



Appeal Decision

Hearing held on 31 October 2023

Site visit made on 31 October 2023

by Diane Lewis BA(Hons) MCD MA LL.M MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2023

Appeal Ref: APP/D0515/C/23/3316943

Land at Cadermist, Iretons Way, Chatteris, Cambridgeshire PE16 6UZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Doran against an enforcement notice issued by Fenland District Council.
- The notice, numbered 02/23, was issued on 25 January 2023.
- The breach of planning control as alleged in the notice is Without planning permission, the change of use of land from a single dwellinghouse (use class C3) to the mixed use of a dwellinghouse and the stationing of caravans as separate residential units.
- The requirements of the notice are:
 - a) Cease the use of the land for the stationing of residential caravans.
 - b) Remove all caravans from the land.
- The period for compliance with requirement (a) is 5 months and with requirement (b) is 6 months (running concurrently and beginning with the day on which the notice takes effect).
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed and the enforcement notice as corrected is quashed.

Appeal Site

1. The Land to which the enforcement notice relates includes the bungalow known as Cadermist and the associated land to the front and back of the dwelling. The site is served by a single vehicle access onto Iretons Way.
2. The planning history shows that planning permission was granted on 3 January 2008 for a change of use from dog breeding to dog breeding and boarding kennels and erection of new kennel block. The approved site plan showed the new kennel block to the western side of the dwelling, with the remaining structures along the western boundary of the land to the rear.
3. The appellant's mother acquired the land in November 2019 and the appellant became the landowner in November 2022. The appellant explained that he helped the former owner to remove the kennel blocks from the site and the business was relocated elsewhere. In 2020 there were two caravans on the land occupied by his family and his sister. He had plans to renovate the bungalow and commenced work but decided it would not be cost effective to do so.
4. In May 2022 a planning application was made and on 5 September 2022 permission was granted to erect a dwelling (2-storey 4-bed) and detached double garage involving the demolition of the existing dwelling. The site

outlined in red on the approved plan did not include the land where the caravans were positioned.

5. The Council confirmed at the hearing that officers visited the site in March 2021 and in September 2022. The Council's report of occupation and conditions on the site was significantly different to the appellant's description.
6. In January 2023 the agreed position is that 8 static caravans were stationed on the back half of the site. Occupation was not agreed. On the day of the hearing there were 7 static caravans on the site. The appellant stated 6 caravans were occupied by the appellant and his extended family and the other was used for storage. Work had begun on building the double garage in the front garden, approved under the 2022 permission. No-one was living in the bungalow as their home. The appellant and the residents of the caravans used the kitchen and bathroom facilities and the living space for sitting and children's play. A small existing extension to the bungalow was used as a utility room.
7. As a result of the discussion on the planning history at the hearing the Council and the appellant agreed (i) the Land was and remains a single planning unit, and (ii) the lawful use is a mixed use of residential and dog breeding and boarding kennels. There was no consideration of or evidence to show the use for dog breeding and boarding was abandoned.

Enforcement notice

8. The description of the alleged breach of planning control does not take full account of the planning history of the Land when stating the former use and the reference to the caravans as separate residential units requires clarification.
9. The parties agreed this amended wording: "Without planning permission, the material change of use of the Land to a mixed use as a dwellinghouse and the stationing of caravans for residential purposes as residential units separate to the dwellinghouse." I am satisfied this correction would not cause injustice to either the Council or the appellant.

Appeal on ground (a), the deemed planning application

Planning policy and main issues

10. The Fenland Local Plan 2014 is the development plan for the area. The National Planning Policy Framework 2023 (the Framework) and Planning Policy for Traveller Sites 2015 (PPTS) are additional policy considerations.
11. Based on the reasons for issuing the notice and the policy context the main issues are:
 - The effect of the development on the living conditions and amenity of the occupiers of the site and the occupiers of the neighbouring residential property.
 - Whether the development is in an appropriate location to meet accommodation need.
12. In the event the development is found to be unacceptable consideration will be given as to whether it could be made acceptable by the use of planning conditions.

The development enforced against

13. The description of the development for which permission is sought is derived directly from the breach of planning control, as proposed to be corrected. I am also mindful that, under the ground (a) appeal, permission may be granted in relation to the whole or any part of the matters or in relation to the whole or any part of the land to which the notice relates.
14. The Council's description of the site over the period 2020 to January 2023 presents a very different picture to that from the appellant's description. There was no evidence to help decide which version presents the more probable situation or if occupation changed over time. In addition, the appellant maintained that in January 2023 when the notice was issued his family were occupying the caravans. The matter was raised with the Council at the time but the Council did not take the opportunity to visit the site to confirm the appellant's version. The Council's last visit was on 1 September 2022.

Living conditions and amenity

15. The plot of the adjacent property, the Bungalow, is the same depth as Cadermist but is wider. The bungalow is towards the front of the site, more generous in size than the bungalow on the appeal site. It appeared a small number of touring caravans, outbuildings and commercial vehicles were on the land to the rear. Logs and pet food were advertised for sale. The common boundary with Cadermist is marked by close boarded fencing at the rear.
16. The harm the Council identified to site occupiers and neighbours was related to the number of caravans present on site, the number of occupiers of the caravans and the inadequate site infrastructure, especially foul water drainage. The appellant recognised that 8 caravans caused overdevelopment, with an unsafe cramped layout and poor levels of amenity.
17. The living conditions described by the Council would not be acceptable and would not create a healthy, safe and equitable living environment. The neighbouring residents would suffer noise and disturbance from the intensity of occupation and public health would be put at risk.
18. The development does not comply with Policy LP2, which is concerned with facilitating the health and wellbeing of Fenland residents.

Location

19. The site is about 1.5 km from the edge of Chatteris and about 2 km from the town centre. Chatteris is a market town in the settlement hierarchy set out in Policy LP3 of the Local Plan. The town is one of the locations where the majority of the district's new housing, employment and retail growth and wider service provision is proposed to take place.
20. I consider the site is not sufficiently close to the town to be within the area around the settlement. Instead the site is in the Elsewhere location identified by Policy LP3, where development is restricted to the types of uses described in the policy. Policy LP12 Part E confirms proposals for mobile homes will be considered in the same way as permanent homes in the rural areas. The location of the mixed use is not in accordance with the policies.

Conclusion

21. The development is contrary to Policies LP2, LP3 and LP12 Part E when assessed against the site conditions reported by the Council and would be unacceptable. If a planning condition required no more than three or four caravans to be stationed on the site the harm related to living conditions and amenity would be partly addressed. However, the inappropriate location and related policy objection would be sufficient to tip the balance against the development.

Alternative form of development

22. The appellant disputed the Council's description of site conditions but did not attempt to justify eight caravans on site, acknowledging that caravan site licence requirements for separation distances would not be met. Permission was sought for four single unit static caravans, to provide accommodation for the appellant and his family, most of whom are Irish Travellers (his mother and grandmother are English Gypsies). Reliance was placed on the development meeting the criteria set out in Policy LP5 Part D on Gypsy and Travellers and Travelling Showpeople.
23. The description of the unauthorised development does not state a number of caravans or refer to their occupation. The mixed use, as described, comprises two primary land uses – a dwelling and a caravan site. Control on the number of caravans and, if necessary, their occupation by a named sector of the community (such as agricultural workers or gypsies and travellers) would be achieved through planning conditions. A caravan site occupied by gypsies and travellers is not a 'sui generis' land use in its own right, unlike a travelling showpeople's site.
24. With these considerations in mind my conclusion is that the development proposed by the appellant is within the scope of the deemed planning application and can be determined under the ground (a) appeal.
25. The appellant and his extended family are Irish Travellers and Gypsies who have followed a nomadic way of life and travelled for an economic purpose. Some members of the extended family now travel primarily for cultural reasons due to age, health and caring responsibilities. The PPTS Annex 1 meaning of gypsies and travellers would exclude them having traveller status but this definition has been found to be discriminatory through the *Lisa Smith* judgment¹.

Living conditions and amenity

26. A reduction in the number of caravans, as proposed, would be expected to make a significant difference to the effect on site conditions and on the neighbouring residents of The Bungalow. The concentration of domestic activity would be much less, together with fewer vehicle movements. Caravans would be sited away from the principal dwelling. Hence the potential for undue noise and disturbance would be much reduced. There would be space on site for improving the layout, for providing facilities and amenities and suitable boundary treatment. Such improvements, all of which could be controlled through a planning condition, would minimise any harmful effects on the neighbouring property. Any harm would be no more than would be expected

¹ *Smith v Secretary of State for Levelling Up Housing and Communities & Others* [2022] EWCA Civ 1391

from the fallback lawful use of the appeal site for dog breeding and boarding kennels.

27. Similar considerations apply to the amenity of the residents living on the site. The additional space created by the reduction in caravans would enable a more spacious layout incorporating amenity and play space, although no layout or pitch details have been provided. As explained above, the bungalow is not a separate home but is used like a dayroom. There is the prospect that this arrangement may change in the future because of the start of development on the replacement dwelling. The new home would have adequate garden and parking space as indicated on the approved plan, even with caravans on the rear part of the site. The site history of mixed use also indicates the ability of two compatible uses to co-exist. There may be a future need to accommodate a dayroom and utility block if the main house was no longer accessible to the caravan residents but any planning implications would be for future consideration.
28. With these considerations in mind and subject to compliance with planning conditions, the development would not have an unacceptable adverse effect on the amenities of occupiers of nearby properties or the health and well-being of the occupiers of the site. On these matters criterion (e) of Policy LP5 Part D would be met.

Location

29. Policy LP5 Part D allows for the location of traveller sites in the countryside, subject to the stated provisos. More specifically the site is located within a reasonable travelling distance of Chatteris which offers local services and community facilities.

Other policy requirements

30. The site is served by a safe and convenient vehicle access to and from the public highway Iretons Way (the A142) with adequate space for vehicle parking, turning and servicing. There is a footway along the highway, although its use would not be pleasant for pedestrians in view of its width, proximity to the busy carriageway and lack of lighting.
31. The countryside surroundings are characterised by a flat landscape comprising agricultural fields, sporadic farmsteads and commercial premises, a mix of building types associated with the uses and a network of drove roads connecting to the A142. In the near vicinity of the site are a transport depot and country store and a property with stables attached. The siting of the caravans to the rear of Cadermist on an enclosed site reduces their visual prominence. Caravans are not unusual on properties in the area and in this instance they do not lead to visual or landscape harm given the mix of vehicles, outbuildings and storage seen on nearby premises or when compared with the probable appearance of the former mixed use.
32. No evidence has been presented to show that the development would conflict with planning policies related to flood risk, contamination, protection of heritage assets or agricultural land quality. In view of the small scale residential use and the surrounding settlement pattern the development would allow for peaceful and integrated coexistence with the local settled community.

The appellant has explained the children attend local schools and the family use local shops and leisure facilities and attend church in the area.

33. A reduction in the number of caravans should enable the site to be served adequately by water, waste water and refuse facilities. Such matters may be confirmed by planning condition.
34. The Local Plan does not allocate land for traveller sites based on evidence dated November 2013. Policy LP5 Part D is a criteria based policy to assess the suitability of sites coming forward. The policy also requires evidence of a need (as identified in the local assessment) to support permission being granted for traveller sites in the countryside. However, this approach is inconsistent with PPTS which allows sites coming forward on unallocated sites to be assessed against locally specific criteria where there is no identified need for pitches.
35. The Council accepted that the Gypsy and Traveller Accommodation Assessment (GTAA) is out of date. Attempts at a refresh were not completed due to the Covid pandemic and new work has been commissioned. The Council explained at the hearing the GTAA had identified a need for 18 pitches over the period 2013 to 2026, whereas 57 pitches have been approved in the District since 2013. One interpretation is that the GTAA significantly underestimated the level of need. In addition, the appellant and his extended family have a personal need for pitches and no alternative sites are available at the present time.
36. In conclusion, the proposal is supported by a need for traveller pitches in the region and more locally in the District, the absence of a five year supply of deliverable sites and the personal need of the appellant and his extended family.

Personal circumstances

37. The appellant has provided information about his own family and the family members who would occupy the other three caravans, if granted permission. They have close family ties with the area and the home of the appellant's father is in Doddington, a short distance from Chatteris. There are currently twelve children living on the site, eight of whom live in the proposed four caravans. There also are elderly residents who no longer travel extensively. Irish Travellers and Romany Gypsies are ethnic minorities with the protected characteristic of race for the purposes of the Public Sector Equality Duty. The ability of the extended family to stay on the site would be consistent with promoting equality, supporting the best interests of the children and respecting their Article 8 rights for a home and their private and family life.

Conclusion

38. The proposal complies with Policy LP5 Part D and there is no significant conflict with the development plan when read as a whole.

Planning Conditions

39. The Framework states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects (the six tests). A list of conditions was discussed at the hearing.

40. A restriction on occupation to Gypsies and Travellers would be necessary to ensure the site meets a need for and contributes to the supply of pitches in the District. The appellant is seeking four single unit static caravans and not additional touring caravans. The probability is a maximum of four single units could be accommodated on the land available. This control on the number and type of caravans is necessary to safeguard the amenity of the site and the living conditions of neighbouring occupiers. For a similar reason a site development scheme condition is necessary, together with conditions controlling the number and type of commercial vehicles parked on the site. The limit will be two commercial vehicles, having regard to the intended occupation of the caravans and the current lack of detail on an acceptable future site layout.
41. A site development scheme would confirm the internal layout and siting of caravans (taking account of any proposed utility blocks) as well as details of site drainage, boundary treatment, external lighting, refuse storage and landscaping. Development has been carried out and therefore the condition is worded to be enforceable in the event the required details and approvals are not secured and implemented.
42. The set of conditions is with a view to ensuring the development complies with Policy LP5 Part D.

Conclusion

43. For the reasons given above, the appeal succeeds on ground (a). Planning permission will be granted for the material change of use of the Land to a mixed use as a dwellinghouse and the stationing of caravans for residential purposes as residential units separate to the dwellinghouse.
44. As a result, the appeal on ground (g) does not fall to be considered.

DECISION

45. It is directed that the enforcement notice is corrected in paragraph 3 by the deletion of the description of the breach of planning control and the substitution of "Without planning permission, the material change of use of the Land to a mixed use as a dwellinghouse and the stationing of caravans for residential purposes as residential units separate to the dwellinghouse."
46. Subject to the correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the Land to a mixed use as a dwellinghouse and the stationing of caravans for residential purposes as residential units separate to the dwellinghouse at Cadernist, Iretons Way, Chatteris, Cambridgeshire PE16 6UZ as shown on the plan attached to the notice and subject to the following conditions:
- 1) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently but excluding members of an organised group of travelling showpeople or circus people traveling together as a group.

- 2) No more than four single unit static caravans shall be stationed on the site at any time.
- 3) No more than two commercial vehicles shall be parked or stored on the land. Each vehicle shall not exceed 3.5 tonnes in weight and shall be only for use by the occupiers of the caravans hereby permitted.
- 4) No commercial activities shall take place on the land, including the storage of materials.
- 5) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a site development scheme (hereafter referred to as the scheme) shall have been submitted for the written approval of the local planning authority. The scheme shall include details of the internal layout of the site, including the siting of caravans, utility block(s), hardstanding, parking and amenity areas; the means of foul and surface water drainage of the site; proposed and existing external lighting on the boundary of and within the site; proposed and existing boundary treatment; domestic refuse and recycling storage facilities; tree, hedge and shrub planting, including details of species, plant sizes and proposed numbers and densities and details of existing trees to be retained; and a timetable for implementation of the scheme.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Diane Lewis

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs Alison Heine Heine Planning Consultancy
Mr John Doran
Mr John Doran Senior

FOR THE LOCAL PLANNING AUTHORITY:

Mr Nick Harding Head of Planning

DOCUMENTS submitted at the Hearing

Planning Decision Notice and related documents ref F/YR22/0501/F.
Plan ref F/YR07/1207.
Draft list of planning conditions.