submitted; and ~~one person on it has sent a letter stating he did not sign it~~] ~~]~~ returned

Relevant Planning Policies and Guidance

Adopted West Sussex Structure Plan 2001-16 (WSCC 2005) (saved policies): LOC2, NE1, ERA1, ERA4, CH1, CH3, DEV1
Adopted Adur District Local Plan 1993-2006 (ADC 1996) (saved policies): AG1, AC1, AC4, AH11
PPS7 "Sustainable Development in Rural Areas" (ODPM 2004)
PPS25 'Planning and Flood Risk' (ODPM 2006) & Circular 04/07
Circular 01/2006 'Planning for Gypsy and Traveller Caravan Sites' (ODPM 2006)

Planning Assessment

Policies

Policy AH11 of the Local Plan states that the land use policy considerations for mobile homes are the same as for permanent housing (NB. policy AH12 relating to gypsy caravans has not been 'saved').

The site lies outside the built-up area and in the 'strategic gap' of countryside separating Lancing from Shoreham. The above policies CH3 and AC4, relating specifically to the strategic gaps, are intended to prevent further

development in such areas in order to prevent the coalescence of settlements and to ensure that any development maintains and enhances their predominantly open and undeveloped character. Policy AC4 states that development will only be permitted in "compelling circumstances" and that need for development essential for agriculture, horticulture, forestry or the diversification of the rural economy or to take advantage of a valuable opportunity to meet demand for quiet informal recreation may exceptionally be regarded as compelling.

Flood risk

The site lies within the area at risk of flooding (zone 3a) and, as a result of the Environment Agency's objection, this was a reason for the previous appeal being dismissed. The Inspector noted that PPS25 advises that mobile homes/caravans intended for permanent occupation are 'highly vulnerable'.

The applicant's agent has included a Flood Risk Assessment in the Design & Access Statement accompanying the present application. He states that the site is at low-medium flood risk in a theoretical 100 year flood assessment. It is on the edge of zone 3 and only 0.275m below the spot heights on the edge of zone 3. As the floor level of the mobile home is 0.5m above ground level, he states it is above the theoretical 100 year flood level. He also states that the main risk is from the nearby 'creek' and there is no record of any incident resulting in significant flooding of the application site – also, the applicant regularly monitors the weather forecast and will be on-site to advise patrons of potential flooding should a flood alert be issued by the EA.

The Environment Agency object, as before, commenting that the submitted flood risk assessment does not adequately consider the flood risk, as it only adequately considers fluvial flooding, not tidal/coastal flooding, and there a chance greater than 0.5% of the site flooding each year. For the 0.5% probability event, they state that there is potential for floodwater 1.6m-2m deep, rising to 2.5m taking account of the effect of climate change. They again refer to mobile homes being 'highly vulnerable'.

The applicant has employed a planning consultant to prepare a further flood risk assessment in an attempt to persuade the Environment Agency to withdraw its objection. However, the applicant has not presented any sound case as yet to overcome this ground of refusal and according to the EA is most unlikely to be able to do so. Consequently, the development conflicts with policy ERA4 and PPS25.

Visual amenity

The Inspector took the view that "the mobile home, by reason of its colour, presence and height, fails to maintain the local open character although there is some planting that breaks up views of the mobile home from Old Salts Farm Road to a limited extent."

The mobile home has since been replaced by another one but its impact is no less. If permitted, it would constitute a sporadic form of development, detrimental to the appearance and character of the area, contrary to policies CH1 and DEV1. It is accepted that the surrounding landscape is not of a particularly high quality, having typical "urban fringe" characteristics associated with land fragmentation into small plots. However, it still possesses some rural quality and, most importantly, needs stringent control over new development to retain a rural character. The cumulative effect of incremental development as in this case would be to eradicate the remaining semblances of rurality. The Willowbrook Park Residential Mobile Home Park, sited some 100m to the south-west of the application site, and the 4 new houses adjoining the pumping station 70m to the west, are located within the 'built-up' area as identified in the Local Plan and therefore not comparable with the application site.

Whether the need for the mobile home outweighs the policy, amenity and flood risk objections –

(a) – the need to control use of the touring caravan and camping site

The use of the site as a touring caravan and camping site is extremely small scale. As stated above, its use is limited solely to members of the Camping and Caravanning Club and the number of touring caravans on the site must not exceed 5 at any time, with no individual caravan present for more than 28 days.

The use of the site as a touring caravan site for as few as 5 caravans, normally less and sometimes none at all, is not felt to warrant a permanent resident manager. With regard to security, the site is very close to the nearby residence now called 'Beechlands' (formerly 'The Barn') which was until recently in the same ownership as the touring caravan site (NB. ownership of the touring caravan site was recently transferred to the applicant and the former owners who are understood to be his parents now live at the Minstrels Gallery a short distance further to the east).

In the previous appeal decision concerning this matter in 2007, the Planning Inspector accepted that permanent residential development is unacceptable in this location. She acknowledged "that it is necessary to maintain a level of security within the site and to control unauthorised entry onto the site" and noted that "the site appeared to be fairly easily accessed". She took the view that the need for security was capable of being a compelling circumstance but concluded that:-
"I am not convinced that the siting of a mobile home is the only means of controlling the usage and security of the site and therefore the harm to the countryside in the strategic gap from the mobile home has not been justified".

She took account of the site not being totally isolated, being near dwellings and mobile homes within the built-up area, as well as sporadic development. Whilst these are not currently within the applicant's control, she considered "it would be possible to monitor the site and usage from some existing dwellings

and no mention is made of alternative means of controlling access and monitoring usage having been investigated."

The present application states that the neither the applicant nor his spouse have any legal interest in any adjoining property but it is not considered that the issue has been adequately addressed. The security case currently put forward by the applicant, which is basically the same as before, is not considered strong enough to outweigh the policy objection to new residential development in the strategic gap.

(b) – the need to accommodate a member of the gypsy and travelling community

Government Circular 01/2006 states that for the purposes of the Circular, "gypsies and travellers" means:-

> "Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circuspeople travelling together as such."

The Circular requires the Council, before making any decision to refuse an application for a gypsy/traveller site, to take into account information relating to the quantitative assessment of the need for such sites (including the most recent gypsy count data, the waiting lists for existing sites, any plans for new or enlarged sites, the number of unauthorised encampments). It states that Gypsy and Traveller Accommodation Assessments (GTAAs) should be undertaken in order to inform the preparation of new Core Strategies which will then set out criteria for the location of gypsy/traveller sites in order to guide the allocation of sites. The Circular states that if there is evidence of a clear and immediate need through the presence of significant numbers of unauthorised encampments, LPAs should bring forward site allocation documents. It suggests that sites on the outskirts of built-up areas may be appropriate and that rural settings, where not subject to special planning constraints (ie. not in Green Belts or AONBs), are acceptable in principle.

The Circular refers to the statutory duty to determine planning applications "in accordance with the Development Plan unless material considerations indicate otherwise". It states "Other considerations for gypsy and traveller site applications are likely to include the likely impact on the surrounding area, the existing level of provision and need for sites in the area, the availability (or lack of) alternative accommodation for the applicants and other personal circumstances."

The Circular also contains a reminder that the provisions of the European Convention on Human Rights should be considered as an integral part of the decision-making process, including its approach as to what are the material planning considerations. The consequences of refusal/approval on the rights of the individuals affected, both gypsies/travellers and local residents and

whether the decision/action is proportionate in the circumstances. It points out that these rights do not give gypsies/travellers a right to establish sites in contravention of planning control.

Subsequent to the refusal of the last application, as part of his grounds of appeal, the applicant (Joby Joseph Pannell) introduced a completely new issue, namely that he had a "gypsy bloodline". When the Planning Inspectorate asked for information about this, he did not respond and it was consequently not taken into account in the determination of his appeal. He stated that he did not pursue it because he thought that his case on security grounds would have been sufficient to have won the appeal.

His agent has now asked for it to be taken into consideration, claiming that he has the right to settle on the land and this accords with Government policy requiring all local authorities to provide sufficient land to meet the needs of the travelling community. He states that there is clearly insufficient provision in the Adur area as he has had their names down on the waiting list for gypsy sites for the past 24 months with no pitches having become available in that time. He states that he has never lived in a conventional house and has no desire to do so; he has 3 dependants (his wife who has found local employment and 2 young children) and they would become homeless and need to be re-housed by the Council if this application is unsuccessful. He states that he stopped travelling in order to manage the certificated caravan site (as set out in the preceding section).

With regard to actual evidence from the applicant to support his claim that he and his family fall within the definition of "gypsies and travellers" set out in the Circular (see definition below), information has now been received from his agent. His latest letter states that, following his birth in 1980, he lived with his mother (Mrs Sibella Pannell) during the school term at 'The Poplars', Roman Crescent, Southwick and attended St Peter's RC School, Shoreham (aged 5-10), Manor Hall School, Southwick (aged 11-12) and Kings Manor School (aged 12-13).
It is stated that during the entire period of his early life and during his pre-school and school education he travelled with his father during the school holidays where he attended many of the summer fairs forming part of the travelling Gypsy and Showman's circuit – from the age of 13 he spent more time travelling with his father's side of the family and he was placed on a 2-day week attendance at King's Manor School. At the end of 1992 he excluded himself from school entirely and went to live during the winter months with members of the travelling community at Coneleys Yard, Sidlesham, where he adopted a nomadic lifestyle in the care of his father and other members of the travelling community until September 2003. During the Spring and summer each year he travelled with his father's family on an annual circuit of horse and travellers' fairs etc (Stow-on-Wold; Wickham, Hants; Epsom; Appleby; Cambridge; Builth Wells; Edenbridge; Blandford; Ireland).
In August 2003 he married and put their names down on the waiting list for Withy Patch. As there were no vacancies, he moved a mobile home onto the present application site where they have lived ever since (except for a brief

period in May 2007 when they are stated to have moved off in response to the enforcement notice).
As for employment, until his marriage in 2003 he had no significant overheads and funded his modest lifestyle working on a casual basis at many of the fairs, often exchanging a day's work for board and lodging within the travelling community. From 2003, his income from the certified touring and camping site has been combined with that of his wife Kirsty Pannell (who works as a sales assistant at Next, Hollingbury, Brighton).

Also submitted is a Statutory Declaration from the applicant Joby Pannell declaring "I was born on the 2nd day of December 1980 and am of true Romany descent"; his membership card of the Gypsy Council; an extract from the Journal of Romany and Traveller Family History Society which includes the surname 'Pannell'; plus the 8 letters from members of the travelling community, etc (referred to under Third Parties above).

Whether the applicant's case on the basis that he is a traveller with a family needing to settle is of sufficient strength to override normal policy is not straightforward. He has previously lived in a conventional house and his pursuit of a travelling lifestyle appears to have been a matter of personal choice rather than need. Also, despite the previous applications, this is the first time that he has put forward such a case. When he applied for a mobile home on the present site in 2001, the justification was to provide security for horses then kept on the land, his agent then stating that he "lives in the existing family house 'The Barn' owned by his mother". The applicant himself stated in writing at that time "I was born in Adur Area and I have lived here ever since, I also work in the area. I want to continue living here but due to the rising house prices I cannot afford to buy a property so the best idea would be to locate a mobile home on a plot of land already owned."

If it is accepted that the applicant is genuinely a gypsy/traveller who needs to settle because of the health or educational needs of his family, then the provisions of Circular 01/2006 referred to above must be taken into account.

Up to date information in the form of The Gypsy and Traveller Accommodation Needs Assessment (GTAA) has just been published for West Sussex. It concludes that there is a need for 90 additional permanent pitches in the County for the period 2006-2011, of which 6 pitches should be in Adur. It states that the existing Withy Patch site, with 12 pitches, has a low turnover of pitches and that the recommended 6 new pitches would mainly "meet the need from new family formation on Withy Patch and a number of gypsies and travellers in bricks and mortar accommodation with a preference for a site." Over the last 6 years, a total of 127 unauthorised encampments have been recorded in Adur but none in the last 3 years.

Where no new sites have yet been allocated but there is a reasonable expectation that new sites will become available, LPAs are expected to give substantial weight to the unmet need for gypsy/traveller sites in considering whether a temporary planning permission is justified. However, it is not yet known whether there is a reasonable prospect of a new site being allocated

and the unmet need in Adur as identified by the above GTAA is small (ie. only 6 pitches).

Where no sites are allocated, 'windfall' sites may be acceptable having regard to the provisions of the Development Plan and other material considerations including "the likely impact on the surrounding area, the existing level of provision and need for sites in the area, the availability (or lack of) alternative accommodation for the applicants and other personal circumstances." In this instance, the site is in a flood risk area and in a strategic gap and there are visual amenity objections. With regard to the relevant human rights, Article 8 of the European Convention safeguards respect for family life and home whilst Article 1 of the First Protocol concerns the non-interference with the peaceful enjoyment of private property. Both rights are subject to conditions and interference with them is permissible if the need to do so is proportionate. On the evidence available, it is considered in the present case that refusal of the application in order to avoid flood risk to the occupants and to safeguard the 'strategic gap' environment for the benefit of the wider community would not be disproportionate. As regards the need for respect for the applicant's family life and home, there does not appear to be an overriding reason for the applicant and his family to have to live on this site as opposed to living in a lawful existing dwelling or mobile home in the locality.

Recommendation

REFUSE on the grounds:-

1. The site is located within a flood risk area and the application involves a highly vulnerable form of development which would be at unacceptable risk of flooding, contrary to policy ERA4 of the West Sussex Structure Plan and PPS25.
2. C3AR (Within 'strategic gap' and contrary to countryside policies LOC2, CH3, AC1 and AC4 and housing policy AH11) (amended)
3. C16BR (Sporadic development detrimental to rural character and contrary to policies CH1 and DEV1) (amended)

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