

Appeal Decision

Hearing held on 6 December 2022

Site visit made on 5 December 2022

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st December 2022

Appeal Ref: APP/C2708/W/22/3292203

Dugdale Ranch, Langber End Lane, Ingleton, Carnforth LA6 3DT

- 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 Messers K and R Dugdale against the decision of Craven District Council.
 - The application Ref 2021/23369/FUL, dated 30 September 2021, was refused by notice dated 2 February 2022.
 - The development proposed is the material change of use for stationing of caravans for residential occupation with utility buildings and associated hard standing.
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Decision

1. The appeal is allowed and planning permission is granted for the material change of use for stationing of caravans for residential occupation with utility buildings and associated hard standing at Dugdale Ranch, Langber End Lane, Ingleton, Carnforth LA6 3DT in accordance with the terms of the application, Ref 2021/23369/FUL, dated 30 September 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. There is no dispute that the intended occupants of the appeal site are Gypsies and Travellers. I do not disagree. The appellants are two of seven children who have previously occupied their family's site at Clay Barn, Burton in Lonsdale. The family has occupied this site since 2004. The appellants are now adults and wish to set up their own household separate from the Clay Barn site.
3. One of the appellants and his wife are currently living on the appeal site in a touring caravan. This is located next to the existing barn broadly in accordance with the proposed site layout. None of the additional hard standing, caravans or utility blocks are on the land. The access from Langber End Lane and the yard next to the barn is existing.

Main Issues

4. The main issues are: a) whether the proposal is in a suitable location in the countryside and future occupants would have reasonable access to facilities and services, having regard to the development plan, the National Planning Policy Framework (the Framework), and the Planning policy for traveller sites (PPTS); b) the need for, and provision of, sites for Gypsies and Travellers in the area; and c) whether there are any other material considerations in support.

Reason

Suitable location

5. Policy SP1 of the Craven Local Plan 2012 to 2032 (Local Plan) outlines how the

- District's housing needs will be achieved. For development in the open countryside, proposals will be considered against Local Plan SP4 which confirms the settlement hierarchy for the District and requires the development of non-allocated sites to be directed to the most sustainable settlements (Tier 1- 4), followed by small villages and hamlets (Tier 5).
6. The appeal site lies outside of any identified settlement. The nearest is Ingleton, a Tier 3 settlement, but High Bentham, a Tier 2 settlement and Burton in Lonsdale, a Tier 4 settlement are relatively close by also. Outside of the tiered settlement hierarchy, Local Plan Policy SP4(K) confers the Council's approach to limit proposals for new homes in the countryside away from existing settlements. There are exceptions to this, but the proposal would not accord with any of those listed. On this basis, the proposal conflicts with Local Plan Policy SP4(K). By extension, the proposal would also conflict with Local Plan Policy INF7 which seeks to maintain a pattern of growth which reflects the spatial strategy and settlement hierarchy. This is, however, premised on minimising greenhouse gases and congestion, maximising opportunities for travel by sustainable transport modes, and avoiding severe cumulative transport effects and safe and convenient access to transport. I shall come to these matters later.
 7. People's daily lives are not necessarily influenced by arbitrary lines such as settlement boundaries. In this case, Ingleton offers a good range of facilities and services that cater for day-to-day needs. Burton in Lonsdale offers a basic range of facilities and services and is around 3 miles away.
 8. Framework paragraph 80 explains that planning decisions should avoid the development of isolated homes in the countryside. The term 'isolated' is not defined, but it has been held to mean a dwelling that is physically separate or remote from a settlement.
 9. Nonetheless, the PPTS in policies C and D talks about traveller sites in rural areas. PPTS paragraph 25 goes on to say that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. 'Away from' is not defined and what this means, in this case, is a matter of judgement. It does not necessarily mean the same as the term isolated. Also, paragraph 25 uses 'should' and not a definitive such as 'must'. Hence, the PPTS does not outright prohibit new traveller sites in the open countryside. But this is subject to matters such as the site's location, the scale of development in relation to the nearest settled community, whether they will place undue pressure on local infrastructure, and site-specific matters such as landscaping and the effective use of previously developed, untidy or derelict land.
 10. In this case, the appeal site is physically separated from Ingleton by open fields, though there are several farmsteads between the main body of Ingleton and the appeal site. This is typical of this rural area, but they are separate from Ingleton and each other. The appeal site is physically isolated from Ingleton even though it is visible from Langber End Lane and nearby farmsteads. Even so, there are no issues concerning the scale of development or its effect on local infrastructure. There is, however, in terms of the latter, a functional link between the appeal site and Ingleton. Its facilities and services are between a mile and two miles away, depending on the route and mode of travel. This is a short and straightforward journey, whether by car or bicycle. However, most, if not every journey between the appeal site and Ingleton would be by private vehicle due to the distance, convenience, and the lack of footways and street

lighting for a large part of the journey. The occupants could walk in fair conditions should they wish to between the site and Ingleton, but this would not likely change the use of private vehicles, albeit the number of trips would be modest given the scale and nature of the proposal.

11. Nonetheless, even with a high dependency on the private vehicle, occupiers of the site would, having regard to Local Plan Policy H3 c), have access to employment, local services and facilities, including public transport, shops, schools and health care provision which are found in Ingleton. Others can be found in High Bentham. Framework paragraph 105 also confirms that sustainable transport solutions will vary between urban and rural areas and setting aside the proposal's locational conflict with Local Plan Policy INF7 and the fact that the scheme would not necessarily minimise greenhouse gases, the proposal would not conflict with the remaining thrust of this policy.
12. In drawing these considerations together there are inherent tensions between the Council's spatial strategy, achieving a sustainable pattern of growth, limiting proposals for new homes in the countryside, new private traveller sites, the Framework and the PPTS. Applying that to the proposal means that, whilst the appeal site lies outside of Ingleton and is physically separated from it, the proposal is within striking distance of Ingleton and the facilities and services it offers to the extent that the intended occupiers would have access to them. In this regard, whilst the site is isolated in the context of Framework paragraph 80 and none of the listed exceptions apply, the appeal site is not so away from Ingleton that it conflicts with the PPTS which anticipates that new traveller sites may well be in the open countryside. The site is also well planned, of a scale that respects the nearest settled community, and does not place undue pressure on local infrastructure. In fact, there is likely to be a limited benefit to facilities and services in Ingleton from increased spending and support for them by the intended occupants.
13. The development plan is the starting point for decision-making, and in this regard, I conclude that the proposal conflicts with Local Plan Policies SP1, SP4(K), and INF7 together with Framework paragraph 80. Nevertheless, the proposal accords with PPTS paragraph 25 and future occupants would have reasonable access to facilities and services having regard to Local Plan Policy H3 c), the Framework and the PPTS. Whether the proposal fully accords with Local Plan Policy H3 will turn on whether on the need case which I go onto consider, but there is no conflict with points d) to h) of this policy.
14. Local Plan Policy INF4 is cited by the Council in relation to this issue, but this policy deals with the provision and management of parking for cars and other vehicles. No such concerns are raised by the Council, so there is no conflict with this policy.

The need for, and provision of, traveller sites

15. The PPTS seeks to promote more private traveller site provision and to ensure that local planning authorities develop fair and effective strategies to meet the need for sites in appropriate locations, to address under provision and maintain an appropriate level of supply, including a five-year supply of specific deliverable sites.
16. The Council published its Gypsies and Travellers Evidence Base (Evidence Base) in 2013. This was updated in 2017 and remains the Council's evidence base for determining the need for gypsy and traveller sites in the district. The Evidence Base identified a need for one new pitch to address a need arising from the

Dugdale family's then temporary planning permission at Clay Barn which expired in 2015. This need was met with a permanent planning permission on that site. The Evidence Base does not identify a need for new pitches.

17. The appellant contends that the Evidence Base is not robust or reliable as it is based on data from 2012 and it does not take into account of new household formations, namely those arising from children living on or who used to live on the Dugdale family site at Clay Barn. Besides the two appellants, there are a further two children who are now adults and others will over the coming years also become adults.
18. The Evidence Base seeks to account for new household formations by applying a growth rate. On the ground, however, six of the Dugdale children will have all become adults no later than 2028. The family were not on their site when surveys were completed to inform the Evidence Base. Irrespective of why their situation was not captured then, the 2017 update does not seem to have done so either.
19. It is not for a s78 appeal to determine what the need for pitches is in the district. However, the appellant's evidence does indicate that there is currently a level of need for the two pitches that are proposed. This is the most up-to-date evidence available, which is what Local Plan Policy H3 seeks decisions to be based on. Given this, and for the reasons set out in my first main issue, I conclude that the proposal accords with Local Plan Policy H3.
20. Nevertheless, for context, come 1 April 2023 the Council will be part of a new combined authority covering North Yorkshire. This will involve a new local plan being prepared, examined, and adopted along with the evidence base to support that. The Council expects that this work may take up to five years.

Alternative sites

21. There is no room on the existing family's site to accommodate further caravans, so the appellants do not have the option of living there. One of the appellants is living on the site at present with his wife, having married earlier this year. The other is travelling at present but intends to marry his partner early next year and use the appeal site as a base.
22. The appellants have not looked for other sites as they own the appeal site. Hence, it is their first option. The Council could also not point to any alternative sites that may be suitable. Given this, and the limited number of Gypsy and Traveller sites in the district that has remained steady for several years, it appears that there are no alternative sites available to the intended occupants.

Whether the harm is clearly outweighed by other considerations

23. I have had due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. Given the intended site occupiers are Gypsies, they have a protected characteristic for the purposes of the PSED. Article 8 of the HRA requires that decisions ensure respect for private and family life and the home. In reaching my decision, I have kept these interests at the forefront of my mind. However, these are qualified rights and interference may be justified where in the public interest. The concept of proportionality is key.
24. Against the Council's spatial strategy, the proposal would result in harm due to its location when assessed against Local Plan Policies SP1, SP4(K) and INF7. However, the material harm would be limited and the conflict with INF7 is

- partial only, whilst the proposal would accord with Local Plan Policy H3. There would also be conflict with Framework paragraph 80, but on a limited basis as the site would not be away from Ingleton when the PPTS is also considered.
25. There is an existing need relating to the intended occupants and there is no supply of land for such sites. There are also no alternatives open to the intended occupants to move to. Hence, the only alternative would be to live on the roadside and forgo the benefit of a settled base and access to health care. These matters weigh in favour of granting permission.
26. The new combined authority's local plan will take time to prepare, be examined and adopted. An updated evidence base around Gypsies and Travellers is only one part of that process. So, whilst there is an existing need, the extent of any future need is unclear, and so is how that may or may not be addressed. This also weighs in favour of granting permission.
27. Having regard to all these matters, I conclude that the identified harm arising from the proposal outweighs the other considerations and indicates that permanent permission should not be granted for the appeal scheme at this time. However, in terms of a temporary planning permission, the lack of a supply of land traveller sites in the area is a significant material consideration when contemplating the grant of a temporary planning permission. So is the lack of alternative accommodation for the intended occupants and the position around North Yorkshire's new local plan. Also, if I were to dismiss the appeal, the Council would commence enforcement proceedings. Whilst there is no indication of what this may comprise of or any timescales, the only possible alternative for the intended occupants is a roadside existence. If this happened, this would represent a serious interference with the intended occupants in respect of private and family life and the home (Article 8 of the HRA).
28. The new combined authority's local plan must be adopted within 5 years of 1 April 2023. Given that North Yorkshire will include other neighbouring districts, and the new local plan will be based on up-to-date evidence, a period until 31 March 2023 will provide all concerned with a suitable period of time whereby: a settled base is secured for the intended occupants, who would not then be roadside; for the new evidence base to be prepared, and scrutinised as part of the local plan process and for the local plan to be adopted along with how any extent of future need is to be addressed.
29. Restoring the part of the site not associated with the existing barn to its previous condition at the end of the temporary period would help mitigate the locational harm by removing the use at the end of any period of use. It would not, however, stop such harm from arising in the meantime.
30. A planning permission for a limited period would be a reasonable and proportionate approach to the legitimate aim of protecting the environment, whilst allowing potential sites to meet any identified need to be examined and allocated through the development plan process, and not on an ad hoc basis. Granting such a permission would have no greater impact on the intended occupants than would be necessary to address the wider public interest.
31. For the reasons set out, I consider that the appropriate balance would be struck between the rights of the individuals and the protection of matters of acknowledged public interest by the grant of temporary planning permission running between the date of this decision and the end of 5 years from the

1 April 2023 which is when the new combined authority will officially start. Subject to appropriate conditions, this would be a proportionate action and would not result in a violation of the rights of the individuals concerned.

Conditions

32. The Council have suggested that, if planning permission is to be granted, it should be subject to a condition limiting occupation of the site to Gypsies and Travellers as defined in Annex A of the PPTS. However, the Court of Appeal in *Smith*¹ held that the exclusion of Travellers who have ceased to travel permanently is discriminatory and has no legitimate aim. There is no certainty about whether any of the intended occupiers might be forced to cease travelling permanently during the anticipated lifetime of the permission, even though the Council accepts that they do now. Therefore, imposing the condition as suggested would be liable to result in unlawful discrimination, with the intended occupants being unable to live on the site. The Council has not explained why that would be justified in this case, so I shall impose a condition which restricts occupation to Gypsies and Travellers, defined so as to not exclude those who have ceased travelling permanently.
33. A condition is necessary to limit the occupancy of the land until the end of a temporary time period for the avoidance of doubt in light of the North Yorkshire combined authority and the future preparation of a new local plan and evidence base to underpin that. I have also imposed conditions, in the interests of certainty and the character and appearance of the area, to control: the number and type of caravans on the pitches; the implementation and maintenance of a site development scheme; to prevent new walls, fences or other means of enclosure being erected; and to prevent external storage and the parking of heavy vehicles. In the interests of the character and appearance of the area, a condition is necessary so that the land is restored to its prior condition at the end of the temporary period.

Conclusion

34. For the reasons given above, relevant considerations indicate that planning permission should be granted on a temporary basis for development that is not in accordance with the development plan as a whole.
35. I therefore conclude that the appeal should be allowed on this basis.

Andrew McGlone

INSPECTOR

¹ Lisa Smith v SSLUHC [2022] EWCA Civ 1391

SCHEDULE OF CONDITIONS

1. The use hereby permitted shall be carried on only by Robert and Kalum Dugdale and their resident dependants and shall be for a limited period until 31 March 2028 from the date of this decision, or the period during which the use are occupied by them, whichever is the shorter.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: proposed block plan, utility block plans and elevations.
3. 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 dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
4. When the land ceases to be occupied by those named in Condition 1 above, or at the end of the temporary period, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought onto the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
5. 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 failure to meet any one of the requirements set out in (i) to (iv) below:

i) Notwithstanding the submitted details within 3 months of the date of this decision a scheme (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority. The scheme shall include:

- materials to be used in the construction of the utility blocks
- soft and hard landscaping to include existing landscaping that is to be retained; proposed tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities;
- any external lighting;
- refuse and recycling facilities;
- a biodiversity enhancement plan, a management plan and a programme for its implementation;
- the restoration of the site to its condition before the development took place, as required by condition 4; and
- a timetable for its implementation.

(ii) Within 11 months of the date of this decision the details to be submitted in (i) shall have been approved by the local planning authority or, if the local planning authority refuse to approve the 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;

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

(iv) The approved details shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved details specified in this condition, those details 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.

6. No more than four caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the land at any one time, of which no more than two shall be a static caravan or mobile home.
7. No external storage shall take place on the land in connection with the use hereby permitted.
8. No vehicles over 3.5 tonnes, other than in connection with the pre-existing barn/agricultural use of the site, shall be stationed, stored or parked on the site.
9. Notwithstanding the provision of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no new walls, fences or other means of enclosure shall be erected on the site at any time.

END OF SCHEDULE

APPEARANCES

FOR THE APPELLANT:

FOR THE APPELLANT:

Alison Heine
Kalum Dugdale
Tilly Dugdale

Heine Planning

FOR THE LOCAL PLANNING AUTHORITY:

Andrea Muscroft
Ruth Parker
Roy Banks

Craven District Council
Craven District Council
Craven District Council

DOCUMENT

1 – Gypsy and Traveller Analysis 2022