



Appeal Decision

Hearing held on 8 November 2022

Site visit made on 8 November 2022

by Helen Hockenhull BA (Hons) B.PI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 December 2022

Appeal Ref: APP/Y2003/W/22/3301917

Land north of Butterwick Road, Messingham, Lincolnshire, DN17 3UU

- 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 Ms Amanda Smith against the decision of North Lincolnshire Council.
 - The application Ref PA/2022/341, dated 19 January 2022, was refused by notice dated 7 April 2022.
 - The development proposed is the change of use of land to use as residential caravan site for an extended Gypsy family with 4 caravans, including no more than 2 static caravans, together with laying of hardstanding and erection of amenity building.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to use as residential caravan site for an extended Gypsy family with 4 caravans, including no more than 2 static caravans, together with laying of hardstanding and erection of amenity building on land north of Butterwick Road, Messingham, DN17 3UU in accordance with the terms of the application, Ref PA/2022/341, dated 19 January 2022, subject to the conditions in the attached schedule.

Preliminary Matters

2. In the submitted Statement of Common Ground (SoCG), the parties agreed that the appellant and his family met the definition of a gypsy and traveller set out in Annex 1: Glossary of Planning Policy for Traveller Sites (PPTS). I have no reason to disagree.
3. The appeal proposal is part retrospective as the use of the land has already taken place with the siting of 4 caravans, though the amenity building has not yet been constructed. I have considered the appeal on this basis.
4. At the hearing, the appellant explained that the site was originally intended to be occupied by two families; the appellant, and a related family. The extended family have now found alternative accommodation and no longer intend to live on the site. The appellant suggested the description of development could be changed to propose the siting of 2 caravans instead of 4, one static and one tourer.
5. I am mindful that the appeal process should not be used to evolve a scheme and it is important that what I consider is essentially what was considered by the local planning authority, and on which interested persons views were

sought. Therefore, I confirm that I have decided the appeal on the basis of the proposal as set out in the submitted planning application ie for 4 caravans, and the drawings accompanying it.

Main Issues

6. The main issues in this case are:

- having regard to local and national development planning policy, whether the location of the proposal is appropriate, with particular regard to access to services and facilities;
- the effect of the proposal on the character and appearance of the countryside;
- whether the proposal provides a good standard of accommodation with particular regard to the provision of amenity space;
- whether other material considerations, including the general need for and supply of gypsy sites, the accommodation needs and personal circumstances of the appellant, outweigh any harm identified, such as to justify the development.

Reasons

7. The appeal site lies in the open countryside to the north of Butterwick Road, to the west of the village of Messingham. It comprises a flat parcel of land just under 0.1 hectare. To the west of the site are two newly built dwellings and to the east lie agricultural fields. A caravan storage facility is approximately 40 metres to the west at Bridge Farm, on the other side of Butterwick Road.

Appropriate Location

8. The PPTS in paragraph 25 states that local planning authorities should very strictly limit new traveller site development in the open countryside that is away from existing settlements or outside areas allocated in the development plan.
9. Policy CS10 of the North Lincolnshire Core Strategy 2011 (CS) forms a criteria-based policy for Gypsy, Traveller and Travelling Showpeople accommodation in the borough. It states that such sites should be in or near to existing settlements with access to local services, including shops, schools and healthcare.
10. The appeal site lies approximately 470 metres to the west of the Messingham development limit. The village provides a good range of services including a primary school, public houses, restaurants, shops takeaways, petrol station, medical centre, pharmacy and library. It is notable that the North Lincolnshire Settlement Survey 2019 Revision, which forms part of the emerging local plan evidence base, found the settlement to rank 9th out of 76 settlements in North Lincolnshire.
11. The distance to the supermarket in the village is around 1km. There is a footpath from the appeal site into the village. Whilst it has no lighting it provides a suitable route for those walking. The road is subject to the national speed limit, 60 mph, it is flat with good visibility and low traffic volumes.

Cycling could therefore also be an option. Butterwick Road is a public transport route with buses traveling generally hourly between Gainsborough and Scunthorpe. The nearest bus stop to the appeal site is on Scotter Road in Messingham, approximately 1 km away, a 10–15-minute walk.

12. Given the above, occupiers of the appeal site would have options other than the car to access services and facilities in the village. Policy CS10, requires sites to be 'in or near' existing settlements with access to local services. In this case, the site is clearly not in Messingham. However, having regard to the separation distances involved, the options for walking and cycling to access services and facilities, my view is that the site can be described as 'near to' the village.
13. The site is not in an isolated location, being close to other newly built dwellings. Furthermore, the development would not dominate the nearest settled community and would not place undue pressure on local infrastructure.
14. Accordingly, I conclude that the appeal site would be in an appropriate location, having regard to the National Planning Policy Framework, (the Framework), the PPTS and local planning policy, specifically CS Policies, CS2, CS3 and CS10 which seek to achieve sustainable development.

Character and appearance

15. The area in which the appeal site is located is characterised by flat agricultural fields with mature hedgerow boundaries. The site is well screened by existing vegetation. There is a hedgerow of around 3 metres in height on the southern site boundary next to the road. There is a similar height hedgerow to the western boundary beyond which is a newly built bungalow. The northern boundary consists of a post and rail fence and conifers have been planted on the adjoining land along the boundary. The eastern boundary is defined by a post and rail fence. New hedgerow planting is proposed to the northern and eastern boundaries of the site with indigenous native species similar to those of the existing hedgerows.
16. Looking towards the site from the east, the site would be screened by a double hedgerow, provided by an existing hedgerow on the far side of the access track and the proposed new hedgerow on the site boundary. Butterwick Road at this point is slightly higher than the appeal site. However, if the proposed hedgerow is allowed to grow to a similar height as the existing hedgerows, it would provide good screening to the development. I accept that the hedge running along the track is not in the control of the appellant, however even if it were to be removed, the proposed new hedgerow would be sufficient when established to screen the site.
17. I acknowledge that in the winter months, when the hedgerows have lost leaves, glimpses of the caravans on the site would be achievable. However, I noted on my site visit that the caravan storage facility a short distance to the southwest of the appeal site is screened from the road by existing hedgerows. Glimpses of the caravans on that site were visible through the hedgerow at the time of my site visit. This forms part of the established character of the area. The appeal proposal would not appear incongruous in this context.
18. The Council have raised concern that the scale and height of the proposed amenity building would cause harm to the character of the area. However, this

building is single storey with a pitched roof and similar in scale to a domestic garage. It would be located at the furthest corner of the site away from the road. Whilst it may be seen above the height of the boundary hedgerows, it would be viewed against the backdrop of the two bungalows to the west of the site and would be constructed in similar materials, brick with a tiled roof. I therefore do not consider it would cause unacceptable harm to the character of the area.

19. Turning to views of the site from the west, the site is well screened by existing hedgerows. A glimpse of the caravans can be achieved through the access to the nearby bungalow, but this is fleeting and filtered through existing vegetation.
20. I also viewed the appeal site from the allotments to the east, which are set at a higher level. Whilst the roofs of caravans may be visible from this vantage point, with the proposed additional planting and the two bungalows beyond the site seen in the same viewpoint, I am satisfied that the scheme would not cause harm to the local character.
21. PPTS is clear that gypsy and traveller sites should not be so enclosed by hard landscaping, walls or fences such that the impression is given that the site and its occupants are deliberately isolated from the rest of the community. The Council raised concern in this regard. Whilst the site would be screened and enclosed by hedgerows on all sides, these do not form hard barriers through which no views are possible. I am therefore satisfied that with an appropriate landscaping scheme, which positively enhances the environment, the site and its occupants would not be isolated from the community.
22. In summary, I conclude that the appeal proposal would not cause harm to the character and appearance of the area. It would comply with CS Policies CS1 and CS5 and saved Policies LC7 and RD2 of the North Lincolnshire Local Plan which seek to protect and enhance the character of the area.

Standard of accommodation and amenity space.

23. The appeal proposal results in a compact development. The Council have raised concern that it does not make suitable provision for play space for children on the site, contrary to paragraph 26 c) of the PPTS and the requirements of CS Policy CS10.
24. There are small areas of grass included in the development however these are insufficient to provide play space. The appellant has argued that the turning areas on the site would be multipurpose and could provide space for children to play. Whilst this may be the case, it would not be ideal. Whilst I am sure that children would be supervised, there is a potential safety issue with vehicles turning within the site.
25. I am advised that there is a children's play area and playing field in the village that could provide recreational space for the occupants of the site. Whilst I take this into account, I consider that the site would not provide a safe area of amenity space, and therefore in this regard, the proposal would be in conflict with the PPTS and CS Policies CS5 and CS10, which seek to achieve high quality design.

Need and supply of Gypsy sites

26. The Council's Gypsy and Traveller Accommodation Assessment (GTAA) dated October 2021, which provides evidence in support of the emerging local plan, identifies a need for 17 pitches between 2012-2038 and up to 4 pitches for gypsies whose gypsy status is currently unknown. 8 permanent pitches are required to be provided within the first 5 years, 2021-25.
27. It is agreed between the parties in the SoCG, that the Council cannot identify a 5-year supply of pitches and that there is an unmet need in the borough. Accordingly, in line with paragraph 11d) of the Framework, the tilted balance applies.
28. The identified unmet need weighs in favour of the proposal.

Alternative sites

29. I am advised that there are no public sites in North Lincolnshire. There are some existing sites, but these are private, and generally unavailable to the appellant.
30. The appellant has searched for alternative accommodation but has been unable to find a site. The Council were unable to suggest any alternatives at the hearing.
31. The GTAA notes vacant pitches at an existing site and also the fact that planning permission had been granted to allow 15 authorised pitches on Mill View, Brigg to be occupied by persons not complying with the gypsy definition in the PPTS. There is no evidence to suggest that these are available to the appellant.
32. The development plan does not allocate any sites for Gypsy and Traveller accommodation, neither does the emerging local plan, which is due to be submitted to the Secretary of State for Examination imminently. This plan is not likely to be adopted until late 2023.
33. As I have no evidence before me that there is suitable alternative accommodation for the appellant and their family, this factor also adds support to the proposal.

Personal circumstances

34. The appeal site would accommodate the appellant, their father and mother and 3 adult siblings. All the family are registered with a local health centre. Two of the adult children suffer from serious health conditions requiring hospital visits. This also affects their ability to seek employment. The appellant also has a health condition which means he needs regular access to health care.
35. The appellant and their family moved onto the appeal site approximately a year ago. They moved from a site in Skegness to be closer to healthcare facilities, particularly access to hospital care.
36. As noted in the Preliminary Matters, the original intention was that the site would accommodate 2 families. The second family comprised an adult and two dependent children of school age.

37. The appeal site would clearly provide a settled base from which the appellant and their family could access health care. It would also enable access to education facilities if the extended family were to remain or return. This would be an advantage to their wellbeing and in the best interests of any school age children living on the site. These matters weigh in favour of the proposal and accord with the aims of the PPTS to enable the provision of suitable accommodation from which travellers can access education, health, welfare, and employment. A permanent base would also reduce the need to travel, reduce the risk of environmental damage from unauthorised encampments and promote the traditional lifestyle of the appellant and his family.

Other matters

38. The appeal site is accessed from a private access track off Butterwick Road. Concern has been raised by an adjacent landowner that the appellant has no right of access over this track. Evidence provided by the parties is inconclusive. This matter is however a separate legal matter between the parties concerned and not one upon which I need to make a judgment in this decision.

39. Concern has also been raised about vehicles parking on the access track potentially causing an obstruction. Adequate car parking is provided on the site to serve the development. Whilst there is no visitor parking provided, this would be occasional and, in any event, vehicles may park on the adopted highway.

Planning balance

40. I have found that the appeal site is in an appropriate location and would not cause harm to the character and appearance of the area. I attach significant weight to these considerations. Having regard to the need for and lack of sites in the borough, the site's contribution to the overall supply attracts significant weight. The appellant's need for accommodation, personal circumstances and the best interests of any children that may occupy the site, would also weigh significantly in favour of the scheme.

41. Set against these considerations is the poor standard of living accommodation, particularly the lack of amenity space. I accept that there would be some opportunity for children to play on the site, though this would not be ideal or of a good standard. Bearing in mind the facilities in the village, I attribute moderate weight to this harm.

42. Furthermore, as the proposals are part retrospective, intentional unauthorised development has taken place. It is Government policy this is a material consideration in determining planning applications and appeals. The reason behind the policy is that the Government is concerned about the harm caused where the development is undertaken in advance of obtaining planning permission, such that there is no opportunity to appropriately limit or mitigate harm that is caused.

43. I have already explained that the move onto the site was to enable better access to healthcare. Nevertheless, the application of this policy is a factor that weighs against the proposal. Bearing in mind the fact that the appellant has not yet constructed the amenity building and has undertaken minimal work on the site, apart from a small area of hardstanding for vehicles, I give limited weight to this harm.

44. Given the above, I consider that the harm I have identified, the lack of suitable amenity space and the unauthorised nature of the development, would be significantly and demonstrably outweighed by the benefits. The appeal should therefore be allowed.
45. In coming to my decision, I have had regard to the requirements of Article 8 of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998 and I recognise the appellants right to a private life and a home. Any interference with this right should be proportional. I have also considered the Public Sector Equality Duty (PSED) at section 139 of the Equality Act 2010 to which I am subject. This sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. As I am allowing the appeal, my decision would not interfere with the appellant's rights and would advance equality of opportunity for the appellant.

Conditions

46. I have imposed several planning conditions based on the suggested conditions submitted by the Council and discussed at the hearing. I have amended some of the conditions slightly, in line with those discussions and to ensure that they meet the tests in the Framework and Planning Practice Guidance.
47. I impose a condition requiring the development takes place in accordance with the approved plans for clarity and the avoidance of doubt. The Council suggested a condition that would restrict the occupation of the site to Gypsies and Travellers as defined in Annex A of PPTS. However, the Court of Appeal in Smith¹ held that the exclusion of Travellers who have ceased to travel permanently is discriminatory and has no legitimate aim.
48. In this case, whilst none of the occupiers have ceased to travel permanently, this situation could change in the future, for example due to old age or ill health. Imposing the suggested condition would result in unlawful discrimination. I therefore grant planning permission subject to a condition restricting the occupation of the site to Gypsies and Travellers, not excluding those who have ceased to travel permanently.
49. It is also necessary to control the number of pitches and caravans on the site as well as the number of light goods vehicles parked on the site in the interests of the character and appearance of the area. A condition is also necessary to prevent the commercial use of the site including the storage of materials for the same reason and to protect the amenity of adjoining residential occupiers.
50. Since works have already commenced on site, a condition is necessary to ensure that various matters are approved and implemented in a timely manner such as drainage, landscaping, and external lighting. An additional condition is necessary to ensure the landscaping is maintained for a period of 5 years, so it can become established.
51. In case contamination is found on the site, a condition is necessary to require development to stop and a method statement to be prepared to outline how the contamination would be dealt with in the interests of the health and wellbeing of the occupants.

¹ Smith v SSLUHC & Ors [2022] EWCA 31 October 2022

52. Whilst not put forward by the parties, I have considered the imposition of a personal or temporary permission. In terms of a personal permission, whilst I have found that personal circumstances weigh in favour of the scheme, they are not in this case determinative. This is because the harm by way of lack of amenity space and the unauthorised nature of the development, is significantly and demonstrably outweighed by the contribution of the site to the overall supply, as well as other material considerations including the suitability of the site for the use proposed and the lack of harm to the character and appearance of the area. For the same reasons a temporary permission is not necessary.

Conclusion

53. For the reasons given above and having had regard to all other matters raised, I conclude that the appeal should be allowed.

Helen Hockenhull

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Philip Brown	Philip Brown Associates
Joe Smith	Appellant
Jonny Smith	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Rebecca Leggott	Principal Planning Officer
Elizabeth Pearson	Planning Policy Officer
Kate Mills	Housing Specialist

INTERESTED PERSONS

Cllr Neil Poole	Local Councillor
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SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: DRWG/PA/2022/341/01 - Site Layout Plan, Amenity Block Elevations, Amenity Block Floor Plan.
- 2) The site shall not be occupied by any persons other than gypsies and travellers, defined 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 dependant's educational or health needs or old age have ceased to travel temporarily or permanently.
- 3) No more than four caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than two shall be static caravans) shall be stationed on the site at any time.
- 4) The use 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 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i. Within 3 months of the date of this decision a scheme for:
 - the means of foul drainage of the site;
 - proposed external lighting on the boundary of and within the site;
 - tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities, the retention of all existing trees and hedgerows along the boundary of the site and measures for their protection throughout the course of the development.(hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii. If within 11 months of the date of this decision the local planning authority refuse to approve the scheme 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.
 - iii. If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

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) At the same time as the site development scheme required by condition 4 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of 5 years of the proposed planting beginning at the completion of the final phase of implementation as required by that condition. The schedule shall make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.
- 6) No more than two light goods vehicles shall be parked on the site at any time.
- 7) No commercial activities shall take place on the land, including the storage of materials.
- 8) If during development, any odorous, discoloured or otherwise visually contaminated material is found to be present at the site then no further development shall be carried out until a written method statement, detailing how this contamination shall be dealt with, has been submitted to and approved in writing by the local planning authority. The approved method statement shall be implemented in full prior to development commencing on site.