Planning Inspectorate

Appeal Decisions

Hearing held and site visit made on 6 November 2024

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2025

Appeal A Ref: APP/A2525/C/24/3343821
Appeals B, C, D, E, F, G, H, I, J, K and L: References as listed in Appendix 1
Bridge Inn Caravan Site, Common Drove, Crowland PE6 0HJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the Act") by the persons listed in Appendix 1 against an enforcement notice issued by South Holland District Council.
- The notice was issued on 17 April 2024.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land to a site for permanent residential use by the year-round occupation of caravans for human habitation.
- The requirement of the notice is to cease all permanent residential use of the land by complying with the holiday use condition (condition No.4) listed in planning permission granted by the Council on 20 January 2010 to modify the layout of existing holiday caravan park (originally approved under H02-0359-00) with Council reference number H02-0700-09 as varied by an appeal decision dated 10 November 2010 with appeal reference APP/A2525/A/10/2128849.
- The period for compliance with the requirement is: 9 calendar months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeals B, C, D, E, F, G, H, I, J, K and L are proceeding on the grounds set out in section 174(2) (b), (c), (d), (f) and (g) of the Act.

Summary of Decisions: The Appeals are dismissed and the enforcement notice is upheld with a correction and a variation in the terms set out below in the Formal Decisions.

Appeal M Ref: APP/A2525/W/24/3343820
Bridge Inn Caravan Park, Common Drove, Crowland, Spalding, Lincolnshire PE6 0HJ

- The appeal is made by Mr J O'Connor under section 78 of the Act against the decision of South Holland District Council to refuse to grant planning permission under section 73A of the Act for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The application Ref H02-1123-23 sought planning permission for 'proposed static and touring caravan park, inc. 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.'

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. It was confirmed in the Hearing that Appeal K was made by Ms M O'Connor.

2. Appeals A to L had included appeals on ground (e), that copies of the notice were not served correctly. It was confirmed in the Hearing that the appeals on that ground are withdrawn.

3. The planning application the subject of Appeal M relates to more land than the notice the subject of Appeals A to L. The difference is the addition of land to the north of (or in front of) the Crowland Water Tower. Where it is necessary to make a distinction, I shall refer to the land subject of Appeal M as 'the planning site' and the land subject of Appeals A to L as 'the enforcement site.'

4. Appeal M relates specifically to 5 pitches shaded in red on the appellant's Plan 1, numbered 1, 2, 3, 4 and 14. Appeals A to L relate to all of the pitches, since all are included within the site shown on the plan attached to the notice. In other words, the enforcement appeals relate to more pitches on a smaller area of land.

5. All references to the National Planning Policy Framework ('the Framework') and Planning Policy for Traveller Sites (PPTS) mean the revised versions published in December 2024. The parties were invited to comment on any relevant changes.

The 2000 Permission and Appeal M

6. I shall discuss the relevant planning history in more detail below but note the following points here.

7. Planning permission was granted in 2000[1] for '[the use of land as a] static and touring caravan park, inc. new toilet block and access road' at 'land to the rear of The Bridge Inn, Crowland, Peterborough.' I refer to this as 'the 2000 permission.'

8. The black and white copies of the approved plans are unclear. However, it seems that the 2000 permission related to the planning site but may also have included other land to the immediate rear of the Inn. It may also, despite the description of 'land to the rear of The Bridge Inn', have included the Inn itself.

9. As set out above, Appeal M seeks a variation of condition 6 imposed on the 2000 permission so that caravans on pitches 1, 2, 3, 4 and 14 may be occupied all year round as permanent homes. It is undisputed that those caravans are already occupied as such, so I shall treat Appeal M as though it was made under section 73A of the Act for a grant of permission for development already carried out.

The 2010 Permission, the Enforcement Notice and Appeals A to L

10. The Council granted planning permission in 2010[2] to 'modify layout for existing holiday caravan park (originally approved under H02-0359-00)' subject to 5 conditions. The then applicant successfully appealed under section 79 of the Act against conditions 1 and 4 imposed by the Council. The Inspector varied those conditions and references to the '2010 permission' should be construed as that granted via the '2010 appeal decision[3].'

11. Condition 1 as varied by the 2010 appeal decision prohibited any touring caravan from remaining on the site for any continuous period exceeding 42 days, or for a total of more than 56 days in any calendar year. Condition 4 prohibited use of

[1] H02-0359-00 granted 22 June 2000.
[2] H02-0700-09 granted 20 January 2010.
[3] APP/A2525/A/10/2128849 allowed 10 November 2010.

static or touring caravans other than for holiday purposes, again via restrictions on the duration of use plus a requirement for a register of occupants to be kept.

12. The requirements of the notice the subject of Appeals A to L show that the Council is concerned that there has been a breach of condition 4 imposed on the 2010 permission. However, the allegation is inconsistent with the requirements and with the planning history in that it alleges there has been a material change of use of land without planning permission. If that was the breach of planning control, the notice should require cessation of the unauthorised use, not compliance with a condition imposed on a permission.

13. Accordingly, either the allegation or the requirements of the notice are likely to be incorrect. I shall consider through the appeals on grounds (b) and (c) what has taken place on the site, whether there has been a breach of planning control, what that breach might have been, and whether any required corrections to the notice can be made without causing injustice to the Council or the appellants.

14. The appellants contend that the notice is fundamentally flawed because it only affects part of the land subject to the 2000 permission. However, it is not essential for a notice to relate to the whole of a planning unit or the site subject to a previous permission. What is crucial is that the notice clearly identifies the precise boundaries of the land to which it relates. I am satisfied that the notice identifies the land where pitches are laid out for stationing caravans.

Appeals A to L – the appeals on ground (b)

15. It is undisputed that some caravans on the enforcement site are permanently occupied for residential use and that the land had, at one time, not been occupied in that way. Accordingly, and while I will need to consider via ground (c) whether there has been an unauthorised material change of use or a breach of condition, the matters alleged have occurred in substance. The appeals on ground (b) therefore fail.

Appeals A to L – the appeals on ground (c)

16. An appeal on this ground may succeed if it can be demonstrated, on the balance of probabilities, that there has not been a breach of planning control. This may be because what the notice alleges already has planning permission, or there has not been a breach of a valid condition imposed on a relevant and extant planning permission.

Planning history prior to 2000

17. The earliest recorded planning permission benefitting the land was granted in 1979[4] for the 'use of land for a caravan holiday site (27 caravans with toilet and shower block) and alteration to access' ('the 1979 permission'). Condition 6 limited the use of the caravans to between 1 March and 31 October annually.

18. The appellants contend that the conditions of the 1979 permission were never complied with, such that there are no restrictions on how caravans can be occupied. Planning permission is not required for 'occupation', so conditions should be imposed if, for example, it is necessary that a residential site is

[4] H02-0917-78 granted 2 February 1979.

occupied only by holidaymakers. However, it does not follow that the word 'holiday' in the description of development that was subject to the 1979 permission itself can be ignored. I cannot sensibly interpret the permission as having authorised the stationing of caravans for people's permanent homes.

19. Moreover, there is no need to speculate about the effect of any non-compliance with condition 6 on the occupation of the land. That is because the appellants have not demonstrated that the 1979 permission was lawfully commenced in any way, shape or form. Likewise, they have not shown that 2 later permissions[5] ('the 1984 and 1989 permissions'), seemingly made to gain more time to commence development and so extend the life of the 1979 permission, were ever implemented.

20. The 3 pre-2002 permissions which authorised the siting of a single residential caravan 'at rear of Bridge Inn'[6] were subject to conditions tying occupation to the Inn and have been put before me without their location plans. It has consequently not been demonstrated that those permissions probably authorised the use of the whole enforcement site as a caravan site or, again, were implemented.

21. Other evidence suggests there was no actual use of land to the rear of The Bridge Inn as a permanently occupied residential caravan site, whether permitted or not, prior to the grant of the 2000 permission. The land is vacant in an aerial image from 2000, with no track or other sign of a formal layout for caravans. Nothing in the image suggests caravans had by then been stationed on the land.

22. Also, the track now present is very different from that shown on the plans from the 1979, 1984 and 1989 permissions. The Land Registry Title Register[7] includes no entry of any sale of the land, whether in use as a caravan site or otherwise before May 2004. The appellants state that the vendors at that time were Romany Gypsies and therefore claim use as a caravan site beforehand. However, it does not follow, and the Title Register does not confirm, that the land was used as a residential caravan site with pitches being occupied as permanent homes.

23. The 1979, 1984 and 1989 permissions show that the then owners aspired to open a caravan site of some description, but the evidence before me as a whole does not show that any such development was probably brought into existence, or that the use and occupation of any such site for permanent residential purposes was authorised.

The 2000 and 2010 permissions

24. There is no dispute that the 2000 permission was implemented, and that is probably what happened. A caravan site can be seen as having been developed on the ground in the 2000 and 2004 aerial images. The question is whether the 2000 permission was superseded by that granted in 2010.

25. As already noted, the 2010 planning application was made so that the caravan site could be laid out in accordance with plans that differed from those identified in the 2000 permission. The Council approved the application and granted permission to "modify [the] layout" of the site, subject to new occupancy

[5] H02-0355-84 granted 20 August 1984 and H02-0442-89 granted 19 May 1989.
[6] H02-0630-79, H02-0790-81 and H02-0748-83 granted 24 July 1979, 21 December 1983, and 6 October 1981.
[7] The appellants' exhibit 6.

conditions. The Inspector who allowed the appeal against those conditions considered the application as essentially seeking to modify the 2000 permission, which he described as 'the original permission.' He varied the permission for the modified layout by deleting and substituting new occupancy conditions 1 and 4.

26. Whether the 2010 permission was lawfully implemented thereafter will depend on how the caravan site was subsequently laid out. The drawings approved in 2000 had showed the site laid out with a central landscaped area and several pitches encroaching on a 5m easement provided for maintenance of the drainage ditch near the southern boundary. The drawings listed in condition 2 of the 2010 permission showed pitches moved away from the easement and encroaching into the central landscaped area.

27. I find that the caravan site was probably laid out in accordance with the modified layout. In section 3 of the application form, the applicant answered, 'yes' to the question "Has the building, work or change of use already started?" Whether or not the works were undertaken in advance, the 2010 Inspector noted that "For various reasons, the appellant has not been able to adopt the layout shown on the plans submitted in relation to the original permission and…wishes to change the position of about 4 pitches." The 2010 and 2014 aerial images then show pitches laid out away from the easement in line with the modified layout.

28. It is not clear whether, after the 2010 appeal, the site was occupied in accordance with conditions of the 2000 or 2010 permissions. Condition 6 of the 2000 permission prevented occupation of the static caravans during January and the first two weeks of February in each year. Conditions 1 and 4 of the 2010 permission limited occupation to holiday purposes, and restricted the duration of stays, but did not prohibit occupation during any time of year[8]. However, that the site was laid out in accordance with the modified plan is sufficient for me to find that the 2010 permission was probably implemented.

29. Another Inspector suggested the opposite in 'the 2023 appeal decision'[9] but not as part of any determination on the matter. That appeal concerned a planning application, not an enforcement notice or lawful development certificate application. The Inspector therefore had no remit to consider the lawful use of the appeal site and, when read sensibly and fairly, the relevant part of her decision letter simply records, as a preliminary matter, that the parties agreed that "the 2009 [sic] permission was not implemented." The evidence before me differs and I am not bound to make the same finding.

Conclusion on ground (c)

30. The appellants have not demonstrated that the enforcement site is subject to any planning permission that authorises permanent occupation of caravans on the land, or that it is still subject to the 2000 permission. I conclude, on the balance of

[8] Condition 4 read: "Static and touring caravans on the site shall not be used other than for holiday purposes. In the context of this condition, 'holiday purposes' means occupation of any one or more of those caravans by the same person, group of persons or family for period(s) not exceeding 42 consecutive days and not exceeding a total of 56 days in any one calendar year. No caravan shall be used as the main residence of any occupant, and a register of occupants on the site shall be kept at all times and made available to the local planning authority upon request."
[9] APP/A2525/W/20/3249950 dismissed 11 January 2023.

probabilities, that the 2010 permission is extant and governs the use of the enforcement site.

31. It follows that there has probably been a breach of planning control, but not as alleged. There has not been an unauthorised material change of use of land; it is rather the case that static residential caravans on the enforcement site are occupied permanently, not as holiday homes, in breach of condition 4 imposed on the 2010 permission. That is what the requirements of the notice suggest.

32. I am satisfied that correcting the allegation so that it corresponds with the requirements will cause no injustice to the Council or appellants. The appellants have had, and taken, proper opportunity to make a case on ground (c) that there has not been a breach of condition 4 of the 2010 permission. Correcting the notice will not prejudice the appellants' case for any of the other grounds of appeal set out below, and it will not necessitate changes to the requirements that would make the notice more onerous to comply with.

33. For these reasons, the appeals on ground (c) must fail.

Appeals A to L – the appeals on ground (d)

34. An appeal on ground (d) is that no enforcement action could be taken at the date the notice was issued, being 17 April 2024 in this case. Since there has been a failure to comply with an occupancy condition, the relevant time period for immunity from enforcement action is 10 years. To succeed on this ground, the appellants need to demonstrate that the permanent residential occupation of caravans began on or before 17 April 2014, 10 years before the date on which the notice was issued. They also need to demonstrate that the use continued for not less than 10 years without significant interruption. The relevant test for each is the balance of probabilities.

35. The appellants claim the use constituting the alleged breach of planning control was instituted in about 2007 and identify 4 pitches, shaded green on Plan 1 as having been 'used residentially as dwellinghouses' for more than 10 years. However, they have not produced evidence to demonstrate that any of these, or any other pitch on the land, was continuously occupied for 10 years in breach of condition 4 of the 2010 permission and/or condition 6 of the 2000 permission.

36. Accordingly, the appeals on ground (d) must fail.

Appeal A – the appeal on ground (a) and Appeal M

37. As noted above, the planning application subject to Appeal M was made in respect of pitches 1, 2, 3, 4 and 14, while the enforcement site includes all pitches within the caravan park. However, it is possible to grant deemed planning permission in respect of part of the land and I shall consider Appeal A on the basis that it could be allowed in relation to pitches 1, 2, 3, 4 and 14 only.

38. The ground (a) appeal and deemed planning application arising under Appeal A relate to the allegation as corrected, meaning that the question for me is whether to vary or remove conditions 1 and 4 imposed on the 2010 permission. Appeal M relates to condition 6 of the 2000 permission but the outcome sought in both cases is the same.

39. The appellant's primary position is that the disputed conditions should be varied or removed so that any caravan on the relevant pitches may be occupied by any person as their permanent home. If I do not allow the appeals on that basis, the appellant told the Hearing he would accept a condition allowing the caravans to be occupied by Gypsies and Travellers only as their permanent homes.

40. The main issues in these appeals are:

- Whether permanent residential use through year-round occupation of caravans for human habitation is appropriate in terms of flood risk, having regard to the need for and supply of Gypsy and Traveller sites in South Holland.
- Whether the planning and enforcement sites are acceptably located for permanent residential occupation in terms of access to services, community facilities, public transport and employment opportunities.

Reasons

Flood risk – the site and policy context

41. The caravan site is within Flood Zone 3 (FZ3), meaning an area with the greatest probability of flooding, close to and lower than the nearby River Welland, separated by an embankment carrying the B1166. The Framework and Policy 4 of the South East Lincolnshire Local Plan 2011-2036 ('the SELLP') expect that, where appropriate, planning applications are accompanied by a site-specific flood risk assessment (SSFRA).

42. The appellant has provided an SSFRA but only in respect of pitches 1, 2, 3, 4 and 14, and that immediately weighs against a grant of permission in respect of the whole enforcement site via Appeal A. I shall consider the SSFRA in the light of the Planning Practice Guidance (PPG), which states that residential development can be assumed to have a lifetime of at least 100 years, unless there is specific justification for considering a different period, perhaps because the development is subject to a time-limited condition.

Flood risk – the sequential test

43. SELLP Policy 4 and the Framework only allow for development in FZ3 if it can be demonstrated, having regard to an SSFRA, that no other sites are available in areas with a lower risk of flooding. This approach is known as the sequential test (ST). Policy B, paragraph 13 of PPTS states that Gypsy and Traveller sites should not be located in areas at high risk of flooding given the particular vulnerability of caravans.

44. Despite submitting an SSFRA, the appellant has not carried out any ST. They have instead submitted a separate sequential statement (SS) in which it is argued that an ST is not required because Appeal M is concerned with a variation of condition rather than development. The same is now true of Appeal A, given the correction to the notice, However, Annex 3 to the Framework classifies caravans intended for permanent residential use as 'highly vulnerable' to flood risk. The authorised holiday use of caravans falls in the 'more vulnerable' category whereby flooding would not be expected to have such a severe impact on the occupiers.

45. Accordingly, I do not accept there is no need for the ST to be carried out. The appellant has not shown that 5 pitches could not be directed to an area at lower risk of flooding, and that weighs against a grant of permission for permanent residential use with no restrictions on occupation. However, there is no evidence before me as to whether there are any alternative sites where 5 pitches for Gypsies or Travellers could be provided.

46. The PPTS requires that local planning authorities identify sufficient sites to ensure a 5-year supply of deliverable pitches to meet their locally set targets. SELLP Policy 20 suggests that only 4 new pitches are needed in the area by 2036, but that is likely to be an under-estimate of need, given that it was derived from a Gypsy and Traveller Accommodation Assessment (GTAA) prepared almost ten years ago and based on a now superseded definition of Gypsies and Travellers.

47. SELLP Policy 20 also suggests that the 4 pitches it says are needed will be provided through the development of named sites, but they have not yet to my knowledge been progressed. The Council has not shown that planning permission has been granted for the development of any Gypsy or Traveller site so as to provide a 5-year supply of deliverable sites.

48. Reference was made in the Hearing to people from outside the area buying any available sites, thus making them less affordable for local Gypsies and Travellers. While affordability can be a relevant consideration, no empirical evidence of any sites being available at any price was produced in support. I therefore cannot give this any appreciable weight.

49. I find that there are no available sites at all, let alone in areas with a lower risk of flooding, where 5 pitches for Gypsies and Travellers could be provided. The ST is met if the appeals are considered as relating to pitches 1, 2, 3, 4 and 14 only, and for Gypsies and Travellers only.

Flood risk – need for and safety of the pitches

50. Where highly vulnerable development is proposed within FZ3, as is the case here, the exception test described in the Framework and PPG is not required even if there are no alternative sites in FZ1 or FZ2.[10] However, paragraph 170 of the Framework provides that where development would be inappropriate in areas at risk of flooding but is nonetheless necessary, it should be made safe for its lifetime without increasing flood risk elsewhere.

51. The appeal pitches are already occupied, and I have found that there are no alternative sites for Gypsies and Travellers. It follows that the pitches can be deemed necessary. The appellant has not described his personal circumstances, or those of the other occupiers, and I shall return to that matter later. As noted, however, the general unmet need for Gypsy and Traveller accommodation in South Holland carries weight in favour of the appeals.

52. To decide whether the pitches can be made safe for their lifetime, without increasing flood risk elsewhere, I shall have regard to criteria a) to e) set out under paragraph 181 of the Framework and the similar requirements of SELLP

[10] PPG paragraph ref ID: 7-031-20220825 and Table 2.

Policy 4. The SSFRA acknowledges that there would be a residual risk of flooding if defences were breached, and it sets out 4 mitigation measures.[11]

53. The first measure addresses criterion a) of paragraph 181 and is the location of the most vulnerable components (meaning the caravans in permanent residential occupation) within areas of minimal flood risk. The Strategic Flood Risk Assessment (SFRA) for South East Lincolnshire shows that, while most of the site is within an area where flood waters would be predicted to reach a depth of between 1 and 2m and represent 'danger for all', pitches 1, 2, 3, 4 and 14 are within a smaller area with lower predicted flood depths of between 0.5 and 1m, classified as 'danger for most.'

54. However, the nearby River Welland is the primary source of flood risk on this site and any breach of its embankment could be expected to result in a rapid influx of floodwater. Even if the waters only reached a minimal depth of 0.5m, they would still be liable to have a catastrophic effect on anyone living in an affected caravan, especially older or disabled people or children. A condition could be imposed to strictly control the positions of caravans on pitches 1, 2, 3, 4 and 14, but that would not make safe either the caravans themselves or access routes off the site.

55. Criterion b) of paragraph 181 is that the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment. The second measure proposed in the SSFRA would address this by raising caravans in permanent occupation 1m above the surrounding ground levels on plinths anchored to the ground. This would place the caravans above the expected depth of flood waters, particularly in the short term such that the caravans could perhaps be brought back into use after a flood event.[12]

56. However, it does not follow that plinths would make it safe to be on site during a flood event. I was provided with a photograph of caravans on plinths elsewhere to illustrate how they might appear, but there is little information before me as to how the plinths would be constructed or attached to the caravans or the ground. It has not been shown, then, that any plinths which could be reasonably required by condition would be robust enough to withstand a surge of flood waters. I am also not satisfied that plinths would enable occupiers to remain safely in the caravans while surrounded by flood waters and there is no measure proposed to improve the safety of access routes. In my view, the proposed plinths would not suffice to make the pitches flood resistant and resilient places to live.

57. Criterion c) is that sustainable drainage systems are incorporated, unless there is clear evidence that this would be inappropriate. The SSFRA does not propose a sustainable drainage system or give any clear reason why one would be inappropriate. I have no evidence that any soakaways or other sustainable drainage measures exist at present, although the site is not hard surfaced. Even if it were reasonable to require such measures for pitches 1, 2, 3, 4 and 14, I have no evidence to indicate that they would prove effective with the uncertainty about drainage conditions on the wider site.

[11] A fifth measure, raising the bund on the southern boundary, has been withdrawn.
[12] All depths are for a flood with a 0.1% chance of occurring in any year up to 2115 with an allowance for climate change.

58. Criterion d) is that any residual risk can be safely managed. Even if the plinths did make the caravans safe, any breach of flood defences would be likely to arise unexpectedly, and yet the SSFRA does not outline measures to protect any residents outside their caravans or their vehicles. The appellant has also not engaged with the fact that occupiers inside caravans may not be able to leave the site safely because of the depth of surrounding flood water and the force of water flowing through the site. The proposed measures therefore do not address this criterion.

59. Criterion e) is that safe access and escape routes are included where appropriate, as part of an agreed emergency plan. In this case, the only escape route for the occupiers of pitches 1, 2, 3, 4 and 14 would be through a 'danger for all' area. Even if the whole of the site, which is largely level, was only flooded to a depth of 0.5m, that would render it unsafe particularly to transport children and/or elderly and disabled persons. As noted above, the floodwater is likely to be dangerous because of its force and volume as well as depth. Safe access and escape routes would plainly be required, and yet are not identified in the SSFRA.

60. The third and fourth measures proposed in the SSFRA are use of the flood alert service provided by the Environment Agency (EA) and drawing up an emergency response plan. An occupier's use of the flood alert service cannot be guaranteed, although that is the case with any private residence. The latter measure could be secured by condition, but I agree with the EA that, on their own, these measures would not make the development safe for even a short lifetime.

Flood risk - conclusion

61. The permanent occupiers of a residential caravan site are 'highly vulnerable' to flood risk. The site is in FZ3 and the pitches used by the appellants are in an area of danger to most. There are no identified alternative sites for Gypsies and Travellers, meaning that the ST is passed, and so the pitches are necessary for the Gypsies and Travellers who occupy them.

62. However, the measures set out in the SSFRA are in my view wholly inadequate to meet the Framework's requirement that the pitches be made safe for their lifetime without increasing flood risk elsewhere. I conclude that allowing the appeals would give rise to unacceptable flood risk and therefore conflict with SELLP Policies 2, 4 and 20, which require that development is sustainable in terms of drainage and flood risk, as well as with the Framework and PPTS.

Acceptability of the location

63. SELLP Policy 1 recognises that the housing needs of Gypsies and Travellers may, by exception, be justified in the countryside. Likewise, PPTS allows for the development of new Gypsy and Traveller sites in rural or semi-rural areas so long as they respect the scale of, and do not dominate, the nearest settled community.

64. The planning site was found to be an appropriate location for a Gypsy and Traveller site, in compliance with the sustainable development objectives of Policies 1 and 20 of the SELLP and PPTS in the 2023 appeal decision. The parties agree there has been no change in this respect since then.

65. The nearest settlement is the Main Service Centre of Crowland, approximately 1.5km away. The route into Crowland along the B1166 is mostly straight and has good visibility but is unlit. For most of its length, an unmade path runs along the verges with narrow timber bridges over sections where surface water may be found. There is, however, only a very narrow footway on the bridge carrying the road over the Welland. Some users, particularly those with limited mobility or with children in pushchairs, may have no alternative to using the carriageway at that point. No information on public transport availability has been provided.

66. Accordingly, occupiers of the appeal pitches would be highly likely to rely on private motorised transport to access shops and services. However, they would not have to travel excessive distances in my view, and PPTS paragraph 13 outlines other matters to be considered when assessing the sustainability of Gypsy and Traveller sites.

67. In accordance with SELLP Policy 1 and PPTS, the occupation of the appeal pitches as permanent homes would afford access to, meaning the ability to use, education, health care and recreational facilities, shops and employment. Those facilities are within what I find to be a reasonable travelling distance for the purposes of Policies 1 and 20 of the SELLP. In these respects, consistent with the findings of the previous Inspector, I conclude that the pitches are in an acceptable location for permanent residential occupation. However, given my findings on flood risk, I cannot describe the location as sustainable overall.

Other matters

68. There is planning permission for the permanent residential occupation of a caravan on the pitch specified in a permission granted in 2012.[13] While that permission may provide a fallback, it could only benefit a person "solely or mainly employed in the business known as The Bridge Caravan Site." Furthermore, the permission relates to a single caravan, so it cannot justify the permanent occupation of 5 others.

69. While I have already taken account of the shortfall in the supply of Gypsy and Traveller pitches in the District in relation to the ST, I must return to the point here. It is likely that, if the appeals were dismissed, compliance with the notice would force the appellant and other occupiers to vacate the site and become homeless. In that scenario, there is a high risk of them having to resort to roadside encampments and suffering harm in terms of their personal safety as well as living conditions and general wellbeing.

70. I cannot speculate any further on the impact of a refusal of permission on the appellant and other occupiers since, as noted above, I have been given no details of them or their personal circumstances. Nonetheless, I attach significant weight to the likelihood of 5 families being made homeless as a factor in favour of allowing Appeals A and M.

Planning balance and conclusion

71. The holiday occupation conditions of the 2000 and 2010 permissions were imposed to accord with policies of the then current development plan, which

[13] H02-0998-11 granted 7 March 2012.

sought to prevent permanent residential uses in the countryside. Given current local and national planning policies, the rural nature of the surrounding area may not justify retaining the conditions as they are. However, that finding is neutral in the planning balance.

72. Dismissing the appeals would be liable to make 5 families homeless and that factor weighs significantly in the appellant's favour. However, I have found that allowing the use of the site for permanent residential purposes would cause unacceptable harm in terms of flood risk. That is even if the disputed conditions were only lifted in respect of pitches 1, 2, 3, 4 and 14, and new conditions were imposed to limit their occupation to Gypsies or Travellers. The pitches are in FZ3, their occupiers would be 'highly vulnerable' to flood risk and the SSFRA fails to show that the risks could be reduced to an acceptable level. This to my mind is a compelling reason why Appeals A and M should not succeed.

73. I have considered allowing the appeals subject to a temporary permission, so that the occupiers could live on the pitches for a limited period during which climate change should not advance to the point that maximal flood depths could be expected. However, the occupiers would remain 'highly vulnerable' to a breach of the Welland flood defences because, if the permission would endure only for a temporary period, it would likely be unreasonable to impose conditions requiring the design and implementation of flood mitigation measures. That is additional to the concern I have already expressed about the effectiveness of the plinths.

74. Dismissing the appeals would interfere with the rights of the appellant and other occupiers to respect for their home and family life and property. This is under Article 8 of the European Convention on Human Rights as set out in Schedule 1 of the Human Rights Act 1998. The caravans on pitches 1, 2, 3, 4 and 14 are the occupiers' homes, and living in those caravans is central to their private and family lives. I have not been provided with details of the appellant's or any other occupier's family, but they are likely to include children, whose best interests are a primary consideration in the appeals. However, as already noted, children are amongst the most vulnerable in the event of a flood.

75. The rights set out under Article 8 are qualified rights, which may be interfered with in accordance with the law and in the interests of public safety in a democratic society. Although there are no alternative available sites, and the occupiers of the site are likely to be made homeless, the risk and consequences of flooding on this site are so serious that it is proportionate to dismiss Appeals A and M. The protection of the public interest cannot be achieved by means that are less interfering with the rights of the occupiers under Article 8.

76. Under section 149(1) of the Equality Act 2010, I must also have regard to the aims of the Public Sector Equality Duty (PSED). The second of those aims, to advance equality of opportunity, is relevant in terms of access to suitable accommodation, particularly in view of the undersupply of sites for Gypsies and Travellers. The appellant and other site occupiers, as Travellers, have the protected characteristic of race for the purposes of the PSED. However, the harm arising from the development in terms of flood risk outweighs its benefits to the occupiers. Dismissing the appeals is proportionate and necessary to avoid unlawful discrimination and to foster good relations between the occupiers and members of the settled community.

77. While I have taken account of the foregoing rights and the aims of the PSED, they do not individually or along with any other considerations, outweigh the substantial negative factor of flood risk. It is in the public interest to direct vulnerable development away from sites in FZ3 and in the best interest of any child to not be at risk of flooding. I note that a similar view was reached in the 2023 appeal decision relating to permanent residential occupation of the planning site.

78. For these reasons, I conclude that Appeal A should fail on ground (a), the deemed planning application should be refused, and Appeal M should be dismissed.

Appeals A to L – the appeals on ground (f)

79. An appeal on this ground is that the requirements of the notice are excessive to remedy the breach of planning control or, as the case may be, the injury to amenity. By requiring compliance with condition 4 of the 2010 permission, the purpose of the notice is to remedy the breach. For that reason, and since I have considered amenity issues in the appeal on ground (a) and found that condition 4 should not be varied, I cannot rehearse the merits of the condition via ground (f).

80. The appellants have not identified any steps short of compliance with condition 4 that would remedy the breach. However, as noted earlier, there is planning permission for the permanent residential occupation of a caravan on the pitch specified in a permission granted in 2012. That is provided the caravan is occupied by a person solely or mainly employed by a business known as The Bridge Caravan Site. I have no information as to whether a business under that name still exists, but it remains that one could operate under that name in future. It would therefore be appropriate to vary the requirement to acknowledge that possibility, regardless of likelihood.

81. The appeals on ground (f) succeed to that limited extent and the notice will be varied accordingly.

Appeals A to L – the appeals on ground (g)

82. An appeal on this ground is that the period for compliance with the requirements of the notice, 9 months in this case, falls short of what should reasonably be allowed. The appellants consider a longer period for compliance of 2 years would be reasonable because there are no alternative sites. The absence of available sites indicates that a search for new accommodation may be prolonged.

83. A 2-year period for the continuation of permanent residential occupation would be an unduly long time in view of the location within FZ3 and the absence of any mitigation measures following the failure of the appeal on ground (a). That is of particular concern given the potentially catastrophic consequences of a breach in nearby flood defences.

84. In the circumstances, I find that the 9-month period for compliance given by the notice is proportionate and reasonable. The appeals on ground (g) fail accordingly.

Appeals A to L – Conclusions

85. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction and a variation.

Appeals A to L - Formal Decisions

86. It is directed that the enforcement notice is corrected in section 3 by the deletion of the words “the material change of use of the land to a site for permanent residential use by the year-round occupation of caravans for human habitation” and the substitution of the words “the use of the land as a site for permanent residential use by the year-round occupation of caravans for human habitation in breach of condition 4 of planning permission H02-0700-09.”

87. It is further directed that the enforcement notice is varied in section 5 by the insertion of the words “other than as may be permitted by planning permission H02-0998-11” after the words “Cease all permanent residential use of the land.”

88. Subject to the correction and variation, the appeals are dismissed, and planning permission is refused on the application deemed to have been made under section 177(5) of the Act in Appeal A.

Appeal M – Formal Decision

89. The appeal is dismissed.

Mark Harbottle

INSPECTOR

Appendix 1
List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/A2525/C/24/3343821	Mr J O'Connor
Appeal B	APP/A2525/C/24/3343822	Ms M O'Connor
Appeal C	APP/A2525/C/24/3343823	Mr Pat Cash
Appeal D	APP/A2525/C/24/3343824	Ms M Delaney
Appeal E	APP/A2525/C/24/3343825	Mr P O'Connor
Appeal F	APP/A2525/C/24/3343826	Mr James O'Connor
Appeal G	APP/A2525/C/24/3343827	Ms J O'Connor
Appeal H	APP/A2525/C/24/3343828	Mr Jerry O'Connor
Appeal I	APP/A2525/C/24/3343829	Mr Myles O'Connor
Appeal J	APP/A2525/C/24/3343830	Mr John O'Connor
Appeal K	APP/A2525/C/24/3343831	Ms M O'Connor
Appeal L	APP/A2525/C/24/3343832	Ms B O'Connor
Appeal M	APP/A2525/W/24/3343820	Mr J O'Connor

APPEARANCES

FOR THE APPELLANTS:

Stuart Carruthers
Mr J O'Connor

FOR THE LOCAL PLANNING AUTHORITY:

Mark Simmonds
Angela Simmonds
Kate Bellamy
Councillor Jim Astill
Councillor Angela Harrison

INTERESTED PARTIES:

Heather Tysoe, The Environment Agency
Danielle Maclean-Spencer, The Environment Agency

Documents submitted at the Hearing

1 Photographs of breaches of flood defences, January 2024
2 Photograph of static caravans on raised platforms