

Appeal Decision

Hearing held on 3 September 2024

Site visit made on 3 September 2024

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2024

Appeal Ref: APP/B3410/W/24/3342170

**Land West of Ashbourne Road, Spath, Stramshall, Uttoxeter,
Staffordshire ST14 5AD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Simon McDonagh against the decision of East Staffordshire Borough Council.
 - The application Ref is P/2021/00969.
 - The development proposed is the change of use to a Gypsy / Traveller site, proposed works to provide 3 no. family pitches including 1 x amenity building, level changes across the site, creation of a swale, package treatment plant, bin storage area, alterations to existing driveway, erection of stables, alterations to fencing and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have amended the description of development detailed in the banner above from that detailed on the appeal form to remove reference to 'retrospective' because this is not development. At the site visit I saw that some works had been carried out on site, including works not proposed as part of the appeal scheme, but also that the appeal scheme had not been carried out in its entirety. I have determined the appeal on the basis of the submitted plans.
3. The appellant's statement of case details that the appeal scheme seeks consent for 3 no. family pitches for the applicant and his family inclusive of fifteen children, all under the age of 13.

Main Issues

4. The main issues are:

- : Whether or not the appeal site is a suitable location for the proposed development with particular regards to flooding.

- : Whether there are material considerations which exist that outweigh the conflicts with the development plan and any other identified harm resulting from the appeal proposal.

Reasons

Flooding

5. It is not at dispute between the parties that the appeal site is within flood zone 3b and the proposed use is highly vulnerable¹. The site has been subject to recent flood events that have required the evacuation of residents. The site is also at risk of surface water flooding. In addition, I note that the Environment Agency maintains an objection to the appeal scheme.
6. With reference to national policy and guidance, the appeal scheme is a highly vulnerable form of development and, should not be permitted in Flood Zone 3b and the exception test does not apply. On this principle alone, the appeal site is not a suitable location for the proposed development.
7. The appellant has prepared a flood risk assessment (FRA) that proposes various measures to mitigate the flood risk at the site without increasing the risk of flooding elsewhere and requiring the occupants to sign up to receive flood alerts, flood warnings and the preparation of a flood evacuation plan.
8. The appellant proposes physical mitigation measures, including raising the part of the site that would accommodate the static caravans to a level of 85.05 mAOD being the level of a 1:100 year flood event, plus the allowance for climate change and an additional 'freeboard' of 600mm. To prevent these works decreasing the effectiveness of the appeal site to act as a flood plain and thus increase the risk of flooding elsewhere, it is proposed to lower part of the site that is indicated as being used as a horse paddock and stable.
9. The raising of the height of part of the site would not remove entirely the risk of flooding of the site and I note that the flood evacuation plan requires residents to exit the site via a route that is situated at a lower level than that proposed for the static caravans and thus is likely to experience flooding before the appeal site.
10. The appellant has submitted details of a Sequential Test (ST) that has set the area of search as being the whole of East Staffordshire Borough². I note that the Council does not dispute the findings of the ST and has not identified any alternative sites.
11. The Planning Practice Guidance on Flood Risk places the onus on the appellant to identify "*whether there are any other 'reasonably available' sites within the area of search, that have not already been identified by the planning authority in site allocations or relevant housing and/or economic land availability assessments, such as sites currently available on the open market. The applicant may also need to check on the current status of relevant sites to determine if they can be considered 'reasonably available'.*"
12. However, the ST search submitted by the appellant, consisting of a very limited search, falls short of this requirement. The Council's now superseded

¹ Table 2 Planning Practice Guidance - Flood Risk and Coastal Change and Annex 3 of the Framework.

² Paragraph 2.7 Sequential Test, Trevor Mannell Planning dated March 2024.

Gypsy Traveller Accommodation Assessment (GTAA) (2011) is referred to, as is the Council's Strategic Housing Land Availability Assessment (no date provided). The ST identifies 3 sites, none of which are available but no details of these sites are provided. The appellant does not refer to any sites available on the open market or any search for sites available on the open market through sources such as estate agents or online.

13. At the hearing the appellant was able to offer a greater but still limited level of detail of the search for sites that was undertaken prior to purchasing the appeal site, but this still falls short of the requirements of the guidance referred to previously. On this basis, I am not satisfied that it has been demonstrated that there are no sequentially preferable sites available in areas with a lower risk of flooding.
14. The proposed use is highly vulnerable to flooding, the site is in flood zone 3b at high risk of flooding and it has not been demonstrated that there are no preferable sites available elsewhere at a lower risk of flooding. As such, I find that the appeal site is not a suitable location for the appeal scheme, with particular regards to flooding.
15. Thus, the appeal scheme is contrary to policies SP19 and SP27 of the East Staffordshire Borough Council Local Plan (LP) that relate to the suitability of Gypsy and Traveller sites and to flooding and the provisions of the National Planning Policy Framework (Framework) and Planning Practice Guidance with regards flooding. I afford this harm and the conflict with the Development Plan, great weight.

Other considerations

Need for and supply of gypsy sites

16. The Planning Policy for Traveller Sites (PPTS) requires that the level of local provision and need should be considered when dealing with proposals for gypsy sites. The Council is required to demonstrate a 5 year supply of permanent traveller pitches.
17. It is common ground between the parties that the Council's GTAA 2023 identifies a requirement for 8 pitches between 2020 and 2024 and that there is a short fall of 6 sites. As a consequence, the Council accepts that it cannot demonstrate a 5-year supply.
18. The Council detailed that there are a number of planning applications for private pitches currently being considered by the Council, but that these were private sites where the applicants would be the occupiers and it was unclear whether or not consent would be granted or when a decision would be made.
19. As such I am satisfied that the Council cannot demonstrate a 5-year supply of permanent traveller pitches. The need for accommodation is therefore a material consideration that weighs in favour of the appeal, and I afford it significant weight.

Personal circumstances and accommodation need

20. It is not in dispute between the parties that the extended family living on the appeal site are Gypsies and have a personal need for a settled base, in particular to meet the best interests of the fifteen children present on site with regards to the education of the school age children as this takes place at nearby schools and access to healthcare. Furthermore, a clear consequence of not granting planning permission for the appeal scheme is that the appellant and their family will return to a roadside existence.
21. Case law establishes that the best interests of the children are a primary consideration. A settled base is clearly in the best interests of the children, rather than the alternative of returning to a roadside existence and having to keep moving around. A settled base would allow for the children to continue attending local schools and for the younger children to be able to do the same when they are old enough. It would also allow all residents to access health care provision on a consistent basis. I give the personal circumstances of the extended family and their accommodation needs significant weight and I also ascribe the best interests of the children substantial weight.

The Overall Planning Balance

22. Weighing in favour of the approval of the appeal is the general need for gypsy and traveller pitches in the district, the personal circumstances of the extended family who have a pressing need for a settled base so the families children can continue to regularly attend school, the long standing and ongoing failure of the Council policy to address the needs of the gypsy and traveller community and thus the unequal approach when compared to the settled community. However, I have identified harm with regards to the vulnerability of the site to flooding contrary to the policies of the LP, the Planning Practice Guidance and the Framework and afforded this conflict great weight.
23. I confirm that I have considered the possibility of granting a temporary planning permission. However, Planning Practice Guidance indicates that circumstances where a temporary permission may be appropriate include where a trial run is necessary in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. It has not been put to me that such circumstances apply in this instance.
24. Moreover, I am concerned that a time limited permission would not be appropriate due to the levels of harm that would arise even on a temporary basis. Taking all these factors into account, I also consider that a temporary permission is not justified.
25. I have also considered whether a personal permission (to restrict the occupation of the site to the extended family) would be appropriate. As set out in the Guidance, planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission.

26. I have had regard to the requirements of Article 8 of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998, and am aware that the Article 8 rights of a child should be viewed in the context of Article 3(1) of the United Convention on the Rights of the Child. However, I am mindful that the extended family's individual rights for respect for private and family life (along with the best interests of the children) must be weighed against other factors including the wider public interest and legitimate interests of other individuals.
27. I have also considered the Public Sector Equality Duty (PSED) at section 139 of the Equality Act 2010 to which I am subject. Since the extended family are Gypsies, Section 149 of the Act is relevant. Because there is the potential for my decision to affect persons (the extended family) with a protected characteristic(s) I have had due regard to the three equality principles set out in Section 149 (1) of the Act.
28. To dismiss the appeal would disrupt the education of the school age children. The negative impacts of dismissing the appeal arise since the extended family may be forced into a roadside existence and intermittent use of unauthorised sites. This would interfere with the best interests of the children and each member of the extended family's right for respect for private and family life and weighs in favour of the appeal.
29. However, I have found that the proposal is not a suitable location for the proposed development with particular regards to flooding and I am satisfied that the well-established and legitimate aim of granting planning permission in accordance with the development plan and planning policies which seek to prevent a highly vulnerable use at significant risk of flooding can only be adequately safeguarded by the refusal of permission in this instance. Whilst bearing in mind the need to eliminate discrimination and promote equality of opportunity, in my view the adverse impacts of dismissing the scheme on the appellant and their family are necessary and proportionate.
30. Bringing matters together, the other considerations in this case and the benefits of the proposal, even taking into account the extended family's Article 8 rights and the PSED considerations, do not clearly outweigh the totality of the harm identified.

Conclusion

31. For the reasons given above I conclude that the appeal should be dismissed.

Mr M Brooker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Trevor Mennell - Trevor Mennel Planning

Kathie Mennell - Trevor Mennel Planning

Martin Lucass – Geosmart Information

Simon McDonagh – Appellant

Ann McDonagh – Appellant’s Wife

FOR THE LOCAL PLANNING AUTHORITY:

Cllr Arshad Afsar

Jonathan Imber – JMI Planning

INTERESTED PARTIES:

Graeme Irwin – Environment Agency

Andrew Richardson Environment Agency

Les Tench – Stramshall & Spath Action Committee