



Appeal Decisions

Inquiry opened on 28 June 2023

Site visit made on 28 June 2023

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04th September 2023

Appeal A: APP/V2635/C/21/3286363

Appeal B: APP/V2635/C/21/3286364

Appeal C: APP/V2635/C/21/3286365

Appeal D: APP/V2635/C/21/3286366

Robyn's Nest, Baldwins Drove, Outwell, Norfolk PE14 8SB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
 - The appeals are made by:
 - Appeal A: Mr J Vickers
 - Appeal B: Mr J Vickers
 - Appeal C: Ms C Vickers
 - Appeal D: Ms P Vickers
 - The notice was issued on 27 September 2021.
 - The breach of planning control as alleged in the notice is *Without planning permission, the material change of use of the Land from agricultural use to a mixed use of agricultural land and use for residential purposes.*
 - The requirement of the notice is to permanently cease the use of the Land for residential purposes.
 - The period for compliance with the requirements is two months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a) [Appeal A only], (b), (c), (d), (f) 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.
-

Decisions

1. It is directed that the enforcement notice is corrected and varied by:
 - i) Deleting all wording in section 2 (The land to which this notice relates) and replacing it with '*Land known as Robyn's Nest, Baldwins Drove, Outwell, Norfolk ("the Land") as shown edged red on the attached plan*'.
 - ii) Replacing the plan attached to the notice with the plan attached to this decision.
 - iii) Replacing 'Two calendar months' in section 6 (Time for Compliance) with 'Nine calendar months'.
2. Subject to those changes, the appeals are 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.

Applications for costs

3. Applications for costs were made by both the Council and the appellants. These applications are the subject of separate decisions.

Preliminary Matters

4. The case was initially to be determined as a hearing. However, since there were disputes regarding factual matters, and following consultation with the parties, I decided that an inquiry should be held. The inquiry sat for 2 days and all evidence was taken on oath or affirmation.
5. The appeal form indicated that appeals were made on grounds (a), (b), (c) and (g). However, it appeared to me that, in fact, matters relating to grounds (d) and (f) were also being raised. I raised this matter with the parties and the appellants' agent confirmed the intention to pursue those grounds also¹.
6. The notice refers to the site as 'Land known as Robins Nest', but other documents and the signage at the site say 'Robyn's Nest'. I will correct the address in the notice accordingly.
7. There was some discussion at the inquiry as to the current version of the Gypsy and Traveller Accommodation Assessment (GTAA). The Council submitted information to demonstrate that the 2016 document has now been superseded by the June 2023 document, which has been submitted as evidence to the examination into the local plan review and will be subject to public consultation in due course. I have been provided with a copy of the new GTAA and have had regard to it.

Background

8. Robyn's Nest is a site within open countryside, outside the settlement limits of the village of Outwell. The site is about 1.6 hectares (ha) in area. It includes open grazing land and a variety of structures and stored items. The buildings on the site include a building variously referred to as 'the day room', 'Building No 2' and 'the dwellinghouse'. I shall refer to it as 'Building No 2'. Another building is generally referred to as 'the barn'. That building is only partly completed. Much of it is open but part of it is fully enclosed and has been built and fitted out for residential use. At the time that the notice was issued, there was a mobile home located next to Building No 2. This had been moved a short distance to another part of the site when I saw it, apparently with a view to replacing it with a new unit.

Ground (b) and matters relating to the allegation in the notice

9. The appeals on ground (b) are concerned with the question of whether the matters stated in the notice have occurred. The burden of proof falls on the appellants and the standard of proof is the balance of probability.
10. There is no dispute that development has taken place at the site. Rather, the gist of the appellants' case is that the change of use alleged in the notice is not an accurate reflection of what has actually occurred. It is also argued that the notice is so unclear, due both to the allegation and its requirements, as to

¹ Email dated 16 February 2023

render it a nullity. Additionally, and regardless of the grounds of appeal, I need to ensure that the notice is in order.

11. Although not specified in the notice, it is clear from the cases made out by both sides that the residential accommodation on the site is primarily comprised of Building No 2, the barn and the mobile home. The appellants argue that these 3 elements together comprise a single dwellinghouse. It is also argued that this is a Gypsy site. However, the starting point for considering the change of use alleged is identifying the relevant planning unit, and I consider this first.

The Planning Unit(s)

12. The leading case relating to planning units is *Burdle & Williams v SSE & New Forest DC [1972] 1 WLR 1207*, in which Bridge J suggested three broad categories of distinction:

- A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
- A single planning unit that is in a composite use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and
- The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.

13. In this case the site identified by the enforcement notice is entirely owned and occupied by the appellants and is therefore a single unit of occupation. However, the site is not uniform in character or function. The eastern half of the site is generally open and free from substantial structures. There is nothing residential in the character or use of this land, nor any evidence to suggest there was when the notice was issued.

14. The remainder of the site is very different and, in my judgement, forms a recognisably separate area. It has a number of buildings and items placed on the land. These include Building No 2, the barn, the (recently relocated) mobile home, a large workshop/storage building with a toilet attached, stables, dog kennels, a hay store, a wooden bird shed, an open fronted storage/car port building and a variety of minor structures. Additionally, an old mobile home used for keeping birds and large storage containers, apparently used for miscellaneous storage, were sited on the land. When I saw the site, some of it was used for storing a wide variety of items in the open, including scrap cars and other scrap, telegraph poles, wood, manure and various other items. A grassed area to the rear of the barn was fenced off and contained play equipment and garden furniture, and appeared in use as a residential garden.

15. While there are elements potentially compatible with agricultural use, such as the stables, bird sheds, hay storage and manure heap, the combination of the extensive range of buildings and the evident residential use, together with the wide range of items stationed or stored on the land, mean that this area has a very different character to the undeveloped grazing land. Aerial photographs from September 2018 and April 2020 reinforce the very clear distinction between these areas in the period leading up to the issuing of the notice.

16. Thus, I conclude that there is a clear distinction between the grazing land to the east and the more developed land to the west and they are not a single planning unit (and were not when the notice was issued). There is nothing before me to suggest any material change of use of the grazing land and the notice is therefore incorrect insofar as it refers to it. I will consider next whether the allegation in the notice is correct insofar as it relates to the rest of the site.

The use of the developed part of the site

17. It is clear that there is a residential element to the use of the developed part of the site. There are also elements compatible with agricultural use. These uses are consistent with the allegation in the notice. However, the appellants say that there are also commercial elements, and refer to the storage of vehicles and storage of scrap², amongst other things. When I saw the site it certainly appeared that some kind of scrap/commercial storage use was taking place at the time. This was particularly focused in a compound that had been formed at the western end of the site.
18. However, I must consider the use at the time the notice was issued. It is clear that the site has changed considerably over recent years. For the Council, Mr Bates expressed a clear view that the compound area was agricultural in character when he visited the site in April 2021. His description of the site at that time, as set out in his proof of evidence and orally at the inquiry, suggests it may have had a similar range of buildings as at present, but with some fruit trees and without the extensive open storage.
19. Aerial photographs from 2006 shows the compound area covered with trees. An aerial photograph from September 2018 shows a marked difference, with most of the trees removed and a range of buildings. However, there is no clear indication of open storage. A photograph from April 2020 is slightly less clear but appears to show the site in a similar condition.
20. I do not have any photographs that show conclusively whether or not the site was being used for commercial scrap/storage purposes at the point the notice was issued. However, it seems probable to me that the Council would have sought to include that within the allegation in the notice if such a use was evident. Moreover, Mr Bates' evidence at the inquiry was clear that the character of the compound area in September 2021 was agricultural, referring to fruit trees, a chicken coop and a hay store on the land, among other things.
21. The burden of proof falls on the appellant and there is no firm evidence to show that a commercial scrap/storage use was operating at a level to amount to a primary use of the land at the time the notice was issued. Nor is there substantive evidence to show that the reference to agricultural use is wrong.
22. The key residential elements - Building No 2, the barn, the mobile home and the garden - are grouped together and I have considered whether they comprise a distinct planning unit with its own residential character. The compound area to the west of these is fenced off, is not obviously residential in character and, to that extent, is separate from the core residential part of the site. However, it is difficult to fully disentangle these areas. First, there is the

² Draft Statement of Common Ground

link by occupation (as there is with the remainder of the site). Second, there is not a complete separation of uses. For example, there are large storage containers located on the edge of the compound area so that they can be accessed from the more residential part of the site. It seems probable to me that the workshop in the compound would be used for domestic maintenance tasks as well as any commercial work. The only toilet at the site, other than the one in the mobile home, was within the compound, attached to the workshop building and separate from the other residential elements. A photograph appended to the Council's statement shows hay being stored in the open part of the barn, which could be consistent with agricultural use. Finally, both areas are served by the same access. Thus, while the compound is gated off from the rest of the site, I regard it and the remaining developed part of the site as forming a single planning unit.

Whether the allegation should refer to a Gypsy site and/or a dwellinghouse

23. The evidence submitted on behalf of the appellants indicates that they are a family of Romany Gypsies³. The Council does not dispute that claim⁴ and I have no reason to take any contrary view. The appellants say that the site is properly characterised as a Gypsy site comprised of a 'dwellinghouse' and its curtilage. It is argued that any site occupied by Gypsies should be regarded as a Gypsy site.
24. However, I cannot see any support for that view in relevant local or national policy. The glossary to the Government's *Planning policy for traveller sites* does not define the term 'site' or 'Gypsy site'. The definition of 'site' in the GTAA refers to 'an area of land on which Gypsies, Travellers or Showpeople are accommodated in caravans, chalets or vehicles'. In this instance, the most significant element of accommodation is the barn, a substantial building constructed of steel, brick and wood on a concrete base. This has bedrooms and is not just a day room. In my judgement, this means that the site is significantly different in character to what would normally be regarded as a Gypsy/Traveller site.
25. While the site is included in the list of sites and yards at Appendix E of the GTAA, that is a wider study, largely based on desk-top research and interviews, whereas I have based my assessment on a full inspection of the site and related evidence. Overall, it seems to me that this site has evolved to meet the very specific residential requirements of its occupiers. Thus, while the occupiers are Gypsies, that does not make the reference to residential use in the notice, or the lack of a reference to a Gypsy site, wrong.
26. The 'dwellinghouse' the appellants claim is said to be comprised of the barn, Building No 2 and the mobile home. During the inquiry, Mr Carruthers suggested that the toilet structure to the side of the workshop, the garden to the rear of the barn, and even cars on the site (which I am told have been used for sleeping in) were also part of the dwellinghouse (also referred to as a 'distributed home').
27. Neither party could refer me to any definition of 'dwellinghouse' within relevant planning legislation. I understand that a caravan may be regarded as a

³ Rebuttal of the Kings Lynn and West Norfolk Borough Council Proof of Evidence

⁴ Lucy Smith Proof of Evidence, para 2.4

dwelling for Council Tax purposes (the appellants refer to s72 of the Local Government Finance Act 1992), but that does not assist in deciding whether the caravan, buildings etc in this case are a dwellinghouse for planning purposes.

28. The appellant cites *Grendon v FSS & Cotswold DC [2006] EWHC 1711 (Admin)*, [2007] JPL 275. This indicates that physical attributes and use are both relevant to determining whether a building is a dwellinghouse, but does not assist with the facts of this case. It does, however, make the point that definitions applicable in one area of law may not apply to others.
29. The term 'dwellinghouse' was considered in the case of *Gravesham BC v SSE & O'Brien [1982] 47 P&CR 142*; [1983] JPL 307. It is clear that the judgement started from the basis that a dwellinghouse is a building, stating 'Thus, whatever else may be the attributes of a dwelling-house, it is a building of a particular kind'. It went on to conclude that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence.
30. That was for the purpose of interpreting the provisions of the General Development Order of the time, so must be treated with a degree of caution in applying it in other situations. Nevertheless, I am not persuaded that the ordinary meaning of 'dwellinghouse' can be stretched to include 2 or more separate buildings and a mobile home. The suggestion at the inquiry that cars that were slept in also formed part of a 'dwellinghouse' deviates further from the ordinary meaning of that word. But even if the various elements could be described as a 'dwellinghouse', that would not make the reference in the notice to residential use wrong.
31. The appellants suggest that the reference to the use of land in the notice caused confusion, given the residential use of buildings and a mobile home. It is also said that the word 'residential' relates specifically to structures and does not describe the breach of planning control on the site. The courts have established that an enforcement notice must tell the recipient fairly what has been done wrong and what must be done to remedy it⁵.
32. However, the definition of land at s336 of the Act includes buildings. It is clear from the initial information submitted with the appeal that the appellants understood the residential elements encompassed in the breach of planning control alleged, the grounds of appeal making specific reference to the two buildings and the mobile home. While 'residential' is not defined in the Act, it seems to me that the ordinary use of the word is sufficiently broad to encompass the concept of people residing on land in the various ways that have occurred in this case. Accordingly, I do not consider that the notice was unclear.

Conclusion – the notice and ground (b)

33. Drawing these threads together, I conclude that the notice was wrong to include the grazing land within the site and target it as part of the alleged mixed use, since there is nothing about it that suggests any primary residential use. However, the mixed agricultural and residential use is a satisfactory

⁵ *Miller-Mead v MoHLG* [1963] 2 WLR 225

description of the use of the remaining land at the time the notice was issued, being able to encompass the variety of residential elements that are claimed by the appellants – including the residential use of buildings and vehicles on the land – as well as the creation of a garden.

34. In accordance with s176(1)(a) of the Act I am able to correct any defect, error or misdescription in the enforcement notice, provided doing so does not cause injustice to the appellant or the local planning authority.
35. Amending the site plan would not cause injustice to the appellant, since it would reduce the notice in its scope and I cannot see that it has any bearing on the case that has been made out. Nor would it cause the Council injustice, since it is clear that it is the residential use which the Council is targeting, and no residential use is taking place on the grazing land.
36. For these reasons I shall correct the notice by substituting a new plan identifying a reduced site focused on that part of the site where the residential use has been introduced. To that extent only, the appeals on ground (b) succeed.

Ground (c)

37. Appeals on ground (c) are made on the basis that the matters stated in the notice do not constitute a breach of planning control. The burden of proof falls on the appellants and the standard of proof is the balance of probability.
38. Some of the case initially advanced under ground (c) concerns whether the time for taking enforcement action has passed, and I have considered those elements under ground (d). However, it is also argued that the mobile home is permitted by a planning permission granted in 2017⁶.
39. The planning permission granted was for 'construction of a general purpose agricultural barn', with no mention of the siting of the mobile home. The appellants' contention is rooted in Condition 4 of the permission, which states 'Within one month of the completion of the agricultural barn hereby approved, the mobile home shall be permanently removed from the site'. The appellants' case is that the barn building has not been completed, and so the condition permits the mobile home.
40. However, I do not see that the reference to the mobile home in the condition is an indication that planning permission was being granted for it. Indeed, the only reference to the mobile home relates to its removal from the site. Consequently, even setting aside the question of whether the permission granted was ever implemented (given the deviation from the approved plans and the way the building is being used) permission was not granted for the stationing of the mobile home for residential use.
41. It might be said that the condition shows the Council's acceptance that the mobile home could remain in place while the barn was completed. However, there is nothing in Condition 4 referring to the use of the caravan. Rather, it simply requires its removal at a particular time. The evidence of Mr Bates, which is not disputed, indicated that the Council understood that the caravan

⁶ 17/1048/F

was there to provide shelter and facilities while the barn was built and that the Council had been assured that nobody was living on the site at that time.

42. There is no planning permission in place to build a dwelling on the site. Nor has planning permission been granted for residential use of any part of the site or the buildings on it. The material change of use of the land to a mixed use of agriculture and residential use is development for which planning permission is required.
43. For these reasons I conclude that it has not been demonstrated, on the balance of probability, that the matters stated in the notice do not constitute a breach of planning control. Accordingly, the appeals on ground (c) fail.

Ground (d)

44. The appeal on ground (d) is made on the basis that it was too late to take enforcement action when the notice was issued. The burden of proof falls on the appellants and the standard of proof is the balance of probability.
45. The time periods for taking enforcement action are set out in s171B of the Act. The relevant time periods in this case are:
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
 - (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
46. There are various strands to the appellants' case.
47. Mr James Vickers claimed in evidence during the inquiry to have lived on the site since buying it on 7 August 2009, often sleeping in a car. However, the evidence was often vague, and I can see no firm evidence to support that claim. Even if Mr Vickers had slept on the site on occasion, that would not show the kind of continuous use that would be needed to show that residential use had become lawful.
48. Moreover, it is common ground that Mr Vickers has previously, on a number of occasions, advised the Council that he was not living on the land. This claim was made as recently as 22 April 2021. The Council had previously been advised that Mr Vickers was living at a house in West Walton. The evidence before me shows that Ms C Vickers owned the property from 2006 until it was sold in July 2021⁷. In May 2019 an appeal decision recorded that the site had no overnight accommodation⁸. The supporting statement for that appeal, prepared by a planning agent, stated 'a mobile home is located adjacent to the barn which is used for making hot drinks during the day, completing paperwork and shelter during inclement weather. The mobile home is not occupied as a dwelling'. With these points in mind, I give little weight to the claim now made that Mr Vickers has lived on the site since 2009.

⁷ Council's Statement of Case, Appendix 13

⁸ APP/V2635/W/19/3222486

49. Mr J and Ms C Vickers now say that the previous statements that nobody was living on the site were falsely made in order to avoid losing their home. However, the burden of proof falls on the appellants and there is nothing to lead me to prefer their current claims over the previous ones. Indeed, the previous claims that no one was living at the site are supported by a number of Council inspections and the appeal statement of a planning agent.
50. In terms of occupying the structures on the site, the appellants say:
- Ms C and Ms P Vickers have lived permanently in the house (dwelling unit) – since June 2017 in the bungalow and since about September 2019 also in the dwelling in the barn. The bungalow had been used as a single dwelling house since about June 2017. The enforcement notice was issued on 27 September 2021⁹.*
51. The origins of Building No 2 are not entirely clear, but plans provided by the appellants dated October 2021 suggest that the first part of the structure dates from 2015, with additions in March 2019 and April 2020. The bedroom is in the 2019 extension. It therefore appears doubtful to me that the building would have been used as sleeping accommodation on a regular basis before that date. Even with the extensions, the building is modest and lacks a toilet or bathroom, which casts further doubt in my mind as to the extent to which it will have been used as a dwelling in preference to the house at West Walton.
52. To have become lawful over time assessed against s171B(2) the barn would have had to be completed as a non-residential building and have subsequently changed use to a dwellinghouse and used continuously as such not less than 4 years before the notice was issued in September 2021. Quite plainly, since I am told that the building was 'erected in about 2019'¹⁰, this cannot have occurred within that timeframe.
53. The mobile home is not a building and so s171B(2) cannot apply to it.
54. I have considered the appellants' suggestion that there is a single composite dwellinghouse comprised of the 2 buildings and mobile home. However, such a development could not be described as 'change of use of any building to use as a single dwellinghouse', since it involves 2 buildings and a mobile home. Thus, this strand of the appellants' case can only be considered with regard to s171B(3), which specifies a 10 year period. Since both the barn and Building No 2 were built less than 10 years before the notice was issued, it is clear that the use is not lawful due to those provisions.
55. In any event, I have concluded that the allegation of a mixed residential and agricultural use is correct (albeit relating to a reduced site area). Thus, the development is not the change of use of any building to use as a single dwellinghouse. Consequently, whether it was too late to take enforcement action must be considered against the 10 years specified in s171B(3) for 'any other breach of planning control'. As I have already indicated, the evidence before me does not demonstrate 10 years use, on the balance of probability.
56. For all these reasons, the appeals on ground (d) fail.

⁹ Appellant's Hearing Statement

¹⁰ Appellant's Planning Statement para 2.6

Ground (a)

Main issues

57. The main issues are:

- The effect of the development on the character and appearance of the area;
- Whether the site is appropriately situated in relation to services and facilities, having regard to local and national policies relating to the location of development;
- Whether the site is an appropriate location for a residential use, having regard to flood risk considerations; and
- Whether any harm is outweighed by any need for the development, and whether it makes any contribution to the provision of Gypsy and Traveller accommodation.

58. Since I have reduced the area targeted by the notice, my assessment of the planning merits of the development relates only to that reduced area.

Character and appearance

59. The deemed planning application (dpa) is confined to the matters stated in the notice, which is concerned with the use of the land rather than any operational development. Furthermore, the notice does not seek the removal of any buildings. Consequently, it is the effect of the use, rather than any buildings associated with it, that I must consider.

60. The site is located in the countryside, beyond the confines of the settlement of Outwell. It is part of a landscape described as 'Settled Fens' by the Council's Landscape Character Assessment. The Council is concerned that the domestication of the land alters its appearance and dilutes its countryside character. However, for the most part, the residential use is well contained by fencing and buildings and would be largely unnoticeable from outside the site.

61. The garden area to the rear of the barn is more open and can be seen on the approach to the site along Baldwins Drove. So too can an area used for parking vehicles. While some vehicles may be there in connection with the lawful use of the land, the additional residential use appears likely to increase the number of vehicles, particularly cars (as opposed to commercial or farm vehicles) and the time that they spend parked at the site. Thus, they add to the impression that the site has a residential element to its use. This erodes the rural character of the area, albeit only to a modest extent.

62. I conclude that the garden area and the parking of vehicles associated with the people living on the site result in a degree of domestication which erodes the rural character of the site. The effect of this is limited and possibly could be reduced further with landscaping, although there is no scheme before me to show what could be achieved. I am also mindful that the site is not prominent, being away from main roads and reached via an unmade track. Nevertheless, the harm I have found leads to conflict with Policy CS06 of the Council's Local Development Framework Core Strategy, which seeks to maintain local character in rural areas.

Location, services and facilities

63. Core Strategy Policy CS02 sets out the settlement hierarchy for the borough and identifies Outwell, alongside Upwell, as a joint Key Rural Service Centre. Key Rural Service Centres are said to provide a range of services that can meet basic day-to-day needs and can be a focus for local scale development, including new housing. Policy DM2 of the Council's Site Allocations and Development Management Policies Plan seeks to focus development within the development boundaries of settlements and restrict development in the countryside to certain specified forms of development identified as suitable in rural areas.
64. The appeal site falls outside the settlement boundary for Outwell/Upwell. It is in a rural location, reached via a narrow lane and a track (Baldwins Drove) and remote from services and facilities. The appellant says it is only 0.75km from the development boundary of Outwell/Upwell and I accept that this may limit the need to travel to an extent. Nevertheless, in my judgement the distance to shops and services within the settlement, combined with the nature of the route, which means travelling on a track and lane without pedestrian facilities, means that trips to reach services are generally likely to be made by car.
65. Policy DM2 sets out examples of the types of development that may be permissible in the countryside, but the evidence before me does not show that any apply in this case. Directing new development towards settlements in accordance with the Council's strategy will limit reliance on private motorised transport. This is in alignment with wider sustainability objectives, as set out in the National Planning Policy Framework (The Framework).
66. I conclude that the site is not appropriately situated in relation to services and facilities. The residential occupation of the site runs counter to the aims of policies CS02 and DM2 of focusing development in established centres, where services and facilities are available and reliance on private motorised transport can be minimised.

Flood risk

67. The site lies within Flood Zone 3a, which relates to land which has a 1% or greater annual probability of river flooding; or Land having a 0.5% or greater annual probability of sea flooding. The appellant refers also to an Environment Agency map categorising the site as at medium long-term risk. 'Medium risk' in this context indicates land that has a chance of flooding of between 1% and 3.3% (taking account of any flood defences). This does not strike me as being inconsistent with the Flood Zone 3a categorisation but, in any event, it is the Flood Zone categorisation which is key to the application of Government policy relating to flood risk.
68. Paragraph 159 of the Framework states that: "Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere." Core Strategy Policy CS08 also seeks to guide development away from areas of high flood risk.

69. Annex 3 of the Framework categorises mobile homes intended for permanent residential use as highly vulnerable to flooding and buildings used for dwellinghouses as more vulnerable. The Government's Planning Practice Guidance (PPG) establishes at Table 2 that highly vulnerable development should not be permitted within Flood Zone 3a or 3b. The use of the mobile home on this site as residential accommodation runs counter to that policy.
70. As to the residential buildings on the site, the PPG advises that more vulnerable development should only be permitted in flood zone 3a where the sequential and exception tests are passed. The sequential test is applied first, and only if that is passed is it necessary to apply the exception test. It is common ground that the sequential test should be applied to this development, a view I share.
71. The appellant argues that alternative sites for residential use are limited, pointing out that there are extensive areas within the Borough that lie within Flood Zone 3. However, no more detailed assessment of alternative sites has been provided. Moreover, land within the nearby service centre of Upwell and Outwell lies within Flood Zone 1, suggesting that land suitable for residential use may well be available within areas at a lower risk of flooding than the appeal site. Neither side has provided details of alternative sites and I am told that the allocated sites are not available or are unsuitable or unaffordable for the appellants. However, I have not been provided with evidence to show this. It is for the appellant to demonstrate that the sequential test has been passed, and I have no evidence to show any attempt to actively assess alternative sites. Consequently, I find that the sequential test has not been satisfied. In these circumstances, it is not necessary to go on to consider the exception test.
72. For the appellant it is argued that the land is safe because of the established flood defences. I am told that the main risk would arise from the failure of the defences, but that this is highly unlikely because the defences and drainage ditches are well maintained by public authorities. However, the presence of such defences do not mean that a proposal is safe, only that while the defence is maintained the risk is reduced.
73. The Framework establishes that a site-specific flood risk assessment (FRA) should be provided for all development in Flood Zones 2 and 3. The appellants have provided one. This states that the site has a medium risk of flooding and asserts that the development can be made safe for its lifetime. However, during cross examination Mr Carruthers accepted that the level of water during particular flood events – which has implications for safety – was not known. Moreover, the FRA does not consider the buildings on the site in any detail and lacks detail as to how the development could be made safe. Although the barn has an upper floor, the other residential elements do not. While an evacuation plan could be required by a planning condition, that would only be an appropriate course of action if it were clear that the development could be made safe.
74. During the inquiry I was provided with the Environment Agency's response to a request for a Flood Defence Breach Hazard Map ('Product 8') for the site. The request was refused on the basis that there was no breach data at this location. However, I cannot assume from that that the site is safe in terms of flood risk. The Agency's response refers to the Flood Map for Planning (Rivers and Seas) and Fenland Flood Zone Improvements modelling, but explains that further detail may be required for site specific flood risk assessments.

75. I have been referred to an appeal decision to grant planning permission for a Gypsy and Traveller caravan site nearby¹¹, in which flood risk was also raised as a consideration. However, in that case the site was on Flood Zones 1, 2 and 3. Moreover, there were extant pitches in Flood Zone 3, which the inspector described as 'a significant fallback position'. Consequently, that is not a genuinely comparable case and does not lead me to any different view.
76. In conclusion, it has not been demonstrated that the appeal development passes the sequential test. Residential mobile homes are highly vulnerable to flood risk and national policy clearly discourages them in areas at high risk of flooding. While an FRA has been submitted, the detail it contains is insufficient to demonstrate that the development can be made safe. I therefore conclude that the site is not an appropriate location for a residential use, having regard to flood risk considerations, and find conflict with Policy CS08 of the Core Strategy and the advice set out in the Framework and the PPG.

Personal circumstances and need

77. The site currently provides a home for the appellants. Thus, upholding the notice would lead to the loss of a home for four people.
78. The appellants say that there is a shortage of suitable housing locally that would meet their needs. This is partly on grounds of cost. Additionally, however, it is agreed that the appellants are Gypsies. I am told, and the Council does not dispute, that some family members have an aversion to living in houses. I can therefore see that the varied accommodation on the appeal site provides a solution to the appellants' particular housing requirements.
79. Moreover, it is a matter of agreement that there is a significant shortfall in the provision of Gypsy and Traveller accommodation in the area. As I have already explained, I do not regard this as a Gypsy site simply on the basis that people meeting the Gypsy/Traveller definition live there. However, the fact remains that those living on the site are part of the overall local Gypsy/Traveller population who need to be accommodated somewhere. Thus, the site fulfils a role in housing people who might otherwise seek or take up Gypsy/Traveller accommodation. Consequently, the shortfall in Gypsy/Traveller sites is an important matter to which I attach significant weight.
80. It is also argued that the appellants remaining at this site is the most cost-effective option and that a cessation of the residential use of the site would create a cost to the public purse, as well as being at odds with the appellants' wishes.
81. Overall, there are significant benefits arising from the use, including providing accommodation for people the Council accepts are Gypsies, and I attach significant weight to those benefits.
82. Race (including ethnic or national origin) is a 'protected characteristic' for the purposes of the Public Sector Equality Duty (PSED) set out in s149 of the Equality Act 2010. Consequently, since the appellants are Gypsies, I have had due regard to the aims of the PSED, together with relevant provisions of the Human Rights Act 1998, in determining the appeal. I return to this later.

¹¹ App/V2635/W/22/3307596

83. Drawing the above together, there is clearly a benefit for the appellants retaining their current home. However, I also consider that the impact on those concerned will depend to some degree on the time allowed for compliance with the notice, a matter I consider further in relation to the ground (g) appeal. Nevertheless, the appellants' circumstances and the need for the development are important considerations to which I attach significant weight.

Other matters

84. A range of other matters are raised on behalf of the appellants. It is argued that the GTAA is flawed and discriminatory. However, the GTAA identifies, and it is common ground, that there is a significant unmet need for Gypsy and Traveller accommodation within the borough. That is the relevance of the GTAA to this case and it is a relevant and important consideration in the appellants' favour. The broader question of whether the GTAA is discriminatory in its approach is a matter for the authors of the report and the Council rather than me. Nor is the tendering process for that document a consideration for me.
85. It is said that it is important to clearly define certain words and phrases to ensure consistency in other cases. However, it is not part of my role to seek to define such terms, except insofar as relevant to the case before me.
86. It is argued that the Gypsy community is discriminated against as a result of the way habitat mitigation charges (known as GIRAMS) are applied, but the application of those charges is not a matter for me to consider in this case.
87. It is argued that the development is compliant with the Planning Policy for Traveller Sites (PPTS). Since I have concluded that this is not a Gypsy/Traveller site, that is not a relevant consideration. But in any event, the PPTS makes clear that local planning authorities should not locate Traveller sites in areas at high risk of flooding. Core Strategy Policy CS09 (Housing Distribution) takes a similar stance. Thus, applying the PPTS could not lead me to any different conclusion in any event.
88. The appellant has produced a Value for Money Report considering different options and concluding that allowing the current use of the site to remain represents the most cost-effective option for the public authorities. However, that must be balanced against the consistent application of planning policies in the public interest and I am not persuaded that a scheme contrary to relevant policies should be permitted on that basis.
89. I have considered whether a temporary or personal planning permission could be appropriate in the circumstances of this case but, given my concerns relating to flood risk and safety, conclude that neither course of action would be appropriate.
90. The site lies within the Zone of Influence of 2 protected European habitat sites - The Wash (SPA, SAC and Ramsar) and Breckland (SPA and SAC). The Council consider that the adverse impact of the development on the integrity of these sites could be mitigated with a standard 'GIRAMS' tariff payment. However, since the appeal is dismissed for other reasons, it is not necessary to consider this further.

Conclusion – ground (a)

91. The harm I have found and consequent conflict with development plan policies leads me to conclude that there is conflict with the development plan as a whole. Having considered all matters raised in support of the development, and having due regard to the need for the development and the personal circumstances raised, I conclude that the harm I have found is not outweighed.
92. I have no doubt of the important implications of upholding the notice for the occupiers of the site. Loss of their home would represent a serious interference with their right to respect for their private and family lives and homes in accordance with Article 8 of the European Convention on Human Rights, as set out in Schedule 1 of the Human Rights Act 1998.
93. However, that is a qualified right. The interference in this case is in accordance with the law, given the provisions of the Town and Country Planning Act 1990 and related legislation. While the notice would result in four people losing their current home, that must be weighed against the public interest of ensuring the proper planning of the locality. I cannot see that the legitimate planning aim of directing new homes towards areas well related to local services and free from flood risk could be achieved by any other means which would cause less interference with their rights under Article 8. In my judgement, and bearing in mind also my decision in relation to the ground (g) appeal, dismissal of the ground (a) appeal is a necessary and proportionate response, and would not result in any violation of the rights of the individuals concerned.
94. I have had due regard to the aims set out in the PSED of eliminating discrimination, victimisation or harassment against persons with protected characteristics, advancing equality of opportunity for those persons and fostering good relations between them and others. Nevertheless, for the reasons explained above, I conclude that the enforcement notice is a proportionate response to the breach of planning control, subject to the changes I shall make to it.
95. For these reasons, I conclude that planning permission should not be granted and the appeal on ground (a) therefore fails.

Ground (f)

96. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the allegation concerns the introduction of a residential use and the notice requires the cessation of that use. This is consistent with remedying the breach of planning control in accordance with s174(4)(a). Consequently, I do not regard the requirement as excessive. In any event, the appellants have not put forward any specific alternative measures to achieve that purpose.
97. The appellants argue that it is pointless to require the cessation of the use of the buildings when the structures themselves can remain. However, I have considered the use under ground (a) and found it to be harmful. In any event, the buildings might be put to alternative uses. Indeed, one of the buildings is

described as a barn and is generally similar to the barn for which planning permission was sought and granted in 2017.

98. For these reasons, the appeals on ground (f) fail.

Ground (g)

99. Under ground (g) the appellants seek a longer period to comply with the requirements of the notice. The appellants initially suggested a 9-month period¹², but a 2-year period was subsequently suggested at the inquiry.

100. I have no clear evidence to justify a 2-year period and am mindful of the desirability of remedying the breach of planning control without undue delay. However, the notice allows just 2 months for compliance. Within that time, the residential use of the site, which is apparently home to the 4 appellants, must cease. In my view that is an inadequate period. Significant additional time is needed to allow the appellants time to look for alternative accommodation.

101. While the appellants have been aware of the breach of planning control for some time, they appealed the notice on a number of grounds. As a consequence, the notice might have been quashed or its requirements varied, and they could not be expected to make arrangements for matters yet to be determined. Consequently, the period prior to the notice taking effect is not relevant. I appreciate that a house previously occupied by the appellants has been sold, but I must consider what is reasonable having regard to all the current circumstances. In my judgement, 9 months would achieve an appropriate balance and amount to a proportionate response to the breach that has occurred.

102. The appeal on ground (g) therefore succeeds to the extent described and I will vary the notice to specify a 9-month compliance period.

Conclusion

103. For the reasons given above, I shall uphold the enforcement notice with correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Peter Willows

INSPECTOR

¹² Appellants' Hearing Statement



The Planning Inspectorate

Plan

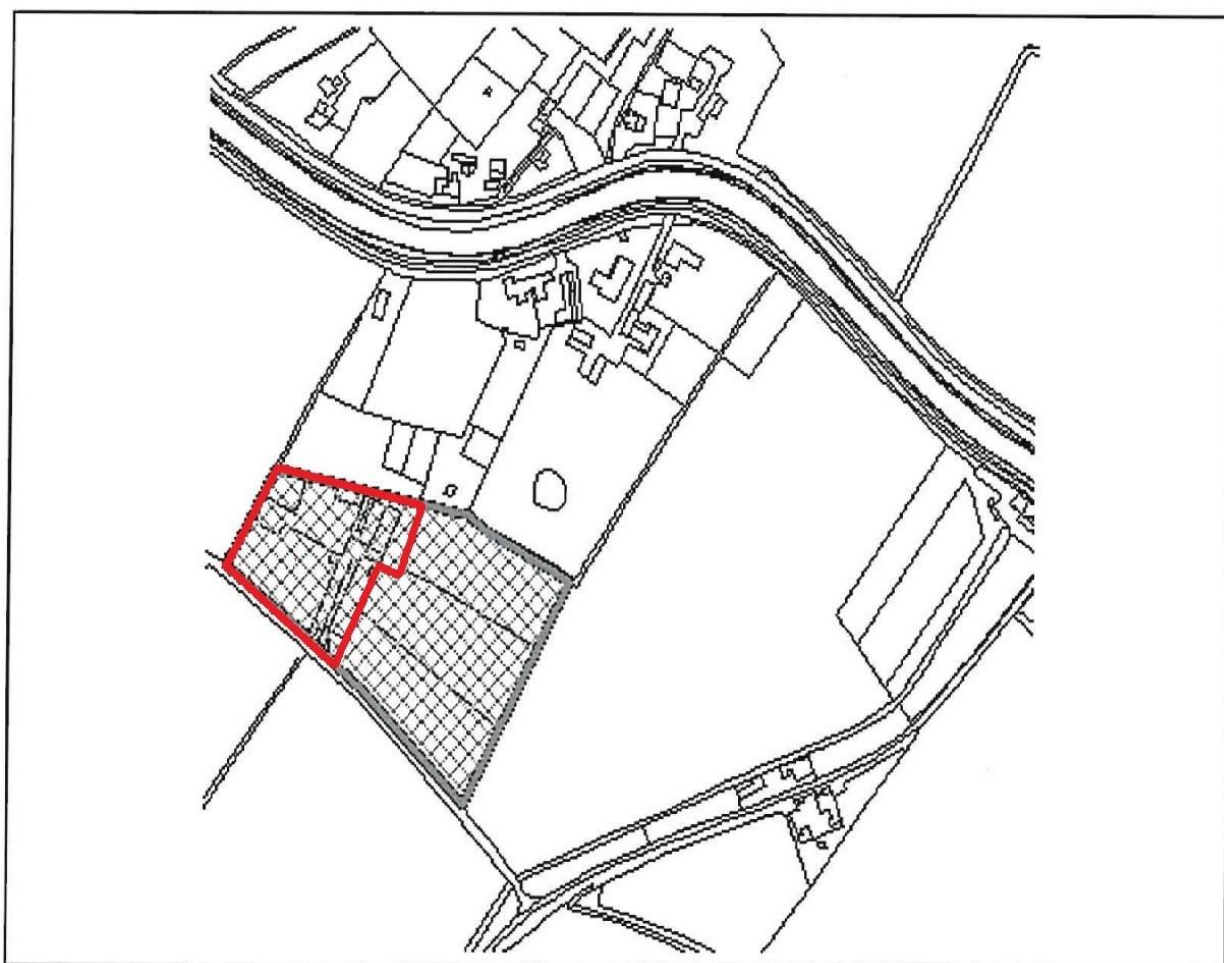
This is the plan referred to in my decision dated:

by P H Willows BA MRTPI

Land at Robyn's Nest, Baldwins Drove, Outwell, Norfolk PE14 8SB

**Appeal Refs: APP/V2635/C/21/3286363; APP/V2635/C/21/3286364;
APP/V2635/C/21/3286365; APP/V2635/C/21/3286366**

Scale:NTS



APPEARANCES

FOR THE APPELLANTS:

Stuart H Carruthers

WITNESSES

J Vickers

C Vickers

Stuart H Carruthers

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader, of Counsel

WITNESSES

Michael Bates, Planning Enforcement Officer, KLWNBC

Lucy Smith Bsc (Hons) MURP MRTPI, Planning Officer, KLWNBC

DOCUMENTS ACCEPTED DURING THE INQUIRY

1. Email dated 21 June 2023 – Discrimination Complaint
2. Letter to Planning Policy Manager dated 20 June 2023
3. Email dated 9 June 2023 – BCKLWN – Local Plan – Gypsy and Traveller Accommodation Assessment
4. Borough Council of King's Lynn and West Norfolk – Latest Examination News
5. Environment Agency Email dated 27 June 2023 – response to FOI request
6. King's Lynn and West Norfolk Borough Council GTAA Final Report - June 2023
7. Flood Zone Map – Wider View
8. Additional Documents GTAA/Flood Risk – Stuart H Carruthers 28 June 2023 [Excluding Document F – Email Chain – which was not accepted]
9. Aerial Photographs
10. Photograph of site
11. Site map – Dwg2 – with red line marking
12. Proposed list of conditions – LPA
13. Proposed list of conditions – appellant.

Written opening submissions were also provided by both main parties.