

Appeal Decision

Hearing held on 12 July 2022

Site visit made on 12 July 2022

by Zoe Raygen DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2022

Appeal Ref: APP/E2001/W/22/3296464

Land to the West Of 18, Gowdall Lane, Pollington, East Riding of Yorkshire, DN14 0AY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Price against the decision of East Riding of Yorkshire Council.
 - The application Ref 21/02267/PLF, dated 8 June 2021, was refused by notice dated 18 October 2021.
 - The development is the change of use of land for use as a 2 pitch traveller family site with access off Highfield including construction of gravel surface, siting of 2 static caravans and 2 trailer caravan pitches, erection of a 1.8m high boundary fence, erection of a single stable, siting of a storage container and conversion of existing garage/store building for use as a day room.
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Decision

1. The appeal is allowed, and planning permission is granted for the change of use of land for use as a 2 pitch traveller family site with access off Highfield including construction of gravel surface, siting of 2 static caravans and 2 trailer caravan pitches, erection of a 1.8m high boundary fence, erection of a single stable, siting of a storage container and conversion of existing garage/store building for use as a day room at land to the West Of 18, Gowdall Lane, Pollington, East Riding of Yorkshire, DN14 0AY in accordance with the terms of the application, Ref 21/02267/PLF, dated 8 June 2021, subject to the conditions set out in the schedule to this decision notice.

Preliminary Matters

2. I have used the description of development contained on the Council's decision notice and the appellant's appeal form as this better describes the totality of the development than that contained on the application form.
3. One of the Council's reasons for refusal relates to the insufficient information it considered had been submitted by the appellant to demonstrate the highway impacts of the scheme, particularly in relation to the visibility splay, a swept path analysis, the position of the access gates and the surfacing of the access way. Prior to the Hearing the appellant submitted revised plan 4B which sets the access gates back to allow a mobile home and horse trailer sufficient room to wait off the public highway while the gate is opened. The visibility splay is also marked accurately, to the satisfaction of the Highway Authority and the Council confirmed at the Hearing that surfacing could be achieved through the imposition of a suitably worded condition.

4. On that basis I consider that as the revised plan includes only a minor change to the position of the gated access then no one would be prejudiced were I to take it into account in the determination of the appeal. I have proceeded on that basis. The Council confirms that the receipt of the plan effectively addresses its reason for refusal No 2. The Highway Authority confirms, having received the revised plan, it has no objections to the proposal subject to the imposition of conditions. In the absence of any substantive evidence to the contrary and, based on my observations on site, I see no reason to disagree. I note resident's concerns regarding the condition of the highway. However, the amount of traffic generation from the proposal would be minimal and the condition of a public highway would be a matter for the highway authority to address in the first instance.
5. It is common ground, and I observed on my site visit, that the appeal site is currently being used for residential use and therefore the change of use has occurred. Some of the structures on the site are not the same as those on the submitted plans, and in some cases are significantly different. In addition, the access has not been implemented as shown on the submitted plan. I have therefore based my determination on the plans considered by the Council, together with the later addition dealing with the proposed access as detailed above. The development when complete would comprise two pitches with four caravans in total (two touring and two static), a container, a stable and the surfacing of much of the site. The conversion of the existing garage to a day room has taken place.

Main Issues

6. The main issues are:

- the effect of the proposal on the character and appearance of the area; and
- whether any harm arising from the proposal would be outweighed by other considerations.

Reasons

Character and appearance

7. There is no dispute between the parties that the appeal site is outside of the designated development limit of Pollington, and therefore for the purposes of the development plan is classed as being within the countryside. This part of Gowdall Lane has a cluster of residential properties, some fronting the road, with lengthy plots to the rear which are split by a private track, separating the main domestic gardens from the remainder of the plot.
8. The private track provides access to the plots to the north of No 17 Gowdall Lane and the severed plots are mainly grassed and well vegetated. However, there is also a large variety of structures including garages, containers, timber sheds and caravans. Some are used for horse grazing, others as an extension of the garden with garaging and parked cars.
9. The appeal site and the adjacent plot to the north share many of these characteristics but are less vegetated and are accessed from the public highway. The consequent lack of a wide grass verge gives them a harder edge.

10. While the area has a verdant quality as a whole, due to the characteristics I have outlined, its overall character is more intrinsically linked to the houses than the surrounding open countryside. This is reinforced through the presence of a group of houses at the southern end of the cluster on Highfield which extend a similar length to the rear plots behind properties to Gowdall Lane.
11. The appeal site is located to the rear of No 18 Gowdall Lane and prior to its current use comprised a grassed area with an existing garage adjacent to the road and a static caravan sited about halfway into the site. There are some trees on the boundary and there was open low fencing. Consequently, the site, as was, contributed positively to the character and appearance of the area.
12. The structures would be sited further into the site than those to the north. However, they would be located no further than the existing residential development to the south. Furthermore, the structures themselves would be fairly representative of those already present on the plots of land to the north and therefore would not appear out of place instead reflecting local context. The lack of grass verge to the front and, already hard edge formed by the existing garage and access from the public highway, means that the extent of surfacing would not be out of place. While there would be more development on the site than on plots to the north, the structures would be modest, single storey and still retain satisfactory space around them so that the open, verdant quality of the area would not be materially eroded by the proposal. This is particularly so given that the existing hedge to the side and rear is retained.
13. The size of the plot is more than adequate to accommodate the two pitches as demonstrated on the proposed layout of the site. Furthermore, it is of a scale, contained within just one of the rear plots, to ensure it would not dominate the settled community.
14. The new boundary treatment which has been erected on the site to the southern boundary, would reflect the existing fencing to the south, to which it is closely located, and is not therefore overly obtrusive in the streetscene. Furthermore, the open boundary to the west and north means that it does not appear that the site and its occupants are deliberately isolated from the rest of the community.
15. The Council confirmed that there are no footpaths to the rear of the site and the houses fronting Gowdall Lane, have very small spaces between them. As a result, there are only very occasional glimpses of the area to the rear, where the appeal site is located, from the main road other than from the Highfield/Gowdall Lane junction. Here the view is of the existing garage which would be little altered. As a consequence, the development would have very limited visibility in the wider area.
16. I am aware that a planning application for a dwelling was refused by the Council in 2018¹ for similar reasons as the development before me now, and that the current structures would encroach further into the countryside than that proposal. However, I have considered the development on the basis of the evidence before me and my observations of the surrounding context of the area at the time of my site visit.
17. For the reasons above, I conclude that the development would not be harmful to the character and appearance of the area and therefore there would be no

¹ 18/01082/PLF

conflict in this respect with Policies S4 and ENV1 of the East Riding Local Plan Strategy Document 2016 (the Local Plan), the National Planning Policy Framework and policies C1 and I1 of the National Design Guide. Together, these require that development is of good design and has regard and responds to the specific characteristics of the sites wider context and character.

Other Considerations

18. A number of residents raise concerns regarding the impact on their privacy and problems with noise. However, the units would be positioned well away from most of the surrounding houses along Highfield and Gowdall Lane. One of the pitches would be about 8.7m from the closest elevation of Newryan. However, the combination of hedgerow and fencing would ensure that there would be no unacceptable loss of privacy due to the proposed caravans being single storey only.
19. At the time of my site visit the area was quiet. Although issues have been raised regarding dogs barking, the only dogs I heard were at other residential properties. I appreciate that this is only a snap-shot in time but the keeping of dogs on a residential plot would not be unusual or unreasonable.
20. Representations were made to the effect that the rights of a nearby resident, under the Human Rights Act 1998, Article 1 of the First Protocol, would be violated if the appeal were allowed. I do not consider this argument to be well-founded, because I have found that the proposed development would not cause unacceptable harm to the living conditions of surrounding residents. The degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 1 of the First Protocol.
21. The development does not fall within any of the forms of development that Part C of Policy S4 of the Local Plan seeks to support in the countryside. However, the Council explained at the Hearing that the list of acceptable forms of development in the countryside within the Policy is not exhaustive. Paragraph 4.34 of the supporting text states that proposals not listed in the Policy would have to demonstrate why they require a rural location. The Council raise no concerns with regard to the location of the site in principle.
22. There is no dispute between the parties that the appellants meet the definition of gypsies and travellers contained within the Planning Policy for Travellers Sites (the PPTS). From the evidence before me, and what I heard at the Hearing, it is clear that the appellants, who currently occupy the site, and their family who would occupy the site, previously led or are leading a nomadic life and wish to settle for health and educational purposes. They will continue to travel for economic purposes. I am satisfied therefore that the appellants and occupiers of the site meet the definition contained within the PPTS.
23. The PPTS states that new traveller site development should be strictly limited in the open countryside that is away from existing settlements or outside areas allocated in the development plan. However, the PPTS does not preclude gypsy and traveller sites from the countryside. In this case, the site is adjacent to existing dwellings in the settlement of Pollington and is within convenient walking and cycling distance of facilities including shops, primary school and public houses and would therefore be in accordance with the requirements of the PPTS. I therefore conclude that there would be no conflict with Policy S4 in this respect.

24. The Council agreed at the Hearing that the development accords with Policy H3 of the Local Plan regarding the provision of pitches for gypsies and travellers which states that proposals on non-allocated sites should be considered against the most up-to-date needs assessment.
25. The Gypsy and Traveller Accommodation Assessment 2018 (the GTAA) forms the most up to date assessment which found a need for two pitches over the period 2018-2032 which the assessment assumed would be met by natural turnover. However, the Council's three sites are all full, with eight people on the waiting list. I am advised that vacancies very rarely come up on the Woodhill Way and Cottingham sites with the last vacancy being three years ago. Furthermore, vacancies at the other Council site at Woldgate are short term, with people already on the waiting list. It is unlikely therefore that the need for two pitches would be met in the short term. Furthermore, the GTAA acknowledges that there is likely to be individuals with needs unknown at the time of the survey, or who refused to participate the most up-to-date needs assessment. Moreover, up to eight pitches may be required, for gypsies and travellers where, at the time of the survey, their status could not be confirmed.
26. The Council is satisfied therefore that the two pitches the subject of this appeal can be supported in principle in accordance with Policy H3. Based on the evidence before me I share that view.
27. Local residents are concerned that if this appeal were to be allowed it would set a precedent for future similar development on adjacent plots. This is a valid concern given that plots extend to the north. However, given that my conclusions regarding the acceptability of this proposal rely on a number of factors related to the specific circumstances of this plot and its location, then future applications would be based on an assessment of each plot at that time. Furthermore, future proposals would also need to show that they comply with Policy H3 regarding the need for the accommodation. I am satisfied therefore that allowing this appeal does not set a precedent for future applications.
28. It seemed to me from the evidence I heard that it is likely that the occupiers were fully aware of the need to secure planning permission but continued to develop and occupy the site in any event. However, they have since sought to regularise the development. That is a material consideration that weighs against the grant of planning permission.

Conditions

29. The appellants confirmed at the Hearing that they were in agreement with the conditions suggested by the Council. I have had regard to the list and considered them against the tests in the National Planning Policy Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents.
30. The Council has suggested a condition which would restrict the occupation of the site to the appellants and their family only and, that when their occupation ceased, the appeal site be restored to its previous condition. However, it agreed at the Hearing that were I to find the site to be acceptable in principle, without the requirement to consider personal circumstances, then a condition restricting occupation to those persons meeting the definition of gypsies and travellers in the PPTS would be necessary instead. Therefore, given my findings above I have imposed the latter condition.

31. It is necessary to restrict the number of pitches and caravans to protect the character and appearance of the area. It is also reasonable to impose a condition to ensure that commercial activities do not take place on the site and no vehicle over 3.5 tonnes is stationed, parked or stored on the site to protect the character of the area and residents' living conditions.
32. Condition No 4 is imposed to ensure that the site is laid out in accordance with the approved plans and that details of drainage and its maintenance, together with surfacing of the access are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted part retrospectively, and so it is not possible to use a negatively-worded condition to secure the approval and implementation of the matters outlined in this condition before the development commences. The condition will ensure that the development can be enforced against if the site is not laid out in accordance with the approved details or the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.
33. A condition is necessary to ensure that the gates open inwards and that nothing is erected, retained, planted or allowed to grow over 1.05 metres in height in the visibility splay to protect highway safety.

Conclusion

34. I have found that the development accords with the policies of the development plan as a whole and national policy. Despite the weight to be afforded to the intentional unauthorised development as a material consideration, it would not tip the balance against the grant of planning permission.
35. It is not necessary to consider whether other considerations such as the personal circumstances of the individual occupiers would be other considerations that may justify a grant of planning permission given that I find in favour of the proposal in any event.
36. Therefore, for the reasons above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Zoe Raygen

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Calum Rowley	Principal Planning Officer, East Riding of Yorkshire Council
Jessica Hobson	Senior Planning Officer, East Riding of Yorkshire
Jason Shakesby	Principal Highways Development Manager Officer, East Riding of Yorkshire Council

FOR THE APPELLANT

Mike Carr	MAT Design Limited
Mr Price	Appellant
Mrs Price	Appellant

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Photographs of appeal site in original state

SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 2) There shall be no more than 2 pitches on the site and on each of the 2 pitches hereby approved no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed at any time, of which only 1 caravan shall be a static caravan.
- 3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 4) The use of the land hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to v) below:
 - i) Within 3 months of the date of this decision the site shall be laid out in accordance with plan refs 3A (in so far as it relates to the elevations of the stable and the storage container) and 4B;
 - ii) Within one month of the date of this decision a scheme, including manufacturer and maintenance details, for the discharge of foul and surface water from the site shall be submitted to and approved in writing by the local planning authority;
 - iii) The approved drainage scheme shall be constructed in accordance with the approved scheme within three months of the granting of approval;
 - iv) Within one month of the date of this decision details of the surfacing of the access shall be submitted to and approved in writing by the local planning authority; and
 - v) The surfacing shall be implemented in accordance with the approved details within three months of the approval.

If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or details or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

If an appeal is made in pursuance of ii) or iv) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

Upon implementation of the approved drainage scheme specified in this condition, that scheme shall thereafter be managed and maintained in accordance with the approved details

Upon implementation of the approved surfacing details specified in this condition the area shall be retained as such at all times

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) No commercial activities shall take place on the land, including the storage of materials.
- 6) Any gates shall only be installed to open inwards into the application site and shall not open outwards.
- 7) Nothing shall at any time, whether permitted by the Town and Country Planning (General Permitted Development) Order 2015 or not, be erected, retained planted or allowed to grow over 1.05m in height above the level of the adjoining carriageway within the visibility splay identified on plan ref 4B.

*******END OF SCHEDULE*******