

## Appeal Decisions

Hearing and site visit held on 24 September 2013

**by Clive Kirkbride BA(Hons) DipTP MSc MRTPI**

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

**Decision date: 8 November 2013**

### **Appeal Ref: APP/J0540/C/13/2196062 and 2196063** **Land on south west side of Northey Road, Peterborough, PE6 7YX**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr and Mrs N Hall against an enforcement notice issued by Peterborough City Council.
- The Council's reference is 11/00564/ENFOTH.
- The notice was issued on 13 March 2013.
- The breach of planning control as alleged in the notice is a material change of use has occurred as land forming part of the open countryside is being used as a residential caravan site following the stationing of caravans, storage units and the installation of fencing, a cess pit and the laying of hardcore.
- The requirements of the notice are to:
  - (i) Cease use of the land for the stationing of residential caravans;
  - (ii) Remove the caravans, storage units and other ancillary structures from the land;
  - (iii) Remove the fencing from the land;
  - (iv) Remove the cess pit and any associated component parts from the land;
  - (v) Remove all hardcore and replace with Fenland soil to the same level as the surrounding land to restore the land to its previous state;
  - (vi) Remove all other resultant materials arising from compliance with steps (iii), (iv) and (v) in addition to any machinery and other items used to comply with the notice.
- The period for compliance with the requirements is 6 months in respect of steps (i) to (iii) and 8 months in respect of steps (iv) to (vi).
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.

### **Appeal Ref: APP/J0540/A/13/2193949** **Land on south west side of Northey Road, Thorney, Peterborough, Cambridgeshire, PE6 7YX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs N Hall against the decision of Peterborough City Council.
- The application Ref 12/01565/FUL, dated 9 October 2012, was refused by notice dated 7 December 2012.
- The development is use of land for one gypsy family comprising 1 x residential caravan; 2 x ancillary caravans, 2 x portacabins for use as a utility and storage and 1 x storage container.

## Decisions

### **APP/J0540/C/13/2196062 and 2196063**

1. The enforcement notice is corrected and varied:

by deleting the allegation in its entirety and substituting the following allegation: "A material change of use of the land from agriculture to a mixed use for agriculture and residential purposes by the stationing of caravans for

residential use, storage units and the installation of fencing, a cess pit and the laying of surface scalpings/planings.”

by the deletion of the words "all hardcore" and the substitution of the words "the surface scalpings/planings" in Requirement v)

Subject to these corrections and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **APP/J0540/A/13/2193949**

2. The appeal is allowed and planning permission is granted for the use of land for one gypsy family comprising 1 x residential caravan; 2 x ancillary caravans, 2 x portacabins for use as a utility and storage and 1 x storage container on land on the south west side of Northey Road, Thorney, Peterborough, Cambridgeshire, PE6 7YX in accordance with the terms of the application, Ref 12/01565/FUL, dated 9 October 2012 and the plans submitted with it, subject to the conditions set out in the attached Schedule.

### **Application for costs**

3. At the Hearing an application for costs was made by the appellants against the Council. This application is the subject of a separate Decision.

### **Background**

4. The appeal site is a long, narrow rectangular area of land lying immediately to the west of Northey Road with part hedged and part fenced boundaries. It shares a common boundary with Flag Fen which generally lies to the north and west. Flag Fen, described as "a Bronze Age post alignment and timber platform to the east of Fengate Power Station, including Bronze Age and later field systems and settlement to either side of Northey Road" in the list entry description, was scheduled as an ancient monument (SAM) in March 2012.
5. The appellants bought the notice land, which had previously been used for agricultural/grazing purposes, about 12 years ago. There were already stables on the land so it was well-suited to the appellants' needs as they keep horses. Over the years the stables and other buildings, which would appear to have not been in a good condition, have been removed including the building shown on the appeal plans. Prior to occupying the notice land for residential purposes, the appellants and their family had been living on a private gypsy and traveller site at Eye. However, overcrowding and increasing family needs resulted in the family moving onto the appeal site.
6. The site is currently subdivided into three by internal fencing with the surface between the entrance onto Northey Road and the westernmost fence generally covered with a layer of scalpings/planings. The eastern section of the site closest to the road is used for vehicle parking and turning. The family is currently living in the central fenced section (residential compound) which is where their caravans, storage units and utility room are generally located.
7. Beyond the residential compound and westernmost fence the notice land extends all the way back to its boundary with the Counter Drain and this part of the site accounts for significantly more than half its total area. Although I

noted this area to be generally unused, I saw evidence of low-key ancillary residential use taking place immediately outside the residential compound, including a washing line and children's play equipment.

### **The notice and the appeals on ground (b)**

8. The appellants raised concerns about the wording of the allegation that goes to the heart of their appeals, that is, that the matters alleged in the notice have not occurred as a matter of fact. They claim that the land shown edged red on the notice plan is being used for a mixed use of agriculture/equestrian and as a residential caravan site. Whilst I saw no evidence of any equestrian use of the land the Council agreed that the previous use of the land was agriculture and conceded that only part of the notice land was being used for residential purposes.
9. It was also submitted that not all of the hardcore presently covering the site had been laid by the appellants, as demonstrated by the evidence of the appellants' drainage consultant. What the appellants did not dispute was that they had covered the surface with a layer of scalplings/planings.
10. None of these matters was disputed by the Council and it was agreed by the parties that I could correct the notice allegation to read as follows: "A material change of use of the land from agriculture to a mixed use for agriculture and as a residential caravan site following the stationing of caravans, storage units and the installation of fencing, a cess pit and the laying of surface scalplings/planings" without causing any material injustice. I shall do this, in which case the appeals on ground (b) fail in relation to the corrected allegation.
11. Correcting the allegation in this manner has a knock-on effect on the wording of requirement (v) of the notice and the Council agreed this could be varied by deleting the reference to 'all hardcore' and substituting this with 'the surface scalplings/planings.'

### **The ground (a) and s78 appeals**

12. The reasons for issuing the enforcement notice are very similar to the first three reasons for refusal shown on the Council's decision notice. However, the Council confirmed that its reason for refusal relating to the use of non-mains drainage and the risk of water pollution had been withdrawn following confirmation from the Environment Agency (EA) that the use of a septic tank, as proposed, would be acceptable. The Council also conceded during the hearing that its concerns about damage to any buried archaeological remains could be addressed by an archaeological investigation and recording condition as suggested by English Heritage (EH). I have determined the appeals on this basis.

### ***Main issues***

13. Having regard to the above, I consider this to be the effect of the appeal development on the setting of Flag Fen SAM and the character and appearance of the area, and whether other material considerations are sufficient to outweigh any harm identified.

### ***Reasons***

#### ***Setting and character and appearance***

14. In the language of the National Planning Policy Framework (The Framework) a SAM is a 'designated heritage asset' (DHA). The appeal site lies outside, but directly adjoins, the southern boundary of the SAM. The setting of a heritage asset is defined in the Annex 2: Glossary to The Framework as *The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.* This is the same definition contained within the now cancelled Planning Policy Statement 5: Planning for the Historic Environment.
15. At the hearing, EH's representative confirmed that there is no boundary to the setting of Flag Fen SAM and that the setting does not form part of the scheduled area. It is neither a heritage asset nor a heritage designation in itself and, by definition, the harm caused by the appeal development and s78 appeal scheme is 'less than substantial' rather than 'substantial' when assessed against paragraphs 132-134 of The Framework.
16. The importance of setting lies in what it contributes to the significance of the heritage asset. This depends on a wide range of physical elements within, as well as perceptual and associational attributes pertaining to the heritage asset's surroundings. In some cases the contribution made by setting to the asset's significance may be negligible; in others it may make the greatest contribution to significance. Therefore, the importance of setting is a matter of judgment. EH has issued guidance on the setting of heritage assets based largely on the advice and guidance set out in PPS5. Whilst this is currently being reviewed it still contains useful advice and is a material consideration.
17. As part of my site visit I was able to see, amongst other features at Flag Fen, the preserved remains, visitor centre, museum and the grounds within which these features are contained and displayed (the visitor attraction). Although this forms only a small part of the SAM it forms the focus of attraction for, and the educational and interpretative effort aimed at, visitors. I particularly noted the 'dioramas' on the walls of the preservation hall which provide visitors with an artist's impression of the context within which to understand the significance and role of the preserved remains. These are displayed and interpreted as being set within an ancient landscape of fen and open water beneath large skies, somewhat reminiscent of parts of the modern-day Norfolk Broads.
18. According to EH, the area beyond the visitor attraction and the boundaries of the SAM provides the setting for experiencing the preserved Bronze Age remains, and later evidence of Iron Age and Roman occupation. However, in complete contrast to the experience provided by the visitor attraction, this is a modern landscape of rectilinear fields, both worked and grazed, separated by hedges and fences, interspersed with scattered buildings and whose skyline is interrupted by a significant number of tall structures including chimneys, wind turbines and pylons carrying power lines. In my judgment, this is the setting within which the SAM is experienced today, and it is completely at odds with, for example, the mysterious and lost world portrayed and experienced by visitors in the preservation hall.
19. Addressing some of the particular concerns raised by EH and the Council about the effect on setting, the well established and maintained conifer hedge along part of the appeal site's southern boundary already existed prior to the time

Flag Fen was scheduled. The newer hedge along part of the northern boundary abuts but does not intrude into the scheduled area, including its southern boundary.

20. I do not disagree that these and other similar hedges in the immediate locality are alien features of the landscape, the more so if those at the appeal site, which are only about 3m tall, were allowed to grow to a substantial height. Hedges, however, are not generally subject to planning controls and the appellants would be agreeable to managing them at about their present height as part of any landscape management plan that might be agreed as a condition of granting permission for the s78 appeal scheme. In my view, this is a material consideration.
21. There are glimpses of the appeal development from the access road leading to the Flag Fen visitor centre where it is seen in the context of other buildings and caravans nearby as well as against a skyline punctuated by a variety of tall structures. From this vantage point it causes little by way visual harm and does not adversely affect the setting of the SAM. However, the appeal development can be seen at much closer quarters from the cycleway on the opposite side of Counter Drain from a position just outside the scheduled area.
22. I accept that, prior to the appeal development being carried out, there was already a range of, by all accounts, unattractive buildings occupying the same site. However, these buildings were a feature of an area where horse grazing and equine uses were already established. In my judgment, this so-called fallback position, as the appellants refer to it, does not outweigh the harmful visual impact caused by the residential use of the land in its present form. On balance, I also consider the appeal development makes a negative contribution to the setting of the SAM.
23. However, as proposed under the s78 appeal scheme, the residential compound would be re-sited further to the east, closer to Northey Road, in order to move it outside the area of land which is subject to the risk of flooding. In my judgment this would result in a reduced visual impact compared to that caused by the current appeal development. It would also result in a correspondingly lesser impact on the setting of the SAM when experienced from this particular vantage point. The Traveller policy, whilst seeking to strictly limit traveller site development in the open countryside, does not prevent their development, as a matter of principle, and there is no evidence before me that the s78 appeal scheme would dominate the nearest settled community or place undue pressure on local infrastructure.

Other material considerations

24. I have only briefly considered these as most of the matters are not in dispute, including the status of the appellants as gypsies for the purposes of the Traveller policy. I heard that they are horse dealers, that the family travels to horse fairs around the country during school holidays and that Mr Hall also does a variety of work in the local area. In other words, they live a typical gypsy lifestyle.
25. There is a considerable unmet need for around 30 traveller pitches in Peterborough and no alternative sites for the appellants to move to. The Council confirmed that it would not be in any position to identify sites to meet the agreed level of need in the foreseeable future. It follows, therefore, that it

does not have a five year supply of traveller sites as required by the Traveller policy. Moreover, it would appear that the Council does not propose to identify any new sites. Rather, it intends to review the need for these based on what it considers to be genuine local needs only, which is also contrary to Government policy, and to publish guidance on this in the form of a proposed Supplementary Planning Document for which I heard there is currently no timetable for publication and adoption.

26. The appellants have two school age children who are attending and, by all reports, doing well at Parnwell Primary School, which is close by. Their eldest daughter who is also living with them has an 18 month old baby. It is essential for the children's continuing education that they live on a settled site close to their school; there is none other than the appeal site. The requirement to vacate the site without a suitable alternative to move to would interfere with the appellants' rights under Article 8 of the Human Rights Act 1998 and, critically, would not be in the best interests of the children living whose needs the courts have found to be a primary consideration.
27. Whilst unauthorised occupation of the appeal site should not be treated lightly it is evident that the Council has done little, if anything, to assist the appellants find an alternative site, despite the intervention of the Council's Traveller Support and Education Officer on their behalf.

### **Overall conclusions on the ground (a) and s78 appeals**

28. Having heard and read all the submissions on this matter I conclude as follows: Firstly, the modern local landscape does not contribute greatly to the significance of the SAM; much of the appeal of visiting Flag Fen is to experience the remarkable survival of an ancient drowned landscape that it entirely at variance with today's landscape.
29. Secondly, the appeal development as carried out has harmed the character and appearance of its open, rural setting and, from one particular vantage point, has a limited, but nevertheless, negative impact on the setting of the SAM. Therefore, I conclude that the appeal development is contrary to Policies CS9 (Gypsies and Travellers), CS17 (the historic environment) and CS20 (landscape character) of the Adopted Peterborough Core Strategy, Policy PP17 (heritage assets) of the Adopted Peterborough Planning Document and the relevant advice and guidance on the conservation of heritage assets set out in The Framework.
30. Consequently, I also conclude that the ground (a) appeals should fail, the corrected and varied notice should be upheld and that planning permission should not be granted for the development as carried out.
31. However, and thirdly, the s78 appeal scheme, subject to appropriate conditions, would not harm the character and appearance of the countryside and would have a neutral, as opposed to an adverse, effect on the setting of the SAM. Had I identified that this would have resulted in less than substantial harm to the SAM, other material considerations (in this case, the public benefits of the proposal in the form of providing a settled site for a gypsy family and their young children in an area with a significant unmet need for traveller sites which is unlikely to be addressed in the foreseeable future) would have outweighed the negligible harm caused. Consequently, there

would be no conflict with the above mentioned development plan documents or the advice and guidance set out in The Framework.

32. Therefore, the s78 appeal succeeds and planning permission is granted for that development. By virtue of the provisions of Section 180 of The Town and Country Planning Act 1990 as amended the notice shall cease to have effect so far as inconsistent with that permission. In these circumstances there is no need for me to consider the enforcement appeals under grounds (f) and (g).

### **Conditions**

33. I have considered the conditions suggested by the Council in the light of the advice set out in Circular 11/95 and the discussion that took place at the hearing. As development of the land has already commenced there is no need for the standard time limited condition. I shall impose a modified version of the suggested archaeological investigation and recording condition, reflecting the fact that development has already commenced, in the interests of mitigating the effects of development on any buried archaeological remains. There is a need for conditions restricting occupancy of the site to gypsy and travellers; the number and types of caravans; preventing any commercial use of the site, and restricting the weight of commercial vehicles stationed on the land, in the interests of meeting an unmet need for gypsy sites and safeguarding the appearance of an area of open countryside and the setting of Flag Fen SAM.
34. There is a need for a condition requiring a site development scheme to be submitted, approved and implemented within a given period of time, otherwise the use permitted shall cease. Such a scheme shall include details of: landscaping, including hedgerow management, a reduction in the area of hardsurfacing, so that this is contained within the developed area of the site, in the interests of appearance; on-site parking and turning arrangements, in the interests of highway safety and residential amenity, and details of the proposed septic tank, in the interests of preventing pollution. There is a need for a separate condition requiring the vehicular access to be surfaced in a bound material in a more timely fashion, in the interests of highway safety.
35. In the absence of any evidence before me relating to site contamination, and the likely danger to public health arising from this, there is no need for a condition requiring the appellants to assess, identify and remediate any site contamination. As there is ample space within this well-contained site for the storage of refuse and recycling bins there is no need for a condition requiring the construction of a bin store.

*C.S. Kirkbride*

INSPECTOR

## SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in the Annex 1: Glossary to the Planning policy for traveller sites.
- 2) There shall be no more than 1 pitch on the site on which no more than 3 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, shall be stationed at any time, of which only 1 caravan shall be a static caravan.
- 3) No commercial activities shall take place on the land, including the storage of materials, and no vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 4) Within 1 month of the date of this decision the vehicular access shall be surfaced in a bound material for a distance of 10m into the site from the back edge of the carriageway.
- 5) The use hereby permitted shall cease and all structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 1 month of the date of failure to meet any one of the requirements set out in (i) to (v) below:-
  - i) prior to any further development taking place and not later than within 2 months of the date of this decision, a programme of archaeological work, including a written scheme of investigation, arrangements for archiving any finds, the submission of final reports and a timetable for implementation shall have been submitted for the written approval of the local planning authority (hereinafter referred to as the archaeological investigation scheme);
  - ii) within 2 months of the date of this decision the following details and plans shall be submitted for the written approval of the local planning authority: a plan detailing on-site parking and turning arrangements; a landscape management plan, including details of hedgerow management and any other internal and external boundary treatment and any scalplings/planings to be removed from the land, in order to contain these within the area shown for development on the approved plans; details of the specifications of the proposed septic tank and its siting. Such details and plans, hereinafter referred to as the site development scheme, shall include a timetable for implementation;
  - iii) within 10 months of the date of this decision, if the local planning authority refuse to approve both the archaeological investigation scheme and site development scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as valid by, the Secretary of State;
  - iv) if an appeal is made in pursuance of (iii) above, that appeal shall have been finally determined and the submitted scheme(s) shall have been approved by the Secretary of State.
  - v) the approved schemes shall have been carried out and completed in accordance with the approved timetables.



## **APPEARANCES**

### FOR THE APPELLANT:

Janet Montgomery	The appellants' agent and planning consultant
Mr and Mrs N Hall	The appellants
Peter Cox	The appellants' archaeological consultant
Terry Archer	The appellants' drainage consultant
Claire Carrington	Traveller Support and Education Officer, Peterborough City Council

### FOR THE LOCAL PLANNING AUTHORITY:

Janet MacLennan, BSc(Hons) MA MRTPI	Senior Development Management Officer, Peterborough City Council
Tony Whittle	Planning Enforcement Officer, Peterborough City Council
Andrew Cundy, MRTPI	Area Manager (Development Management), Peterborough City Council
Dr William Fletcher, BA PhD	Inspector of Ancient Monuments, English Heritage

### INTERESTED PERSONS:

Barry Nicholls	Independent Gypsy and Traveller consultant
Miss T O'Rourke and partner	Local residents/occupiers of neighbouring land

## **DOCUMENTS**

- 1 Copy of the Council's hearing notification letter and list of consultees dated 10/09/13
- 2 Bundle of letters providing the appellants with references and support for their appeals

## **PLANS**

- A Copy of plan (unnumbered and undated) entitled "Foul drainage solution" showing, amongst other matters, proposed foul drainage options for the appeal site (submitted for the appellants)

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