The Planning Inspectorate

Appeal Decision

Hearing held on 22 and 23 June 2023

Site visit made on 22 June 2023

by Katie Child B.Sc.(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2023

Appeal Ref: APP/V2635/W/22/3294180
Moyse's Bank, School Road, Marshland St. James, Wisbech, Norfolk PE14 8EY

- 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 Laurence Manning against the decision of the Borough Council of King's Lynn and West Norfolk.
- The application Ref 20/01246/FM, dated 19 August 2020, was refused by notice dated 3 September 2021.
- The development proposed is described as 'the use of land for the stationing of caravans for residential purposes, together with the formation of hardstanding and utility/day room ancillary to that use and the use of land for the keeping of horses and the erection of a stable.'

Decision

1. The appeal is allowed and planning permission is granted for the use of land for the stationing of caravans for residential purposes, together with the formation of hardstanding and utility/day room ancillary to that use and the use of land for the keeping of horses and the erection of a stable at Moyse's Bank, School Road, Marshland St. James, Wisbech, Norfolk PE14 8EY in accordance with the terms of the application Ref 20/01246/FUM, dated 19 August 2020, subject to the conditions in the attached schedule.

Application for costs

2. At the hearing an application for costs was made by Laurence Manning against the Borough Council of King's Lynn and West Norfolk. This application is the subject of a separate decision.

Preliminary matters

3. The site address on the application form and decision notice are different. The application form refers to 'land west of Moyse's Bank, School Road, Wisbech, Cambridgeshire PE14 8EY' whilst the decision notice refers to 'Orchard south of School Road, Marshland St. James, Norfolk.' At the hearing the main parties agreed that the address in the banner above should be used. I concur that it represents an appropriate description of the site location.

4. A Tree Preservation Order on the orchard which adjoins the appeal site was confirmed by the Council on 14 June 2023. An opportunity for verbal comments on the matter was provided at the hearing session. No objections

were made by the appellant. The designation does not include the appeal site and there is no evidence before me that the proposal would necessitate works to these trees or cause harm.

5. A recent Court of Appeal decision in the case of Lisa Smith[1] has held that the definition of Travellers within Planning Policy for Travellers Sites (2015) (PPTS) is unlawfully discriminatory. The parties were provided with an opportunity to comment on the case prior to the hearing, and the definition was discussed at the hearing itself. The implications of the judgement are addressed later in my decision.

6. The Council has submitted a new Local Plan for examination. However, the hearing stage has been suspended pending further work by the Council, including on the matter of Gypsies and Travellers. Accordingly, I have attached little weight to the policies in the emerging Plan and have determined this appeal with regard to relevant policies in the Council's adopted Core Strategy (2011) and the Council's Site Allocation and Development Management Policies Plan (2016) (SADMPP) as well as national policy.

7. The appellant contends that Policies CS06 and CS09 in the Core Strategy are inconsistent with the National Planning Policy Framework (NPPF) (2021) and PPTS. I deal with these in turn below.

8. Policy CS06 states that the strategy in the countryside is to protect intrinsic character and beauty. The NPPF no longer contains this wording and the policy could be seen as inconsistent with national policy in this regard. The requirement in Policy CS06 for housing to be located 'in close proximity' to rural service centres is also more onerous than Policy C in PPTS. The Courts have held that Traveller accommodation is 'housing' as it provides homes[2]. Nevertheless, other aspects of Policy CS06 including the requirement to 'maintain local character and a high quality environment' and to protect the diversity of landscapes are consistent with the NPPF and are relevant to this appeal.

9. The last part of Policy CS09 deals with provision for Gypsies and Traveller and Travelling Showpeople. Both parties accept that the identified needs in the policy are outdated, with subsequent Gypsy and Traveller Accommodation Assessments (GTAA) produced in 2016 and 2023. The criterion requiring that sites meet an identified need is also inconsistent with paragraphs 11 and paragraph 24 in the PPTS, which indicate that an identified need is not necessary and that local planning authorities should 'consider' the existing level of provision and local need when determining proposals. However, other criteria in this section of Policy CS09 are still relevant.

10. The parties agree that Policy CS02 in the Core Strategy on the settlement hierarchy is no longer critical to the case, on the basis that the Council now accepts the proposal is for Traveller accommodation, as set out below. However, I concur with the Council that Policy CS02 is still relevant to the case in relation to sustainability, insofar as it confirms the status of the nearby village of Marshland St. James.

[1] Lisa Smith v SSLUHC [2022] EWCA.
[2] Wenman v Secretary of State for Communities and Local Government [2015] EWHC 925 (Admin)

11. The Council's updated Gypsy and Traveller Accommodation Assessment (GTAA) (2023) was made available in the week prior to the hearing. The appellant submitted a written response to the document and the GTAA was discussed at the hearing. The implications of the document are covered later in this decision.

12. Following the site visit it was confirmed by the appellant that the red line boundary was incorrectly plotted. Amended proposed block plans 19_1072_004 and 19_1072_003 Revision E have been submitted which exclude the ditch along the site frontage and shift the developed part of the site slightly south. The changes are small and the Council confirmed at the hearing that they were content to accept these as minor changes. I concur with this position as I am satisfied that interested parties would not be prejudiced.

13. Plan 19_1072_003 Revision E also shows an alternative access point into the site, from the east. The parties agreed at the hearing that if the access point was moved to this position, sufficient visibility could be achieved to meet the Council's standards and provide safe vehicular access to the site. Having observed the altered access position on my site visit, I concur with this. It would be dependent on other access points being stopped up, but this could be secured via a planning condition. The Council confirmed they are content to accept the amended access as a minor change to the planning proposal. Other aspects of the internal site layout would be unaffected and I am satisfied that the interests of other parties would not be prejudiced. On this basis I conclude that adequate visibility splays can be achieved to ensure highway safety and refusal reason 5 is resolved.

14. The parties disagree on the degree to which the road to Marshland St James is suitable for walking and cycling and occupiers would be reliant on the use of a car. However, the Council confirmed at the hearing that it no longer considers the appeal site to be an unsustainable location overall for the proposed development, as cited in refusal reason 3. The Council now accepts the proposal is for Traveller accommodation, as set out below. PPTS recognises that Traveller accommodation can be appropriate in rural areas and Policy CS09 in the Core Strategy implicitly supports Traveller accommodation in the countryside providing certain criteria are satisfied. Taking account of the modest distance to the village and nearby facilities in other settlements, I concur that the appeal site is a sustainable location for Traveller accommodation. The site would also help to provide a settled base which would enable a Traveller family to access health care and education and reduce the need for long distance travel, in line with paragraph 13 in PPTS.

Main issues

15. The remaining main issues are as follows:

    1) Proposed Gypsy and Traveller use and which planning policies should apply.

    2) Whether the site is in an acceptable location for the proposed development in terms of flood risk.

    3) The effect of the proposal on the character and appearance of the surrounding area.

4) Whether there are any other considerations indicating that planning permission should be granted. This includes the need for and supply of Gypsy and Traveller sites, policy failure, animal welfare and reduction of traffic movements, and potentially the personal circumstances of the intended occupants.

Reasons

Proposed Gypsy and Traveller use and which planning policies should apply

16. The Council determined the planning application as caravans for general residential use in the countryside, rather than Gypsy and Traveller accommodation (as set out in refusal reason 1). The Council has stated that this is because details of the intended occupants and their personal circumstances were not provided.

17. The appellant has subsequently submitted additional information with the appeal which confirms that he, his wife and their dependents are the intended occupants and outlines details of a nomadic lifestyle and personal circumstances. At the hearing the Council concurred that the appellant and his family are cultural Gypsies and Travellers with a history of travelling for work and I see no reason to disagree with this. On the basis of this evidence the Council now agrees that national and local planning policies relating to Travellers are relevant to the proposal.

18. Nevertheless, the Council still maintains that information on Traveller status and personal circumstances was necessary to allow the application and appeal to be determined as Gypsy and Traveller accommodation. The Council has referred to the Wheatley Bank decision[3] in support of its position. Paragraph 19 in that decision states that *'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.'*

19. However, reading the appeal decision as a whole, it is apparent that the Inspector is looking at the Traveller status and personal circumstances of the specific intended site occupants, within the context that the proposed level of provision is greater than identified pitch needs. As such the decision does not suggest that all applications from non-Travellers or those not meeting the PPTS should primarily be determined against general housing policies or that all applications should identify specific occupiers.

20. Policy CS09 in the Core Strategy sets out criteria for determining Gypsy and Traveller proposals. It does not specify that applicants should be Gypsies and Travellers or distinguish between Travellers who meet and do not meet the PPTS definition. Furthermore, although paragraph 24 in PPTS refers to the personal circumstances of the applicant, it is part of a range of factors to consider. The paragraph does not specify that all criteria should apply or preclude applications coming forward where the identity of occupants is not known.

[3] APP/V2635/W/17/3180533.

21. The Council's position is not supported by case law or policy. Planning permission normally runs with the land and it is not necessary for an applicant to be a Traveller or have a nomadic habitat of life to apply for permission for use of land as a Traveller site. Planning conditions can be used to limit occupancy to Gypsies and Travellers and enforce any breaches. The wording of any condition would need to take account of the aforementioned Lisa Smith judgement, as it has held that the PPTS definition of Travellers is unlawfully discriminatory and excludes those who may cease to travel permanently. This issue is dealt with in the Conditions section below.

22. Personal circumstances are capable of being a material planning consideration and it is possible to use personal occupancy conditions if such matters are critical to the decision and outweigh harm. But if a scheme is acceptable in terms of its planning merits it may not be necessary to have recourse to them. This is the position I have reached in relation to this appeal, as set out later in my decision.

23. In summary, I consider that it is possible to determine the proposed development as Gypsy and Traveller accommodation and against Traveller policies, without requiring details of the intended occupant or their personal circumstances.

Flood risk

24. The appeal site lies within Flood Zone 3a, as shown in the Council's Strategic Flood Risk Assessment (2018). As such the site is categorised as having a high flood risk, with 0.5% or greater annual probability of tidal flooding from the River Great Ouse and a 1% or greater annual probability of flooding from the drainage system within the King's Lynn Internal Drainage Board (IDB) area and the Middle Level Main Drain.

25. The southern part of the site also lies within the Environment Agency's Tidal Mapping Zone and is therefore within an area where there would be inundation following a breach. The appellant's site-specific Flood Risk Assessment (FRA) indicates that the site could be affected to a depth of between 0 and 0.6 metres.

26. Where development is proposed in Flood Zone 3a the NPPF requires application of a sequential test, with the aim of steering development to areas with the lowest risk of flooding. The Council's appeal statement outlines two potential alternative sites within Marshland St. James that are allocated in the SADMPP. However, the Council confirmed at the hearing that this application of the sequential test was based on the scheme being for general residential development, rather than accommodation for Travellers. As outlined above, this position has altered. At the hearing neither party was able to identify any other suitable and available alternative sites for Travellers, let alone in areas with a lower risk of flooding. Consequently, based on the evidence before me I am satisfied that the sequential test has been met.

27. However, the NPPF identifies caravans and mobile homes as 'highly vulnerable' to flood risk and Table 2 in the Planning Policy Guidance (PPG) on Flood Risk states such development should not be permitted within Flood Zone 3a. The need to avoid development in areas at risk of flooding is also highlighted in Policy CS01 in the Core Strategy whilst Policy CS09 states that sites for

Travellers should be given permission where they avoid areas at risk of flooding.

28. Nonetheless, paragraph 159 in the NPPF recognises that development may be necessary in areas of high flood risk. The appellant has also submitted a number of appeal decisions which indicate that there are circumstances in which highly vulnerable development in Flood Zone 3 can be permitted[4]. Policy CS01 in the Core Strategy also recognises that exceptions may exist. Further detail is provided in Policy CS08 which states that 'if the development vulnerability type is not compatible with the flood zone as set out in PPS25[5], proposals will need to demonstrate that the proposal contributes to the regeneration objectives of King's Lynn or the wider sustainability needs of rural communities'. The policy also requires in such cases that 'flood risk is fully mitigated through appropriate design and engineering solutions'.

29. The site is in a rural area and there would be benefits to the local Gypsy and Traveller community from the provision of additional permanent accommodation. I have found above that the site is in a sustainable location and would provide sustainability benefits linked to paragraph 13 in PPTS. Although the number of additional pitches is small in numerical terms, the significant shortage of pitches in the borough, as identified in the need/supply section below, means that even the provision of one additional pitch would be an important gain.

30. The appellant's FRA also highlights that the site benefits from existing flood defences and is shown in the Council's Level 2 Strategic Flood Risk Assessment 2019 as being within a 'Low Risk Area of Flooding'. The defences are designed to protect against a 1 in 200 year tidal event and a 1 in 100 year fluvial event. The FRA sets out that the likelihood of flooding due to overtopping or failure of flood defences and embankments is small, whilst taking account of climate change; that significant upgrades have been carried out to pumping stations in the area; that flood defences and drainage systems in the area are subject to a routine maintenance programme and maintenance standards are good; and that in a very extreme event the rise of water on the site would not be sudden and there would be time to take precautionary action.

31. The FRA concludes that residual flood risk is low due to the current standards of drainage and flood defence in the area and that development would be safe for its lifetime. It advises that any risks could be mitigated by requiring finished floor levels to be 600 millimetres above ground level with flood resilient construction up to 300 millimetres and stipulating that the static caravan is securely anchored to concrete ground bases.

32. Neither the Environment Agency nor the King's Lynn IDB have objected to the scheme. However, the Environment Agency recommends that the mitigation measures referred to in the FRA should be adhered to.

33. Taking account of all evidence before me, notwithstanding that the proposal is for highly vulnerable land use within Flood Zone 3a, in this case I am satisfied that flood risk on the site is low and the site is capable of being made safe for

[4] Including APP/A2525/C/20/3258547 and APP/D0515/C/18/3196061

[5] Planning Policy Statement 25. Although this document has been superseded, it has the same vulnerability classification for caravans and mobile homes and flood zone compatibility as current Government guidance.

its lifetime without increasing flood risk elsewhere. The scheme would bring wider community benefits that outweigh the flood risk, and residual flood risks could be mitigated by using planning conditions to secure the measures referred to above.

34. In conclusion, the proposal therefore accords with paragraph 159 in the NPPF and Policy CS08 in the Council's Core Strategy insofar as it relates to flood risk. Although the 'exception test' in the NPPF is not normally applicable to highly vulnerable uses in Flood Zone 3a, as set out above it is also apparent that both limbs of the test would be satisfied. Overall, I conclude the site is an acceptable location for the proposed development in terms of flood risk.

Character and appearance

35. The appeal site is located within the 'Fens - Open Inland Marshes' area as defined in the Council's Landscape Character Assessment (2007). The area is characterised by a flat fenland landscape, mainly comprising regular sized fields separated by low dykes and ditches, with some farmsteads located along minor roads running through the area. It is identified as having inherent landscape sensitivities with a strong sense of openness and tranquillity and recognisable sense of place.

36. The appeal site is an open flat field that was overgrown at the time of my site visit. The site is bounded by ditches on several sides and by an orchard to the east. The site contains a small number of orchard trees close to the eastern boundary. On my site visit I observed that the site has a rural and tranquil character.

37. The site forms part of an area of intensively farmed land to the east of Marshland St James. It mainly consists of agricultural fields, although there are some pockets of trees and planting in the area, including the adjoining orchard and planting along the boundary of the field to the west. As seen on my site visit and highlighted in the appellant's evidence, there are also a number of scattered dwellings and farm buildings in the local area.

38. The absence of boundary treatment on the frontage means that there are clear views across the site from the adjoining section of School Road. However, the orchard to the east and planting to the west restricts views from other parts of the road and from Moyse's Bank. As you travel east from the village along School Road the site is not observed until close by due to the vegetation and also the angle of the road. From the other direction, the site frontage can be seen further away but views into the site are restricted by the orchard. My site visit took place in Summer and it is likely that views are less filtered by foliage during other periods of the year. However, based on the size and depth of the orchard I consider that this would still provide a significant visual barrier in all seasons.

39. The site can also be seen along the track which adjoins the western side of the site. The Council indicated that this route is an unadopted highway and is used by local people for walking/cycling and provides vehicular access to stable buildings to the rear. There are also some views of the site from more distant vantage points, to the north and south. However, given the flat topography of the area and the distance, the site is not prominent in these views.

40. The proposal involves the stationing of a caravan and mobile home and erection of a day room and stables. At the hearing the appellant indicated that the standard mobile home height is about 4 metres. The Council did not dispute this figure. Mobile homes are elevated above the ground and therefore the flood risk mitigation measure of 600mm would already be partly satisfied. Accordingly, I conclude that the maximum roof height of the mobile home on the site is likely to be slightly above 4 metres but less than the figure of 5 metres suggested in the Council's appeal statement. The parties agreed at the hearing that the height of the day room and stables would respectively be some 3.6 metres and 3.7 metres above the ground.

41. The Council contend that the structures would be seen from a considerable distance away and over treetops due to their height and the pale metal colour of caravans and mobile homes. However, the extent and height of proposed built form on the site is modest. Furthermore, the tall trees to the west and the bulk and positioning of the orchard to the east, as described above, provide a significant amount of screening from School Road and Moyse's Bank. The amended plans show that existing trees on the site would be retained and additional frontage planting is proposed. The amended red line boundary indicates there is scope to achieve this. The appellant has also agreed to submit a landscaping scheme by condition.

42. Taking account of these factors and my observations I consider that any views of structures above treetops or between trees would be limited and largely restricted to points on School Road close to the site. Other vantage points, notwithstanding aspects of road elevation, are more distant. As such, despite the potential pale colour of the caravans/mobile homes, the development would be seen from elsewhere against a wide backdrop of fields and farmsteads and would not be overly prominent.

43. The proposal would introduce built form into the northern part of the site. There would also be hardstanding and parked vehicles. The rural and open character of this part of the site would alter. However, the extent and height of built form and amount of hardstanding would be modest. The plans shows that a sizable part of the frontage would remain as open land. The site also benefits from screening, as described above. Furthermore, there are other scattered farmsteads and stables elsewhere in the local area. Therefore modest development on the site would not be wholly out of keeping with the character of the area.

44. Therefore, overall I conclude that the proposal would not adversely affect the character and appearance of the surrounding area. As such, it would accord with Policy CS06 in the Core Strategy insofar as it seeks to protect the character of the countryside and local landscapes, and Policies CS08 and CS12 in the Core Strategy and Policy DM15 in the SADMPP insofar as they require development to respect local setting and character.

Need for and supply of Gypsy sites

45. The Councils GTAA 2016 identifies a need for 45 pitches for Gypsies and Travellers between 2016 and 2036, comprising 5 pitches for those who meet the PPTS definition and 40 for those who do not. It also identifies a need for up to 35 pitches linked to need arising from the significant number of Gypsy and Traveller families who were not interviewed as part of the GTAA work.

46. The new GTAA, dated June 2023, identifies a need for 156 additional Gypsy and Traveller pitches between 2023 and 2039. This consists of 102 pitches for households who meet the PPTS definition, 6 pitches for undetermined households and 48 pitches for households not meeting the PPTS definition.

47. The GTAA 2023 is due to be published and assessed as part of the on-going examination of the Local Plan. The examination process has been paused to facilitate this and enable reflection on the overall strategy for Gypsy and Traveller site provision. As part of this the Council will need to take account of the aforementioned Lisa Smith case, which has held that the PPTS definition is unlawfully discriminatory.

48. Nonetheless, the updated GTAA figures before me show a significant level of unmet need in the borough, which is considerably higher than the level in the GTAA 2016. Both parties agreed at the hearing that the GTAA 2023 represents a more accurate up to date assessment of current and future need, albeit the appellant has some concerns that the figures are an under-estimate.

49. The Council has also confirmed that it does not have a five-year supply of sites. The submitted Local Plan does not identify any proposed allocation sites and at the hearing the Council were unable to identify any further potential windfall sites in the pipeline. The Statement of Common Ground confirms that both parties agree that there is a lack of suitable, acceptable and affordable sites for the appellant or any other Gypsy and Traveller family within the borough.

50. Overall, the evidence before me indicates that there are current and future identified needs for additional Gypsy and Traveller pitches in the borough. If new windfall proposals have come forward since the hearings, given the short passage of time I consider this is likely to be modest and would not affect my overall conclusions regarding need. A new pitch on the appeal site would provide additional Traveller accommodation to meet current unmet needs in the area. This is a benefit to which I attribute significant weight. I also attach significant weight to the absence of five-year supply.

Policy failure

51. Policy CS09 in the Core Strategy (2011) refers to an identified need for 146 pitches between 2006 and 2011 and an annual compound increase of 3% for the period 2011-21. The Council confirmed at the hearing that this equates to a total need figure of 202 additional pitches.

52. The Council sought to address these needs by establishing a criteria-based framework in Policy CS09 for determining windfall proposals. Neither the Core Strategy or the SADMPP identify Traveller allocation sites. The exact degree to which this policy-based approach was successful and identified needs were met is not wholly clear, given the passage of time and changes in Council personnel. The Council's hearing statement indicates that 12 pitches were approved between 2016 and 2021 and there was reference at the hearing to a small number of more recent pitch approvals. However, the Council were unable to confirm how many pitches were permitted between 2011 and 2016 or delivered between 2011 and 2021. The Council were also unable to confirm the level of needs or the Council's policies prior to 2011.

53. The GTAA 2016 and 2023 both show on-going need for additional pitches. They also identify current authorised pitch numbers of 174 and 172

respectively that are below the need figure of 202 and which appear to have declined. The GTAA 2023 also shows high levels of current need for additional pitches within the next five years, linked to families living on unauthorised sites or where households are concealed, doubled up or displaced.

54. The evidence before me shows significant levels of current unmet need and suggests that the criteria-based windfall approach has not delivered sufficient recent pitch completions in the borough to fully satisfied the accommodation needs of the Gypsy and Traveller population. However, the extent of under-delivery is not clear and there is a lack of information relating to unmet needs and pitch completions in earlier parts of the Plan period. As such, based on the evidence before me it is difficult to reach a firm conclusion regarding the length of time that needs may have been unmet.

55. The adopted Plan set out a strategy and criteria-based Traveller policy. The Council has sought to periodically re-assess the need for pitches, as set out in the GTAA 2016 and 2023. The GTAA 2016 only identifies a need for 5 additional pitches for Travellers meeting the PPTS definition and a further 40 for those who did not, albeit it also identifies a need for up to 35 pitches relating to Gypsy families who were not interviewed. However, the evidence before the Council at that time showed only a modest confirmed pitch requirement and predated the Smith judgement. The current examination of the Local Plan will provide an opportunity to appraise the latest evidence on unmet need, take account of the Smith judgement and determine the most appropriate strategy for delivering sites.

56. Therefore, based on the evidence before me I am not persuaded that policy failure has occurred.

Animal welfare and reduction of traffic movements

57. The proposal includes provision of a stable block and land for keeping of horses. The appellant has indicated this set-up would aid animal welfare and reduce travel, as his horses are currently stabled at a number of locations owned by other people. However, I have concluded below that the proposal is acceptable on its planning merits and have not have not had recourse to personal circumstances or applied a personal condition. Not everyone owns horses and these circumstances may not apply to other Traveller households. As such I do not consider these factors weigh in favour of the proposal.

Other matters

58. Local residents have raised concerns that the proposal would increase the amount of traffic in the local area and cause safety issues. However, notwithstanding the recent construction of a number of houses on the edge of the village and presence of the primary school in this area, Norfolk County Council's and the appellant's survey evidence both indicate that School Road has modest levels of traffic. Furthermore, the County Council's estimate of six movements per weekday from the site, albeit with some additional movements if the paddocks are rented out, is modest and was accepted by the appellant at the hearing. Accordingly, notwithstanding the narrow width of parts of School Road, I am satisfied that the proposal would not cause a significant worsening of traffic or result in severe cumulative impacts on the road network.

59. The proposal is land 'for the keeping of horses' rather than grazing. At the hearing the appellant confirmed that kept horses rely on imported feed rather than grass, and the paddock would be used for turning out horses rather than as a means of feeding. As such there is no evidence that the size of the paddock is insufficient for its intended purpose.

Planning balance

60. The proposed development is for use of the land for Gypsy and Traveller accommodation and a planning condition could be used to ensure occupancy is limited to Gypsies and Travellers. As set out above, I conclude that the site is an acceptable location for the proposed development in terms of flood risk and the proposal accords with Policy CS08 in the Core Strategy insofar as it relates to flood risk. I also conclude the proposal would not adversely affect the character and appearance of the surrounding area and accords with various policies in the Core Strategy and SADMPP which relate to protecting the character of the locality and the countryside.

61. At the hearing the appellant confirmed he already has permanent settled accommodation. His family is currently residing on a pitch with planning permission which is owned by his family and located in the neighbouring authority of Fenland. It is intended that the vacation of that pitch would enable his sister and partner to gain a secure and settled base. They are currently doubling up on the appellant's parent's site in Fenland.

62. Nonetheless, the evidence before me indicates high levels of unmet current need and future need for additional pitches in King's Lynn and West Norfolk. There would be clear benefits associated with provision of an additional pitch for use by Gypsies and Travellers in the borough. I have attached significant weight to this matter along with the absence of five-year supply.

63. As I have found the development to be acceptable on the basis of its planning merits and identified accommodation needs in the borough, there is no need for me to go on to consider the significance of the appellant's personal circumstances or those of his family. There is also no need for me to determine whether paragraph 11d of the NPPF is engaged as I have already determined that the planning balance is acceptable.

64. The appellant has also cited benefits linked to a reduction of unauthorised development in Fenland, following the re-location of his sister. However, there is no specific evidence before me relating to the need for and supply of sites in Fenland and the occupation of the appellant's current site is not within my jurisdiction. As such I afforded limited weight to this matter.

Conditions

65. The Council has suggested conditions which I have considered against advice in the NPPF and PPG. In addition to the standard implementation condition, I have imposed a condition to ensure the proposal is carried out in accordance with the approved plans, in order to provide certainty and protect the character and appearance of the local area.

66. The Council has proposed a planning condition which refers to occupants needing to accord with the definition of Gypsies and Travellers in Annex 1 of the PPTS. However, the Court of Appeal in the Lisa Smith case held that the exclusion of Travellers who have ceased to travel permanently is discriminatory

and has no legitimate aim. It is not possible to foretell whether any occupiers might be forced to cease travelling permanently during the anticipated lifetime of the permission. Imposing the suggested condition would be liable to result in unlawful discrimination, with family members being unable to live on the site. I shall therefore grant planning permission subject to a condition which restricts occupation to Gypsies and Travellers, defined so as to not exclude those who have ceased travelling permanently. I have not found it necessary to impose a personal condition, for reasons already outlined.

67. The number and type of caravans and size of vehicles kept at the site and the extent of commercial activities on the site are restricted through condition in order to limit visual impact and protect the character and appearance of the area. For the same reasons, conditions seeking details and implementation of landscaping, external lighting and materials are imposed.

68. Conditions relating to flood risk mitigation and surface water drainage are necessary in order to deal with flood risk.

69. Conditions relating to vehicle access and the closure of other access points are imposed in the interests of highway safety.

Conclusion

70. I therefore conclude that the proposal would accord with the development plan as a whole, and as other material considerations do not indicate a decision to the contrary, that the appeal should be allowed.

Katie Child

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Green	Planning consultant
Geoff Beel	Flood Risk consultant
Jeremy Hurlstone	Transport consultant
Laurence Manning	Appellant
Laurence Manning	Appellant's father
Rhiannon Manning	Appellant's sister

FOR THE LOCAL PLANNING AUTHORITY:

Keith Wilkinson	Senior Planning Officer, King's Lynn and West Norfolk Borough Council
Sandra Horncenko	Technical Support Officer, King's Lynn and West Norfolk Borough Council
Jonathan Hanner	Highways, Norfolk County Council
Steve Jarman	ORS

INTERESTED PARTIES:

Carol Coleman	Member of Marshland St. James Parish Council
Brian Long	King's Lynn and West Norfolk Borough Councillor

DOCUMENTS RECEIVED AT THE HEARING

1. Signed Statement of Common Ground between the Council and the appellant (dated 22 June 2023).
2. Signed version of Witness Statement of Laurence Manning (dated 22 June 2023).
3. Letter on Gypsy and Travellers from the Inspectors examining the submitted Local Plan, dated 20 June 2023.
4. Proposed block plan 19_1072_004
5. Proposed block plan 19_1072_003 Revision E

DOCUMENTS RECEIVED AFTER THE HEARING

1. Email from appellant dated 23 June 2023 confirming it is acceptable for the landscaping condition to be a pre-commencement condition.

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans. Drawings Nos. 19_1072_001, 19_1072_003 Revision E, 19_1072_004, 19_1072_005 Revision A, 19_172_006 and 19_1072_007.
3. Finished floor levels will be 600mm above existing ground level with flood resilient construction up to 300mm above finished floor level. The static caravan will be securely anchored to concrete ground bases. These measures shall be maintained thereafter.

4. All surface water drainage from the development will be by soakaway to BRE365 design requirements and Building Regulations approval.

5. No development shall take place until a scheme of landscaping and schedule of maintenance for the establishment of planting for a minimum period of five years has been submitted to, and approved in writing, by the Local Planning Authority. Development shall be carried out in accordance with the approved details and schedule.

6. Prior to occupation details of an external lighting scheme shall be submitted to, and approved in writing, by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

7. On the pitch hereby approved there shall be no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravans Sites Act 1968, stationed at any time (of which no more than one shall be a static caravan or mobile home).

8. 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.

9. Except for the breeding and sale of horses, no commercial activities shall take place on the site, including the storage of materials.

10. Except for one vehicle up to 7.5 tonnes used for the transport of horses, no vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

11. Vehicle access to and from the adjoining highway shall be limited to the access shown on Drawing 19_1072_003 Revision E only. Any other access/egress shall be permanently closed and the footway/highway verge shall be reinstated in accordance with the detailed scheme to be agreed with the Local Planning Authority concurrently with bringing the new access into use.

12. No development above slab level of the dayroom shall be undertaken until details of the facing bricks and roof tiles have been submitted to, and agreed in writing by, the Local Planning Authority. The dayroom shall be built in accordance with the materials agreed.

-END-

The Planning Inspectorate

Costs Decision

Hearing held on 22 and 23 June 2023

Site visit made on 22 June 2023

by Katie Child B.Sc.(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2023

Costs application in relation to Appeal ref: APP/V2635/W/22/3294180 Moyse's Bank, School Road, Marshland St. James, Wisbech, Norfolk PE14 8EY

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Laurence Manning for a partial award of costs against the Borough Council of King's Lynn and West Norfolk.
- The hearing was in connection with an appeal held against the refusal of planning permission for the use of land for the stationing of caravans for residential purposes, together with the formation of hardstanding and utility/day room ancillary to that use and the use of land for the keeping of horses and the erection of a stable.

Decision

1. The application for a partial award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The applicant contends that the Council acted unreasonably by requiring that the applicant provide information on personal needs and their Gypsy and Traveller status, and in the absence of this information refusing the proposal on the basis of inappropriate new residential development in the countryside (refusal reason 1) and the locational sustainability of the site (refusal reason 3).

4. The appellant subsequently provided more detail regarding status and personal circumstances in the Witness Hearing Statement. The Council accepted at the hearing that the appellant and his family are Gypsies and Travellers and that national and local policies relating to Gypsies and Travellers are relevant to the proposal. As such it was agreed that the principle of the development was acceptable in a countryside location. In the context of this new policy position

the Council also indicated at the hearing that it considered the site to be a sustainable location for the proposal.

5. However, the Council maintains that it was appropriate to seek information on the applicant's Traveller status and personal circumstances, and in the absence of this to determine the application on the basis of general housing use. In support of this approach the Council refers to an appeal at Wheatley Bank, Walsoken. Paragraph 19 in this appeal decision states that *'in relation to those who are not currently Gypsies and Travellers as defined by PPTS* [Planning Policy for Traveller Sites 2015], *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.'*

6. However, as set out in my appeal decision, I disagree with the Council's view on this. The Inspector in this appeal concludes that proposed provision exceeds identified needs and is assessing the Traveller status and personal circumstances of the various specific intended occupants. There is nothing in the Wheatley Bank case to suggest that all applications from non-Travellers or those not meeting the planning definition should be determined against general housing policies or that applications should identify specific occupants. Planning permission normally runs with the land and it is not necessary for an applicant to be a Traveller or have a nomadic habit of life to apply for permission for use of land as a Traveller's site. Planning conditions can be used to limit occupancy to Gypsies and Travellers and enforce any breaches. This position is supported by a number of appeal decisions referred to by the appellant[1].

7. Furthermore, as set out in my appeal decision, Policy CS09 in the Council's Core Strategy (2011) does not specify that applicants should be Gypsies and Travellers or distinguish between Travellers who meet and do not meet the planning definition. Paragraph 24 in PPTS refers to the personal circumstances of the applicant, but as part of a range of factors to consider. The paragraph does not specify that all criteria should apply or preclude applications coming forward where the identity of occupants is not known.

8. Personal circumstances are capable of being a material consideration and personal occupancy conditions can be used if such matters are critical to a decision and outweigh harm. But if a scheme is acceptable in terms of its planning merits it may not be necessary to have recourse to them. As set out in my appeal decision, I have concluded that the proposal would be acceptable in terms of its planning merits and therefore the latter approach applies.

9. In support of their case the Council has also highlighted the covering letter submitted with the planning application which states that 'the application seeks permission for a wooden stable and 1 no. residential pitch to meet a recognised need and personal need for such facilities in the area to facilitate a gypsy lifestyle.' The Council states that it sought to obtain information on the personal needs/status of the applicant via a series of emails but did not secure further information. This fact was not disputed by the appellant. However, at the hearing the appellant explained that, as they considered the proposal to be acceptable in planning terms, they did not consider it necessary to provide details of personal circumstances.

[1] Cost decisions Henry Janes v Bridgend County Borough Council (APP/F6915/A/2205366) and M Jones v Pembrokeshire County Council (APP/N6845/11/2151750/WF)

10. Nonetheless, the covering letter also refers to general 'recognised need' for Gypsy and Traveller accommodation in the area. It is not clear why the Council decided that it was unable to determine the application as general accommodation for Gypsies and Travellers, having regard to evidence on local needs. In my decision I outline clear evidence of unmet needs for Gypsy and Traveller accommodation in the borough. As outlined above, it is also feasible to use a planning condition to control occupation to Gypsies and Travellers.

11. The Council's approach does not appear to be supported by policy or case law. The appellant had clarified that the application was for use by Gypsy and Travellers. The Council's failure to fully address this matter in line with case law and its assessment of the proposal against general housing policies amounts to unreasonable behaviour.

12. The PPG specifically states that a Council is at risk of an award of costs being made against them if they refuse planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.

13. In my appeal decision I have concluded that the proposed scheme is acceptable on its planning merits and would provide additional Gypsy and Traveller accommodation to meet identified needs in the area. As set out above, the use of planning conditions to secure Gypsy and Traveller occupancy is feasible and the Council could have elected to take this approach. This would have allowed the proposal to be assessed as Gypsy and Traveller accommodation and determined against national and local planning policies which provide implicit support for the general principle of Gypsy pitches in the countryside. I therefore conclude the Council has acted unreasonably in this regard.

14. In summary, I conclude that unreasonable behaviour by the Council has been demonstrated in relation to its failure to assess the proposal as a Gypsy and Traveller site in the absence of information on the status/personal circumstances on the intended occupant, or to deal with the contested issue and secure occupancy for Gypsies and Travellers through a planning condition.

15. The Council's actions have resulted in unnecessary expense to the appellant relating to the cost of addressing refusal reasons 1 and 3 within the appellant's appeal statement and in preparations for the hearing. Although the Council had conceded by the time of the hearing that refusal reason 1 no longer applied, the question of whether it is necessary to demonstrate Traveller/personal circumstances to enable an application to be determined for general Gypsy and Traveller use was fully discussed at the hearing, as the Council still maintained their position on this related aspect. Some discussion on refusal reason 3 also took place at the hearing as the Council did not confirm it was satisfied with the locational sustainability of the proposal until the hearing itself. A partial award of costs is therefore justified.

16. I am not persuaded that the Council failed to review their case promptly following the lodging of the appeal. The Council submitted a statement of case as part of the appeal process. They subsequently altered their position with regards to refusal reasons 1 and 3 in response to evidence submitted by the appellant as part of the appeal. Other key evidence, in the form of the Council's updated Gypsy and Traveller Accommodation Assessment (June 2023), was not available until just prior to the hearing. The Council has responded to new evidence as it has arisen.

17. An additional note from the Council received prior to the hearing suggested that there may be grounds for the appeal not to be heard, on the basis of evidence that the appellant had gained planning permission for a pitch elsewhere. I determined that the appeal should still be heard as it was necessary to explore the planning merits of the case, including general provision for Gypsy and Traveller use. However, I am not persuaded that the note amounts to unreasonable behaviour by the Council as it is a suggestion and the note also states that 'the Council hopes the matter will be explored at the hearing.' Furthermore, I promptly determined that the hearing should proceed and there is no evidence that the note resulted in unnecessary expense for the appellant.

Costs Order

18. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Borough Council of King's Lynn and West Norfolk shall pay to Laurence Manning the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in dealing with refusal reasons 1 and 3 as described above; such costs to be assessed in the Senior Courts Costs Office if not agreed.

19. The applicant is now invited to submit to the Borough Council of King's Lynn and West Norfolk, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Katie Child

INSPECTOR

The Planning Inspectorate

Zone 3C Eagle
Temple Quay House
2 The Square
Bristol
BS1 6PN

Direct Line: 0303 444 5290
Customer Services:
0303 444 5000

Email: East2@planninginspectorate.gov.uk
www.gov.uk/planning-inspectorate

Ruth Redding
King's Lynn and West Norfolk Borough Council
Kings Court
Chapel Street
King's Lynn
Norfolk
PE30 1EX

Your Ref: 20/01246/FM
Our Ref: APP/V2635/W/22/3294180

14 December 2023

Dear Ruth Redding,

Town and Country Planning Act 1990
Appeal by Mr Laurence Manning
Site Address: Land West of Moyse's Bank, School Road, Wisbech, Cambridgeshire

I enclose a copy of our Inspector's decision on the above appeal(s), together with a copy of the decision on an application for an award of costs.

If you wish to learn more about how an appeal decision or related cost decision may be challenged, or to give feedback or raise complaint about the way we handled the appeal(s), you may wish to visit our "Feedback & Complaints" webpage at https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure.

If you do not have internet access you may write to the Customer Quality Unit at the address above. Alternatively, if you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

The Planning Inspectorate is not the administering body for High Court challenges and cannot change or revoke the outcome of an appeal decision. If you feel there are grounds for challenging the decision you may consider obtaining legal advice as only the High Court can quash the decision. If you would like more information on the strictly enforced deadlines and grounds for challenge, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

Guidance on Awards of costs, including how the amount of costs can be settled, can be located following the Planning Practice Guidance.

http://planningguidance.communities.gov.uk/blog/guidance/appeals/how-to-make-an-application-for-an-award-of-costs/

We are continually seeking ways to improve the quality of service we provide to our customers. As part of this commitment we are seeking feedback from those who use our

service. It would be appreciated if you could take some time to complete this short survey, which should take no more than a few minutes complete:

https://www.surveymonkey.co.uk/r/Planning_inspectorate_customer_survey

Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely,

Neil Devereux
Neil Devereux

https://www.gov.uk/government/publications/planning-inspectorate-privacy-notices

Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through GOV.UK. The address of the search page is - https://www.gov.uk/appeal-planning-inspectorate