



## Appeal Decision

Hearing held on 6 September 2022

Site visit made on 6 September 2022

**by Helen Hockenhull BA (Hons) B.PI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 07 October 2022**

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**Appeal Ref: APP/U2370/W/21/3278791**

**Blueberry Stables, Lancaster Road, Preesall, Poulton le Fylde, Lancashire  
FY6 0HN**

- 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 Kathleen McGinley against the decision of Wyre Borough Council.
  - The application Ref 20/01171/FUL, dated 17 November 2020, was refused by notice dated 13 April 2021.
  - The development proposed is the change of use of land to mixed use of keeping of horses and use as residential caravan site for extended Gypsy family with 5 No. caravans, including no more than 2 No. static caravans/mobile homes, together with conversion of part of stable building to ancillary dayroom.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. I observed on my site visit that the proposed development has substantially taken place. The change of use has occurred with the stationing of one static caravan and three touring caravans on the site. The conversion works to the stable building have also been completed. I have therefore considered the appeal on this basis.
3. Before the hearing the parties were unable to agree a Statement of Common Ground. The event therefore addressed all the areas of dispute between the parties.

### Main Issues

4. The main issues in this case are:
  - Having regard to local and national development planning policy, whether the location of the proposal is appropriate with particular regard to access to services and facilities;
  - The effect of the proposal on the character and appearance of the countryside;
  - Whether the site is at risk of flooding;
  - Whether other material considerations, including the general need for and supply of gypsy sites, the accommodation needs and personal

circumstances of the appellant, outweigh any harm identified, such as to justify the development.

## **Reasons**

### **Appropriate Location**

5. The appeal site forms a relatively flat area of land to the southern side of Lancaster Road, Preesall. Access from the road is through an existing gated entrance. The site comprises hardstanding with a single storey stable building approved under planning application Reference 14/00051/FUL. Behind the stables is a dilapidated structure which appears to have been the original stables on the site. I am advised by the appellant that this is to be demolished. A storage building to the western side of the site (application Ref 18/01170/FUL) is under construction.
6. The site lies in the countryside as defined in the Wyre Borough Local Plan (WBLP) 2011-2031. Policy SP1 sets out the spatial approach to development, with development outside settlements strictly limited. It goes on to say that the overarching aim will be to meet housing needs of all sections of the community, raise economic performance, average wage levels and GVA generation, while minimising or eliminating environmental impact.
7. Policy SP4 states that the open and rural character of the countryside will be recognised for its intrinsic character and beauty. It goes on to say that planning permission for new development in such areas will be restricted to certain uses. The use as a Gypsy and Traveller site is not included in the policy.
8. Policy HP8 of the WBLP sets out criteria against which a new site for Gypsies and Travellers should be assessed. This policy makes no reference to countryside areas, though importantly it does not rule out such development.
9. Part 2 d) of Policy HP8 states that if a proposal involves the development of land identified in the local plan for another purpose, the loss of such land should be outweighed by meeting an identified need for additional Gypsy and Traveller accommodation. The Council argue that countryside is a use of land identified in the local plan and its loss, should the development proceed, is not outweighed by the benefits. In my view 'countryside' is a designation rather than a use of land and therefore this part of the policy does not apply in this case.
10. Turning to national planning policy, Planning Policy for Traveller Sites (PPTS) in paragraph 25 requires that a local planning authority should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. It also requires that such sites should not be of such a scale as to dominate the nearest settled community and should avoid placing undue pressure on local infrastructure. Clearly the PPTS has an expectation that a traveller site may be located within the countryside. It was agreed at the hearing that the appeal proposal would not dominate the nearest settled community and local infrastructure would not be adversely affected.
11. PPTS paragraph 13 states that local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally. In terms of accessibility, the appeal site is located less than 70 metres from the edge of Preesall. It cannot be regarded as remote or isolated being close to a

small cluster of terraced properties known as Sunnyside Terrace to the west. Preesall forms a main rural settlement which provides a small supermarket approximately 1km from the appeal site, with another small convenience store a little closer, approximately 15 minutes' walk away. There is a football pitch and recreation ground at a distance of approximately 615 metres and a primary school just over 800 metres away. A secondary school is even closer at around 500 metres, just over 5 minutes' walk. The health centre is located in Knott End, approximately 1.2 miles away. Whilst this would take approximately 25 minutes to walk, the facility would be accessible by cycling or public transport. I noted on my site visit that walking into Preesall to access the facilities it provides would be along lit footways.

12. In terms of public transport, there is a half hourly service from Sandy Lane running from Blackpool to Knott End, a few minutes' walk to the north west of the site and also a bus stop on Lancaster Road giving access to an hourly service to Lancaster. Given the sites rural location, I consider it to be well served by public transport.
13. I am mindful that paragraph 105 of the National Planning Policy Framework (the Framework), recognises that the opportunities to maximise sustainable transport solutions will vary between urban and rural areas and that this should be taken into account in decision making. Bearing in mind the context of the site, it has a good level of accessibility to services by walking, cycling and public transport. Whilst future occupants may choose to use the car, there are alternatives available.
14. In summary, I consider the site is close to the settlement of Preesall in an appropriate location with the potential to access services and facilities using sustainable modes of travel. The proposal is therefore in compliance with national and local plan policy in the PPTS and WBLP Policies SP1, SP2, SP4 and HP8.

### **Character and appearance**

15. The appeal site is visually detached from the settlement of Preesall. The surrounding area has a generally flat topography with open agricultural fields to the south and north. Clusters of sporadic built development are evident in the area contributing to its character.
16. The northern boundary of the appeal site next to Lancaster Road is defined by a mature hedge. The submitted plan illustrates post and rail fencing and new hedgerow to the southern and eastern boundaries of the site.
17. Looking from Lancaster Road, the existing stable building is visible in a break in the hedgerow where the watercourse runs to the eastern site boundary. The approved storage building currently under construction is relatively high and is quite prominent as one approaches the gated access to the site. As both of these buildings are lawful, I must consider the additional impact of the static and touring caravans on the character of the area
18. It was notable on my site visit that the static home currently on the site, which is sited immediately next to the northern boundary and not further into the site as shown on the submitted plans, could not be seen above the height of the hedgerow. I accept that the hedge may be cut back, but overall, I am of the view that the existing mature hedgerow would provide good screening from the road minimising the visual impact of the proposed static and touring caravans

- on the surrounding countryside. The existing stable building would block views into the site from the gap in the hedgerow formed by the eastern watercourse.
19. From the west along Cartgate, close to the properties on Sunnyside Terrace, a clear view of the site is achievable from a field access. The proposed post and rail fence together with additional hedgerow planting would assist with screening the site from this viewpoint but would take some time to establish and become effective. Similar views of the site are experienced from the public right of way along Green Lane.
  20. The appeal site is generally open in character apart from the stable building and storage building. The siting of two static caravans and the tourers would erode this character, having an increased urbanising effect. However, a characteristic of the landscape of this area is that there are clusters of built development, many of which are screened by hedgerows. In this context and bearing in mind the height and scale of the proposed static and touring caravans, together with the proposed screening, I consider that there would be no unacceptable adverse impact on the character of the local area.
  21. The proposal would therefore comply with Policies SP4 and CDMP3 of the WBLP which amongst other things seek to achieve development of a high standard of design that respects or enhances the rural character of the countryside.

### **Flood risk**

22. The appeal site lies in Flood Zone 3, as defined in the Environment Agency's flood maps, an area at risk of flooding. The PPTS paragraph 13g) states that traveller sites should not be located in areas of high risk of flooding.
23. The Council at the hearing explained that the main risk to the appeal site was from tidal flooding, though defences are in place, and also from fluvial and pluvial flooding. I was informed that this part of the Borough was the most likely to flood and that on average there were 3 or 4 flood events per year. At times of heavy rain, watercourses are unable to cope and surface water flooding is a particular problem. By way of corroboration, local residents have provided photographs of flooding around the properties in Sunnyside Terrace immediately to the west of the appeal site.
24. The appellant advised that the site itself has not flooded though areas around it have. There was considerable discussion at the hearing about the findings of the Council's Strategic Flood Risk Assessment 2016 which informed the current local plan. This showed the extent of flooding with and without defences. Without defences it is estimated that tidal flooding could reach a depth of between 0.5 and 1 metre in the vicinity of the appeal site. Figure 4.2 of the report models a flood event with defences and shows that even taking account of climate change, the appeal site would not be affected by flooding. In Figure 6.2 the report models the impact of a breach in the defences at Knott End and shows that the appeal site would not be subject to flooding.
25. The appellant argues that in light of the above, it can be concluded the risk of flooding is very low. Whilst this may be the case, access and egress to the site may well be affected. The Council accepted at the hearing that it was unlikely that the site would be subject to tidal flooding, but it would depend on where the defences were breached.

26. The Framework requires that development proposals in flood risk areas should be accompanied by a site-specific flood risk assessment. Planning Practice Guidance (PPG) states that such assessments should be credible and fit for purpose and that they should be appropriate to the scale, nature and location of the development.
27. In this case, the appellant submitted a Flood Risk Assessment (FRA) which was a copy of one prepared for a proposed dwelling on the site. The assessment was not bespoke to the use now proposed, that it is the siting of static and mobile caravans, which are described as highly vulnerable development in the Flood Risk Vulnerability Classification at Annex 3 of the Framework.
28. Whilst I agree with the appellant that the FRA submitted was still pertinent in terms of the general risk of tidal, fluvial and pluvial flooding, it was deficient in assessing the specific nature of the development proposed and whether it would be safe for its lifetime. The Environment Agency in their representation set out what they considered to be the flaws in the assessment, including the lack of consideration of climate change, how occupants would be kept safe in a design flood, mitigation measures, and flood emergency planning.
29. The appellant in the Statement of Case and at the hearing provided evidence of how such matters could be addressed. I accept that measures such as anchoring the caravan could be implemented and the future occupants could join the local flood warning scheme. However, this has not been formally set out in a site-specific FRA and the Environment Agency have not had chance to comment on the adequacy of such measures. It may be the case that a revised FRA could address these matters, but one is not before me.
30. In line with paragraph 167 of the Framework and Planning Practice Guidance (PPG), a sequential test needs to be satisfied. The appellant argues that the submitted FRA demonstrates that there is less than a 0.5% annual probability of flooding occurring on the appeal site which demonstrates the proposed development would be safe for its lifetime. However, PPG is clear that even though the FRA may show a development can be made safe during its lifetime, the sequential test still needs to be satisfied<sup>1</sup>. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source.
31. The Council has produced guidance to developers on undertaking the sequential test which accords with the PPG. In the appeal case, such a test has not been undertaken. There are no sites allocated in the development plan for Gypsy and Traveller use and the parties are not able to identify any sites with an extant planning permission. I acknowledge that much of the borough is in Flood Zone 3 which is a major restraint to development.
32. The appellant argues these factors demonstrates that there are no reasonably available appropriate sites at a lower risk of flooding. However, this does not take account of land that may be available on the open market, or land identified in the Council's Housing and Economic Land Availability Assessments. It may well be that there are no alternative sites in the borough at a lower risk of flooding but without this assessment being undertaken, I am unable to conclude that the sequential test has been passed.

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<sup>1</sup> Paragraph 023 Reference ID:7-023-20220825

33. In these circumstances it is not necessary for me to consider, the exception test. This provides two further elements to be satisfied when there are no other sites at a lower risk of flooding.
34. The appellant has brought my attention to several appeal decisions for Gypsy and Traveller accommodation in areas of flood risk. However, these are not completely comparable to the case here, having site specific flood risk assessments provided which had not been challenged.
35. Policy CDMP2 of the WBLP is clear that where development is proposed in areas at risk of flooding, it must be demonstrated that the sequential test has been applied and that there are no reasonable available alternative sites at lower risk. Whilst the appeal site may be at a low risk of flooding, the above policy requirements have not been satisfactorily demonstrated. The appeal proposal therefore fails to comply with this policy, as well as Chapter 14 of the Framework and the advice in the PPG on Flood Risk and Coastal Change.
36. The submitted appeal provides little detail of how the site will be drained. This would enable an assessment of whether the development would add to flooding elsewhere. However no new hardstanding areas are proposed, and the siting of the static and touring caravans will have little impact on surface water drainage overall. Foul drainage is already in place on the site with a sewage treatment plant discharging to the watercourse at the eastern site boundary. Should the appeal be allowed, conditions could be imposed requiring further details and possibly seeking improvements to the existing drainage. I am therefore satisfied that the site can be appropriately drained.

### **The need for and supply of gypsy sites**

37. The Council's 2016 Gypsy and Traveller Accommodation Assessment (GTAA) found no need in Wyre for Gypsy and Traveller pitches over the current plan period. The appellant criticised the methodology of the GTAA and cast doubt on its findings. In the absence of evidence to the contrary, I have no reason to consider it is not sound or robust.
38. In any event, the Council accepted at the hearing that this evidence was out of date and that the appeal proposal was evidence of a local need. The Council confirmed that a new GTAA was about to be commissioned with Blackpool and Fylde Councils, but this would not be available until the middle of 2023.
39. The PPTS in paragraph 10a) states that local planning authorities should identify and annually update a supply of deliverable sites sufficient to provide a 5 years' worth of sites against their locally set targets. As the target in the local plan is zero, it cannot be argued that the Council has failed to identify a 5-year supply of sites. Despite this, I agree that there is a local need in the borough which weighs in favour of the development.

### **Alternative sites**

40. As has already been discussed above in relation to the sequential test, there are no allocated gypsy and traveller sites in the borough and no sites with an extant planning permission. There is no public site in Wyre, the nearest being in Blackpool which I am advised is generally full, though no up to date information on this was available at the hearing. There are also no pitches available on private sites. As I have no evidence before me that there is

suitable alternative accommodation for the appellant and her extended family, this factor also adds support to the proposal.

### **Personal circumstances**

41. The appellant and her family moved onto the appeal site in October 2020 during the covid pandemic. Before that they were on various unlawful sites in Fleetwood and Blackpool. The move to the appeal site was to provide a settled base when a member of the extended family had a baby and also to enable the family to isolate to protect vulnerable family members.
42. The site would accommodate the appellant, her husband and 4 dependent children aged between the ages of 17 and 4 years. It would also accommodate the appellants elder son and his wife, who are expecting a baby in the very near future and also the appellants daughter who has a young child.
43. The appellant's family are registered with a local health centre. The appellant has a health condition and is awaiting surgery. One of her children also has a health condition and is also awaiting surgery. The appellant's grandchild has health problems requiring hospital visits. The appellant's son's wife is booked into a nearby Hospital for the birth of their first child. The appellants two middle children are school age and currently home schooled. Should the appeal be successful I understand the intention is for them to enrol at a local school.
44. The appeal site would provide a settled base from which the appellant and her family could access education and health care more readily. This would be advantageous to their wellbeing and in the best interests of the children. These matters weigh in favour of the proposal and accord with the aims of the PPTS to enable the provision of suitable accommodation from which travellers can access education, health, welfare and employment. A permanent base would also reduce the need to travel, reduce the risk of environmental damage from unauthorised encampments and promote the traditional lifestyle of the appellant and her family.

### **Planning balance**

45. I have found that the appeal site is in a suitable location and that the proposal would not cause harm to the character and appearance of the area. The appellant's need for accommodation, personal circumstances and the best interests of the children also weigh in favour of the scheme.
46. As the proposals are part retrospective, intentional unauthorised development has taken place. It is Government policy this is a material consideration in determining planning applications and appeals. The application of this policy is a factor that weighs against the proposal. However, I give this limited weight as the site has already been developed for a stable use and is hardsurfaced so that the siting of caravans on the site is easily reversible.
47. I have also found conflict with the Framework, PPG, PPTS and local plan policies in relation to flood risk. Inadequate evidence has been provided to show that there are no alternative sites at a lower risk of flooding so that the sequential test is not passed. Furthermore, the submitted FRA fails to adequately assess flood risk and does not demonstrate the proposal would be safe for its lifetime or that safe access and egress can be provided in a flood event.

48. I have had regard to the requirements of Article 8 of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998, and am aware that the Article 8 rights of a child should be viewed in the context of Article 3(1) of the United Convention on the Rights of the Child. However, I am mindful that the appellant's individual rights for respect for private and family life (along with the best interests of the children) must be weighed against other factors including the wider public interest.
49. I have also considered the Public Sector Equality Duty (PSED) at section 139 of the Equality Act 2010 to which I am subject. Because there is the potential for my decision to affect persons (the appellant and her family) with a protected characteristic(s) I have had due regard to the three equality principles set out in Section 149 (1) of the Act.
50. Dismissing the appeal would impact on the education of two of the children and the healthcare of the children and the appellant. The negative impacts of dismissing the appeal arise since the family may be forced into a roadside existence and intermittent use of unauthorised sites. This would interfere with the best interests of the children and each member of the family's right for respect for private and family life.
51. However, this must be balanced against other considerations. In this case, it has not been satisfactorily demonstrated that the site would not be at risk of flooding and safe for its lifetime. This represents a risk to the children permanently resident on the site. Therefore, in weighing the balance, the safety of the children in terms of exposure to flood risk, outweighs the benefit of a stable access to education. Consequently, in my view, the best interest of the children would be served by them not being resident on the site. The dismissal of the appeal would be a proportionate and necessary response.
52. Whilst neither party sought the imposition of a temporary permission it remains necessary for me to consider whether such a permission would protect the public interest by a means that would be less interfering to the intended occupant's human rights and thus be a more proportionate response. PPG states that temporary permissions may be appropriate if planning circumstances are likely to change at the end of that period. The updated GTAA has only just been commissioned and the review local plan is not likely to be adopted until 2024 at the earliest. Any sites allocated in the plan would then need time to come forward, gain planning permission, be implemented etc.
53. Therefore, it is not likely that circumstances would change in the next 3-4 years. The occupants of the site including the children would be at risk of flooding during this time. It would not be in the interest of the appellant and her family to be resident for this period or in the wider public interest. A temporary permission would therefore not form a more proportionate response and would not be justified.

## **Conclusion**

54. The appeal proposal is contrary to the development plan and national guidance. The material considerations in this case, do not justify a decision other than in accordance with these policy documents.



55. For the reasons given above and having had regard to all other matters raised, I dismiss this appeal.

*Helen Hockenhull*

INSPECTOR

**APPEARANCES**

**FOR THE APPELLANT:**

Philip Brown	Philip Brown Associates Ltd
Andrew Eastham	Appellant's legal advisor
William and Kathleen McGinley	Appellants

**FOR THE LOCAL PLANNING AUTHORITY:**

Rob McKillop	Senior Planning Officer
Len Harris	Senior Planning Officer
Paul Long	Senior Engineer