



Appeal Decision

Hearing held on 11 June 2024

Site visit made on 11 June 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 July 2024

Appeal Ref: APP/A2525/W/24/3339458

Land at The Orchards, Blazegate, Gedney, Spalding PE12 0AD

- 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 Rooney against the decision of South Holland District Council.
 - The application Ref is H06-0532-23.
 - The development is change of use of agricultural land to provide 5 Gypsy/Traveller family pitches each having a static mobile home, dayroom, parking for a tourer and 2 vehicle spaces together with a treatment plant, the laying of hardstanding and associated ancillary works.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use of agricultural land to provide 5 gypsy/traveller family pitches each having a static mobile home, dayroom, parking for a tourer and 2 vehicle spaces together with a treatment plant, the laying of hardstanding and associated ancillary works at The Orchards, Blazegate, Gedney, Spalding, PE12 0AD in accordance with the terms of the application, Ref H06-0532-23, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appellant and his wider family have been on the site since 2021. The development subject of this appeal is therefore retrospective. Indeed, an Enforcement Notice has been served and is in effect. This requires the use of the land for residential purposes to cease, all caravans and other associated works to be removed and the land to be returned to its previous condition.
3. It is not disputed by the Council that all of the occupants of the site are Irish travellers and meet the definition of gypsies and travellers as set out in Annex 1 of the Planning Policy for Traveller Sites (PPTS). From the evidence before me, I have no reason to disagree.

Main Issue

4. The main issue is whether the development and its occupiers are at unacceptable risk from flooding.

Reasons

5. It is not disputed by the parties that the site is within flood zone 3a. This is defined in the national Planning Practice Guidance (the 'PPG') as being land

which has a high probability of flooding i.e. a 1% or greater annual probability of river flooding or a 0.5% or greater annual probability of sea flooding. It is agreed that the risk of flooding at this site is from the sea. It is also not disputed that the development, by primarily comprising caravans, falls into the classification of 'highly vulnerable' development as set out in the National Planning Policy Framework (the 'Framework'). The PPG says that highly vulnerable development in flood zone 3a should not be permitted, though it is noted that this national guidance takes no account of flood defences, and it is agreed that there are defences against tidal flooding in the District. Nonetheless, policy 4 of the South East Lincolnshire Local Plan (the 'Local Plan'), which relates to flooding, reflects this guidance in stating that caravans will not be permitted in areas at risk of flooding. Similarly, Local Plan policy 20, which relates to gypsy and traveller sites, says that such accommodation will not be permitted in flood zone 3a.

6. However, the explanatory text to policy 4 acknowledges that much of the land in South Holland is at significant risk of flooding and so identifies the need to facilitate development in a way that is resilient to flooding. To that end, the policy generally allows for development in flood zones 2 and 3 subject to a number of criteria, including where a site specific flood risk assessment identifies the predicted flood risk level and demonstrates flood resistance and resilience measures.
7. It is agreed by the parties that the flood risk at the appeal site primarily arises from a failure or breach of the sea defences, and that these defences comprise an earth embankment around 7km from the site. The Environment Agency would aim to fix the breach within 72 hours of it occurring.
8. Two breach scenarios have been modelled; a 1 in 200 year flood event (0.5% annual probability) and, due to the highly vulnerable nature of the development, a 1 in 1000 year flood event (0.1% annual probability). Both scenarios were modelled based on such events happening now, and in 2115.
9. The data shows that were either event to happen now there would be very little impact on the site. Flood water could reach the site, but it would be very shallow; less than 0.25m, and slow moving and therefore it is considered to be a low hazard.
10. Were such flood events to happen in 2115, the hazard would be greater as flood water would be deeper as a result of climate change. A 1 in 200 year event could result in flood water at the site being up to 1m in depth and a 1 in 1000 year event could result in water at the site reaching a depth of up to 1.6m. In both scenarios the water would be slow moving.
11. However it was agreed by both parties that as the risk is from tidal flooding, the depth of water would rise and fall with the tides. These maximum depths would only occur after a number of high tides, with the depth of water at the site increasing with each high tide. Indeed after the first high tide, the water may not reach the site at all. It is also the case that other obstacles, such as historic defences between the site and the sea, may impede the flow of flood water. No account of these is made in the modelling.
12. Clearly, were flood water depths to reach 1.6m or even 1m at the site this could be dangerous to the residents. However it is more likely, in my view, that even in these most serious flood events, because of the slow rate of increase in

the depth of flood water and because it would rise and fall, occupiers would take the opportunity to evacuate the site during one of the low tide times, before these dangerous depths of flood water were reached. This evacuation would be prompted by text alerts from the Environment Agency warning the residents of imminent flood events, starting from a basic flood alert to a severe flood warning.

13. Notwithstanding the above, paragraph 173 of the Framework and Local Plan policy 4 both advise that applications should be supported by site specific flood-risk assessments and should demonstrate that there are no other reasonably available sites appropriate for the development with a lower risk of flooding. 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.
14. As the PPG states the proposal should not be permitted, the exception test is not applicable. This test would require the development to demonstrate wider sustainability benefits to outweigh the flood risk, and that the development would be safe for its lifetime and without increasing flood risk elsewhere. However even if the exception test did need to be passed, the appellant suggests the provision of 5 gypsy and traveller pitches to the provision in the District is a wider sustainability benefit. The Council do not dispute this. The parties also agree that the development does not increase flood risk elsewhere.
15. With regard to making the development safe, it has been proposed that the dayrooms would be built with floor levels 1.6m above ground level and that static homes would also be set 1.6m above ground level on brick plinths. This would allow for damage to most possessions to be avoided. However were residents to take refuge in those spaces, they would be surrounded by deep floodwater at times of the severest flood events. Although the static mobiles and day rooms would provide a safe space for a short amount of time, the occupiers would ultimately need to be rescued, which would place additional burden on emergency services. However, as set out above, it is more likely that the occupants would vacate the site, prompted by text alerts from the Environment Agency, before floodwater reached dangerous depths. As such I am satisfied the exception test would be passed.
16. Consequently, whilst there is conflict with some parts of policies 4 and 20 and the PPG, I find that that conflict is outweighed by the specific circumstances here as set out above such that the residents are not at unacceptable risk of flooding.
17. Though not included in the reason for refusal, the Council identify conflict with Local Plan policy 1 in their officer's report, as this states that in the countryside, development will be limited to that which is necessary to such a location or meets the needs of the area in terms of community benefits. The Council accept they do not have a sufficient supply of gypsy and traveller sites. I consider, therefore, that this development would go towards meeting the needs of that community. I also note that in the explanatory text to the policy it states that some housing may be justified in the countryside, such as gypsy and traveller accommodation. As such whilst the site is detached from Gedney, which itself only has limited facilities, there is no conflict with Policy 1.

Other Matters

18. For the hearing, a second main issue on the agenda was whether there were any other considerations, such as the need and supply of gypsy and traveller sites in the district and the personal circumstances of the appellant and his family, that outweighed any harms. However as I have found no harm in respect of the main issue, I need not consider this second issue further.
19. Concerns have been raised by some neighbours regarding the loss of wildlife and the effect on the appearance of the area. Whilst any loss of habitat is regrettable, a planning condition can be applied which would secure a net gain in biodiversity. Also, the site is fairly well screened by vegetation along its boundaries, supplemented by a fence along its eastern side. Though it is proposed to raise dayrooms and static mobiles substantially above ground level, it is likely that the boundary vegetation would continue to provide a good degree of screening such that there would be no adverse visual impact.
20. I understand the land has been used for agriculture in the past but, as set out in the officer's report, that use has not been maintained. In any case, even if the development has resulted in a loss of active agricultural land, I have no substantive evidence to demonstrate that the loss of this area is detrimental to agricultural production.
21. There is also concern that dogs from the site have caused a nuisance to a neighbour. However I have no substantive evidence of this, and the plans show entrance gates to be provided. There is also concern that the site is being used as a commercial operation. A planning condition can be imposed to ensure no business is carried out at the site.
22. The development generates a modest amount of traffic and although Blazegate is narrow, I do not consider this is likely to have resulted in an adverse effect on highway safety. Furthermore, although visibility to the right from the access is poor, the plans show the existing hedge on the frontage being removed and replaced further into the site to ensure satisfactory visibility. The lack of objection from Lincolnshire County Council supports my view. I have seen photos of caravans being moved onto the site and the disruption that caused. However as the static mobiles are all now on site, any additional deliveries of this nature would be rare.
23. The occupation of the site before obtaining planning permission and the continued occupation in breach of the Enforcement Notice constitutes intentional unauthorised development. Furthermore as the appellant has owned the site for many years before moving onto it, there has been considerable opportunity to achieve permission before occupation. However the lack of any other suitable gypsy and traveller sites is also a consideration. Overall I give modest weight to this matter.

Conditions

24. At the hearing it was agreed that, as the development has already commenced, many of the conditions proposed by the Council would need to be reworded as, as drafted, they referred to details being submitted before development commenced. In addition the suggested condition relating to the commencement of development is not necessary. I have slightly amended the

wording of some of the conditions to better reflect the advice in the PPTS and the Framework.

25. It is necessary to impose conditions limiting the occupation of the site to gypsies and travellers, the number of pitches, and specifying the approved plans in the interests of certainty. The condition preventing commercial activities is necessary to maintain the character of the area and the living conditions of nearby occupiers.
26. The conditions which relate to the flood warning and evacuation plan, the flood risk assessment and site drainage are necessary in the interests of keeping the occupants of the site safe from flooding.
27. The condition relating to the submission of a biodiversity management plan is imposed in the interests of supporting biodiversity and has a longer compliance period than the others as the appellant has advised that currently the lead in time for such work is lengthy. The condition reflects their advised timescales, which I consider to be reasonable. The condition relating to details of levels is necessary to protect the character and appearance of the area.
28. The Council had suggested a condition withdrawing permitted development rights for curtilage buildings and means of enclosure. However the PPG advises that such conditions may not pass the test of reasonableness or necessity, and in this case, I do not consider the condition is necessary. Curtilage buildings would not benefit from permitted development anyway, and means of enclosure would not be likely to be visible from beyond the site past the existing boundary vegetation.

Conclusion

29. Overall despite some limited conflicts with the development plan and national policy, the site and its residents are not at an unacceptable risk from flooding, for the reasons set out above, and therefore the development accords with the development plan as a whole. There are no other considerations which suggest a decision other than in accordance with the development plan. As such the appeal is allowed.

A Owen

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 20/BLAZE/01 and 20/BLAZE/02 Rev C.
- 2) The site shall not be occupied by any persons other than gypsies and travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 3) There shall be no more than 5 pitches on the site, and on each of the pitches there shall be parking for a tourer, and no more than one dayroom and one static mobile home at any one time.
- 4) No commercial activities shall take place on the site, including the storage or sale of materials, machinery, vehicles or waste.
- 5) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within **28 days** of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) Within **three months** of the date of this decision a scheme for the means of foul and surface water drainage disposal to separate systems shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within **11 months** of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, the scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within **28 days** of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) Within **three months** of the date of this decision a scheme showing full details of the existing and proposed site levels and proposed floor levels of the buildings, hard surfaced areas and garden/amenity areas,

including any mitigation measures arising as a consequence (for example increased height of boundary treatment) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation;

ii) If within **11 months** of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, the scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 7) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within **28 days** of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

i) Within **six months** of the date of this decision a Biodiversity Net Gain Plan to demonstrate a net gain in biodiversity on-site, supported by a Biodiversity Management Plan setting out how the biodiversity enhancements will be managed and monitored for the lifetime of the development shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

ii) If within **14 months** of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, the scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 8) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within **28 days** of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
- i) Within **three months** of the date of this decision a Flood Warning and Evacuation Plan (the FWEP) shall have been submitted for the written approval of the local planning authority and the FWEP shall include a timetable for its implementation. The FWEP shall include (but not be limited to):
- The name of the designated flood warden who will assume overall responsibility for the management of the FWEP;
 - The trigger for an evacuation of this site which shall be the issue of Flood Alert code(s) issued by the Environment Agency and the same shall bear the meaning set out in 'Flood Warnings: what they are and what they do' (or any successor document published by the Environment Agency);
 - The arrangements made by the operator of the site to register for, receive and continue to receive all forms of Flood Alert/Warning from the Environment Agency's Flood Warning system;
 - The arrangements that will be made to ensure every occupier of each caravan is able to leave the site immediately in the event of the issue of a trigger for evacuation, including the arrangements that will be made to ensure persons who may not be able to use their own private car are able to leave the site with the assistance of the operator;
 - Details of how the need for evacuation will be communicated to any occupiers of a caravans who are on site at the time of the issue of a trigger for evacuation;
 - Provision for the periodic review and updating of the FWEP.
- ii) If within **11 months** of the date of this decision the local planning authority refuse to approve the FWEP or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted FWEP shall have been approved by the Secretary of State.
- iv) The approved FWEP shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved FWEP specified in this condition, the FWEP shall thereafter be maintained.
- In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 9) The development shall be carried out in accordance with the mitigation measures detailed in the submitted flood risk assessment (ref ECL0712a/NKF Planning Consultancy, dated May 2023). These mitigation measures shall be fully implemented within **three months** of the date of

this decision and subsequently retained and maintained thereafter throughout the lifetime of the development.

APPEARANCES

FOR THE APPELLANT

Neil Langley	Agent
Phillip Brown	Gypsy & Traveller Consultant
Tim Ellingham	Flood Risk Consultant

FOR THE COUNCIL

Daniel Allen	Principal Planning Officer
Mark Simmonds	Development Manager
Rebecca Flint	Planning Officer for the Environment Agency
Heather Tysoe	Flood Risk Advisor for the Environment Agency