
Appeal Decision

Hearing Held on 25 January 2022

Site visit made on 24 June 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2022

Appeal Ref: APP/V2635/C/20/3251202

Land on the south side of Lady Drove, Downham Market

- 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 Mr Danny Carman against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
 - The enforcement notice, numbered 19/00231/UNAUTU, was issued on 19 March 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land from agricultural land to a mixed use of agricultural land for residential/domestic purposes.
 - The requirements of the notice are:
 - (a) Permanently cease the use of the land for the stationing of caravans and associated paraphernalia for residential/domestic purposes.
 - (b) Permanently remove all caravans and associated paraphernalia used for residential/domestic purposes from the land.
 - (c) Restore the land to its former condition.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld subject to a correction as set out in the Formal Decision below

Procedural matters

1. The appellant initially elected for this appeal to be determined under the Written Representations procedure, and a site visit was scheduled for 24 June 2021. Having carried out that site visit, it became apparent that the personal circumstances of the appellant and his family were going to be crucial to my decision. It was also apparent to me that a Hearing would be required to gather the information required for my Decision. Accordingly, the procedure was changed to a Hearing, which I held as a Virtual Event on 25 January 2022.

The enforcement notice

2. The breach of planning control as alleged in paragraph 3 of the notice is, without planning permission, the material change of use of the land from agricultural land to a mixed use of agricultural land for residential/domestic purposes. However, the requirements of the notice at paragraph 5 of the notice include to permanently cease the use of the land for the stationing of caravans and associated paraphernalia for residential/domestic purposes, and to remove the caravans and associated paraphernalia from the land. There is,

therefore, a mis-match between the breach of planning control alleged in the notice and the requirements to comply with it.

3. It is clear from the appellant's grounds of appeal and the discussion at the Hearing that he has understood the breach of planning control alleged in the notice, and what must be done to comply with it. In particular, the appellant has clearly understood that, in the event that his appeal does not succeed, he must cease using the land for residential purposes and must remove his caravans from the land. I consider that the most accurate description of the breach of planning control that has occurred can be derived from combining the breach of planning control alleged at paragraph 3 of the notice with aspects of the requirements to comply with it at paragraph 5. I am satisfied that I can correct the notice in that respect without causing injustice.

The appellant's status under the Planning Policy for Traveller Sites (PPTS)

4. The appellant claims that he is of traveller heritage, indicating on the GTAA Questionnaire that he is Romany Gypsy. The Council disputes this, and considers that overall the information provided as part of the enforcement investigation combined with the limited information within the appeal form was not sufficient to demonstrate that the appellant meets the definition in the PPTS. The focus of the Hearing was to gather information in relation this matter.
5. Annex 1 of the PPTS defines 'gypsies and travellers' 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 showpeople or circus people travelling together as such (emphasis added).
6. I have highlighted *ceased to travel temporarily* in the definition at Annex 1 because this transpired to be the main consideration in relation to this matter. In answer to my questions, Mr Carman explained that he had travelled for work over a period of some 20 years, venturing as far afield as Kent and Essex as well as to various horse fairs. This was typically throughout the summer months, but less so during the winter months. On the basis of this information, I am satisfied that Mr Carman conducted a nomadic lifestyle during that period.
7. However, Mr Carman went on to explain that he has now ceased travelling and has not travelled for work for the last three years or so. The primary reason behind Mr Carman's decision to stop travelling is that some of his children attend school in nearby Downham Market. As he explained, Mr Carman is keen to ensure that his children have a good education and, in that respect, considers that stability is in the best interests of his children. For that reason, Mr Carman does not intend to resume a nomadic lifestyle. Indeed, Mr Carman went on to explain that in order to facilitate his children's education he would now prefer to settle in bricks & mortar accommodation, specifically indicating that a small bungalow would be ideal for his requirements.
8. The definition at Annex 1 of the PPTS allows for a temporary cessation of a nomadic lifestyle, including for educational needs. However, that is not Mr

Carman's intention. It is clear from Mr Carman's evidence to the Hearing that he has ceased travelling, with no intention of resuming that way of life. I conclude that, as a matter of fact and degree, Mr Carman does not meet the definition of 'gypsies and travellers' set out in Annex 1 of the PPTS at this time. The corollary is that Mr Carman and his family cannot benefit from any policies aimed at providing for gypsies and travellers, although I will of course have regard to their personal circumstances as part of the overall planning balance.

The appeal on ground (a) and the deemed planning application

9. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated two substantive reasons for issuing the enforcement notice, from which the following main issues are raised:
- Whether the location of the site is suitable for the development in principle
 - The effect of the development on the character and appearance of the area, and
 - whether the use of the land for the stationing of the caravans for residential use increases the number of people at risk of flooding.

Location of the site

10. Policy CS01 of the Kings Lynn & West Norfolk Borough Council Local Development Framework - Core Strategy (Core Strategy) indicates that development priorities will be accommodated through a settlement hierarchy approach. Policy CO2 of the Core Strategy expands on that approach, and indicates that decisions on the location of new development will be taken on the basis of the borough settlement hierarchy which, in broad terms, seeks to direct development to the main towns and settlements identified as being Key Rural Service Centres. This policy is supported by Policy CS06, and also by Policy DM2 of the Site Allocations and Development Management Policies Plan (Policies Plan). The latter policy indicates that areas outside development boundaries will be treated as countryside where new development will be more restricted and will be limited to that identified as suitable in rural areas by other policies of the development plan.
11. The appeal site is located in open countryside on the outskirts of Salters Lode. There is a dwelling to immediate south of the appeal site and a further dwelling to the rear, but the appeal site it is not within any settlement boundary. The appeal site is therefore in a location where Policy DM2 of the Policies Plan indicates that new development will be more restricted. Neither is the breach of planning control alleged in the notice one of the development types identified in other policies within the development plan as being suitable in rural areas.
12. A representation has been received from the Council's Community Safety & Neighbourhood Nuisance Team, raising no objection in principle to the use of this site for residential purposes. However, the comments made in that representation relate to matters associated with the actual occupation of the site, such as the presence of a dwelling nearby, external lighting and foul sewerage. I do not read the comments made in this representation as

providing support for residential use of the site in terms of its wider location or in the context of the hierarchical approach to the location of development set out in the policies referred to above.

13. I conclude that the location of the appeal site is not suitable for the development subject to the enforcement notice. I therefore conclude that the breach of planning control alleged in the notice is contrary to Policies CO1, CO2 and CO6 of the Core Strategy, as well as Policy DM2 of the Policies Plan.
14. In addition to the above policies, the Council has also cited Policy DM3 of the Policies Plan in the reasons for issuing the notice. However, on my reading, that policy relates to developments within smaller villages and hamlets. Given that appeal site is outside of any settlement boundary, that policy is not directly relevant in the context of this appeal.

Character and appearance

15. The character of the area surrounding the appeal site comprises typical flat fenland rural landscape that extends for some distance to the north, south and west of the site. The majority of this landscape comprises open fields with, typically, only isolated dwellings and farm buildings being present. There are some buildings in the immediate vicinity of the site itself but, due to the presence of vegetation bordering the highway, these are not unduly prominent in the wider landscape and do not detract from the essentially rural character of the locality.
16. To the east of the appeal site, on the opposite side of the A122 road, are fields and beyond that a ribbon of dwellings fronting Farthing Road. Due to intervening vegetation on the field boundaries, the latter are not visible from the appeal site and this too preserves the rural character of the surroundings. Beyond those dwellings is the River Great Ouse, embanked at this point, which is a prominent feature in the wider landscape.
17. Prior to the stationing of the caravans, the appeal site comprised a relatively small area of overgrown agricultural land bounded on all sides by mature trees and hedging. The stationing of the caravans has altered the character of the appeal site, insofar as it required the removal of vegetation from the site and has resulted in the opening up of the site frontage. I understand that new planting has taken place since my site visit but planting on the boundaries of the site does not disguise the change in the character that has taken place within the body of the site. The stationing of the caravans and the residential use of the land has introduced a domestic character to the site, which is exacerbated by the activity associated with the residential use, the associated paraphernalia, the cleared surface and the fencing erected around the site.
18. I note the presence of the dwellings to the south and rear of the appeal site. The presence of isolated dwellings forms part of the character of the wider area. The effect of the stationing of the caravans on the appeal site has been to conglomerate the residential use of those isolated dwellings and therefore to erode the rural character of the area.
19. The character of the site that has resulted from the stationing of the caravans for residential use is out of keeping with the rural character of the wider landscape. I therefore conclude that the breach of planning control unacceptably harms the character and appearance of the area, and is therefore

contrary to Policy CS08 of the Policies Plan. That policies requires, amongst other things, that development responds to the context and character of places in West Norfolk and enhances the quality of the environment.

Flood risk

20. Paragraph 159 of the National Planning Policy Framework (Framework) indicates that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Annex 3 of the Framework indicates that caravans and mobile homes intended for permanent residential use are classed as highly vulnerable to flood risk. The Planning Practice Guidance (PPG) indicates that development classed as highly vulnerable to flood risk should not be permitted in Flood Zones 3a or 3b.
21. The Council indicate that, whilst a portion of land to the front of the site is categorised as Flood Zone 2, the majority of the land is within Flood Zone 3 as shown within its Strategic Flood Risk Assessment (2018). The part of the site where the caravans are located is within Flood Zone 3. This is therefore a location in which the PPG indicates that development classed as highly vulnerable to flood risk, including caravans and mobile homes intended for permanent residential use, should not be permitted.
22. In accordance with the PPG, all sources of flooding must be considered as part of any planning application. In this case, the Tidal River Hazard Mapping for the Great Ouse illustrates the flood risk from the nearby river in the event of an overtopping and/or breach of the defences is shown with potential flood depth of up to 2 metres across the site. A tidal breach also has the potential of flooding the appeal site by up to 2 metres. I have no details in relation to the rate of inundation should a flooding event occur, but it is nonetheless evident that a flood depth of up to 2m in the event of an overtopping or breach has the potential to put the safety of any occupants of the site at significant risk.
23. I conclude that the stationing of the caravans for residential use on the appeal site unacceptably increases the number of people at risk of flooding. I therefore conclude that the breach of planning control is contrary to Policy CS08 of the Core Strategy which, amongst other things, requires that the type of development is appropriate to the level of flood risk identified in the Strategic Flood Risk Assessment.
24. In addition, the breach of planning control fails to accord with guidance in the Framework and the PPG in relation to flood risk. That is a material consideration to which I attach significant weight.

Other considerations

25. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the breach of planning control subject to this appeal fails to accord with the development plan in one respect. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

26. As indicated above, the primary reason why Mr Carman wishes to remain at the appeal site is that three of his children attend school in nearby Downham Market. The three children are all doing well at school and have made many friends there. I understand that one of these children has some learning difficulties, and that Mr Carman has been advised by the present school that in order to make further progress this child would benefit from 1-to-1 education at a specialist school in Wisbech. Another of the children has expressed an aspiration to enter a career in the medical profession.
27. In addition to these three children, Mr Carman has four other children that do not reside at the appeal site but who frequently visit him there. Two of those children are now themselves adults. The other two, who are of school age, stay with Mr Carman at weekends on a regular basis.
28. Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration and this matter is very much in the forefront of my mind. I do not underestimate the importance of stability in a child's life, particularly in relation to their education.
29. Nevertheless, this must be balanced against other considerations. In this case, I am mindful of the propensity of the site to flood. Moreover, there is the possibility that the flooding could be to a depth of up to 2 metres across the site. That represents a significant risk to the children permanently residing on the site, as well as to those staying with Mr Carman at weekends.
30. In weighing the balance, in my view the safety of the children in terms of exposure to flood risk in itself outweighs the benefit in terms of stable access to education. Consequently, in my view, the best interests of the children would be served by them not residing on the site, which then becomes the primary consideration. In addition to that, there is the harm caused to the character and appearance of the area to take into account. For these reasons, I consider that the stationing of caravans on the appeal site for residential use should cease.
31. In reaching that conclusion, I have considered whether granting a temporary and/or personal permission would be appropriate in this case. The PPG sets out circumstances in which the grant of a temporary and/or personal permission may be justified. In relation to personal permissions, these circumstances include exceptional occasions where granting planning permission for development that would not normally be permitted on the site could be justified because of who would benefit from the permission.
32. Having regard to the guidance in the PPG relating to temporary and personal permissions, it seems to me that in this case the sole potential reason for doing so would be to facilitate Mr Carman's children attending the nearby school. However, given the age of those children, there is no realistic prospect that by the end of a temporary period of reasonable length the circumstances will have changed. Should, for example, a temporary permission of five years be granted, one or more of the children would still be attending the school. Increasing the length of the temporary permission would be tantamount to granting a permanent position, and would expose all the occupants of the site to the risk of flooding for a longer period of time. I therefore consider that granting a temporary and/or personal permission is not an option open to me in this case.

33. I am fully aware that the dismissal of this appeal would result in the appellant and his family losing their home. This would interfere with their rights under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA). In particular, their rights under Article 8 (right for respect for private and family life, home and correspondence) and Article 1 of the First Protocol (right to respect to property) would be interfered with. Both of the above are qualified rights, and interference with them may be justified where lawful and in the public interest.
34. The issue of an enforcement notice is in accordance with the law, specifically section 172 of the Town and Country Planning Act 1990 as amended, such that there is a clear legal basis for the interference with the rights under Article 8 and Article 1 of the First Protocol held by the appellant and his family. In my view, the application of the hierarchical approach to the location of development required by the development plan for the area and remedying the harm caused to the character and appearance of the area by the breach of planning control would both be in the public interest. Removing the numbers of people at risk of flooding would not only be in the interests of the occupiers of the site, it would also be in the wider public interest.
35. I am satisfied that the relevant planning policy objective could not be achieved by means which interfere less with the appellant's rights and could not be met by a less intrusive action. In that context, I am satisfied that the requirements of the notice are the minimum necessary to achieve the planning policy objective. Balancing the appellant's rights under the HRA against the wider public interest, I conclude that in this case the interference with those rights is both proportionate and justified.

Conclusion on the appeal on ground (a) and the deemed planning application

36. For the reasons set out above, the breach of planning control alleged in the notice is contrary to the development plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan.
37. Accordingly, I conclude that planning permission ought not to be granted the matters stated in the notice.

The appeal on ground (f)

38. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice include to cease the use of the land for the stationing of caravans and to remove the caravans from the land. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.

39. The appellant's case on this ground of appeal is that the actions are too excessive and that, if planning permission was granted, the requirements of the notice would not need to happen.
40. I have concluded that planning permission ought not to be granted for the matters stated in the notice. The question then becomes whether the requirements of the notice are excessive to achieve the intended purpose.
41. However, it seems to me that the use must cease and the caravans removed in order to achieve the purpose of the notice. I am therefore satisfied that the requirements stated in the notice are the minimum necessary and are not excessive. I have considered whether there are any other suitable alternatives to the steps required by the notice which would overcome the planning difficulties with less cost or disruption to the appellant, but none are obvious to me.
42. Accordingly, the appeal on ground (f) fails.

Conclusion

43. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

44. It is directed that the enforcement notice is corrected by:
- Delete the breach of planning control alleged in paragraph 3 of the notice in its entirety, and replace with:

Without planning permission, the material change of use of the land from agricultural land to a mixed use of agricultural land and for the stationing of caravans for residential use, together with associated paraphernalia.
45. Subject to the correction, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Freer
INSPECTOR

APPEARANCES

For the appellant:

Mr Danny Carman	Appellant
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For the Local Planning Authority:

Ms Lucy Smith BSc (Hons) MURP Assoc (RTPI)	Planner
Mr Karl Patterson BA (hons) CIHCM	Senior Housing Development Officer
Mr Matthew Clarey	Enforcement Team Leader