



Appeal Decision

Hearing Held on 16 January 2018

Site visit made on 16 January 2018

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 02 February 2018

Appeal Ref: APP/V2635/W/17/3180533

Land to the south west of Flying Field Farm, Wheatley Bank, Walsoken, Norfolk

- 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 Mrs Christine Harrison against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 16/01002/F, dated 23 May 2016, was refused by notice dated 10 February 2017.
 - The development proposed is described in the application as "Change of use of paddock to 12 pitches for traveller families including standing 12 mobile homes, 12 touring vans and construction of 12 day rooms."
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Decision

1. The appeal is dismissed.

Procedural matters

2. As it was not necessary for me to enter the appeal site to consider any of the issues raised in this appeal, the parties were content for me to conduct an unaccompanied site inspection to view the location and the site's relationship with nearby settlements. Having closed the hearing, I carried out that inspection at just after 16:00 on the same day.
3. The Council confirmed that it determined the application on the basis of drawing number 15/11/1958 Rev A. This addressed the concerns of the King's Lynn Drainage Board regarding development within 9 metres of Kersons Dyke.
4. The planning application gave the site address simply as Wheatley Bank, Wisbech, Cambridgeshire, PE14 7AZ. The address stated above is taken from the appeal form and the parties agreed that it better identifies the site.
5. The description of the development in the application includes "standing 12 mobile homes". Clearly this should say "standing for 12 mobile homes".

Main Issues

6. The main issues are:
 - whether the proposed occupants are gypsies and travellers as defined in Annex 1 of Planning Policy for Traveller Sites (PPTS);
 - the effect of the proposal on the character and appearance of the countryside;

- whether the site is in an accessible location;
- the risk of flooding; and
- whether any harm arising from the development would be outweighed by any other considerations, including the need for gypsy and traveller sites, the availability of alternative accommodation and the personal needs and circumstances of the proposed occupiers.

Reasons

Gypsy and traveller status

7. The appeal site lies in the countryside outside any settlement boundaries, where residential development would normally be contrary to the development plan. In particular Policy CS06 of the King's Lynn & West Norfolk Borough Council Core Strategy (CS), adopted July 2011 and Policy DM2 of the Site Allocations and Development Management Plan (SADMP), adopted September 2016 restrict development in such areas to specified categories, including that which is essential to agriculture and forestry needs. In any event, the proposal does not fall within any of the specified categories and is advanced on that basis that it is intended to provide for the land use and accommodation requirements of specific individuals and that they are gypsies and travellers.
8. The Government's planning policy on the provision of gypsy and traveller sites is set out in Planning Policy for Traveller Sites (PPTS), August 2015. This indicates that the overarching aim is to "ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community". It also seeks to promote more private traveller site provision. I must have regard to PPTS, in addition to the development plan, but its policies will only apply if the proposed occupiers of the site come within the definition of gypsies and travellers set out in Annex 1 of PPTS, at this point in time.
9. The PPTS definition of gypsies and travellers is as follows:

"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, (my emphasis) but excluding members of an organised group of travelling showpeople or circus people travelling together as such" and paragraph 2 of Annex 1 adds:

"In determining whether persons are "gypsies and travellers" for the purposes of this planning policy, consideration should be given to the following issues amongst other relevant matters:

 - a) whether they previously led a nomadic habit of life*
 - b) the reasons for ceasing their nomadic habit of life*
 - c) whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances."*
10. As discussed during the hearing, although the PPTS definition does not spell this out, it has been established in case law¹ that the nomadism must have an

¹ *R v South Hams DC ex p. Gibb [1994]*

economic purpose. In other words gypsies and travellers wander or travel for the purposes of making or seeking their livelihood.

11. The appellant feels the Council should have provided more guidance on what was required, but the parties dispute the thrust and tone of pre-application advice. However, the Council's position was that it had not been given sufficient evidence to demonstrate that the proposed occupants satisfied the PPTS definition of gypsies and travellers.
12. The appellant's agent submitted letters dated 23 May and 14 July 2016. Taken together, these listed the proposed occupants, stated that they were from true gypsy traveller stock from this area and provided copies of old photographs to illustrate a history of travelling and caravan living. The May letter indicated that: the prospective occupiers of pitches 5, 7, 8, 9 and 12 were families with young children who would not be able to travel far until the children's education is complete; the occupants of Pitches 1 and 3 were restricted in their travelling through disability; but the remainder travel to various traveller venues around the country, most notably the Appleby Fair in Cumbria, Stow-on-the-Wold and Kenilworth. However, that letter does not indicate whether this is for social or economic reasons, such as trading in horses or tack. The May letter also enclosed a letter dated April 2016 from the Gypsy Liaison and Support Officer for Norfolk and Suffolk². However, this deals in general terms with "The Current Situation of Gypsies and Travellers in Norfolk" and provides no information specific to the intended occupiers of the appeal site.
13. Whilst I have no reason to doubt that all of the families listed are from traditional gypsy stock, the letters provided with the application contained insufficient detail concerning the extent and purpose of travel to demonstrate that the proposed occupants satisfied the PPTS definition of gypsies and travellers. Although further photographs and letters from some of the proposed occupants were submitted as appendix 1 to the appellant's statement of case, these also lacked the necessary detail. Where I mention letters from the proposed occupants, it is those in appendix 1 to which I refer.
14. I sought to explore this issue further at the hearing and, in answer to my questions, some additional information was provided in relation to the proposed occupiers of each pitch:

Pitch 1

Isabel Buckley attended the hearing and explained that she used to travel to do field work but no longer travels because of her health. She does not think she will be able to return to travelling.

Pitch 2

Betsy Pinnock was not at the hearing, but I was told that she travels with her father Jeff (Pitch 6), who undertakes landscape gardening works. I was not informed of the work Betsy does and have no details of how much she travels for the purpose of making or seeking her livelihood.

² Included at appendix 2 of the appellant's statement.

Pitch 3

Frank Buckley was not at the hearing. I was told that he travels as a landscape gardener, but was given no details of the extent of this in recent times.

Pitch 4

Levi Pinnock was not at the hearing, but I was told that he is currently living at the roadside in Kent. It was said that that he travels with his father Jeff, as a landscape gardener, but I have no details of the extent or pattern of recent travel.

Pitch 5

Kathleen Buckley was not at the hearing, but her mother Isabel told me that Kathleen is a single parent with 2 children. She looks after them, but last travelled about 2 years ago to do groundwork with her former husband. Kathleen intends to resume travelling for work when she can.

Pitch 6

Jeff Pinnock did not attend the hearing, but he said in his letter that he was living at the roadside with his children. He gave no details of their ages or whether they are attending school, but said he wants to secure their health and safety and a stable home. Although I was told by others at the hearing that Jeff travels for work as a landscape gardener, I was given no details of the extent or pattern of recent travel or his intentions for travelling in the future. Indeed, he said in his letter that he has health problems and he made no reference to work related travel.

Pitch 7

Tracey Twinley was at the hearing and I have a letter from her. She said that she used to travel every few months for 20 years to do fieldwork, roofing, tree cutting and picking. Whilst she still attends some horse fairs, there was no indication that this was for work purposes. Indeed Tracey can no longer travel for work because, as well as having young children who need to go to school, she has a serious and deteriorating health condition. She does not expect to return to travelling for work.

Pitch 8

George Harrison attended the hearing and I have a letter from him. He said that he travels "here, there and everywhere" to deal in cars and that he also has taxi ranks. I doubt whether travelling to taxi ranks in fixed locations amounts to nomadism but, in any event, Mr Harrison said that he currently has no settled base and travels for his car dealing work all of the time, as well as to attend horse fairs. Travelling does not have to be the primary source of family income, or even a major source, as long as it has an economic purpose and is more than a hobby.

Pitch 9

Delia Twinley was not at the hearing, but I was told that she travels with her father John Twinley (Pitch 11), who works as a roofer and landscape gardener. Her letter indicated that she is also a single parent and she needs to be settled to enable her children to go to school. It gave no information regarding her own history of travelling for work and no indication that she intends to travel for work in the future.

Pitch 10

Christine Harrison is the appellant and was at the hearing. She said that she used to travel for work as a gardener. An accident a couple of years ago curtailed this, but she said she intends to travel again in the future. However, she provided little detail of her previous patterns of travel for work and only a vague statement of intent for the future.

Pitch 11

John Twinley was not at the hearing, but his daughter Tracey said that he regularly travels to work as a roofer and landscape gardener; he could be in Wales for a week, then London, or Nottingham and so on. His own letter provided no travel or work details, but explained that he wanted to live near his daughters, particularly in view of his eldest daughter's health problems and the desire to help with his grandchildren.

Pitch 12

Lucy Smith and Steve Smith both attended the hearing. Steve said he works as a landscape gardener "as and when." He said that he travels for that work at least a few days per month. He also attends horse fairs at Appleby, Stow-on-the-Wold, Epsom and Kenilworth. In any event, he and Lucy have 2 young children who need to attend school. Lucy said that she used to travel for 8 months of the year, mainly as a housewife, but also to pick fruit. The couple intend to travel together again for work when the children leave school.

15. The Council was in some difficulty responding to information provided for the first time at the hearing, but was still concerned about the lack of detail and corroborating evidence, for example in the form of written business records. On the evidence, the Council was unable to accept that any of the proposed occupants currently satisfy the PPTS definition of gypsies and travellers.
16. The evidence concerning travel for economic purposes was vague or thin in places. Several of those present at the hearing made reference to the fact that, like many other travellers, they are members of a 'Born-Again Christian' group and they travel to gatherings such as the 'Light and Life' Festival. However, such travel does not have an economic purpose and does not assist in establishing gypsy and traveller status under PPTS. The absence of several of the intended occupiers made it difficult to obtain detailed evidence of their status.
17. I am satisfied on the balance of probability however, that George Harrison (Pitch 8), John Twinley (Pitch 11) and Steve and Lucy Smith (Pitch 12) do satisfy the PPTS definition. Each of the men has a nomadic habit of life and

their travel has an economic purpose. Lucy is dependent on Steve. Furthermore, she used to travel regularly, including to pick fruit, and she intends to travel with her husband again when their children leave school. Similarly, whilst Kathleen Buckley (Pitch 5) was not at the hearing, on the basis of what her mother Isabel said about her past travelling with her former husband and her intention to resume travelling when her children are older, I accept on the balance of probability that she is a gypsy in terms of PPTS.

18. On the evidence before me, Isabel Buckley (Pitch 1) and Tracey Twinley (Pitch 7) do not satisfy the PPTS definition, because they have ceased to travel permanently, due to ill health, and have no present intention to resume a nomadic habit of life in the foreseeable future. Given that they were not present and evidence given by others at the hearing and in any letters was limited and vague, I am also unable to conclude on the balance of probabilities, and as a matter of fact and degree, that the prospective occupiers of pitches 2, 3, 4, 6 and 9 satisfy the definition at this point in time. In relation to Pitch 10, Christine Harrison's own evidence did not satisfy me on the balance of probability that she has a firm intention and is likely to return to travelling for work, so as to satisfy the PPTS definition.
19. In relation to those who are not currently gypsies and travellers as defined by PPTS, proposals for residential development should be assessed primarily in accordance with general housing and other plan policies, though their personal circumstances will also be material. In this regard, the SOCG records the parties' agreement that the Council has a 5 year supply of general needs housing, so that the relevant development plan policies for the supply of housing cannot be considered out of date on that basis.
20. Nevertheless, having concluded that the occupiers of 4 out of the 12 proposed pitches are gypsies and travellers in terms of PPTS, I must also consider the proposal in the context of that policy and development plan policies relating to gypsy and traveller site provision.

The character and appearance of the countryside

21. In setting the criteria, subject to which permission will be granted for gypsy and traveller sites, CS Policy CS09 makes no reference to impact on character and appearance. However, this would clearly be a material consideration, even if the entire development were to be occupied by gypsies and travellers.
22. Consistent with the core principles of the National Planning Policy Framework (the Framework), CS Policy CS06 seeks to protect the countryside for its intrinsic character and beauty. Policy CS08 also requires all new development to be of high quality design and to respond to the context and character of places in West Norfolk by ensuring that the scale, density, layout and access will enhance the quality of the environment. Similarly, Policy CS12 requires sensitive designs which do not detract from the inherent quality of the environment, protecting, conserving and, where possible, enhancing the special qualities and local distinctiveness of the area, landscape setting and landscape features. In addition, SADMP Policy DM15 requires development to protect and enhance the amenity of the wider environment, having regard to a range of factors, including visual impact.
23. Although PPTS allows for gypsy and traveller site provision in the open countryside, it indicates that, away from existing settlements, this should be

very strictly limited. PPTS must also be read in conjunction with the Framework. It also states that local planning authorities should protect local amenity and environment when producing Local Plans and that, when considering applications, they should attach weight to sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness.

24. The site is some 1.3 km to the west of the village of Walsoken. There is an agricultural field to the north, commercial premises to the west, an equestrian use to the south and an agricultural field and orchards to the east. The site lies in an open, flat, agricultural landscape. It is largely reclaimed land, categorised as "The Fens – Settled Inland Marshes" in the Landscape Character Assessment (LCA) 2007. There are sporadic dwellings, along Wheatley Bank and associated agricultural and equine structures. Furthermore, some orchards have been stripped out and some development has taken place since 2007. There is indeed a caravan nearby, though the Council said this only has temporary permission, whilst another use is established. However, I saw nothing to suggest that the LCA categorisation is no longer appropriate.
25. In any event, the proposal would encroach a significant distance to the west of Wheatley Bank on a site of around 1.44 ha. It would comprise of 12 pitches with: 12 mobile homes; 12 touring caravans, 12 amenity buildings/day rooms; an access spine road and hardstanding to serve all of these and associated vehicles; external boundary treatment; fencing to delineate individual pitches; and inevitable domestic paraphernalia.
26. Notwithstanding the details shown on the application plans, there would be scope to limit the height of the internal boundary fences by condition and to require appropriate native planting on the southern and roadside site boundaries. Nevertheless, the proposal and all associated paraphernalia and activity would be clearly visible from Wheatley Bank, as well as from the elevated A47 and Lynn Road to the north-west, albeit at some distance.
27. Caravan sites will often have some impact on the character and appearance of a countryside location and PPTS indicates that gypsy and traveller sites should not be so enclosed that the impression may be given that they are deliberately isolated from the rest of the community. Furthermore, by reference to PPTS paragraph 14, the development would not dominate the nearest settled community.
28. However, in the context of the requirement in PPTS to very strictly limit traveller site development in the open countryside, given its form and density, this development would have a significantly detrimental impact on the characteristically open, flat fenland landscape. It would appear unduly prominent, intense and incongruous, contrary to CS Policies CS06, CS08, CS12, SADMP Policy DM15 and the Framework. Even ignoring the length of time it could take native screen planting to mature, I am not persuaded that such planting would adequately mitigate the harm caused by development on this scale, in this context and this factor weighs heavily against the proposal.

The accessibility of the site

29. On the Council's evidence, the appeal site is: 2.3 km from the centre of Walsoken, with its village hall, convenience store, chemist, hairdressers, butchers, takeaways and church; 1.5 km from the nearest bus stop on a

- regular route (Lynn Road to the north); 0.65 km from a farm shop and bar and grill; 0.7 km from a garden centre with café; 2.8 km from the nearest primary school; 2.9 km from the nearest high school; and 4.4 km from Wisbech Town Centre.
30. Whilst not providing a copy, the appellant's agent drew attention to advice in table 3.2 of a document entitled "Providing for Journeys on Foot"³, which he said suggests the maximum acceptable walking distance for commuting or travelling to school on foot is 2 km. This is consistent with the long-since cancelled Planning Policy Guidance Note 13.
 31. However, on the Council's evidence, the distances to the centre of Walsoken and the nearest schools exceed 2 km and the nearest bus stop is more than the 400 metre maximum recommended in the Department for Transport document 'Inclusive Mobility' (2005). In any event, whilst the distances in this case may not be too great for many people to walk, the roads in the vicinity of the site have no footways, are unlit and subject to a 50 mph limit. Whilst cycling may be an option, it is unlikely that people would regularly walk to schools or the shops and other facilities from the appeal site and they would probably be largely reliant on the private car.
 32. The Framework looks to maximise sustainable transport solutions and give people a real choice of how they travel. CS Policy CS11 reflects this, giving preference to walking and discouraging use of the private car. CS06 also seeks to ensure that housing, services and facilities are provided in close proximity. Furthermore, Policy 5 of 'Connecting Norfolk – Norfolk's Transport Plan for 2026' says that new development should be well located and connected to existing facilities so as to minimise the need to travel and reduce reliance on the private car or the need for infrastructure. Whilst it gave no details, Norfolk County Council expressed concerns about potential pressure on school transport.
 33. However, in so far as this site would accommodate gypsies and travellers, Policy CS09 requires that it should be located "within a reasonable distance" of facilities and supporting services and afford good access to main routes, including the A47. PPTS accepts that gypsy and traveller sites can be in rural locations. In this context, it is also relevant that paragraph 29 of the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary from urban to rural areas.
 34. Furthermore, Paragraph 13 of PPTS seeks to ensure that traveller sites are sustainable economically, socially and environmentally and, in respect of transport issues, this means developing policies to provide settled bases which reduce the need for long-distance travelling. By definition, gypsies and travellers are nomadic and travel is part of their way of life. However, a settled base reduces the need for frequent long distance travel, not least in order to find places to stay.
 35. On balance, though not especially well located, I conclude that, assessed as a gypsy and traveller site, the location is within a reasonable distance of facilities and supporting services and it does afford good access to the A47. In this regard, in so far as it would accommodate gypsies and travellers, the proposal complies with CS09. For the most part however, the development would

³ Published by The Institution of Highways and Transportation

accommodate people who, on the evidence, do not currently satisfy the planning definition of gypsies and travellers and general market housing in this location would conflict with CS Policies CS11 and CS06. Overall, the limited accessibility of the site weighs moderately against the proposal.

The risk of flooding

36. The site is also in an area identified as at risk of flooding and CS Policy CS09 states that sites for gypsies and travellers should avoid such areas. The application was determined in accordance with the Council's Strategic Flood Risk Assessment (SFRA), which indicated that part of the site was within Flood Zone 3 and the remainder was in Flood Zone 2. However, the Council is in the process of updating its Strategic Flood Risk Assessment and says the appeal should be considered on the basis of the Environment Agency's (EA) Flood Maps, which show the site in Flood Zone 2.
37. The Site Specific Flood Risk Assessment (SSFRA) submitted with the application suggests that the existing EA Flood Zone Map has been superseded by more recent EA Tidal Hazard Mapping, which shows the site to be in Flood Zone 1. The Statement of Common Ground (SOCG) notes the fact that the EA Flood Maps were produced in 2009 and the Tidal Hazard Mapping was undertaken in 2013. However, it also records the parties' agreement that the Tidal Hazard Mapping provides "an additional layer of information." For the Council, Mr Wilkinson reiterated this point and said that the Tidal Hazard Mapping did not alter the Flood Zone Map for planning purposes. He also said that, whilst the new SFRA has not been published, it is due out in early 2018 and he had seen a preview. The SFRA should refine the information in the EA Flood Zone Maps, but Mr Wilkinson said he would "put (his) mortgage" on the appeal site still being identified as within Flood Zone 2.
38. In any event, in response to the application, the EA said that the site was within Flood Zone 2 on its Flood Zone Map⁴; the SOCG records the parties' agreement that it is within Flood Zone 2; and, when specifically asked, the appellant's agents confirmed at the hearing that this was indeed agreed. On this basis, and in the absence of the author of the SSFRA to provide further explanation at the hearing, I will approach this issue on the basis that the site is within Flood Zone 2.
39. Having regard to tables 2 and 3 in the PPG, the proposal constitutes a "highly vulnerable" development in Flood Zone 2. In accordance with paragraph 100 of the Framework, it should therefore meet the Sequential Test and the Exception Test, which are set out in the Framework at paragraphs 101 and 102 respectively.
40. The Sequential Test aims to steer new development to areas with the lowest probability of flooding. The Council says that, if the proposal is considered to be for market housing, then the test is not satisfied because the SADMP allocates a substantial site for housing in Walsoken. However, I have found that, in part, the proposal would provide for the needs of gypsies and travellers and the Council confirmed that it could not identify any suitable site for this purpose in a location with a lower probability of flooding. To this extent, the Sequential Test is satisfied

⁴ The EA confirmed that it had regard to the Tidal Hazard Map.

41. In terms of the second limb of the Exception Test, the SSFRA indicates that the development would be safe for its lifetime and will not increase the risk of flooding elsewhere, subject to the proposed floor level of the permanent pitches being 300mm above existing ground level and surface water run-off being discharged to soakaways. The EA appears to accept this and does not oppose the development, as long as conditions are imposed in relation to floor levels and drainage. Indeed, the Council confirmed its satisfaction that this part of the test is met.
42. However, under paragraph 102 of the Framework, both limbs of the Exception Test have to be passed. Not surprisingly, the EA does not comment on the first limb, which is that it must be demonstrated that the development will provide "wider sustainability benefits to the community that outweigh flood risk". The criteria in CS Policy CS08 are consistent with this, even though they make specific reference to Planning Policy Statement 25, which has been cancelled. In this regard, the appellant's case is that the proposal would provide wider sustainability benefits by assisting the Council in meeting an identified need for gypsy and traveller site provision.
43. Whilst I have found that the proposal would provide in part for the needs of people who meet the PPTS definition of gypsies and travellers, the Council says that the proposal would provide much more than is needed. I cannot therefore assess any wider sustainability benefits until I have considered the question of general need. I will come back to this point but, in that assessment, I will also have to take account of the harm to the character and appearance of the countryside and the issue of accessibility.

Other considerations

44. Paragraph 24 of PPTS indicates matters which should be taken into account when considering planning applications for traveller sites. The first of these is the existing level of local provision and **the need for sites**.
45. The Cambridgeshire, King's Lynn and West Norfolk, Peterborough and West Norfolk Gypsy and Traveller Accommodation Assessment October 2016 (GTAA), was produced by Opinion Research Services (ORS) and the appellant did not dispute the Council's evidence that ORS are leading consultants in the field. The GTAA identified a need for 5 pitches for people who will meet the current definition of gypsies and travellers for the period up to 2036. This is made up of a current need for 4 pitches in the period 2016 – 2021 and a future need for 1 pitch in the period 2031 – 2036, resulting from new household formation⁵.
46. The appellant considers that the Council's position does not reflect reality and that it should not ignore the 'hidden need' referred to in the GTAA. Based on her personal experience, and having spoken to others, the appellant believes there is a shortfall in the supply of local sites for gypsies and travellers, resulting in households doubling, or even tripling-up on single pitches, along with a high level of unauthorised encampments and enforcement action. She says the public sites at Saddlebow, King's Lynn (27 pitches managed by Norfolk County Council) and West Walton Court, Blunts Drove (16 pitches managed by

⁵ This is based on a net household growth rate of 1.5% per annum derived from OPR's Technical Note on Household Formation and Growth Rates (August 2015). See hearing document 9, paragraphs 7.6 – 7.9, 7.14 and 7.91.

- Hastoe Housing Association) are operating at 100% capacity, with long waiting lists of local families.
47. However, the Council says that, since 2016, there have been only 5 unauthorised permanent gypsy and traveller encampments subject to enforcement action in the borough. Whilst there are unauthorised encampments at certain times of the year, particularly around the time of the Walsingham pilgrimage, these are visited by the Council's Housing team and they generally do not indicate a need for permanent provision; the occupants are just travelling on elsewhere. Furthermore, while the Hastoe Housing Association has 3 applicants on its waiting list, none has a local connection. Though Norfolk County Council has 5 applicants on its waiting list, which covers sites in Norfolk and Suffolk, all of those applicants are from outside Norfolk, whereas preference is given to people with a local connection. The figures do not suggest a significant unmet need.
48. In terms of the robustness of the GTAA and the question of hidden need, those producing that document engaged with members of the travelling community based on all known authorised and unauthorised sites. Whilst the planning history and status of each site was considered, some occupiers refused to be interviewed or were not present, despite 3 visits, and so it was not possible to interview all households. There is therefore an unknown element.
49. The GTAA acknowledges that, because of this, there could be between 0 and 35 further households in the period 2016 – 2036 who will meet the gypsy and traveller definition and require pitches. The estimate seeks to identify potential current and future need from any pitches known to be temporary or unauthorised and through new household formation. However, based on national averages, around 10% of the possible 35 additional households are likely to satisfy the gypsy and traveller definition. This would result in a requirement for 3 additional new pitches up to 2036⁶.
50. I have taken account of the concerns expressed in the Gypsy Liaison Officer's letter referred to above concerning the inadequacy of provision for gypsies and travellers generally and the difficulties caused by the new PPTS definition of gypsies and travellers for planning purposes. I also note the appellant's concerns about the GTAA and it is also clear that circumstances can change. Whilst it is intended to inform the local plan for the period up to 2036, the Council acknowledged that the 2016 GTAA has a "shelf life" of perhaps 3 – 5 years. Significant changes in data trends or increases in unauthorised encampments would prompt a review. However, Council officers visit all known sites every January and July to see what is happening and the Council says it is not seeing evidence of frequent doubling up or significant roadside camping. Whilst the identified need appears low to the appellant, this may be a function of the new definition of gypsies and travellers. In all the circumstances, the GTAA is currently the best evidence base available to me.
51. The Council says that there is no policy requirement to plan specifically for the needs of the unknown group of up to 35 (but more likely 3) households in the period up to 2036. However, in line with PPTS paragraph 11, its criteria based policy CS09 enables the needs of applicants to be met. If they can demonstrate that they come within the planning definition of gypsies and travellers, then the

⁶ See hearing document 9, at paragraphs 3.25 and 7.76.

- criterion in CS09 that the proposal must meet an identified need would be satisfied and the proposal can then be assessed against the other criteria.
52. On the evidence before me, the proposal for 12 pitches significantly exceeds the identified need for 5 pitches up to 2036. Even if one adds 3 pitches to take account of unknown households, the proposal exceeds that need and I have found that only the prospective occupants of 4 of the proposed pitches would currently satisfy the planning definition of gypsies and travellers. On this basis, the proposal would not clearly meet an identified need, as required by CS Policy CS09 and the first criterion of paragraph 24 of PPTS does not add substantial weight to the proposal. This also means that, in the context of flood risk, the wider sustainability benefits to the community relied on by the appellant are limited. They do not outweigh flood risk, as required by the Exception Test, such that the Framework and Policy CS09 point towards dismissal of the appeal.
53. In terms of **alternative accommodation** and **other personal circumstances**, whether or not they satisfy the planning definition of gypsies and travellers, I accept that the proposed occupants are ethnic Gypsies and have a tradition of living in caravans. I am told that there is a family connection through blood and marriage between all of them; they have a connection to this area; and they wish to live together to offer mutual support. This would be of particular benefit to those who are in poor health and it would provide a safe and supportive environment for children within the group. However, it was not suggested that all of the households had previously travelled together as a single group.
54. The best interests of children are a primary consideration and no other consideration is inherently more important. However, I was not told that any children are not attending school because of their current accommodation, or that they have any special educational needs that would be better met if they occupied the appeal site. I nevertheless accept that living together in a supportive, extended family group would probably be in the best interests of the children.
55. It also appears that: Levi and Jeff Pinnock are currently living at the roadside in Kent; 2 households are 'doubling up' on a pitch at Earith, Cambridgeshire; 3 households are 'tripling up' on a pitch at the West Walton Court site at Blunts Drove; and members of the Buckley family are doubling up on a pitch at Somersham in East Cambrdge. They are therefore contending with cramped conditions.
56. A letter from East Cambridgeshire District Council⁷ indicates that Delia Twinley and her family have been seeking accommodation on gypsy and traveller sites. However, the 2 open sites in that district, at Earith Bridge and Wentworth, are full with no likelihood of change in the foreseeable future and there are limited pitches available across Cambridgeshire. The appellant also says that the site is the only affordable opportunity to present itself in recent years to allow a private gypsy traveller site to be established in the area and all of these factors must be weighed in the overall planning balance.
57. However, I have been provided with no evidence of efforts made to find alternative sites to purchase. I was also given no satisfactory explanation of

⁷ Hearing document 7.

the fact that none of the intended occupants of the appeal site is on the waiting list for either Saddlebow or West Walton Court, though the latter has a turnover of approximately 4 pitches per year and, unlike the prospective occupants of the appeal site, no one currently on the waiting list has a local connection.

58. Though the appellant made no reference to this, under Article 8 of the European Convention on Human Rights (ECHR), everyone has the right to respect for his private and family life, his home and his correspondence. This brings with it a positive obligation to facilitate the gypsy way of life. Article 8 is particularly important in relation to those prospective occupiers who are currently living by the roadside. However, this is a qualified right; the degree of interference with the Article 8 rights arising from the dismissal of the appeal, must be balanced against the harm to the public interest, and the decision as a whole must be necessary and proportionate in the circumstances.
59. Again, the appellant did not cite this legislation but, by virtue of the Equality Act 2010, given that the proposed occupiers are ethnic Gypsies, I must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the act; advance equality of opportunity between gypsies and others; and foster good relations between them and others. These factors make up the Public Sector Equality Duty (PSED).

Overall planning balance

60. Having regard to the GTAA, this proposal for 12 gypsy and traveller pitches is not justified by identified general need. Given my conclusions that the majority of the prospective occupiers do not currently meet the PPTS definition of gypsies and travellers, the proposal would not meet an identified need in accordance with CS Policy CS09.
61. Having regard to PPTS paragraph 24, the accommodation needs and personal circumstances of all the proposed occupiers (adults and children), even those who do not currently satisfy the definition of gypsies and travellers, weigh moderately in favour of the proposal in the particular circumstances of this case. However, these factors do not outweigh the harm and conflict with policy which would result from the proposal. This includes: the significant detrimental impact on the character and appearance of the area, contrary to CS Policies CS06, CS08, CS12, SADMP Policy DM15 and the Framework; the moderate harm arising, notwithstanding the conclusions of the SSFRA, from locating highly vulnerable development in an area at risk of flooding, contrary to CS Policies CS08, CS09 and the Framework; and, in so far as the proposal is not justified by the need for gypsy and traveller pitches, the moderate harm arising out of conflict with Policies CS11 and CS06, due to the likely reliance on the private car.
62. These factors indicate that the appeal should be dismissed. Whilst this will result in some interference with the rights of the intended occupiers under Article 8 of the ECHR, that interference is proportionate and the minimum necessary for the legitimate public objective of safeguarding the character and appearance of the countryside, minimising flood risk and reducing the need to travel. I have had due regard to the PSED. Without evidence specific to the use of this site or the behaviour of the proposed occupants, I do not attach weight to local resident's concerns regarding the fear of crime or antisocial behaviour.

Nevertheless, in the absence of a clearly demonstrated need for 12 gypsy and traveller pitches, approving this proposal in this particular countryside location would do little to foster good relations between travellers and others. Though PPTS seeks to promote fair and equal treatment for travellers and to facilitate the traditional gypsy way of life, this must be done in a way which respects the interests of the settled community.

63. For all the reasons given, I conclude that the appeal should be dismissed.

J A Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Andrew Hird	Senior Planning Consultant, Cundall
Grahame Seaton	Grahame Seaton Design Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Keith Wilkinson	Senior Planning Officer, King's Lynn and West Norfolk Borough Council
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Nikki Patton	Housing Strategy Officer, King's Lynn and West Norfolk Borough Council
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INTERESTED PERSONS:

Christine Harrison	Appellant
Lucy Smith	Appellant's daughter and prospective resident
George Harrison	Appellant's son and prospective resident
Steve Smith	Prospective resident
Isabel Buckley	Prospective resident
Tracey Twinley	Prospective resident
Raymond Green	Local resident

DOCUMENTS SUBMITTED DURING THE HEARING

- 1 Drawing No. 15/11/1958 Rev A
- 2 Statement of Common Ground
- 3 Core Strategy Policies CS09, CS11 and CS12
- 4 Site Allocations and Development Management Policies Plan Policies DM1 and DM2
- 5 Site Specific Flood Risk Assessment
- 6 Letter from Hastoe Housing Association dated 3 May 2017
- 7 Letter from East Cambridgeshire District Council letter dated 9 January 2018
- 8 Extract from Cambridgeshire, King's Lynn & West Norfolk, Peterborough and West Suffolk Gypsy and Traveller Accommodation Assessment (GTAA), October 2016
- 9 Full copy of the GTAA
- 10 Appeal ref APP/V2635/W/16/3166074