



Appeal Decision

Hearing held on 15 November 2022

Site visit made on 15 November 2022

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2022

Appeal Ref: APP/V2635/W/22/3304327

Land SE of Bramleys and E of The Myrtles, Pius Drove, Upwell, PE14 9AN

- 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 Thomas Beaney against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 21/00928/F, dated 30 April 2021, was refused by notice dated 5 May 2022.
 - The development proposed is change of use of part of the land for the stationing of three static caravans for Gypsy/traveller occupation. Provision of three day rooms; erection of small agricultural barn. Hard and soft landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An amended plan, 2021-049v1a-Prop Block has been submitted as part of the appeal to take into account the need for access to be kept available for maintenance of the drainage channels which border the site. I have considered this as part of the appeal as this change would not materially alter the nature of the application and would not prejudice the interests of interested parties¹. The Council also raised no objection to the submission of the amended plan.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

Character and appearance

4. The appeal site comprises a paddock accessed off Back Lane, a byway open to all traffic (BOAT) which connects Pius Drove to Cottons Head in Outwell. The appeal site is surrounded by other grazing land and interspersed with drainage channels which often form the field boundaries. The settlements of both Outwell and Upwell are visible from Back Lane and newly constructed development associated with the villages planned expansion are evident.

¹ Annex M of the Procedural Guide Appeals – England advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

5. The area exhibits the flat open landscape characteristics of The Fens, albeit that the appeal site is more contained with the villages of Outwell and Upwell both visible. Beyond the appeal site as you leave these settlements the area has much wider expansive landscapes with extensive vistas and large scale field patterns, which are synonymous with The Fens.
6. The Kings Lynn and West Norfolk Landscape Character Assessment (LCA) divides the Borough into character areas, with the site being within D5 Outwell fenland. The LCA sets out that potential landscape sensitivities are the open views to adjacent fen landscape, strong historic integrity with the traditional built character of the villages of Outwell and Upwell and the historic drainage network, with a moderate to strong sense of tranquillity throughout the area.
7. The planning guidelines, as set out in the LCA, for this area seek to conserve the mostly rural character of the area, conserve and enhance the landscape setting and to ensure that any new development responds to historic settlement pattern. Development should be well integrated into the surrounding landscape and conserve the largely undisturbed and tranquil nature of the area.
8. The appellant's Landscape and Visual Appraisal (LVA) considers that the appeal site is small scale in relation to the wider Fens D5 landscape type. As such, the LVA considers that the wider landscape and character type has a low sensitivity to the development proposed, whilst accepting that the site is part of a wider farmland setting and has a medium level of sensitivity to change, with the potential for mitigation. The LVA concludes that the proposal could very easily fit into the local character of Outwell and that low levels of landscape and visual impact can be mitigated with appropriate design. The landscape effects of the operation on the site and its immediate setting are considered within the LVA to represent a moderate-slight effect. However, from localised viewpoints it is my view that the development would be noticeable, and its urban form would fail to enhance or protect the existing landscape.
9. The proposed development would result in the siting of three mobile homes and three dayrooms, with a single access point leading to three driveways and parking spaces, as well as access to the proposed agricultural barn to the rear of the site. I consider that the overall scale of the development and its linear form and pattern across the entrance of the site would fail to respond to the context and character of the area. It would not result in development that enhances the quality of the environment.
10. I have had regard to the presence of other structures within the vicinity of the site. These include the pumping station directly opposite the site and the presence of larger agricultural buildings, which are visible within the wider context of the site. However, these confirm that such development can be highly visible and intrusive in this flat and open landscape and therefore should not be used as a reason to allow a further development such as that before me.

11. The National Planning Policy Framework (the Framework) also makes clear that, in general terms, decision-makers should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. Even allowing for possibilities for landscape planting to screen the development, this would take some time to establish. Furthermore, a strongly landscaped buffer would be inconsistent with the flat open characteristics of the Outwell character area. As such I find the development would remain unduly harmful for the reasons described.
12. Policy CS09 of the Kings Lynn and West Norfolk Borough Council Core Strategy, July 2011 (the CS) permits sites for gypsies and travellers where they avoid environmentally sensitive areas and areas at risk of flooding. The Council was unable to direct me to a definition of an environmentally sensitive area. I have taken into account that paragraph 175 of the Framework requires plans to distinguish between the hierarchy of international, national and locally designated sites and allocate land with the least environmental or amenity value. The Council confirmed that the site does not benefit from any international, national or locally designated status.
13. The site is located within the open countryside, and whilst an environmentally sensitive area is not defined, the relevant policy in the Planning Policy for Travellers (PPTS), Policy H, sets out that development should be very strictly controlled. Taking these things together it is clear there would be conflict with policy CS09 of the CS.
14. The proposal would lead to an intrusion into the countryside, failing to recognise the intrinsic rural character of the countryside, contrary to policies CS06, CS08 and CS12 of the CS which together seek to maintain and respond to the local character context, provide a high quality environment, protecting the countryside for its intrinsic character and beauty and be sensitive to the surrounding area and development should not detract from the inherent quality of the environment.
15. It would also fail to accord with policy DM15 of the Site Allocations and Development Management Policies Plan, 2016 (SADMP) which requires development to protect and enhance the amenity of the wider environment.
16. Paragraph 174 of the Framework sets out that planning decisions should contribute to the natural and local environment by recognising the intrinsic character and beauty of the countryside.
17. I therefore conclude the development would lead to significant harm to the character and appearance of the appeal site and its surroundings contrary to the policies within the development plan. This is a matter to which I attach considerable weight as part of my planning balances to follow.

Other considerations

Unmet Need

18. The Cambridge Sub-regional Gypsy and Traveller Accommodation Assessment (GTAA) was published in October 2016 and represents the most up to date reference when assessing need. This identifies an assessed need for 5 pitches within the period 2016 – 2036. It is anticipated that an updated GTAA will be published shortly to inform the Local Plan Review.

19. The Council have acknowledged in their officer report that the 2016 GTAA has a shelf life of perhaps 3-5 years. It goes onto accept that in the absence of an updated GTAA proposals for new pitches should be made in the context of the existing data available. On this basis the Council has approved 12 pitches in the period up to 2021, where 5 pitches had been anticipated within the 2016 GTAA and any unmet need arising through this appeal should also be considered on this basis.
20. The parties agree that the appellants meet the 2015 PPTS definition of Gypsies and Travellers and have an unmet need for pitches, which can not be met by current authorised sites or any alternative sites either within the borough or neighbouring sites. I attach moderate weight to this consideration, noting that the Council has a criteria based policy under which the unmet need can be considered.
21. Third parties asked whether the appellants could be adequately accommodated within adjoining neighbouring authorities, where the appellant's family are located. Limited evidence was available as to which sites these may be, but the GTAA lists 6 public sites in the Fenland and Cambridge area, which were all fully occupied.

Personal Circumstances

22. The appeal site would be occupied by three brothers and their wives and 8 children between the ages of 10 years and 18 months. There are also 4 other children who reside elsewhere but who would visit the site. The 3 households have a wish to have a settled base together in order that the wives would be able to support each other with the children whilst the brothers are away travelling for work.
23. The appellant had previously had a settled base for two years in Kent, but the site was privately owned, and the appellant was asked to leave when the owner decided to return to the site. Since then, the three households have been residing in temporary locations whilst seeking to establish a permanent base. They are seeking to relocate to the area in order to maintain connections with family who are based locally.
24. If the appeal is dismissed, then the family would continue living in temporary locations on the roadside and the children's welfare would be seriously disrupted. In addition, living an uncertain roadside existence would not support the children's welfare and development. Instead, an enduring settled base would enable access to education, healthcare and generally supporting the children's welfare by, for example, attending clubs, making friends and being close to family.
25. Article 1 of the First Protocol sets out that a person is entitled to the peaceful enjoyment of his possessions and that no one shall be deprived of his possessions except in the public interest. Article 8 of the Human Rights Act states that everyone has the right to respect for his private and family life and his home. Dismissing the appeal would represent an interference with the home and family life of the proposed occupiers, such that both Articles would be engaged. There is also a positive obligation imposed by Article 8 to facilitate the gypsy way of life.

26. The future occupants of the proposed pitches are, as Romany Gypsies, an ethnic minority, and thus have the protected characteristic of race under s149(7) of the Equality Act 2010. 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.
27. There is therefore a need to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations. Aside from the best interests of the children, I attach moderate weight to the other personal circumstances as a factor in favour of the scheme.

Best Interests of the children

28. Where Article 8 rights are those of children, as in this case, they must also be seen in the context of Article 3 of the United Nations Convention on the Rights of the Child. This requires a child's best interests to be a primary consideration. More particularly, case law identifies that, although a primary consideration, the best interests of a child are not a determinative planning issue, but no consideration must initially be regarded as more important or, in advance of the subsequent assessment of the individual circumstances, be given greater weight.
29. The Guidance advises that decision-makers need to consider whether children's best interests are relevant to any planning issue under consideration. In doing so, it similarly advises they will want to ensure the approach is proportionate. Decision-makers need to consider the case before them, and need to be mindful that the best interests of a particular child will not always outweigh other considerations including those that impact negatively on the environment or the wider community.
30. The appeal site would provide a settled base for 8 children, and their best interests need to be carefully considered. The children of school age had previously attended school full time in Kent but are now receiving home schooling with the assistance of a tutor.
31. The appellant set out that it is their wish to have a settled base for all of the children to go to school locally, with provision identified in both Upwell and Outwell. They recognise the limitations of home schooling and the importance of the social aspects of school such as interacting with other children and the ability to join local clubs.
32. I accept that the best interests of the children would, in principle, be served by a permanent and secure home, whilst having regard to the fact that their educational needs are not currently being met by a school in the local area.
33. The merits of the case presented are such that I afford the benefits, of this development to the best interests of the children, significant weight.

Other Matters

34. I have had regard to all of the other matters raised by local interested parties, including the recreational value of the area which walkers and riders enjoy and the fear that this may no longer be a tranquil area which can be enjoyed by all. The Council raises no objections to these and none of the matters raised provide a compelling reason why planning permission should not be granted.

Planning Balance

35. Notwithstanding that the scheme would be contrary to the development plan as a whole and would not thereby be a sustainable development, the question remains whether there are material considerations which would warrant a decision in this instance other than in accordance with the development plan.
36. Policy H of the PPTS requires applications for gypsy sites to be assessed in accordance with the presumption in favour of sustainable development and with regard to the application of specific policies in the Framework and the PPTS.
37. There are several points in favour of the proposal. The Council are unable to meet the accommodation needs of the appellant, his two brothers and their families, all who meet the planning definition of Gypsies and Travellers in the PPTS. The appeal scheme would support the traditional way of life of families that have a protected characteristic.
38. The appeal scheme would facilitate the establishment of a settled base for the appellants' families whilst they continued to pursue a nomadic lifestyle for economic purposes. This would allow cultural traditions to be balanced with the practicalities of modern living thereby, advancing equality of opportunity. The unmet need for pitches also indicates inequality in housing opportunities and the proposal would help to offset this in a modest way.
39. These are important points in achieving the social sustainability sought by Paragraph 13 of the PPTS. It does not automatically follow that the appeal should be permitted because the PSED is relevant. Nonetheless, the equality implications weigh notably in favour of permitting pitches at the appeal site because dismissing the appeal would perpetuate the disadvantages currently endured.
40. The accommodation needs and personal circumstances of the intended occupiers are together, significant points in favour of the proposals. Furthermore, the best interests of 8 children is a primary consideration. All would benefit considerably from a settled base from which to gain stability and an education. I have attached moderate weight to the accommodation needs and personal circumstances of the appellant, and significant weight to the best interests of the children.
41. Nevertheless, I attach considerable weight to the significant collective harm to the intrinsic character and appearance of the area as described. In the overall planning balance, the benefits of the proposal, including that the development would provide a settled base for three households, are not sufficient in this case to outweigh the harm on the character and appearance of the area.

Temporary Planning Permission

42. Possibilities for a temporary planning permission require a second balancing exercise taking into account the limited duration of any permission and any reasonable expectation of a change in planning circumstances by the end of that period.
43. I have considered the best interests of the children, and in granting a temporary period that they may become established in local schools and to the difficulties of finding alternative, authorised accommodation.

44. However, the harm arising to the character and appearance of the area, would remain but be incurred for a strictly limited period of time only. The Council is in the process of updating its GTAA in order to inform a new Local Plan and therefore there is a possibility of legitimate alternative sites becoming available through that process, from around the time of its adoption.
45. Nonetheless, I have no indication as to whether a period of three years is likely to be sufficient for the Council to complete its assessment and adopt a new Local Plan, or for any future allocations to come forward. Furthermore, after this time the children would be settled in the local school and as such the appellant would be less likely to want to relocate if future allocated sites were elsewhere in the Borough.
46. Therefore, the material considerations would not clearly outweigh the temporary harm arising from a limited period of occupation such to justify the grant of a temporary permission personal to the appellant and his family and those of his two brothers.

Proportionality

47. The human rights interference associated with this conclusion is in accordance with the law and is necessary in a democratic society to protect the countryside by restricting inappropriate development, which is a legitimate objective. The relevant planning policy objectives could not be achieved by means less imposing or intrusive, and the minimum action necessary to achieve those important ends, would not have an excessive or disproportionate effect on the interests of the persons affected. This includes the particular interests and accompanying rights of the children, which I attach significant weight.
48. The public interest cannot be served 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 1 and Article 8 would not occur.
49. 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

50. My overall conclusion is that the proposal would be contrary to the development plan, both on a permanent and temporary basis, and that this finding would not be out-weighted by all other material considerations including all relevant provisions of the Framework and the PPTS. In accordance with section 38(6) of the Planning and Compulsory Purchase Act, 2004, I find no basis for planning permission to be granted.
51. For the above reasons, the appeal is dismissed.

G Pannell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr S McKay, SJM Planning Ltd
Mr R Morrish, Richard Morrish Associates Ltd
Mr T Beaney
Mr N Beaney
Mr S Beaney

FOR THE LOCAL PLANNING AUTHORITY:

Mr K Wilkinson, Senior Planner
Mr K Patterson, Senior Housing Development Officer

INTERESTED PARTIES:

Borough Councillor C Crofts
Ms D Semmens