



Appeal Decision

Hearing held on 31 May 2022

Site visit made on 31 May 2021

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2022

Appeal Ref: APP/J3015/W/21/3272021

**Land adjoining 313 Nottingham Road, Toton, Nottingham NG9 6EG,
450569, 334243**

- 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 Connors against the decision of Broxtowe Borough Council.
 - The application Ref 20/00272/FUL, dated 20 April 2020, was refused by notice dated 29 September 2020.
 - The development proposed is Change of use to residential including retention of static mobile home, touring caravan, utility/dayroom building, raised site levels and parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On the basis of the evidence before me, including oral evidence at the hearing, I see no reason to doubt that the appellant and his immediate family have gypsy status as defined in Annex 1 of Planning Policy for Traveller Sites (PPTS).
3. The description of development is that set out on the appeal form.
4. The application form states that work began on site on the 20 April, which is also the date of the application. However, the evidence before me indicates that some works began before that date. The application is at least in part retrospective.

Main Issues

5. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - The effect of the proposal on the openness of the Green Belt;
 - Whether the development would conform with local policies and national guidance with regard to flood risk;
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on the living conditions of occupiers of 313 Nottingham Road, with particular regard to overlooking;

- Whether the Council has made sufficient provision for gypsy and traveller sites in accordance with local policies and national guidance;
- Whether there is overriding need for the development; and,
- Whether the harm to the Green Belt, by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If it is, would this amount to the very special circumstances necessary to justify the proposal.

Reasons

Policy background

6. Policy 9 of the Core Strategy (CS) sets out that sufficient sites for gypsy and traveller sites will be identified in the Local Plan Part 2 (LP2). It also sets out the criteria for the acceptability of speculative sites. These are that the site should not be in the Green Belt except in very special circumstances, that the site should be within reasonable distance of schools and community facilities, and that the development should not have an unacceptable adverse impact on the amenities of the site's or nearby occupiers, or the character or appearance of the area.
7. It is not in dispute that the site is within easy reach of schools and community facilities. Issues concerning the Green Belt, the effect of the proposals on the living conditions of neighbouring occupiers, and the visual amenity of the area, are discussed below.

Inappropriate development

8. Two sides of the appeal site extend into the Green Belt by a few metres. The site boundaries are formed of concrete posts and gravel boards, with timber panels, and the site is noticeably raised above the level of the adjacent field and the neighbouring plot of 313 Nottingham Road (No 313).
9. The Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and their permanence.
10. Paragraphs 149 and 150 of the Framework set out exceptions for development within the Green Belt. However, there are no exceptions for gypsy and traveller sites. Consequently, the change of use for the part of the site within the Green Belt would be inappropriate development.

Openness

11. The site's boundaries and raised levels are a distinct feature at the side of the adjoining field. Given that openness is generally considered to mean an absence of activity and development, I conclude that the combination of fencing and raised levels are causing a significant loss of openness within and along this boundary of the Green Belt.
12. The planning history of the site indicates that a few years ago the site had chain link fencing on its field boundaries, which seems to suggest that the levels were at grade with the surrounding land at the time. It is a matter of some dispute in the evidence as to the extent to which the appellant has raised site levels. However, the evidence and the description of development

indicate that the appellant has raised levels to some degree. As such I conclude that the proposals will have an adverse effect on openness primarily as a consequence of the raised levels associated with the change of use, and the solid boundary fence.

13. It is argued that activity and the positioning of structures could avoid the land that lies within the Green Belt. However, it is the raised levels and the fence that are the key detractors from openness, and the avoidance of activity and structures on the Green Belt land within the site would not alter that. As such I conclude that there would be minor to moderate harm to openness if the change of use was allowed.
14. I appreciate that the area of the site within the Green Belt could be fenced off and planted, but this would not mitigate the harm to openness arising from a 1.8 metre high boundary fence and the raising of levels.
15. The Framework states that substantial weight should be given to any harm in the Green Belt. However, in these particular circumstances, the Green Belt is a small proportion of the site, and consequently this harm carries lesser weight in the overall planning balance set out below.

Flood Risk

16. LP2 Policy 1 states that development will not be permitted in areas at risk from any form of flooding unless there are no suitable and reasonably available alternative locations in a lower risk area outside the Green Belt. In the case of fluvial flooding, the policy states that proposal is to be protected by the Nottingham Trent Left Flood Bank Alleviation Scheme (NTLFAS) or other flood defences of equivalent standard of protection. Proposals are also required to mitigate residual fluvial flood risk, provide flood compensation where appropriate and ensure that development on greenfield sites maintains pre-development run off rates.
17. It is not disputed that the site lies within Flood Zone 3. Although the appellant argues that the site is protected by the NTLFAS, this is disputed by the Environment Agency (EA). The site would appear to be at greater risk from the river Erewash which is around 30 metres from the site's rear boundary. This is confirmed by the 2020 Flood Risk Assessment (FRA) which states that the risk of flooding appears to originate from the Erewash.
18. There is some dispute regarding a one metre high bund protecting dwellings to the south of Nottingham Road from the Erewash. This was not discernible at my visit as the land was heavily vegetated. Its presence is also disputed by residents of the nearby dwellings and one interested party notes that flood barriers were removed by residents. In any case, if a bund was built, and if it remains, it does not extend as far as the appeal site. Moreover, flood waters find their own level and inundate lower ground, irrespective of the normal direction of the river flow. The EA considers the site to be undefended from the Erewash and I see no reason to disagree.
19. Furthermore, photographs submitted by interested parties clearly show the raised levels of the Erewash at the rear of a flooded garden, and further extensive flooding on land in the distance between the Erewash and the Trent, in November 2019. I conclude that even if there are bunds and higher ground, they were ineffective in protecting land between the Erewash and Nottingham

Road on that occasion and there is nothing before me to suggest that similar situations are unlikely to occur in the future.

20. The proposals include raising site levels, but the degree to which site levels have been raised by the appellant is disputed. A 2020 topographic survey recorded levels ranging from 28.04m AOD to 28.21m AOD, which indicate that the site is now around 400 - 500mm above ambient levels. From the levels I noted on site, using the gravel boards of the fencing as a guide, levels have been raised since the Council took its photograph in February 2020. Whether the 2020 survey levels were recorded before or after that additional raising of levels is unclear. The aerial photographs of 2016 and 2019 show some hard surfacing but it is not possible to determine the depth of that surfacing. The appeal statement notes that the site has been raised by about 200mm by the appellant. However, this is based on one level on a previous survey. Other levels taken for the previous survey show that parts of the site, notably along its southern boundary, have been raised by considerably more than 200mm.
21. The LiDAR section included in the 2020 FRA shows the site to vary in height from around 27.6m AOD on the southern boundary to around 28m AOD at the entrance. The 2017 FRA raises concerns that the LiDAR data used by the EA to determine flood levels is potentially inaccurate and that this is confirmed by the 2016 topographic survey mentioned above. However, the 2020 survey records the centreline of Nottingham Road to be around 28.3m AOD, which is the level shown on the LiDAR section in the 2020 FRA. I conclude that the EA's LiDAR and the LiDAR section are accurate. Although it is unclear when the data informing this section was obtained, some of the levels shown on the LiDAR section appear to be more or less in line with those on the previous survey. As such, I conclude that the appellant has raised levels by considerably more than 200mm in some parts of the site.
22. The 1:100 year flood level would not encroach on to the site but a 1:100 plus 20 per cent climate change (CC) event would cause flooding to a depth of up to around 200mm over some parts of the site. A 1:1000 year event for the Erewash would result in a flood depth of over 300mm over parts of the site and around 170mm at its shallowest.
23. The static caravan's floor could be raised above these levels and the depths of flood water on the site could perhaps be considered to be manageable. However, Nottingham Road is also partly within Flood Zone 3 and the northern footpath is within Flood Zone 2. Flood Zone 2 has a flood risk of between 1:100 and 1:1000. The access from the site to land unaffected by flood risk to the north of Nottingham Road would require a traverse through flood water. Furthermore, that land, the nearest refuge, would be landlocked in periods of serious flooding. In any case, the concerns around flood risk are not only related to the safety of residents in a flood event but the burden on emergency workers during flood events and the support required for those affected.
24. I appreciate that a caravan site generally has a lifetime of around 100 years, but this does not reduce its vulnerability to 1:100 year flood events. Modelling does not necessarily reflect actual events. Flooding, of any magnitude, can occur at any time.
25. Moreover, whilst I appreciate that the site may not flood in 1:100 events or to between 200 -300mm in more extreme events, this has been achieved by effectively creating an island within the flood plain. This intention is confirmed

in the appeal statement, and it appears to me that at least half of the current raising of levels is associated with this development. Raising levels has reduced storage within the flood plain and the stone and concrete gravel boards further impede the flow of flood water which could cause additional flood risk for the occupiers of nearby dwellings. Whilst I appreciate that compacted stone is porous, flood water will not drain across the site at the same rate as if there was open ground. Moreover, less water can be retained in the voids compared to open ground. Interested parties have reported anecdotal concerns in relation to the surcharging of land between dwellings nearby in recent flood events and I see no reason not to give these reports at least some weight.

26. At the hearing it was noted that recent events are caused by surface water rather than river flood events and I appreciate that this area appears to lie in a depression. Nonetheless, raising the site levels will displace flood water, and impede drainage even in localised events, whatever the water's source. Given that the busy Nottingham Road runs along the site boundary, anything that impedes drainage to any extent, is likely to cause disruption. In any case, it seems highly unlikely that the extent of inundation between the Erewash and the Trent in 2019 was a localised surface water event.
27. The EA has indicated that it would be unlikely to grant a Flood Risk Activity Permit for the proposals. Although it was suggested at a hearing that compensation measures could be provided through underground storage, or other sustainable drainage schemes, there are no such schemes before me. Consequently, I cannot be sure that such schemes would be practical or would be acceptable to the Council or the EA. This is not something that could be left to condition.
28. The Framework states that all plans should apply a sequential risk-based approach to the location of development with regard to flood risk. Development should not be permitted if there are reasonably available sites appropriate for the proposed development. The Council is unable to suggest alternative sites and there is no provision in the local development plan. I see no reason to conclude that there are no reasonably available sites in areas with a lesser risk of flooding.
29. Paragraph 163 of the Framework states that if it is not possible for development to be located in areas with a lower risk of flooding, the exception test may have to be applied. However, caravans and mobile homes intended for permanent residential use are classed as highly vulnerable in Annex 3 of the Framework. In addition, Paragraph 13 of PPTS sets out that local planning authorities should ensure traveller sites are sustainable economically, socially and environmentally, and states that sites should not be located in areas at high risk of flooding including functional floodplains, given the high vulnerability of caravans.
30. In order to pass the exception test, Paragraph 164 of the Framework states that it should be demonstrated that the development would provide wider sustainability benefits that outweigh the flood risk, and that the development will be safe for its lifetime without increasing flood risk elsewhere. There are no arguments advanced with regard to sustainability benefits. With regard to safety over the lifetime of the development, the fact that a caravan site is

considered to have a lifetime of 100 years does not render it immune from a 1:100 year flood event.

31. Various suggestions to make the site safe in a flood event, such as tethering and having voids beneath structures have been proposed. However, these are adjustments that are available to all caravan sites yet the national guidance for gypsy and traveller sites, PPTS, states that sites should not be located in functional flood plains. Even if I gave weight to the argument that the caravan would only be vulnerable in extreme flood events, it does not alter my concern in relation to the loss of functional floodplain and the increased impact of flood events on nearby residents.
32. I appreciate that the appellant could sign up to the EA flood warning scheme and that in the event of a potential flooding event could move off the site in a tourer or camper van. However, given that the extended family's site is also highly likely to be affected by flooding, I am not satisfied that this would necessarily reduce the occupier's vulnerability. Moreover, there may be occasions when the tourer or camper van is not on the site when it needs to be evacuated. And even if the occupiers could relocate at times of flood, this does not overcome my concern in relation to the obstruction to water flow caused to nearby dwellings, Nottingham Road and the loss of flood plain storage. I conclude that the proposals fail the exception test.
33. The EA evidence demonstrates that the flood risk arising from the Erewash is greater than that from the Trent, and other evidence shows that when the Erewash floods above a certain point, it floods nearby gardens. Moreover, this has happened in the last few years. It cannot be presumed that a similar event will not occur sooner rather than later. As such I am satisfied that even if there is flood protection for the Erewash, it does not offer the equivalent protection of the NTLBFAS.
34. Nor is there anything before me to indicate that the development would meet the other criteria in LP2 Policy 1 in relation to flood mitigation, flood plain compensation or reduced runoff to the satisfaction of the EA. I also conclude that notwithstanding that the site was raised to some extent before its purchase by the appellant, the further raising of site levels has and will continue to displace water to neighbouring plots and impede the movement of flood waters.
35. As such, the development fails to meet the requirements of Paragraphs 164 of the Framework with regard to the exception test, and CS Policy 1 insofar as this supports the Framework with regard to the need to demonstrate wider sustainability benefits that outweigh the flood risk. It would also fail to meet the requirement of LP2 Policy 1 as set out above.

Character and appearance

36. The appeal site is at the end of a line of two-storey semi-detached dwellings situated between the River Erewash and Nottingham Road. Notwithstanding that this frontage has been built to slightly different designs, there is a distinct underlying consistency in building line, height, scale and style.
37. A large expanse of what appears to be unimproved pasture separates the appeal site from a retail park to the east. On the opposite side of the road, to the west of the site the building line is much further back and the dwellings are

largely obscured by mature vegetation. To the east the building pattern is more varied with bungalows, and period two storey cottages.

38. The gated entrance to the appeal site is unduly prominent in a line of more modest front entrance treatments. The arrangement of a static caravan, amenity block, camper van and vehicles would be incongruous in the context of the repetition of the building line to the site's immediate west. However, the site abuts a very large area of what appears to be unimproved pasture on its other side, and the building pattern opposite the pasture is less rigid. As such, I acknowledge that the development pattern could be considered to be in transition along this section of Nottingham Road.
39. The appeal site could also be read as an extension of the adjoining dwelling's plot. However, I conclude that the presence of permanent structures such as the amenity block and static caravan, and temporary structures such as a tourer or camper van, and vehicles as well as domestic paraphernalia would appear out of keeping with the scale and appearance of the adjoining dwelling. I appreciate that planting in the adjacent field could provide screening along the eastern boundary where the site is most exposed to glimpsed views from Nottingham Road and would provide some mitigation. However, there would be reduced opportunities for screening across the gated entrance, given the extent of stone forming the site base and the proposed raising of the caravans above flood levels.
40. It is argued by the appellant that the site has a residential character. However, there is a very clear distinction between front and rear amenity areas for the existing ribbon development. These proposals would introduce frontage activity across the full extent of the site, and including alongside the rear garden of No 313. This would be out of keeping with the character of the underlying building pattern.
41. The appellant has drawn my attention to another appeal¹ where the inspector found that the proposed gypsy site would make an appropriate transition between a ribbon development and a woodland area to the north-east. Although the plans are not before me, the reasoning suggests that the existing woodland would provide some screening, which would not be the case here. Moreover, it is unclear how that site related to the adjacent dwellings or the extent of the nearby urbanisation. I cannot presume that the situations are directly comparable.
42. Notwithstanding that mitigation could reduce the visual impact of the development from the side, I conclude that there would incongruity in extending frontage activity across the entire site, and to a lesser extent, incongruity in the appearance of the site, when compared to the adjacent ribbon development.
43. The proposals would therefore be contrary to the design aims of CS Policy 10, and LP2 Policy 17 which requires development to integrate into its surroundings amongst other considerations.

¹ APP/F1040/C/06/2015966

Living conditions

44. The site is raised above the rear garden of No 313 by between 400 - 500mm. At the visit the camper van was parked alongside the fence with windows directly looking down into No 313's garden.
45. The existing fence alongside the boundary with No 313 could be replaced with a higher structure to ensure that people standing within the site are unable to see over the fence top. However, this would result in an excessively high fence when viewed from No 313. Moreover, PPTS states that sites should not be so enclosed with fences as to give the impression that the site and its occupants are deliberately isolated from the rest of the community.
46. I appreciate that the static caravan could be designed so as to have a blank façade facing No 313, but this would not alter my reasoning with regard to people standing on the site and being able to look into No 313's garden. Nor would this potential harm be mitigated by placing the amenity block at the rear to allow it to have the appearance of a garden outbuilding. In any case, an outbuilding built as permitted development close to the boundary would not be as tall as the amenity block.
47. The planning statement states that the existing static caravan has been located on the east side of the site to minimise the impact on the views from No 313. This is on the opposite side of the site to what is now proposed. To some extent the actual positions of caravans and structures could be determined with a site development scheme, but it remains that in order to secure privacy between the site and No 313, boundary treatments would need to be higher than would be considered normal practice. This could raise other concerns for occupiers of No 313.
48. As such I conclude that it is likely that there is and would continue to be overlooking between the appeal site and No 313 and that this could be detrimental to the occupiers of No 313. This would be contrary to CS Policy 10 which requires development to take account of its impact on the amenity of nearby residents or occupiers, and LP2 Policy 17 which states the development should ensure a satisfactory degree of amenity for occupiers of neighbouring properties.

Council provision

49. Policy 16 of LP2 states that a site will be identified for two pitches before the end of 2019. That this has not occurred is not disputed by the Council. Although a Supplementary Planning Document is planned in this regard, no action has been taken. As such, I conclude that the Council has failed to make sufficient provision for gypsy and traveller sites in accordance with local policies and national guidance. As set out in Paragraph 27 of PPTS, the lack of supply of deliverable sites is a significant material consideration in favour of this appeal.

Overriding need

50. The appellant has two young children, one of whom is approaching school age. The family is currently living with extended family on a nearby site which is itself overcrowded and which also has some flood risk. I can appreciate that the family wishes to have a permanent base. However, the children are not yet at school and so continuity of education at this point in time, carries less

weight than if they were already attending a school. Nonetheless, the lack of alternative sites and the best interests of the children indicates that there is an overriding need for the family to find a suitable site and this carries considerable weight in favour of the appeal.

Planning balance

51. Policy E of PPTS sets out that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh the harm to the Green Belt. However, although the appellant's children are not yet at school, it is clearly in their best interests to have a settled home to enable them to enrol and remain at the same school for the foreseeable future. The best interests of the child weigh heavily in favour of the appeal. Furthermore, the site is only partly in the Green Belt and consequently I give that harm only minor-moderate weight. As such, I conclude that the best interests of the child, personal circumstances and unmet need for pitches taken together clearly outweigh the harm to the Green Belt. These considerations also outweigh the harm I have identified in relation to character and appearance and living conditions.
52. Nonetheless, I have found significant conflict with the Framework, PPTS, the Environment Agency's standing advice, CS Policy 1 and LP2 Policy 1 in relation to flood risk and the effect of the development on other land uses and occupiers. This harm, particularly given the implications of the development on land uses and occupiers outside the site, is not outweighed by the best interests of the child and overriding need.
53. I have considered whether a temporary permission would be appropriate. However, although this could relieve overcrowding on the Sawley site, albeit to a minor degree, it would not overcome my concerns in relation flood risk as set out above. Moreover, whilst Planning Practice Guidance states that temporary permissions may be appropriate if planning circumstances are likely to have changed at the end of the period, there is nothing before me to indicate that this would be the case.

Conclusion

54. I conclude that the proposals are contrary to the local development plan and national guidance. Such material considerations as there are, carry insufficient weight to outweigh that conflict. The appeal is dismissed.

A Edgington

INSPECTOR

APPEARANCES

APPELLANT

Elijah Connors
Philip Brown

Philip Brown Associates Ltd

COUNCIL

Sue Heron
Steve Simms
Nick Wakefield

Broxtowe Borough Council
Broxtowe Borough Council
Environment Agency (via videolink)

INTERESTED PARTIES

Shelley Gent
Jason Hodges

(via videolink)
(via videolink)