



Appeal Decision

Site visit made on 21 September 2022

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 November 2022

Appeal Ref: APP/F2605/W/21/3266443

Land East of Summer Meadows, 2 Mill Road, Mattishall, NR20 3RH

- 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 L Rooney against the decision of Breckland Council.
 - The application Ref 3PL/2020/0466/F, dated 11 May 2020, was refused by notice dated 6 July 2020.
 - The development proposed is change of use of land to use as residential gypsy caravan site, including the stationing of 7 caravans for residential purposes, together with the laying of hardstanding.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the Council's decision, the National Planning Policy Framework (the Framework) was revised on 20 July 2021. The Council and appellant have had an opportunity to comment on the implications of this as part of their submissions.
3. Following the appeal submissions, a Written Ministerial Statement (WMS) on river basin catchments and relevant watercourses beyond those previously identified as being in 'unfavourable' condition due to high nutrient levels, and protected sites under the Habitat Regulations was issued on 16 March 2022. As a result of the WMS, Natural England updated the conservation status of The Broads Special Area of Conservation (SAC), in regard to unfavourable nutrient levels. In the interests of natural justice, both main parties have had the opportunity to make representation. In coming to my conclusion, I have had regard to those.
4. The submitted block plan illustrates how the site will be subdivided into four pitches, three of which would contain 2 units either a caravan and/or mobile home and one pitch would contain a single caravan/mobile home, with a total of 7 caravans proposed.
5. Part of the site already has the benefit of planning permission for a single pitch, allowing the stationing of a static caravan and mobile caravan. The appellant indicates that whilst 5 extra households could occupy the site, it is likely that this would be 3 additional households as each family would ordinarily have two caravans.

6. Therefore, I have dealt with the appeal on the basis that there are four separate households who would occupy the four pitches outlined on the submitted block plan with up to seven caravans being present on the site.

Main Issues

7. The main issues in this appeal are:
- whether or not the appeal site is a suitable location for the proposed pitches with reference to the spatial strategy in the development plan;
 - the effect of the development on the safety and convenience of highway users;
 - whether or not there are contamination risks which would be likely to make the site unsuitable for residential use; and
 - whether the proposed use would adversely affect the integrity of the European designated nature conservation sites.

Background

8. The Planning Policy for Traveller Sites (PPTS) sets out the Government's planning policy on such matters and applies where the occupiers of a proposed site would meet the definitions of a Gypsy and Traveller for planning purposes.
9. The appellant has confirmed the intended occupiers of the site, but has indicated that the site could be subject to a condition limiting occupancy of the caravans to gypsies and travellers falling within the definition set out in Annex 1 of the PPTS. Therefore, I have considered the appeal on the basis that the proposed pitches would be available to meet existing and future needs for gypsy and traveller accommodation in the district.

Reasons

Spatial Strategy

10. The appeal site is located adjacent to an existing gypsy and traveller site at Summer Meadow and the proposal would develop the land between Summer Meadow and include the previously approved pitch at Willow End through the expansion of the existing site.
11. The site is located outside of the settlement boundary of Mattishall, designated as a Local Service Centre within policy GEN 03 of the Breckland Local Plan 2019 (the LP). Policy GEN 05 sets out that outside settlement boundaries development will be acceptable where it is compliant with a range of policies, including a criteria based policy for the provision of Gypsy and Traveller sites.
12. Policy HOU 08 of the LP sets out the spatial strategy for providing pitches for Gypsies and Travellers that meet the PPTS definition. Policy HOU 08 identifies the need for 4 additional pitches and confirms that these additional pitches and any additional requirements associated with newly confirmed need from unknown households will be secured via support for the expansion of existing sites.

13. The policy confirms support for the expansion of the existing Gypsy and Traveller sites, including 1 additional pitch at Summer Meadow, Mill Road, Mattishall. As the policy does not preclude further pitches coming forward within the district, I have taken the target of 1 additional pitch at Summer Meadow as a minimum rather than maximum figure.
14. The Council have directed me to the Planning Inspectorate Report on the Examination of the LP which highlighted that there could be a requirement for up to 27 pitches for persons who may or may not meet the PPTS definition and this would be delivered through the criteria outlined within Policy HOU 08.
15. The report goes on to consider that until the immediate/early review of the Plan is completed additional pitches for non-travelling gypsy and travellers will also be considered in accordance with the criteria of Policy HOU 08 and that the immediate review of the Plan will need to positively and fully meet the identifiable needs at that time for all gypsy and travellers and travelling showpeople, whether they meet the PPTS definition or not.
16. The Council have indicated that this review needs to be submitted by November 2022, however I have nothing before me to indicate whether this review has been undertaken or the findings from it. Therefore, I have given weight to the expansion of an existing site which would go some way to meeting the unmet need that was identified by the examining Inspector in 2019.
17. Therefore, I am satisfied that the provision of additional pitches through the expansion of the existing site, would accord with Policy HOU 08 of the LP and therefore the spatial strategy outlined within Policies GEN 03 and GEN 05.

Highways

18. The site is served from an existing access off Mill Road, which is a narrow, single track rural lane without footways, which is common of a number of the roads leading to the site. The access already exists and currently provides access to Summer Meadows, Clover Paddock, Rose Orchard and existing stables.
19. The County Highway Authority have requested the provision of a formal passing bay at the front of the site and for the existing access to be surfaced and widened for the first 10 metres with sufficient turning provided within the site.
20. The use of the site would be for residential purposes and the evidence from the appellant indicates that the additional traffic generation arising from the occupation of the site would be 3-5 additional trips during the peak hours based on TRICS data.
21. Paragraph 111 of the Framework advises that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.
22. The nature of the road would help to slow traffic entering and exiting the lane. Therefore, it is likely that the potential for conflicting movements could be anticipated well ahead by all parties and when vehicles are exiting the site, which would limit the need for vehicles to pass directly outside the site.

23. Furthermore, there is nothing in the evidence before me to indicate that there would be a significant increase in large vehicles entering and exiting the site on a regular basis. Having regard to that which may currently occur from the use of the existing stables and permitted pitches. Furthermore, I have not been provided with any evidence to indicate that the movement of touring caravans from the site has caused any highway safety concerns.
24. Should I conclude that the appeal is to be allowed, it would be possible for the improvements to the existing access to be provided by condition. The site layout plan also provides for two internal accesses to serve the proposed pitches and therefore I am satisfied that it would be possible for vehicles to manoeuvre within the site.
25. In conclusion, I am satisfied that having regard to the scale of development proposed and the small increase in the traffic movements generated, the access would be sufficient to ensure the safety and convenience of highway users along Mill Road, without the need for further improvements. Therefore, the development would accord with policy COM01 (m) of the LP which requires the design of new development to ensure it does not compromise highway safety.

Land Contamination

26. The Council have suggested that the residential use would be unacceptable due to uncertainties about the former use of the land. I have presumed that this is due to the possible presence of contaminants. However, there is nothing before me to indicate that the land has been used intensively for commercial purposes and the wider site is currently in residential use. Therefore, it would appear to me that any contamination would be at a level that could be made suitable for the residential use subject to further investigations and remediation required.
27. Paragraph 55 of the Framework sets out that consideration should be given as to whether otherwise unacceptable development could be made acceptable through the use of conditions. A condition to require a more detailed investigation and requiring the matter to be fully investigated and considered, and including a scheme for all/any necessary mitigation would therefore appear to be appropriate and I do have the power to incorporate a suitably worded condition, should I conclude that the appeal be allowed.
28. In conclusion, the contamination risks would be unlikely to make the site unsuitable for residential use subject to the imposition of a suitably worded pre-commencement condition. Therefore, the development would accord with policy COM3 (8) of the LP which requires the protection of amenity, including consideration of other forms of pollution such as contaminated land.
29. The Council's decision notice refers to Policy COM 01 of the LP. However, this deals with design and is therefore not relevant to this main issue.

The Broads Special Area of Conservation

30. Nutrient neutrality requires that competent authorities under the Habitat Regulations carefully consider the nutrient impacts of projects on Habitats sites, and whether those impacts may have an adverse effect on the integrity of a Habitats site that requires mitigation. The Council have advised that the appeal site is within the identified catchment area of the Broads Special Area of Conservation (SAC).
31. The proposal for new residential accommodation has the potential to lead to an increase in additional nutrients reaching the SAC due to the implications of foul and surface water drainage systems. Consequently, the proposal would likely have a significant adverse effect on the integrity of the SAC.
32. Given the lack of clarity as to what may be required and uncertainty on the time it may take to have a strategy in place with practical solutions to resolve this matter long term and for the lifetime of the development, I am not satisfied that it would be reasonable to impose a Grampian condition to resolve this matter.
33. This is also not an incidental implication of the proposal but a matter of principle as to whether or not the scheme could proceed in an acceptable manner without causing harm to the integrity of the SAC and contrary to the statutory duty upon the competent authority which accompanies it.
34. Furthermore, it would appear that the appeal site falls within an area where recreational impact mitigation measures for The Brecks, North Norfolk Coast and The Broads as described in the Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy (GIRAMs) are required. Natural England has provided revised advice regarding the need to ensure that new residential development and any associated recreational disturbance impacts on designated sites are compliant with the Habitats Regulations.
35. Whilst the effect of the additional pitches would be small, in combination with other development, based on a precautionary approach and the evidence before me, I conclude that the appeal scheme would be likely to have both a significant adverse effect on the integrity of the SAC due to the potential increase in nutrients entering the watercourse and in addition potential increased disturbance through recreational activity on the integrity of The Brecks, North Norfolk Coast and The Broads.
36. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the designated sites' conservation objectives. However, in the absence of an agreed mitigation strategy to overcome the effects that have been identified in respect of nutrients and the lack of a mechanism to secure the contribution to mitigate the impacts of recreational pressure, I cannot be satisfied that the appeal proposal would not result in significant adverse effect to the integrity of the SAC.

37. The proposal would therefore fail to comply with the requirements of the Regulations as well as Paragraph 180(a) of the Framework which states that where significant harm to biodiversity resulting from a development cannot be adequately mitigated, then planning permission should be refused. As a result, it would not accord with Policy ENV02 of the LP which gives the highest level of protection to European Sites.

Other considerations

38. Article 3(1) of the United Nations Convention on the Rights of the Child states that the best interest of a child shall be a primary consideration. This means that no other consideration is more important. If I were to allow the appeal 4 children and an unborn child would have a settled base in order to access education and health care.
39. However, I have not been provided with any evidence as to the ages of the children or where they are currently educated. Therefore, I have given moderate weight to the benefits a settled base would bring, so there would be certainty over where they would go to school and receive medical treatment. An enduring settled base would also support the children's welfare more generally by, for example, affording them a sense of security and continuity and enabling them to attend clubs and make friends.
40. The Council have provided me with a copy of the Mattishall Neighbourhood Plan (NP). This is a referendum document dated July 2017 and I have no reason to believe it has not been adopted given the Council have submitted it as part of their appeal questionnaire. However, I have not been directed to any particular policies and the Councils officer report, appeal statement and decision notice have not made reference to it. I also note that the Parish Council have not made reference to any NP policies within their consultation response. Therefore, whilst I have had regard to the general policies within the NP I have not identified any specific conflict with them.

Planning Balance

41. In the overall planning balance, the benefits of the proposal, including that the development would contribute to the supply of gypsy and traveller pitches in the locality, and would provide a settled base for four households, are not sufficient in this case by virtue of the Habitat Regulations to outweigh the adverse effects on the integrity of the European designated nature conservation sites.
42. I attach substantial weight to my finding that mitigation cannot be assured to achieve nutrient neutrality or mitigate recreational disturbance. Consequently, there is no certainty that the proposal would not adversely affect the integrity of the European designated nature conservation sites. The proposal would be contrary to the development plan in these respects.
43. By virtue of the Habitats Regulations, agreement cannot be given to the project because the integrity of a European site would be adversely affected. Given the serious impacts upon the integrity of the designated sites and the accompanying conflict with the development plan as a whole, this is sufficient for me to conclude that the proposed development is unacceptable.

44. Dismissing the appeal would represent an interference with the potential homes of the proposed occupiers such that Article 8 of the Human Rights Act is engaged. There is also a positive obligation imposed by Article 8 to facilitate the gypsy way of life.
45. The proposal would meet the needs of those persons with a relevant protected characteristic, by reason of race, and so, as required by section 149(1) of the Equality Act 2010, the public sector equality duty is applicable. There is therefore a need to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations.
46. The human rights interference associated with this conclusion is in accordance with the law and is necessary in a democratic society to protect environmental interests which is a legitimate objective. The public interest cannot be achieved by means that cause less interference with the appellant's rights. Therefore dismissing the appeal is a proportionate response in all the circumstances and a violation of rights under Article 8 would not occur.
47. In accordance with the public sector equality duty, due regard has been paid to minimising the disadvantages suffered by the intended occupiers of the site and to meeting their needs in so far as they are different to those without a relevant protected characteristic. Whilst ultimately the appeal is to be dismissed, these considerations have been at the forefront of the decision-making process. Because of the significant objections identified the outcome is a proportionate one.

Conclusion

48. The proposal would lead to significant adverse effect on the integrity of the designated sites contrary to the requirements of the Habitat Regulations and in conflict with Policy ENV02 of the LP. There are no other considerations which are of greater significance which would outweigh this finding or the conflict with the development plan as a whole.
49. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

G Pannell

INSPECTOR