



Appeal Decision

Site visit made on 12 October 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2023

Appeal Ref: APP/F2415/W/22/3313559

**Land opposite Wild Meadow, Bowden Lane, Welham, Leicestershire
LE16 7UX**

- 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 Jamie Smith against the decision of Harborough District Council.
 - The application Ref 22/01238/FUL, dated 22 June 2022, was refused by notice dated 14 October 2022.
 - The development proposed is described as change of use of the land for the siting of 1 mobile home to provide 1 No. Gypsy and Traveller pitch.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In the appeal site address above, I have included '*opposite Wild Meadow*' as detailed in the Council's refusal notice as it adds precision.
3. It is proposed to site a mobile home on a concrete base with some hardstanding area and two car parking spaces. The mobile home would be used for residential purposes by the appellant and his family. There is no dispute between the main parties that the appellant is, by definition, a Traveller having regard to annex 1 of the Government's Planning Policy for Traveller Sites 2015 (PPTS). I have no reason to disagree with such a view and have determined this appeal based on the provision of one Gypsy/Traveller pitch on the site.
4. My site visit revealed that the land was already being used for the siting of a mobile home used for residential purposes. However, the development that has taken place on the land does not accord with the layout plan submitted as part of the planning application. Indeed, the mobile home and the touring caravan are in different positions, there is an absence of a dedicated permeable paving area for car parking, there is no rainwater tank in the position shown on the layout plan, and an outbuilding has been erected near to the touring caravan. I have determined this appeal based on the proposal shown on the submitted layout plan and, in this regard, have not considered the proposal on a retrospective basis.

Main Issues

5. The main issues are whether i) occupiers of the site would be at risk of flooding and ii) the proposal would provide an acceptable choice of means of sustainable

transport to services and facilities thereby minimising reliance on the private motor vehicle.

Reasons

Flood risk

6. The Environment Agency (EA) mapping shows that the appeal site is within flood zone 3. It is within the River Welland catchment floodplain (Flood Zone 3a) and the Stonton Brook floodplain (Flood Zone 3b). The land is defined by the Planning Practice Guidance (PPG) as having a high probability of flooding, i.e., greater than 1 in 100 (1%) annual probability of flooding. Caravans intended for permanent residential use are classified in the PPG as a '*highly vulnerable*' form of development. It is noteworthy that the EA has commented that the area has historical flooding records at the site, including flooding in 1998.
7. Table 2 of the Flood Risk and Coastal Change chapter of the PPG states that planning permission should '*not be permitted*' for highly vulnerable development in flood zone 3. The appellant has submitted a flood risk assessment, dated 2 December 2021, which also acknowledges that the site is within flood zone 3, that the residential caravan is a highly vulnerable form of development, and that the proposal does not accord with the flood risk requirements of the National Planning Policy Framework 2023 (the Framework) or the PPG.
8. Given the clear policy position above, I find that the development should not be permitted. The occupiers of the proposed development would be at unacceptable risk from flooding. The view is also reached by the Environment Agency (EA). The appellant has submitted a Flood Warning and Emergency Plan (FWEP) prepared by STM Environmental, which indicates that the occupiers would subscribe to the EA flood warning direct service which would provide two-hour flood warnings by telephone, email, or facsimile.
9. The FWEP also includes mitigation measures relating to matters such as the use of sandbags, temporary barriers, drainage, gas and electricity, safe storage of records and insurance. It also states that safe egress to Flood Zone 1 would be available by a three-minute drive to Thorpe Langton. The evidence is that the mobile home would be positioned on a concrete pad 300 mm above ground level and fixed to an anchor point, and that rainwater tanks would provide attenuation in terms of the loss of permeable land arising from the siting of the mobile home.
10. I am not persuaded that the FWEP would reasonably ensure the safety of occupiers of the site in the event of a flood. It remains possible that the occupiers of the site may not receive flood warnings in time, either because they are sleeping, or owing to the failure of technology. If this were to happen, the occupiers of the site may be stranded given that the evacuation route may be flooded. Furthermore, the safety of members of the emergency services may be put at risk in this situation.
11. Therefore, the FWEP does not lead me to reach a conclusion that the development would be safe for its lifetime. Furthermore, and, in any event, both the Framework and the PPG make it clear that highly vulnerable development in Flood Zone 3 should '*not be permitted*'. I therefore conclude

that the proposal would not accord with the flood risk requirements of policies CC3 and H6(5)(g)(iv) of the adopted 2019 Harborough Local Plan 2011-2031 (LP), chapter 14 of the Framework, and the PPG.

Sustainable transport

12. The appeal site is in an area of countryside which is a significant distance away from a reasonable level of day-to-day services and amenities. The very small settlements of Welham and Weston by Welland include a very limited range of services, but even the journey to the heart of these areas would be via the long and narrow Bowden Lane which is devoid of footpaths and is unlit. Hence, walking would be discouraged on a regular basis. The distances involved to settlements where there is a greater range of day-to-day facilities and services, such as Great Bowden or Market Harborough, are such that regular walking would not be likely and, furthermore, the routes to such settlements are again along highways which are unlit and do not include continuous footways.
13. There is no evidence before me of any bus stops or services near the appeal site. Owing to the distances involved, and the absence of streetlights, occupiers of the site would be unlikely to use bicycles on a regular basis to reach settlements such as Market Harborough or Great Bowden. Indeed, I do not consider that these roads provide the sort of safe environment, particularly in the hours of darkness or when there is inclement weather, which is conducive to frequent walking or cycling. In this regard, there is conflict with policy H6(5)(b) of the LP which requires Gypsy and Traveller sites to be within '*a safe walking distance of settlement*'.
14. I acknowledge that paragraph 105 of the Framework states that '*opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making*'. In this case, however, the regular potential to access an acceptable level of amenities and services in surrounding settlements, on foot or by bicycle, would be significantly inhibited for the reasons outlined above. Furthermore, the evidence does not indicate that there are suitable opportunities available for occupiers of the site to use public transport to access settlements which contain a reasonable level of day-to-day amenities and services.
15. The appellant states that it would be possible to use taxis to reach settlements and that grocery shopping could take place using home delivery services. While this type of living is of course possible, it would still likely involve motorised trips which would have the potential to lead to similar environmental harm. In any event, I am not persuaded that occupiers of the site would seek to rely on the use of taxis for all journeys and while home grocery deliveries may be possible, other trips would be necessary for the family on a day-to-day basis relating to school, leisure and recreational activities.
16. I therefore find that the evidence indicates that car dependency would be very likely for access to day-to-day activities and, in this regard, there would be direct conflict with policy H6(5)(b) of the LP which states that Gypsy and Traveller sites will be permitted where '*the site is located within safe walking distance to a settlement and has access to a range of services including health and education provision*'. In this regard, I do not therefore find that the appeal site is in a sustainable location even accounting for the above flexible approach

to addressing sustainable transport and accessibility matters as outlined in the Framework.

17. For the above reasons, I conclude that the proposal would not accord with the sustainable and accessibility requirements of policies GD1 and H6 of the LP and the Framework. This is a matter that weighs against allowing the appeal and, indeed, reflects the control advocated in paragraph 25 of the PPTS which is 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'*.
18. In reaching this conclusion, I have considered the PPTS which does not specifically include reference to distance from or means of transport to shops and services. Nonetheless, the PPTS requires planning applications to be determined against development plan policies for Gypsies and Travellers. While a settled base may mean that there was less travel when compared to a roadside existence, I do not consider, as detailed later in this decision, that a roadside existence need be an inevitable outcome if this appeal were to be dismissed. In any event, I do not find that the proposal would accord with policy H6 of the LP. It is not located in safe walking distance to a settlement and the evidence is that access to a range of services including health and education provision would, on a day-to-day basis, be private motor vehicle focussed. The conflict with Policy H6 of the LP and the Framework is an overriding matter in respect of this main issue.

Other Considerations

19. The evidence is that the appellant is married, has four children and until recently was temporarily living on a Traveller pitch at 'Greenacres' which belonged to another family. While not entirely certain, the evidence points to the likelihood of the appellant and his family needing to vacate 'Greenacres' when the other family returned.
20. As detailed above, there is no dispute that the appellant is a Traveller in PPTS terms. In this regard, I have had regard to Article 8 of the European Convention on Human Rights, as incorporated into the Human Rights Act 1998 (HRA), which states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.
21. The Gypsy and Traveller Accommodation Assessment for Leicester and Leicestershire 2017 (2017 GTAA) identifies a need for Gypsy and Traveller pitches in the area for 2016-2031. It identifies a need for five pitches relating to Gypsies/Travellers in accordance with the definition in annex 1 of the PPTS. The Harborough District Authority Monitoring Report 2021/22 states that four of these five pitches have already been provided. In addition, Policy H6 of the LP allocates sites for Gypsies and Travellers and there is also 'reserve site' at Boneham's Lane, Gilmorton to meet future accommodation needs due to either an increase in the need of pitches arising from a change to the PPTS definition and/or sufficient evidence is provided that the identified 'unknown' Gypsy and Traveller population does not meet the PPTS definition of Gypsy and Traveller.
22. Policy H6 of the LP states that the need arising from non-PPTS definition Gypsies and Travellers, and 'unknown' Gypsies/Travellers, is identified as being

respectively 24 pitches and 13 pitches. The Court of Appeal judgement of *Smith v SSLUHC & Ors* (2022) EWCA held that the PPTS definition of Gypsy and Travellers is discriminatory in so far that it does not include persons of nomadic habitat of life who, on the grounds of their own or family's dependants' educational or health needs or old age, have ceased to travel permanently.

23. In the context of the above, I find that when the full extent of non-PPTS definition need is considered, the evidence does not indicate that the local planning authority (LPA) can demonstrate a five-year supply of deliverable Gypsy and Traveller pitches. Indeed, and, in this regard, the LPA's own data in the form of the '*pitch requirements and supply document*', dated 12 October 2023, indicates 4.12 years supply for 2022-2027. This relies on the provision of pitches from the LP 'reserve' site. However, the evidence is not certain about whether Gypsy/Traveller pitches would be capable of being delivered on this site in the next five years. This adds additional uncertainty about the five-year supply position. The LPA has indicated that if pitches could not be provided on the reserve site within the next five years, the supply position would be 1.38 years.
24. While one may argue that the LPA can technically demonstrate a five-year supply of deliverable pitches in the context of the PPTS definition of Gypsy and Traveller sites, and against locally set targets, I do not find that the evidence demonstrates that it can demonstrate a five-year supply of deliverable Gypsy/Traveller pitches when a non-discriminatory approach to need and supply is considered. I find that the supply position is not entirely certain for the reasons outlined above and, in addition, the 2017 GTAA has not been reviewed for several years thereby resulting in further uncertainty in terms of whether the need for Gypsy and Traveller pitches has changed.
25. Paragraph 27 of the PPTS states that '*if a local planning authority cannot demonstrate an up to date 5-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission*'. For the purposes of determining this appeal, and, given my reasoning above, my appeal decision is based on a worst-case scenario, i.e., that the LPA is not able to demonstrate a deliverable five-year supply of Gypsy/Traveller sites.
26. The LPA accepts that there are currently no alternative Gypsy and Traveller pitches in the area to accommodate the family should they be required to immediately vacate the appeal site. This is therefore a matter which weighs in favour of allowing the appeal. Furthermore, I attribute some positive weight to the fact that the proposal would make more effective use of a previously developed site in accordance with paragraph 26(a) of the PPTS.
27. I am mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. The appellant has four children. The needs of the children must in law be a primary consideration in the determination of these appeals.
28. The evidence is that the appellant's four children are of school age and attend local schools. I do not doubt that a settled base would provide educational and emotional stability for the children. This is therefore a matter to which I afford positive weight in favour of allowing the appeal. However, this is tempered to

some extent as it may be possible for the appellant to secure planning permission on an alternative site which is outside of Flood Zone 3 and still allow the children to attend local schools.

29. I note that the appellant and his family are registered with local health providers. This provides some stability and certainty for the family in terms of health care. However, this is not a matter to which I afford very significant weight in favour of allowing the appeal, as there is no evidence before me to indicate why it would not be possible to explore the potential to secure planning permission on another site in the area, fully according with the requirements of policy H6 of the LP, while also continuing to benefit from health providers.
30. The appellant states that he is currently residing on the site in a mobile home which *'has been modified as much as is practical for the comfort Mr Smith's wife due to her ongoing severe medical condition'*. I sought clarification from the appellant about the health condition as part of the appeal. This is sensitive information and as such it is not appropriate for me to disclose details as part of this appeal. However, it is clear from the evidence that the appellant's wife is undergoing treatment for a specified health condition.
31. It is not certain whether the health condition does or will amount to a disability from the point of view of long term and substantial effects on the ability to carry out normal day to day activities. Nonetheless, and, for the purposes of this appeal, I have nevertheless assumed that the appellant's wife does have a disability which is a protected characteristic in respect of the Equality Act 2010.
32. In respect of the above, 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. I do not doubt that the certainty of a stable residential base would have the potential to go some way in helping to alleviate and control some of the symptoms associated with the wife's disability. This weighs in favour of allowing the appeal.
33. The Act also recognises that race constitutes a relevant protected characteristic for the purposes of the PSED. Romany Gypsies and Irish Travellers are ethnic minorities, and thus have the protected characteristic of race. In this regard, I afford positive weight to the fact that use of the land as a residential caravan site would enable the appellant and his family to live a nomadic lifestyle in accordance with their culture and values.

Planning Balance and Conclusion

34. The occupiers of the site would be at risk of flooding. The proposal includes *'highly vulnerable'* development in Flood Zone 3 and national planning policy states that the development should *'not be permitted'*. This is a matter to which I afford very substantial adverse weight in the planning balance. Furthermore, I have found that on balance the proposal would not be sustainably located and there would be significant reliance on the private motor vehicle for most day-to-day trips. This also weighs significantly against allowing the appeal.

35. Weighed against the above are the other considerations to which I have referred. I acknowledge that a refusal of planning permission would have the potential to result in the family being made homeless if the LPA were to take enforcement action. However, both this matter, and the appellant's wife who has a disability, would need to be fully considered if the LPA considered that it was expedient to take enforcement action, particularly from the point of view of a compliance period.
36. In the context of the above, and despite the undisputed lack of other available alternative Gypsy/Traveller pitches in the area, there is no credible reason why the appellant could not explore, within a relatively short period of time, the potential to secure planning permission and occupy a new Gypsy/Traveller site elsewhere in the locality which would fully accord with the requirements of policy H6 of the LP. Consequently, I find that permanent planning permission is not therefore justified. My conclusions on the main issues are matters of overriding concern. The other considerations do not collectively attribute sufficient weight to outweigh the harm that would be caused from the proposal from a flood risk and locational sustainability point of view.
37. I have considered, in view of the other considerations outlined above, whether a temporary planning permission would be justified. The risk of flooding is a matter to which I afford very substantial adverse weight in the planning balance. It remains possible that a flood event could occur at any time. I recognise that the appellant's wife has a disability, but the risk associated with a flooding event is real and no doubt would be an ongoing psychological concern for all members of the family. Given these matters, coupled with the proposal's conflict overall with policy H6 of the LP, and the potential to secure planning permission for a Traveller pitch elsewhere, I do not find that a temporary planning permission is justified.
38. I do accept that in reaching the above conclusions, there is a possibility that the appellant and his family may have to leave the site if the LPA were to take enforcement action. In the absence of alternative affordable, suitable and available Traveller sites, such an event may mean that the appellant's family would be made homeless and that they would have to live a roadside existence, at least for some time. The loss of a home in such a circumstance would lead to a significant interference of rights under Article 8 of the European Convention on Human Rights as incorporated into the HRA.
39. In this case, however, it remains possible that the appellant could source an alternative site in the area and seek planning permission on it for a Gypsy/Traveller pitch in accordance with policy H6 of the LP. Therefore, a roadside existence need not be an inevitable outcome arising from this appeal being dismissed. In any event, the collective planning harm that I have identified is of such weight that a refusal of planning permission is a proportionate, legitimate and necessary response that would not violate those persons rights under Article 8. I find that the protection of the public interest, and safety of occupiers of the site, cannot be achieved by means that are less interfering of the rights of the family arising from the refusal of planning permission. Furthermore, and, having regard to the PSED, I find that the identified risk and harm caused by the proposal outweighs any benefits in terms of eliminating discrimination against persons with the protected characteristic of race and disability. In this regard, it is proportionate and necessary to dismiss the appeal.

40. For the above reasons, I conclude that the development does not accord with the development plan for the area taken as a whole and there are no material considerations, including the supportive letter appended to the appellant's statement of case, which indicate the decision should be made other than in accordance with the development plan. Neither permanent nor temporary planning permission is justified in this case. Consequently, the appeal should be dismissed.

D Hartley

INSPECTOR