

Appeal Decisions

Site visit made on 21 December 2016

by Paul Dignan MSc PhD

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

Decision date: 14 February 2017

Appeal Refs: APP/U1105/C/16/3146167-73

Land south-west of Trafalgar Bridge, Weston, Honiton, Devon EX14 3NY.

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mrs Ivy Ayres, Mr Nelson Ayres, Mr Shaun Ayres, Mrs Nicole Ayres, Master Jimmy James Ayres, Miss Nevaeh Ayres and Master Michael Ayres against an enforcement notice issued by East Devon District Council.
 - The enforcement notice, numbered 14/F0117, was issued on 10 February 2016.
 - The breach of planning control as alleged in the notice is without planning permission the carrying out of a material change of use of the Land to a use for the siting of a mobile home and touring caravans and their use for residential purposes within the approximate area edged blue on the attached plan.
 - The requirements of the notice are: i) Cease using the Land for the siting of a mobile home and touring caravans for residential purposes; ii) Remove permanently from the Land the mobile home and touring caravans; iii) Remove all domestic paraphernalia; iv) Remove the hardstanding within the area edged blue as this facilitates the breach complained of; v) Remove from the Land all materials and debris associated with compliance steps i) – iv) above.
 - The period for compliance with the requirements is 9 months.
 - The appeal made by Mrs Ayres is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended, and the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered. The other appeals are proceeding on ground (g) only.
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Decisions

Appeal APP/U1105/C/16/3146167

1. The appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the carrying out of a material change of use of the Land to a use for the siting of a mobile home and touring caravans and their use for residential purposes, for a temporary period of five years, on the land shown edged blue on the plan attached to the notice, subject to the following conditions:
 - 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
 - 2) The use hereby permitted shall be for a limited period being the period of 5 years from the date of this permission.
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- 3) On the expiry of the limited period specified in Condition 2, the use hereby permitted shall cease and the mobile home and touring caravans shall be removed from the land along with any associated domestic paraphernalia.
- 4) No more than 3 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.
- 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) Within 3 months of the date of this decision a Flood Plan shall be submitted for the written approval of the local planning authority and the Plan shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the Flood Plan 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 Flood Plan shall have been approved by the Secretary of State.
 - iv) The approved Flood Plan shall have been carried out and completed in accordance with the approved timetable.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 6) The Flood Plan approved under Condition 5 above shall be adhered to for the duration of the use hereby permitted.

Appeals APP/U1105/C/16/3146168-73

2. No further action is taken on these appeals.

Background

3. The appeal site is a small hedgerow enclosed roadside yard with a large metal shed, of agricultural appearance but with a lawful domestic use. It is just to the north of the A30 and a short distance outside of Honiton. The appellants are a Romany gypsy family who have been living on the site in a mobile home and touring caravans. A planning application¹ was made in July 2013 for "The change of use of land to a private gypsy and traveller caravan site consisting of 2 no mobile homes (one of which is a twin unit), amenity block and associated works." That application was refused and dismissed at appeal² following a hearing in March 2014. The appellants' status as Gypsies for planning policy purposes was established at the hearing. Since then there has been a change

¹ Council Ref. 13/1661/FUL

² Appeal ref. APP/U1105/A/13/2210497

to the relevant definition, contained in Annex 1 to Planning Policy for Traveller Sites, but the information provided with this appeal indicates that they continue to meet the PPTS definition, and the Council is satisfied that this remains the case. I see no reason to come to a different view.

4. When the notice was issued there was a mobile home and 2 touring caravans stationed on the site. The planning application referred to above sought to station 2 mobile homes, but that has not been put forward as the preferred development in this appeal. I have therefore considered the appeals on the basis of the description in the Notice.

Appeal APP/U1105/C/16/3146167

Main issues

5. The 2013 planning application was refused for a single reason, namely flood risk. The Inspector determining the appeal found that there would be a significant flood risk to the occupants, and that the harm in that regard would not be outweighed by other considerations. The Council's sole reason for issuing the notice is that the development would place the occupants of the caravans on the site at unnecessary risk of flooding and reduce the effectiveness of the functional floodplain.
6. In view of this I consider the main issues to be the flood risk implications of the development, and whether any harm identified is outweighed by other considerations.

Reasons

Flood risk

7. The appeal site is located within an area designated by the Environment Agency (EA) as Flood Zone 3. In the absence of detailed flood modelling to demonstrate otherwise, the EA has advised that the site should be considered as being within Flood Zone 3b, that is functional floodplain. It is about 60m from the River Otter.
8. Policy EN21 of the East Devon Local Plan 2014-2031 (EDLP), adopted in January 2016, takes the approach set out in the National Planning Policy Framework (NPPF) to determine whether development should be permitted in areas subject to river and coastal flooding. The approach requires the application of a Sequential Test followed by an Exception Test if necessary. The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The Inspector in the 2014 appeal placed some weight on the failure of the appellant to adequately undertake a Sequential Test. At that time the Council apparently did not know the extent of the need for gypsy and traveller sites in the District, but it stated also that there were no pitches within the District known to be available, nor was there a 5-year supply of sites. There are still no available sites and no 5-year supply, but in addition the Council has now established, through a Gypsy and Traveller Accommodation Assessment (GTAA) that there is a substantial unmet need for sites. I return to that below, but the implications for the appeal is that the Sequential Test is inevitably met.

9. However, even where the Sequential Test is met, the NPPF advises that local planning authorities should only consider types of development that are appropriate. The Planning Practice Guidance (PPG) classifies caravan sites as a highly vulnerable form of development that should not be permitted in Flood Zone 3a or 3b, and EDLP Policy EN21 takes an approach consistent with this guidance. The development is therefore clearly contrary to national and local planning policy.
10. There are measures that can be taken to significantly reduce the risk to site occupants in the event of flooding, such as establishing safe escape routes and registering with flood warning notification services, of which the appellants are aware. The site is right on the edge of the designated flood zone and pedestrian access onto the adjoining highway from the southern end of the site can be arranged. Furthermore, notwithstanding that the site is within Flood zone 3, which is based on an absence of flood defences, the EA's map of "Flood Risk From Rivers or The Sea" shows most of the site, including the southern end where the mobile home is sited, as having a low or very low risk of flooding. The site has been known to flood in the past, but the most recent occurrence was in 1968 during a particularly severe event with a 1 in 500 likelihood of recurrence in any year.
11. Flooding harm can also arise where development reduces the effectiveness of the functional floodplain by restricting the flow or storage of water in the event of a flood. The caravans themselves would have little impact in this regard, but buildings or impermeable hardstanding are likely to affect floodplain effectiveness. However, the existing hardstanding associated with the use is permeable, and the Inspector in the 2014 appeal, who had the benefit of evidence from EA officers and an engineering consultant for the appellant, found that there was no substantive evidence that development of the site as proposed would have a material effect on flood risk elsewhere. I see no reason to take a different view on the evidence before me.

Other material considerations

12. The recently adopted EDLP includes Policy H7 regarding sites for gypsies and travellers. Policy H7 draws on the Devon Partnership GTAA 2015, which identified a need for 34 new pitches in the period 2014-2031, 22 of which are needed in the period up to 2019. Recent approvals have reduced the immediate need to 16 in the period to 2019, but it is evident that there is currently not a 5-year supply of sites against the local target. Policy H7 aims to meet the need, but it does not allocate sites. It is essentially criteria based, and the Council is satisfied that the appeal site in this case meets all of the criteria, including being sustainably located in terms of access to shops, schools and health facilities, which weighs in favour of the appeal. The site is also previously developed land, which attracts further weight in favour of the appeal, by reference to paragraph 26 of PPTS.
13. The EDLP envisaged a Gypsy and Traveller DPD coming forward by the end of 2016 which would make allocations of sites to meet the outstanding need. However, insufficient sites have come forward to warrant making allocations, and other options are currently being pursued. However, this points to a failure of policy, which again weighs in favour of the appeal. The current situation then is that while there is a commitment on the part of the Council to meet the locally identified need, there are no currently available sites and the prospect of

sites becoming available in the short term is unclear. Hence compliance with the requirements of the notice would see the appellants with no site to move to.

14. This raises the prospect of having to resort to unauthorised encampments, which can have very negative consequences, particularly in terms of health and education, and the appellant and one of her children have already suffered medical problems while living in unauthorised encampments. One of the school-age children has already suffered abuse at school, and losing the benefits of having a settled base would not assist in remedying this situation. I have no doubt that it is in the best interests of the children that they have a settled base from which to access education and health care, and these are clear benefits of the appeal site. This is a primary consideration. Roadside or unauthorised encampments are also known to cause tensions between settled and traveller communities, whereas occupation of the site would promote peaceful and integrated co-existence between occupants of the site and the local community. In this regard I have noted representations in support, and the living arrangements on the site, whereby the extended family live together for mutual support, is characteristic of the gypsy way of life. The proposal would therefore be consistent with the Government's aim of facilitating the traditional and nomadic way of life of travellers.
15. In many ways the site is ideal, and there are significant factors in its favour. However, given the strong policy presumptions against permitting vulnerable development in Flood Zone 3, in the absence of robust evidence to demonstrate that the site would be safe for its lifetime, I consider that the weight of the factors in favour of the appeal is not sufficient to justify permanent planning permission. However, in view of the local plan commitment to address the need for sites identified in the recent GTAA, that the flooding history of the site is confined to a very extreme event, and that there is clear potential for safe egress from the site given adequate warning, along with other measures which could reduce the flood risk, I consider, taking all of the other positive factors into account, that a temporary planning permission is justified. In coming to this view I acknowledge that the site would be at some risk of flooding, albeit small, but that must be balanced against the potential significant harm that could result from unauthorised encampment. Given the current Gypsy and Traveller DPD position, I consider that a temporary of 5 years is justified. A temporary permission would be consistent with the Council's responsibility to plan positively for such sites and would be reasonable and proportionate in the circumstances, having regard also to the occupants' rights under Article 8 of the European Convention of Human Rights. My conclusions differ from those of the Inspector in the 2014 appeal, but the information before me regarding the need for sites was not before him.

Conditions

16. Since the permission is for a temporary period, a condition specifying the period and requiring the removal of caravans and domestic paraphernalia at the end of the specified period is necessary. Since the development is a gypsy site, and I have had regard to the relevant specific national and local policies in coming to my conclusions, I consider that an occupancy condition, whereby the site could only be occupied by gypsies and travellers meeting the planning definition, is necessary. In the interests of the character and appearance of the site and surrounding area, and to safeguard local amenity, I shall limit the

number of caravans using the site. To minimise flood risk, I shall require the prompt submission of a Flood Plan to the Council, and require adherence to the approved plan.

Conclusion on ground (a)

17. For the reasons given above I conclude that this appeal should be allowed and planning permission granted on a temporary basis.

The appeals on ground (g)

18. Since temporary planning permission is granted the enforcement notice is quashed. Hence the appeals on ground (g) do not fall to be considered, and I take no further action on appeals APP/U1105/C/16/3146168-73

Paul Dignan

INSPECTOR