



Appeal Decision

Site visits made on 27 October and 26 November 2020

by A Blicq BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 7th December 2020

Appeal Ref: APP/E2530/W/19/3240125

Land off Bulby Lane, Fulbeck NG32 3JG

- 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 Messrs S and D Gray, and Mr A Smith against the decision of South Kesteven District Council.
 - The application Ref S19/0834, dated 8 May 2019, was refused by notice dated 24 October 2019.
 - The development proposed is Planning application for the material change of use of land for the siting of caravans for residential purposes for 4 no gypsy pitches with facilitating development (hard standing, widened gateway, package treatment plant, utility blocks).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Given the difficulties arising from COVID-19, the main parties agreed to go forward on the basis of an enhanced Written Representations procedure. On this basis, I invited the parties to submit additional evidence as appropriate in response to specific concerns set out in a pre-event note. The responses were circulated and an opportunity given for further final comments.
3. From the decision and officer's report I interpreted the Council's objection in relation to noise and disturbance on Bulby Lane to be concerns related to the character and appearance of the conservation area.
4. After reviewing evidence from interested parties I considered it appropriate to include highway safety as a main issue. This was set out in the pre-event note and the main parties had an opportunity to submit additional evidence.
5. The appellants have moved onto the site. Although this is effectively a retrospective application and the site layout does not accord with what I observed at my site visits, I have based my reasoning on the layout submitted at application.
6. Since determination the Local Plan¹ (LP) has been adopted. The Council has identified the relevant policies for this appeal and noted that they have replaced the policies cited in their decision. Consequently, I have referred only to those LP policies, which were circulated to the appellants during the appeal process.

¹ South Kesteven District Council Local Plan 2011 – 2036, January 2020

7. Planning Practice Guidance states that non-designated heritage assets (NDHAs) can be identified through a number of processes *including local and neighbourhood plan making, and conservation area appraisals and reviews. Clear and up to date information should be made accessible to the public by plan-making bodies to provide greater clarity and certainty.* During the appeal I have requested clarification that the site's ridge and furrow features have been so identified. I have not received any such clarification. Moreover, the features are not mentioned in any relevant policy or the Fulbeck Conservation Area Appraisal. However, the ridge and furrow features were highlighted by Heritage Lincolnshire at application stage. As both parties agree that the features have the statutory status of NDHAs I have proceeded on that basis.

Main Issues

8. The main issues are:

- Whether the appellants have gypsy status as defined in Annex 1 of Planning Policy for Traveller Sites (PPTS);
- Whether the proposals would meet the requirements of relevant local policies and PPTS with regard to location;
- Whether the development would pose a flood risk to existing and future occupiers of the area;
- Whether the development would preserve or enhance the character or appearance of the Fulbeck Conservation Area (FCA), including its setting; the effect of the development on the ridge and furrow features; and, whether the development would preserve the Grade II* listed Fulbeck Hall and the Grade I listed Church of St Nicholas or any features of special architectural or historic interest which they possess, including setting;
- The effect of the development on highway safety;
- The effect of the development on biodiversity and local ecology; and,
- Whether there is overriding need for the development, with regard to the Council's provision for gypsy and travellers, personal circumstances, Equality and Race Relations Legislation, the human rights balance and the best interests of children.

Reasons

Gypsy Status

9. The Council does not dispute the gypsy status of the four families seeking to occupy the site. The families comprise one elderly couple, their two sons, wives and their children, and another related family and their children. The evidence before me indicates that they travel extensively for work in the UK and Europe, to the extent that they meet the criteria set out in PPTS. PPTS stipulates that persons who have ceased travelling for reasons of education, health or old age may still be considered to have gypsy status. On the basis of what is before me I see no reason to disagree that the appellants and their dependents have gypsy status as set out in Annex 1 of PPTS.

Location

10. LP Policy H5 sets out that proposals for pitches will be supported where the proposed site provides an acceptable living environment for its residents; that there is good access to the highway network and the development would not cause congestion or safety problems; that the site is in reasonable proximity to shops, schools and health facilities; the site is not identified as an area at risk of flooding in the Strategic Flood Risk Assessment (SFRA); and that the site's layout and scale will respect its relationship with any residential (settled) community and not place undue pressure on the local infrastructure.
11. The site is located to the north-west of Fulbeck, towards the end of a network of narrow lanes which culminate at a dwelling (Greenacres) to the site's immediate west. As far as I could ascertain all forward routes from Bulby Lane to Cliff Road, which links Grantham and Lincoln, require travel through the village. Bulby Lane is a narrow country lane which leads to the dog-legged North End Lane, and Rectory Lane and Washdyke Lane. Even where these roads are wide enough for two running lanes, parking may obstruct the carriageway. Footways within the village are intermittent and often narrow. Brant Lane leads westwards to Stragglethorpe, two or so miles away, but this is not wide enough for two running lanes and has unbound edges.
12. Although there is no further policy definition of good highway access, I noticed at both my site visits that even low volumes of traffic travelling through the village away from Bulby Lane can cause congestion. If considering a spectrum of highway access which might include distance to arterial roads, carriageway width and capacity, and footway provision, this site would fall towards the lower end. As such, I conclude that it does not have particularly good highway access. Congestion and safety issues are considered more fully below.
13. LP Policy H5 is less restrictive than Policy H4 of the Core Strategy with regard to access to amenities, and only requires that gypsy sites are in reasonable proximity to shops, schools and health facilities. Fulbeck falls within the definition of smaller villages in the Council's spatial hierarchy and small infill development is allowed. Although this appeal is not infill development, this suggests that travel to nearby villages such as Caythorpe for essential facilities is deemed to be acceptable by the Council.
14. I have not been provided with a copy of the SFRA, but there is nothing before me to suggest that the site lies within an area identified as having flood risk identified in the SFRA. Other flood risk issues are addressed below.
15. Concerns have been raised that the development would dominate the local settled community. Using the word dominate in its normal interpretation I see no reason why four families would dominate the 500 or so residents of Fulbeck or the smaller community of North End, both of which are some distance from the appeal site. However, the site is located between two plots which are outliers in the development pattern. A development comprising four families in this location would represent an abrupt change in density and does in my view represent a lack of respect for this element of the settled community.
16. Moreover, Paragraph 13 of PPTS also sets out criteria for assessing the suitability of sites in rural or semi-rural settings and requires that the scale of sites does not dominate the nearest settled community. Greenacres and Rose Croft are relatively remote from the rest of the village. Four families on an

intervening site could be considered to dominate this element of the settled community.

17. Interested parties have raised concerns that the surgery or local school could not accommodate the future occupiers. I appreciate that the health issues of some of the appellants could lead to a demand for home visits. However, on the basis of what is before me it is difficult to assess whether there would be undue pressure on local infrastructure. In any case, everybody has a right of access to health care and education, irrespective of existing conditions or where they live.
18. LP Policy H5 does not define what is meant by an acceptable living environment, and I have taken this to be broadly as set out in Paragraph 127 of the National Planning Policy Framework (the Framework), which requires development to *create places that are safe, inclusive and accessible with a high standard of amenity*. I have outlined below my concerns in relation to drainage which would be detrimental to the living conditions of future occupiers and affect their amenity, contrary to Paragraph 127 of the Framework.
19. As such I conclude that the development would fail to meet the criteria of LP Policy H5 with regard to acceptable living conditions and respect to the settled community. Consequently, the development would be contrary to LP Policy H5 and PPTS with regard to location.

Flood risk

20. There is a wealth of evidence from interested parties concerning surface water runoff from the escarpment, standing water on the adjoining flat farmland and the impermeability of the local clay soil. Excess water is regularly seen on the appeal site, particularly within the furrows. This is confirmed in the Environment Agency's (EA's) map of surface water flooding which shows that there is low risk flooding in the furrows across most of the site, with medium and high risk flooding at the northern and southern boundaries of the site and at the ditch to the immediate north-west.
21. Underground attenuation crates could store excess surface water and release it at a rate commensurate with a green field site. However, the crates would discharge into an underground pipe that then discharges into the aforementioned field ditch on neighbouring land. At the visit the ditch had standing water which appeared to be some 300 – 400 millimetres below the level of the lane. The lane appeared to be at broadly the same level as the appeal site. This is confirmed by the EA's flood map which shows the low risk flood areas of the furrows joining up with sections of the lane.
22. As the outfall from the crates would be 850 millimetres below ground level, and the underlying pipe is about 1 metre below ground level, it is unclear to me how the crates would ultimately discharge into the ditch which, as far as I could ascertain, had standing water higher than the outfall from the crates. This would not provide a positive outfall. The drainage reports state that the underground pipe follows the fall of the land, but I was unable to conclude that the land falls 1 metre from the appeal site to the nearby field drain invert. My concerns in this regard are reinforced by a representation from the farmer who owns the land to the site's immediate west, and who highlights the lack of fall across land in the vicinity. Moreover, there is no topographic survey data to support the drainage report in this regard.

23. The proposed packet treatment plant would augment the site discharge. The drainage report states that the discharge from a package treatment plant would be miniscule, at 0.03l/sec. However, this would amount to around 2.5 cubic metres of water per day, which in combination with localised poor drainage is not necessarily miniscule. The drainage report gives options for disposal of the discharge, which could be through a system of percolation through field drains, drainage through a sandy soil layer, reedbeds or a wetland pond, or discharge to the ditch, but fails to identify which option would be deployed.
24. Excavations for field drainage, soakaways or reed beds would destroy the NHDAs. With regard to the ditch the report does not assess its capacity to take this discharge. The ditch is at the centre of localised high risk surface flooding on the EA map and on the boundary of a field that has more extensive surface water flooding issues than the appeal site. I appreciate that the ditch could be excavated but it is not in the appellant's ownership. Even if it was excavated there is nothing before me to suggest that it connects to a wider system which would remove the water from the area.
25. Furthermore, approval from the EA or ditch owner would be needed for additional discharges into the ditch. There is no confirmation that such permissions would, in principle, be forthcoming. This issue was also highlighted at application stage by the local drainage authority.
26. The lack of clarity concerning foul water waste is of particular concern in this context. As such, on the basis of what is before me, I am unable to conclude that the surface and foul water drainage proposals would be acceptable, or be able to be provided without detriment to the NDHAs or aggravating surface water flooding. This is fundamental to the site's development and the future living conditions of future and existing occupiers, and is not something that could be addressed by condition.
27. Furthermore, the recently laid hardstanding is tarmac scalpings rather than the gap graded hardcore specified in the drainage report. Scalpings have a very small void percentage and consequently the filling in of furrows with scalpings will impede and displace surface water. Even if clean or gap graded sub-base with a higher void percentage was used, the volume of the stones would displace an equivalent amount of water where they are laid below standing water levels. This will have a localised and adverse impact on surface water drainage or storage. I also note that the drainage plan indicates that only the areas under the caravans and utility blocks are to be surfaced, whereas a much larger area is shown surfaced on the site layout plan. This in itself raises concerns about the efficacy of the drainage proposed.
28. There is evidence which shows previous flood water up to threshold level at a nearby dwelling. The appellants argue that photographs showing flooding and waterlogging on the site were taken during Storms Dennis and Ciara but it remains that these events occurred in quick succession and there is nothing before me to indicate that similar storm events would not reoccur in the short or medium term. I give little weight to the argument that storm risk is beyond the parameters of the proposed drainage design.
29. Consequently, I conclude that the development would be likely to result in disturbance to local surface water drainage and would also increase the overall discharge from the site without any clear indication of where the water would

go. The volumes of surface water may be relatively small but this does not justify development that could aggravate the current situation. I appreciate that the site, the lane or nearby plots would be unlikely to have flood depths recently experienced in other parts of the country, but that does not reduce the harm likely to be caused to the owners of nearby dwellings or fields.

30. Consequently, I conclude that the development fails to demonstrate that there would be adequate discharge arrangements, and could cause increased flood risk elsewhere. This would be contrary to LP Policy EN5 which is concerned with flood risk and the drainage of development sites. The uncertainty around drainage of the site could also lead to unacceptable living conditions for future occupiers, which would be contrary to LP Policy H5, as set out above.

Heritage Assets

Significance – Fulbeck Conservation Area

31. The site is about 100 metres from the FCA boundary and separated from it by fields, large residential plots to the west of North End and another plot on Bulby Lane, The Poplars.
32. Fulbeck Hall (the Hall), and its parklands and gardens, together with the adjoining church and churchyard, dominate the FCA, forming a wide belt that runs from one side of the village to the other. The small nucleated settlement of Fulbeck abuts the Hall's estate and churchyard on their southern boundary, and the far smaller cluster of dwellings of North End abuts the estate to the north.
33. The Hall and the church are located on elevated ground just above a long escarpment which slopes steeply to the west, and which is a dominant feature in the landscape when viewed from the extensive flat plains below.
34. Both Fulbeck and North End are characterised by a very high proportion of period limestone buildings, often arranged in a tight building pattern around small greens and following the irregular layout of narrow roads. Although buildings vary in period and detailing, there is an underlying consistency of materials and architectural coherence in the vernacular typology.
35. The dominance of the Hall is particularly apparent on the central section of Bulby Lane which runs between an area of sloping rough grassland to the Hall's rear, identified as Important Open Space in the FCA appraisal, and the start of the adjoining flat arable landscape. The rough grassland forms the foreground to local views of the Hall, on the ridge above.
36. From further afield, the distinctive crocketed pinnacles of the church's tower are visible on the skyline when approaching the village along Brant Lane. From this viewpoint the Hall appears to be set at a slightly lower level and nestles into the mature vegetation of its grounds rather than dominating the ridge.
37. There is a sharp juxtaposition between the FCA, which contains most of the building pattern, and the surrounding open countryside. This reinforces the distinctiveness of the village's urban form and also highlights the abrupt change in landform.
38. I conclude that the significance of the FCA is derived from the dominance of the Hall and the nearby church, the unique spatial relationship between these listed

buildings and the irregular layout of the original village cores. There is also significance derived from the retention of a very high proportion of period buildings and their intact and distinctive fabric, and the relationship between the building pattern and underlying topography, all of which have informed and influenced Fulbeck's evolution. Finally, the lack of through routes also results in very low traffic volumes and an extraordinarily peaceful character, which is particularly evident on the central stretch of Bulby Lane. This makes a substantial contribution to the setting of the FCA.

Significance – NDHAs

39. The ridge and furrow features on the appeal site are highly visible at close range. Their significance derives from their origin as a medieval farming practice, and intact ground structure. The field would have been part of the village's economic activity in medieval times, and may have been controlled by a former manorial demesne on or near the site of the current Hall. However, there is no evidence before me to corroborate arguments advanced in this regard.

Significance - Listed Buildings

40. The 18th century Hall has a commanding position on the ridge, and comprises a three storey stone ashlar and gault brick country house built in a classical style, presenting a frontage to Cliff Road behind listed ornate gates. The surrounding estate provides a wide buffer on all sides, notably the formal garden to the north, the extensive parkland to the east and the rough grassland to the rear which runs down to Bulby Lane.
41. A substantial two storey limestone rubble wing, attached to the rear of the 18th century building, appears to date from an earlier period. This is referred to in the listing only as the fragment of 17th century block. However, from the owner's comments at the visit and from my observations of building materials, scale and vernacular detailing, I conclude that at least part of this wing and a nearby single storey outbuilding date may date from an earlier period.
42. Although altered and extended in subsequent years the main 18th century building has retained an impressive front façade with much of its original fabric and detailing. This façade faces a mature tree-lined avenue leading to the gates. This approach, together with the views across the parkland and another far longer tree-lined avenue on the other side of Cliff Road, suggests that this frontage is the Hall's principal elevation.
43. The stone church, which dates from the 10th century, with many subsequent alterations, retains a variety of building styles from Norman to Perpendicular. It has historic association through commemorative plaques and memorials with the Fane family, who have owned the Hall since the 17th century. The approach to the church's south facing entrance abuts a small village green lined with period stone buildings, and a listed wayside cross.
44. The church is separated from the Hall's grounds by a rubble limestone wall with tiled coping and a gateway supported by oddments of dressed stone, seemingly reclaimed from a grander structure. Similar limestone rubble walls also bound one side of the Hall's rear courtyard. The appearance and construction methods of these walls appear to predate the 17th century building works. As such, from the age of the church and other structures nearby and in the Hall's

rear courtyard, I conclude that there has been activity on or near the Hall's site from medieval times.

45. The significance of the Hall is derived from its commanding position on the ridge, its visual and spatial dominance of Fulbeck, the fine example of 18th century architecture and the notably intact historic fabric of all the Hall's built elements. There is also significance in its uncompromising elevated position which takes advantage of the long views over parkland to the east and panoramic views over the flat agricultural plains to the west. This demonstrates the Hall's local status and importance, its long historic association with the site and the economic wealth that underpinned its development.
46. The significance of the church is its intact historic fabric, its spatial relationship with the green and the wayside cross, and its prominence as a local landmark. There is also associative significance in the links with ownership of the Hall.

Proposals and Effects

47. The site is not particularly visible from the FCA, or even its immediate locality. It is located beyond a sharp dog leg near the junction of North End Lane and Bulby Lane, where immediate views are dominated by a large shed-like building at The Poplars. From nearby Beck Lane, views are restricted by high hedges and vegetation on the appeal site boundary. Visual appreciation of the Hall and the adjoining Important Open Space, or the views of dwellings at the top of North End Lane from Bulby, Beck or Brant Lanes, would be unaffected.
48. From North End Green, it was possible to obtain glimpsed views of caravans through tree cover, from a very restricted viewpoint and at a distance of some 400 metres. Those views would be obscured by leaves for much of the year. Although incongruous, the caravans are not much more out of keeping than the The Poplars' shed, and are further away.
49. Although there are views shown on the FCA plan, I could not see the site from these points. I appreciate that the site is visible from the rear of dwellings at North End but there is no right to a view in planning terms and the site forms one small part of the overall vista. Even though the surrounding landscape contributes to the setting of the FCA, I am not satisfied that this should extend to the protection of all land seen from the inside the FCA. In any case the dwellings most affected by views of the site are outside the FCA. I see no reason to conclude that these views are detrimental to the character or appearance of the FCA, or its setting.
50. However, the FCA and its immediate area are characterised by a notable tranquillity with narrow lanes, lush natural verges and very little traffic. This contributes to a distinct undeveloped and rural character where the village and the Hall's estate meets the lanes and the adjoining farmland. At both visits, there were very few vehicles using the lanes. This tranquillity is highlighted in the FCA Appraisal and adds greatly to the appreciation of the FCA, the Hall and the adjoining Important Open Space. I see no reason to disagree tranquillity is a key feature of the FCA and its setting.
51. As such, I appreciate the concerns that the intensified use of a field site outside the settlement boundary would detract from that tranquillity. Beyond the junction with North End Lane, Bulby Lane serves Greenacres and Rose Croft.

- The development would introduce four more families, with additional comings and goings contributing to traffic movement. Although small infill development is allowed in Fulbeck, which would also contribute to traffic movement, this particular plot, beyond the village, would not represent infill development.
52. Moreover, despite the appeal statement noting that commercial vehicles would not be taken to the site, and this issue being central to objections from interested parties, there have been commercial vehicles, including medium sized low-loaders, on the site at both site visits. This reinforces the arguments advanced by the Council and other parties that the daily use of the narrow lanes by additional traffic, including commercial vehicles, is detrimental to the underlying character of the lanes.
53. Although conditions relating to commercial vehicles are regularly used on gypsy sites, there seems to be a need to have those vehicles on the site. As this site would not be appropriate for mixed use, which councils are required to consider in line with PPTS Paragraph 18, the continued movement of commercial vehicles to and from the site suggests that this site is not particularly appropriate for the appellants.
54. With regard to alleged verge damage it is impossible to attribute overrunning to any particular vehicle. However, I did notice that there is significantly less over-running of the verges beyond the site entrance. I appreciate that the site entrance coincides with the entrance to Rose Croft but submitted photographs suggest that this damage was not previously apparent.
55. I conclude that the increased traffic associated with the development would be noticeable and represent a moderate increase when compared to baseline levels on Bulby Lane. This would be detrimental to the character and appearance of the FCA's setting.
56. Paragraph 197 of the Framework states that a balanced judgement is required when weighing applications that directly affect NDHAs. Part of the formations have probably been destroyed by the appellant's development of the site to date, as soil has been stripped from the ridges and deposited in furrows elsewhere on the site. If the appeal is allowed the hardstanding area will extend beyond the area currently surfaced, and further ridge and furrow features are likely to be lost or significantly damaged.
57. The development would therefore be detrimental to the physical fabric of the NDHAs, resulting in their loss across some of the site. I appreciate that agricultural practices could destroy the ridge and furrows without further recourse to the Council but given the drainage issues and field size, it seems that future agricultural options would be limited.
58. I also appreciate that development has been allowed on adjoining fields which had ridge and furrow features but existing harm does not necessarily warrant further loss of those features. The appellant has highlighted that another Council allowed the loss of ridge and furrows for gypsy pitches on a site near Darlington. However, I do not have the full details of that application before me, and in any case, this appeal is determined in the context of this Council's development plan as well as national guidance and legislation.
59. From the Hall's third floor, it was possible to see the appeal site, at an angle, from a bathroom and a bedroom. However, the scale and plainness of the

access staircase suggested that these rooms are former servants' quarters, and views from those rooms would be likely to be considered of lesser importance than accommodation used by the Hall's owners when it was built. Moreover, site is not directly opposite the windows and does not intrude into the overall outlook.

60. From the elevated formal gardens, there are panoramic views across the flat plains below and from the boundary hedge the site is visible in peripheral views. However, it is one very small component of a very wide and long vista. I am not satisfied that views of the site, from limited viewpoints, are detrimental to the gardens' appreciation. Moreover, it seems unreasonable to presume that all land within a visual envelope from a listed building or its grounds should be given a blanket protection from development.
61. There is nothing to directly link ownership of the appeal site with the Hall. The ridge and furrow features cannot be seen from the Hall, unless using high resolution binoculars, and they could be linked to the economic activity of another farm or demesne in the area.
62. Whilst I appreciate that the Hall takes advantage of its elevated position in both directions, its principal elevation faces east. Given that internal views of the site appear to be limited to lesser accommodation, I conclude that the importance of views to the west has been significantly overstated. The main vista, directly opposite the Hall's principal elevation, would be unaffected.
63. There are no views of the appeal site from the church grounds or its churchyard. The church's visual and functional setting appears primarily associated with the adjoining village green and wayside cross. The ridge and furrow features will have been contemporaneous with the church, but there is limited evidence before me to indicate that they contribute in more than a minor way to the church's setting, if at all.
64. Interested parties have highlighted an appeal decision at Tysoe² where the Inspector concluded that a nearby ridge and furrow system had significance with regard to the setting of a nearby listed building. In that case the reasoning states that the ridge and furrow was related to a nearby 14th century Manorial demesne. I have outlined above that in this case such a link would be supposition. Although I accept that the ridge and furrow features form part of the evolution of the landscape, they are not mentioned in the FCA appraisal. As such, it seems more appropriate to consider the ridge and furrow features as heritage assets in their own right rather than attempt to find functional or associative links with other buildings.
65. I conclude that the development would preserve the historic features, including settings, of both the Hall and the church.
66. Nonetheless, the development would fail to preserve or enhance the setting of the FCA. It would also cause the loss of, or substantial damage to, the existing ridge and furrow formations, which are NDHAs. This would be contrary to the provisions of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) in respect of the FCA, and Section 16 of the Framework which is concerned with the historic environment with regard to the FCA and the NHDAs.

² APP/J3720/A/14/2215276

67. The development would also be contrary to LP Policy EN6 which requires the protection and enhancement of heritage assets and their settings, and LP Policy EN1 which requires development to be appropriate to the character and significant natural historic and cultural attributes and features of the landscape within which it is situated.
68. With regard to the setting of the listed buildings, I conclude that their historic features and settings would be preserved if the development was allowed. Consequently, the development would not be contrary to Section 66 of the Act, Section 16 of the Framework or LP Policies EN1 and EN6, as set out above, with regard to the settings of the listed buildings.

Highway safety

69. The highways authority has not raised an objection on the grounds that Paragraph 109 of the Framework states that development should only be refused on highway grounds if there would be unacceptable impact on highway safety, or if the residual cumulative effects on the road network would be severe.
70. However, Paragraphs 108 and 110 of the Framework require the consideration of development to promote sustainable modes of transport, create safe and secure places, and to minimise conflict between pedestrians, cyclists and vehicles.
71. I have set out above my concerns in relation to the comings and goings of commercial vehicles. From my observations I conclude that that Bulby Lane and the village routes to Cliff Road are not suitable for regular use by these vehicles. However, this could be dealt with by condition.
72. From four pitches, the overall volume of traffic would be low, and issues of alleged speeding and poor driving skills are not matters that fall within the remit of this appeal. Although impromptu surveys have been submitted by the appellants and other parties there is no TRICS or other standardised data for comparison. It is difficult to give weight to either survey in the lack of standardisation or objective measurement.
73. Moreover, infill development, which is permitted under the LP, would generate additional vehicle movements through the village. As such, I conclude that although there could be some additional congestion, the harm would probably not be substantial and insufficient to warrant dismissal of the appeal in the absence of other concerns. As such, I conclude that there would not be conflict with Paragraphs 108 and 110 of the Framework, or LP Policy H5 in relation to location and highway safety.

Biodiversity

74. The Preliminary Ecological Assessment³ was undertaken in a sub-optimal period. The assessment concluded that the site had limited ecological potential other than as tree and hedgerow habitat for breeding birds. Reference was made to a national database⁴, but I am unclear how comprehensive this is. Evidence from the Lincolnshire Wildlife Trust (LWT), which holds the county records, suggests that it is not wholly comprehensive.

³ ASW Ecology, February 2019

⁴ NBN Atlas

75. Whilst I appreciate that access to the LWT records has a modest cost implication, it could have addressed the concerns raised in relation to great crested newts, raised by interested parties.
76. Those concerns led to a further survey, commissioned by interested parties. This found one nearby pond to be an excellent habitat, and another to be an average habitat. The survey also found newts. These results are not disputed by the appellants.
77. However, the development would not affect those ponds and most of the appeal field would be unaffected by the proposals. Habitats could be created within the site to enhance biodiversity for the newts as well as other fauna in the area, particularly.
78. Consequently, as the appeal site is located within a building pattern of occasional dwellings with highly maintained gardens, it seems unreasonable to find harm in relation to biodiversity on this particular field. I appreciate that wildlife may be temporarily disrupted as a consequence of increased activity on this site, but there should be sufficient alternative habitats available in the immediate area to compensate in the longer term. There is nothing before me to suggest that the development would have a significant impact on protected species or that a net biodiversity gain could not be achieved through condition. As such the development would not be contrary to LP Policy EN2.

Overriding need

79. I now consider whether there is an overriding need for this development, and whether this would outweigh the harm identified above.
80. The Inspector's Report for the recently adopted LP identified that there would be no plan-led certainty for either travelling or settled communities on where the need identified in the GTAA would be met. The Inspector notes that the plan on this basis is *unsound, being neither positively prepared, effective or consistent with national policy*. Accordingly, he states that LP Policy H5 and H6 are starting points only and that these policies relate only to scale and layout in accordance with PPTS. An early review of the LP is recommended to address this issue.
81. The Council confirmed at the visit that the only site in the pipeline, which is a speculative development, is currently at appeal. This suggests that the Council has not made any progress since the LP examination to identify potential gypsy sites. I conclude that the Council does not have allocated sites and nor are there any extant permissions for such use. As such it cannot demonstrate an up to date five year supply of deliverable sites. PPTS states that this should be a significant material consideration when considering the grant of temporary permission.
82. Article 3 of the UNCRC⁵ requires the best interests of children to be a primary consideration in decision making. Using the abbreviations from the Council's welfare assessment, Family B has two primary school age children at Colsterworth School, which is some distance away, but have been offered places at nearby Caythorpe School. Family C has one pre-school age child and Family D has a primary school aged child who is not attending school, and one pre-school child.

⁵ United Nations Convention on Human Rights

83. Article 8 of the ECHR⁶ is concerned with the right to respect for private and family life and for the home. There is an expectation that signatories to the ECHR will positively facilitate the gypsy way of life, which is based on familial ties and support.
84. Families A, B and C have members with chronic health conditions, and family A in particular benefits from familial support. The development would enable that support to be provided and would facilitate the gypsy way of life.
85. However, at the time the appeal was lodged, only one family was living roadside. The other families were living on other sites or in bricks and mortar dwellings which although considered unsatisfactory and remote from family support, were nonetheless more secure living situations than the situation they are now in in planning terms. If the appeal is dismissed, it is argued that all four families would have to live roadside as there are now no alternatives. However, this was a conscious decision by the appellants and carries only limited weight.
86. Notwithstanding the delays to the appeal process caused by COVID19, no pre-application advice was sought and the appellants moved onto the site without permission. One child has been taken out of school since the appellants moved onto the site, and two are likely to move to Caythorpe School despite attending Colsterworth until now.
87. It is clearly in the best interests of the children to have a secure home environment and long-term stability to ensure that they can attend and have continuity in their schooling. There are also considerable benefits to be attributed to the familial support for family members with chronic health issues. I give both these benefits great weight, and the failure of the Council to allocate alternative pitches in line with the GTAA⁷ or the LP is also a significant material consideration which adds considerable weight to the appellant's case.
88. I have considered whether a temporary permission or a permission for fewer pitches would be appropriate. This would defer the decision making process, and provide stability for the appellants in the medium term. However, given the likely timeline of the LP review and site allocation, it is apparent that a period of at least five years would be required before any alternative sites were available. Given the Council's inability to identify any potential sites at this point in time, there is no certainty that even in five years there would be appropriate alternatives available.
89. A temporary permission would require additional site development and infrastructure which would be difficult, and in the case of the NDHAs, impossible to mitigate, even if a condition regarding restoration was imposed. Furthermore, even if I concluded that the harm arising from the site's location and heritage assets would be outweighed by the weight I give to overriding need, it would not outweigh my concerns with regard to site drainage.
90. It is also confirmed by the appellants that although a temporary consent would be acceptable, a condition for fewer pitches, which would have lesser harm than what is proposed, would not be acceptable.

⁶ European Convention on Human Rights

⁷ South Kesteven and Rutland Gypsy Traveller and Travelling Showpeople Accommodation Assessment 2016

Other matters

91. It is argued that the villagers are hindering the appellants' reasonable attempts to assimilate into the community and have excluded the appellants from the village Facebook page. However, both parties have undertaken activity which is likely to fuel distrust. Moreover, the site was developed without permission and caravans were moved on at night. As such, I can appreciate that to the settled community it appears that the appellants have not had regard to due process and this is likely to have contributed to the lack of assimilation with the settled community. In any case, this weighs neither for nor against the appeal.
92. Other issues have been raised by interested parties but as I have found harm in relation to the main issues it is not necessary for me to consider these further.

Planning balance and conclusion

93. An increase from two to six households on this stretch of Bulby Lane, would be a significant intensification of use. There would be a significant and additional concentration of population, with attendant domestic paraphernalia, noise and disturbance, and associated vehicle movements. This would not respect the scale of the nearest settled community on Bulby Lane which in itself would be contrary to the provisions of Paragraph 25 of PPTS.
94. I have also found significant harm in relation to the drainage of this low-lying site, likely to affect the living conditions of the appellants as well as their neighbours, as well as additional harm in relation to heritage assets. Moreover, whilst I appreciate the cultural requirements of the gypsy lifestyle, the interference with human rights is a qualified right and has to be balanced against the rights of the settled community.
95. Consequently, and despite the great weight I attach to overriding need, on balance I find that the harm arising from the proposed development of the site outweighs that need.
96. For the reasons given above and taking into account all matters raised, including my duties in relation to personal circumstances, Equality and Race Relations Legislation, the human rights balance and the best interests of children, I conclude that the appeal would fail to comply with relevant local policies, national guidance and the Act. Other material considerations are of insufficient weight to lead me to conclude otherwise. The appeal is dismissed.

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INSPECTOR