



Appeal Decision

Hearing held on 28 January 2020

Site visit made on 28 January 2020

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2020

Appeal Ref: APP/D0515/W/19/3228109

Crazy Acres, Chase Road, Benwick PE15 0XS

- 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 Andrew Smith against the decision of Fenland District Council.
 - The application Ref F/YR18/1038/F, dated 14 November 2018, was refused by notice dated 14 January 2019.
 - The development proposed is the removal of concrete hardstanding and replace with 8 static caravans and associated works, gravel access drive and associated fencing and planting all to accommodate one traveller's family.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are
 - a) the effect of the development on the character and appearance of the area;
 - b) whether this is a sustainable location for the development;
 - c) whether the development would be at risk from flooding;
 - d) its impact on highway safety and
 - e) if any harm would be caused by the above issues, whether this would be outweighed by other material considerations.

Reasons

Character and appearance

3. The appeal site lies in a large, flat expanse of fenland, roughly 1.5km from the settlement of Benwick. It is triangular in shape, with a wood to its north, a line of trees along its western side, and its third side is bounded by a ditch. Access to the site is gained from Chase Road, a lane that runs from Whittlesey Road and along which are a number of houses. Following the grant of planning permission in 2009 (the 2009 permission) the land currently has permission to be used for the siting of 2 touring caravans to be occupied by the appellant and his dependents, although a mobile home is now on site instead of a touring caravan and there is a dayroom as well.

4. The proposal is for a total of 8 static caravans with associated parking to replace the 2 touring caravans permitted now, and they are to be occupied by the appellant and his family. Despite the family link though I will treat them as being 8 separate pitches as each one will contain an independent household, albeit no doubt with strong daily links to the other family members on the site. There would be no commercial activity and no vehicles exceeding 3.5 tonnes parked there. Moreover, unlike on many proposals to use land for siting Gypsy and Traveller caravans, and despite one being present now, no dayrooms are proposed.
5. The proposed caravans would not be well screened, as the east side of the site is open whilst the trees along the western boundary are intermittent with higher crowns, and so would allow views through. The caravans would be set well back from Whittlesey Road, but given the flat and expansive nature of the area, I consider the structures and vehicles associated with the development would still be a notable intrusion into this landscape that would detract unacceptably from its open, rural character, and in this regard would be far more harmful than the 2 touring caravans authorised on the site now. Although landscaping is proposed, based on what is before me I am not satisfied it would adequately mitigate the development in this regard.
6. In coming to this view, I have noted the houses along Chase Road, but they are spread over a distance and to my mind do not create a pocket of existing development around this site. As such, their presence does not change the site's rural character and appearance at present. Moreover, whilst caravans housing rural workers may well be common in The Fens, I would expect those to be in and around existing farmsteads rather than relatively isolated such as this. I have noted too the farm building to the south, and I acknowledge its design limitations. I nonetheless consider that its agricultural nature means it is a more accepted part of the rural landscape and so does not lead me to a different view on the effect of the appeal scheme.
7. Finally, the appellant made reference to the greater impact of the many thousands of houses the Council has to locate across the District. I clearly have no knowledge of where they will be sited, but to my mind it does not justify a visually harmful development such as this, whether for use by Gypsies and Travellers or not.
8. Accordingly, I conclude that the proposal would detract unacceptably from the character and appearance of the area, in conflict with Policies LP5D(a) & (e) and LP16(d) in the *Fenland Local Plan* that seek development that safeguards the character and appearance of an area.

Sustainability of the location

9. Benwick contains a shop, a primary school, a public house, places of worship and a bus service to March and Whittlesey. The Officer Report concerning the 2009 planning permission described the site as being '*on the fringe of the village*' but this is not a view I share as it is some 2.5km to Benwick's shop when travelling along the roads. A walk to the village on pleasant summer evenings along bridleways may be attractive, but as the intervening roads are poorly lit with few pavements, given the distance involved it is unlikely walking or cycling to Benwick will be a realistic option throughout the year.

10. The appellant nonetheless maintained this was a good level of accessibility for rural East Anglia. That though was unsubstantiated and so cannot outweigh the concerns I have in this regard.
11. It was also emphasised that being a family group there would be shared trips undertaken. However, whilst this may mitigate the harm to some degree, in my opinion the limited services available in Benwick, plus the fact that walking or cycling are unlikely to be attractive, mean the development will nonetheless result in undue reliance on private motorised transport, in conflict with Local Plan Policies LP2 and LP15 that promote the use of non-car modes.

The effect on flooding

12. The site is in Flood Zone 3, with a high probability of fluvial flooding. In identifying the area as such, no doubt regard has been given to the character of the water systems, the nature of the landscape and the area's water-management practices. Moreover, being for the siting of residential caravans the *Planning Practice Guidance* identifies it as a highly vulnerable development. Given these factors, the *Planning Practice Guidance* therefore states in Table 3¹ that the development should not be permitted here.
13. In response, the appellant has undertaken a Sequential Test to demonstrate that no sites with a lower probability of flooding are available. This search though has been confined to the Benwick area. The entirety of this area may be in Flood Zone 3², but I consider the appellant has been too restrictive confining his search in that way. Whilst he has found there are no alternative sites 'in the vicinity' the *Planning Practice Guidance* does not expressly state the geographic area of search.
14. Notwithstanding that point, the extent of the appellant's search appears to have been confined for 2 reasons. The first is that this is the only piece of land he owns, but that in itself cannot be a reason to accept such development in conflict with the strong thrust of national guidance. Whilst he expanded on this by saying no other sites were available, little evidence supported this claim.
15. Secondly, he wished to maintain his links with Benwick where he has lived for over 10 years. Even if this appeal is dismissed though, the appellant and his dependents will continue to have the right to live here under the 2009 permission. However, the other pitches will be occupied by incoming family members who do not live in the area now and, in some cases, I understand have never lived near Benwick. Moreover, the only link that was expressly mentioned was the desire for the children of incoming family members to go to the local primary school, as the family are familiar with that school already. To my mind that does not seem a matter of sufficient strength to overcome the clear guidance against such development in this Flood Zone.
16. In coming to this view, I appreciate that undertaking a Flood Risk Assessment and a Sequential Test is expensive. However, such work should be proportionate to the degree of flood risk, mindful this is a highly vulnerable use in an area with a high probability of flooding. Therefore, limiting the cost does not justify accepting a scheme that has not been fully supported as a result.

¹ *Planning Practice Guidance* Paragraph 067 Reference ID: 7-067-20140306

² In relation to the 2009 permission the Environment Agency said the site was in Flood Zones 2/3, but that does not reflect current mapping.

17. Consequently, I find that the Sequential Test has not been satisfied as it has not been shown that suitable sites at a lower risk of flooding are not available.
18. However, considering the scheme to satisfy the Sequential Test, the appellant has gone on to undertake an Exception Test, which he also considers it satisfies. This is despite the fact that the *Planning Practice Guidance* states such tests should only be applied as set out in its Table 3, and that Table does not say it should be applied to developments of this level of vulnerability in Flood Zone 3.
19. Despite that point, an Exception Test should comprise 2 parts. The first is to assess whether the development will be safe for its lifetime. In this regard appellant's Flood Risk Assessment has found that the flood risk is low given the character of the watercourses around, but by definition, being in Flood Zone 3, there must be a high probability of flooding. Flood Zone 3 concerns the 1 in 100 year event, and so the absence of flooding over the last few years, when those present were familiar with the site, does not necessarily mean flooding is not a potential hazard here. He also contended that if any flooding did occur it would not be deep or fast, giving a low hazard rating. The basis for these findings though is not well substantiated.
20. Given their flatness and low level, I anticipate that the Fenlands are capable of suffering sudden inundations, especially if a large defence is breached or a significant piece of equipment fails. Moreover, mindful that the site is at around sea level, I have little information about the effect of climate change in this regard. If flooding did occur, then the absence of land in Flood Zones 1 or 2 near at hand could compromise the safety of the residents and there is little evidence to show how the safety of those living there would be protected.
21. The second part of the Exception Test is to consider whether wider sustainability benefits outweigh flood risk. Although I will discuss this in more detail below, at this point it is sufficient to say that no substantive evidence concerning sustainability benefits, such as a sustainability appraisal, was submitted and I am aware of no such benefits existing. Again, the *Planning Practice Guidance* advises that if a scheme does not score positively against a sustainability appraisal or similar, the Exception Test has not been satisfied and planning permission should be refused³. In my judgement such a situation applies here.
22. Considering this issue, I have been aware of the appeal decision at Bevis Lane⁴. However, that site was only a 'short distance' to land above the 1 in 1000 year flood risk and, being close to Wisbech, I understand that more detailed flood diagrams were available. Moreover, it was also for only one static caravan. Therefore, that decision does not lead me to different findings in this case.
23. Accordingly, I conclude that siting this highly vulnerable development in Flood Zone 3 would result in an unacceptable flood risk, and conflict with Local Plan Policies LP2, LP5D(a) & (e) and LP14(B) that require a safe environment for residents, and guidance in the *National Planning Policy Framework* and the *Planning Practice Guidance*.

³ *Planning Practice Guidance* Paragraph 037 Reference ID: 7-037-20140306

⁴ APP/D0515/C/18/3196061 dated 24 September 2019

Highway safety

24. Although Chase Road has a single lane only it is flat, straight and very lightly trafficked, and so if 2 vehicles met, or if there was a pedestrian on the lane when a vehicle was coming, there would be opportunity to pass in safety.
25. Chase Road joins Whittlesey Road, a 'B' road, on the inside of a bend, and so visibility is limited to some degree by the hedges and fences of the dwellings to either side. However, the road does not appear to be busy and although there is a 60mph speed limit in force it is unlikely cars would be passing this bend at that speed, but rather would be travelling appreciably slower. There is also signage on Whittlesey Road to the east and the west forewarning drivers of this double bend so they should be approaching with caution. I am aware too that, to the east, Whittlesey Road seems to be elevated slightly allowing visibility over the intervening garden.
26. Taking these factors together I conclude that this development would not have an adverse effect on highway safety, and so in this regard would not conflict with Local Plan Policies LP5D(d) and LP15C that require safe access.

Other considerations to outweigh the harm

27. Section 38(6) of the *Planning and Compulsory Purchase Act 2004* says

'the determination [of planning proposals]... must be made in accordance with the [development] plan unless material considerations indicate otherwise'.

With this in mind a number of factors have been cited by the appellant as being material considerations to be balanced against any development plan conflict.

Need

28. Of the 7 additional pitches on the site 2 would be occupied by relatives who currently live opposite each other on separate pitches in a Council-owned Gypsy and Traveller site in another local authority, 2 would be occupied by 2 of the appellant's children who are both married, have children and currently have a nomadic existence, and the remaining 3 would be for each of the appellant's remaining children to occupy in due course, only one of which is currently an adult. On the evidence before me I am satisfied that the appellant and his immediate dependents, along with his 2 married children and their families fall under the definition of a gypsy and traveller found in *Planning Policy for Traveller Sites* (PPTS). However, the other 2 family members do not appear to have travelled for a long time and I have no reason to consider this is just a temporary cessation. Therefore, they fall outside the PPTS definition.
29. I have no specific evidence before me to support a District-wide need for Gypsies and Travellers whether or not they are within the definition in the PPTS, or to show why any need that may exist cannot be reasonably addressed through a criteria-based assessment of individual applications. I therefore afford limited weight to any general need for Gypsy and Traveller sites in the District.

Personal needs of the adults

30. Five of the additional 7 pitches proposed would be occupied by people who are adults now. I accept that the appellant's married children each need a settled

base and so that is a matter to which I attach significant weight. A third pitch would be occupied by the appellant's daughter who requires her own unit. However, she now lives in the existing caravans on site, and so whilst I afford weight to her need that is less than that attributed to her 2 married siblings who have no settled base.

31. With regard to the 2 other family members who would occupy the fourth and fifth pitches, I was told that they were unhappy with the atmosphere on their current site. However, whilst that situation may not be pleasant for them, again I am aware their need for accommodation is clearly less critical than those who do not have a pitch. They each have poor health though and I accept that being close to other family members would ensure they had the care and support they need. For this reason, I therefore afford their personal circumstances significant weight.
32. The final 2 pitches would each be retained for 2 more of the appellant's children when they reached adulthood and required pitches of their own. That though, in the case of one of them at least, is a number of years away. Circumstances could change over the intervening time, and so the weight I afford their needs as adults is not decisive.

The best interests of the children

33. At the outset I have regarded no other consideration as more important than the best interests of the children or, in advance of the subsequent assessment of the individual circumstances, I have given none greater weight. However, these best interests will not always outweigh other considerations including those that impact negatively on the environment. I have nonetheless kept the best interests of the children at the forefront of my mind in reaching my decision.
34. Children would live in 3 of the 8 resultant pitches. However, one of those is the currently extant pitch and so its presence will not be challenged by this decision, and neither would the settled base and the access to education and health that it offers the children resident there.
35. The other 2 pitches would be those occupied by the appellant's married children who currently travel. The children in those families are not old enough to attend school at the moment. I nonetheless accept that a settled base is important for their emotional well-being and for their medical care. Moreover, they soon will be of school age and again a settled base would enable schooling to start as seamlessly as possible.
36. For these reasons I therefore afford substantial weight to the best interests of the children, insofar as it impacts upon 2 of the 7 additional pitches now proposed. Whilst the children may also be supported by having other family members around, that in itself is not so necessary and consequently does not add any appreciable weight to the presence of the other 5 pitches.

Other benefits

37. The 2 family members who now live on a Council-owned site would make their existing pitches available by moving here, and some limited benefit arises from this.

38. One of the parts of the Exception Test is that the development will provide wider sustainability benefits that outweigh flood risk. However, beyond establishing a number of additional pitches, no such benefits have been substantiated and I am aware of no reasons why the scheme would score positively against the aims of a sustainability appraisal had one been submitted. I therefore afford limited weight to the wider sustainability benefits.

Planning balance

39. Harm would be caused to the character and appearance of the area, and I afford this moderate weight. I also attach moderate weight to the distance of the site from services and the inevitable reliance on motorised transport that will result. Moreover, as the site is in Flood Zone 3 where there is a high probability of flooding and as it would be for a highly vulnerable form of development, I attach substantial weight to the harm resulting from flood risk, particularly given the presence of children and those in need of care at the site.
40. Balanced against this the development provide a settled base for a number of children to assist in their emotional, educational and medical development. Although I can give this substantial weight, in relation to the scheme as a whole though this level of weight is limited to just the 2 new pitches where the children will be living. Moreover, I attach significant weight to providing a settled base for 2 families plus care needs for 2 other family members, lesser weight to providing a pitch for the appellant's child who lives on site now and is an adult, and a limited amount of weight to existing pitches being freed up elsewhere, providing pitches for the younger children, and the sustainability benefits.
41. Overall, I therefore find that the benefits do not outweigh the identified harm. Moreover, it is open to me to grant a temporary permission, but I am aware of no reasons why the planning context should change in the foreseeable future. It is also possible to restrict occupancy to just some of the intended residents, but I consider these would still be subject to the concerns about flooding in particular.

Conclusions

42. For the reasons stated I therefore conclude the appeal should be dismissed.

J P Sargent

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr J Cunningham	Site Manager of the Gypsy and Traveller site at Oxney Road in Peterborough
Dr R Home	Planning Consultant
Mr D Ison	Local resident
Mr A Smith	Appellant
Ms K Smith	Member of the appellant's family
Ms L Smith	Member of the appellant's family
Ms Savannah Smith	Member of the appellant's family
Ms Shania Smith	Member of the appellant's family

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Taylor	Senior Development Officer with Fenland District Council
Mr A Warnock	Highways Development Management Engineer with Cambridgeshire County Council

DOCUMENTS

- 1 Appeal notification letter submitted by the Council
- 2 Details of application F/YR09/0699/F submitted by the Council
- 3 Various letters concerning the health of one of the potential residents submitted by the appellant