

Appeal Decision

Site visit made on 28 August 2024

by Grahame Kean BA(Hons) Solicitor MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 November 2024

Appeal Ref: APP/J3015/C/22/3309558

Land adjacent 313 Nottingham Road, Toton, Nottingham, NG9 6EG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Elijah Connors against an enforcement notice issued by Broxtowe Borough Council.
 - The notice was issued on 20 September 2022.
 - The breach of planning control as alleged in the notice is: without the benefit of planning permission
 - (i) the material change of use of the land to residential and
 - (ii) the siting of a static mobile home, the raising of site levels and the construction of close boarded fencing on the western, eastern and southern boundaries of the site. The position of the fencing is annotated on the attached plan in green.
 - The requirements of the notice are:
 - (i) Permanently cease the use of the land for residential purposes and cease the occupation of the static mobile home
 - (ii) Permanently remove the static mobile home from the land
 - (iii) Permanently remove the hard surfacing materials, used for the raising of the site levels, from the land and reinstate the ground levels of the land to LiDAR heights as provided by the Environment Agency of between 27.36m AOD and 28.1m AOD as set out in the Environment Agency's Statement of Case Page 3, paragraph 2.5 dated 19 October 2021 (enclosed) and suitably dispose of the resultant waste materials.
 - (iv) Reduce the height of the close boarded boundary fencing so that it does not exceed 2 metres from the reinstated ground level as required by (iii) above.
 - The periods for compliance with the requirements are:
 - (i) 8 weeks from the effective date of this notice
 - (ii) 12 weeks from the effective date of this notice
 - (iii) 12 weeks from the effective date of this notice
 - (iv) 12 weeks from the effective date of this notice.
 - 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.
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Formal Decision

1. The appeal succeeds on ground (g) and it is directed that the enforcement notice be varied as follows:

- as to the period for compliance with requirement (i) and (ii) delete "8 weeks" and "12 weeks" and in each case replace with "4 months";
 - as to the period for compliance with requirements (iii) and (iv) in each case delete "12 weeks" and replace with "5 months"; and
 - in requirement (iii) replace "suitably dispose of the resultant waste materials" with "remove the resultant waste materials from the site."
2. Subject to these variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matters

3. The appeal was started with a view to being determined by a hearing. However, the appellant did not submit a statement of case for the notified hearing. This was despite his agent having claimed that the appeal raised issues of personal circumstances and human rights that could only be properly considered by a hearing. The appellant's case was made on the basis that the site is suitable for a gypsy/traveller caravan site and the lack of sites generally. However, no case at all was made on personal circumstances. On review, the procedure changed to written representations.
4. As a result of changing the mode of determination to written representations, final comments were invited to be made by the main parties by 16 August 2024. The Council commented in relation to need for accommodation on the site, that since the commencement of the appeal process the appellant Mr Connors and his family had never lived on the site but it was still occupied by tenants. Indeed, the Council's original statement in this appeal dated December 2022 alleged that Mr Connors, the appellant owned a newly built detached four-bedroom residential property on Carlton Road c2.5 miles from the appeal site and questioned whether he could satisfactorily demonstrate a need for the site to be a primary home for him and his family.

Ground (a)

5. The main issues are:
- whether the proposal would be inappropriate development in the Green Belt (GB) and the effect of the proposal on the openness of the GB;
 - character and appearance;
 - flood risk;
 - living conditions of neighbouring occupiers, including 313 Nottingham Road;
 - provision for gypsy and traveller sites;
 - whether appellant/occupants have overriding need for accommodation; and

- planning balance including whether the harm to the GB by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations such as to amount to the very special circumstances necessary to justify the development.

Whether inappropriate development

6. The mobile home is to the rear of the appeal site in the south-east corner. Part of the site is in the GB, a strip of land inside the north-east boundary widening out into a triangular area covering the south-east corner where the home is sited. The fields to the south-east and north-east are also in the GB.
7. The National Planning Policy Framework (Framework) states that the fundamental aim of GB policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and their permanence. Section 13 of the Framework does not contain exceptions for development in the GB as gypsy and traveller sites.
8. The whole of the appeal site is used residentially. In his statement of facts and grounds, the appellant's agent suggested that a condition could ensure that the mobile home is moved outside the GB area, which area would be returned to its former condition by removing the fencing on the east and south boundaries and lowering the level of the land to the 2016 level. This is considered separately below but, in any case, it does not amount to a proposal to alter the boundary of the appealed application site, merely to remove the mobile home itself from the GB.
9. The officers' delegated report for the application to retain the mobile home (the refusal of which prompted the current enforcement action), took into account an amended site plan (but not submitted in this appeal) whereby apparently the mobile home would be repositioned to the south-west of the site such that no development, save for the timber fencing, would be in the GB. Whilst permission was refused on other grounds, officers stated that if the mobile home were so moved, there would no longer be harm to the GB.
10. However, the mobile home has remained in its position as shown on the plan attached to the enforcement notice. Consequently, it is incorrect and misleading to conclude as the appellant's agent does, that the appeal site is not located in the GB. There has been no formal amendment proposed to the deemed application or other plan submitted with a proposed revised boundary for the residential use of the land such that I might have considered.
11. I find that the development described in the notice as regards part of the site in the GB would be inappropriate development. Paragraph 153 states that substantial weight should be given to any harm to the GB. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. This position is reflected in Policy E of Planning Policy for Traveller Sites (PPTS) December 2023, which expressly states that traveller sites in the GB are inappropriate development, and that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the GB and any other harm so as to establish very special circumstances.

Effect on openness

12. The original pre-existing lawful use of the appeal site is uncertain but presumed to be originally agricultural as a greenfield site and part of a flood plain. In 2013 planning permission was granted to erect chain link fencing to the north-east and south-east boundaries and create a dropped kerb. It appears to have been largely open at that time. Planning permission was refused twice (Refs 14/00168/OUT and 15/00494/OUT) to erect a storage unit and refused (Ref 16/00759/FUL) for the erection of a dwelling.
13. The same appellant as in the current appeal was also refused permission to retain the mobile home for residential use and his appeal then was dismissed on 20 June 2022 (Ref APP/J3015/W/21/3272021) after a hearing.
14. Clearly the installation of a mobile home and the domestic paraphernalia surrounding it, including a large area of hardstanding, outbuildings, brick gate piers and walls built to either side of the access and the parking of vehicles have had an adverse effect on openness of the site including the GB where the mobile home has been stationed for a substantial period of time.

Character and appearance

15. The appeal site is a rectangular area of land some 0.06ha in size, on the eastern boundary of Nottingham Road, a fairly busy distributor road, at the end of a ribbon of semi-detached, two-storey houses. Open fields lie to the east and south of the site and beyond is a retail park whilst the field to the south, slopes down to the River Erewash.
16. Policy C of PPTS suggests that gypsy sites may be located in rural or semi-rural areas if their scale is appropriate to their location. Paragraph 25 of Policy H states that new traveller sites should be very strictly limited in the open countryside away from existing settlements or outside areas allocated in the development plan. The site is at the edge of Toton with local services and community facilities within reasonable travelling distance. There are footpaths either side of the road and street lighting. Absent GB considerations that pertain to part of the site, there is no dispute that the site may not be suitable in principle, for allocation as a gypsy site.
17. However, the housing nearby has uniform characteristics, being single and two-storey brick built terraced or semi-detached houses or bungalows. The adjacent terraced row of dwellings exhibits open frontages and whilst their designs may differ in detail, the development in the appeal plot appears in stark juxtaposition to the ribbon development on both sides of the road. The static caravan is largely hidden from views within the road, behind solid and tall timber gates, brick piers and fencing. The boundary treatment undermines the generally open character of housing in the area giving the development a somewhat intimidating appearance within the street scene.
18. The description of "dwarf brick walls" either side of the access is accurate but omits the fact that it is virtually impossible to see the site over the brick piers and large gates across the whole frontage. I also agree with the previous Inspector that within the plot, to extend frontage activity across the site adds to the incongruity when compared to the adjacent ribbon development.

19. The incongruous nature of the development is exacerbated by the large expanse of hard-surfaced gravel covering most of the plot and its enclosure by close-timber fencing along its eastern, western and southern boundaries. No details of additional landscaping within the site were submitted as part of the application or appeal.
20. The appeal site is connected to mains water and electricity, and a septic tank has been buried just outside the site. This is an unseen use of the flood plain which I deal with later in this decision and the Council's building control officer advised that the siting of the tank is unacceptable in the area of flood risk.
21. The development fails to comply with Policy 9.2 c) of the Broxtowe Aligned Core Strategy 2014 (CS) in that it would have unacceptable impacts on the appearance or character of the area in which it is situate. It would also conflict with CS Policy 10 and Policy 17 of the Broxtowe P2LP (LP) by failing to integrate into its surroundings due to its siting and choice of materials, to the detriment of the visual amenity of the street scene and character and appearance of the area.

Living conditions of neighbouring occupiers

22. The position of the mobile home to the rear of the site reduces the privacy for the adjacent neighbour at No 313. Although no formal amendment to the deemed application is before me, were the mobile home to be relocated outside the GB to the south-west corner of the site, that would be significantly closer to No 313. The delegated report considered such a position but due to the raised height of the home and its windows officers found, and I agree that there would be unacceptable impacts on privacy for the occupiers of No 313. Requiring the facing windows to be obscurely glazed would restrict access to natural light due to the internal layout of the home.
23. The precise location of the mobile home could be made the subject of a condition. The Council accepts that re-siting the caravan could address this issue. A condition to this effect should ensure if practicable, that the siting avoids the part of the site that falls within the GB designation. If the development were acceptable in all other respects, any part of the mobile home that may encroach on the GB area would not be an overriding factor.
24. It is therefore considered that the re-positioning of the static caravan home could meet the policy requirements of CS Policy 10 and LP Policy 17 in not having an unacceptable impact on the amenities of the occupiers of No 313 or the occupiers of the new development subject to an appropriately worded condition, but only in respect of matters concerning privacy and internal layout of the caravan. The effects of the development on neighbouring property and its occupiers must be considered as part of the flood risk issue.

Flood risk

25. I saw that the appeal site is raised considerably higher than the land on the adjoining boundary at No 313. The previous appeal decision rejected the retention of the mobile home for the reasons there stated. It was not disputed then, and it is not disputed now that the site lies within Flood Zone 3.
26. The Inspector found that the site was "*noticeably raised above the level of the adjacent field and the neighbouring plot of 313 Nottingham Road*". The

degree to which site levels were raised was disputed but the Inspector concluded that the appellant raised levels by considerably more than 200mm in some parts of the site. Apart from her finding that the development would adversely affect openness mainly due to the raised levels associated with the change of use and the solid boundary fence, the appellant had “*effectively create[ed] an island within the flood plain*”. It appeared that at least half of the raising of levels was associated with the development. She continued:

“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” (emphasis supplied).

27. The Inspector’s concerns included that raising site levels would displace flood water and impede drainage even in localised events, whatever the water’s source. Although the site was raised before its purchase by the appellant, further raising of levels had and would “*continue to displace water to neighbouring plots and impede the movement of flood waters*” contrary to the requirements of Paragraph 164 of the Framework regarding the exception test, LP2 Policy 1 and CS Policy 1 with respect to the need to demonstrate wider sustainability benefits that outweigh the flood risk.

28. The concerns that the Inspector expressed about flooding on the appeal site are very serious concerns. Caravans used for permanent residential occupation are highly vulnerable to the potential impacts of flooding whatever may be the case as to the existence of alternative available sites.

29. Local residents commented, which is not disputed by the appellant, that the site used to be depressed lower than the land level at No 313, and always used to flood first before the residents’ land did. Issue was taken with the appellant’s assertion that flood flows would be routed away from the site and into adjacent floodplain:

“The reality and lived experience for residents, over many years, is that flood waters cover the gardens, sides of properties, anywhere it can find, and flows onto the field, and increasingly into the A6005 main road in more recent times. The Appellant’s land is the only land that stays dry due to the raised levels and fencing”.

30. The images from Storm Babet in 2023 show that in fact the appeal site did not escape that particular flood event. I have read the submitted flood risk assessments, but they were also considered in the previous appeal. No new evidence is submitted now which could rationally provide effective protection, as the detailed commentary from the Environment Agency (EA) demonstrates. The appeal site was impacted recently by significant flooding from the River Erewash during Storm Babet. The photographic images show the appeal site considerably under water as well as neighbouring property including No 313, but the occupants of the caravan remain highly vulnerable to flooding events.

31. The EA’s comments reinforce my concerns. The data indicates that flood depths during this event could have varied between 0.81m and 1.41m across the site. Siting the caravan centrally in the site to allow for lowering of land

levels in the southern part is relied on to protect neighbouring occupiers and property but wherever the caravan is sited it will be within flood zone 3b according to the modelled flood extent shown within the Greater Nottingham Strategic Flood Risk Assessment. There is no location across the whole site which would be suitable for a highly vulnerable development, even if ground levels were lowered in the southern half of the site. The development is as incompatible with the flood zone as was the case in the previous decision.

32. Moreover, reinstating ground levels in the southern half of the site would not account for the floodplain volume lost due to the caravan occupying space that would reduce the volume of flood storage available, and therefore present an increased flood risk to third parties. There is no compensatory storage to mitigate for lost storage volume. In simple terms, the more the appellant elevates the levels, the more exposed their neighbours are to the impacts of another flooding event.
33. I conclude that the appellant's case focuses on the safety of the intended occupiers of the site with little or no regard for neighbouring occupiers or their property. No measures proposed to mitigate residual fluvial flooding risk would obviate satisfactorily the risk of flooding through displacement of flood water to nearby properties, the public highway, or disruption to the flow of floodwater. No details of flood compensation were supplied. The development continues to breach the requirements of Paragraph 164 of the Framework, Policy CS 1 and LP Policy 1 as to the exception test, the need to demonstrate wider sustainability benefits that outweigh the flood risk and the lack of any flood compensation measures that would replace lost flood storage.

Provision for gypsy and traveller sites

34. Insofar as the appeal is made on the basis that the site is suitable for a gypsy and traveller site, the appellant maintains that the need for two permanent pitches identified in LP Policy 16 is outstanding and unmet and he has acquired a private site to accommodate the need. Whilst acknowledging this need, the Council points to a revised GTAA assessment in March 2021 that identifies that at the time of the report there was no identified need for accommodation forecast for between 2020 and 2038 in its area. The GTAA has been found by Inspectors on appeal not to be a robust assessment and that it under-estimates the true level of need. For the purposes of this appeal, it can be assumed that the identified need for 2 permanent pitches has not been met and remains outstanding. 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, as it was in the previous appeal decision.

Whether overriding need demonstrated in appellant/occupiers' circumstances

35. After the previous appeal decision was issued, the Council's Environmental Health Officer (EHO) visited the site in August 2021 noting that it was occupied by two persons, not the appellant or his wife and children. No evidence has been submitted to the contrary. It was believed the occupant was an adult female and her daughter (age unknown). It was unclear as to whether these occupiers had gypsy or traveller status, but the EHO was told they had moved to the site following sale of property in Beeston, a temporary measure whilst they looked for a suitable property to which to move.

36. The previously appealed application was for a change of use to residential and it was claimed to provide accommodation for a person or family of gypsy or traveller status. Neighbours responding to the notification at the time doubted whether the applicant had a nomadic lifestyle as he was understood to reside on a site in the neighbouring authority and ran a business there. The previous Inspector found on the evidence then before her that she had no reason to doubt that the appellant and his immediate family had gypsy status as defined in Annex 1 of PPTS.
37. However, the Council asserts that the need for accommodation for the appellant on the site is indeed questionable and refers to his permanent residence described above. There is no evidence to support the claim that he has ever lived on the site. He was clearly not in occupation when I inspected the site which currently appears to have been let to a single mother with a child. No information was supplied as to their gypsy status or otherwise.
38. When I inspected the appeal site, the gate was opened by a male who, I was clearly given to understand, did not live at the property, the sole occupants being the mother and her infant child who had been there for the past two years or more. A car on site, the mother told me, belonged to the appellant and was stored there. The appellant has allowed the caravan to be tenanted for this period in the full knowledge that the residential use of the caravan is unauthorised in planning terms.
39. There is uncertainty in the information supplied about the existence and extent of need for gypsy accommodation on the part of the appellant or the occupants. It has not been demonstrated on the balance of probability on the information submitted, that either person has gypsy status as defined in PPTS Annex 1. Nor has the appellant through his agent made any case on the supply or lack of adequate mainstream housing in the borough or as to how this might affect these tenants.

Planning balance

40. PPTS, Policy E states that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the GB and any other harm so as to establish very special circumstances. It is clearly in the best interests of the infant child to have a settled home to be able to be looked after by its mother in a location which is close to services and facilities.
41. The best interests of the child are a significant factor in favour of the appeal. The site is only partly in the GB. The appellant failed to supply any personal circumstances pertaining to him or the occupants for me to consider. It is reasonable to assume that more suitable permanent accommodation is currently unavailable for this family. I find that the best interests of the child and the circumstances of the family clearly outweigh the harm to the GB as well as harm caused due to character and appearance and living conditions.
42. The lack of supply of deliverable traveller sites is a significant material consideration as set out in PPTS, paragraph 27. However, the Inspector concluded in the previous appeal decision that if the site were for the occupation of a gypsy family including young children the unmet need for pitches would outweigh any harm to the GB, but also stated that in relation to

flood risk and the effect of the development on other land uses and occupiers outside the site, the harm was not outweighed by the best interests of the child and any overriding need for accommodation. I see no reason to disagree as far as concerns the present appeal for which the appellant has presented no compelling new information that would change that conclusion. A temporary permission would be inappropriate because it would not overcome the serious concerns I have in relation to flood risk described above.

43. I conclude that the development is contrary to the local development plan as a whole, as well as national guidance. No other considerations taken singly or in combination carry sufficient weight to cause the appeal on this ground to be decided otherwise than in accordance with the development plan policies described above which are the important policies to be considered. The appeal on ground (a) fails.

Ground (g)

44. The appeal form under this ground was completed by the agent stating that the appeal site "is someone's home" without being clear whose home it was or their circumstances. It is argued that 8 weeks is far too short to expect the occupants to obtain alternative accommodation and avoid homelessness. A period of at least 12 months is requested but no further detail is given to support the request for this period as may be related to the need to find alternative accommodation whether in a caravan or a conventional dwelling.
45. However, the site is inherently unsuitable for the unauthorised use mainly due to the risk of flooding and the consequential adverse impacts on the well-being of its occupants but also nearby residents. It would not be in the best interests of the occupants, including any child of the family, to remain there as this would only exacerbate the potential for harm to their well-being given the unpredictable timing of another flood event.
46. The availability of suitable alternative accommodation affects the degree of seriousness of any interference with Article 8 human rights and should be considered as part of the proportionality assessment including the best interests of the child. Interference with the home and family life of the site's occupants is necessary and proportionate here, having regard to the adverse impacts of continuing a residential use in a highly vulnerable non-permanent dwelling within a level 3 flood zone. I have been given no reason to doubt that the family could secure some form of alternative accommodation within a reasonable period albeit not one that would necessarily meet their aspirations.
47. In the circumstances a period of 4 months would give the tenants a reasonable opportunity to find alternative accommodation. I have been given no reason to suppose that as part of that search, application may not be made to the Council as housing authority with statutory responsibility for providing housing assistance which, in this eventuality would be on the basis that the applicants would be facing homelessness and therefore eligible for assistance, not be intentionally homeless and would clearly be in priority need. They would therefore be covered by s193 Housing Act 1996 which (per section 193(2)) provides that, unless the authority refers the application to another housing authority, it shall secure that suitable accommodation is available for occupation by the applicant.

48. I will adjust the period for reducing the height of the fencing, removing the hard surfacing and reinstating the former ground levels of the land, to ensure compliance takes place one month following cessation of residential use and removal of the caravan. As a "suitable" disposal of the resultant waste materials is vague I have amended this to require their removal off-site.

49. It goes without saying that the requirements of the notice leave the appellant, Mr Connors at liberty to assist his tenants in their search for alternative accommodation. This might well reduce the period in which they remain exposed to the ongoing danger to their well-being on the appeal site.

Conclusion

50. For the reasons given above I conclude that a reasonable period for compliance would be as indicated above, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal on ground (g) succeeds to that extent. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Grahame Kean

INSPECTOR