



Appeal Decision

Hearing held on 31 May 2022 and 6 September 2022

Site visit made on 6 September 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2022

Appeal Ref: APP/E2530/C/21/3274182

Land at Valley Lane/A1 Junction, Long Bennington, Lincolnshire NG23 5EE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Sam Smith against an enforcement notice issued by South Kesteven District Council.
- The notice was issued on 1 April 2021.
- The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the land from agricultural land to a mixed use for the occupation of caravans for residential purposes, storage of vehicles and equipment related to the occupant's business and for the grazing of animals.
- The requirements of the notice are to:
 1. Cease the use of the land for the occupation of caravans for residential purposes, storage of vehicles and equipment related to the occupant's business and for the grazing of animals.
 2. Remove from the land any caravans, trailers, portable toilets, vehicles, equipment related to the occupant's business and any other domestic or business paraphernalia related to the unauthorised use of the land.
 3. Remove from the land all close boarded fencing and gates.
 4. Restore the field gate to the vehicular access to the site.
- The period for compliance with the requirements is 3 months.
- 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. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. It is directed that the enforcement notice is corrected by:
 - The deletion of the words 'for the occupation of caravans for residential purposes, storage of vehicles and equipment related to the occupants business' and the substitution of the words 'for the stationing of caravans for residential purposes' in the allegation (the matters which appear to constitute the breach of planning control).
 - The deletion of the first and second requirements and their substitution as follows:
 1. Cease the use of the land for a mixed use for the stationing of caravans for residential purposes and for the grazing of animals.

2. Remove from the land any caravans, trailers, portable toilets, vehicles, equipment and any other domestic paraphernalia related to the unauthorised mixed use of the land.
2. It is also directed that the enforcement notice is varied by the deletion of 3 months and the substitution of 12 months as the period for compliance.
3. Subject to the corrections and variation, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

4. The hearing opened on 31 May 2022 but was subsequently adjourned to allow timely notification of interested parties and because technical problems meant that interested parties were unable to be fully engaged in the hearing through attending virtually. The hearing resumed on 6 September 2022 as a face-to-face event with the Council's Environmental Health officer joining the meeting virtually.
5. At the hearing the appellant sought to introduce additional information in respect of the assessments of noise and odour in the form of data on windspeed and direction. This information was made available to the Council, and the Council confirmed that its case would not be prejudiced if the information was introduced. Therefore, I accepted this information, and I will have regard to it in my determination of the appeal.
6. There is no dispute between the parties that the appellant is a gypsy as defined in the Planning Policy for Traveller Sites (the PPTS) and that the PPTS is relevant to the appeal.

The Notice

7. The alleged breach of planning control refers to the 'occupation of caravans for residential purposes'. However, the caravans have been brought onto the site and form living accommodation, therefore a more accurate description is the 'stationing of caravans for residential purposes'. I can make this change without causing injustice to either party.
8. The allegation also refers to a mixed use of the land including the storage of vehicles and equipment related to the occupant's business. However, it was established at the hearing that the storage use was ancillary to the appellant's residential occupation. The appellant confirmed that no business activities were carried on at the site and that the parking of vehicles and storage of equipment were comparable with a person bringing home a work van overnight. For that reason, I shall revise the notice to remove the reference to storage of vehicles and equipment related to the occupant's business to ensure that the notice is correct.
9. Consequential changes are also necessary to the requirements of the notice to reflect the corrections made to the allegation. These can also be made without causing injustice.

Ground (a)

10. An appeal under ground (a) is on the basis that in respect of the breach of planning control, as corrected in this case, planning permission ought to be granted.

11. Whilst the notice refers to the mixed use of the site, the Council's reasons for issuing the notice do not relate to the use of the land for the grazing of animals. In the light of the evidence before me and the site visit, I find that of itself the use of the site for the grazing of animals is appropriate use of the land. My consideration of ground (a) is therefore focussed on the residential element of the mixed use.

Main Issues

12. On the basis of the Council's reasons for serving the notice, the main issues are:
- Whether or not the development provides appropriate living conditions for the occupiers with particular regard to:
 - the noise arising from traffic using the A1, and
 - the odour arising from the use of the adjacent land as a maggot farm.
 - The effect of the close-boarded fencing which has been erected on the site on the character and appearance of the surrounding area.
 - Whether or not any harm arising from the development could be overcome by the imposition of planning conditions.

Reasons

Living Conditions – Noise

13. The National Planning Policy Framework (the Framework) sets out that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution, which includes noise, on living conditions. Furthermore, one of the policy aims of the Noise Policy Statement for England (March 2010) (the NPSE) is to avoid significant adverse impacts on health and quality of life. The NPSE recognises that noise exposure can cause annoyance and sleep disturbance which can give rise to adverse health effects. It goes on to establish that mitigation may be reasonable where noise levels are between Lowest Observed Adverse Effect Level (LOAEL) and Significant Observed Adverse Effect Level (SOAEL).
14. Policy H5 of the South Kesteven District Local Plan 2011-2036 (the Local Plan) requires that residential gypsy and traveller pitches provide an acceptable living environment for their residents. Whilst not specifically referencing noise this policy must be seen in the context of policy guidance provided by the Framework and the NPSE and also Planning Policy Guidance which refers to noise being a relevant planning consideration.
15. The site lies adjacent to a slip road serving the A1 which is one of the key north-south routes in the country and which carries high volumes of traffic. The appellant submitted an assessment of the impact of noise from the traffic on the A1 on a residential use of the site. It was established at the hearing that the assessment had been carried out correctly and to relevant industry standards.
16. The appellant clarified that the assessment was made on the basis of the development being a log cabin (static caravan) as opposed to the caravans

- which are currently on the site. He also said that when the noise assessment was carried out noise levels inside the existing caravans were not measured.
17. The assessment of existing noise was made using one monitoring station on the boundary of the site close to the slip-road and the predicted noise was calculated for receptor locations in the north west corner of the site. The position of the receptor locations was based on a layout of the site with the log cabin beside the western boundary and the amenity spaces to the north and east of it. The existing layout is such that the two caravans are in the north east corner of the site and the amenity area to the west of them.
 18. There was broad agreement between the parties that the fact that the noise assessment considered a different site layout did not affect the outcome of the conclusions of the assessment. From the appellant's perspective he was content to change the site layout should that be considered necessary. The Council, however, confirmed its view that in terms of noise impact the site as a whole was unacceptable.
 19. The noise assessment concluded that with windows closed the recommended internal noise limit¹ would be likely to be achieved. However, with windows open the assessment concluded that the internal noise limit would be exceeded in most rooms during parts of the day and night. My experience during the site visit was that traffic noise could be clearly heard inside the bedrooms of both caravans with windows open. In respect of the outside space, the noise assessment concludes that the noise levels would be above the level at which people would be seriously annoyed.
 20. The appellant said at the hearing that he did not notice the noise from traffic using the A1 and I can appreciate that he is unlikely to complain about the effect of the noise on his living conditions bearing in mind the importance which he places on his occupation of the site. It was also established at the hearing that even if complaints were made it would not be feasible to take action to reduce the noise at source or to provide sound attenuation measures close to the road.
 21. Notwithstanding the appellant's individual response to the noise, it is reasonable to consider on the basis of the conclusions of the noise assessment that noise would be likely to lead to a material change in behaviour and/or attitude, for example through keeping windows closed and avoiding use of the outside space. To that extent the noise level falls into the SOAEL category where development should be avoided. However, the appellant goes further and considers mitigation measures to reduce the noise levels, which is accepted practice.
 22. In respect of internal noise, the noise assessment says some form of acoustic ventilation would be required so that when quiet conditions are needed the residents can close windows but still maintain adequate ventilation. The details of the acoustic ventilation were beyond the scope of the noise assessment. Consequently, the appellant took further advice from specialist suppliers and was advised that a heat recovery supply and extraction unit (MVHR system) ducted into the primary spaces would supply adequate ventilation. This advice came in the form of an email exchange and reference to a website which was submitted by the appellant.

¹ Appellant's Noise Assessment - Table 2 Summary of internal noise guidelines

23. I have given consideration to whether or not a MVHR system could be successfully integrated into the development through the imposition of a suitably worded planning condition. However, given the very limited information before me, I am not persuaded that a MVHR system could be installed in a caravan, either of the type currently on the site or the log cabin, or that such a system would be affordable to install/run for the appellant. Consequently, such a condition would not pass the tests of being enforceable or reasonable.
24. Even in the event that it was possible to secure the provision of an MVHR system through the imposition of a planning condition, this form of mitigation would not address the noise which would be experienced in the amenity/outdoor space.
25. Drawing all of these points together it has not been shown that mitigation measures can be carried out to satisfactorily reduce the exposure of the appellant and his family to high levels of noise.
26. I conclude that the noise arising from traffic using the A1 would have a harmful effect on the quality of life of the occupiers of the site such that the development fails to provide appropriate living conditions. The development is therefore contrary to Policy H5 of the Local Plan which requires that residential gypsy and traveller pitches provide an acceptable living environment for their residents. For the same reason the development fails to accord with the Framework which seeks to ensure that new development is appropriate for its location in respect of the effects of pollution on living conditions.

Living Conditions - Odour

27. The policy set out in the Framework, that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution, also applies to the effect of odour. Similarly, Policy H5 of the Local Plan applies where odour is a consideration, to ensure that residential gypsy and traveller pitches provide an acceptable living environment for their residents.
28. The appeal site shares a boundary with land and buildings which are in use as a maggot farm. By virtue of the activities carried out the maggot farm produces odour, and the appellant has commissioned an odour assessment. The odour assessment concludes that the odour effects on the site are not significant.
29. The Council contends that the odour assessment includes a very limited period of monitoring, and it was accepted by the parties that odour is assessed on a qualitative as opposed to quantitative basis, albeit by trained personnel. The additional information provided by the appellant relating to windspeed and direction seeks to demonstrate that the prevailing wind direction would blow the odour away from the location of the caravans. Whilst this could be the case as the Council state the assessors did detect unpleasant odours on the site on each site visit. Furthermore, during my visit there was a pungent and unpleasant smell at the site.
30. In common with the effect of noise, the appellant stated that he was not bothered by the odour at the site. This is understandable given his need for a site for his family. He did however acknowledge that the odour was pronounced on the day of the site visit.

31. The Council confirmed that in the event that there were complaints from the occupiers of the site, provided that the maggot farm was acting in accordance with its environmental permit, then no action could be taken. The Councillor who attended the hearing said that complaints had been made by residents in the village and as a resident himself he had experienced the odour effects of the maggot farm.
32. The appellant argues that a carbon filter could be added to the MVHR system which would reduce the level of odour within the caravans. However, as I have noted above there is very limited information before me regarding the MVHR system and the system is not capable of being secured through the imposition of a planning condition. It follows that as the carbon filter would be an add-on to the MVHR system, the provision of a carbon filter cannot be guaranteed either. Furthermore, the addition of the carbon filter would have no effect on the odour impact within the amenity/outside spaces on the site.
33. Drawing all of these points together, the impact of odour on the living conditions of the occupiers of the site is not as clearcut as the effect of noise. On one hand there is nothing to suggest to me that the odour assessment was carried out other than in accordance with standard practice and its conclusions that odour effects are considered to be not significant have not been challenged by the Council.
34. On the other hand, I share the Council's misgivings regarding the shortcomings in respect of the number of site visits made by the assessors. Furthermore, although on-site mitigation has been suggested, there is no certainty that it could be provided, and it would have no effect on the presence of odour in amenity/outside space. Also, the assessors, local residents and the appellants have had experience of odours arising from the adjacent use and I was able to share their experience during the site visit.
35. On balance, notwithstanding the conclusion of the odour assessment which has been carried out by air quality experts, I find that the odour impact has an adverse effect on the quality of life of the occupiers of the site. In reaching this view I am also mindful of the cumulative effect in addition to the harm which I have already found in respect of noise.
36. I conclude that the odour arising from the use of the adjacent land as a maggot farm would have a harmful effect on the quality of life of the occupiers of the site such that the development fails to provide appropriate living conditions. The development is therefore contrary to Policy H5 of the Local Plan which requires that residential gypsy and traveller pitches provide an acceptable living environment for their residents. For the same reason the development fails to accord with the Framework which seeks to ensure that new development is appropriate for its location in respect of the effects of pollution on living conditions.

Character and appearance

37. The character of the land surrounding the site is of fairly flat countryside with hedges and trees defining field edges. The buildings associated with the maggot farm are well screened from the road and from the appeal site. Although the site is adjacent to a slip road serving the A1 in this case the slip road is long, and the major road is not visible in the site context.

38. A close boarded fence has been erected around the perimeter of the site. Against Valley Lane where there is a ditch along the roadside, there is significant planting, and the fence is almost totally screened by vegetation. However, in the winter months the fence would be more visible. Alongside the slip road to the A1 there is a change in the levels of the land, but the fence is visible as a consequence of the limited roadside vegetation.
39. The Council explained that its concern was primarily related to the design of the fence in a rural location and the effect which its appearance has on the roads into and out of Long Bennington. The close boarded design of the fence is more characteristic of fencing around residential plots in villages and towns and where it is visible it appears as an alien feature in the rural context of the site. However, the site is not visually connected with the village being separated from it by a bridge over the A1. Consequently, I do not consider the fence to be harmful to the approach to and from Long Bennington.
40. The appellant says that he would be willing to replace parts of the fence with planting. Such works may in part improve the adverse visual impact of the fence, however as it stands the fence has a harmful impact on the countryside location within which it has been constructed. A more comprehensive solution of replacement of the new fencing with post and rail fencing, together with planting, particularly on the boundary with the slip-road, would however render the boundary treatment appropriate to the site context.
41. Given that the meaning of post and rail fencing is clearly understood and a planting scheme in the form of native hedge plants is comparatively straightforward, in this case the replacement boundary treatment could be secured by a planning condition. Such a condition could be worded so as to meet all the tests, including those of being enforceable and reasonable. The imposition, discharge and implementation of the requirements of a planning condition in this case would address the harm which I have found.
42. I conclude that subject to a planning condition to secure the replacement of the close-boarded fencing which has been erected on the site, the boundary treatment would not have a harmful effect on the character and appearance of the surrounding area. In that event, the development would be in accordance with Policy DE1 of the Local Plan which promotes good quality design and requires that all development proposals make a positive contribution to local distinctiveness. For the same reason the boundary treatment would accord with the Framework and the PPTS which require development to be sympathetic to local character and well planned to positively enhance the environment.

Other considerations

The need for and supply of gypsy and traveller sites

43. The Statement of Common Ground (SoCG) sets out that the South Kesteven and Rutland Gypsy, Traveller and Travelling Showpeople Accommodation Assessment which was published in 2016 identifies a need for 32 pitches over the period 2016 to 2036. The Council confirmed that in the first 5 year period to 2021 15 pitches were consented out of 16 pitches identified as the number of pitches needed over that 5 year period and so far in the second 5 year period two pitches have been consented. The latter is consistent with the one pitch per annum figure referred to in the SoCG.

44. The Council explained at the hearing that an early review of the Local Plan is underway in respect of Gypsy and Traveller policy, and it pointed to the fact that its Planning Committee have supported applications for planning permission for new pitches. However, it is common ground that the Council is unable to demonstrate a 5 year supply of deliverable sites. This weighs in favour of allowing the appeal and whilst acknowledging the positive steps which the Council are taking, the shortfall in local site provision attracts significant weight.

Availability (or lack) of alternative accommodation

45. The appellant explained that he had no alternative than to move onto the site. He and his family previously occupied a transit site in the area. However, he said that there was no capacity for him to move back to that site and that he moved from there at the time of the Covid pandemic because he felt unsafe. He described the conditions as overcrowded and there were a number of people sharing facilities such as toilets. He argued that the appeal site was much better in this regard.
46. The appellant confirmed that if he was not able to remain on his land his only option would be a roadside site. The Council confirmed that there are no pitches available on the Council site and neither party was aware of any other available site. The lack of alternative accommodation also weighs in favour of allowing the appeal and attracts significant weight.

Personal circumstances of the appellant

47. The appellant and his wife have four children, two have left school, one of whom has full-time employment in the area and two attend school in Newark. The appellant placed weight on the fact that the two schoolchildren had benefited from consistency in their education in comparison with the older children who he says attended six different schools before they were 12 years old. The appellant and his family are registered with the doctor. One family member has a serious medical condition which necessitates a regular procedure at Mansfield Hospital.
48. Whilst the benefits of a settled base are clear in relation to the school children being able to complete their education and all of the family accessing healthcare, this is tempered by the poor living conditions of the site. Taking this into account I attach moderate weight to the personal circumstances of the appellant and the best interests of the children in this case.

Conclusion on ground (a)

49. There are two sources of harm in this case and the site is not in an appropriate location for the stationing of caravans for residential purposes. The development does not provide satisfactory living conditions for the occupiers in respect of either noise from traffic on the A1 nor odour arising from the use of the adjacent land as a maggot farm. To weigh against that harm, I attach significant weight to the unmet need for Gypsy and Traveller sites in the district and the lack of alternative accommodation available to the appellants and moderate weight to their personal circumstances.

50. Policy H5 of the Local Plan is the relevant policy for the consideration of both noise and odour impact on the living environment for residents of gypsy and traveller sites. This policy also sets out other criteria in respect of the location of gypsy and traveller sites. However, whilst there is no dispute that the development accords with those criteria, compliance with criteria (b) to (e) of Policy H5 has a neutral effect on the planning balance in this case.
51. The Council appears to be making progress in terms of its assessment and provision of gypsy and traveller sites and I can see no reason why the needs of the appellant and his family could not be fed into that process. Although there is no certainty that the appellant would be able to move to a site with more appropriate living conditions, the process which the Council are undertaking leads me to conclude that such a possibility exists.
52. Presented with the alternative of a roadside existence and the contrast between the site and the previous living conditions on the transit site, it could be argued that the poor living environment should be outweighed by the other matters. Moreover, the appellant himself has said that he is accustomed to the noise and odour, and he has been resident on the site for two summer seasons when those effects are likely to have been most intense.
53. Nevertheless, it seems to me that a poor quality living environment should not be accepted through a grant of planning permission simply because the potential alternatives available in the short term are worse. This is why a planning permission runs with the land and it is seldom desirable to provide otherwise. On that basis I do not find that the unmet need for Gypsy and Traveller sites in the district, the lack of alternative accommodation available to the appellants and their personal circumstances outweigh the harms which I have identified.
54. I have given consideration to whether a temporary planning permission would be appropriate. Whilst the appellant considers that a temporary permission is justified, he also says that a temporary planning permission would simply put aside the question of whether or not this site is suitable for occupation as a gypsy and traveller site. I agree with the appellant in this regard and as I have found the site to be unsuitable for use for a mixed use for the stationing of caravans for residential purposes and for the grazing of animals, it is not appropriate to grant planning permission on either a permanent or temporary basis.
55. For the reasons set out above, my preliminary conclusion is that the mixed use of the site does not accord with the Development Plan and that material considerations do not indicate that my decision should be otherwise than in accordance with the Development Plan. Consequently, it is my initial view that the appeal should be dismissed, and that planning permission should be refused.

Ground (g)

56. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period of three months is too short because of the lack of provision for gypsy and traveller sites in the Council area.

57. The lack of an alternative site has attracted significant weight in my consideration of whether planning permission should be granted on either a temporary or permanent basis. On this basis I consider that a three month compliance period is insufficient to enable the appellant and his family to find a new site. To that extent the compliance period falls short of what should be allowed.
58. I am mindful that extending the compliance period by more than 12 months would be tantamount to granting a temporary consent. I have already ruled that out on the basis that the site is unsuitable in terms of living conditions. However, an extension of the compliance period to 12 months would allow the appellant more time to explore options or to find an alternative site and would have the advantage of allowing one child to complete their education.
59. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Conclusions and consideration of Human Rights

60. The occupiers of the caravans are members of the gypsy and traveller community. There is a positive obligation to facilitate the Gypsy way of life to the extent that the vulnerable position of Gypsies as a minority group means that some special consideration should be given to their needs and different lifestyle in the regulatory planning framework and in reaching decisions on particular cases. Furthermore, in this case if the appeal is dismissed and the enforcement notice upheld, the appellant and his family would lose their home and two children may not be able to continue their education.
61. This outcome would be a serious interference with the rights of the appellant and his family under Article 8 of the European Convention on Human Rights as set out in Schedule 1 of the Human Rights Act 1998 which is the right for respect for private and family life. However, Article 8 is a qualified right, and the concept of proportionality is critical.
62. Consequently, I must weigh up the relevant considerations relating to the appellant and his family's rights to enjoyment of family life and a home and the best interests of the children and balance them against the needs of the wider community/public interest. Whilst the appellants would lose their home, this also has to be considered in the context of the poor living conditions on the site which I have found.
63. In relation to the best interests of the children, in this case these pull in two different directions. It would be beneficial for the two children who attend school to have a stable base from which to access education. However, the conditions within which they study, and sleep are not conducive to their quality of life. By extending the compliance period by 12 months, one child will be able to complete their education, and the other child and their family would have time to consider alternatives in advance of the next school year.
64. Dismissing the appeal, but extending the compliance period, is therefore a proportionate response in relation to both public policy in relation to noise, the health and wellbeing of the occupiers of the site in respect of their living conditions and in the best interests of the children.

65. I conclude that the appeal should be dismissed, and that the enforcement notice should be upheld with corrections and a variation as set out in the Decision.

Sarah Dyer

Inspector

APPEARANCES

For the appellant:

Mr Stephen Clark
Mr Sam Smith

Representing the appellant
Appellant

For the Council

Mr Phil Jordan
Mr Adam Murray
Mr Martin Glossop

South Kesteven District Council
South Kesteven District Council
South Kesteven District Council

Councillor Paul Wood

Councillor and resident of Long Bennington

DOCUMENTS SUBMITTED TO THE HEARING

By the appellant:

Additional data on windspeed and direction (i) Cranwell UK winds 2017-2021 and (ii) Windrose – Cranwell UK, 2017-2021 and translucent overlay of appeal site.