The Planning Inspectorate

Appeal Decision

Hearing held on 7 December 2022

Site visit made on 7 December 2022

by Helen Hockenhull BA (Hons) B.Pl MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2023

Appeal Ref: APP/A2525/W/20/3249950
Bridge Inn Caravan Park, Common Drove, Crowland, Spalding PE6 0HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr J O'Connor against the decision of South Holland District Council.
- The application Ref H02-1174-19, dated 28 November 2019, was refused by notice dated 30 January 2020.
- The application sought planning permission for a proposed static and touring caravan park, including new toilet block and access road without complying with a condition attached to planning permission Ref H02/0359/00, dated 22 June 2000.
- The condition in dispute is No 6 which states that: The static caravans shall not be occupied during the month of January and the first two weeks of February in each year.
- The reason given for the condition is: The application has been submitted for holiday use and this condition is imposed to prevent a permanent residential occupancy occurring which would be contrary to residential development policies in the Development Plan.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. This retrospective appeal proposal seeks to vary condition 6 on planning permission ref H02/0359/00 to allow for permanent residential use throughout the year for 5 static caravan plots only to be occupied by Gypsy/Travellers.

3. The main parties were unable to agree a Statement of Common Ground before the event. The hearing therefore proceeded on the basis that there were no areas of agreement between the parties.

4. The appeal site has a complex planning history. Following the original permission in 2000, an application was made to modify the site layout in 2009. This was granted subject to a number of conditions which included restrictions on the occupation of the site for holiday use and the time periods for occupation. An appeal was made against the imposition of two of these conditions which was subsequently allowed on appeal. It was confirmed at the hearing that the 2009 permission was not implemented and has now expired. Therefore, the extant permission for the caravan park is that granted in 2000.

5. Before the hearing, I requested the views of the main parties on the implications of the Finney[1] judgment on the appeal proposal. In this case, the Courts established that an application under s.73 may not be used to obtain a permission that would require a variation to the terms of the "operative" part of the planning permission, that is, the description of the development for which the original permission was granted. I have considered the views provided. I am satisfied that having regard to the original description of development, a static and touring caravan park, that the appeal case is not affected by this judgment.

6. The appellant confirmed at the hearing that the personal circumstances of the appellant and the current occupants of the site was not being relied upon in support of the appeal. Nevertheless, at the hearing I heard details of the families who are living on the site, and I have taken this into consideration in my decision.

Main Issues

7. Given the above, the main issues in this case are

    - whether the disputed condition is reasonable and necessary having regard to whether the site forms an appropriate location for Gypsy and Traveller accommodation and whether it would be subject to an unacceptable risk of flooding;

    - whether other material considerations, including the general need for and supply of gypsy sites, the accommodation needs and personal circumstances of the appellant, outweigh any harm identified, such as to justify the development.

Reasons

8. The appeal site lies in the open countryside to the west of Common Drove, adjacent to the River Welland and the Bridge Inn Public House to the west of the town of Crowland. It forms an existing caravan park with permission for 15 static and 15 touring caravans.

9. The appellant has questioned whether the authorised use of the site is for holiday use. I acknowledge that the description of development on the original planning permission does not mention holiday use. However, the reason for condition 6 of the permission clearly states that the application was submitted for such a use. Furthermore, the condition was justified on the basis that a permanent residential use would have been contrary to the policies of the development plan.

10. It is also significant that the 2009 planning application on the site, described the site as an existing holiday caravan park. I am not aware that this description was disputed. There is no evidence before me to suggest that the authorised use of the site is as anything other than a holiday park with both touring and static caravans with restrictions on their occupation to prevent a permanent residential use.

[1] John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868 (Finney).

Appropriate location

11. Planning Policy for Traveller Sites (PPTS) states in paragraph 25 that local planning authorities should very strictly limit new traveller site development in the open countryside that is away from existing settlements or outside areas allocated in the development plan.

12. Policy 1 of the South East Lincolnshire Local Plan adopted in 2019 sets out the spatial strategy in the District. In relation to development in the countryside, it recognises that housing needs for Gypsy and Travellers may, by exception, be justified in the countryside. The principle of Gypsy and Traveller accommodation in the countryside is therefore supported by national and local plan policy.

13. Turning to the specifics of the site in question, it lies approximately 1.5 km from Crowland. Crowland is defined as a Main Service Centre in Policy 1 of the Local Plan. It provides a range of services including a primary school, pubs, shops, health centre, pharmacy, takeaways, hairdressers, pavilion and sports field.

14. It would take around 20 minutes to walk to Crowland, and a few minutes longer to the school and to the health centre which is at the southern end of the town. The route would involve walking along Gravel Causeway which is a long narrow straight road with no footways and no lighting. Users would on occasion have to walk along the grass verge. This is evidently marshy and uneven in places, more so in the winter months. Several narrow timber footbridges have been installed with a railing to assist walkers.

15. The road is subject to the national speed limit, 60 mph. I observed on my site visit that the route is not heavily trafficked but because of its nature, vehicles travel at speed. However, the road has very good visibility, anyone walking, or cycling would be able to be seen from some distance. The situation would of course be much more hazardous at night when the road is unlit.

16. The nearest public transport to the site would be from the town, a 20/25 minute walk, where an hourly service to Spalding and Peterborough can be accessed. Services are less frequent on Sundays and terminate early evening.

17. In the context of a rural area, the appeal site is not 'away from' an existing settlement, being only about 1.5km from Crowland. The site is also not isolated, being located next to a public house with a residential property beyond. Whilst occupants of the appeal site would have options other than the car to access services and facilities particularly during the day, I accept that in the evening and in inclement weather they would be more likely to use the private car. However, such local journeys would be short.

18. Policy 20 of the Local Plan requires Gypsy and Traveller sites to provide access to education, health care and recreational facilities, shops and employment within reasonable traveling distances, preferably by walking, cycling or public transport. I consider the distance between the site and Crowland to be reasonable. Furthermore, whilst non-car means of transport would not always be ideal as I have outlined above, it would provide an option to future occupants particularly during the day.

19. I take account of paragraph 105 of the Framework which recognises that opportunities to maximise sustainable transport solutions will vary between

urban and rural locations. Given the above, I conclude that the appeal site does provide an appropriate location for a Gypsy and Traveller site. It complies with PPTS and Policies 1 and 20 of the South East Lincolnshire Local Plan which amongst other things seek to achieve sustainable development.

Flood risk

20. The appeal site lies in Flood Zone 3a of the Environment Agency (EA) Flood Zone Map. It lies immediately next to the River Welland, a designated main river, and is protected by the Deeping High Bank running along the southern site boundary. On the opposite side of the river, are the Crowland and Cowbits Washes.

21. The Strategic Flood Risk Assessment (SFRA) identifies around 70% of the site as being within an area of 'Danger for All' with predicted flood depths of between 1-2 metres and around 30% being within an area of 'Danger for Most' with a predicted flood depth of 0.5 to 1 metre in a modelled scenario of a flood with a 1 in 1000 chance of occurring in any year up to 2115. I was advised at the hearing that the 5 static pitches proposed for permanent residential use are within the latter area with a predicted flood depth up to a metre. The EA object to the development proposal as it falls into a flood risk vulnerability category that is inappropriate to the Flood Zone in which the application site is located.

22. PPTS in paragraph 13 is clear that Gypsy and Traveller sites should not be located in areas at high risk of flooding given the particular vulnerability of caravans. They are described as a highly vulnerable development in the Flood Risk Vulnerability Classification at Annex 3 of the Framework. Policy 20 of the Local Plan reiterates this position and states that sites for permanent residential use should not be located within Flood Zone 3a.

23. The Framework requires that development proposals in flood risk areas should be accompanied by a site-specific flood risk assessment (FRA). Planning Practice Guidance (PPG) states that such assessments should be credible and fit for purpose and that they should be appropriate to the scale, nature and location of the development.

24. In this case, the appellant has not submitted a fully detailed assessment but has instead provided a letter addressing flooding matters before the event. The appellant argues this is in effect a FRA, however I do not agree. The PPG advises that the objectives of a site-specific FRA are to establish whether a proposed development is likely to be affected by current or future flooding from any source, whether it will increase flooding elsewhere, whether the measures proposed to deal with these effects and risk are appropriate and also to provide the evidence required to apply a sequential test and where necessary an exception test. The submitted letter does not provide all this information.

25. The appellant refers to the Welland Catchment Strategic Modelling Study undertaken by the EA. This demonstrates that the site would be protected from flooding up to and including the 1 in 1000-year return period plus an allowance for climate change. This is however only in the event that the existing defences are not breached.

26. I was advised at the hearing that the last time the defences in this location were breached was in 1947. The existing fluvial defences consist of earth embankments and reduce the risk of flooding to a 1% chance of occurring in

any year. Whilst I accept that the risk of flooding is low, the potential consequences are significant. This is because the appeal site is lower than the river level, so that if the defences were breached, there would be rapid inundation of fast flowing water with little warning.

27. The appellant suggests that the floor level of the static caravans could be raised to a metre in height, to match that of the predicted flood levels. I acknowledge that this could be achieved, so that the caravans provide a safe haven. However, in a flood event the occupants would be stranded. The flood water would take time to recede resulting in the likelihood that the site occupants would need to be rescued, putting a burden on emergency services.

28. I acknowledge that the existing planning permission for the site permits static caravan occupation all year except for approximately 6 weeks in January and early February. There are no other restrictions on the length of stay etc so that in effect the caravans can nearly be occupied all year round. However, I have already set out in the Preliminary Matters section that in my view the site was permitted on the basis of a holiday use. Notwithstanding the permanent occupation of the site manager, there is a clear distinction between occupation for holiday use and occupation on a permanent residential basis. A flood event would have more serious consequences for those who permanently live in a caravan on the site, including the need for temporary accommodation and loss of property.

29. It is also important to note that the original permission for the site dates from June 2000. Since that time national planning policy has changed, the Framework has been introduced and the risk of flooding and the effects of climate change are now better understood and of greater significance in policy making and decision taking.

30. In line with current planning policy, specifically paragraph 167 of the Framework and Planning Practice Guidance (PPG), a sequential test needs to be satisfied. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source.

31. The appellant argues that since much of the district lies in Flood Zone 3, there are no alternative sites available at a lower risk of flooding. However, a detailed sequential test has not been undertaken to demonstrate which sites have been considered and the reasons for their rejection. Whilst it may be that there are no alternatives, without this assessment being undertaken, I am unable to come to this conclusion. A further difficulty is that the area of search illustrated in the appellant's supporting letter, is very localised to Crowland. It does not cover the whole of the District as required by Policy 4 of the Local Plan.

32. Accordingly, I am not satisfied that the sequential test has been passed. In these circumstances it is not necessary for me to consider, the exception test. This provides two further elements to be satisfied when there are no other sites at a lower risk of flooding.

33. The appellant suggested various measures that could be taken to make the site safe in a flood event, including tethering or anchoring the caravans and a Flood Warning and Evacuation Plan. These adjustments are available to all caravan sites yet the national guidance for Gypsy and Traveller Sites states that sites should not be located in areas at risk of flooding. Whilst the caravans would

only be vulnerable in extreme flood events, it does not alter my overall concern about the impact of a flood event on the occupants.

34. Whilst the appeal site is defended and may be at low risk of flooding, the above policy requirements have not been satisfactorily met. The appeal proposal therefore fails to comply with Policy 4 of the South East Lincolnshire Local Plan, as well as Chapter 14 of the Framework and the advice in the PPG on Flood Risk and Coastal Change.

The need for and supply of Gypsy sites

35. The Council's Gypsy and Traveller Accommodation Assessment conducted in 2016 found a need for 4 new pitches over the local plan period 2011-2036. This was taken forward into Policy 20 of the Local Plan, which allocated a site at Bleu Raye Farm, Whaplode Fen to meet this need. I understand this site has planning permission but has not been implemented.

36. Notably however, the GTAA identified 5 known households that met the PPTS definition and 37 unknown households who met the PPTS definition but could not be interviewed. The appellant has criticised the GTAA as the interviews undertaken were in the summer months when many Gypsies would have been away travelling. It is therefore not surprising that there is a high number of unknown households. The GTAA also identified 19 households who did not meet the definition. Cumulatively this amounts to a significant cultural need in the District.

37. Whilst I acknowledge that the GTAA was the subject of scrutiny during the Local Plan Examination and found to be sound, it is now 6 years old. There is no timeframe for a new assessment to be undertaken. I agree that based on the Local Plan requirements, the Council can demonstrate a five-year supply of pitches. However, I take the view that the high number of unknown households and those not meeting the PPTS definition suggests a higher need in the District. This local need weighs in favour of the development.

Alternative sites

38. I have already discussed alternative sites above in relation to the sequential test and that the site allocated in the Local Plan for Gypsy and Traveller accommodation has planning permission. However, I have no evidence before me that the site is available to the appellant. There are no public sites in South Holland, and I have not been advised of any vacant pitches on other private sites which may be suitable and available. Accordingly, as there is no evidence of alternative accommodation, this factor adds support to the proposal.

Personal circumstances

39. The appellant stated at the start of the hearing that reliance was not being placed on the personal circumstances of the appellant. However, I was provided with some details of those families currently living on the site. In total there are 5 families, though at the time of the appeal hearing, one family was away traveling. There are 5 dependent children of school age. I was informed that all the occupants are registered with the local health centre.

40. I acknowledge that the appeal site would provide a settled base from which the occupants could access education and health care more readily. This would be advantageous to their wellbeing and in the best interests of the children. These

matters weigh in favour of the proposal and accords with the aims of the PPTS to enable the provision of suitable accommodation from which travellers can access education, health, welfare and employment. A permanent base would also reduce the need to travel, reduce the risk of environmental damage from unauthorised encampments and promote the traditional lifestyle of the families.

Planning balance

40. I have found that the appeal site is in an appropriate location with adequate access to services and facilities. The current occupants need for accommodation, personal circumstances and the best interests of the children also weigh in favour of the scheme. I also give positive weight to the fact that the proposal would make effective use of previously developed land.

41. As the proposal is retrospective, intentional unauthorised development has taken place. It is Government policy this is a material consideration in determining planning applications and appeals. The reason behind the policy is that the Government is concerned about the harm caused where the development is undertaken in advance of obtaining planning permission, such that there is no opportunity to appropriately limit or mitigate harm that is caused. The application of this policy is a factor that weighs against the proposal. However, I give this limited weight bearing in mind the current use with static caravans already located on the site.

42. I have also found conflict with the Framework, PPG, PPTS and local plan policies in relation to flood risk. Inadequate evidence has been provided to show that there are no alternative sites at a lower risk of flooding so that the sequential test is not passed. Furthermore, a formal FRA has not been prepared, though some evidence on the risk of flooding has been provided. This does not however provide an adequate assessment of flood risk to demonstrate the site would be safe for its lifetime.

43. Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration. I do not underestimate the importance of stability in a child's life, particularly in relation to their education.

44. Nevertheless, this must be balanced against other considerations. I am mindful that it has not been satisfactorily demonstrated that the site would not be at risk of flooding. This represents a risk to the children permanently resident on the site. Therefore, in weighing the balance, the safety of the children in terms of exposure to flood risk, outweighs the benefit of a stable access to education. Consequently, in my view, the best interest of the children would be served by them not being resident on the site. The dismissal of the appeal would be a proportionate and necessary response.

45. I have also considered the Public Sector Equality Duty (PSED) at section 139 of the Equality Act 2010. Because there is the potential for my decision to affect persons (the appellant and her 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.

46. Dismissing the appeal would impact on the education of the dependent children and the healthcare of all the occupants. It may also result in the families being forced into a roadside existence and intermittent use of unauthorised sites. This

could interfere with the best interests of the children and each member of the family's right for respect for private and family life.

47. Whilst neither party sought the imposition of a temporary permission it remains necessary for me to consider whether such a permission would protect the public interest by a means that would be less interfering to the intended occupant's human rights and thus be a more proportionate response. PPG states that temporary permissions may be appropriate if planning circumstances are likely to change at the end of that period. I was provided with no timeframe for an updated GTAA or for the review of the local plan, though the local plan should be reviewed by 2024, five years after its adoption.

48. Therefore, it is not likely that circumstances would change in the next 3-4 years with additional sites allocated and available to the appellant. The occupants of the site including the children would be at risk of flooding during this time. It would not be in the interest of the appellant and the families concerned to be resident for this period or in the wider public interest. A temporary permission would therefore not form a more proportionate response and would not be justified.

Conclusion

49. The appeal proposal is contrary to the development plan and national guidance. The material considerations in this case, do not justify a decision other than in accordance with these policy documents.

50. For the reasons given above and having had regard to all other matters raised, I dismiss this appeal.

Helen Hockenhull

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Brian Woods	WS Planning and Architecture
Tom Quigg	Flume Consulting Engineers
James and Mary O'Connor	Appellants

FOR THE LOCAL PLANNING AUTHORITY:

Mark Simmonds	Mark Simmonds Planning Services
Keri Monger	Environment Agency
Councillor James Anstill	Ward Member

INTERESTED PERSONS:

David Kempton	Crowland Parish Council