



Appeal Decision

Site visit made on 27 June 2023

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2024

Appeal Ref: APP/D0515/W/22/3299283

Rear of Greenbanks, Garden Lane, Wisbech St. Mary PE13 4RZ

- 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 John Connors against the decision of Fenland District Council.
 - The application Ref F/YR21/0487/F, dated 23 March 2021, was refused by notice dated 15 February 2022.
 - The development proposed is described as "10 x traveller's plots including the siting of 10 x mobile homes, 10 x touring caravans and erection of 10 x day rooms."
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Decision

1. The appeal is allowed and planning permission is granted for 10 x traveller's plots including the siting of 10 x mobile homes, 10 x touring caravans and erection of 10 x day rooms at Rear of Greenbanks, Wisbech St. Mary PE13 4RZ in accordance with the terms of the application, Ref F/YR21/0487/F, dated 23 March 2021, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. At the site visit I saw, and it is confirmed in the Officer's report, that the development has already commenced, with various works to the formally agricultural field including the occupation of some pitches and the setting out of others. The application is therefore partially retrospective and I have determined the appeal on this basis.

Main Issues

3. The main issues are (i) whether the appeal scheme, singularly or in combination with other nearby traveller sites, would dominate the nearest settled community, and (ii) if any harm is caused by the above issue, whether this is outweighed by other considerations.

Reasons

Effect on the Settled Community

4. The appeal site lies on the south side of Garden Lane, approximately 1km from the edge of the nearby village of Wisbech St Mary. The surrounding landscape is flat and predominantly agricultural in nature, with hedges and trees marking field boundaries and the lines of the drainage ditches being notable features.
5. Nearby, there is a scattering of dwellings and commercial operations, this is a particular characteristic of the area. As such, although the area is generally of a rural character, I nonetheless saw at the site visit that this is markedly diluted by these various surrounding developments.

6. The application site is accessed from Garden Lane between two existing Gypsy and Traveller sites and is located behind those sites. The Council Officer's report details that there are "seven further pitches to the southeast around Ponderosa Farm". Presumably, this consists of five existing pitches and the two proposed pitches, currently subject to a separate appeal.
7. The Planning Policy for Traveller Sites (PPTS) seeks to ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community. I saw at the site visit that there is the sporadic ribbon, loose knit and individual properties found nearby the appeal site and secondly, the nearby settlement of Wisbech St Mary situated approximately 1km away.
8. The appellant refers to the main settled community as being located along the High Road in the nearby settlement of Wisbech St Mary. The Council makes reference to the "scatter of dwellings within a 0.5km radius" of the appeal site as being the nearby settled community.
9. What comprises the "nearest settled community" is not described by the PPTS. The nearest settled community is not the same as the nearest settlement, or that phrase would have been repeated in the PPTS. On this basis I am satisfied that the nearest settled community consists of the scattered dwellings found in the proximity of the appeal site.
10. The appeal scheme, as shown on the submitted plans, would create a concentrated cluster of plots completely filling the appeal site and, in conjunction with neighbouring Gypsy and Traveller sites, would create a group of plots of some scale. While I do not have a definitive figure for the likely number of residents of the proposed pitches, the appeal scheme and resulting concentration of plots in a location where the settled community largely exists within scattered dwellings would dominate the nearest settled community.
11. As a result, I am satisfied that cluster of plots, of which the appeal site would form an additional part, would not respect the scale of and would dominate the nearest settled community. This would be in conflict with the PPTS and Policy LP5 of the Fenland Local Plan 2014 (the LP) that, amongst other matters, seeks to ensure that sites are well integrated with the settled community.

Other considerations to outweigh the harm

12. The main parties agree that the Council does not have an up-to-date Gypsy and Traveller Needs Assessment, the most recent completed assessment dates from 2013. The Council details that a new Gypsy and Traveller Needs Assessment was commenced in 2019 but delayed by the Covid -19 pandemic.
13. As such, the Council is unable to demonstrate an up-to-date supply of Gypsy and Traveller pitches. This is a material consideration that I afford significant weight.
14. The Council details that the 2013 assessment "identified a need for 18 new pitches up to the year 2026. Since then 40 pitches have been approved, 6 in the period April 2013 to March 2016, 32 between April 2016 and March 2021 and 2 since April 2021". This is a significant provision of pitches in itself and over and above the need identified in the 2013 assessment.
15. Nonetheless, I note that the Council Officer's report details that the Traveller and Diversity Manager at the Council has confirmed that there are no available

Local Authority pitches, and that records are not kept of private sites. As such, I have no substantive evidence of any available alternative pitches for the current and prospective occupiers of the appeal scheme.

16. The appellant has provided details of a number of current and future occupiers of the proposed pitches, including the residents of pitch no.5 who lives with their husband and 5 children. The evidence submitted details that the resident's mother, who lives on a pitch adjacent to the appeal site, has recently suffered a bereavement and a health incident that has had a lasting effect. Furthermore, the resident herself has recently suffered a health incident that has required hospital care. Understandably, having family close by offers practical as well as emotional support on a day to day basis and when accessing healthcare.
17. The 5 children attend the local Wisbech St Mary's school. The evidence states that a number of members of the family have additional educational and health needs. The evidence submitted clearly shows that a settled base and the support of the family and others is important to the residents, prospective residents and is in the best interests of the children.
18. Evidence submitted in respect of one perspective occupier of the appeal scheme details that she has suffered a health incident and has since benefited from the support of her extended family. The evidenced details that the extended family lack a permanent base and that existing sites suffer from overcrowding and anti-social behaviour. The proposed development would accommodate the extended family.
19. Another prospective future occupier is a husband and wife with a young child. The evidence submitted details a family and local connection to the area. Furthermore, the family has lived at the site "on and off for 5 years" and the family are seeking a more settled base following the birth of their child. Clearly living at the site would help to sustain the family and close ties with other residents.
20. Furthermore, the appellant has submitted basic details of other persons, including children with only basic information as to their health, employment and age. The evidence details the different and related family groups.
21. The best interest of the child must be a primary consideration in the case, and no other material consideration should be treated as inherently more significant. The provision of appropriate accommodation is in the child's best interest. This must carry substantial weight.
22. Furthermore, I recognise the family and close ties between the prospective future occupiers and the occupiers of the neighbouring sites and the fact that living together helps to facilitate their traditional way of life, having regard to the Public Sector Equality Duty (PSED).
23. These are material considerations that I afford significant weight, in particular with regards to the best interests of the child. In this instance clearly the best interests of the child would be served by the approval of the appeal to allow the family to move into the accommodation that would be created at the appeal site.
24. Furthermore, on the basis of the evidence before me, in particular the absence of alternative accommodation, that if this appeal were to be dismissed there

would be an infringement of the occupiers' human rights under Article 8 of the European Convention on Human Rights. This refers to the right to a family life and the home.

Other Matters

25. I note the comments of Wisbech St Mary Parish Council, in particular regarding the need for "a completed Gypsy & travellers housing needs assessment" and with regards school capacity. As detailed previously Fenland District Council accepts it does not have an up-to-date Gypsy and Traveller Needs Assessment and that it cannot demonstrate an up-to-date supply of pitches. I have no substantive evidence before me to demonstrate that the local schools do not have the capacity to accommodate the children of the proposed pitches.

Conditions

26. I have had regard to the planning conditions that have been suggested by the Council, and as accepted by the appellant, and considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents.
27. I have included conditions relating to the occupation of the site and the number of caravans on the site to define the planning permission and in the interest of clarity.
28. In the interests of the living conditions of the occupiers of neighbouring properties I have attached conditions limiting the vehicles and commercial activities that can take place at the site.
29. In the interests of the visual amenity and the environment, I have included conditions relating to a landscaping scheme, boundary treatment and external lighting.

Planning Balance and Conclusion

30. The proposal would dominate the settled community. Thus, the proposal would be contrary to the Development Plan and PPTS in this respect. I attribute substantial weight to this harm. The PPTS states that "Planning law requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise."
31. The benefits of the proposal, specifically the provision of 10 additional gypsy and traveller pitches in the absence of a demonstrable up-to-date supply and improved accommodation for the appellants, including children, in a location that would maintain family links are issues to which I attach significant weight.
32. I have considered whether this should be a temporary planning permission having regard to the harm on the settled community, and the progress on the Gypsy and Traveller Needs. However, it appears in the absence of any compelling evidence, that these matters are unlikely to be resolved in the short or even medium term. As such a temporary planning permission would not be proportionate as it would not balance the protection of the public interest against the families' human rights.

33. I consider that cumulatively, these benefits outweigh the harm identified previously and the conflict with the development plan. For the reasons given above I conclude that the appeal should be allowed.

Mr M Brooker

INSPECTOR

Schedule of Conditions

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 2) No more than 20 caravans, of which no more than 10 shall be static caravans, shall be stationed on the land at any time.
- 3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 4) No more than one commercial vehicle per plot shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight.
- 5) No commercial activities shall take place on the land, including the storage of materials.
- 6) The landscaping shown on the approved site plan and detailed in the key on the same plan shall be planted in full in the first planting season following this decision in complete accordance with the approved details. Should any plants die, become diseased or are uprooted within the first 5 years of planting, they shall be replaced by a plant of a similar size and species in the following planting season. Neither boundaries of the site nor the individual plot boundaries shall be planted with leylandii or similar non-native hedging/trees.
- 7) Notwithstanding the submitted drawing, no boundary screening in the form of walls, gates and/or fencing shall be erected until a scheme detailing such screening has first been submitted to and approved in writing by the local planning authority. Only boundary screening that has been so approved in writing shall be erected. Notwithstanding the provisions of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), no other gates, fences, walls or other means of enclosure shall be erected on the site unless planning permission has first been obtained from the local planning authority.
- 8) No external lighting shall be erected on the site unless details of the lighting have first been submitted to and approved by the local planning authority. Such lighting shall only be erected in full compliance with the approved details.
- 9) Within two months the date of this decision, the access to the site shall be laid out and constructed in complete accordance with the details shown on the approved site plan and shall be retained as such thereafter. The access shall be drained to prevent surface water from draining onto the highway carriageway.

End of Schedule