



Appeal Decision

Hearing held on 14 September 2023

Site visit made on 20 September 2023

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th October 2023

Appeal Ref: APP/D0515/W/23/3320053

Crazy Acres, Chase Road, Benwick PE15 0XS.

- 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 Andrew Smith against the decision of Fenland District Council.
 - The application Ref F/YR21/1520/F, dated 30 December 2021, was refused by notice dated 12 October 2022.
 - The development proposed is stationing of gypsy caravans (six, including two on F/YR09/0699) with ancillary day room, hard standing, gates and fencing.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning permission was granted in 2009 (F/YR09/0699/F) (the 2009 permission) for the change of use of land to travellers site involving formation of access track and siting of 2 no touring caravans to be occupied by the appellant and his dependents. An application F/YR18/1038/F for the removal of concrete hardstanding and replacement with eight static caravans and associated works, gravel access drive and associated fencing and planting all to accommodate one traveller's family was submitted in November 2018 and was subsequently refused and the related appeal¹ was dismissed. At the time of that appeal, there was a dayroom and a mobile home on site.
3. The application form indicates that work on site started on 1 March 2021. However, the proposal has not been fully implemented, with hardstanding, boundary treatments, and foul water drainage works having taken place. I have therefore dealt with this appeal on the basis of the submitted plans.
4. Prior to the hearing, I requested confirmation of plans determined by the Council as the plans before me differed from those on the Council's decision notice. The relevant plans² were confirmed by both parties at the hearing.
5. There is no dispute that the site's intended occupiers are Gypsies and Travellers falling within the Planning policy for traveller sites 2015 (PPTS) definition.
6. The National Planning Policy Framework (the Framework) was revised on 5 September 2023. It has not altered any of the paragraphs referred to in the

¹ APP/D0515/W/19/3228109, decision issued 20 February 2020.

² ASM2 LP01; ASM2 LP02; ASMI LP03; ASM3 PL01; ASM3 PL02; ASM3 PL03; and ASM3 PL04.

hearing or in appeal documents. I have had regard to it and consider no party would be disadvantaged by this.

7. Following the hearing, I wrote to the parties regarding provision of maps from the Fenland Level 1 Strategic Flood Risk Assessment June 2022 (SFRA). As both parties have had the chance to comment on these maps and the SFRA, no disadvantage would arise from my consideration of the maps.

Main Issues

8. The main issues in this appeal are:

- a) The effect of the proposal on the character and appearance of the area;
- b) Whether the site is suitably located with regard to proximity to services;
- c) Whether the proposal would be at risk from flooding; and
- d) Whether any harm identified, including conflict with the development plan, would be outweighed by other considerations.

Reasons

Character and appearance

9. Located within the flat, open Fenland countryside outside the village of Benwick, the triangular site is bounded by storage buildings and a wooded copse to the north, a drainage ditch to the east, and Chase Road to the west. Vegetation adjoins the site's boundary wall along Chase Road, while trees intermittently line Chase Road west of the roadway. Beyond the ditch and Chase Road, the surrounding area is largely characterised by agricultural fields with sporadic houses and farm buildings. Chase Road is a rural and partially unadopted road which connects to the B1093 Whittlesey Road and serves several other houses. Keyworth House Farm is located to the north, while Keyworth Cottages and Keyworth Bungalow lie to the south.
10. The proposal would comprise a dayroom and six pitches for mobile homes. The dayroom would lie closest to the site's access from Chase Road, with the six pitches sited parallel to one another running northwards from the dayroom. The northern, eastern, and western site boundaries would have timber fencing.
11. Located on existing hardstanding, the dayroom would be situated so that it would be unlikely that the proposed pitches would be visually apparent from the south along Chase Road. Apart from the dayroom, there would be only glimpsed views of caravans from this vantage point. Due to trees and vegetation, there would only be intermittent glimpses of the site's western boundary from the wider countryside and from the B1093.
12. However, the site's eastern boundary would adjoin a drainage ditch, with the open countryside beyond. Even with the provision of a timber fence and the background vegetation, given the generally flat surrounding landscape, it is possible to see the site in long views from the B1093. It would therefore be possible to see the linear arrangement of caravans and pitches. This would be more prominent and negative than the 2009 permission, where the hardstanding for a lesser number of touring caravans was shown at the site's southern end. By reason of the number and arrangement of caravans, the proposal would have a detrimental effect on the open countryside.

13. While the dayroom would be sited to mask the pitches and caravans from the south, the dayroom would be some 10 metres by 10 metres in width and depth and would be approximately 5.3 metres to the highest point of the pitched roof. It was suggested that the dayroom's roof could be amended to a flat roof. Notwithstanding the roof type, the dayroom would not be modest in scale and would be the most prominent part of the proposal viewed from Chase Road.
14. Part D of Policy LP5 of the Fenland Local Plan 2014 (FLP) states that in the countryside, permanent built structures should be restricted to small amenity blocks associated with each pitch. The proposal would provide for the family to gather together during bad weather, but it is not clear how the dayroom would provide for all pitches. Even if it were justified as a single dayroom, the large dayroom would be a notable and negative intrusion within the open countryside. Taking the dayroom with the other structures proposed, the proposal would detract unacceptably from the area's open and rural character.
15. In the event of a split decision to exclude the dayroom, the increased site coverage with mobile homes would detrimentally affect local character. While mention was made of individual dayrooms for each pitch or pair of pitches, no such proposal is before me.
16. Though it is possible to condition soft landscaping, in the absence of confirmation from the Internal Drainage Board (IDB), it is not clear whether soft landscaping would adequately mitigate the proposal's effect and if it could be introduced without interfering with the drainage ditch's safe operation while ensuring consistency with PPTS paragraph 26 which amongst other things seeks to ensure that soft landscaping positively enhances the environment and increases its openness.
17. The appellant has referred to paragraph 175 of the Framework which addresses the need for plans to distinguish a hierarchy of international, national and locally designated sites. This is an appeal, rather than plan-making. However, the appeal site does not fall within a valued landscape. It is not unsuitable for either the Council or for me to consider the matter of the character and appearance of the area in this appeal.
18. I recognise there are few other properties locally; that the appellant has sought to reduce the proposal's prominence; there are other caravans locally; and householders may keep caravans within residential curtilages. With regard to planning permissions for large-scale housing on FLP allocations, the effect on character and appearance will have been taken into account at the FLP examination and application stages.
19. In conclusion, the proposal would have a negative effect on the character and appearance of the area, in conflict with FLP Policies LP5 Part D (a) and (e) and LP16 (d), which seek to protect the character and appearance of the area and provide high quality environments. It would also contravene PPTS paragraph 25 which confirms 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.

Location

20. Benwick has a shop, a primary school with a capacity of 140 pupils, a public house, places of worship and a limited bus service to March and other larger

settlements, while there is a community hospital and shops in Doddington. The site is 1.5km from Benwick via the B1093, a 60 miles per hour road. The B1093 does not have street lighting or pavements and is bounded on either side by drainage ditches and the River Nene (Old Course) for much of the journey from the site into Benwick.

21. Given the distance and the absence of pedestrian and cycle infrastructure, including street lighting, it would be unlikely that occupiers of the site would regularly walk or cycle to services and facilities in Benwick or travel to other settlements by public transport. Though there is scope for occupiers undertaking some shared trips as part of the same extended family group, there would be an undue reliance on the use of private motorised transport. Although transport movements will already be made on the local road network by residents of Chase Road and Benwick, the addition of four pitches would contribute further unsustainable movements by the private car.
22. While the appellant considers that there is a good level of accessibility for rural East Anglia, there is no evidence before me that the site's accessibility is of a good quality compared to other sites. No objection has been made on highway safety by the County Council in its role as the Highways Authority. However, this does not indicate that the site is accessible by sustainable travel modes.
23. I conclude that the site is not suitably located with regard to proximity to services, contrary to FLP Policies LP5 Part D (d) and LP15. These policies seek respectively to ensure that Gypsy and Traveller pitches enable safe and convenient pedestrian access and that all development proposals contribute to the delivery of the Council's vision for sustainable transport.

Flood risk

24. Paragraph 159 of the Framework states 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.
25. Paragraph 162 of the Framework confirms that the aim of the sequential test (ST) is to steer new development to areas with the lowest risk of flooding from any source. It outlines that 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. It confirms that the strategic flood risk assessment will provide 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.
26. FLP Policy LP2 deals with the health and wellbeing of Fenland's residents and refers, amongst other things, to the need for development proposals to be safe from flooding. Part D of FLP Policy LP5 provides criteria for assessment of Gypsy and Traveller pitches and Travelling Showpeople plots. Criterion a) requires that the site and its proposed use should not conflict with other development plan policy or national policy on issues such as flood risk. FLP Policy LP14 addresses the need to respond to climate change and manage the risk of flooding in Fenland. It sets out the need for ST for all forms of flooding and the provision of the Exception Test (ET), if necessary.

27. Sited within the Middle Level of the Fens, the site lies in Flood Zone 3, with a high probability of flooding. The nearest Environment Agency Main Rivers are the River Nene and the River Great Ouse, located some distance from the site. The River Nene (Old Course) lies adjacent to the B1093 close to the site and is defended by defences maintained by the Middle Level Commissioners. The Middle Level is divided into pumped catchments managed by IDB. One of the March West and White Fen IDB drains runs alongside the appeal site.
28. The proposal would increase the approved number of residential caravans on site from two to six and would involve the erection of a single-storey dayroom. This proposed intensification in the number of residential caravans on site would increase the number of households to be affected by any future flooding.
29. Given its location in an area with a high probability of flooding, it is necessary to carry out the ST. When carrying out the ST, the PPG³ dated August 2022 advises that where it is not possible to locate development in low-risk areas, the ST should compare reasonably available sites within medium risk areas; and then, only where there are no reasonably available sites in low and medium risk areas, within high-risk areas. The PPG also confirms that, initially, the presence of existing flood risk management infrastructure should be ignored, as the long-term funding, maintenance and renewal of this infrastructure is uncertain. Climate change will also impact upon the level of protection infrastructure will offer throughout the lifetime of development. The ST should consider the spatial variation of risk within medium and then high flood risk areas to identify the lowest risk sites in these areas, ignoring the presence of flood risk management infrastructure. It may then be appropriate to consider the role of flood risk management infrastructure in the variation of risk within high and medium flood risk areas. Information such as flood depth, velocity, hazard and speed-of-onset in the event of flood risk management infrastructure exceedance and/or failure, should be considered as appropriate.
30. Providing local advice, the Cambridgeshire Flood and Water Supplementary Planning Document (2016) (SPD) sets out how applicants should undertake the ST. This includes agreeing with the relevant Council the geographical area of search for the ST. The SPD's starting point is the entire district of Fenland, but it acknowledges that the functional requirements and objectives of the proposal may cause the area of search to be reduced or expanded through discussion.
31. Two years after the SPD's adoption, the Council presented a Flood Risk Sequential Test Methodology to Planning Committee on 28 February 2018. The document provides informal guidance to simplify the process and provide advice to developers. It confirms that development in the countryside will have an area of search of the whole of the rural area of Fenland. It also confirms that both larger and smaller sites can be considered as reasonable alternatives.
32. The appellant's site-specific Flood Risk Assessment dated April 2023 (FRA) confines its area of search for the ST to a 4km radius of the site and finds no reasonably available alternatives. However, there is no evidence that the area of search was agreed with the Council. Furthermore, the FRA does not set out which sites were considered and ruled out within the appellant's area of search or indeed what the spatial variation of flood risk was within those sites when compared to the appellant's site. Reference was made at the hearing to no

³ Paragraph 7-024-20220825 How can the Sequential Test be applied to the location of development?

approvals having been issued where there were not already occupiers in place. However, no detailed data was provided to evidence this.

33. While there is land within Flood Zone 3 near the site and nearby areas of undeveloped land within Flood Zones 1 and 2 are often prime agricultural land within larger landholdings, this does not remove the requirement to produce an ST. The area of search is too restrictive. Given the paucity of information, it has not been demonstrated that the ST has been passed as it has not been shown that sites at a lower risk of flooding are not reasonably available.
34. Reference has been made to appeal decisions⁴ and to planning permissions⁵ within the district. I have not been provided with detailed background information for these cases and it is not possible to confirm whether they present similar circumstances to the appeal before me, in terms of location and the extent of flood risk, detailed flood risk modelling, the quality of their respective FRA, and the quantum of development. Additionally, these may have been determined prior to the 2022 changes to the PPG. Furthermore, with regard to the level of flood risk protection, the PPG confirms that initially the presence of flood risk management measures should be ignored. It appears to me that the necessary steps of the ST have simply not been carried out or evidenced appropriately.
35. The appellant owns the site and has links with Benwick, though the site is away from the village on a relatively isolated pocket of land. However, this is not sufficient justification to pass the ST. I also understand that three previous FRA have been produced for this site in 2009, 2018 and 2021. I have been provided with these documents in full or in part. However, nothing that I have read in the earlier FRA documents alters my concerns about the content of the FRA 2023 with regard to the ST.
36. Turning to the ET, paragraph 163 of the Framework states that if it is not possible for development to be located in areas with a lower risk of flooding (accounting for wider sustainable development objectives), the ET may have to be applied. This will depend on the site's and the development's potential vulnerability, in line with the Framework's Annex 3 and the PPG. As the proposal would include mobile homes intended for permanent residential use, it would be classified as highly vulnerable development.
37. The appellant considers the proposal to satisfy the ST and has carried out the ET. Notwithstanding that I have found that the ST has not been passed and that Table 2: Flood risk vulnerability and flood zone 'incompatibility' within the PPG advises that development should not be permitted in Flood Zone 3, I have considered the appellant's ET.
38. The ET, as set out in paragraph 164 of the Framework, has two parts. Firstly, it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk. Secondly, the ET requires 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.

⁴ APP/D0515/C/18/3196061, decision issued 24 September 2019; and APP/D0515/C/19/3226096 and APP/D0515/W/19/3226090, decisions issued 2 April 2020

⁵ F/YR21/0768/F; F/YR22/1135/F; F/YR21/1501/F; F/YR21/0309/F.

39. The appellant argues that the provision of four additional Gypsy and Traveller pitches is a sustainability benefit, given the level of need. I will turn to the matter of need below. However, the appellant has not provided any relevant and proportionate evidence on sustainability benefits. This is not in keeping with the advice in the PPG⁶. In the absence of suitable evidence on wider sustainability benefits, the first part of the ET has not been passed.
40. Turning to the second part of the ET, the FRA 2023 draws on the 2021 FRA and finds that the site is not in a functional floodplain, but rather a passive floodplain of the River Nene, some 9km from the site. This FRA concludes that any flooding would be low-velocity and of gradual onset. It was confirmed at the hearing that the appellant considered that there would be an insufficient volume of water to flood the site. The FRA considers that any flood risk could be managed with flood alerts and precautions, and result in minimal risk to life. Occupiers could also be advised to register with the Environment Agency's flood warning system.
41. Notwithstanding the distance from main rivers and the presence of flood defences, areas with flood defences remain in areas of higher flood risk due to a residual risk of flood defence failure. Indeed, the PPG⁷ advises that areas behind flood defences are at particular risk from rapid onset of fast-flowing and deep-water flooding, with little or no warning if defences are breached.
42. Given that the site is located in Flood Zone 3, there is a high probability of flooding. The apparent absence of flooding in recent years and relatively low average annual rainfall does not mean that flooding is not possible. With the generally flat landscape and low land levels of close to sea level, it is possible that the fens could suffer from sudden inundations, particularly if a key defence or pumping system failed. Furthermore, there is little information before me in respect of any allowance for effects of climate change. If flooding took place, the absence of land within lower Flood Zones could lead to the future occupiers' safety being put at risk. This is of particular importance where touring or static caravans are involved, as such structures require very little depth of water to float or become isolated and without safe refuge. This could be compounded in a countryside location, where it would take longer for emergency services to reach the site.
43. The Environment Agency responded to the application and did not object, but no consultation response was received from the IDB. The absence of IDB response does not assuage my concerns. While the FRA indicates that the site is situated above adjoining agricultural land, thereby possibly providing scope for the risk to the site during a flood event to be lowered, I have limited evidence that this would be the case.
44. Although the appellant considers the previous Inspector to have taken a narrow and unnecessarily cautious approach to flood risk, it will be seen from my decision that I concur with the concerns identified in the previous appeal decision. There is insufficient information to determine to a reasonable degree that the proposed development would be safe from flooding. It has therefore not been demonstrated that the second part of the ET has been satisfied.

⁶ Paragraph 7-036-20220825: How can it be demonstrated that wider sustainability benefits to the community outweigh flood risk?

⁷ Paragraph 7-042-20220825: How can residual risk be addressed?

45. The appellant has referred to the Huntingdonshire SFRA 2017. However, as the site lies in Fenland, the Huntingdonshire SFRA is not directly applicable. With regard to maps K and M from the Fenland Level 1 SFRA 2022, which respectively show levels of flood risk and potential development locations and the maximum extent of reservoir flooding, these do not alter my concerns about the lack of certainty in terms of the ST and ET.
46. Concluding on this main issue, it has not been demonstrated that the proposal would not be at risk from flooding. It would therefore contravene FLP Policies LP2, LP5, and LP14, the Cambridgeshire Flood and Water SPD and paragraphs within Chapter 14 of the Framework, and the PPG as set out above.

Other considerations

47. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that any determination must be in accordance with the development plan unless material considerations indicate otherwise. Paragraph 47 of the Framework and PPTS paragraph 22 echo this element of the Act.
48. Paragraph 38 of the Framework encourages local planning authorities to approach decisions on proposed development in a positive and creative way, and to work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Paragraph 62 of the Framework seeks to address the needs of groups with specific housing requirements, including travellers. Amongst other things, paragraph 119 of the Framework outlines that planning decisions should promote effective use of land in meeting the need for homes.
49. PPTS paragraph 4 sets out several criteria, including the aim to promote more private traveller site provision; increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply; and to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure.

Need and supply

50. PPTS paragraph 10 requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against locally set targets and identify a supply of specific developable sites or broad locations for growth for years 6-10 and, where possible, for years 11-15. PPTS paragraph 27 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.
51. PPTS paragraph 24 outlines, amongst other things, the need to consider the existing level of local provision and need for sites, the availability (or lack) of alternative accommodation, and other personal circumstances. It also confirms that locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites.
52. The Fenland Gypsy and Traveller, Accommodation Needs Assessment (GTANA) Update 2013 identified a need for 18 pitches between 2013 and 2026. It is

acknowledged by the Council that this GTANA is not up-to-date. A new GTANA is presently being produced to support the development of the emerging Local Plan (eLP) for Fenland. No precise timescales have been provided in respect of the likely publication of the new GTANA, though the Council hopes to reach pre-submission consultation on the eLP by July 2024. This timing is by no means certain. No sites were allocated for pitches within the current FLP. The Council confirmed at the hearing that planning permission has been granted for 57 pitches since 2013. This indicates that the level of need is higher than that set out in the current GTANA. Appeal decisions⁸ issued in 2019 and 2020 also noted that there is an underestimate of need in the district. The Council's current approach focusses on application of criteria-based Policy LP5 in assessing individual applications.

53. In the absence of an up-to-date GTANA supporting the eLP, it is not possible to be certain of the extent of current need for pitches in Fenland. Nevertheless, it is a material consideration to which I must attribute weight. Given the inability of the Council to identify a five-year supply of specific deliverable sites and the apparent underestimation of need, I give significant weight to the provision of four additional pitches for Gypsies and Travellers.

Alternative sites

54. The appellant confirmed at the hearing that there were no known alternative sites. However, the appellant is not likely to be looking for sites elsewhere given their ownership of the site and the 2009 permission. It was further confirmed that the nearest Council-owned sites in Wisbech and King's Lynn had no pitches available. The Council was not aware of any further pitches coming forward via a call for sites process as part of the eLP, with sites generally coming forward as windfall sites. Though the consideration of alternative sites should have formed part of the ST process, I have identified that there is a paucity of evidence in this regard. I therefore afford limited weight to the lack of suitable and available alternative sites.

Personal circumstances

55. The appeal site would be occupied by six households within the same extended family. For reasons of clarity in my decision only, I have set out the six households numbered by household below:

Household 1: The appellant, his wife, and their adult daughter

Household 2: The appellant's adult daughter, her husband, and their young child

Household 3: The appellant's sister and her two young grandchildren, for whom she has assumed guardianship

Household 4: The appellant's adult daughter, her husband, and their two young children

Household 5: The appellant's adult daughter and her two young children

Household 6: The appellant's adult, pregnant daughter and her partner

⁸ APP/D0515/C/18/3196061, decision issued 24 September 2019; and APP/D0515/C/19/3226096 and APP/D0515/W/19/3226090, decisions issued 2 April 2020

56. Of the six households, only the appellant and his household presently benefit from the personal permission granted in 2009. Households 2 – 6 would be directly affected by my decision. The appellant's intention is that all six households would have a settled base together on the appeal site. His primary concern is the wellbeing of his family, including the education of his grandchildren and his sister's grandchildren.
57. Presently, the members of households 2 and 3 are living on the appeal site, while the appellant and his household are travelling. All three children presently on site are attending the local school. One of the children has recognised special educational needs for which they receive specialist support. Their headteacher has confirmed the importance of consistent schooling and ongoing specialist support to assist the child's development. Local residents and the appellant's family also spoke at the hearing of the importance of the children attending the local school, making friends, and attending local clubs and birthday parties. Reference was also made to the extended family's attendance at a local church.
58. Unlike in the previous appeal, none of the potential occupiers of the site are presently resident at Oxney Road, Peterborough. The members of households 1, 4, 5 and 6 are all currently living on the roadside in different locations across England. It was indicated at the hearing that they are rarely permitted to remain in one place for more than a few nights and that this causes difficulties with obtaining and carrying out paid work, accessing adult literacy classes, and supporting their children's access to education.
59. If the appeal is dismissed, it is likely that one of the households presently on site would leave the site and take up a roadside existence as the appellant intends to return to the appeal site over the Winter. This would detrimentally affect their ability to find work, their overall wellbeing, and the education of children. Furthermore, those members of the extended family who are presently on the road would remain in an extremely uncertain position, with associated negative effects on access to healthcare, education and work without a postal address. It was asserted by the appellant that the circumstances of a roadside existence have become even more difficult and precarious since the Police, Crime, Sentencing and Courts Act 2022 came into force and the frequency of being moved on by the Police increased.
60. The appellant has also referred to the 2020 findings of a research project on the effects of hate crime on the wellbeing of members of Gypsy, Traveller and Roma communities, with particular reference to suicide rates. Reference was also made by the appellant to a recent legal judgment⁹. However, while reference was made to poor outcomes achieved by many Gypsies and Travellers and the disproportionate difficulty faced by many in obtaining planning permission, whether temporary or permanent, no specific evidence was provided to me on these matters.
61. Human rights and equality issues are integral to my assessment. Of particular relevance is the Human Rights Act 1998 at Article 8, which confirms that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, where interference may be justified in the public interest. Interference may be justified where it is in the interests of,

⁹ Smith vs SSLUHC and others [2022] EWCA Civ 1391

amongst other things, the country's economic well-being, including protection of the environment and upholding planning policies.

62. As required by Section 149(1) of the Equality Act 2010, the Public Sector Equality Duty is also applicable as the future occupiers are Gypsies and Travellers and would have protected characteristics. There is therefore a need to have due regard to eliminating discrimination, advancing equality of opportunity, and fostering good relations.
63. I afford the personal circumstances of the members of households 2 – 6 significant weight.

Best interests of the children

64. It is also necessary to consider Article 3 of the United Nations Convention on the Rights of the Child, which requires a child's best interests to be a primary consideration in all actions by public authorities concerning children. Although a primary consideration, the best interests of a child are not a determinative planning issue, but no consideration must initially be regarded as more important or, in advance of the subsequent assessment of the individual circumstances, be given greater weight. However, the best interests of the children will not always outweigh other considerations including those that impact negatively on the environment.
65. The appellant has identified that seven children would be living on four of the six pitches, with an additional child expected in the near future on a further pitch. Most of the children would be of school age and three are presently at the local school, which has further capacity for pupils. I understand it is intended that the four children not presently on site would also be enrolled at that school in due course. I have referred to the specific educational needs of one of the children above.
66. I accept that a settled base without overcrowding would be in the best interests of all the children in terms of their mental and physical well-being and development, engagement with their friends, and stable access to education, healthcare and leisure facilities. Accordingly, I afford the best interests of the children significant weight.

Consistency of decisions

67. It will be seen from my decision that there is little difference between this decision and the previous appeal decision. Despite the changes made in respect of the number of pitches proposed, there has been failure to advance the merits of the case for pitches for Gypsies and Travellers on this site.
68. The appellant argues that the Council's refusal of this proposal is inconsistent with the granting of permission in several other recent cases in Wimblington, Leverington, and Wisbech St Mary, as referred to in the flood risk section above and as noted in the report in the Fenland Citizen newspaper dated 22 March 2023. However, I do not have sufficient information before me in respect of those decisions to conclude that they are directly comparable with the circumstances in this proposal. As such, I afford this no weight in my decision.

Other Matters

69. Concerns were raised by Benwick Parish Council regarding further issues of overdevelopment and highway safety. I acknowledge that there is sufficient space within the site for the parking and turning of vehicles. I also note that the previous Inspector did not find the appeal scheme for a total of eight pitches to be harmful in respect of highway safety. I have not dealt with the matter of overdevelopment in any detail as I am dismissing the appeal.
70. The appellant has suggested some changes to conditions on the 2009 permission. However, as this proposal does not seek to vary those conditions, I have not given this matter further consideration. During the hearing, I was made aware of new housing development in Benwick for some 50 homes in total. This does not alter my findings.

Planning Balance

71. Notwithstanding that the proposal would be contrary to the development plan, it is necessary to consider whether there are material considerations which would warrant a decision other than in accordance with the development plan.
72. There are several considerations in favour of the proposal. These include significant weight given to the provision of four additional pitches, significant weight to the personal circumstances of households 2 - 6, significant weight to the best interests of the children, and limited weight to alternative sites.
73. I have identified that there would be harm to the character and appearance of the area and in respect of the suitability of the location with regard to proximity to services. Each of these main issues is given moderate weight. Given that the appeal site lies within Flood Zone 3, the proposal would constitute highly vulnerable development, and there would be children on site, I afford substantial weight to the harm associated with flood risk.
74. Neither party sought a temporary permission but it remains necessary for me to consider whether such permission would protect the public interest by a means that would interfere less with the intended occupants' human rights and thus be a more proportionate response. However, it is not evident that personal circumstances will change significantly in the next few years, with education needs likely to continue beyond that time period. Furthermore, it remains possible that the additional households would be affected by flooding, even if the permission was temporary in nature.
75. I have also given thought to a personal permission. However, it would not be appropriate to grant a personal permission given the absence of clarity over flood risk and the increase in the number of households to be affected by any future flooding, the effects of which could be negative and long-lasting.
76. Having regard to paragraph 55 of the Framework, I have also considered whether any conditions would render otherwise unacceptable development acceptable. However, in this instance, I do not have sufficient certainty that this would be the case.
77. Having had regard to all material considerations, the benefits associated with the proposal do not outweigh the harms I have identified. Accordingly, the harms can only be adequately addressed by my dismissal of the appeal.

Interference with the human rights of the appellant and his family is therefore necessary and proportionate.

Conclusion

78. For the reasons given above and having had regard to all other matters raised, including the suggested conditions, the appeal should be dismissed.

Joanna Gilbert

INSPECTOR

Appearances

FOR THE APPELLANT:

Dr R K Home	Agent
Mr Andrew Smith	Appellant
Mr Tim Ellingham	Ellingham Consulting Ltd
Mr Martin Maughan	Member of the appellant's family
Mrs Maisie Maughan	Member of the appellant's family
Ms Dawn Smith	Local resident
Ms Kerry Streete	Local resident

FOR THE COUNCIL:

Mr Nick Harding BSc (Hons) MRTPI	Head of Planning, Fenland District Council
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Documents submitted at and after the Hearing

Document 1	Smith v SSLUHC and others [2022] EWCA Civ 1391
Document 2	Letter dated 1 September 2023 from Cambridgeshire Children and Young People's Health Services
Document 3	Letter dated 8 September 2023 from the Headteacher of Benwick Primary School
Document 4	Fenland Level 1 Strategic Flood Risk Assessment June 2022
Document 5	Council's response regarding the Fenland Level 1 Strategic Flood Risk Assessment June 2022 dated 26 September 2023