



Appeal Decision

Site visit made on 27 September 2023

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th October 2023

Appeal Ref: APP/P0240/W/22/3313533

Land to the east of Saxon Drive and the development Orchard Chase, Kennel Farm, Saxon Drive, Biggleswade SG18 8UT.

- 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 Messrs Parrish, Gray, Smart & Harris against the decision of Central Bedfordshire Council.
 - The application Ref CB/21/05398/FULL, dated 3 December 2021, was refused by notice dated 22 June 2022.
 - The development proposed is change of use of agricultural land to a Travelling Showpeople Site to create 4 plots. Each plot containing 2 x Static Caravans, 4 x tourer caravans, 1 x workshop, 4-6 trailer parking spaces, and 4 x car parking spaces. Total for the site 8 x static caravans, 16 x tourer caravans, 4 x workshops, 24 trailer parking spaces and 16 car parking spaces.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description of development from the appeal form as the appellants have confirmed that the description of development has changed from that stated on the application form.
3. At odds with the description of development and Plan 2635_015, Plan 2635/00 010 Rev F indicates that two of the plots would have four trailer parking spaces each, while the other two plots would have six trailer parking spaces each. I have not addressed this further as I am dismissing the appeal.
4. The most recent revision of the National Planning Policy Framework (the Framework) was published on 5 September 2023. It has not altered any of the paragraphs referred to in the appeal documents. I have therefore had regard to it and consider no party would be disadvantaged by this.
5. The Biggleswade Neighbourhood Plan was made on 17 October 2022. The appellants have commented on its contents. No party would therefore be placed at a disadvantage by my consideration of this document.

Main Issues

6. The main issues in this appeal are:
 - a) whether the proposal would be at risk from flooding; and
 - b) whether any harm identified, including conflict with the development plan, would be outweighed by other considerations.

Reasons

Flood risk

7. Located adjacent to the narrow agricultural track of Hollyhock Way, the site consists of a triangle of land of some 1.67 hectares. The site slopes from its narrowest point down towards the watercourse on its south-western edge. Beyond the watercourse, a housing development at Orchard Chase is partially built out. There are arable fields north of the site, while the site is bounded to the east by commercial units and their access at Stratton Business Park. Park homes adjoin the Orchard Chase development and are proximate to the site's southernmost corner. South of the park homes lies the Stratton Park Moated Enclosure and Associated Manorial Earthworks, a Scheduled Monument.
8. The proposal would involve the change of use of agricultural land to four plots for use by Travelling Showpeople. Under the description of development, each plot would contain two static caravans, four touring caravans, a workshop, four car parking spaces, and up to six trailer parking spaces. The site would be accessed from Hollyhock Way via the roundabout at the junction of Saxon Drive, Foxglove Drive, and the newly constructed roadway at Moonflower Place.
9. In terms of flood risk, the majority of the site falls within Flood Zone 1, with its south-western edge falling within Flood Zones 2 and 3 due to the site's proximity to the watercourse. Hollyhock Way, the only access route to and from the site also crosses the watercourse using a narrow bridge. Part of the access route falls within Flood Zones 2 and 3.
10. Policy CC3 of the Central Bedfordshire Local Plan 2015 – 2035 (July 2021) (Local Plan) deals with flood risk. It requires a site-specific Flood Risk Assessment (FRA) for sites within 20m of any watercourse (including those not shown on the Environment Agency Flood Maps). It sets out criteria, including proposals being located in areas at lowest risk of flooding and the sequential and exception tests (where required) demonstrating that the site is appropriate for development and its intended use; a sequential approach to site layout being applied, directing the most vulnerable uses to the areas at lowest flood risk; being safe for the lifetime of the development, not increasing flood risk elsewhere or result in a loss of floodplain storage capacity or impeding flowpaths; provision of a site-specific FRA consistent with Policy CC3 and the Framework and with appropriate flood risk management measures; and appropriate consideration of climate change implications.
11. Policy BSP1 of the Biggleswade Neighbourhood Plan deals with sustainable development and growth and requires account to be taken of flood risk. It is not clear whether this policy would be applicable as it encourages development in particular locations, which would not appear to include sites such as the site in this appeal. It does not refer to the provision of sites for Travelling Showpeople.
12. The Framework advises at paragraph 159 that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. Further to this, paragraph 161 of the

Framework advocates that all plans should apply a sequential risk-based approach to the location of development.

13. Paragraph 162 of the Framework confirms that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with lower risk of flooding. The Strategic Flood Risk Assessment (SFRA) will be the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.
14. Planning Practice Guidance (PPG) paragraph 27¹ provides advice on when the sequential test should not be applied to major and non-major development. There are three elements which could exempt a proposal from testing.
15. The first element relates to the site being allocated for development and subject to the sequential test at the plan-making stage, as per paragraph 166 of the Framework. The site was proposed for allocation for four plots for Travelling Showpeople in Central Bedfordshire's Gypsy and Traveller Local Plan (GTLP) submitted in June 2014. Following an initial letter from the Inspector in August 2014, the GTLP was withdrawn from examination in September 2014. The site is not allocated for development and it is not possible to say whether the GTLP would have been found sound. The GTLP therefore carries no weight in my decision. This first element of PPG paragraph 27 is not met.
16. The second element pertains to the site being at a low risk of flooding, unless the SFRA or other sources indicate there may be a risk of flooding in the future. As I have already noted, parts of the site lie in Flood Zones 2 and 3, where there is a higher risk of flooding than for the parts of the site in Flood Zone 1. The second element of PPG paragraph 27 is not met.
17. The third element refers to development being of an exempt type specified in footnote 56 of the Framework, which supports paragraph 168 of the Framework in setting out exceptions for sequential and exception testing. This proposal does not fall within the parameters of footnote 56 of the Framework as it involves a change of use of land for occupation by caravans and mobile homes. The third element of PPG paragraph 27 is therefore not met.
18. The appellants suggest that the sequential test is not required as only part of the site is at higher risk of flooding and any touring or static caravans would be sited within areas at lower risk of flooding. The appellants' site-specific Flood Risk Assessment & Drainage Strategy (FRA) (RAB Consultants Ref 2805_FRD, Version 3.0 dated 29 November 2022) confirms that the sequential approach should be applied at site level to ensure that new development is located away from Flood Zones 2 and 3 and into Flood Zone 1.
19. However, a sequential test should be applied when any part of the site is at risk of flooding as the PPG² advises that areas at little or no risk of flooding from any source should be developed in preference to areas at higher risk. This means avoiding, so far as possible, development in current and future medium and high flood risk areas considering all sources of flooding. It is not disputed that part of the site falls within Flood Zones 2 and 3. No sequential

¹ Paragraph 7-027-20220825: How should the Sequential Test be applied to planning applications?

² Paragraph 7-023-20220825: What is the aim of the sequential approach?

test has been undertaken and it has therefore not been demonstrated that the sequential test could be satisfied and that there are no reasonably available sites appropriate for the proposal in areas with a lower risk of flooding.

20. Turning to the exception test, paragraph 163 of the Framework outlines that if it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. This will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in Annex 3 of the Framework.
21. Having considered Annex 3 of the Framework, it appears that the proposal would include caravans and mobile homes intended for permanent residential use. It would therefore be highly vulnerable development. The proposal would not fall within the more vulnerable category referred to in the appellants' FRA as I consider the site would not be for holiday or short-let caravans and camping, subject to a specific warning and evacuation plan.
22. PPG paragraph 79³ states that some developments may contain different elements of vulnerability and the highest vulnerability category should be used, unless the development is considered in its component parts. Though the appellants have sought to argue the separation of the trailer parking from the rest of the proposed change of use, with such uses falling within the less vulnerable classification for flood risk, I consider that as each plot would be laid out with its own trailer parking within the plot, the uses would not be clearly separated.
23. Paragraph 164 of the Framework confirms that the application of the exception test should be informed by a strategic or site-specific flood risk assessment, depending on whether it is during plan production or at the application stage. To pass the exception test, it should be demonstrated that the development would provide wider sustainability benefits to the community that outweigh the flood risk; and the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall. Paragraph 165 of the Framework states that both elements of the exception test should be satisfied for development to be allocated or permitted.
24. With regard to sustainability benefits, I will address the matter of need and the balance of benefits against any associated flood risks below.
25. Turning to the safety of the development, the Environment Agency (EA) has expressed concerns about the appellants' FRA due to what the EA perceives to be a simplistic methodology (ReFH2), with an absence of consideration of upstream or downstream structures, downstream boundary impacts, structure operations, and other locations with lower banks where there may be a greater connection to the floodplain and other flood flow routes locally. Fundamentally, the EA considers that flood risk at the site has not been adequately assessed, that there has not been assessment of the impact of climate change using appropriate climate change allowances for the design flood, and that it has not been demonstrated that the site is safe for its lifetime.

³ Paragraph 7-079-20220825: Table 2: Flood risk vulnerability and flood zone 'incompatibility'

26. Though it is argued that the residential parts of each plot are located in Flood Zone 1, the parts of the site at highest risk of flooding would form part of the access route and would also include areas within the proposed plots where property and livelihood could be put at risk. Even if flood levels on the access route were limited, the future occupiers would need to be sure of safe access to and egress from the site, with the possible consequential effects on personal safety as well as to property and their livelihood. Given the level of detail of flood risk mapping and the quality of the FRA, it is possible that the extent of flood risk may be greater than that shown by mapping and the FRA. Indeed, as the FRA has not taken appropriate allowances for climate change into account, it is far from certain that both trailer parking and residential accommodation could be delivered without residential accommodation falling within a higher area of flood risk, thereby risking life, property, and livelihood.
27. While hydraulic modelling is expensive, the appellants' FRA and their response to the EA's objection do not provide me with the necessary confidence that the proposal would be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall. This would not be adequately addressed by means of a pre-commencement condition as there is no certainty that the proposal would be safe for its future occupiers. The exception test has not been passed.
28. The parties have referred to Planning policy for traveller sites (2015) (PPTS) paragraph 13 g) which states that local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally. Local planning authorities should ensure that their policies do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans. This part of the PPTS relates to plan-making rather than decision-making. If I did apply this paragraph to the proposal, it would not meet it as it has not been demonstrated that plots for Travelling Showpeople would not be at high risk from flooding.
29. In conclusion, it has not been demonstrated that the proposal would not be at risk from flooding and that the future occupiers of the site would be safe in the event that flooding occurred. I therefore consider that the proposal would be contrary to Local Plan Policy CC3, Chapter 14 of the Framework, and the PPG on flood risk and climate change, as set out above. I have already addressed why I consider PPTS paragraph 13 g) and Policy BSP1 of the Biggleswade Neighbourhood Plan would not be applicable in this instance. Chapter 1 of the Framework will be covered in the planning balance, insofar as it deals with planning permission being determined in accordance with the development plan, unless material considerations indicate otherwise. I shall also address Local Plan Policy SP2 in the planning balance as it pertains to the presumption in favour of sustainable development.

Other matters

30. Concerns have been raised about a wide range of issues, including potential effects on highway and pedestrian safety; air, noise and light pollution; living conditions; character and appearance; and proximity to a wood and orchard. As I am dismissing this appeal, I have not addressed these matters.
31. I note Historic England's concerns about the effect of the proposal on the Scheduled Monument. If I was determining the appeal differently, I would

have covered this issue in further detail, but I have not as it would not alter my overall decision.

Other considerations

Previous planning permission

32. Planning permission CB/17/02682/REG3 (2017 permission) was granted for the same proposal on 18 September 2017. This 2017 permission was granted in the context of Policy CS13 of the Central Bedfordshire Core Strategy and Development Management Policies (November 2009)⁴, and the National Planning Policy Framework (March 2012). The PPG on flood risk was as first published on 6 March 2014.
33. The 2017 permission was accompanied by a Flood Risk Assessment and Drainage Strategy (Project Ref: 29191/006 Rev: B February 2016), which stated that sequential testing was not required. The officer report for the 2017 permission does not cover the sequential or exception tests and the 2017 permission was granted without the tests having been required or carried out.
34. I understand that the 2017 permission was submitted as an application by the Council as landowner of the site and that there was considerable joint working with the appellants' representatives to achieve that submission. The EA did not comment on the 2017 application and the appellants do not appear to have been advised that the sequential test was necessary. In light of this, I appreciate the appellants' frustration at the Council's change in approach.
35. However, while the appellants view the 2017 permission as a material consideration of significant weight, it has not been implemented and is no longer extant. I therefore afford the 2017 permission no weight in my decision. Though the appellants consider there not to have been a material change in circumstances between the 2017 permission and the current appeal, I am required to assess this appeal based on the issues raised by the parties, including statutory consultees.

Need and supply

36. PPTS Paragraph 9 states that local planning authorities should set plot targets for travelling showpeople as defined in PPTS Annex 1 which address the likely permanent and transit site accommodation needs in their area, working collaboratively with neighbouring local planning authorities. PPTS paragraph 10 confirms that local planning authorities should identify and annually update a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. PPTS paragraph 19 highlights the importance of having regard to the need that travelling showpeople have for mixed-use yards to allow residential accommodation and space for storage of equipment.
37. Local Plan Policy SP8 Gypsy and Traveller, and Travelling Showpeople Pitch Requirement states that the Council will facilitate the delivery of up to 22 plots to meet the needs of Travelling Showpeople in Central Bedfordshire over the period 2015 - 2035. It also confirms that windfall applications will be determined against Local Plan Policy H8 and other relevant policies in the

⁴ The Core Strategy was produced at a time when Planning Policy Statement 25: Development and Flood Risk (2006) was in place.

Local Plan. Local Plan Policy H8 is a criteria-based policy for assessing applications for Travelling Showpeople, which also expects criteria in Local Plan Policy H7 to be met. Local Plan Policy H7 sets out criteria for assessing applications for Gypsy and Traveller sites.

38. The Council's Gypsy and Traveller Accommodation Assessment (GTAA)(August 2016) identifies a need of 22 plots for Travelling Showpeople between 2016 and 2035. The GTAA indicates that 16 additional plots were required between 2016 – 2021 and a further two plots between 2021 – 2026, totalling 18 plots. Monitoring data from 2023 shows that 18 plots have been permitted and implemented since 1 April 2016. This 2023 data does not include the site.
39. However, the appellants have questioned including plots at Bridge Farm, Leighton Buzzard and at the Fairground site, Mill Lane, Biggleswade in supply data. A lawful development certificate⁵ has been provided for Bridge Meadow. This indicates that there are 10 plots on site. As only seven plots were included in the GTAA as tolerated plots, it is not unreasonable for the Council to include the three additional plots in the supply.
40. Although there has been an appeal⁶ allowed at the Fairground site, it is not clear whether the appellant's one plot or the Council's four plots were previously included in the GTAA figure of 16 tolerated plots at Land at Fairground Site. As such, I find that the supply consists of 11 plots⁷ at Double Arches Farm, Heath and Reach, and three plots at Bridge Meadow giving a total of 14 plots. Taking this figure as a worst case scenario, it has therefore not been demonstrated that the Council has an adequate rolling five-year supply of sites. In these circumstances, I afford the provision of four additional plots for Travelling Showpeople significant weight. This would represent a sustainability benefit in economic and social terms.

Personal circumstances and alternative sites

41. Beyond confirming that the site's occupants would be Travelling Showpeople who would meet the definition set out in PPTS Annex 1 and the documents dated 2009 and 2011 indicating that there were overcrowding issues at existing Travelling Showpeople sites at Mill Lane and Sun Street, Biggleswade, the appellants have simply referred to a longstanding relationship with the Council to bring forward the site. As the appointed Inspector, I must depend on the evidence before me. No particular personal circumstances have been highlighted which might weigh in favour of the appeal.
42. No mention has been made of the availability of alternative sites by the appellants. While the Council has confirmed that plots at Bridge Meadow and the Mill Lane site have been added to supply figures, it is uncertain as to what opportunity the appellants would have to live on any of these plots. This has moderate weight in my decision.

Planning balance

43. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that development should be in accordance with the development plan unless material considerations indicate otherwise. Section 70(2) of the Town and

⁵ CB/21/03557/LDCE

⁶ APP/P0240/C/21/3287338, decision issued 7 February 2023.

⁷ CB/16/00232/FULL

Country Planning Act 1990 requires the authority to have regard to the provisions of the development plan, insofar as they are material to the application. There is conflict with the development plan with regard to flood risk.

44. The shortfall in the delivery of plots for Travelling Showpeople within the authority's area and the provision of four further plots is a significant material consideration, while I afford the absence of alternative sites moderate weight.
45. However, it has not been demonstrated that the proposal would not be at risk from flooding. I afford this matter very significant weight. Given the importance of avoiding harm in terms of flood risk, I find that the benefits indicated, including sustainability benefits, would not be sufficient to justify the proposal in light of the harm identified and would not justify a decision otherwise than in accordance with the development plan. As such, the proposal would also fail to comply with Chapter 1 of the Framework and Local Plan Policy SP2 as set out above.
46. Given the harm I have found, a permanent planning permission is not appropriate. Neither party sought a temporary or personal permission but I have considered whether such a permission would protect the public interest by a means that would interfere less with the intended occupiers' human rights and thus be a more proportionate response. However, it would not be suitable to allow either a temporary or a personal permission, as either option would potentially place the lives, property and livelihoods of Travelling Showpeople at risk due to flood risk, which would not be mitigated.
47. The human rights interference associated with my findings is in accordance with the law and is necessary to protect environmental interests which is a legitimate objective. The public interest cannot be achieved by means that cause less interference with human rights. Dismissing the appeal is a proportionate response in these circumstances and a violation of rights under Article 8 of the European Convention on Human Rights, with regard to a right to respect for one's private and family life, his home and his correspondence, would not occur.

Conclusion

48. For the reasons set out above, the appeal is dismissed.

Joanna Gilbert

INSPECTOR