



Appeal Decision

Hearing Held on 2 February 2023

Site visit made on 2 February 2023

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 06 March 2023

Appeal Ref: APP/V2635/W/22/3307596

Plot 1 Primrose Farm, Small Lode, Upwell, Wisbech, Norfolk PE14 9BL

- 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 McDonagh against the decision of Kings Lynn and West Norfolk Borough Council.
 - The application Ref 21/01171/F, dated 18 May 2021, was refused by notice dated 19 October 2021.
 - The development proposed is the change of use of land to a 5-pitch residential Gypsy and Traveller caravan site, including laying of hardstanding and erection of amenity building.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to a 5-pitch residential Gypsy and Traveller caravan site, including laying of hardstanding and erection of amenity building at Plot 1 Primrose Farm, Small Lode, Upwell, Wisbech, Norfolk PE14 9BL in accordance with the terms of the application, Ref 21/01171/F, dated 18 May 2021, subject to the attached schedule of conditions.

Procedural Matters

2. The description of development in the planning application referred to change of use to a residential caravan site for 5 caravans. It was agreed at the Hearing that the site is for gypsy and traveller use, rather than a generic residential caravan site and that it was for 5 pitches.
3. I have altered the description of development accordingly and consider that there is no prejudice caused by this change, given that the site was considered by the Council and interested parties as a Gypsy and Traveller site at the planning application stage.
4. Prior to the Hearing, the parties were given an opportunity to comment on a Court of Appeal Judgement¹ which relates to the definition of Gypsy and Travellers contained within Annex 1 of Planning Policy for Traveller Sites (2015) (PPTS). PPTS remains extant policy, however the planning definition within it was found to be unlawfully discriminatory. This was also discussed at the Hearing. I address the implications of this judgement later in my decision.

¹ Smith v SSLUHC & Ors [2022] EWCA Civ 1391

5. The Upwell Neighbourhood Plan was adopted in 2021. This does not specifically refer to Gypsy and Traveller sites, nor did the Council quote any of its policies within their Reasons for Refusal. At the Hearing, I asked about the relevance of its policies to the appeal, however the Council did not seek to rely on it as part of their case.

Background

6. The site was first granted permission in 2011 at appeal for 2 park homes for travellers.² That decision included a condition restricting occupation to Gypsy and Travellers, however it did not tie the site to any specific named occupiers.
7. In 2014 an application to vary condition 3 of that appeal decision to allow for a further static caravan on the site was approved by the Council.³
8. Today the site is occupied and has been developed in accordance with the above consented schemes. There was also an additional mobile home at the site, which appears to be unauthorised, but it was clarified at the hearing that it was due to be removed.

Main Issues

9. The main issues are:
 - a) the accessibility of the site to local services and facilities
 - b) whether or not the proposal would provide a suitable site for the siting of caravans with regard to flood risk; and,
 - c) whether or not there are other considerations weighing in favour of the proposed development.
10. However, before considering the main issues in detail, there is the matter of my approach to the determination of the appeal which must first be established.

Reasons

Approach to decision

11. The Council state that any application for a new pitch or site for use by Gypsies and Travellers, or a plot for Travelling Showpeople, would need to demonstrate that the intended occupants meet the planning definition and that they comply with the criterion specified in Policy H of the PPTS and Policy CS09 of the Council's Core Strategy (2011) (CS).
12. Due to a lack of evidence of the proposed occupants of this site, the Council considered that there was no overriding policy presumption (in Gypsy and Traveller terms) to enable the intensification of development in the countryside. Accordingly, they assessed the proposal against general housing and other plan policies. Three appeal decisions made in the Borough were submitted by the Council in support of this stance.
13. The appellant was clear that consent is sought for a site which would be subject to a planning condition restricting occupancy to Gypsies and Travellers, but not for a personal permission - a speculative site. No evidence relating to

² APP/V2635/A/10/2139784

³ 14/00029/F

the intended occupiers of the site was therefore submitted. The appellant considers that the proposals should be assessed against relevant Gypsy and Traveller policy, and not general housing policy, as the occupation would be controlled by condition in any case.

14. This difference in approach was discussed in-depth at the Hearing with both parties maintaining their respective positions. Accordingly, for each of the main issues, both the approaches were discussed so that I could fully understand the implications for each alternative, including the policy implications.
15. Policy CS09 of the CS sets out criteria where a Gypsy and Traveller site would be allowed. Crucially, it is not referenced anywhere in the policy that the definition must be met for this policy to apply in the determination of such speculative applications.
16. It was held by the Council that one of the criterion in CS09 relating to meeting an identified need could only be met if it were demonstrated that the intended occupants were indeed Gypsies and Travellers. However, while they are related, need is a different consideration to Gypsy and Traveller status, which I consider later in my decision.
17. Instead, the imposition of an occupation condition would ensure that a site would meet its intended planning need i.e. to house Gypsy and Travellers. It would then be up to the Council to issue enforcement action should they consider that an occupation condition to be breached.
18. Of course, personal circumstances can, and indeed are often advanced, as identified in PPTS, but it is simply not reasonable or necessary to require every application for a Gypsy and Traveller site to demonstrate these in order to prove the sites future occupational use.
19. The imposition of a personal condition would only be necessary in order to address a specific planning harm. Indeed, while personal circumstances were advanced, in allowing the original appeal at this site, the Inspector did not consider these to be decisive and thus a personal permission was not deemed to be necessary. A similar approach was taken in the Basildon appeal.⁴
20. In terms of Policy H of PPTS, this also contains a number of criteria, at paragraph 24, which states that the following issues amongst other relevant matters when considering planning applications for traveller sites should be considered:
 - a. the existing level of local provision and need for sites
 - b. the availability (or lack) of alternative accommodation for the applicants
 - c. other personal circumstances of the applicant
 - d. that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites
 - e. that they should determine applications for sites from any travellers and not just those with local connections

⁴ Hearing document 4

21. While these criteria do reference personal circumstances as part of a package of other considerations, nowhere does it preclude speculative Gypsy and Traveller sites coming forward. Nor does it say that all the criteria must apply in every case in order for an application to be treated favourably.
22. Turning to the appeal decisions put forward by the Council, the most recent appeal decision at Pius Drove in Upwell⁵ did deal with personal circumstances as a material consideration and there was no debate regarding Gypsy and Traveller status. This is not therefore comparable.
23. In finding that the appellants did not meet the planning definition, the Inspector for the Lady Drove appeal⁶ stated that the family could not therefore benefit from any policies aimed at providing for Gypsy and Travellers. However, this was an enforcement case where the development had already happened and, in those circumstances the Inspector was correct to then assess the proposals against the general residential policies.
24. The Wheatley Bank appeal⁷ is more nuanced. Here, the Inspector firstly examined in some detail the proposed occupiers of each pitch against the definition contained within PPTS⁸, finding that occupiers of 4 out of the 12 pitches would meet that definition. The main planning matters in contention (for example character and appearance) were then assessed in accordance with Gypsy and Traveller policy for the 4 pitches, and the remaining 8 pitches were assessed against general housing and other plan policies.
25. However, reading the decision as a whole, this appeal largely failed on need, as the Inspector found that the proposed number of pitches significantly exceeded the current requirements for sites in the Borough and concluded that the proposal for 12 Gypsy and Traveller pitches in not justified by identified general need. The personal circumstances of the proposed occupants were put forward in this case and thus the Inspector was correct in assessing them, however I am looking at a speculative site which, if approved, would be for Gypsies and Travellers and secured by condition. There is nothing in the Wheatley Bank decision that precludes me in looking at a proposed site without potential named occupiers.
26. I therefore consider that there is no policy basis for the Council's approach. PPTS and CS Policy CS09 are applicable in this case, and there is no rationale for me to assess these proposals against the general housing and other plan policies.

Services and facilities

27. Upwell, along with Outwell, are classed as a key Rural Service Centre which has a good range of facilities, such as shops, pubs, restaurants, schools, doctors, all for use by the local community.
28. The appeal site is located around 1 mile from the centre of Upwell, outside of the settlement boundaries and as such is located in the open countryside. That said, it is not isolated, and Small Lode contains a number of residential

⁵ Decision dated 15 December 2022, hearing document 1.

⁶ APP/V2635/C/20/3251202

⁷ APP/V2635/W/17/3180533

⁸ Which was unchallenged at this point

developments along its length. Small Lode is a narrow country road, unlit and with no pavements along its length.

29. Had the site been considered against general residential housing policy, the Council considered that the access to local services and facilities would be contrary to the CS. Policy CS09 requires that Gypsy and Traveller sites are located within a reasonable distance of facilities and supporting services and the Council acknowledged that the site would meet this criterion. I agree. It is accepted that there would be some reliance on the private car, rather than sustainable transport methods, but the good service level provision in Upwell and the relatively short distance of the site from it would satisfy this policy criterion.
30. Overall, there would be no conflict with this part of Policy CS09. I am also mindful that the Inspector who dealt with the original appeal at this same site came to a similar conclusion on this topic.

Flood Risk

31. Policy CS09 states that sites should avoid areas at risk from flooding. The appeal site is located in Flood Zones 1, 2 and 3. Caravans, mobile homes and park homes intended for permanent residential use are classified as a highly vulnerable development category. In such cases development should not be permitted in Flood Zone 3, and in the case of Flood Zone 2, the Sequential and Exception Tests should be applied, as required by paragraphs 161-165 of the National Planning Policy Framework (the Framework). Zone 1 has a low probability of flooding and thus development is prioritised in these locations.
32. The siting of the extant pitches is within the part of the site which is Flood Zone 3. This represents a significant fallback position which is reflected in the response from the Environment Agency who, on this basis, do not maintain an objection for the site, subject to a sequential approach being taken to the site layout and mitigation measures to be implemented.
33. For the pitches in Zone 2, if the proposal was considered to be market housing, then the test is not satisfied as there are other sites in the area at a lower risk of flooding. However, as a Gypsy and Traveller site, the Council accepted that there are no other suitable sites in the area and thus the Sequential Test is satisfied in this regard.
34. In terms of the application of a sequential approach to the site layout, two of the proposed pitches would be within Flood Zone 3, although the orientation of the caravans as shown on the proposed site layout plan would change from what was previously approved. The proposed amenity building has also been located within Zone 3, which is a preferable location for a building which would not be occupied on a permanent basis. This allows for the remainder of the pitches to be located in Flood Zones 1 and 2.
35. Given the size of the site, the location of the access and the need for a turning circle in the site, I consider that the proposal site layout represents the optimum arrangement and thus the internal sequential approach as advocated by the Environment Agency is passed.
36. The Exception Test is therefore relevant. This requires that the development provides sustainability benefits to the community that outweigh flood risk and

that the development is safe for its lifetime without increasing flood risk elsewhere and, where possible, reducing flood risk overall.

37. In respect of the latter, the submitted Flood Risk Assessment outlines mitigation measures including finished floor levels, access to the Flood Warning Service and surface water run-off measures. These can be secured by condition and as such I am satisfied that this part of the Exception Test is met.
38. In terms of sustainability benefits, the site is a brownfield site which the proposal is seeking to optimise. I have also found that there would be reasonable access to local services and facilities which is a sustainability benefit. For a site such as this, these factors weigh together and I consider that here, the Exception Test is met. Accordingly there would be no conflict with Policy CS09 or and that the proposal accords with paragraph 164 the Framework.

Other considerations

39. As has been discussed above, no personal circumstances or other matters were advanced by the appellant, as it is a speculative site. Accordingly, the only other consideration put forward in support of the site relates to need.
40. CS Policy CS09 identifies the number of pitches required, based on the former Regional Spatial Strategy numbers, as being a minimum of 146. However, that figure is out of date and instead, the Cambridge Sub-Regional Gypsy and Traveller Accommodation Assessment (GTAA) published in 2016 represents the Council's most up to date reference for the purposes of assessing need. This is said to be 5 pitches for Gypsy and Travellers who meet the PPTS definition. The GTAA also states that the need for households which do not meet the PPTS definition totals 40 pitches and for unknown households is 35 pitches.
41. At the Hearing, and in accordance a recent appeal decision within the Borough⁹, the Council acknowledged that the 2016 GTAA has a shelf life of 3-5 years. Policy CS09 makes reference to an annual review on the need for additional pitches, which the Council confirmed had not been done.
42. The Council are currently undertaking a Local Plan review which incorporated a draft policy for Gypsies and Travellers. However, at the Hearing the Council confirmed that the examination had been suspended and that no weight can be given to this document at this time.
43. The Council have approved 12 pitches between 2016-2021, however it is also clear that the need for 40 pitches identified by the GTAA for those who do not meet the PPTS definition, which is now a relevant consideration in light of the recent caselaw, is not being met.
44. In light of its vintage, there are also significant question marks as to whether the GTAA figure is truly representative for the Borough-wide need. There is also uncertainty around when a new GTAA will be published and when the new local plan might come forward. There are no allocations within the development plan specifically for Gypsy and Traveller sites.
45. Any future such need is currently unknown, but even on the Council's current GTAA figures, including those that do not meet the PPTS definition, there is a

⁹ Hearing document 1

significant unmet need in the Borough. Accordingly, an addition of further pitches at this site would make a contribution to need and supply in the Borough, in accordance with the need criterion set out in CS09.

Conditions

46. The conditions were discussed at the Hearing, and an amended list submitted by the Council following its close, reflecting the discussions held.
47. Conditions relating to timescales and approved plans are imposed for certainty. It is also necessary to impose conditions restricting occupation to Gypsies and Travellers, for the reasons discussed before. Conditions which place a restriction on the number of pitches and commercial activities/storage are also necessary to protect the character and appearance of the area. Conditions relating to materials for the amenity building and external lighting are also necessary for the same reason.
48. As discussed, the site is located within Flood Zones 1,2 & 3. Conditions relating to mitigation measures outlined in the FRA and for surface water and foul drainage are thus necessary. Finally, visibility splays are needed to serve the site, for highway safety reasons.

Conclusion

49. I have found that, subject to conditions, the site can be considered as a Gypsy and Traveller site without named occupiers which accords with the criteria contained within CS Policy CS09 in terms of flood risk and access to services and facilities and need.
50. For the reasons set out above I therefore conclude that the appeal should be allowed.

C Searson
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Phillip Brown

Phillip Brown Associates Limited

FOR THE LOCAL PLANNING AUTHORITY:

Keith Wilkinson

Senior Planning Officer

Karl Patterson

Senior Housing Development Officer

DOCUMENTS

- 1 Appeal Decision: APP/V2635/W/22/3304327
- 2 Approved Site Plan Application Reference 14/00029/F
- 3 Appellant Supplementary Statement on the implications of Lisa Smith v SSLUHC
- 4 Appeal Decision: APP/V1505/W/21/3266538
- 5 Appeal Decision: APP/L1765/W/21/3271015
- 6 Appeal Decision: APP/Z3635/W/22/3292634

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawings – Elevation, Floor Plan and Front Elevation, Location Plan and Site Layout Plan received 17 Jun 2021.
- 3) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or other family's or dependants' education or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 4) On the site hereby approved (and defined by the red line on Drawing 'Site Layout Plan') there shall be no more than five pitches, each of which will contain no more than one static caravan and one touring caravan (as defined in the Caravan Sites & Control of Development Act 1960 and the Caravan Sites Act 1968) stationed at any time per pitch.
- 5) No commercial activities shall take place on the land, including the storage of materials.
- 6) No development above slab level of the amenity building shall be undertaken until details of the external surfaces have been submitted to, and agreed in writing by, the Local Planning Authority. The building shall be built in accordance with the materials agreed.
- 7) Prior to installation, details of any additional external lighting shall have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 8) The development shall be undertaken in accordance with the mitigation measures contained in the Flood Risk Assessment ref: ECL0610/PHILIP BROWN ASSOCIATES dated October 2021 undertaken by Philip Brown Associates and submitted as part of the application. Those measures shall be maintained thereafter.
- 9) Prior to the commencement of the development hereby approved, details of both foul water and surface water drainage schemes shall be submitted to, and agreed in writing by, the Local Planning Authority. The schemes shall be implemented as agreed prior to occupation of the additional pitches.
- 10) Prior to the commencement of use of the additional pitches, a visibility splay of 2.4m x 59m to the westward direction at the access point to the Highway, shall have been created. The visibility splay shall thereafter be maintained free of obstruction.