



Appeal Decisions

Hearing held on 13 March 2012

Site visit made on 13 March 2012

by Mr Keri Williams BA MA MRTPI

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

Decision date: 29 May 2012

Appeal A: APP/P0240/A/11/2165294

Paradise Farm, The Causeway, Clophill, Bedfordshire

- 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 Ned Gumble against the decision of Central Bedfordshire Council.
- The application Ref.CB/11/03034/FULL, dated 30 August 2011, was refused by notice dated 24 October 2011.
- The development proposed is a change of use to a gypsy site, with one static caravan, one portaloo and parking for one car.

Summary of Decision: The appeal is dismissed.

Appeal B: APP/P0240/C/11/2160387

Land adjacent to 17 The Causeway, Clophill, Bedfordshire

- 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 Ned Gumble against an enforcement notice issued by Central Bedfordshire Council.
- The Council's reference is CB/ENC/10/0189.
- The notice was issued on 10 August 2011.
- The breach of planning control as alleged in the notice is the unauthorised material change of use of the Land to a caravan site for the stationing of caravans, trailer, portaloo and other paraphernalia for residential purposes.
- The requirements of the notice are to:
 - i) Cease using the land as a caravan site for the siting of caravans, trailers, portaloo, and other paraphernalia used for residential purposes;
 - ii) Remove all caravans, trailers, portaloo and other paraphernalia used for residential purposes from the Land.
- The period for compliance with each of the requirements is 60 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal is dismissed. The enforcement notice is varied and upheld.

Preliminary Matters

1. The National Planning Policy Framework (NPPF) and the Government's "Planning Policy for Traveller Sites" document (PPTS) came into effect soon after the close of the Hearing. My decision takes into account written

representations submitted by the main parties after the Hearing on the effect of these documents in these appeals.

2. The description of development in planning application CB/11/03034/FULL should refer to a residential gypsy site. I have determined Appeal A on that basis. At the start of the Hearing I confirmed the relevant plans for Appeal A. A 1:1250 Ordnance Survey plan, referred to in the Council's decision notice as CBC/001, shows the appeal site as including a rectangular block of land and a track giving access to The Causeway. It is adjacent to Paradise Farm. The Council confirmed that the application was determined taking into account the layout shown in drawing SLO1, Draft V. The enforcement notice area is almost identical to the rectangular area shown on drawing CBC/001 but it excludes the access track. A valid appeal was not made against another enforcement notice on the site, also issued on 10 August 2011. Its requirements, for the removal of hardstanding and related site restoration, took effect at the end of the relevant compliance periods.
3. The site is occupied by a family of 2 adults and their 6 children. The Council does not dispute that they fall within the definition of a gypsy or traveller set out in Annex 1 of the PPTS. From the evidence before me I take the same view.

Appeal A and the Deemed Planning Application in Appeal B

Background and main issues

4. The site is on the southern edge of Clophill. It is adjacent to a watercourse and is referred to as within the floodplain of the River Flit. The deemed planning application is for what is alleged in the enforcement notice. There are two touring caravans, a kitchen trailer, a shed and a portable toilet on the land. The site is bounded by timber fencing and gates. An appeal concerning a change of use of the site to "a gypsy site with 1 static caravan, 1 touring caravan, parking for 2 vehicles and 1 portaloo (serviced)" was dismissed in June 2011 (APP/P0240/A/10/2137913). I take that decision into account. Appeal A concerns a reduced form of development. Drawing SLO Draft V shows a single mobile home positioned near the site entrance, a parking space adjacent to the caravan, a shingle area on the western half of the site and a portable toilet. The main issues are:
 - i) The effect on the occupiers of the site with regard to the risk of flooding;
 - ii) The effect on the character and appearance of the area;
 - iii) The need for and provision of sites for gypsies and travellers in the area and the availability of alternative sites;
 - iv) The appellant's need for a settled site and personal circumstances; and,
 - v) The overall balance with regard to a permanent permission and permission for a temporary period.

The risk of flooding

5. The Clophill Flood Zones map (September 2011) shows the main part of the site partly in Zone 1 and partly in Zone 2. Zone 1 has a low probability of flooding and Zone 2 has medium probability, defined as between 1 in 100 and 1 in 1000 annual probability. Part of the track which provides access to The

Causeway is in Zone 2. Part of it, near to The Causeway, is in Zone 3 which has a high risk of flooding. Land to the south of the appeal site, which is at a lower level than the access track, is also in Zone 3.

6. Some local residents consider that the land has been raised by unauthorised tipping. The appellant suggests that raising of levels results from the deposit of river dredgings. The enforcement notice already in force requires the removal of hardstanding, which I take to be the surface gravel on the site. Other than that, there is nothing to show any requirement to lower the site levels and I take into account site levels as they exist.
7. Paragraph 99 of the NPPF says that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk but, where development is necessary, making it safe without increasing flood risk elsewhere. Footnote 20 refers to the need for a site specific Flood Risk Assessment (FRA) for development in Flood Zone 2 and 3. Table 2 of the Technical Guidance to the NPPF classifies caravans, mobile homes and park homes intended for permanent residential use as a highly vulnerable form of development. Table 1 of the Technical Guidance says that highly vulnerable uses are only appropriate in Zone 2 if the Exception Test is met. Footnote 3 confirms that for any proposal for a change of use to a caravan site the Sequential and Exception tests should be applied.
8. My attention has not been drawn to any specific advice on sites which, as in this case, include land in different flood zones. I consider that both the Sequential and Exception Tests should be applied in these circumstances. No FRA, Sequential Test or Exception Test accompanied the planning application which led to Appeal A. The appellant considers that no FRA was required by the Council. The June 2011 appeal decision for the site refers to an earlier FRA but the Inspector considered it contradictory.
9. Some photographic evidence of previous flooding in the area has been submitted, including flood events in 2007, 2008 and 2010. Local residents refer to a number of occasions when parts of The Causeway and surrounding fields were flooded. The appellant observes that the appeal site was not flooded during these past flood events and this is supported by Mr Marks, who owns land adjacent to the site.
10. The Internal Drainage Board (IDB) refers to the braided nature of the local watercourses and the related difficulty of precisely modelling flood risk for a small site such as this. As the appellant observes, the site is on the edge of a flood risk area so that, in the event of a flood, water depth and flood duration are likely to be less than in other affected areas. A caravan would have a degree of freeboard and if planning permission was granted conditions could be applied, for example requiring the tethering of caravans. Nevertheless, the IDB flood map shows a substantial part of the site to be at significant risk of flooding. Part of the access track, which would provide an escape route to higher ground, is at high risk. It weighs in the appellant's favour that part of the site is at low risk of flooding. However, the area of low risk within the site is limited in extent, which is likely to constrain the extent to which it could effectively meet all the needs of the appellant and his family.
11. A Sequential Test requires consideration of whether there are other sites available at lower risk of flooding. I approach this matter on the basis of sites realistically available for the appellant and his family. With regard to the need

for and provision of sites, the Council's position is based primarily on its northern area, within which the site is located. It says that 30 pitches are required in that area for the period 2006 to 2016, that planning permissions have been granted for 7 pitches and that a further 23 pitches have been allocated in its Draft Submission Gypsy and Traveller Development Plan Document, 2010 (DSDPD). It therefore argues that the need for pitches has been met so that further permissions are not needed. The sites identified in the DSDPD are not at risk from flooding.

12. It seems to me that the sites identified in the DSDPD cannot necessarily be regarded as realistically available. Of the five sites identified, one is the reconfiguration of an existing publicly owned site to ease overcrowding without creating additional pitches. Two others, at Pulloxhill and Greenfield, are already occupied by gypsy families. It has not been shown that they are likely to be available to the appellant. The publicly owned sites in the area are full, with waiting lists and the Council does not identify any alternative site which would be realistically available if this family has to leave the appeal site. In addition, although the DSDPD was subject to public consultation, it was not examined in public. It was not adopted as part of the development plan and will not proceed further because the Council has decided to pursue instead the preparation of a Development Plan Document (DPD) for its area as a whole. Work on that DPD is at an early stage. While the DSDPD was ratified by the Council for development management purposes, this reduces the weight I give to its allocations. The appellant observes that a large number of representations were made on the DSDPD and it is not certain that planning permission would be granted for the sites identified in it. Having regard to the above, I consider the Sequential Test to be met.
13. The two parts of the Exception Test are set out at NPPF paragraph 102. Firstly, it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk. There are some sustainability benefits from the appellant's settled occupation of the site, including access to health, education and other services. These benefits accrue primarily to the appellant and his family rather than the wider community. However, there is some community benefit, for example from contributing to meeting the wider need for sites and from the avoidance of environmental damage resulting from resorting to a roadside existence or other unauthorised sites. The Exception Test also requires a site specific flood risk assessment to demonstrate, amongst other things, that the development will be safe for its lifetime, taking account of the vulnerability of its users. As I set out above, no FRA was submitted in this case. I consider that the Exception Test has not been met.
14. The appellant submits other appeal decisions which address flood risk and "dry island" sites (APP/N1730/C/10/2134332 and 2134236, APP/U2235/A/09/2114473 and 2114476). Unlike this site, the sites in those decisions were not themselves at risk of flooding but were surrounded by land which was at risk. I take these decisions into account but my decisions rest on the particular circumstances of this site and on current policy and guidance.
15. I conclude on this issue that there is a significant risk of flooding over part of the appeal site. The development proposed is classed as highly vulnerable. The availability of part of the site at low risk of flooding, which could provide a refuge in a flood event, and which could be used to site the single caravan in

Appeal A, weighs in the appellant's favour but that area is limited in extent. A realistic alternative site which is not at risk of flooding is not currently available for this family. That position is likely to change in the future when a site allocation DPD for the whole of Central Bedfordshire is prepared and adopted. While the Sequential Test is met, the Exception Test is not.

The effect on the character and appearance of the area

16. Although sites in rural areas are not precluded, paragraph 23 of the PPTS says that new traveller sites in open countryside that is away from existing settlements or outside areas allocated in the development plan should be strictly limited. While this site is close to an existing settlement, it is not in an area allocated in the development plan.
17. The site and adjoining land have historically been part of the flood plain meadows flanking both sides of The Causeway. That area forms an attractive part of the setting for Clophill but there have been significant changes to its character. They include the extensive development on the adjacent Paradise Farm site, comprising buildings, enclosures, stored materials, vehicles and equipment. The land to the west of the appeal site is unoccupied but is surrounded by timber fencing. I refer above to the previous raising of the appeal site, which also appears to have affected the access track and some of the neighbouring land. Tree and shrub planting, including non-indigenous species, has been carried out alongside part of the access track.
18. Nothing is submitted to suggest that these changes are likely to be reversed. Nor does the enforcement notice require the removal of the fencing around the appeal site, which could therefore remain. There are no public footpaths running past the site but it is seen from The Causeway, from part of the A507 and from some of the houses to the north of the stream. The site appears as part of the strip of development along the edge of Clophill, most of which is within Paradise Farm. The development extends the visual intrusion which results from that development. That effect is unlikely to be effectively mitigated by further planting or landscaping on land within the appellant's control.
19. The appeal site can be seen against the backdrop of houses to the north of the stream, including some recent development. Other appeal decisions submitted by the appellant make it clear that gypsy sites need not be hidden from view. Nor is it unusual for sites to be located in the countryside or to result in a degree of visual impact. Nevertheless, I find that the development would be materially harmful to the character and appearance of the area. Policy HO12 of the Mid Bedfordshire Local Plan: First Review, 2005 is a criteria based policy for gypsy sites. It is a relevant development plan policy and is broadly consistent with the NPPF. The development would conflict with policy HO12(i) with regard to the harm to the character and appearance of the area. The harm resulting from the development would be reduced to some extent with regard to Appeal A, which is limited to one caravan.

The need for and provision of sites for gypsies and travellers in the area and the availability of alternative sites

20. The PPTS sets out the Government's aims in respect of traveller sites. They include local planning authorities making their own assessment of need, promoting more private traveller site provision and increasing the number of

traveller sites in appropriate locations with planning permission to address under provision and maintain an appropriate level of supply.

21. I refer above to the need for additional sites as assessed for the northern area in the DSDPD. The need in the Council's area as a whole was addressed in an appeal decision of May 2011 (APP/P02040/A/10/2136031) concerning a site at Tilsworth. The Inspector's report refers to a shortfall of between 22 pitches and 45 pitches. The Inspector went on to find that from any perspective Central Bedfordshire has a shortage of gypsy sites. Nothing has been submitted to show that this overall picture has changed significantly. The Council will address the overall need in its area in a DPD, which it anticipates will be adopted in autumn 2014.
22. The Council's policies have not so far been effective in providing sufficient sites for gypsies and travellers in Central Bedfordshire. While this helps to explain the current under-provision of sites. I do not consider it to add significantly to the arguments in favour of the development. I conclude that there is an unmet need for further sites for gypsies and travellers in the area. Further sites are likely to be allocated and become available following the adoption of a DPD in 2014. If the appellant and his family have to leave the site, it is likely that they would have to resort to a roadside existence or other unauthorised sites.

The need for a settled site and personal circumstances

23. The appellant's need is for a settled site on which he and his family can live. He refers to his strong local connections with the area. There are personal circumstances concerning education. Two of the six children attend colleges in Bedford and Kempston. Two children attend schools in Shefford and one attends a school in Flitwick. The remaining child is home tutored. A roadside existence or recourse to other unauthorised sites would not necessarily preclude education. However, it is likely that there would be significant disruption of children's education if the appeals are dismissed. These matters weigh in the appellant's favour.

Other matters

24. Clophill Parish Council and some local residents refer to the limited range of services in Clophill and to the site's poor accessibility to services, including schools. While I take this into account, it is not unusual for development in rural areas to require journeys by car or public transport. There would also be some sustainability benefits from a settled site, to which I refer above. There would be a degree of harm to outlook from nearby houses but it is not sufficient for the development to be unacceptable.

The overall balance

25. I next consider the overall balance in Appeal A and Appeal B. With regard to a permanent permission, the Exception Test is not met and I give substantial weight to the risk of flooding in Appeal B. Although the single caravan in Appeal A could be positioned on that part of the site with a low risk of flooding, that area is limited in extent. I consider it likely that, in practice, the use would spill over into the remainder of the site and part of the access road to the site is at high risk. Significant weight also attaches to the risk of flooding in Appeal B. I give moderate weight to the harm to the area's character and appearance in Appeal B and more limited weight to that harm in Appeal A. The unmet need for additional sites, the lack of alternative sites and the appellant's personal

need and circumstances weigh in the appellant's favour. Other matters do not materially affect the overall balance and I find that it does not justify a permanent planning permission.

26. Bearing in mind the Council's DPD timetable, I consider 3 years to be an appropriate period to consider in respect of a temporary permission. Paragraph 110 of Circular 11/95: The Use of Conditions in Planning Permissions says that a temporary permission may be justified where it is expected that planning circumstances will change at the end of a period. It is also clear from the Impact Assessment document for PPTS that temporary permissions are likely to have a continuing role in meeting the need for sites. Paragraph 25 of PPTS says that "if a local planning authority cannot demonstrate an up-to-date five year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission." However, paragraph 28 makes it clear that this policy only applies 12 months after PPTS comes into force. That period has not expired so that this policy does not yet apply. I therefore give limited weight to the absence of a five year supply of deliverable sites in considering a temporary permission.
27. I take into account all the matters referred to above in respect of a permanent permission and the weight attached to them. A temporary permission would limit the duration of the harm I have identified and alternative sites which are not at risk from flooding are likely to be available at the end of a 3 year period. However, NPPF paragraph 102 makes it clear that both the Sequential and Exception Tests will have to be passed for development to be permitted. Taking that and all other matters into account, I find that the overall balance does not justify a temporary permission.

Appeal G - Ground (g): The period for compliance

28. The Council considers that the 60 day period given for compliance is sufficient. It refers to the history of refusal of planning permission on the site. It is suggested that the appellant has had since August 2010, when the first planning application was refused, to seek alternative accommodation and that leaving this site in the summer may give a better chance of finding another site.
29. Notwithstanding the previous planning decisions on the site the appellant was entitled to assume that his appeals could succeed. To extend the period for compliance would prolong the harm I have identified. However, I also have regard to the current lack of realistically available alternative sites and to the likely effect on the appellant and his family of resorting to a roadside existence or other unauthorised sites. An extended compliance period would increase the chance of another suitable site being found. In all the circumstances I conclude that the period for compliance should be extended to 12 months and I shall vary the notice accordingly.

Human Rights Considerations

30. If these appeals are dismissed it is likely that the appellant and his family will be required to vacate their home, with no certainty of suitable alternative accommodation. This would be an interference with their home and their private and family lives. The occupation of a caravan is an integral part of gypsy and traveller identity and the tradition of pursuing a travelling lifestyle.

Without an authorised site it would be more difficult for the appellant and his family to pursue their traditional way of life. This interference with the rights of the appellant and his family must be balanced against the wider public interest in pursuing the legitimate aims stated in Article 8. With regard to both permanent and temporary permissions, the harm which would continue to be caused by the development with regard to the combined effect of flood risk and the effect on the area's character and appearance would be considerable. Taking into account all the material considerations, including the appellant's personal circumstances, I am satisfied that this legitimate aim can only be safeguarded by the dismissal of these appeals and extension of the compliance period as set out in the Formal Decisions below.

Overall Conclusion

31. Having regard to the above and to all other matters raised the appeals should not succeed.

Formal Decisions

Appeal A: APP/P0240/A/11/2165294

32. I dismiss the appeal.

Appeal B: APP/P0240/C/11/2160387

33. I direct that the enforcement notice be varied by the deletion of all the words in paragraph 6 and their replacement with the words. "Time for compliance with the requirements: 12 months from the date when this notice takes effect."

34. I dismiss the appeal and uphold the notice subject to the above variation.

K Williams
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs A Heine BSc, MSc, MRTPI	Heine Planning Consultancy.
Mr J Jones	Bucks Floating Support.
Mr N Gumble	The appellant.
Mr Marks	Owner of Paradise Farm.

FOR THE LOCAL PLANNING AUTHORITY:

Ms V Davies	Principal Planning Officer, Central Bedfordshire Council.
Ms S Cawthra	Planning Enforcement Team Leader, Central Bedfordshire Council.
Mr A Shadolt	Councillor, Central Bedfordshire Council.

INTERESTED PERSONS:

Mr Parker-Eaton	Clophill Parish Council.
Mr Clarke	Clophill Parish Council.
Mrs J Huckle	Local resident.
Mr Bell	Local resident.
Ms Breed	Local resident.
Mr Soper	Local resident

DOCUMENTS SUBMITTED AT THE HEARING:

1. Map of Central Bedfordshire Council area.
2. Map of Clophill and Hall End, Maulden, Inset 16.
3. Flood zone map showing appeal site.

DOCUMENTS SUBMITTED AFTER THE HEARING:

4. Letter of 8 April 2012 from Mrs Heine to the Planning Inspectorate.
5. Letter of 12 April 2012 from the Council to the Planning Inspectorate.
6. Email from Mrs Heine to the Planning Inspectorate, 3 May 2012.
7. Letter of 3 May 2012 from the Council to the Planning Inspectorate.
8. Letter of 9 May 2012 from Mr J Jones to the Planning Inspectorate.

