



Appeal Decision

Hearing held on 18 February 2026

Site visit made on 18 February 2026

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th March 2026

Appeal Ref: APP/U2750/W/25/3371633

Land off Selby Road, Camblesforth, Near Selby YO8 8NE

- 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 John Cunningham against the decision of North Yorkshire Council.
 - The application Ref is ZG2025/0054/FUL.
 - The development proposed is the change of use of land to a traveller site for one family, erection of a dayroom and including ancillary hardstanding.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the course of the appeal, the appellant submitted information which demonstrates that it would not be feasible to connect to the public sewer system. As a result, the Environment Agency (EA) withdrew its in principle objection that formed the basis of reason for refusal three. The main parties are content that the outstanding matters as to what precise form the foul drainage system might take could be the subject of a planning condition. I have no reason to disagree with that approach and therefore I have not considered this matter further.

Main Issues

3. The main issues are:
 - i) Whether the proposed development would be suitably located, having regard to local and national planning policies and to the accessibility to services and facilities
 - ii) Flood risk matters
 - iii) The weight to be attached to other considerations, including the need and supply of Traveller sites; the availability (or lack) of alternative sites; the personal circumstances of the occupiers including the best interests of children; the Planning Policy for Traveller sites; and the presumption in favour of sustainable development set out by the National Planning Policy Framework

Reasons

Location

4. Policy SP11 of the Selby District Core Strategy 2013 (CS) is a policy specific to Gypsy & Traveller (G&T) development. It does not contain any locational criteria applicable to G&T development, and it instead advises that applications will be determined in accordance with national policy. The National Planning Policy Framework (the Framework) and the Planning Policy for Traveller Sites (PPTS) are the relevant policies in that respect. Policy SP2 of the CS sets out the spatial development strategy for the district and it is not permissive of the type of development proposed by this appeal in the countryside and outside of development limits. The reason for refusal also refers to Policies SP1 and SP19 of the CS, with the former setting out a presumption in favour of sustainable development and the latter relating more to matters of design as opposed to location. Neither are of any particular assistance in assessing site specific locational matters.
5. It is common ground between the parties that it would not be feasible to walk to Camblesforth along Selby Road, this being an unlit national speed limit road with no pavements. Given the nature and speed limit of the road, the appellant also does not seek to suggest that cycling would be an attractive proposition as a means of transport to reach the settlement and to its services and facilities. Selby is located along the same road, in the opposite direction and further away than Camblesforth. Overall, there is an agreement between the parties that there would be a high, if not total, reliance on the use of motor vehicles to move to and from the appeal site. Notwithstanding this, there was also a broad agreement at the hearing that the services and facilities found within Camblesforth, and to some extent those in Selby, are not far in either travel time or in distance from the appeal site, if travelling by a motor vehicle. I find no reason to come to a different conclusion on any of these matters.
6. The Framework seeks to prioritise pedestrian and cycle movements and to facilitate access to high quality public transport. Its general thrust includes the promotion of development which is sustainable in locational terms through limiting the need to travel and offering a genuine choice of transport modes, although it does recognise that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. It also seeks to avoid isolated homes in the countryside and to ensure that safe and suitable access can be achieved for all users and that places are safe and accessible. The PPTS does not however preclude traveller sites in rural areas. Nor does it seek to prevent such development in the open countryside that is away from existing settlements, albeit with the proviso that development in such locations should be very strictly limited. The physical distance and separation between the appeal site and Camblesforth means that in this instance the proposed development would be away from the existing settlement.
7. The proposal would not accord with Policy SP2 of the CS, but I attach limited weight to that policy in my determination of this appeal proposal because it does not permit any G&T development in the countryside outside of development limits. That is clearly inconsistent with the PPTS. It would also appear that the Site Allocations Local Plan to which part B of Policy SP2 refers was never undertaken, and the opportunity to set out a sequential approach to development in locational

terms was therefore missed. The appellant suggested at the hearing that Policy SP11 of the CS is out of date for five separate reasons. But, as I have noted, in any event the policy defers to national planning policy in order to assess the matters relevant to this main issue.

8. There is some tension with the Framework where it seeks to promote the location of new development where it would have access to means of transport other than a motor vehicle. However, the PPTS allows in principle for development in the open countryside that is away from existing settlements. Such locations are unlikely to have good access to public transport and are less likely to be attractive in terms of walking or cycling. As I have noted, the differences between urban and rural areas in that respect is acknowledged by the Framework. The PPTS requires that instances of sites permitted in such locations should be very strictly limited. To my mind, an assessment of this can only be made in the round, with the full circumstances of the particular case and the wider position in terms of the delivery of G&T development forming part of the consideration. I shall therefore return to this in the planning balance.

Flood risk

9. The appeal site is located within Flood Risk Zone 3a, which is land identified as having a high probability of flooding. The proposed development would fall within the highly vulnerable flood risk vulnerability classification set out in Annex 3 of the Framework. Table 2 of the Planning Practice Guidance¹ (PPG) indicates that highly vulnerable development should not be permitted in Flood Risk Zone 3a. Policy SP15 of the CS seeks at criterion A.d) to ensure that development in areas of flood risk is avoided wherever possible through the application of the sequential test and exception test. The PPTS states that local planning authorities should ensure that their policies do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans.

Sequential test/exception test

10. The appellant states that there are no other sites available and they point to much of the surrounding land being at similar levels of flood risk and being within the Green Belt, alongside there being no allocated G&T sites identified. The EA accepts in their consultation response that there are not extensive areas in North Yorkshire that would be at lower flood risk and the Council's Officer Report acknowledges that there are limited options in general. This is not however the same as accepting there are no other options, and the onus is on the appellant to demonstrate that this is the case. Whilst some of the sites identified by the Council during the separate injunction proceedings relating to the appeal site were indeed in Flood Zone 3, others were not.
11. In terms of wider flood risk, the flood map provided by the Council suggests that there are some areas of lower flood risk relatively close to the site and within the proximity of Thorpe Willoughby, where the appellant intends for his children to be schooled. No details have been provided to suggest that the presence of Green Belt would be a constraint in that area. There is no apparent reason why the fact that there are no allocated sites means that in flood risk terms the appeal site should be considered to have passed the sequential test. Indeed, the appeal site itself is not an allocated site, and therefore in principle it has no preference in

¹ Paragraph: 079 Reference ID: 7-079-20220825

selection for its intended use than other land. The Site Allocations Local Plan which has never come to fruition would have been expected to apply a sequential approach in flood risk terms, but its absence does not absolve the appellant from doing so. No substantive evidence has been provided to support the proposition that a sequentially preferable site would be prohibitive in cost terms. The appellant's position that all other land can be ruled out as not being sequentially preferable has not been substantiated.

12. The appellant referred directly to the Blazegate² appeal at the hearing, where the appointed Inspector noted that *'the Council accept there are no public gypsy and traveller sites in the district and do not dispute there is no availability for the appellant and his family on other private sites. This demonstrates there are no other sequentially preferable sites, and hence the sequential test is passed'*. I do not have the evidence that was before the Inspector in that instance. In this appeal, the parties disagree as to whether it has been demonstrated that the sequential test has been passed. For the reasons I have set out, I agree with the Council that it has not.
13. Even if the sequential test had been passed, table 2 of the PPG states that the exemption test should not be applied and instead that the development should not be permitted. In any scenario, the question of whether a development can be made safe would come after the consideration of whether there are sequentially preferable sites available. That is the case on the application of both Policy SP15 of the CS and the Framework. This is a logical approach, as if it is shown that there are no alternative sites at a lower flood risk then the only way a specific type of development could be brought forward is to put in place the best measures possible to make it safe. Whether a development could be made safe is not therefore the starting point, as if it were it would in effect render the sequential test redundant. And in any event, the exception test would require that the development would be safe for its lifetime taking account of the vulnerability of its users, which is a matter I will now consider.

Could the proposed development be made safe?

14. There are a number of measures proposed to make the development safe, including signing up to flood warnings, passive flood protection in the form of raised ground levels, flood resilience measures and the provision of a safe refuge. It was confirmed at the hearing that ground levels would be raised across the whole site. In doing so there is the potential to address all of the outstanding concerns of the EA in terms of ensuring that the proposed development itself would not be affected by the flood levels expected on the basis of the available data. However, this would not address the concerns of both the Council and the EA with respect to the impact of flooding on the site access/egress and in terms of the specific safe refuge that is proposed.
15. The Flood Risk Assessment (FRA) states that flooding in this area is predominantly fluvial due to tidal impacts and consequently restrictions on the use of the access/egress would not be extensive, with access being predominantly available. The EA however take the view that due to the dominance of fluvial flood sources, it is unlikely that flooding of the access/egress would be significantly ameliorated during low tides and that they would expect flood levels to persist for

² APP/A2525/W/24/3339458

prolonged periods as the significantly large upper catchments drain down. There is not a wealth of evidence before me to suggest that one of those positions is more likely, but the FRA does note that the appeal site is located approximately 27km from the River Humber whose tidal range reaches Goole. There is therefore at least a question mark as to what degree tidal factors would actually be an influence on how long the access/egress remained flooded given the distance and tidal range.

16. If the access/egress was flooded the appeal site would in effect become an island because of the intended raising of the ground levels. It is important to know with as much degree of likelihood as is possible as to how long this island might remain. This is because the longer the flooding persists the more likely that the occupants would need to be rescued from the site. In flood risk terms many developments could be made safe from actually flooding by raising their ground levels. But this does not solve the issue relating to occupants becoming trapped on the site, the demands made on emergency services in having to rescue them or the risk to the occupants through attempting to leave.
17. In the event of a severe flood, the safe refuge identified in the FRA is for ladders to be used to enable occupants to access the roof of buildings. With justification, the EA does not consider this to represent a safe refuge. Whilst it would allow people to escape the immediate risk posed by a flooded building, they would then be left on top of a roof. It is highly unlikely that anything other than an immediate rescue would be required in that case, in particular given that they would not have access to household amenities or shelter and that there would be children residing on the site. There is also the possibility that the ability of a person to climb a ladder may change at any point in time.
18. The proposed refuge would therefore do nothing to reduce the burden on the emergency services to attend the site. The appellant considers that the reliance on the refuge would be a worst-case scenario and a rare event, and it would in effect be negated by EA alerts which would allow the appellant to pre-emptively evacuate the site. However, it is not inconceivable that those alerts could be missed, not received or not acted upon. If the refuge identified was needed, it would not be safe and this would almost certainly mean that immediate evacuation from the appeal site would be needed.
19. I acknowledge that the EA accept that the overtopping of defences would not be a likely immediate extreme hazard, and I note the distances between the appeal site and the Rivers Ouse and Aire. The appellant also refers to the acceptance by the EA that an increase in ground levels would be a valid mitigation and they also point out that the whole site would be of a level where a person would be able to go somewhere safe in the instance of flooding at an expected level. But in a severe flood event it remains that there would be no safe refuge and even in an expected flood event there is a likelihood that occupants would become trapped in effect on an island within the flooded area because the access/egress would not be useable. Those are matters which weigh significantly against the proposal.

Conclusion on main issue two

20. For these reasons I conclude that it has not been demonstrated that the sequential test has been passed or that the proposed development would be safe from flooding in terms of access/egress and the proposed safe refuge. Consequently, it

fails to accord with Policy SP15 of the CS where it refers to flood risk matters, and to the Framework and the PPG in the same regard.

Other Considerations

Need and supply

21. There has been a clear and persistent need to provide G&T sites for a considerable period of time. It would appear that the Council has not kept on top of what is needed and what has been supplied, which has led to the agreed position on the basis of the Bilbrough appeal decision³ that there is currently an unknown level of need and that the Council is unable to confirm it has a defensible position on the supply of G&T pitches. This carries significant weight in support of the appeal proposal.

Alternative sites

22. In terms of alternative sites on which the appellant could lawfully live at the current time, the Council refers only to two pitches which are understood to be available on the Carlton public site. However, the appellant set out their reasons at the hearing as to why this would not be an acceptable option for his family and I see no reason to disagree with them on that point. In the event that the appeal is dismissed, the appellant would not have a lawful alternative site on which to reside, and this too carries significant weight in support of the appeal proposal.

Policy failure

23. It has been put to me that the Council's failure to provide G&T sites extends beyond just an existing unmet need and instead it amounts to a policy failure. The evidence on this is compelling, with reference to such a policy failure, including in terms of Policy SP11 of the CS not being consistent with national policy, appearing in decisions from as long ago as 2015⁴. That decision itself refers to an appeal decision from 2009 which identified a need that had not been addressed by the time of the later appeal. My attention has been drawn to other appeal decisions since that point which refer to an unmet need and to policy failure.
24. As I have noted above, the Site Allocations Local Plan, which would have formed the basis for establishing at least a 5-year supply of deliverable sites and broad locations for growth to accommodate additional Traveller sites/pitches/plots has not come forward. It is also pertinent to note that the accompanying text for Policy SP11 refers to the North Yorkshire Gypsy & Traveller Accommodation Assessment 2010, which is a stark indication of just how long this matter has been left unaddressed.
25. There has been a consistent and prolonged policy failure which has led to the situation that exists today. This carries significant weight in favour of permitting the proposed development.

Personal need

26. It was explained at the hearing that the appellant and his family do not have a settled base, and it was stated that they are currently living wherever they can. This has had consequences for his three children, who have not been able to

³ APP/U2750/C/23/3322444 / APP/U2750/W/23/3322355

⁴ APP/N2739/C/14/2222861 and APP/N2739/A/14/2218640

attend school for a period of approximately one year in the absence of a permanent address. There have also been implications in terms of being able to register with a general practitioner and a dentist for the same reason. The children have had no opportunity to play outside in the locations they have been residing. There would be a clear benefit as a result of them having a settled base, and the best interests of the children would be served by this. If the appeal is dismissed they would remain without a settled base. These considerations carry significant weight in favour of the proposed development.

PPTS

27. The appellant highlights that the matters listed in paragraph 25 of the PPTS support the appeal proposal. I have addressed criteria a) to c) above and also noted that there is no local policy which includes locally specific criteria. Criterion e) is not a matter of concern that has been raised by any party.

Paragraph 11d)

28. In circumstances where the most important policies for determining the application are out of date, which includes situations where the local planning authority cannot demonstrate a five year supply of deliverable G&T sites, Paragraph 11d) of the Framework advocates for the granting of planning permission unless the application of either criteria 11d)i) or 11d)ii) indicates otherwise. Paragraph 11d)i) is the scenario where the application of policies in the Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed. In footnote 7, areas at risk of flooding are identified as areas or assets of particular importance.
29. Given that I have found that it has not been demonstrated that the sequential test has been passed and that it has not been demonstrated that the proposal would be safe for its future occupants, flood risk provides a strong reason for refusing the development proposed. As a result, the presumption in favour of sustainable development set out in the Framework does not apply.

Other Matters

30. There were no objections from members of the public to the appeal proposal. The appellant refers to the Ten Acres appeal decision⁵ where it is stated that the Council accepted that it would be difficult for the appellants to obtain planning permission for a gypsy caravan site because of the local opposition that such development raises. They consider that there would be benefits to both the G&T and the settled community from the appeal proposal. However, the lack of objection does not itself equate to an acceptance of a proposed development in planning terms, nor negate the requirement to balance the benefits against the harm and to make an assessment on the individual merits of the case. Furthermore, there is nothing substantive to suggest that the appeal site is the only location where such development might come forward without objection.
31. My attention has been drawn to other G&T appeal decisions, including some where flood risk concerns were outweighed by other considerations and planning permission was granted. As the Council alluded to at the hearing, I do not have the benefit of the full evidence, such as the site specific Flood Risk Assessments, for

⁵ APP/N2739/C/14/2227549/50/51/52/53/54

those cases before me and in each instance it was for the appointed Inspector to balance the benefits against the harm. But, in any event, the two cases in South Holland district⁶ would appear to have been more influenced by tidal factors than the appeal site. The appeal at Biggin⁷ was dismissed for other reasons, but in so far as it addressed flood risk it is clear from the decision letter that there were differences in the site characteristics in flood risk terms, alongside it being a development of a much greater quantum. I do not therefore consider that any of those decisions assist me in my determination of this appeal.

Planning Balance & Conclusion

32. The position regarding the need and supply of G&T sites, the absence of a lawful alternative and the prolonged policy failure in the Selby district are all matters which weigh significantly in support of the appeal proposal. The personal circumstances of the appellant also weigh significantly in favour, and that their children would be able to attend school, access medical services and have an outside area to play means that the best interests of the appellant's children would be served by having a settled base. Although away from the settlement of Camblesforth, the fact that services and facilities are easily accessible by motor vehicle in terms of distance and time offers some mitigation against the location. With respect to the matter arising from main issue one alone, these considerations collectively would justify the permitting of the proposal in the face of the PPTS requirement that development in such locations is very strictly limited.
33. Nonetheless I have found conflict with the policies of the development plan, the Framework and the Planning Practice Guidance in flood risk terms. At both a local and national level, planning policy seeks in the first instance to direct new development to areas at the lowest risk of flooding. There has not been an adequate sequential test undertaken and therefore it has not been demonstrated that there are no sequentially preferable sites on which the appeal development could be located. Even if this had of been undertaken, it has not been shown that the proposed development would be safe for its future occupants, with regard to the matters of how long the access/egress to the appeal site might be impeded by flood water and the safe refuge that is proposed. This means that the proposed development fails to accord with the development plan, taken as a whole.
34. The harm in this respect and the conflict with the development plan that results is not outweighed by the considerations in favour of the proposal. In reaching this conclusion I acknowledge that the dismissal of the appeal would leave the appellant and his family without a settled base and that in a number of respects this would not be in the best interests of the children. I also acknowledge the significant weight I have afforded to need and supply, alternative sites and policy failure, and that I have found that the appeal site would be acceptable in locational terms when balanced against these considerations collectively.
35. However, the submission does not follow the approach set out in local or national policy to development in areas of flood risk in terms of the sequential test. It has also not been shown that the proposal would be safe for its occupants, and it follows that it would not be in the best interests of any of the occupants, including the children, to settle them here in those circumstances. These are fundamental policy conflicts which support the refusal of planning permission and the numerous

⁶ APP/A2525/W/24/3339458 & APP/A2525/C/20/3258547

⁷ APP/U2750/C/25/3360459, APP/U2750/C/25/3360460, APP/U2750/C/25/3360466, APP/U2750/W/25/3361997

considerations put forward in favour do not outweigh these, taken either individually or collectively.

36. I have given consideration as to whether permission could be granted on a temporary basis and/or be granted as a permission personal to the appellant. However, neither approach would overcome the harm arising from the matter of flood risk.
37. I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I have also had regard to rights conveyed within the Human Rights Act 1998. In respect of the above and for the reasons I have set out, a refusal of planning permission is a proportionate and necessary approach to the legitimate aims of ensuring that development in areas of flood risk is avoided wherever possible and that if it is permitted that it is safe for its occupants.
38. Furthermore, the protection of the public interest cannot be achieved by means that are less interfering with the appellant's human rights. Therefore, whilst I acknowledge the personal circumstances of the appellant and his family, I conclude that they do not outweigh the harm that would be caused by the proposal in respect of flood risk.
39. The appeal should therefore be dismissed.

Graham Wraight

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Freddie Humphreys – Counsel, Kings Chambers

Mark Simmonds – Agent

John Cunningham – Appellant

Mrs Cunningham – wife of the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Shemuel Sheikh – Counsel, Kings Chambers

Ryan King – Senior Planning Officer

DOCUMENTS

Flood Evacuation Plan