
Appeal Decision

Hearing held on 28 February 2018

Site visit made on 28 February 2018

by Sarah Colebourne MA, MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26th April 2018

Appeal Ref: APP/B3030/W/17/3180652

Land at Shannon Falls, Tolney Lane, Newark on Trent, Nottinghamshire, NG24 1DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Creddy Price against the decision of Newark and Sherwood District Council.
 - The application Ref 16/01884/FUL, dated 26 November 2016, was refused by notice dated 25 January 2017.
 - The development proposed is described as change of use of scrubland for the siting of 8 static mobile homes for gypsy travellers and reduce ground levels to 10.5m AOD.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. It is clear from the plans and was confirmed at the hearing that the proposed development includes the siting of 8 static mobile homes with an amenity block on each pitch, a hardstanding and alterations to one of the two existing accesses. I have considered the appeal on this basis.
3. The previous unauthorised use as a caravan site has ceased but it remains subject to extant enforcement notices for the lowering of ground levels and the removal of unauthorised tipping.
4. Since the application was refused, the Council has considered the additional information submitted with the appeal regarding the gypsy status of the intended occupiers and their personal circumstances. It resolved that if the appeal information had been before it previously, it would have been minded to approve the application subject to conditions for a temporary period of three years, personal occupancy and flood evacuation and warden requirements.
5. The appellant confirmed at the hearing that whilst a permanent permission was preferred, if this was found to be unacceptable then a temporary permission would be acceptable.
6. The proposed development is for eight pitches, of which seven would be occupied by the appellant and named members of his wider family. From the evidence provided in the appellant's statement and at the hearing, I am satisfied that they all have a nomadic way of life, travelling in connection with their work as well as for social purposes and have no reason disagree with the

Council's view that the intended occupiers meet the definition of gypsy and travellers in national policy 'Planning Policy for Traveller Sites' (PPTS). I have therefore considered the appeal on that basis.

7. Since the hearing, I have referred back to the parties for comments regarding the matter of the Environment Agency's (EA) and the Council's suggested floodplain compensation condition because the EA's representatives had left the hearing prior to detailed discussion of that matter. I have taken into account the post hearing comments received from the EA and the response to that from the Council. No response has been received from the appellant although I have had regard to the comments made on his behalf during the hearing.

Main Issues

8. The main issues in this case are:-

- the effect of the proposed development in terms of flood risk;
- if any harm arises, whether it is outweighed by any other material considerations, including any identified need for sites for gypsies and travellers in the area, the alternatives for the appellant and any personal circumstances.

Reasons

Flood risk

9. Tolney Lane lies close and runs parallel to the River Trent on the edge of Newark. It has a number of authorised gypsy and traveller sites accommodating a large gypsy and traveller community of over 260 pitches, all within flood zones 2 and 3. Since 2012, no permanent permissions have been approved although there have been temporary permissions. The appeal site is located within the centre of the wider area of sites. The appeal site lies mostly within flood zone 3a (high probability) and on the edge of the functional flood plain, with the northern part being in flood zone 2 (medium probability).
10. The development plan includes Core Policies 5 and 10 in the Newark and Sherwood Core Strategy (CS) (2011) and policy DM5 in its Allocations and Development Management Development Plan Document (DPD) (2013) which seek to avoid flood risk. The Technical Guidance to the Planning Practice Guidance on flood risk which underpins the National Planning Policy Framework ("the Framework") classifies development types according to their vulnerability to flood risk and gives guidance on which developments are appropriate in each flood zone. Despite the appellant's view that the proposed tethering of the static caravans would make them less vulnerable, in policy terms the development is clearly contrary to the above local policies and national policy in that it is a highly vulnerable use located mainly in flood zone 3a.
11. The overall aim of national policy is to steer new development to areas with the lowest probability of flooding through application of the Sequential Test and where necessary the Exception Test. Development in areas at risk of flooding should only be considered where, informed by a site specific flood risk assessment (FRA) following the Sequential Test (and if required the Exception Test), it can be demonstrated that within the site the most vulnerable development is located in areas at lowest flood risk, that the development is

appropriately resilient and resistant, including safe access and escape routes where required and that any residual risk can be safely managed. Although the Inspector for appeals¹ at another site in the Tolney Lane area at Green Park in 2014 found that those tests did not strictly apply and the Council agrees, the guidance says that they should be applied to any proposal involving a change of use to a caravan, camping or chalet site. Nevertheless, in its statement the Council accepts that the proposal would pass the Sequential Test as at present there are no reasonably available alternative sites and I have no reason to disagree with that. It also accepts that the accessibility to services within Newark would meet the test of wider sustainability benefits in the first part of the Exception Test. The second part of the Exception Test requires that the development would be safe for its lifetime, taking account of the vulnerability of the occupants without increasing flood risk elsewhere and where possible reducing flood risk.

12. The Environment Agency considers that lowering the site levels will increase flood risk to the site but at the hearing accepted that the proposed mitigation for the raising of the caravans on stone gabions to raise floor levels and tethering measures would be appropriate for the safety of the occupants on the site.
13. However, I was told that the access to the site along Tolney Lane floods very frequently, preventing access for the general public and in one part falling within the 'danger to all' (including the emergency services) category in national guidance. The safety of residents would therefore be dependent on an appropriate evacuation plan. I was told that the Environment Agency does not comment on evacuation plans and that the Council had received no response from its Emergency Planning Officer due to a vacancy in that post when consulted. I heard from the Council that, although there is no assumption that it would provide for further development, the Tolney Lane Action Plan which is in place for existing sites in the area had achieved its aim during the flood events of 2000 and 2012. The appellant's FRA recommends a site specific flood warning and evacuation plan but it was agreed at the hearing that the Council's suggested condition would make better provision, requiring residents to sign up to the EA's Flood Warning Service, provide details of locations to which they could evacuate and nominate at least three Flood Wardens. Under this residents would have prior warning of flood events and would be able to evacuate the site in good time before flooding occurred although the Council and emergency services would need to ensure that the site had been evacuated. Whilst in the short term it would reduce the risk of any significant burden to the Council and the emergency services, in the longer term that burden would be obviously be increased.
14. The Green Park decisions referred to earlier form part of the Council's justification for a temporary permission. However, the Green Park scheme did not involve static caravans or utility blocks and no condition for floodplain compensation was imposed as it was considered that a condition for the lowering of ground levels would be sufficient. A temporary permission granted in 2015 for a nearby site at The Abattoir was also for touring caravans. In this respect, the proposal differs significantly and I agree with the EA that the raising of the static caravans onto stone gabions and the proposed amenity

¹ APP/B3030/C/12/2186072, APP/B3030/C/12/2186073, APP/B3030/C/12/2186074, APP/B3030/A/12/2186071

blocks on each pitch would cause the loss of floodplain storage for flood water. Even though the unlawfully raised existing ground levels would be reduced as part of the proposal and the extent of development might result in a relatively small loss of storage capacity given the vast size of the floodplain, the cumulative impact of this proposal together with the other existing sites in the area would have a harmful impact upon flooding across the area and would be significant in terms of flood risk to third parties. Whilst the gabions and buildings could be removed at the end of a temporary period, the annual probability of flooding remains the same in the short term. The EA's and the Council's suggested condition for a flood plain compensation scheme would therefore be necessary (in addition to the lowering of ground levels) even for a temporary permission to mitigate the harm arising from the loss of floodplain storage. However, as the submitted site layout shows that the whole of the site would be occupied by plots and the hardstanding and I was told at the hearing (during discussion of other alternative accommodation options) that the appellant does not own any other land in the vicinity, I agree with the EA that it is unlikely that compensation works could be achieved in the context of this scheme. The Council has indicated that if any land outside of the appeal site in the same flood cell were used for offsite compensation works, this would have to be secured through a Section 106 legal agreement but none has been provided. I have no compelling evidence from the appellant that would lead me to a different conclusion from the EA.

15. I conclude then that the proposal would result in significant harm in terms of flood risk to third parties and that not all the measures necessary to mitigate that harm and meet the Exception Test even for a temporary permission could be achieved. In the longer term, given the strong policy objection and the additional burden that would be placed on the Council and the emergency services, a permanent permission would be also unacceptable in terms of flood risk to the occupiers of the site and to third parties.
16. The Framework requires that both the Sequential and Exception Tests must be satisfied for the development to be allowed. That is not the case for this proposal and it would, therefore be contrary to the local policies referred to above and to national policy.

Need and provision

17. PPTS identifies a national need for traveller sites and seeks to ensure that local planning authorities develop strategies to meet the need for sites in appropriate locations, to address under provision and maintain an appropriate level of supply (including a five year supply) of sites.
18. The Council's Gypsy and Traveller Accommodation Assessment (GTAA) 2016, provides the evidence base for Emerging Core Policy 4 in the Amended Core Strategy. This has been subject to objections during the examination of the emerging Amended Core Strategy and will in any case be tested as part of the ongoing examination. Despite the appellant's concerns regarding the methodology and findings of the GTAA, the Council accepts that it has an unmet need for 28 pitches over the plan period. It also concedes that it does not have a five year supply and that there is an unmet need for at least 14 pitches in the district for the period 2017-2022. The appellant considers the scale of that need to be much greater (around 100 pitches) based on his concerns regarding, in particular, the Council's approach to the turnover of

sites. The Council maintains that its assessment is appropriate and its approach is acceptable. At the hearing, the Council considered that any additional need resulting from that would be more than offset by its likely over-estimation of occupiers who meet the revised definition of gypsy and travellers in PPTS although the appellant disputed this as it does not take account of future household growth from the families of those who no longer meet the definition.

19. I conclude then that whatever the likely need figures are, the evidence before me suggests at least a moderate need for pitches in the district over the plan period, including an urgent need for pitches to provide a five year supply.
20. Emerging Core Policy 4 seeks to focus new pitch provision in and around the Newark Urban Area through a variety of means, including the allocation of sites through the development plan, the granting of permission for individual sites in accordance with emerging Core Policy 5, the purchase by the Council of new sites and the provision of flood resilience measures to enable the safe expansion of existing sites, although it currently remains subject to unresolved objections during the ongoing examination. The review of the Council's Allocations and Management DPD has been separated from the review of the CS and although the timescale has slipped I heard that it is expected to be submitted and examined within the year. I was also told that the Council has resolved that it will take steps towards making provision that could be deliverable ahead of the DPD. However, as it is unclear to me what and where that provision would be and how long it would take for it to become available and deliverable, I cannot be certain if and when sufficient sites would be brought forward and made available to address the likely scale of need. This indicates a current failure of policy. These matters each carry significant weight in favour of the proposal.

Alternative sites

21. None of the intended occupiers own a pitch and most rely on moving around in touring caravans and doubling up on relatives' sites with inadequate facilities and no security of tenure. They have many connections in the area and have been trying to establish a base in Newark for many years but I was told that for financial reasons they have not been able to find any alternative to Shannon Falls. I was told that this is the only land they own. I heard that there are no Council-owned sites in the area and that private sites have long waiting lists. For cultural reasons, bricks and mortar accommodation would be unacceptable to them. There are, therefore, no available alternative sites for the family in the area and this adds further weight in support of the proposal.

Personal circumstances

22. The ages of the intended occupiers range from the mid 50's to the early 70's. I was told that two of the older members have serious on-going health conditions for which they require regular hospital appointments and treatment, with a third awaiting surgery. They wish to live together to provide each other with mutual help and support. A settled base would enable them to do that and would enable access to appropriate health services. However, I have not been told that a base in this particular location is essential for their health needs and this matter therefore carries only limited weight.

The planning balance

23. I have concluded that the development would be unacceptable in terms of flood risk, contrary to national and local policy and this carries significant weight against the scheme. However, a number of other considerations weigh in favour of the scheme. There is an unmet need for additional gypsy and traveller sites in the district, a current lack of sites for the appellant and his family and a failure of policy to meet that need. These matters provide significant weight in support of the proposal and the health and care needs of the family also add some further, albeit limited, weight. However, even if I had found that the likely scale of need is that identified by the appellant, the other considerations do not outweigh the serious and lasting harm that would be caused by the development in terms of the inadequate provision for the loss of floodplain, the additional burden on the Council and the emergency services in the longer term, and the conflict with policies in terms of flood risk.
24. As the Council is currently unable to demonstrate a five year supply of pitches this carries significant weight in favour of a temporary permission. Although a temporary permission is not a substitute for a permanent site, it would give the family an opportunity to pursue a site through the DPD site allocations process or through the Council's other options for the provision of sites. Whilst in the short term, measures can be put in place for the raising of floor levels, tethering and an evacuation plan that would be likely to mitigate flood risk to the occupiers of the site, a floodplain compensation scheme is unlikely to be achievable resulting in significant cumulative harm to others elsewhere. I find that a temporary permission would not therefore be appropriate in this case.
25. I have had regard throughout my decision to Article 8 of the European Convention on Human Rights which affords the right to respect for private and family life, including the traditions and culture associated with a gypsy way of life. From what I have seen and heard, the dismissal of the appeal would not interfere with the Article 8 rights of the family as they are not living on the site and there is insufficient compelling evidence to indicate that they would be made homeless or be unable to practice their traditional way of life. I have also had regard to the Public Sector Equality Duty (PSED) in the Equality Act 2010 which seeks, amongst other things, to eliminate discrimination, harassment and to advance equality of opportunity and good relations between persons who share a relevant protected characteristic and those who do not. Romany Gypsies have a protected characteristic for the purposes of the PSED. Although the appellant and his family would be deprived of the opportunity to live on this site if the appeal is dismissed, this is set against the serious risk to life and property that the proposal would have in terms of flood risk. It does not therefore follow that the appeal should succeed.

Conclusion

26. For the reasons given, the proposal would cause significant harm in terms of flood risk, contrary to the development plan as a whole and there are no material considerations that would indicate otherwise. Therefore, and having taken into account all other matters raised, the appeal should be dismissed.

Sarah Colebourne

Inspector

APPEARANCES

FOR THE APPELLANT:

Philip Brown	Planning Consultant
Elly Price	Appellant's brother
Ros Price	Appellant's sister in law

FOR THE LOCAL PLANNING AUTHORITY:

Julia Lockwood	Planner
Matthew Tubb	Planner
David Woolley	Environment Agency

DOCUMENTS

1. Email from David Woolley, Environment Agency dated 3 April 2018.
2. Email from Julia Lockwood, Newark & Sherwood District Council, dated 25 April 2018.