



Appeal Decisions

Hearing held on 5 August 2025

Site visit made on 5 August 2025

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2025

Appeal A Ref: APP/D2510/C/25/3364355

Stickney Showground, East Fen Lane, Stickney, Boston, Lincolnshire, PE22 8DE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Alan Gray against an enforcement notice issued by East Lindsey District Council.
- The notice was issued on 26 March 2025.
- The breach of planning control as alleged in the notice is change of use of land to use as a gypsy/traveller caravan site and operational development consisting of the development of brick-built walls and piers, fencing and gates, the importation of aggregate for the creation of hardstanding and the raising of land levels, the development of a brick and block structure with twin apex in the southeast corner of the land, the development of sheds and the siting of containers, portacabins and installation of surface water and foul drainage.
- The requirements of the notice are to:
 - 1) Cease the use of the Land as a gypsy/traveller caravan site
 - 2) Cease the use of the Land as a residential caravan site
 - 3) Remove all caravans from the Land
 - 4) Remove from the Land the brick-built walls and piers, fencing and gates
 - 5) Remove from the Land all imported aggregate for the creation of hardstanding and the raising of land levels
 - 6) Remove from the Land the brick and block structure with twin apex in the southeast corner shown in Photo 1
 - 7) Remove from the Land all sheds, containers and portacabins
 - 8) Remove from the Land all installed surface water and foul drainage
 - 9) Return the Land to its previous condition
- The periods for compliance are 6 months for requirements (1) to (3) and 9 months for (4) to (9).
- The appeal is proceeding on the grounds set out in section 174(2)(c), (g) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Appeal B Ref: APP/D2510/W/25/3364354

Stickney Showground, East Fen Lane, Stickney, Boston, PE22 8DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (hereafter “the Act”) against a refusal to grant planning permission.
- The appeal is made by Mr Alan Gray against the decision of East Lindsey District Council.
- The application Ref is S/126/01403/23.
- The development proposed is change of use of land to use as a gypsy/traveller caravan site comprising: a warden's pitch accommodating a static caravan/mobile home, and 10 transit pitches, each accommodating no more than 2 touring caravans, erection of toilet/wash block and erection of dayroom building and laying of hardstanding.

Summary of Decision: The appeal is dismissed.

PRELIMINARY MATTERS

1. The appeal site in Appeal A is shown edged in red on the plan attached to the enforcement notice, referred to at the Hearing as the whole of the 'southern' field. In Appeal B the application site comprises a smaller part of the southern field in an inverted 'L' shape. The adjoining land to the north beyond both appeal sites was referred to as the 'northern' field. I will use the same references throughout in this decision.
2. At the Hearing the parties agreed, and I also agreed, that for the sake of clarity minor corrections to the wording of the enforcement notice could be made without injustice to any party. I will therefore correct the notice accordingly in the Formal Decision using powers available to me under s176(1) of the Act.
3. Appeal B relates to a proposed transit Gypsy and Traveller caravan site, including one permanent warden's pitch. In this regard the provisions of s79(1) of the Act provide that the whole or any part of the Council's refusal of permission can be reversed or varied. Appeal B is considered on that basis.

APPEAL A

Appeal on ground (c)

4. A "material change of use" of land or buildings is included within the definition of "development" in s55 of the Act. Development carried out without required planning permission is a breach of planning control, defined at s171A(1)(a) of the Act.
5. An appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control.
6. The burden of proof, tested on the balance of probabilities, falls to the appellant. If there is no evidence to contradict his version of events, or make it less than probable, and his evidence is sufficiently precise and unambiguous, it should be accepted.
7. In summary, the appellant's case is that at the date the enforcement notice was issued the occupation of the appeal site in caravans was not a material change of use from an existing lawful use of the land as a residential caravan site - that lawful use surviving from a Lawful Development Certificate (LDC) issued by the Council on 24 November 2014 for the "siting of a residential caravan". Consequently, it is argued, there was no requirement for planning permission and hence no breach of planning control.
8. In order to determine whether any lawful use rights exist on the appeal site at the date the enforcement notice was issued, and, if so, whether there was any material change of use from such a lawful use, it is necessary to look at the relevant planning unit/s and past uses.
9. Planning permission was granted for temporary periods in 1995 and 1997 to site a caravan (mobile home) within a small parcel of land within the northern field used for an equestrian business. The conditions on the permissions restricted occupancy of the caravan to persons involved in the operation of the equestrian business. As such that parcel of land was in a mixed use of equestrian and residential use.

10. In 2001 planning permission (S/126/00731/01) was again granted for a caravan with conditions¹ that it be occupied only by the then occupiers (Mr and Mrs Selby) in association with their ownership and management of the equestrian business, and that occupancy of the caravan should cease no later than 2 months from the date that the equestrian business were to cease. However, the permission related to the whole of the northern and southern fields in combination, thereby forming a single planning unit in mixed equestrian and residential use.
11. The 2014 LDC application was submitted by Mr Selby. The land it related to was all of the southern field and roughly half of the northern field. The granted certificate confirmed the existing siting of a residential caravan was lawful. The reasons specified in the LDC² as to why it was lawful included that the caravan had been continuously occupied in compliance with the occupancy condition of the 2001 planning permission restricting occupation to Mr and Mrs Selby. Significantly, it was not applied for or granted on the basis that there had been a breach of the 2001 occupation condition, such that it could be occupied by anyone else.
12. There is some dispute between the parties as to the proper interpretation of the LDC. However, it is unnecessary for me to rehearse that dispute in detail here because any lawful use rights that may have existed for the siting of a residential caravan were subsequently extinguished, as I set out in the following paragraphs.
13. In 2019 planning permission (S/126/01634/19) was granted for the erection of an agricultural building on a parcel of land comprising roughly two thirds of the lower part of the southern field. The notes on the planning permission notice are informative, referring to the details submitted with the application, noting the purpose of keeping *a small number of rare breed cattle and the storage of ancillary equipment and gear required for the maintenance of the surrounding pasture*. The appellant states the foundations for the building were dug and the permission was implemented.
14. I am not wholly convinced the 2019 permission was lawfully implemented, however assuming it was, it would have resulted in two new planning units: the first being the new unit used for agriculture occupying part of the southern field, and the second unit being the remaining mixed equestrian and residential use comprising the northern part of the southern field together with the whole of the northern field.
15. Even if the agricultural use as above did not take place, the land to which the LDC relates was subsequently subdivided with the whole of the southern field being sold to the appellant and his family, with the northern field remaining in separate ownership and occupation.
16. The southern field was then occupied in caravans by the appellant and his family solely for residential purposes. Hence, a new planning unit with different ownership and occupation was created and the use of the land changed from either: the single mixed equestrian/residential use as outlined in the LDC plan, or, from the part mixed equestrian/residential and part agricultural use if the 2019 permission was implemented. In either of these two scenarios the new single residential use was a material change of use from the previous mixed use/s and which required planning permission. Hence, even if there had been any continuing lawful use right in respect of the former single larger planning unit prior to the appellant's ownership

¹ Conditions 1 and 2

² See LDC - "Part II – Particulars of decision"

and use of the southern field, the new planning unit in Appeal A began a new chapter in the planning use of the land and extinguished any such right.

17. Since no lawful use as a residential caravan site exists and the change to that use was a material one, it required planning permission. Since no planning permission has been granted in constitutes a breach of planning control.
18. For these reasons the appeal on ground (c) fails.

APPEAL B

19. As described earlier, the application site comprises a smaller part of the southern field in an inverted 'L' shape. It is bounded by East Fen Lane to the east providing pedestrian and vehicular access, and by the East Fen Catchwater Drain, a designated main river ("the Drain") to the west.

Main Issue

20. The Council agreed that sufficient information³ had been provided by the appellant during the course of the appeal such that highway safety no longer formed an objection to the proposed development. Also, that matters relating to foul and surface water drainage and surfacing material for the site accesses could be controlled through the use of planning conditions. As such, the remaining principle and main issue in the appeal relates to the risk of flooding.

Reasons

Risk of flooding

21. Policy SP12 of the East Lindsey Local Plan (2018) is a criteria based policy which provides for permanent and transit Gypsy and Traveller sites. There is no requirement in the policy for an unmet need for sites to be demonstrated and so it is permissive in that respect. It is common ground between the parties that the proposal would meet all of the locational and other criteria requirements of Policy SP12, except in respect of the proposed permanent warden's pitch, which would conflict with SP12.1, requiring permanent pitches not to be located in an area of flood risk.
22. Although the only conflict with the wording of Policy SP12 relates to the proposed permanent pitch, the Environment Agency (EA) point out that the criteria for provision of transit sites in SP12.7, requiring restricted occupation of transit pitches to between March and October, is based on a historic assessment of risk related only to tidal flooding in 2018, and did not take account of fluvial flood risk. Having regard to the EA's more up to date assessment of all forms of flooding, including fluvial, the Council and the EA's concerns relate to both the permanent and transit elements of the proposal.
23. Reference was also made to Policy SP16 in respect of inland flood risk. However, I note that SP16 relates specifically to development proposals for business, leisure, commercial and housing uses. As such, it is of a wider and more general policy than SP12 which considers and provides for the specific type of development subject of the appeal, also taking account of flood risk. Policy SP12 is therefore the most relevant policy for determining the appeal.

³ Transport Assessment – TTC – May 2025

24. The Council does not currently have a 5-year supply of deliverable pitches to meet the assessed need for Gypsies and Travellers. In these circumstances paragraph 28 of PPTS⁴ and thereby paragraph 11(d) of the Framework⁵ applies.
25. Paragraph 11(d) directs that planning permission should be granted unless:
(i) the application of policies in the Framework that protect areas or assets of particular importance (includes areas at risk of flooding) provide a “strong reason” for refusing the development proposed; or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
26. As expressly stated in paragraph 11(d), the question of whether or not flood risk provides a “strong reason” is to be assessed against the application of policies in the Framework, rather than against local Development Plan policies. Hence, although Policy SP12 provides for transit (not permanent) pitches within areas of flood risk, that does not automatically preclude flood risk from being a “strong reason” in terms of the Framework policies.
27. The whole of the appeal site lies with Flood Zone (FZ) 3a of the EA’s Flood Map for Planning, being land at the highest risk of flooding. It also lies, particularly the western part of it, adjacent the elevated earth embankment which forms the flood defence barrier separating the appeal site from the Drain.
28. Annex 3 of the Framework identifies permanent caravan pitches as “highly vulnerable” development and short-let/holiday caravan occupation as “more vulnerable”. In my view, solely in the context of flood risk, the occupation of pitches throughout the year for transit purposes is more akin to permanent occupation (albeit by different occupiers) than short-let/holiday use.
29. The Framework (paragraphs 170-175) sets out that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future) to areas with lowest risk. Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. To achieve this a sequential risk based approach, (the “sequential test”) should be applied to individual planning applications.
30. The responsibility for applying a sequential test lies with local planning authorities.⁶ The Council should determine an appropriate area of search, based on the development type proposed and relevant spatial policies, with the applicant then identifying whether there are any other ‘reasonably available’ sites within the search area.
31. In this appeal, there is no information in the appellant’s Flood Risk Assessment (FRA) as to what search area was used for applying the sequential test, or any information relating to whether or why any other sites with lower risk of flooding were discounted. Instead, the appellant argues firstly, that large parts of the District are also within FZ3, thereby limiting the scope of potential alternative sites, and secondly, reliance can be placed upon the Council not having a 5-year supply of deliverable pitches to meet the assessed need for Gypsies and Travellers.

⁴ Planning Policy for Traveller Sites (2015) updated in 2024

⁵ National Planning Policy Framework (2024)

⁶ Planning Practice Guidance, paragraph: 029 Reference ID: 7-029-20220825

32. However, with regard to the appellant's first point, while other land in the District also lies within flood zones, that does not provide evidence of there being no other sites at lower risk of flooding (i.e. sequentially preferable in FZ2 or FZ1) than the appeal site in FZ3.
33. Secondly, a lack of a 5-year pitch supply is not a parallel to there being no other alternative sites with a lower risk of flooding. The appeal site did not form part of the Council's 5-year supply and was purchased on the open market. Similarly, other sites, with lower flood risk, may or may not be available. In this regard the PPG also confirms⁷ that the absence of a 5-year land supply is **not** a relevant consideration for the sequential test for individual applications. As such, the search for alternative sites with lower risk should be made on a geographical basis. For these reasons I find that the sequential test has not been passed.
34. Even if the sequential test had been passed, Framework paragraph 177 provides that where it is not possible to locate development in an area at lower risk of flooding, the "exception test" may need to be applied. However, the PPG is clear that the exception test is not appropriate to apply to highly vulnerable development proposed in FZ3, which it states should not be permitted. Paragraph 13(g) of PPTS also states that traveller sites should not be located in areas at high risk of flooding given the particular vulnerability of caravans.
35. Notwithstanding the inability to meet the sequential and exception tests, paragraph 181(d) and (e) of the Framework states that development should only be allowed in areas at risk of flooding where any residual risk can be safely managed, and safe access and escape routes are included where appropriate as part of an agreed emergency plan. I turn to this matter next.
36. As set out in the PPG⁸ residual flood risk to development can arise from a breach of raised flood defences. In particular, it advises that areas behind flood defences *"...are at particular risk from rapid onset of fast-flowing and deep-water flooding, with little or no warning if defences are breached"*. In order to ensure that people are not exposed to hazardous flooding, account should be taken of the risks related to such an event occurring.
37. There has been some raising of ground levels on the appeal site although it is not clear to me the precise extent, and there are some pre-existing differences in natural levels across the site. That notwithstanding, the appellant's FRA identifies that the maximum flood level during an event at the site is 2.43m OD; that ground levels could be raised for individual pitches to not less than 1.9m OD; and that finished floor levels of caravans could be raised to 2.5m OD. On the evidence before me I am satisfied that the caravans would be capable of being raised above the predicted flood water levels in the manner described. The FRA also proposes the caravans could be secured with chains and anchorage points, and that occupation of the site could be required to be subject of a flood warning and evacuation plan (FWEP).
38. However, even if a FWEP were put in place, the EA points to past breaches of the river flood defence at other locations as evidence of the nature of rapid flood water inundation, were it also to occur at this site. In the circumstances of such a breach the EA advise these can happen at any time of the year, and that because of their

⁷ Planning Practice Guidance, paragraph: 028 Reference ID: 7-028-20220825

⁸ Planning Practice Guidance, paragraph 041, Reference ID: 7-041-20220825, paragraph:042 Reference ID: 7-042-20220825

unpredictable nature warnings of such a breach are not possible to be given. For the appellant it is suggested the velocity of water during a breach at the appeal site would not likely be as rapid as the EA argues, that drainage would be towards the south and adjoining fields, and that the residual risk overall would be relatively low.

39. However, given the close proximity of occupiers to the Drain, and on the balance of the evidence before me, I take a precautionary view. Overall, I consider there would remain an unacceptable residual risk to life of occupiers, particularly to children, elderly or disabled persons who may be on site. Furthermore, velocity of water inundation aside, the flood water levels on site could quickly leave people stranded in caravans (or buildings), particularly for an event occurring during the night when people are asleep, leaving occupiers in need of rescue from emergency services.
40. To conclude on this issue, the appeal site is located in FZ3 and the development is classed as highly vulnerable to flood risk. As such, it should not be permitted at this location unless it passes both the sequential and exception tests, and can be made safe for its lifetime. It does not satisfy either test and I have also found there would remain an unacceptable residual risk for occupiers, even with mitigation measures and a FWEP in place. Although the transit pitches could potentially satisfy the requirements of Policy SP12, the policy was adopted in 2018. As such, I place greater weight on the more up-to-date versions of PPTS, the Framework, and PPG, which are significant material considerations.
41. For all these reasons, the site is not an acceptable location for the development with regard to the risk of flooding. This weighs heavily against allowing the appeal.

Other Considerations

42. It is widely acknowledged that in the UK Gypsies and Travellers have some of the worst outcomes in society in terms of health, education and social care. As such, the provision of both permanent and transit pitches would positively assist in achieving better outcomes, particularly given the continuity of education and other supporting services that can be provided for occupiers through the LTI.⁹
43. Permanent occupiers of the site at the date the notice was issued, and also at the date of the Hearing, include the appellant Mr Gray, his wife, and 4 children, and also Ms Collins and her 3 children. I heard that the children attended local schools and/or were home schooled and that some of the occupiers have medical conditions.
44. Together with detailed written submissions from third parties I also heard from local people who know the families, and who spoke very highly of them. Mr Gray supports local community sports groups, which his children also attend, and he also employs local people in his business. Taking all of the supporting evidence before me together, it demonstrates to me that the occupiers have successfully integrated into the local community while also being able to live in the traditional and nomadic way of life of Gypsies and Travellers; that being an overarching Government aim set out in PPTS.

Planning Balance

45. Paragraph 11d) of the Framework applies as set out earlier. In particular, 11d)(ii) states that planning permission should be granted unless any adverse impacts of

⁹ Lincolnshire Traveller Initiative - Mr Paul Boucher.

doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

46. I have found that the risk of flooding weighs heavily against allowing the appeal and this carries substantial weight in the overall balance. Against that the lack of a 5 year supply of pitches suitable and available now for Gypsies and Travellers, and the personal circumstances of the occupiers and other considerations I have set out previously, carry very significant weight in support of allowing the appeal.
47. However, I find that the adverse impacts of granting permission, relating to flood risk, significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As such, this indicates that planning permission should not be granted.
48. I have considered allowing the appeals subject to a temporary and/or personal permission limited to the current occupiers. However, even for a limited period of time the residual risk from flooding would remain, potentially for a very long time in the case of a solely personal permission, such that the site and its occupiers would continue to be “highly vulnerable”.
49. Dismissing the appeal would interfere with the rights of the occupiers to respect for their home and family life and property under Article 8 of the European Convention on Human Rights as set out in Schedule 1 of the Human Rights Act 1998. However, these are qualified rights, which may be interfered with in accordance with the law and in the interests of public safety. Although there are no alternative available sites, such that the current occupiers may be made homeless, the risk and consequences of flooding are such that it is proportionate to dismiss the appeal. The protection of the public interest cannot be achieved by any lesser means.
50. I also take particular account of the *best interests of children* which are a primary consideration, with no other consideration inherently more important. However, children are amongst the most vulnerable of occupiers in the event of a flood.
51. Under section 149(1) of the Equality Act 2010, I must also have regard to the aims of the Public Sector Equality Duty (PSED) to advance equality of opportunity and avoid discrimination. This is relevant in terms of access to suitable accommodation. The appellants and their families have the protected characteristic of race for the purposes of the PSED. However, the harm arising from the proposed development in terms of flood risk outweighs these considerations. Dismissing the appeal is thus proportionate and necessary.
52. Having regard to all of these considerations they do not by themselves or in combination outweigh the harm I have identified. The harm would significantly and demonstrably outweigh the benefits.
53. For these reasons Appeal B must be dismissed.

APPEAL A

Appeal on ground (g)

54. The ground of appeal is that the period of time for compliance with the enforcement notice requirements falls short of what should reasonably be allowed.

55. The notice requires occupation and removal of caravans within 6 months, and removal of operational development and restoration of the land within 9 months. The appellant seeks a period of 12 months for cessation of the use.
56. I am mindful that the harm resulting from the breach of planning control in this case should be remedied as soon as possible. However, given neither party could identify any suitable and available alternative sites, and the Council has a lack of a 5-year supply to meet current need for pitches, I acknowledge that finding and securing an alternative site would likely take longer than 6 months.
57. In light of all the circumstances I consider on balance that 12 months would be more reasonable to cease the use of the site, with a further 3 months for compliance with the remaining notice requirements.
58. The appeal on ground (g) therefore succeeds to this extent and I will vary the notice accordingly.

FORMAL DECISIONS

APPEAL A

59. it is directed that the notice be corrected and varied by:

- in Section 3, first line, insert “the material” before the word “change”;
- in Section 5, insert “5.” before the section heading;
- delete Section 5(1) then re-number the remaining requirements (1) to (8);
- in re-numbered Section 5(8) after the word “condition” insert the words “prior to the breach of planning control occurring”;
- delete section 6(1) then re-number the remaining time periods (1) to (8);
- in re-numbered Section 6(1) and (2) replace “6 months” with “12 months”;
- in re-numbered Section 6(3) to (8) replace “9 months” with “15 months”.

60. Subject to the above corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

APPEAL B

61. The appeal is dismissed.

Thomas Shields

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Phillip Brown BA (Hons)	Phillip Brown Associates
Alan Gray	Appellant
Tim Ellingham CE	Director, Ellingham Consulting Ltd
Geore Bailes MSc MCIHT	Director, The Transportation Consultancy
Paul Boucher	Director, Lincolnshire Traveller Initiative

FOR THE LOCAL PLANNING AUTHORITY:

Sam Hallet	Senior Planning Officer
Dean Flower	Interim Enforcement Service Manager
Ryan Dodd MRTPI	Senior Planning Enforcement Officer

FOR THE ENVIRONMENT AGENCY:

Rebecca Flint MRTPI	Planning Advisor
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INTERESTED PARTIES:

Rachel Bearder
Jim Kaye
Jim Finch
Steve Williams

DOCUMENTS SUBMITTED AT THE HEARING

DOC 1 Highway Authority response (13.06.25) to Transport Assessment