



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/22/3298331

Land south-west of the Garage, The Sanctuary Garden Lane, Wisbech St. Mary, Wisbech, Cambridgeshire 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 L Upton and Mrs K Smith against the decision of Fenland District Council.
 - The application Ref F/YR21/1244/F, dated 21 October 2021, was refused by notice dated 15 February 2022.
 - The development proposed is described as the "change of use of land to a traveller's site involving the siting of 2 x mobile homes and 2 x touring caravans, and the erection of 2 x Day Rooms and a 1.8m high (approx) boundary fence."
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Decision

1. The appeal is allowed and planning permission is granted for change of use of land to a traveller's site involving the siting of 2 x mobile homes and 2 x touring caravans, and the erection of 2 x Day Rooms and a 1.8m high (approx) boundary fence on land south-west of the Garage, The Sanctuary Garden Lane, Wisbech St. Mary, Wisbech, Cambridgeshire PE13 4RZ in accordance with the terms of the application, Ref F/YR21/1244/F, dated 21 October 2021, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Main Issues

2. The main issues are:
 - The effect of the appeal scheme on the character and appearance of the area.
 - Whether the appeal scheme, singularly or in combination with other nearby traveller sites, would dominate the nearest settled community.
 - if any harm is caused by the above issues, whether this is outweighed by other considerations.

Reasons

Effect on Character and Appearance

3. Policy LP16 of the Fenland Local Plan (LP), amongst other matters, seeks to protect the character and appearance of the area.
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. The appeal site consists of an open grass field, accessed from Garden Lane. To the rear of the site and approached from the same access with Garden Lane, are 5 gypsy and traveller pitches with associated utility buildings, fencing and other paraphernalia (which the Council identifies as Ponderosa). The adjacent access serves further Gypsy and Traveller pitches, which front onto Garden Lane and stretch back away from the road, I note that consent exists for part of this site and remaining parts are subject to appeal.
6. 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.
7. Given the flatness of the locality and despite some intervening vegetation, the appeal site is readily visible from Garden Lane and the B1169 Leverington Common immediately opposite the site, but longer distance views are more limited. In the LP the appeal site and neighbouring properties are outside any settlement boundary and so falls in the countryside in planning policy terms.
8. The plan submitted by the Council shows that the site falls within the extensive redline area of the Ponderosa development¹. Conditions on this and a subsequent permission² controlled the number of pitches that could be present on the site, and I saw at the site visit that the existing pitches were located to the rear of the site. Consequently, the appeal site appears as distinct and separate from these pitches, though adjacent to other pitches fronting onto Garden Lane as detailed earlier.
9. The proposal would have the effect of infilling the gap between one existing gypsy and traveller pitch, and the built development to the north, consisting of the commercial and residential uses. As such, the appeal scheme represents an erosion of the rural character of the area.
10. The Planning Policy for Traveller Sites (PPTS) says gypsy and traveller sites should be very strictly limited in open countryside that is away from existing settlements, and this guidance does not conflict with or change any obligation in the National Planning Policy Framework (the Framework) to safeguard the countryside.
11. I note that, as highlighted by the appellant, the scheme includes proposals for "substantial leylandii hedging" and the retention of the existing hedgerow to the front of the site along Garden Lane which would have a screening effect of the proposed development. The creation and retention of hedges could be required by condition, including the inclusion of native species that would reflect the hedging found in the local area instead of leylandii.
12. Nonetheless, screening would only mitigate any negative impacts, rather than removing the harm completely. In this instance the appeal site is located in the countryside away from the existing settlement and would infill an existing gap between existing development, eroding the rural character of the area, creating a concentrated development contrary to the prevailing character of the area.

¹ Council reference F/YR07/0849/F dated 12 September 2007

² Council reference F/YR12/0342/F dated 9 July 2012

13. For the reasons detailed above I find that the development causes harm to the character and appearance of the area. As such, the appeal scheme is in conflict with policy LP16 of the LP and guidance set out in the PPTS and the provisions of the Framework.

Effect on the Settled Community

14. The 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 in the proximity of the appeal site there is the sporadic ribbon, loose knit and individual properties and secondly, the nearby settlement of Wisbech St Mary situated approximately 1km away.
15. 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.
16. 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.
17. It is the Council's case that "The scheme would result in a cluster of 11 traveller plots in close proximity to each other". I do not have a definitive figure for the likely number of residents of the 11 pitches. Nonetheless, the appeal scheme would add to an already notable concentration of pitches in a location where the settled community largely exists within scattered dwellings.
18. As a result of the matters referred to previously, I am satisfied that the cluster of pitches, of which the appeal site would form an additional part, would not respect the scale of, and would dominate, the nearest settled community contrary to the PPTS and Policy LP5 of the LP that, amongst other matters, seeks to ensure that sites are well integrated with the settled community.

Other considerations to outweigh the harm

19. It is not at dispute between the parties 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 accepts, as detailed in the Statement of Case, that it cannot demonstrate an up-to-date supply of gypsy and traveller pitches, this is a material consideration that I afford significant weight.
20. It is submitted that the first Appellant, their partner and their young child (aged 1) currently reside in a tourer and it is stated that this does not have enough room for their growing family. Also, that they have immediate family living nearby and extended family live on land adjacent to the appeal site.
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. The second Appellant (aged 80) currently resides on a nearby Council site but refers to noise and disturbance issues at the site that have had an effect upon

her to the extent that she feels unsafe and would prefer to live on the appeal site where she could receive support from a family that reside nearby. Also referred to is a health condition that requires regular medication.

23. Furthermore, I recognise the family and close ties between the Appellants and the occupiers of the neighbouring site and the fact that living together helps to facilitate their traditional way of life, having regard to the Public Sector Equality Duty (PSED).
24. 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.

Other Matters

25. Local residents have also referred to a number of concerns including a loss of privacy, noise and disturbance. The submitted plans show that the two proposed pitches would be sited closer to the adjacent property 'Goult Farm' than the existing Gypsy and Traveller pitches.
26. I saw at the site visit that Goult Farm appeared to consist of commercial uses and a residential dwelling, the commercial use being located adjacent to the boundary with the appeal site. Furthermore, I am satisfied that suitably worded conditions can be placed upon any planning permission resulting from this appeal to control the size of vehicles on the site and prohibit commercial activity on the site.
27. On this basis I am satisfied that the appeal scheme will not harm the living conditions of the occupiers of neighbouring properties.

Conditions

28. 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.
29. I have included conditions relating to the life of the permission, the occupation of the site and the number of caravans on the site to define the planning permission and in the interest of clarity.
30. 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.
31. In the interests of the environment, I have included conditions relating to a landscaping scheme, boundary treatment and external lighting.

Planning Balance and Conclusion

32. The proposal would cause harm to the character and appearance of the area and would dominate the settled community. The proposal would be contrary to the Development Plan and PPTS in these respects. 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.”

33. The benefits of the proposal, specifically the provision of 2 additional gypsy and traveller pitches in the absence of a demonstrable up-to-date supply and improved accommodation for the appellants, including a child, are issues to which I attach significant weight and I consider that cumulatively, these benefits outweigh the harm identified previously and the conflict with the development plan.
34. I have considered whether this should be a temporary planning permission having regard to the harm to the character and appearance of the area, on the settled community, and the progress on the Gypsy and Traveller Needs Assessment. 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 best interests of the child.
35. For the reasons given above I conclude that the appeal should be allowed.

Mr M Brooker

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) 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).
- 3) No more than 4 caravans, of which no more than 2 shall be static caravans, shall be stationed on the land at any time.
- 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 5) No more than one commercial vehicle per pitch 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.
- 6) No commercial activities shall take place on the land, including the storage of materials.
- 7) No development shall commence until details of a landscaping scheme shall be submitted to the local planning authority for approval. The approved landscape scheme shall be carried out in full in the first planting season following receipt of approval of a landscape scheme, in writing from the local planning authority. 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 pitch boundaries shall be planted with leylandii or similar non-native hedging/trees.
- 8) 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.
- 9) 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.

End of Schedule