



Appeal Decision

Hearing held on 8 March 2022

Site visit made on 8 March 2022

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd March 2022

Appeal Ref: APP/E2530/W/21/3270598 Fourways, 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 Gray and A Smith against the decision of South Kesteven District Council.
 - The application Ref: S20/2128, dated 14 December 2020, was refused by notice dated 12 February 2021
 - The development proposed is a material change of use of land for stationing of caravans for residential use for 2 Gypsy-Traveller families with associated development (hard standing, waste treatment plant, utility building, associated drainage works).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development that is set out in the banner heading above is taken from the planning application form, excluding the term 'part retrospective' as this does not form part of the act of development. It was agreed at the hearing that the development had commenced. Reference was made in particular to the hardstanding area in this regard. I observed this area on my site visit, along with a number of structures and drainage that did not relate to the submitted plans. What is for my consideration is as shown on the submitted plans and not any alternative development which has taken place. Accordingly, I have considered the appeal on this basis.

Main Issues

3. The main issues are the effect of the proposal on (i) the significance of a non-designated heritage asset, ridge and furrow features; (ii) the character and appearance of the area, including on the setting of the Fulbeck Conservation Area and from access/traffic; (iii) flood risk, with regard to the effect on the living conditions of the future occupiers; and (iv) if there is harm, whether this is outweighed by the need and supply of pitches for Gypsies and Travellers, and other considerations.

Reasons

Non Designated Heritage Asset

4. The appeal site forms part of a larger yet modest sized field. The current hardstanding with the associated structures covers an area close to the main Bulby Lane frontage and the site access. The remaining part of the field is open to the site and contains a marked ridge and furrow formation. This feature is most apparent where it extends east – west across the field, although it is also found in a north-south formation across the northern part of the field. The ridge and furrow feature would also have extended across where there is the current hardstanding area, as is shown by the appellants' Earthwork Survey (2021).
5. Both main parties agree that the ridge and furrow constitutes a non-designated heritage asset. Its significance is derived from its origin as a form of arable agricultural practice that has occurred since medieval times. It is clearly intact apart from the hardstanding area, which in any event is part of the development which is for my consideration in its proposed amended form. In such rural surroundings, the ridge and furrow forms part of the area's historical and cultural features.
6. The hardstanding area has obliterated the signs of the ridge and furrow in this part of the field as it has flattened these features and covered them in road planings/hardcore type material. It has very significantly damaged the physical form of the feature in this part of the field. Alterations are proposed to the hardstanding area, in particular to accommodate areas of amenity space. This would however be unlikely to restore the interest because of the flattening that has already taken place and with the domestic related use.
7. I reach a similar view with regard to the proposed drainage infrastructure. Whilst the works would intend to utilise a furrow in the field, this would not relate to the historical interest by way of the proposed infrastructure. As a consequence, the significance would be further harmed.
8. Nor does recording the ridge and furrow account for its loss. The retention in the rest of the field also does not adequately justify the reduction in this feature and neither does that the significance concerns solely ridge and furrow. The same applies by way of the lack of an objection from the relevant consultee, whose response to the planning application does in any event acknowledge that works at the site may have obscured the earthwork remains within the proposed development area.
9. The likelihood of the ridge and furrow feature being lost to modern agriculture is also not a compelling fallback position. The field is of a modest size and there is not substantive evidence that the appellants are involved in agricultural practices that would result in its loss. Using the field for the grazing of horses is not such a practice. There is not a real prospect of the fallback position occurring and so it carries limited weight.
10. I conclude that the proposal would have an unacceptable effect on the significance of a non-designated heritage asset, ridge and furrow features. Therefore, it would not comply with Policies EN1 and EN6 of the South Kesteven District Council Local Plan 2011 – 2036 (2020) (Local Plan) where they set out that development must be appropriate to the character and

significant natural, historic and cultural attributes and features of the landscape, and that the Council will seek to protect and enhance heritage assets, amongst other considerations.

11. With regard to paragraph 203 of the National Planning Policy Framework (Framework), as the hardstanding has eradicated the ridge and furrow in this part of the field and with the proposed drainage, the scale of any harm or loss would be significant. I would accept that the significance of the heritage asset is moderate, given that ridge and furrow is not an uncommon feature in rural areas. Nevertheless, given the level of harm, and in making a balanced judgement as required by paragraph 203, the contribution to the supply of pitches and the particular circumstances of the appellants would not outweigh this harm or loss.

Character and Appearance

12. The site is located within distinctly rural surroundings. Land in its immediate vicinity also principally comprises small fields and is also frequently enclosed by hedgerows. Bulby Lane itself is a typically narrow countryside lane, often enclosed by vegetation or narrow verges. Where Bulby Lane meets the edge of Fulbeck itself, the associated built development is well separated from the site. The same is true as regards the characteristics of North End Lane.
13. Outside of the settlement, built development is therefore of a limited nature. There is an isolated residential property found to the north-west of the site and there is a further property and building where Bulby and North End Lanes meet. There is an access close to the site, but the associated property is well set back towards the village edge. The A17, whilst noticeable from the site, is a distant presence in terms of the associated vehicles and noise.
14. Fulbeck itself lies on an escarpment, whilst the site is found on lower land just beyond the bottom of this feature. It is an attractive village of traditional stone properties and walls that closely bound a number of the narrow roads. These roads are set out in a fairly irregular arrangement and access a close knit pattern of development. The church and Hall are dominant features, while the A607 also passes through the village.
15. The associated conservation area boundary lies a fairly short distance from the site. The countryside around the conservation area, including the site, falls within its setting. The Fulbeck Conservation Area Appraisal and Management Plan (2014 Review) (CAAMP) identifies that the landscape is an important part of the setting of the conservation area.
16. The significance of the setting derives from the relationship between this rural village and its countryside surroundings. This extends to the lanes which connect to this side of the village. They are pleasing features where there is a befitting sense of tranquillity. As they do not lead other than into the countryside and to limited development, traffic volumes that are experienced are minimal. In coming to this view, I have had regard to the totality of the evidence before me, as well as my visits to the area before and after the hearing at the accompanied visit. Linkages to other roads in the area that provide access to other destinations do not palpably alter this aspect of the local character closest to the site.

17. The significance of the setting is therefore clearly sensitive to traffic volumes. The proposal would increase such volumes in these lanes by way of the movements associated with the two households that would reside on the site. Even accepting that the particular lifestyles and working patterns may lessen such movements, it would still cause harm to the significance of the setting. There would still be the comings and goings associated with family life, and whilst there is no business use proposed, there would be commercial vehicles by way of vans, as well as touring caravans. Although not decisive on its own, servicing vehicles would add to the detriment to the significance. It would also be difficult for vehicles to pass without some use of the verges and this itself would harm the character of these lanes. Due to the nature of this harm, it would not be addressed by the limited visibility of the proposal from either Bulby Lane or from within the conservation area.
18. That the CAAMP does not refer to tranquillity is perhaps unsurprising because it does not concern itself in detail with the significance of the setting, but rather with the conservation area itself. Tranquillity is an attribute of the immediate countryside surroundings for the reasons that I have set out, but less so in the conservation area due to the presence of the built form and vehicles using the A607, in post Covid-19 restriction times.
19. Whether or not development in Fulbeck is supported under the Local Plan also has a limited bearing because the effect on the setting of the conservation area still needs to be considered. Traffic movements associated with other properties would also not adequately address this harm because of the sensitivity of the setting to additional movements, as would result from the proposal.
20. I have also been referred to the statutory duty associated with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Whilst this provision does not make particular reference to land outside of a conservation area, the planning system still affords significant protection to the historic environment.
21. I conclude that the proposal would have an unacceptable effect on the character and appearance of the area, including on the setting of the Fulbeck Conservation Area and from access/traffic. Hence, it would not comply with Policies EN1 and EN6 with the protections they afford historic attributes, heritage assets and their settings, and with Policy DE1 of the Local Plan where it concerns local distinctiveness, vernacular and the character of the area.
22. In this regard, I do not find conflict with Policy H5 of the Local Plan, the development plan policy which deals with additional gypsy and traveller pitches. Where this policy refers to good access it seems to me this relates to highway safety as an issue and that its ambit is not so broad so as to include character and appearance. The Council confirmed at the hearing that its access concerns related to character and appearance, which is of relevance to the consideration of Policies EN1, EN6 and DE1. For the reasons that I have set out above, they do not favour the proposal.
23. For the purposes of paragraph 202 of the Framework, 'less than substantial harm' would arise to the significance of a designated heritage asset. This harm is to be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. Whilst a number of the benefits would be of a personal nature to the appellants, the contribution to the supply

of pitches at a time when the Council is lacking in such provision is a public benefit.

24. I am however mindful that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The significance of the setting of the conservation area would be diminished in relation to traffic and access on the pleasing lanes close to the site. Overall, the public benefits would not outweigh the 'less than substantial harm' to the designated heritage asset, under the Framework. The proposal would thus not comply with the policies in the Framework in this regard and there would be further conflict with Policy EN6 where it incorporates the Framework's balancing exercise for such assets. Nor would it accord with Section 12 of the Framework where it identifies good design as a key aspect of sustainable development.

Flood Risk

25. There is an existing drainage pipe which runs under the site from an outfall in the south-east corner to beyond the north-west corner, where it discharges into a watercourse. This connects to another watercourse known as The Beck, further to the west. There is also a cess tank on site for foul water drainage at present.
26. The potential cause of flood risk in this case relates to surface water. The extracts from Central Government's flood warning information service show that a ditch running along the main site frontage represents a high surface water flooding risk, while the accumulation of surface water in the furrows represents a low risk. River flooding is not a matter of dispute.
27. The appellants propose an attenuation system, where crates will be connected to an infiltration chamber that releases water into the existing drainage pipe at a controlled rate. The surface water would then make its way via the pipe to the watercourse outside of the site boundary and then beyond towards The Beck. The hard standing areas on the site are of a permeable nature. As regards foul water drainage, the appellants have confirmed that a treatment plant system would be used that would discharge the cleaned effluent water to the crates. The discharge pipe would also be partially perforated so in effect it could act as seasonal soakaways.
28. The appellants' drainage strategy shows that a positive outfall would be achieved in order to aid flow, albeit it would be fairly marginal. This is because the site and where it would discharge to the watercourse is largely flat, apart from the ridge and furrows, and so allows only for a low gradient. Interested parties have also referred to where the local topography can lead to surface water flooding and standing water on occasion.
29. Based on the evidence before me, however, what is more of a concern is whether the drainage strategy can be successfully implemented beyond the site boundary. The watercourse where the pipe would discharge is under riparian ownership and is not under the control of the appellants. Whilst I observed during my site visit that it appeared to have been recently cleared, I am also aware previously that this has not always been the case, as the appellants have acknowledged.

30. There is not a formal agreement between the appellants and the landowner, including by way of a Section 106 Agreement of the Town and Country Planning Act 1990 or similar, in terms of a mechanism to ensure satisfactory drainage. The imposition of a Grampian-type planning condition would not suffice because it is unclear whether there would be a prospect of the actions that would be required under such a condition being performed where it is not on land controlled by the appellants. Such a condition would have the potential to nullify a permission.
31. In the event that the watercourse would be blocked, there is limited information before me on how flood risk on the site would be managed if water backs up through the pipe and the proposed drainage systems. It is not evident whether the raising of the site levels, the capacity of the attenuation system being able to accommodate a greater number of pitches and a pump for the treatment plant would deal effectively with this type of flood risk, even if at least some of these measures would mitigate against heavy rainfall collecting in the furrows.
32. Simply relying on the Internal Drainage Board (IDB) powers to serve notice on the landowner to maintain this watercourse and to clear it of obstruction would also not prevent the potential for flood risk to occur, if the watercourse is already blocked or poorly maintained when the IDB take action. In the event that the site would be flooded, this clearly would have an adverse effect on the living conditions of the future occupiers.
33. The appellants have also queried whether such a matter is a relevant consideration due to the role of drainage bodies. However, addressing flood risk is a matter of national planning policy which is to be dealt with when considering development proposals, not afterwards if a problem arises. With the harm that flooding can cause, it is a relevant living conditions matter for my consideration. Similarly, flood risk cannot be considered addressed because the Council did not consult the IDB during the course of the planning application. I appreciate that the appellants have commissioned a number of independent reports but none adequately address dealing with the issue of the private watercourse.
34. With the distance that the site lies from the nearest residential properties, I am less persuaded that undue flood risk would occur to the occupiers of those properties. Nevertheless, this does not address the harm to the future occupiers of the proposal themselves.
35. I conclude that the proposal would have an unacceptable effect on flood risk, with regard to the effect on the living conditions of the future occupiers. Thus, it would not comply with Policy EN5 of the Local Plan where it is concerned with flood risk management and that surface water should be effectively managed. It would also not comply in this regard with Policy H5 where it involves providing an acceptable living environment for its residents.

Need and Supply of Pitches for Gypsies and Travellers

36. The Planning Policy for Traveller Sites (2015) (PPTS) requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. The supporting text to Policy H5 sets out the identified need over 5 year periods up to 2036. This is based on the South Kesteven & Rutland Gypsy,

Traveller and Travelling Showpeople Accommodation Assessment (2016) (GTAA). Whilst it is now dated, there is no dispute over its robustness.

37. The Council cannot demonstrate a 5 year supply of deliverable sites in accordance with the PPTS. From what I was told at the hearing, the shortfall is not insignificant. I was also made aware that the Local Plan Examination Inspector recommended an early review of the Local Plan, partly for this reason. Whilst the Council is undertaking a review and has appointed consultants to carry out a new GTAA, as well as considering trans-boundary effects, it is unlikely that the review of the Local Plan will be in place for some time yet.
38. Furthermore, there is limited evidence that the Council is taking other measures to address the deficit through the grant of planning permissions. It is therefore unsurprising that there are unauthorised encampments, as is set out in the enforcement update document, because Gypsies and Travellers are having to find somewhere to live. The Lowfields Paddocks appeal decisions¹ that I have been referred to indicate that a lack of provision has been an historical issue. The current situation amounts to a policy failure.
39. With regard to alternative sites, the appellants are not required to prove that no other sites are available. However, whether there are alternative sites is useful in further understanding local provision in practical terms. I was referred to a Council-run site in Grantham where it was explained that the site was overcrowded with an associated lack of privacy, suffered from anti-social behaviour and that a serious safety incident had resulted from the cramped nature of the site. None of this was disputed. On this basis, there are no obvious alternative sites that the appellants could occupy.

Other Considerations

Circumstances of the Appellants

40. There is no dispute that the status of both appellants conforms to the definition of Gypsies and Travellers that is set out in Annex 1 of the PPTS. The appellants comprise 2 families, with a total of 6 children. The children in the requisite age group attend a local primary school. The appellants and their families have established links to the area. The proposal would provide a base that would also allow the appellants to come and go. Travel is undertaken extensively for work purposes and there is a separate local business premises. The proposal would therefore allow the appellants to work whilst also supporting their families. I have also considered the personal circumstances that were submitted with the planning application.
41. Nor are the appellants' circumstances lessened by comparisons with a previously dismissed appeal² on the site for 4 pitches. It simply means that the circumstances of those who would not now occupy the proposal are not now of relevance. Clearly, those of the appellants and their families are to be considered. I deal with matters why the appellants do not currently occupy the site later in my decision.
42. The appellants consider that they would have nowhere else to go and given the lack of both supply and alternative sites, it is a point that has some resonance.

¹ Appeal refs: APP/E2530/A/09/2106646, APP/E2530/A/10/2136072

² Appeal ref: APP/E2530/W/19/3240125

As a consequence, the appellants also consider that they would have to rely on a roadside existence, and on a regular basis would be likely moved on.

43. In exercising my function on behalf of a public authority, I am also consciously aware of my duties under the Public Sector Equality Duty (PSED) contained within the Equality Act 2010 which sets out to eliminate discrimination, harassment and victimisation, advance equality and foster good relations, and the protected characteristics under the PSED, including for Gypsy and Traveller groups. I am also aware of my duties under Article 8 of the Human Rights Act 1998 (Article 8) that bestows the right to private and family life and for the home, and that the Article 8 rights of a child should be viewed in the context of Article 3(1) of the United Nations Convention on the Rights of the Child.
44. In taking these matters together, I am not unsympathetic to the appellants' circumstances and having such a base would clearly be advantageous to the appellants and their families, as well as serving the best interests of the children.

Other Matters

45. My attention has been consistently drawn to the previous appeal decision on the site. The proposal seeks to address the concerns which the previous Inspector expressed. As a consequence, what is for my consideration is a different development. It is therefore to be considered on its own merits and I am entitled to take my own reasoned view on the relevant considerations, notwithstanding that my overall conclusion is the same as that Inspector.
46. I was made aware of an unsavoury incident that has resulted in the appellants having to move out of the area on a temporary basis. Clearly, this has caused a great deal of distress for the appellants. Whereas such an event has also unsettled members of the local community, it cannot be said to run with the use of the land as it concerns the individuals involved. The incident also occurred elsewhere. Thus, I do not find conflict with where the Framework refers to matters related to safe places and fear of crime. Whilst some members of the local community also take issue with the appellants and have referred to due process not being followed, it seems to me that the root of this problem is more the policy failure over the outstanding need for Gypsy and Traveller pitches at the present time.
47. Interested parties through the written submissions have raised a number of other matters, in particular in relation to highway safety, biodiversity, light pollution and local services. I do not find any particular harm on these counts, including through the use of planning conditions to deal with a number of these matters, if I had been minded to allow the appeal.

Balancing Exercise and Conclusion

48. The proposal would have unacceptable effects in a number of respects. These concern the effect on the significance of a non-designated heritage asset, the character and appearance of the area, including on the setting of a designated heritage asset, and on flood risk grounds. There would be conflict with the policies of the development plan and the Framework in these respects. Whilst the PPTS does not rule out sites in the open countryside, it does refer to very strict limits on new development in such areas. With the harm that would

arise, there would be conflict with the PPTS. Such matters attract very significant weight in my decision.

49. In coming to this view, I have also considered whether a temporary permission would satisfactorily overcome the harm. As the Council cannot demonstrate a 5 year supply of deliverable sites, this is a significant consideration. Still, this would not address the harm to the non-designated asset and there would still be the potential for flood risk with regard to the effect on the future occupiers, even over a shorter time period. There would also still be harm to the setting of the conservation area over that period and this would conflict with the significant protection that is afforded to this asset.
50. A temporary permission would also place a significant burden on the appellants as regards the works associated with drainage, even if an alternative can be found with regard to the proposed utility buildings and landscaping. Moreover, given that the adoption of the Local Plan review appears some way off, there remains uncertainty whether these circumstances would have sufficiently changed at the end of a reasonable time length for a temporary permission.
51. The tilted balance under the presumption in favour of sustainable development as is set out in the Framework would not apply, even if Policy H5 is considered out of date due to need. The application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed related to designated heritage assets, namely the conservation area.
52. Against the harm that I have identified, it is necessary to balance the other considerations. In this case, these centre on the need and supply of pitches for Gypsies and Travellers, the lack of an alternative site, the policy failure, and the circumstances of the appellants including the related need for a settled base. These matters attract significant weight.
53. In considering my duties under the PSED, Article 8 of HRA and the best interests of the child, I also have to consider the wider public interest. The effect on heritage assets, character and appearance and flood risk are such legitimate matters of interest. Taking into account all of the considerations, I am satisfied that this objective can only be adequately safeguarded if the proposal does not proceed. Not granting planning permission would therefore be a proportionate response that would not violate the appellants' human rights. In coming to this view, I have considered the impacts this would have on the appellants and their families. It follows therefore that a personal permission would not adequately overcome the harm.
54. In concluding, I have considered all matters that have been raised, but the benefits that would arise would not outweigh the harm caused by the proposal. For these reasons, I conclude that the proposal conflicts with the development plan when taken as a whole and there are no material considerations to outweigh this conflict. Therefore, the appeal should be dismissed.

Darren Hendley

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Alison Heine	Heine Planning Consultancy
Gertjan van Boven	ISS Consulting
Ashley Smith	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Philip Jordan	Principal Planning Officer
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INTERESTED PARTIES:

Simon Stanion	Shakespeare Martineau, instructed by Mrs S N Tyler
Councillor Penny Milnes	South Kesteven District Council
Dick High	Local Resident
Richard Tyler	Local Resident
Geoffrey Hewitt	Local Resident
Dr Peter Butterfield	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Letter from Bird & Co Solicitors LLP, dated 31 January 2022
- 2 South Kesteven District Council, Quarterly Planning Enforcement Update to Planning Committee, dated 18 November 2021
- 3 Untitled Drainage Map
- 4 Plan 1 Location Plan Scale 1:1250 and Plan 2 Proposed Site Layout Plan Scale 1:500 submitted with planning application Council ref: S19/0834