



Appeal Decision

Hearing Held on 18 October 2022

Site visit made on 18 October 2022

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2023

Appeal Ref: APP/P0240/W/21/3279803

Land South of Top Farm, Shefford Road, Clophill SG17 5PL

- 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 and Mrs Chris Smith against the decision of Central Bedfordshire Council.
 - The application Ref CB/20/03077/FUL, dated 28/08/2020, was refused by notice dated 28 January 2021.
 - The development proposed is for a change of use of land to mixed use. Permission already exists for a stable and barn on site with hardstanding, additional to that we are applying for consent for one residential static caravan and one touring caravan (Gypsy Traveller community use) parking for two vehicles, water treatment plant and associated additional hardstanding and infrastructure.
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Decision

1. The appeal is dismissed.

Procedural matters

2. Notwithstanding the description of development set out above, which is taken from the application form, following discussion with the parties at the Hearing it was agreed that this description does not reflect the development applied for. I note the description of the development was amended by the Council on the decision notice to 'Change of use of land to mixed use. Permission is sought for consent for one residential static caravan and one touring caravan, parking for two vehicles, water treatment plant and associated additional hardstanding and infrastructure, (with alterations to the consented stable & barn).'
3. From the evidence, rather than having been altered, the stables and barn permitted by application CB/17/00629/FULL appear to have been built in a different location to that approved. Moreover, at my site visit it was clear that the timber building annotated as a stable was used as a utility room with domestic storage, and the building marked as a barn was used for storing equestrian harness, traps, hay, and feed together with domestic storage. The appellant confirmed that neither building had been used to keep horses. Therefore, the description of the development as described in both the application and the decision is inaccurate. It should be amended to remove the reference to the alterations but should include the erection of two timber outbuildings.

4. The wider site edged blue on the submitted location plan, is used for the keeping of the appellant's horses and a small number of dogs. There is no evidence before me to suggest that the dogs and horses are kept for any purposes other than part of the family's hobbies, or that there are two separate and distinct planning units. From my site visit, the horses are being kept on the land, rather than simply grazed on the land. Accordingly, I find that the appeal site is in a mixed residential use and for the keeping of horses.
5. Several alternatives to the description were discussed at the Hearing and the parties agreed that for the sake of clarity, the description of the development could be amended, without causing injustice to either party to, 'a change of use of land to a mixed use for the keeping of horses and the siting of one residential static caravan and one touring caravan (Gypsy Traveller community use), parking for two vehicles, two outbuildings, water treatment plant and associated hardstanding and infrastructure.' I have therefore considered the appeal on this basis.
6. During the course of the appeal, the judgement *Lisa Smith v SSLUHC* (2022) EWHC, was issued. The parties were consulted to seek their views on whether this would have any effect on their submissions. The appellant repeated their concerns about the general methodology used by the Council in their assessment of need.
7. In contrast, the Council submit that this judgement does not affect the definition set out in Planning Policy for Traveller Sites 2015 (the PPTS), given that the status of the appellant is not in dispute. They further contend that their Gypsy and Traveller Accommodation (needs) Assessment (GTAA) has already considered the needs of all Gypsy and Travellers, including those not meeting the definition, and thus remains a robust assessment of need. The Council's position on the supply of sites was acknowledged by the Inspector examining The Central Bedfordshire Local Plan (2021) (CBLP), which was subsequently adopted in July 2021. On the evidence before me I have no reason to come to a different view.
8. Since the application was refused the CBLP has been adopted. In view of this, the relevant policies for assessing this appeal were agreed at the Hearing.

Background and main issues

9. The appeal has been lodged against the refusal of the Council to grant planning permission for the development described above. The development has already been carried out.
10. I consider that the main issues are:
 - The location of the development;
 - The effect of the development on the character and appearance of the area; and
 - The effect of the development on flooding and flood risk and whether any harm arising from the above matters is outweighed by any other material considerations.

Reasons

11. The area is flat and generally rural in character, with a number of dwellings, and a golf course within a short distance from the site. A large farm complex and businesses lie in close proximity to the north. The busy A507 Ampthill Road lies a short distance to the south.
12. The appeal site is a small plot of land within a larger triangular parcel of mainly grassland, with several small timber buildings in varying condition, owned by the appellant. The appeal site itself, together with the appellant's remaining land, is bounded by Shefford Road, the River Flit and an unnamed tributary. The site is accessed from Shefford Road, where substantial brick walls and gates have been constructed. These were not included in the application and are therefore not part of this appeal.
13. At the site visit I saw one mobile home, one touring caravan, together with the two sizable timber outbuildings. Hard surfacing provides onsite parking and turning for vehicles. There was a row of existing Leylandii trees to the boundary with Shefford Road and some existing trees along the southern boundary. Whilst this provides some screening of the development, from my observations the mobile home and timber buildings can readily be seen when travelling in either direction on the A507 and along Shefford Road.

Location

14. Paragraph 25 of the PPTS makes it clear that new traveller sites in the open countryside, away from existing settlements should be very strictly limited. The parties agree that the site lies outside any settlement identified by the Council's adopted Local Plan.
15. Policy SP8 confirms that the Council has approved a sufficient number of pitches to meet the need for pitches until 2035, with any windfall applications to be assessed against criteria based policy H7. Policy H7 sets out a number of criteria including criterion 5, that adequate schools, shops, healthcare, and other community facilities are within reasonable travelling distance. The policy does not go on to define what a reasonable distance would be.
16. The other residential properties in the local area mean that the site is not completely isolated. However, the village of Clophill with a limited range of shops and services lies some 2.8km to the west of the site. Shefford has a more extensive range of services and facilities and is just over 5 km from the site.
17. I recognise that over the years there have been changes in the way people shop, with greater emphasis on home delivery and the availability of routine medical advice online. Nonetheless, from time to time it will still be necessary for the appellant and his family to travel to essential facilities such as schools and medical services.
18. From my site visit it is clear that this part of Shefford Road generally does not have pedestrian footpaths and is narrow and unlit. Moreover, there is no bus service. Shefford Road is subject to a 60mph speed limit. Taken in combination these factors make walking and cycling, especially in the winter months or after dark, a less attractive alternative to the private car. In the context of this rural location, where I accept that accessibility is not normally as good as that of

urban areas, the development has resulted in an increase in car movements from occupiers and visitors to the site.

19. My attention has been drawn to a number of planning permissions for some 71 new dwellings approved in the local area. From the details submitted by the appellant, these sites are generally located closer to Clophill than the appeal site. To my mind, given the limited services available, including secondary schools in Clophill the residents of these new dwellings would similarly need to travel outside the immediate area for a full range of shops and other services. I have nothing to suggest that when compared with the appeal site the residents of the new dwellings would be less likely to rely on private motor vehicles.
20. Overall, I find that the location of the development fails to provide a viable alternative to the use of private cars for its residents and their visitors. The development is therefore contrary to Policies SP1, SP7, SP8 and H7 of the Central Bedfordshire Local Plan 2015 - 2035 (2021) (LP). These Policies in combination seek to ensure that new development is provided in accordance with the settlement hierarchy. However, for the above reasons, I do not consider that the location alone should rule out development so give it limited weight in the planning balance.

Character and appearance

21. The site lies within land described in the Landscape Character Assessment and the Flit Greensand Valley Character Area (7A) and Greensand Ridge nature Improvement Area. The prevailing character of the area being rural with open fields, with some sporadic housing and agricultural style buildings. There are a number of substantial buildings a short distance to the north of the appeal site that appear to be in commercial use.
22. I recognise that the site had planning permission for a four unit stable block and a barn with associated hardstanding in 2017. However, as set out above I have little evidence before me to conclude whether this permission has been implemented or remains extant.
23. The development has introduced a substantial mobile home, a touring caravan, two outbuildings and the domestic paraphernalia usually associated with residential occupation, onto land where there was previously little formal development.
24. The development can be readily seen when travelling in either direction from Shefford Road, with additional views from the A507. The planting that has been carried out to the frontage provides some screening, although its overly ornamental nature together with the large entrance walls and gates, further draw attention to the site's existence within the landscape. That said, the development is to some extent viewed in the context of the extensive commercial development to the north.
25. Overall, the permanent siting of the residential caravan, hardstanding and outbuildings and the associated domestic paraphernalia in this formerly open field, is at odds with the prevailing rural character of the area causing some harm to the character and appearance of the area. However, due to the context and relatively small nature of the development, I find that harm to be limited but contrary to policies EE5, EE8, H7 and SP7 of the LP. In combination

these policies seek to safeguard the scenic beauty and key characteristics of the landscape.

Flooding

26. The site lies within Flood Zone 2, where the parties agreed that residential caravans are considered to be highly vulnerable. Following determination of the planning application, a site specific Flood Risk Assessment dated 8 June 2021 (FRA) has been submitted by the appellant.
27. The Environment Agency and The Bedfordshire and River Ivel Internal Drainage Board do not appear to have been consulted. However, the Council's Flood Risk Team have had the opportunity to review the FRA prior to the Hearing. Their comments are included at Appendix 7 of the Council's statement.
28. In summary it is the Council's case that the FRA contains insufficient site specific information, including existing site levels, to satisfy the exception test. They submit that the evidence provided does not demonstrate that the site can be safely occupied, or that the needs of the appellant and his family could not be met on land less liable to flood. The FRA proposes that surface water is discharged to an existing, or new outfall into the adjacent watercourse. However, there is insufficient detail to carry out a meaningful assessment and I have no evidence before me to allow me to come to a different view.
29. I recognise that the appellant has not witnessed any flooding on the site. However, I am mindful of the highly vulnerable nature of the development and the generally flat nature of the site and surrounding fields together with the close proximity of the two watercourses to the residential mobile home. I observed that from Shefford Road, both watercourses appeared to be overgrown, narrow with steep banks. The water levels were some 2 metres below the adjoining land, but I have little evidence to evaluate how quickly water levels might rise in the event of very heavy rainfall.
30. Consequently, for the above reasons and on the evidence before me, I am not satisfied that the development is acceptable in terms of flood risk, which in the interests of resident's personal safety, I give this consideration substantial weight. In addition, Given the serious nature of my concerns, I do not consider that it would be appropriate to require additional Flood Risk information to be secured by condition.
31. The development is therefore contrary to policies CC3, CC4, CC5 and H7 of the LP. Together these policies in summary, seek to ensure that development is directed towards areas at lowest risk of flooding, that conserve, and where possible, enhance the ecological and flood storage. Proposals should demonstrate that the surface water drainage is compliant with local requirements and design guidance set out in the Council's Sustainable Drainage SPD, National Standards and industry best practice.

Other matters

32. From the evidence, the mobile home is occupied by the appellant, his wife and their three children who range from 10 to 17 years old. They confirmed that they moved to the site in August 2020, after having been forced to move from the site they were occupying due to family rivalry. The appellant and his wife gave evidence at the Hearing about their personal circumstances and the health issues affecting the various family members. A letter has been provided

to confirm that the appellant's daughter is well settled in school and progressing well.

33. Intentional unauthorised development has been a material consideration since 2015. From the evidence, the additional caravan was moved onto the site after the family had to relocate from their previous site. Nonetheless, the appellant sought to regularise the position through this planning application. Accordingly, I have given this limited weight in my considerations.

Overall balance

34. The needs of the children are a primary consideration of substantial weight, but are not necessarily determinative. However, as with all those who travel, a settled base would enable the family to have access to medical care and education and this undoubtably weighs substantially in favour of the scheme. Furthermore, I acknowledge that the proposal would provide limited further social and economic benefits and would provide one additional Gypsy and Traveller pitch, contributing towards the Council's targets.
35. The Council submits that it has a healthy supply of pitches. However, they confirmed at the Hearing that there were currently no suitable, affordable and available sites for the family to move to. Furthermore, given the lengthy waiting lists, vacancies would be unlikely to become available in the foreseeable future. These factors all weigh in favour of the development.
36. I have already found limited harm in respect of the location of the site and its effect on the character and appearance of the area. However, I have found substantial harm, due to the uncertain position regarding the safety of the residents in response to flooding. Accordingly, the harm I have identified is not outweighed by matters in support of the proposal. I have also considered whether it would be appropriate to grant a temporary planning permission for the development. However, given the uncertainty of the suitability and safety of the site in terms of flood risk, I do not consider that a temporary permission would be appropriate.
37. I am very mindful of the appellant's personal circumstances and the effect that this decision is likely to have in dismissing this appeal. I have carefully considered the Human Rights issues that may be pertinent to this appeal. However, the protection of the public interest cannot be achieved by means which are less interfering of the appellant's rights.
38. As set out above, the appellant's evidence makes a reference to the family's medical conditions and I have had due regard to the Public Sector Equality Duty (PSED), contained in section 149 of the Equality Act 2010, which 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. Nonetheless, for the above reasons, I consider that the decision is proportionate and necessary in the circumstances.

Conclusion

39. I have considered all of the matters that have been raised but for the reasons outlined above, I conclude that the appeal should be dismissed.

Hilary Orr

INSPECTOR

Appearances

FOR THE APPELLANTS:

Joseph Jones Agent

Chris Smith Appellant

Christine Buckland Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Philip Hughes Consultant.

Steve Jarman Consultant on need

Helen Heanes

Ian Cotterell

Lauren Rance Planning Case Officer

David Hale Gypsy and Traveller Planning Manager

INTERESTED PERSONS:

none