



Appeal Decision

Hearing Held on 8 September 2022

Site visit made on 8 September 2022

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2023

Appeal Ref: APP/F3545/W/22/3293848

Land opposite Pen Villa, Isleham Road, Worlington, Suffolk IP28 8SW

- 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 Shayne Smith against the decision of West Suffolk Council.
 - The application Ref DC/21/1906FUL, dated 21 September 2021, was refused by notice dated 21 January 2022.
 - The development proposed is for a. change of use of land to Gypsy and Traveller residential use; b. 12 residential pitches each accommodating a dayroom/amenity building, up to two caravans and parking spaces; c. vehicular access; d. play area.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 22 September 2022.

Decision

1. The appeal is allowed and planning permission is granted for a. change of use of land to Gypsy and Traveller residential use; b. 12 residential pitches each accommodating a dayroom/amenity building, up to two caravans and parking spaces; c. vehicular access; d. play area at Land opposite Pen Villa, Isleham Road, Worlington in accordance with the terms of the application, Ref DC/21/1906FUL, dated 21 September 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. There is agreement between the parties to a change to the description of development to that listed on the application form. I have therefore used the agreed description in the banner heading above, as described in the Council email dated 27 September 2021. I have also taken the address of the site from the appeal form as it is more accurate.
3. An accompanied site visit was undertaken on 8 September 2022. However, I also undertook an unaccompanied visit prior to the event on 7 September 2022, which included various locations on Isleham Road and Freckenham Road.

Main Issues

4. The main issues of this appeal are:

- Whether the proposal would be in a suitable location with particular regard to access to local services/facilities and its effect on highway safety and the safety of pedestrians;
- the effect of the proposal on the character and appearance of the appeal site and surrounding area;
- the effect of the proposal on biodiversity and protected species; and,
- whether any harm arising from the proposal would be outweighed by other considerations.

Reasons

Location

5. The site is located within the open countryside and approximately 750m from the boundary of Worlington. The access to the site is located off Isleham Road, which has the characteristics of a typical rural lane, through its width, grass verges either side and no footpaths or street lighting being present.
6. Policy CS1 of the Forest Heath Local Development Framework-Core Strategy Development Plan Document 2001-2026 (with housing projected to 2031) Adopted May 2010 (CS) concerns the spatial strategy for the amount of development within the Council area. It also identifies Worlington as a secondary village. CS Policy CS8 is for provision for Gypsy and Travellers, where the Council aims to allocate land to address the accommodation needs of Gypsies and Travellers in its area.
7. The parties agree that the nearest settlement where a number of facilities exist is at Mildenhall, which is approximately 3.7km away. Although it is acknowledged that Worlington benefits from limited facilities, such as a village hall and public house (PH). It was established at the Hearing that various bus services run along The Street/Freckenham Road (B1102). This includes the No 16, which can be caught in the vicinity of the Walnut Tree PH and operates a regular service between Mildenhall and Worlington. This was not disputed by the Council.
8. I am mindful that the National Planning Policy Framework (the Framework) recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Nonetheless, whilst it was suggested at the Hearing by the appellant that the proposed occupants would rely more on private vehicles due to their culture, in this instance, I consider that alternative transport options exist.
9. I accept that the section of Isleham Road to the junction of B1102 would not lend itself to regular walking, especially during inclement weather or hours of darkness. However, whilst only snapshots in time, the level of traffic that I experienced at different times of the day did not appear overly excessive. Additionally, whilst drivers are easily able to assimilate the conditions on the carriageway when driving along Isleham Road, the verges and the access points provided suitable refuge along this section of carriageway, should I have needed to step out of the road. Thus, the associated potential likelihood of vehicular/pedestrian conflict is significantly reduced.

10. The remaining journey along the B1102 is then different in character as footpaths are in position first, then street lights emerge as you progress into Worlington. Given the above factors, which include my own experiences driving in the locality and walking along Isleham Road, I find that the site is within a safe reasonable distance of Worlington, with particular regard to walking and cycling. At this point, the future occupiers of the site, could then easily catch the No 16 bus to Mildenhall.
11. For the reasons given above, I conclude that the proposal would be in a suitable location with particular regard to access to local services/facilities and not result in any significant harm that would create adverse conditions with regard to highway/pedestrian safety. Consequently, the proposal would accord with the strategic and highway safety aims of CS Policies CS1 and CS8 and the requirements of the Framework.

Character and appearance

12. The appellant has submitted with his submission a series of photographs with an accompanying plan identifying their locations, to which I have had regard. I also viewed the site from these locations identified and the request from the Council to view the site directly to the east of the proposed access. In addition to these viewpoints, I also travelled along Isleham Road in both directions, but due to the mature belt of trees to the east of the site it was evident that the site would not be readily visible when approaching from the B1102. Consequently, I am satisfied that I saw everything I need to assess the impact of the development.
13. It is agreed by the parties that the proposal would cause some visual harm, as the site is currently free from built development and can be easily viewed from public vantage points, particularly on Isleham Road. However, I agree with the parties that the proposal would not be readily visible from wider public viewpoints, particularly along Freckenham Road, due to the surrounding topography and landscape features. Thus, in this instance, the effect of the proposal would be limited to more localised viewpoints that would also be restricted to an extent, due to the mature belt of tall trees adjacent to the eastern boundary of the site.
14. Nonetheless, the site would be readily visible in front of the proposed access and glimpses would also be possible when travelling along Isleham Road towards Worlington. The appellant has submitted a landscaping scheme that would provide additional mitigation against the effect of the proposal on the site and its immediate surroundings. I do agree that there would be some adverse landscape and visual effects caused by the proposal, but do not agree that the planting scheme proposed would counteract the adverse visual effects in the short term, as such a scheme would take a notable period of time to reach maturity. Even though these effects would be relatively localised, there would still be an adverse effect, albeit limited.
15. For the reasons given above, I conclude that the proposal would create moderate harm to the character and appearance of the site and its immediate surroundings. The scheme therefore conflicts with the character and appearance aims of CS Policies CS3, CS8, Policies DM2, DM13 of the West Suffolk Joint Development Management Policies Document 2015 (DMPD) and the requirements of the Framework.

Biodiversity

16. There is agreement between the parties that to facilitate the proposal on site would result in the loss of Priority habitat, albeit at a sub-county level. This habitat would be in the form of acid grassland, where a significant part would be lost to the proposal.
17. CS Policy CS2 seeks to protect biodiversity from harm, encouraging their restoration, enhancement and expansion, amongst other things. In addition to other requirements DMPD Policy DM10 requires the extent to which the imposition of conditions or planning obligation would mitigate the effects of the development and/or protect the geological or nature conservation value of the locality; ensure replacement habitat or features; and/or ensure that resources are made available for the future enhancement and management of the replacement. DMPD Policy DM11 requires, where appropriate, the use of planning conditions and/or planning obligations to achieve appropriate mitigation and/or compensatory measures and to ensure that any potential harm to protected species to be kept to a minimum. Similarly, DMPD Policy DM12 seeks to secure mitigation, enhancement, management and monitoring of biodiversity.
18. Acid grassland has to be maintained in a very specific way to ensure it retains its particular ecological character. Limited grazing is beneficial to maintain the range of grassland species, but overgrazing is damaging. Similarly, scrub could easily encroach without adequate management and this effectively takes over the grassland. If the fields were left in their current use, there is uncertainty whether the acid grassland would be maintained in its optimum condition as this habitat needs maintenance.
19. I observed at the site visit that a substantial invasion of scrub had occurred particularly to the front of the site. Similarly, I acknowledge that grazing could be re-introduced without permission, which would be likely to jeopardise the sensitive grassland. Indeed, the adjacent land to the west is used intensively by pigs, which indicates potential for such an activity. In addition, I accept that herbicides and fertilisers could also be used on the site without permission.
20. The area identified by the appellant where the Lizard Orchid exists is agreed by the Council and this area would remain undeveloped, forming an area reserved for nature conservation if the proposal went ahead. This would equate to approximately 11.3% of the site. Whilst the Lizard Orchid is protected under the Wildlife and Countryside Act 1981, I believe that the proposal would aid in securing its long-term future on the site. Additionally, whilst a large portion of the site would be developed, through the creation of the pitches, associated structures and access road, a notable area to the rear of the 12no. pitches would be undeveloped, where drainage from the pitches would be located. In addition to the areas already specified for planting, and apart from the drainage infrastructure, I see little reason why this area could not benefit from any ecological enhancements either.
21. It was evident that even in the absence of a robust calculation that the Council felt that the proposed area reserved for nature conservation was too small. Nonetheless, I accept that the proposal would retain an area of grassland purposely managed in its optimum condition rather than the present circumstances, where it could be neglected or undermined through a lack of management or potential grazing. In any event, it is highly likely that this area

would also receive protection under different legislation due to the presence of the Lizard Orchid.

22. The proposed landscaping scheme shows a notable amount of planting across the site, with a natural scattering of native trees throughout, particularly on the front boundary facing Isleham Road, and the proposed hedgerow on the western boundary that would offer some softening of the proposal and improvements to the habitat. The specific details of such a scheme could easily be secured through the imposition of a suitably worded condition. However, when weighing the benefits that would arise from the proposal, I still consider that in this instance, some harm would still occur from the sizeable loss of acid grassland.
23. For the reasons given above, I conclude that the proposal would create moderate harm to biodiversity. The scheme therefore conflicts with the ecological aims of CS Policy CS2, DMPD Policies DM10, DM11, DM12, and the requirements of the Framework, particularly paragraph's 174 and 180.

Other considerations

24. There is no dispute that the Appellants comply with the definition of Gypsies as set out in Planning Policy for Traveller Sites 2015 (PPTS). Based on the details provided, the representations made at the Hearing and in the absence of any evidence to the contrary, I have no reason to disagree.

Need for and provision of sites

25. It is common ground between the Council and the Appellant that there is not a supply of sites to meet the need for Gypsy and Traveller accommodation in West Suffolk. Furthermore, the Council accepts that the figures quoted in the 2016 Gypsy and Traveller Accommodation Assessment (GTAA) may have significantly underestimated the need.
26. Current figures contained within the West Suffolk Interim Statement in advance of the publication of the Gypsy and Travellers Accommodation Needs Assessment (GTANA) May 2022 indicate that there is a need for 59no. pitches between 2020-2040 to meet the 'ethnic' definition in the Framework, where 33no. pitches would be required for the period 2020-2025. The accommodation needs of Gypsies and Travellers who meet the definition in Annex 1 of the PPTS is 24no. between 2020-2025.
27. Whilst the GTANA is still in the process of preparation for publication and is therefore not before me, the Interim Statement indicates that it is highly likely to only confirm the under provision that is already known. This alone weighs heavily in favour of the Appellant's position. I also accept that the ongoing work on the West Suffolk Local Plan (the emerging LP) would likely address this issue in the long term, although I am unaware as when the emerging LP would be adopted, given its current status. In addition to general need, the availability (or lack) of alternative accommodation for the current occupiers is a relevant consideration of significant weight, as indicated by the PPTS.

Personal circumstances

28. Whilst none of the proposed occupants live on the roadside and with the exception of the future occupiers of pitch no. 8 who reside in a bungalow, the proposed occupiers of the scheme have been dependent on friends and family

to share pitches on a temporary basis. A settled base would therefore be beneficial in respect of those future occupiers that currently occupy temporary sites. In respect of the future occupiers of pitch no. 8, they would be able to move out of bricks and mortar and back into a caravan, which remove any cultural unhappiness associated with their current accommodation, moving away from the reported prejudice that they currently experience.

29. A settled base would be a marked improvement for the 23no. children of school and pre-school age that would occupy the site with regards to their education and the ability of all the future occupiers to access health care more easily. These benefits would be even more pertinent when considering the health issues experienced by the future occupiers of pitch no's 6, 9 and 12 and the special needs of 2no. children in the family unit of pitch no's 4 and 10, where accessing the required specialised services is not currently possible, due to the absence of a settled base. Overall, having a settled base would be particularly beneficial in the best interests of the children and to the future occupiers who have health issues. In stark contrast the alternative of an itinerant life would be damaging to the education, health and well-being of the families. Continuing to move from place to place would be a likely consequence of dismissing the appeal. Whilst, not the current situation, I also consider that in some circumstances living by the side of the road could not be ruled out either.

Other Matters

30. The appellant argued at the Hearing that as the Council could not deliver a five-year supply of deliverable sites, paragraph 11(d) of the Framework should be engaged. However, footnote 7 of the Framework indicates that policies are out-of-date where a five years' supply of deliverable housing sites cannot be demonstrated and refers to paragraph 73. Footnote 36 to that paragraph makes it clear that a five years' supply of sites for travellers should be assessed separately, in line with PPTS, and footnote 25 makes the same point. Accordingly, I do not agree that the absence of a five years' supply of traveller sites leads to the tilted balance in this case.
31. A number of interested parties, including local residents and Worlington Parish Council have also expressed a wide range of concerns including, but not limited to the following: overdevelopment, effect on the nearest community, lack of mains drainage, waste disposal and the scheme not addressing the previous refusal reason, amongst other things. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reasons for refusal, which I have dealt with in the assessment above. Whilst I can understand the concerns of the interested parties, there is no evidence before me that would lead me to come to a different conclusion to the Council on these matters.

Planning Balance

32. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires this appeal to be determined in accordance with the development plan unless material considerations indicate otherwise.
33. The proposal would involve a loss of a greenfield site, comprising acid grassland, creating moderate to limited harm to both character and appearance and biodiversity. Balanced against this, the site can be considered to be sustainable in relation to its location and access to local services and facilities,

which I attach moderate weight. I attach significant weight to providing a settled base for 12no. households/families who are in some instances homeless. Additionally, providing a settled base for a notable number of children to assist in their emotional, educational and medical development attracts very significant weight.

34. Whilst this scheme is outside the emerging LP process as argued by the Council, the proposal is not so substantial that to grant planning permission would undermine the plan-making process. In my view the benefits of the proposed development substantially outweigh the conflict with the development plan. I conclude therefore that these material considerations mean that in this case the proposed development should be determined other than in accordance with the development plan.
35. Overall, my conclusions are that the harm to character and appearance of the site and surrounding area and biodiversity would be clearly outweighed by the site being sustainable, the need and provision factors, the lack of alternative sites and the personal circumstances. I therefore conclude that the proposal is suitable for the site and the factors in favour of the proposal are sufficient to justify a permanent permission.

Conditions

36. I have considered what planning conditions would be appropriate in light of the discussion at the Hearing, making amendments and minor corrections, where necessary, to ensure clarity and compliance with the tests contained within Paragraph 56 of the Framework and the Planning Practice Guidance. In addition to conditions relating to the time limit for implementation, for reasons of certainty a condition requiring the development to be undertaken in accordance with approved plans is necessary.
37. The pre-commencement conditions in relation to biodiversity are reasonable and necessary to ensure that sufficient mitigation is undertaken to ensure no adverse ecological harm, particularly in light of protected species being present on the site. This includes the amendment to the wording of condition 4 e), agreed by the parties at the Hearing.
38. Pre-occupation conditions regarding: drainage; contamination; refuse/waste; manoeuvring/parking; visibility splays and lighting are all reasonable and necessary in the interest of the surrounding environment, future residents living conditions, highway safety, character and appearance and ecology. The Preliminary Risk Assessment undertaken by 4D GEO Ltd, dated December 2020 (PRA) identifies that the presence of historic contamination is limited. I find this to be highly likely, given the agricultural nature of the site. I have therefore drafted a condition that acknowledges the findings and recommendations in the (PRA), but safeguards the future occupiers in the event that unidentified contamination is found.
39. Other conditions, such as restricting the site to people who meet the PPTS definition is both reasonable and necessary to define the permission. Controlling the number of caravans and mobile homes on the site is reasonable and necessary to define the permission and in the interest of character and appearance. I have reworded the suggested condition to make it more clear/precise and less onerous, as the completion of a log by future occupiers is neither reasonable or necessary in this instance.

40. The replacement of trees or shrubs planted as part of the approved planting scheme if they become diseased or die within 5 years is both reasonable and necessary to ensure the successful establishment of the approved landscaping scheme. I have not included a condition removing permitted development (PD) rights in connection with condition No 9, as the condition that it seeks to supplement, already ensures that clear visibility will be maintained. In any event, I am not aware of what permitted development rights would be applicable, nor would this prevent any planting as intended.

Conclusion

41. For the reasons given above, I conclude that the appeal should be allowed.

W Johnson

INSPECTOR

SCHEDULE OF CONDITIONS

Time Limit

- 1) The development to which this permission relates must be begun not later than the expiration of three years from the date of this permission.

Approved drawings

- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings: IR01 Location Plan; IR06 Dayroom/Amenity Buildings; IR09 Entrance Plan v.5; IR10 Visibility Splays v.2; IR11 Cross-section v.2; IR13 Proposed Site Plan (Including Reserve for Nature Conservation); IR14 Site Plan North Section (21 Sep 2021); IR15 Site Plan South Section (21 Sep 2021); IR15 with fire engine swept path; IR16 Landscaping and Planting North Section (15 Oct 2021); IR17 Landscaping and Planting South Section (15 Oct.2021) and, Surface Water Drainage Strategy Dated: Nov 2021 Ref: RLC 201545 Rev 01.

Pre-commencement

- 3) Prior to the commencement of development, the Reserve for Nature Conservation shown on IR15, Proposed Site Plan, south section, shall be fenced off and no entry or works including site clearance shall take place within this area prior to discharge of Condition 4.
- 4) Prior to commencement of development including any site clearance a Biodiversity Mitigation and Enhancement Strategy for the Reserve for Nature Conservation shall be submitted to and approved in writing by the local planning authority. The content of the Strategy shall include the following:
- a) Purpose and conservation objectives for the proposed works;
 - b) Review of site potential and constraints
 - c) Detailed designs and/or working methods to achieve stated objectives;

- d) Extent and location of proposed enhancement measures by appropriate map and plans;
- e) Timetable for implementation detailing works for a minimum duration of 10 years;
- f) Persons responsible for implementing the enhancement measures;
- g) Details of initial aftercare and long-term maintenance (where relevant).
- h) Details for monitoring and remedial measures
- i) Details for disposal of any wastes arising from the works.

The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.

Pre-occupation

5) Prior to first use and occupation of the development, the surface water drainage strategy (Rossi Long Consulting, dated: Jan 2021, Ref: RLC 201545) shall be fully implemented as approved in writing by the local planning authority (LPA). The strategy shall thereafter be managed and maintained in accordance with the approved strategy.

6) Prior to first use and occupation of the development, the recommendations contained in the Preliminary Risk Assessment undertaken by 4D GEO Ltd, dated December 2020 shall be fully implemented and a verification report submitted to and approved by the LPA.

If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the LPA. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the LPA.

If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the LPA. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the LPA within 28 days of the report being completed and approved in writing by the LPA.

7) Prior to first use and occupation of the development, the areas to be provided for storage of refuse/recycling bins as shown on drawing Nos. IR14 and IR15 shall be fully implemented, thereafter maintained and retained for the life of the development.

8) Prior to first use and occupation of the development, the areas within the site shown on drawing Nos. IR14 and IR15 for the purposes of manoeuvring and parking of vehicles shall be fully implemented and thereafter maintained and retained for the life of the development.

9) Prior to first use and occupation of the development, clear visibility at a height of 0.6 metres above the carriageway level shall be provided and thereafter permanently maintained in that area between the nearside edge of the metalled carriageway for the life of the development, and a line 2.4 metres from the

nearside edge of the metalled carriageway at the centre line of the access point (X dimension) and a distance of 215 metres in each direction along the nearside edge of the metalled carriageway from the centre of the access (Y dimension).

10) Prior to first use and occupation of the development, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the LPA. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed fully in accordance with the specifications and locations set out in the approved scheme and maintained thereafter for the life of the development. No other external lighting outside the approved scheme should be installed without prior consent from the LPA.

Other

11) The site shall not be occupied by any persons other than Gypsies and Travellers as defined in Annex 1 of PPTS (August 2015) or any replacement guidance.

12) No more than two 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 one shall be a static caravan) shall be stationed on any one of the approved 12no. pitches, at any one time.

13) All planting comprised in the approved details of landscaping shall be carried out in the first planting season following the commencement of the development (or within such extended period as may first be agreed in writing with the Local Planning Authority). Any planting removed, dying or becoming seriously damaged or diseased within five years of planting shall be replaced within the first available planting season thereafter with planting of similar size and species.

****End of Schedule****

APPEARANCES

FOR THE APPELLANT:

Stephen Cottell of Counsel

Instructed by Mr Hargreaves

He called:

Michael Hargreaves

Agent

Shayne Smith

Appellant

Chris Smith

Small Ecology Ltd

Natalie Stone-Parker

On behalf of the proposed future occupier of pitch No 9

Stephen Kerry

Proposed future occupier

FOR THE LOCAL PLANNING AUTHORITY:

Asitha Ranatunga of Counsel

Instructed by West Suffolk Council

He called:

Britta Heidecke

West Suffolk Council

Sue Hooton

Essex County Council

HEARING DOCUMENTS

The following documents were submitted and accepted at the Hearing:

ON BEHALF OF THE APPELLANT:

- Signed Statement of Common Ground
- Counsel submission on material considerations
- Drawing IR09 v5
- Drawing IR10 v2
- Table 1: Count of Traveller Caravans – Last Six Counts (July 2021)
- Table 2: Traveller and Travelling Show People Caravan Sites Provided by Local Authorities and Private Registered Providers in England, July 2021
- Wildlife and Countryside Act 1981 (England and Wales 13. - Protection of wild plants)
- Wildlife and Countryside Act 1981 c.69, Schedule 8 Plants which are protected
- Conservation of Habitats and Species Regulations 2017/1012, Schedule 5 European Protected Species of Plants.

ON BEHALF OF THE LOCAL PLANNING AUTHORITY:

- Judgment: Stevens v Secretary of State for Communities and Local Government [2013] EWHC 792 (Admin)