

Appeal Decisions

Date of Hearing 19 November 2019

Site visit made on 19 November 2019

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

an Inspector appointed by the Secretary of State

Decision date: 02 April 2020

Appeal A: APP/D0515/C/19/3226096

Land west of (Six Acres) Bar Drove, Friday Bridge, Wisbech, PE14 0JE

- 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 L Smith against an enforcement notice issued by Fenland District Council.
- The notice was issued on 8 March 2019.
The breach of planning control as alleged in the notice is: without planning permission, the material change of use of land from an equestrian use to a mixed use of equestrian and residential use, and the residential occupation of three static caravans.
- The requirements of the notice are:
 - (i) Cease the used [sic] of the land for residential use, and;
 - (ii) Remove the three static caravans, hardstanding and two metre close boarded fence from the land hatched red on the attached plan.
- The period for compliance with the requirements is:
Steps [sic] i) to be completed within 6 months from the date the notice becomes effective;
Steps [sic] ii) to be completed within 7 months from the date the notice becomes effective.
- The appeal is proceeding on the grounds set out in section 174(2)(a)(c)(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice as corrected is quashed, and planning permission is granted as set out below in the Formal Decision

Appeal B: APP/D0515/W/19/3226090

Six Acres, Land west of Bar Drove, Elm, Cambridgeshire PE14 0LE

- 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 Mrs Lynda Smith against the decision of Fenland District Council.
- The application Ref F/YR18/0821/F, dated 23 July 2018, was refused by notice dated 31 January 2019.
- The development proposed is change of use from agriculture to a residential use and the residential occupation of 3no static caravans and 2no tourer caravans (retrospective).

Summary of Decision: The appeal is allowed and planning permission granted subject to conditions set out below in the Formal Decision.

Application for Costs

1. An application for costs was made by Mrs Lynda Smith against Fenland District Council. This application is the subject of a separate Decision.
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Preliminary matters and background

2. The s78 appealed application was for the change of use of land to 1 no. Gypsy / Traveller pitches and associated works including 3 no. mobile homes. This was subsequently amended to "*Change of use from agriculture to a residential use and the residential occupation of 3no static caravans (retrospective)*" and by agreement of the parties at the hearing to include two tourers on the appeal site. I have therefore retained this description of development in the banner heading above.
3. The residential use began around September 2011 according to the application form in the s78 appeal, Appeal B. Planning permission Ref F/YR10/0537/F was granted in 2010 for "erection of stables and tack room and formation of menage and erection of 8no 7.5 metre high floodlights" on a fairly large rectangular area of land that includes the s78 appeal site. The s78 appealed application does not include equestrian use, as does the deemed planning application (DPA) made under s177(5) of the 1990 Act. However the s78 appeal site is confined to a small square-like portion in the south east corner of the rectangular area subject to permission F/YR10/0537/F, where not only the caravans are sited, but also the hay barn, or "existing shed" as annotated in the permission, and part of the menage.
4. The rectangular area of land subject to permission F/YR10/0537/F is itself part of a much larger area of mainly grazing land owned by the appellant, which larger area is the subject of the enforcement notice, albeit that its requirements relate solely to the area where the caravans are sited.
5. The sites in both appeals thus cover different areas but from my inspection of the land and other evidence available I am satisfied that their current use is a mixed use for equestrian and residential purposes as a gypsy/traveller site, and that the current lawful use of both appeal sites is clearly equestrian in nature.
6. The equestrian use in the DPA is not particularised but relates to the existing authorised use pursuant to permission Ref F/YR10/0537/F. This permission is limited by condition such that "*the stables hereby approved shall be limited to the private use of the applicant only and shall not be used for commercial purposes.*"
7. I consider below the planning merits of both appeals and references to the site, unless the context otherwise requires, are to the s78 site. In the s78 appealed application, on-site parking spaces are proposed for 3 cars and 2 commercial vehicles. Surface water would be disposed of by soakaway, and foul sewage by means of a septic tank. The site's existing access would be used, to which the highway authority has no objection. The layout plan (PA04) shows 3 mobile homes, foul water to be managed by an existing septic tank, and soft landscaping, detailed in the layout plan and a landscape statement.

Appeal A

Matters relating to the notice

8. The documents for permission Ref F/YR10/0537/F were not provided until the morning of the hearing, and in a piecemeal and incomplete fashion by both parties. Thereupon the Council said it would be content to have the notice altered to omit the requirement to remove the hardstanding, however in light of my decision to allow the appeal and quash the notice that is unnecessary.

9. Both parties invited me to correct the notice to add two tourer vans, on the appeal site, to the allegation of the breach of planning control. I shall do so using my powers of correction in s176 of the 1990 Act.
10. On the enforcement notice plan, what appears to be a drain runs through the appeal site, on a narrow strip of land that is unregistered. It was said to be possible that the relevant drainage authority had an interest in the land who, if that was the case, had not been served with a copy of the notice. The ditch had been filled in for at least ten years since the land was acquired by the appellant and her late husband and to all intents and purposes formed part of the grazing land.
11. Whilst statutory bodies have powers to work on watercourses under their jurisdiction, the law presumes in the absence of contrary evidence, that land adjoining a watercourse includes the watercourse to its mid-point. This applies to a person such as the appellant who is "riparian owner" of the watercourse, that is the person who owns the land on or adjacent to which the watercourse flows. I find no evidence however that persons other than the appellant have a legal interest in the appeal site and therefore no question of ineffective service arises.
12. Of course those who would implement any eventual planning permission must take account of whether or not a watercourse, which may still include a drain or ditch even if normally dry, is within the jurisdiction of a relevant flood risk management authority, and whether any works planned in, over, under or near it, need separate consent.

Ground (c) - the matters alleged in the notice do not constitute a breach of planning control

13. The Appellant says the hardstanding required to be removed was permitted by planning permission Ref F/YR10/0537/F for "erection of stables and tack room and formation of menage and erection of 8no 7.5 metre high floodlights".
14. The exact extent of hardstanding permitted under that permission is unclear from the plans I was given. However the permission does not permit any residential use, or the siting of caravans for such use, which is alleged in the notice. It is unarguable that the alleged breach of planning control does require planning permission that has not been granted. Therefore the appeal under ground (c) must fail.

Appeal A on ground (a) and Appeal B

Matters of common ground and main issues

15. The appeal site is in the countryside and within Flood Zone 1 (low risk). It is undisputed that the site is previously developed land, is sustainably located and that the appeal proposals would not be prejudicial to the amenities of neighbouring residential properties, highway safety, biodiversity, or nature conservation interests. There is an unmet need for gypsy and traveller sites in the district, and the Council cannot demonstrate a 5-year deliverable supply of pitches to meet accommodation needs for travellers in its district.
16. The main issues are:

- a) The effect of the development on the character and appearance of the surrounding area; and
 - b) The gypsy status of the appellant and other occupants of the site and their personal circumstances.
17. The local provision of sites, need and availability of alternative accommodation was initially disputed at the hearing, and I also make reference to this matter.

Character and appearance

18. The appeal site contains three static caravans, two tourer vans and a 2m high perimeter close boarded fence to the front and north of the site. Its area is about 0.09 ha, part of a larger rectangular area of land in the same ownership. The site is 500m to the north of Friday Bridge and 500m south of Elm and lies to the west of Bar Drove, in characteristically flat and open countryside.
19. The surrounding land use is mainly agricultural whilst to the west of the site are stable blocks, tack room and manege, owned by the appellant, pursuant to permission F/YR10/0537/F granted on 13 September 2010. Most of the site is laid to hardstanding in association with the stable blocks adjacent to the appeal site. In the south of the site is the large storage building/hay barn for horses kept on the adjacent land.
20. The Council considers the caravans and associated residential paraphernalia are 1) not in keeping with the character of the open countryside along Bar Drove; and 2) visually incongruous and unduly prominent in this landscape, impacting unacceptably on the character and appearance of the area, contrary to Policy LP16 of the Fenland Local Plan 2014 (FLP). This policy is also quoted in the reasons for issuing the enforcement notice. It requires developments to respond to local distinctiveness and the character of the area.
21. For gypsy and traveller accommodation FLP Policy LP5 Part D sets out criteria as to a site's suitability for occupation by those who meet the planning definition set out in Planning Policy for Traveller Sites 2015 (PPTS). Decisions are made on a "case by case" basis subject to: no conflict with national planning policy; a peaceful and integrated coexistence with the local settled community; and no unacceptably adverse impact on local character or appearance. PPTS, Policy H also sets out similar criteria for determining planning applications for traveller sites.
22. PPTS expects sites to be found in the countryside outside the Green Belt since Paragraph 25 advises Councils to *"very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan"*.
23. Policy LP5 also states that permission for sites in the countryside would depend on evidence of a need for such provision. I agree with the appellant that this should have limited weight, given the conflict with the later PPTS Paragraphs 11 and 24, which endorse criteria-based policies where there is no such need, and Paragraph 25 which expects sites to be located in the countryside, albeit with restrictions, but without any precondition of evidence of need.
24. It is not in dispute that some hardstanding has been present on site for over four years and as such can be considered lawful, as is the barn associated with

- the equestrian use of the adjoining site. The use of previously developed land (PDL) where suitable opportunities exist is encouraged by paragraph 84 NPPF.
25. PDL is defined in the NPPF as land *"which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure."* Bearing this qualification in mind, as well as paragraph 26 PPTS on the use of brownfield land, the limited extent of previous development on the site carries weight in favour of the appeals.
26. The relatively isolated characteristics of the site are unlikely to be such as to undermine co-existence between its intended occupants and the local community. The development would comply with the second limb of paragraph 25, PPTS in that the site would *"respect the scale of, and not dominate, the nearest settled community, and avoid placing undue pressure on local infrastructure."*
27. The Council was particularly concerned with the views of the appeal site along Bar Drove. I agree that the open views of agricultural land span a considerable distance along this road. However there are small pockets of development amidst the open land in the general vicinity, such that the skyline is far from completely devoid of features. The view on Bar Drove looking north takes in the extensive line of buildings or structures associated with the established equestrian use. These include the hay barn which virtually eclipses views of the caravans in this direction, tack room and stables, all of which mitigate considerably the appearance of the caravans on the appeal site.
28. Having considered the landscaping proposed on the layout plan, I would agree that hardstanding to facilitate residential occupation in caravans would be an additional requirement to what might be strictly necessary to facilitate the equestrian use. A "recreation lawn" is proposed with trees in the centre of the site which would provide some amenity space for the proposed occupants. Its precise extent could be agreed as part of a site development condition and would avoid *"enclosing a site with so much hard landscaping"* in accordance with Policy H of PTTS.
29. The 2m high close boarded fence was said by the Council to be for privacy of the current occupants and inessential to an equestrian use. However a similar kind of treatment might in my view be argued to be necessary on security grounds, such as to comply with FLP Policy LP16 (j). Its replacement with the scheme of planting on the north, east and south boundaries would clearly take a while to adequately screen the site. However once completed, this would form an effective visual barrier to most of the development, accepting that glimpses of residential paraphernalia may continue to be had and the additional comings and goings of the occupants.
30. It was suggested that the boundary treatment could be at a similar height of 2m. I agree, save that an effective screen that blends in with its surroundings may require a sensitive and not completely uniform treatment (which is more likely to draw the eye) in terms of its articulation around the site including as to width, height, use of native species and so forth; such detail could in my view also be included within a site development condition.
31. The site would not be enclosed off to the rest of the community, nor does PTTS suggest that traveller sites should be developed in such a way. The previous

appeal decision¹ submitted on this point does not relate to Fenland but I accept that gypsy and traveller sites are a common sight in the countryside and are not intrinsically discordant or out of character.

32. Furthermore when assessing the overall increase in harm to the character and appearance of the area, the fallback position should be considered against the landscaping proposals and what a site development scheme could achieve. The lawful equestrian use, hay barn and hardstanding on the appeal site, their location adjacent to a stables, tack room and flood lit menage, are relevant considerations. There is also a reasonable likelihood of stationing of structures incidental to the established use such as horse boxes and the like.
33. Additional visual impacts from the vans and increased use of the site would be evident. However landscaping of the boundaries on the three sides subject to public views would reduce the harm from the visual impact of the development to a level that in overall terms would not unacceptably undermine the setting of the open countryside or make the development unduly prominent. Also the appellant would accept a requirement as illustrated in the proposals, for the proposed hedgerow on the south boundary to extend beyond the appeal site itself, so as to screen the existing stables and tack room on that side. In my view the hedgerows would not so much disrupt the landscape rhythm as compared with the close boarded fence, but facilitate assimilation of the development within its local setting.
34. I find therefore that the development would comply with the aims of FLP Policy LP16 (d) and Policy LP5 (e) in not having an unacceptably adverse impact on the landscape character of the surrounding area. National policy in paragraph 127 of the Framework would be complied with in its aim to ensure development is sympathetic to landscape setting, and is attractive as a result of layout and appropriate to ensure no unacceptably adverse impact on local character or appearance. Policy H of PTTS would also be complied with in terms of the similar criteria relevant to this main issue.

Gypsy status and personal circumstances of occupants

35. Within the glossary definition in PPTS, "traveller" includes gypsies and travellers for the purpose of the policy and is defined as:

"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, but excluding members of an organised group of travelling show people or circus people travelling together as such."

36. In determining whether persons are "gypsies and travellers" for the purposes of this policy, consideration is to be given to the following issues amongst other relevant matters:
- a) whether they previously led a nomadic habit of life*
 - b) the reasons for ceasing their nomadic habit of life*
 - c) whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.*

¹ APP/G1630/W/17/3192162, 27 November 2018

37. It is not in dispute that, as according to the Council's traveller and diversity (TD) manager, the appellant was not born into a gypsy family, but travelled with her deceased husband, an English Gypsy. They travelled with their children until his ill health made nomadic life impractical, and they bought land including the appeal site in 2010, turning it into a livery/stables.
38. The appellant, who occupies one mobile home has stopped travelling permanently due to ill health and as such no longer meets the PPTS definition. She is in receipt of welfare benefits. Her livery stable was described as a small living and she states a need to live on site nearby. Two persons keep horses there and they each look after their own horses. Whilst not paying a fee they help out the appellant. Fencing needs to be maintained, weeding, cutting grass and fertilising are required. This takes a few hours per week, the appellant does what she can and her family also helps out. She suffers from anxiety and depression and other illnesses that have exacerbated since her husband's passing and requires this support and emotional support from her family.
39. On behalf of the appellant it is said that as the other two households on site meet the PPTS definition and are Romany Gypsies, it would be a disproportionate interference with her human rights to prevent her from living on the site with her family.
40. The rationale for considering gypsy status in a planning application is that their nomadic lifestyle brings with it special needs that render them more vulnerable to homelessness if subject to the normal regime of planning control. Those who are not currently nomadic, for whatever reason, whether through retirement or illness, are outside the scope of the policy which makes special provision for gypsy status. However their traditions, lifestyle and personal circumstances are still relevant to the planning decision, to be weighed against local plans and policies as material considerations.
41. Thus the individual circumstances and needs of former gypsies such as the appellant may still be taken into account. She clearly has been part of a travelling family and some of her family are still nomadic. That she might be forced to resume a mobile life if the appeals were dismissed, is also a material consideration. The appeal decision cited in support of these principles generally follows established case law in this regard.²
42. The other two households on site are: the appellant's son J, C his wife, and their 2 children aged 6 and 4; and her daughter S, M her husband and their 2 children aged 8 and 8 months. The extended family group which the appellant wishes to be considered comprises these occupants as well as herself.
43. It is not disputed that J and his immediate family, who occupy one mobile home, meet the PPTS definition and are Romany Gypsies. Given their ethnic Gypsy status the Public Sector Equality Duty (PSED) is engaged, such that these residents have a relevant protected characteristic for the purposes of applying the duties in section 149 of the Equality Act 2010.
44. Article 8 of the European Convention on Human Rights, enshrined into UK law by the Human Rights Act 1998, imposes a positive obligation to facilitate the gypsy way of life in that the vulnerable position of Gypsies as a minority group

1. ² APP/L3815/C/15/3136912

means that some special consideration should be given to their needs and lifestyle in reaching planning decisions in particular cases.

45. However the Council considers that S who, it is undisputed was born a gypsy, and her own family, who occupy the third static caravan, no longer meets the gypsy definition in PPTS but could do so if she were able to travel. However I found no clear evidence of her intention to return to a nomadic lifestyle. Her eldest child attends a local primary school which means S cannot travel and she also supports her mother emotionally and with the stables. S told me she would be caring for her children in the next few years, and as her youngest grows up and attends nursery she would get a part-time job to help with the income, but she wanted the children to be at school for as long as possible.
46. M is not an ethnic Gypsy. The Council states that his work with J is no different to a contractor of non-gypsy status who travels for work and stays away from home for periods of time. M works with J when he needs someone with him, they are partners in business, frequently and regularly travelling and finding work principally by word of mouth, consisting of fencing and groundworks, using one of the tourers. The other tourer is used by M and S in the summer when the children are not at school. M had no other source of income and told me he had been doing this kind of work from an early age. He was 31 and had been with S for ten years, so in effect in a nomadic life for most of adulthood. During the school holidays when M and J were not travelling together, M and S travelled as a family in the tourer, M finding work as described above, whilst she looked after the children.
47. Although I have been unable to establish that S herself has an intention to take up or resume active economic travel at some point in the future, I am satisfied from what I have heard, that as a matter of fact and degree M is currently living a travelling life for an economic purpose on a seasonal or periodic basis.
48. I take into account that although he has no traditional gypsy background he has acquired and adhered to the nomadic lifestyle for several years, his intention to continue in this lifestyle is realistic and, as it seems to me honest. This lifestyle is presently limited (but likely to intensify as the children grow older) given the childrens' ages and circumstances of their mother who requires ongoing physical and emotional support from her wider family.
49. Absence of ethnic gypsy origins alone is not determinative of M's status. This is to be differentiated from generalised work-related travel, given they have moved around the country as a family whilst seeking and carrying out seasonal work, not just by way of an extended holiday during summer months. Given all these factors I find that M meets the planning definition in PPTS.
50. Had I not come this view on M's status as a matter of planning law and policy, his personal circumstances and those of his family would have remained relevant and weighed in favour of the appeals.
51. The occupants on site seek a settled and lawful base. Their personal circumstances are relevant, and their Article 8 rights and the PSED are engaged. Several occupants have registered with a local medical practice and some have medical issues, in particular the appellant, which requires treatment or monitoring for the time being. The documentary evidence submitted from a health professional in respect of these matters was accepted by the Council.

52. The children's best interests are a primary consideration following the principles laid down in *ZH (Tanzania) v SSHD [2011] UKSC 4*, which inherently have substantial weight. There are 4 children of varying ages living on the site and it is in their best interests to have a settled base from which to access stable education in the future according to their respective ages, free from disruption. This is a matter to which the parents attached a good deal of importance.
53. The appeal site offers the opportunity of providing one pitch for the extended family. All occupants who spoke at the hearing emphasised the mutual support they gave each other, especially the appellant, consistent with the traditional lifestyle of an extended gypsy family.
54. The current level of equestrian use is fairly low key and it is clear to me that it is the appellant who keeps it going, albeit with assistance and she derives a valuable sense of fulfilment from doing so. It was said by the Council at one point in its statement to be unauthorised under permission Ref F/YR10/0537/F but from what I have seen and read it does not appear that a full-blown commercial use is being undertaken on site. In any case I have not been presented with detailed information that would indicate what if any has been the continuous period of use and therefore how that might impinge on the restrictive condition in F/YR10/0537/F.
55. The appellant has not proposed a commercial use of the site and therefore I have not considered whether it offers the possibility of meeting Policy F of PTTS which encourages where possible, the provision of traveller sites suitable for mixed residential and business uses, whilst not giving rise to adverse safety or amenity issues for its occupants or nearby residents. That said, if the appellant were not there, there is a risk that the livery/stables activity may become unfeasible and she would lose the benefit thereof. Some weight should be ascribed to this matter.
56. To conclude, the appellant and S do not meet the planning definition in accordance with LP Policy LP5 Part D and PTTS, however the majority of the development is occupied by those within her extended family who meet the definition or who are their dependents. Moreover the individual circumstances of the appellant and S and those of the family group taken as a whole are to be taken into account, which on the facts carry significant weight in favour of the development comprised in both appeals.

Availability of alternative accommodation and site provision

57. The availability of alternative accommodation is a relevant matter under PPTS criteria (paragraph 24) in deciding applications. Under the PTTS, Policy B the Council should set pitch targets that address the likely need for permanent and transit sites and have an up to date 5 year land supply. This requirement is reflected in FLP Policy LP5 Part D.
58. Before the hearing the Council's position was that the Gypsy and Traveller Accommodation Need Assessment (GTANA) identifies 18 new pitches required up to 2031 and for the current five year period of April 2016 to March 2021, 10 new pitches would be required. As at March 2018, 5 new pitches had been approved and until the end of October 2018 no other pitches had been approved, therefore a need was accepted for another 5 pitches during the current five year period.

59. At the hearing the Council initially sought to present a case that in the last twelve months additional pitches had been approved such that its case on unmet need had reversed. I allowed further information to be submitted by the Council in this respect and requested that both parties considered and discussed this material between themselves during the lunch break.
60. To be considered deliverable under the PTTS, sites should be available now, offer a suitable location for development, and be achievable with a realistic prospect that development will be delivered on the site within five years. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within 5 years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans. Furthermore, to be considered developable, sites should be in a suitable location for traveller site development and there should be a reasonable prospect that the site is available and could be viably developed at the point envisaged.³
61. It is unnecessary to go into the details of the material provided by the Council submitted in support of their change in position, as I was informed later during the hearing that it was no longer to be relied on. It accepted after all that there was an unmet need for additional pitches in the district, in line with its position before the hearing began.
62. The Council's approach is that under the FLP the need for the unknown households would be likely to be met via a criteria-based policy or for those households that provide evidence that they meet the planning definition. It is however the case that this approach does not wholly fulfil the aims of planning for traveller sites within Policy B of PTTS.
63. On the other hand the development comprised in the appeals would meet the PPTS aim to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites.
64. I was told that the FLP was under review and was at the "options" stage. I enquired about the Local Development Scheme that is required to be put in place each year which among other things, prioritises work on development plans. There are no plans to include any development plan document that would clearly identify specific sites for gypsies and travellers.
65. Although the level of unmet need identified is relatively low for residential gypsy and traveller sites in Fenland, it is a material consideration that carries weight. I find that the appellant and her extended family are in need of a gypsy pitch and there are no alternative sites currently available to meet this need. Nor was there any evidence put forward of any alternative accommodation to which the family might have recourse.
66. I give these factors considerable weight.

Other matters

67. The appeal site is about a mile from Friday Bridge and 1.8 miles from Elm, having a variety of amenities including a primary school. Bar Drove does not have a footpath or street lights and given the nature of the application and location, it is reasonable to expect reliance on private car use as the NPPF at

³ PTTS, Policy B, paragraph 10, fn 4 and 5.

paragraph 83 advises. The site is in a sustainable location and provides a settled base such as would meet criterion b of Policy LP5 Part D.

68. Bar Drove is a straight unclassified road with good visibility and the scale and nature of the development is unlikely to generate high vehicle movements or harmful impacts upon highway users. The five parking spaces proposed would be a reasonable provision on site, and an overall assessment of how they would best integrate with the rest of the layout could be included within a site development condition.

Planning Balance

69. The appeal site is in a relatively isolated part of the countryside at a sufficient distance from nearby settlements to avoid the development becoming a dominant influence upon them. It is in a location where PPTS expects gypsy and traveller sites to be found. The access and parking arrangements are not considered to cause adverse harm to highway users and the site has the means to facilitate services for water, waste water and refuse collection. As such the development meets criterion d and f of Policy LP5 Part D.
70. The development of the appeal site would be an effective use of PDL under paragraph 26 of PPTS. Further, if the appeals were dismissed, the site would likely stay within equestrian use. Consequently the barn, hardstanding next to the ménage, lighting and stationing of associated vehicles would all continue to exert a compromising influence on the open and flat landscape around them.
71. The appeal site is suitable in size for an extended family unit. The development would not be entirely concealed, but gypsy and traveller sites should not be so enclosed as to give the impression of deliberate isolation. A condition providing for a site development scheme based on the submitted landscape plan could achieve an appropriately high standard of design and layout.
72. Some visual harm to the landscape setting of the area would be inevitable until the planting scheme is carried out and the newly planted vegetation has had a really beneficial effect. Given the typically dry conditions in Fenland it is arguable whether this could be achieved within a period of 2-3 years rather than the 6-7 years posited by the Council. Nevertheless on completion the development would avoid unacceptably undermining the character and appearance of the surrounding area, in particular the long-range views along Bar Drove.
73. In these respects the development would in overall terms comply with the key objectives of FLP Policies FP16 and LP5 as well as paragraph 127 of the NPPF and Policy H of PTTS.
74. The Council cannot demonstrate a 5-year deliverable supply of pitches to meet the need for travellers in the district. There is a small but unmet need identified, to which the needs of the gypsy members of the appellant's extended family who meet the planning definition, are additional, and as such should be given significant weight.
75. Two mobile homes are occupied by persons who meet the planning definition of a gypsy or traveller and their dependents, and the third is occupied by their mother, the appellant, who wants to stop on site to maintain the stables/livery use, and to obtain close family support. Without a settled base the adverse

impacts on the education of the children and access to health services for the appellant would be serious and engage the operation of their Article 8 human rights to respect for private and family life and the home, as well as by reference to the extended family unit as a whole. It is not possible to be certain when alternative accommodation for those meeting the planning definition would be available. I accord significant weight to these matters.

76. A privately-owned site may effectively restrict occupants to close family but would be compatible with PTTS aims to promote private traveller site provision. The appellant has maintained an equestrian base on this and the adjacent site with which she is engaged in a positive way that assists with her well-being.
77. Four young children occupy the site and their best interests are to have a stable base from which their present and emerging educational needs can continue to be met. The health-related circumstances of the appellant also carry weight in favour of allowing the appeals. No resident has a suitable alternative base from which to travel and access facilities to meet their respective needs. Moreover the needs of the whole group considered together and the degree of interdependence and mutual support displayed toward each other, is a strong factor to weigh in the balance.
78. The development comprised in both appeals is in overall compliance with the key development plan policies, albeit some temporary harm would result from the continued use of the site, until completion of a landscaping scheme would reduce the visual impact to an acceptable level. The development plan policies are in broad alignment with the NPPF, however limited weight should be given to that part of Policy LP5 that makes permission for gypsy sites in the countryside dependent on evidence of need, since the acceptability of such sites is not so qualified in the more recent, national policy in the PTTS.
79. In my opinion the appellant group's need for a site more or less equates to a need for this site, given the link to the adjacent stables, the length of time the appellant has resided there, and the support that is now required and available from her extended family, which is a key characteristic of their cultural tradition. In any event there are no other sites available.
80. The development would cause harm for a limited but not insubstantial period, so this must be given moderate weight. I have considered whether a temporary permission would be appropriate but the time-limited and moderate harm would be significantly outweighed in my view by the material benefits in allowing either appeal.
81. These are found in contributing to meeting a general need for gypsy sites in the district where there are no alternative available sites, the fact that the Council has not demonstrated a five year supply of deliverable sites, and that it is uncertain when sites would become available. It would also promote an increase in private gypsy sites in a location that is socially, economically and environmentally sustainable, in accordance with PTTS. These factors are sufficient in my view to justify a permanent permission.
82. As to the appellant's personal need for accommodation together with that of her extended family, their individual and collective personal circumstances taken as a whole, remain a compelling factor that supports a decision to permit their continued occupation of the site, where such occupation would otherwise be restricted to those meeting the planning definition in PTTS.

Conditions in relation to both appeals

83. The site would be suitable and acceptable for use by any gypsy or traveller meeting the planning definition, so a general occupancy condition should be applied to that effect. Although permission is being granted for general gypsy use, the appellant and her daughter do not currently meet this definition but should be given permission to stay, and therefore the condition will be adapted to ensure compatibility with this objective.
84. A condition specifying the maximum number of caravans is necessary to limit the scale of the development, as is the restriction of parking of vehicles over 3.5 tonnes.
85. A site development scheme, including layout and landscaping based on the submitted landscape proposals, should be submitted to the Council for approval to protect the character of the area and, in the interests of the occupants' living conditions and prevention of pollution, details of drainage of the site and disposal of foul sewage should be submitted to the Council for approval.
86. The permission to be granted in Appeal A is for a mixed residential and equestrian use. I have had regard to PPTS at paragraphs 18 and 28, but see no need, and none was urged upon me, to formally delineate the respective uses within the site. The current mixed use is not inconsistent with granting a permission for a change of use to a gypsy pitch in the terms sought. However a condition is required in both permissions in the interests of protecting local character and appearance, to restrict commercial activities on the site, including, and save as is in accordance with permission F/YR10/0537/F or the lawful use of the existing hay/storage barn, the storage of materials.
87. As the development has begun the condition requiring the submission of details requires strict time limits for compliance so as to ensure that, if there is non-compliance the development becomes unauthorised and can be enforced against. A usual and reasonable period within which to require submission of such details is three months.

Conclusion on Appeal A, ground (a) the deemed planning application

88. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. Since the enforcement notice as corrected is quashed following the grant of planning permission, grounds (f) and (g) no longer fall to be considered.

Conclusion on Appeal B

89. For the reasons given above I conclude that the appeal should be allowed.

Formal Decisions

Appeal A

90. It is directed that the description of the breach of planning control in the enforcement notice be corrected by the insertion, after "caravans" of the words "and two tourer caravans".
91. Subject to this correction the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development

already carried out, namely the use of the land west of (Six Acres) Bar Drove, Friday Bridge, Wisbech, PE14 0JE, as shown on the plan attached to the notice, for the material change of use of land from an equestrian use to a mixed use of equestrian and residential use, and the residential occupation of three static caravans and two tourer caravans, subject to the following conditions:

- 1) The site shall not be occupied by any persons other than
 - a) gypsies and travellers as defined in Annex 1 of Planning Policy for Traveller Sites (Department for Communities and Local Government, August 2015) or any replacement guidance;
 - b) Mrs Lynda Smith;
 - c) Sylvie Smith.
- 2) There shall be no more than 1 pitch, and on the pitch hereby approved no more than 5 caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended) shall be stationed at any time, of which only 3 caravans shall be static caravans.
- 3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 4) No more than two commercial vehicles shall be kept on the land for use by the occupiers of the caravans hereby permitted, and each shall not exceed 3.5 tonnes in weight.
- 5) No commercial activities shall take place on the land and no storage of materials other than in accordance with Planning Permission Ref F/YR10/0537/F or the lawful existing use of the hay/storage barn.
- 6) 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 3 months 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, details of: a) any external lighting on the boundary of and within the site; b) the internal layout of the site, including the siting of caravans, hardstanding, parking and amenity areas; c) any means of enclosure; and d) tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities; shall have been submitted for the written approval of the local planning authority and the said schemes shall include timetables for implementation.
 - ii. within 11 months of the date of this decision, the details and schemes submitted in pursuance of (i) above 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 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.

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

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.

Appeal B

92. The appeal is allowed and planning permission is granted for the change of use of land to 1 no. Gypsy / Traveller pitches and associated works including 3 no. mobile homes and 2 no. tourer caravans at Six Acres, Land west of Bar Drove, Elm, Cambridgeshire PE14 0LE in accordance with the terms of the application Ref F/YR18/0821/F, dated 23 July 2018, subject to the following conditions:

- 1) Subject to compliance with Condition 7) the development hereby permitted shall be in accordance with the following plans: PA03: Site Location Plan (1:2500 @ A4, Drawing No.: LS18-SLP rev B); PA04: Site Layout (1:200 @ A3, Drawing no.: LSmith18-Layout); and PA05: landscape statement.
- 2) The site shall not be occupied by any persons other than:
 - a) gypsies and travellers as defined in Annex 1 of Planning Policy for Traveller Sites (Department for Communities and Local Government, August 2015) or any replacement guidance;
 - b) Mrs Lynda Smith;
 - c) Sylvie Smith.
- 3) There shall be no more than 1 pitch, and on the pitch hereby approved no more than 5 caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968) shall be stationed at any time, of which only 3 caravans shall be static caravans.
- 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 5) No more than two commercial vehicles shall be kept on the land for use by the occupiers of the caravans hereby permitted, and each shall not exceed 3.5 tonnes in weight.
- 6) No commercial activities shall take place on the land, including the storage of materials, other than in accordance with Planning Permission Ref F/YR10/0537/F or the lawful existing use of the hay/storage barn.
- 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 3 months 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, details of: a) any external lighting on the boundary of and within the site; b) the internal layout of the site, including the siting of caravans, hardstanding, parking and amenity areas; c) any means of enclosure; and d) tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities;

shall have been submitted for the written approval of the local planning authority and the said schemes shall include timetables for implementation.

ii. within 11 months of the date of this decision, the details and schemes submitted in pursuance of (i) above 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 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.

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

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.

Grahame Kean

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Simon Ruston (MRTPI)	Ruston Planning
Lynda Smith	Appellant
C	Appellant's daughter in law
J	Appellant's son
M	Partner of S, Appellant's daughter
S	Appellant's daughter

FOR THE LOCAL PLANNING AUTHORITY:

Sandeep Bains	Development officer
David Bailey	Traveller and diversity manager
David Rowen	Development manager
Lee Walsh	Senior enforcement officer
Gareth Martin	Senior development officer (policy)

ADDITIONAL DOCUMENTS SUBMITTED AT THE HEARING:

FDC1	Approved Pitches in Fenland since April 2013
FDC2	Extract from Revised planning definition, Equality and Human Rights Commission Sep 2019
FDC3	Decision notice, 13 Sep 2010
FDC4	Land Registry copies
SR1	Appeal decision 24.9.2019 (Inspector Peerless)
SR2	Assessment of Appellant, Cambridgeshire and Peterborough NHS Trust
SR3	Plans relating to menage, stables and tack room