



Appeal Decision

Site visit made on 28 February 2024

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2024

Appeal Ref: APP/E2001/C/23/3321342

21 & 22 Green Lane, Skipsea, East Riding YO25 8UA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Helen Johnston against an enforcement notice issued by East Riding of Yorkshire Council.
 - The enforcement notice was issued on 28 March 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, material change of use to a residential caravan site. Associated operational development to facilitate the unlawful use including the erection of a shed, fencing and a gate and the creation of hardstanding.
 - The requirements of the notice are:
 - i) Cease the use of the Land as a residential caravan site; and
 - ii) Remove all caravans and motorhomes from the Land; and
 - iii) Remove the shed and all domestic goods and chattels from the Land; and
 - iv) Remove the fencing and gates along the front boundary of the land (west elevation) and remove the fencing rear of the land (east elevation); and
 - v) Remove the gravel hardstanding from the land; and
 - vi) Remove all vehicles from the Land
 - The period for compliance with the requirements is within 6 months of the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

2. The appeal was made very briefly by completing the appeal form, with a couple of paragraphs of supplementary information. The appellant made no reference to Gypsy status but information provided by the Council indicates that the residents of the site are Gypsies, falling within the definition within Annex 1 of the Planning Policy for Traveller Sites (PPTS). I have no reason to doubt that position based on the information provided and my accompanied visit to the site. At the time of my visit three caravans were sited on the land, occupied by three related families, living together as a group. I was informed that all of the residents were adults and no children lived on the site.

The Appeal on Ground (a)

3. An appeal on ground (a) is made on the basis that planning permission should be granted for the matters alleged in the notice. Having regard to the content of the notice and the grounds of appeal, the main issues in the determination of the appeal are:
- i) Whether the location of the site is suitable for the residential use, having regard to the risk of coastal erosion, the effect on the character and appearance of the area and the location of the development within the countryside, as defined by the East Riding Local Plan Strategy Document (ERLP SD);
 - ii) Whether there is a need for additional gypsy and traveller sites in the area and, if so, whether existing and/or planned developments would be available to meet those needs, including the needs of the appellant and her wider family who reside on site; and
 - iii) The weight that should be attached to the personal circumstances of the applicant and her family who reside on site, having regard to their human rights, and whether any decision to refuse to grant planning permission and uphold the enforcement notice would represent a proportionate response, having regard to the balance of material considerations.

Site Location, Coastal Erosion and Character and Appearance of the Area

4. Green Lane, within which the appeal site sits, is made up of a number of chalet style properties, some of which were historically used for holiday purposes and some for permanent residential use. The properties, including the appeal site, are now accessed from an unmade track to the rear, beyond which lies the Skipsea Sands holiday park. The former road that provided access to the front of the properties has now been claimed by the sea, such that the cliff edge now directly abuts the garden boundaries. From the information provided, the extent of coastal erosion is substantial, with up to 11 metres being lost per year. The site sits within the Coastal Change Management Area (CCMA), as defined by the ERLP SD and policy ENV6 applies.
5. As part of that coastal management, the Council continually measures the coastline and issues notice to any owners of properties within a 'risk line' of 11m from the cliff edge. Where owners have failed to demolish plots and clear the land, the Council has taken direct action to remove unsafe residential buildings.
6. The appeal site once housed two such properties, both have which had been cleared prior to the breach of planning control taking place. At the time of my visit there were three caravans on site housing three related families, with the site laid to hardstanding and associated ancillary sheds, gates and fencing. The cliff edge was directly behind the fence that had been erected on the coastal side.
7. Policy ENV6 identifies that the Council will support development in the CCMA subject to a number of criteria being met. The use of the site as a caravan site would not meet any of those criteria and, most fundamentally in relation to sub-paragraph 3(i), the development cannot be said to be safe from coastal change for its intended lifespan. The appellants have not explicitly requested a

temporary consent but, even if I were to consider that option, I cannot conclude that the development would be safe given the extreme proximity of the cliff edge and the rapid rate of erosion along this stretch of coast.

8. Whilst there may be ebbs and flows in the precise rate of erosion a large storm combined with high tides could have catastrophic results. Accordingly, the use of the land for residential purposes as a caravan site is highly unsuitable and contrary to the aims of policy ENV6.
9. The Council has also referred to the effect of the development on the character and appearance of the area. I recognise that caravans could be said to be out of character with the former row of chalet style properties. However, it is a sad fact of the perilous situation that many of those properties are now run down as a result of understandable lack of investment, with some in a semi-derelict state. The row as a whole presents a rather forlorn and depressing picture; a street hanging on against the march of the tide. Moreover, caravans are not unusual in the area given the close proximity of the holiday park to the rear and the appellant and her family clearly have taken pride in the site, such that it is well-maintained and tidy in appearance. To that extent it is one of the more visually appealing plots along the stretch of Green Lane and has not caused undue harm to the character and appearance of the area. Accordingly, I find no conflict with the aims of policies ENV1 and S4 of the ERLP SD.
10. Policy S4 also applies a number of criteria to development outside recognised villages and towns. The proposal would re-use previously developed land, would not involve the loss of best and most versatile agricultural land and would not be unduly distant from Skipsea itself and close to facilities available on the holiday park. However, the use does not comply with any of the listed exceptions to development within the Countryside listed under section C of policy S4 and there is clearly a degree of conflict with policy S4 as a result.
11. That said, policy H3 of the ERLP SD provides a criteria based approach to the assessment of Gypsy and Traveller caravan sites and that does not preclude their provision within the countryside, outside of defined settlements. Nothing has been presented to suggest that the site would fail to meet any of the criteria within section D of policy H3 and the site is reasonably close to neighbouring facilities within Skipsea itself and the facilities within the holiday park immediately to the rear.
12. Consequently, the fact that the site is technically within the Countryside, as defined by the ERLP SD, would not be a reason to withhold permission of itself. However, the over-riding constraint in terms of location is the obvious danger resulting from coastal erosion. The appeal site is located perilously close to the cliff edge and is inherently unsuited to a residential use, even for a temporary period, given the rate of erosion and unpredictability of storms and natural events. Given the severity of that issue and potential consequences, the conflict with policy ENV6 is the primary consideration in my view and is such that the development is clearly contrary to the aims of the development plan, when viewed as a whole.

Need and Supply of Sites

13. According to the Council's statement, there was a need for 29 Gypsy and Traveller pitches over the plan period for those meeting the definition within the Government's Planning Policy for Traveller Sites (PPTS), as it stood at the

time the Council's 2022 Gypsy, Traveller and Travelling Showperson Accommodation Assessment (GTAA) was compiled. However, since that time, the definition within the PPTS, as amended in 2015, was found to be discriminatory and unlawful by the Courts¹. Subsequently, the definition within the PPTS has reverted to that previously used, which includes reference to those who have ceased to travel permanently on grounds of age or ill health.

14. The 2022 GTAA did include an assessment of those who could not travel due to age, health or other circumstances and identified a need for 32 pitches for those falling within that category. In effect, such people would not fall in the current definition within Annex 1 of the PPTS, as now amended to take account of the findings of the Courts. Overall therefore, the defined need is for 61 pitches of which the Council suggests 36 are needed in the next 5 years.
15. On the information available the Council has not identified any new sites to meet that need. Reference is made to the future turn over of spaces within existing sites but the appeal statement notes that there was only one vacant pitch out of an existing supply of 69 pitches, with a waiting list for those pitches. Evidence for turnover of pitches on the existing sites does not satisfactorily demonstrate that the identified need can be met through that mechanism and no new or proposed sites have been identified that are expected to come forward within a five year period.
16. Consequently, although the evidence before me is limited, the Council has not demonstrated an ability to meet the need for sites, as required by paragraph 10(a) of the PPTS, nor has it identified any sites or broad locations to meet needs over years 6 to 10, as required by paragraph 10(b). The inability to identify sites to meet the defined need is a matter that weighs in favour of the appellant in this case.

Personal Circumstances and Human Rights

17. In the absence of any alternative provision, I cannot rule out the possibility that the families would become homeless and potentially forced to live by the roadside should the appeal be dismissed which would make access to services and medical provision more difficult. That is a matter that weighs in favour of the appellant and the residents of the site having regard to the personal circumstances which I address below.
18. The implications of the enforcement notice would have significant consequences for the home and family life of the families residing on the site and it is clearly a circumstance where Article 8 Convention Rights are engaged². Article 8 imposes a positive obligation to facilitate the Gypsy way of life and, as a minority group, special consideration should be given to their needs and lifestyle.
19. However, such matters are not necessarily determinative and may be outweighed by other considerations. In other words, rights under Article 8(1) are qualified rights and, in appropriate circumstances, interference may be justified in the public interest. Regulation of land use through development control measures is recognised as an important function of Government and is necessary to ensure the economic well-being of the country. In that sense, the regulation of development for legitimate planning aims can be said to be in the

¹ Smith v SSLUHC & Ors [2022] EWCA Civ 1391

² Article 8 of the European Convention on Human Rights, enshrined into UK law by the Human Rights Act 1998

- public interest. The aim is to strike the right balance between the general interests and rights of the wider community and the requirement to protect an individual's private rights. Central to the principle of a fair balance is the doctrine of proportionality.
20. I am very mindful of the human rights of the families and must also have due regard to the protected characteristics of Gypsies in relation to the PSED when applying the duties of section 149 of the Equality Act 2010.
21. In this case, the provision of a settled base does have benefits in terms of enabling the families to integrate with the community through attendance at church and to access medical facilities. I understand that the appellant herself has particular medical needs and Mr Steward Snr also has a number of health related needs that require access to prescriptions and regular medical and hospital appointments. All of those needs would be much easier to meet when living on a settled base, particularly if compared to a life by the roadside. Those matters do attract weight in terms of the benefits of a settled base.
22. However, notwithstanding those benefits, I have severe doubts over whether continued occupation of the site could be said to be in the best interests of the families concerned, having regard to the potentially catastrophic implications of coastal erosion and my conclusions on that issue. That risk is not theoretical but real. In my view, the safety of residents must be of paramount importance and I do not accept that a highly vulnerable residential use in a high risk area could be said to be in anyone's best interests.
23. Thus, I attach substantial weight to the need to facilitate the Gypsy way of life and am very mindful of the implications for the family if the enforcement notice was upheld. The fact that the family would probably be rendered homeless and forced to roadside living is also a matter to which I attribute great weight. However, even when those personal factors are taken into account I am unconvinced that continued occupation of the site is in the best interests of the families concerned.

The Planning Balance and Proportionality Assessment

24. Section 38(6) of the Planning and Compulsory Purchase Act requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. For the reasons given the development is contrary to the aims of the development plan, having regard to the conflict with policy ENV6, which is of critical importance in this case.
25. Whilst I do attach weight to the benefits of a settled base in some respects, I cannot conclude that continued occupation of this particular site is in anybody's best interests. Any decision to uphold an enforcement notice that will render a family or families homeless is a matter that weighs heavily on a decision maker and is not taken lightly. However, the potential consequences of erosion and the failure of the cliff edge are such that the harm clearly outweighs the benefits of granting permission to stay on the site. Even when compared to a life on the roadside, which is a possible alternative, the inherently unsafe nature of the site means that the harm of granting permission clearly outweighs any benefit.

26. For those reasons, the planning balance clearly indicates that permission should be refused and the notice upheld. Given the proximity of the cliff edge and uncertainty over precisely when future erosion will advance onto the site itself I can see no rationale for granting a temporary permission because I could not rule out a significant storm or event that would cause substantial erosion, even over a short timeframe.
27. Moreover, the interference with the home and family life of the residents is clearly a proportionate response, having regard to the need to balance personal circumstances against the public interest in regulating the use of land. Quite simply, the site is not suitable for a residential use on account of the unstable nature of the coastline.
28. Accordingly, I shall dismiss the appeal on ground (a) and refuse to grant planning permission.

Conclusion

29. For the reasons given above I conclude that the development is unacceptable and that the appeal should not succeed. Accordingly, I shall dismiss the appeal, refuse to grant planning permission on the deemed application and uphold the enforcement notice.

Chris Preston

INSPECTOR