

Appeal Decision

Site visit made on 19 November 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 NOVEMBER 2024

Appeal Ref: APP/W3005/C/24/3348000

**Land on the west side of Brickyard, Brickyard Drive, Hucknall,
Nottingham, NG15 7PG**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Andrew Cash against an enforcement notice issued by Ashfield District Council.
 - The notice was issued on 19 June 2024.
 - The breach of planning control as alleged in the notice is without planning permission, unauthorised change of use of land to a mixed use including the siting of a mobile home/caravan for residential use and commercial storage use (including the parking of commercial vehicles, plant and machinery), the laying of hardcore and erection of a front boundary wall and gates to facilitate the use.
 - The requirements of the notice are 1) removal of and cease the use of the site for the stationing of a residential mobile home; 2) cease the use of the site for a commercial use and removal of all commercial vehicles, plant and equipment from the land; 3) remove the hard surfacing that has been laid across the land from the site and return the land to a grass paddock which is its former condition; 4) demolish and remove the front boundary wall and gates and remove all material resulting from the demolition of the site; and 5) restore land to its condition before the breach took place.
 - The periods for compliance with the requirements are 1) within 1 month from the date when the notice takes effect, cease the use of the land for a commercial use and stop parking and remove all commercial vehicles, plant and equipment from the site; 2) within 5 months from the date of when the notice takes effect cease the use of the land for the siting of a mobile home/caravan for residential use and remove the mobile home/caravan from the site; 3) within 6 months from the date when the notice takes effect demolish front boundary wall and gates and remove all material resulting from these works from the land; and 4) within 6 months from the date when the notice takes effect remove all the hard surfacing that has been laid on the land from the site, replace with a layer of topsoil and sow grass seed to return the land to its former condition.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (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.
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Decision

1. It is directed that the enforcement notice is corrected and varied by: -
 - (i) deleting all the words in section 5(3) and substituting them with *"remove the hard surfacing that has been laid across the land from the site and return the land to a grass paddock which is its former condition"*, and,
 - (ii) deleting all the words in section 6(2), 6(3) and 6(4) and substituting them with 6(2) *"within 12 months from the date of when the notice takes effect cease the use of the land for the siting of a mobile home/caravan for residential use and remove the mobile home/caravan from the site"*, 6(3) *"within 13 months from the date when the notice takes effect demolish the front boundary wall and gates and removal all material resulting from these works from the land"*, and 6(4) *"within 13 months from the date when the notice takes effect remove all the hard surfacing that has been laid on the land from the site, replace with a layer of topsoil and sow grass seed to return the land back to its former condition"*.
2. Subject to the correction and 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.

Preliminary Matters

3. The appeal site falls within the settlement boundary of Hucknall on the proposals map for the adopted Ashfield Local Plan Review 2002 (LP). It lies within housing allocation No. Hh 'The Brickyard' (0.7 hectare). Planning permission has been approved for a dwellinghouse on part of the appeal site¹. There is no dispute between the main parties that the planning permission for a dwellinghouse on the site is extant and therefore could be lawfully completed on the appeal site.
4. The appellant claims that footings have been excavated and concrete foundations laid although the evidence is that any alleged work on the construction of the dwellinghouse ceased in December 2021. I was able to observe on my site visit that hard surfacing has been laid over the site of the proposed dwellinghouse and beyond to facilitate the material change of use of the land. In this regard, I was not able to verify the claim made by the appellant that footings and concrete foundations have been laid in respect of the approved dwellinghouse on the site. Moreover, there is no certificate of lawful development before me which would lawfully confirm that in respect of the approved dwellinghouse a material operation had occurred in accordance with section 56 of the Act. The evidence is, however, that all pre-commencement conditions have been discharged by the Council, and this is confirmed in an email from the Council to the appellant dated 10 August 2021.
5. Notwithstanding the above, the existence of the planning permission is a material planning consideration to be considered as part of the consideration of the deemed planning application under the ground (a) appeal. At the very

¹ Outline planning permission V/2019/0013 and reserved matters consent V/2019/0652

least, it demonstrates the Council's acceptance of some form of residential development on part of the appeal land.

6. There is dispute between the main parties about whether the appellant is a Gypsy/Traveller. The Council states that it was only in respect of this appeal that the status of the appellant as an Irish Traveller was made known to it and that prior to that the evidence was *'for the caravan to be on site whilst the dwelling was to be built'*. While the evidence does indicate that the appellant did not disclose any information about being an Irish Traveller in respect of the submission of planning applications for the site, this in itself does not mean that he is not an Irish Traveller. The Council says that there is no touring caravan on the site and hence the appellant cannot meet the definition of a Gypsy/Traveller in annex 1 of the Government's Planning Policy for Traveller Sites as updated in December 2023 (PPTS). The absence of a touring caravan on the land does not in itself mean that the appellant is not an Irish Traveller.
7. The evidence from the appellant is that an appeal was considered in respect of an unauthorised caravan site in Felley Mill Lane North, Underwood and the appellant's Gypsy/Traveller status was accepted at that time². The Council has not disputed what the appellant says about this matter. Moreover, the evidence is that the appellant attends horse fairs and *'while travelling he knocks on doors to find work such as laying driveways and patios'*. The evidence is that he also carries out work in the Nottingham area.
8. The Council has not specifically disputed what the appellant says about his claimed Gypsy/Traveller status (including comments made about the Felley Mill Lane North appeal decision) but nonetheless emphasises that it is not *'appropriate to now claim Gypsy Traveller status as part of an appeal when no such claim has ever been made before at this site. Based on the evidence available, it does not appear that the appellant has an intention to continue with a Gypsy Traveller nomadic habit of life, as their intention has always been to build a dwelling on the site'*.
9. It is noteworthy that the definition of a Gypsy/Traveller includes such persons *'who on the grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently'*. It is not the case, therefore, that Gypsies and Travellers who have previously had a nomadic habit of life, and no longer intend to travel, do not meet the definition of a Gypsy and Traveller in the PPTS. There is no evidence before me to suggest that the appellant does not intend to travel in the future and, moreover, it is noteworthy that there are children on the site and some health needs as outlined later in this decision.
10. I do not know why it would have been necessary for the appellant to have disclosed his Gypsy/Traveller status or background as part of his planning application to erect a dwellinghouse on the land, or indeed his intention to position and live in a caravan on the land during the construction of such a dwellinghouse. The appellant has referred to his Gypsy/Traveller status and background in response to the enforcement notice being issued and in respect of the identified breach of planning control which does not relate to the erection of a dwellinghouse on the land.

² Planning application reference V/2011/0582

11. In my judgement, the evidence indicates that the appellant meets the definition of a Gypsy/Traveller in annex 1 of the PPTS. In this regard, policy HG9 of the LP is relevant in so far that it is a criteria-based policy which specifically deals with Gypsy and Traveller sites in the area. However, and as outlined in my concluding remarks in respect of the ground (a) appeal, this is not a matter which is decisive in terms of the outcome of the consideration of the deemed planning application.
12. Policy HG9 of the LP includes five criteria which must be met including criteria a) which is that *'the need for a site is established'*. I do not find that criteria a) is consistent with paragraph 11 of the PPTS, which post-dates the LP, and states *'where there is no identified need, criteria-based policies should be included to provide a basis for decisions in case applications nevertheless come forward'*. While I deal more broadly with the need and provision of sites for Gypsies/Travellers later in this decision, the PPTS does not require criteria-based policies to include a requirement for Gypsies/Travellers to prove a need for a site.
13. As criterion a) of policy HG9 is not consistent with the PPTS, this part of the policy is out of date from a decision-making point of view. I therefore afford criterion a) of policy HG9 minimal weight in decision making terms. Nonetheless, policy HG9 of the LP continues to hold material weight as a whole and indeed forms part of the adopted development plan for the area. I shall therefore consider the deemed planning application against the other identified criteria in policy HG9 of the LP.
14. The Government consulted on reforms to the National Planning Policy Framework 2023 (the Framework) on 30 July 2024 (Consultation Draft Framework). The consultation closed on 24 September 2024. I afford the Consultation Draft Framework limited weight in decision making terms as a material planning consideration. Considering the deemed planning application main issues below, there are no proposed reforms in the Consultation Draft Framework which have a material bearing on how this appeal should be considered. It is noteworthy that the Consultation Draft Framework states, at paragraph 4, *'the Framework should be read in conjunction with the Government's planning policy for Traveller sites'*. There are no current consultation reforms in respect of the PPTS.
15. Planning permission was sought by the appellant for the temporary siting of a mobile home³ on the land for the period of construction of the approved dwellinghouse on part of the appeal site. This was refused as the Council considered that there was no location on the site that could appropriately accommodate the proposed caravan whilst allowing for the construction of the dwellinghouse.

The Notice

16. Part of requirement 5(3) of the notice states *'which is it former condition'*. This is a typographical error and should read as *'which is its former condition'*. I shall accordingly vary requirement 5(3) of the notice, without injustice being caused to the main parties, by deleting the words *'which is it former condition'* and substituting them with *'which is its former condition'*.

³ Planning application reference V/2020/0371

Appeal on ground (a) and the deemed planning application

17. The appeal made under ground (a) of section 174(2) of the Act is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice.

Main Issues

18. I have considered the reasons for issuing the notice and the main issues are the effect of the breach of planning control on (i) the character, appearance and biodiversity of the area; (ii) the effect of the commercial use on the living conditions of the occupiers of neighbouring residential properties in respect of noise and disturbance; (iii) the effect of the boundary wall and gates on highway safety, and (v), if any planning harm has been caused by the breach of planning control, whether this is outweighed by other considerations so as to justify granting planning permission.

Character, appearance and biodiversity

19. Brickyard is a cul-de-sac accessed from Brickyard Drive via a level crossing over the railway line. Land to the west of Brickyard has a more sporadic pattern of development when compared to the more uniform pattern of dwellinghouses to the east of Brickyard. That said, the position of lawful dwellinghouses to the west of Brickyard is such that they are generally located close to the highway. Hence, this provides some order to the pattern of development in the street-scene as a whole.
20. The appeal site is adjacent to flat roofed garages and then there is a brick-built bungalow with a detached double garage set within a spacious plot. In the area generally, there is variety in the height and scale of built development although most of the properties are two storeys and the prevailing building material is either brick or render. Moreover, there is a variety of boundary treatment along Brickyard including fencing, brick walls and gates.
21. The appeal site forms part of a housing allocation which indicates the erection of 25 dwellings. A dwellinghouse has been approved on part of the site, i.e., that part of the site fronting the road known as Brickyard. The appeal site is larger than that associated with the approved dwellinghouse. Nonetheless, the erection of a dwellinghouse on part of the site, coupled with the Council's allocation of land surrounding it for residential purposes, are relevant material considerations in terms of considering the effect of the development on the character and appearance of the area. Furthermore, as part of my site visit, I noticed that a new two storey brick built dwellinghouse was under construction on the adjacent site in approximately the same position as that approved for the appeal site, and two additional two storey dwellinghouses were being built close to the appeal site on Brickyard and in positions close to the road.
22. The mobile home is positioned about 43 metres back from Brickyard. Owing to its position and height, it is not very prominent when experienced from Brickyard. Nonetheless, it can be seen from parts of Brickyard and it is most conspicuous when the unauthorised gates are open. In my judgement, the mobile home is not reflective of the pattern of development in the area. It

does not follow the prevailing pattern of development which is one of dwellinghouses which tend to be more closely aligned with the main road. Moreover, the mobile home fails to reflect the character and appearance of the dwellinghouses in the area owing to its harsh colour and its use of composite cladding material. In addition, the residential plot appears excessively large in the context of the size of the mobile home. Overall, the mobile home fails to assimilate well into its immediate surroundings.

23. Furthermore, the extent of the hardstanding is significant and visually intrusive. It appears as a very harsh addition within this mainly residential environment. I accept that there are other hardstanding areas in the locality, but those associated with lawful residential uses are generally not as extensive or as intrusive when appreciated by passers-by. I accept that a brick-built dwellinghouse with stone headers and a grey tiled roof has been approved on the land. However, that would assimilate better with other surrounding dwellinghouses including the one that is being built next door and which is broadly in line with that approved on the appeal site. Furthermore, the extent of the hardstanding associated with the approved dwellinghouse is significantly less than that related to the breach of planning control.
24. When appreciated in the context of the immediate area, I therefore find that the passer-by would experience the mobile home, parking of vehicles (commercial and residential) and the hardstanding as being incongruous in visual terms. I accept that there are other forms of boundary treatment in the immediate area including frontage gates, walls, and fences. However, owing to the height and extent of the appeal gates and wall, I consider that they appear dominant and intrusive in the environment, particularly when seen against the excessive hardstanding, isolated mobile home, and parked vehicles. In the context of what is a disproportionately large plot relative to the size of the mobile home, I find that the entrance wall and gates do not appear subordinate in scale.
25. I noticed on my site visit that there was some evergreen planting behind the entrance wall. The retention of a hedge planted behind an altered frontage boundary wall to one metre in height (see highway safety considerations below), and the possible planting of some on-site trees, may to some extent soften the harmful impacts of the development. However, I have not been provided with a plan showing any landscaping proposals and, in any event, the extent of hardstanding remains significant in the context of the area and the residential plot. Even if the wall was lowered in height to one metre, this would mean that the site was even more noticeable to passers-by and the harmful impact of the mobile home, and the extensive hardstanding, would be even more apparent. Moreover, it cannot be guaranteed that planting would endure forever, and any possible indigenous planting would take some time to reach maturity.
26. In this case, I do not find that landscaping opportunities would be sufficient to overcome the harm caused to the character and appearance of the area from the residential mobile home (and associated vehicles and paraphernalia) and the very significant extent of hardstanding.
27. The hardstanding takes up most of the appeal site used in connection with the material change of use of the land. The evidence is that the site did not

include the same amount of hardstanding prior to the breach of planning control occurring. Paragraph 180(d) of the Framework requires developments to provide net gains for biodiversity. Insufficient information is before me in terms of the baseline biodiversity position prior to the breach of planning control taking place, and then what, if any, opportunity is available or proposed to address any erosion of the existing baseline biodiversity position arising from the laying of the hardstanding or indeed any other facilitating development.

28. I acknowledge that the appellant would be happy to accept a planning condition which precluded any commercial use (including storage of commercial materials) and limiting the number and weight of parked commercial vehicles on the land (the appellant has a 7.5 tonne lorry and a 3.5 tonne transit-type tipper van). This would minimise the harmful effects of parking large commercial vehicles and storing commercial materials. However, it would not overcome the harm caused from the mobile home and hardstanding which are matters of overriding concern.
29. I do not find that the provision of an entrance boundary wall/gates is objectionable in principle in this area given the extent and position of boundary treatment that already exists along Brickyard. However, in respect of the appeal wall/gates, it is necessary that at least part of the development is reduced in height to fully address the highway safety concerns detailed below, and, in the context of the breach of planning control as a whole to soften their impact in the street-scene owing to their height and bulk. However, as outlined above, lowering the wall and gates would result in more of the harmful development being visible to passers-by and so, in this case, this would not be an acceptable option in respect of this deemed planning application.
30. For the above reasons, I conclude that the breach of planning control causes very significant harm to the character and appearance of the area. Therefore, the development does not accord with the design, character, and appearance requirements of policies HG9(d)/(e) and ST1 of the LP, and chapter 12 of the Framework. Moreover, and, on the evidence that is before me, I am also unable to conclude that the development would be capable of achieving biodiversity net gain in accordance with paragraph 180 of the Framework. The latter is a matter to which I afford significant adverse weight in decision making terms.

Living conditions

31. There is no actual objective evidence before me to indicate that use of the site for residential purposes has caused any material harm to the living conditions of the occupiers of surrounding properties in noise and disturbance terms. The appeal site is not used intensively for residential purposes. Moreover, it is noteworthy that the appeal site forms part of a wider land parcel that is allocated for housing and planning permission has been approved for a dwellinghouse on part of it.
32. The parking of vehicles used in connection with the operation of a commercial use on the site could potentially lead to some noise or disturbance issues in the area. It is noteworthy that an appeal on ground (b) has not been lodged. In this regard, the appellant does not make a claim that a commercial

storage use has not taken place on the land. I find that a commercial storage use, in combination with a residential use of the land, could lead to harm being caused to the living conditions of the occupiers of neighbouring residential properties in terms of noise and disturbance from the comings and goings of commercial vehicles.

33. Notwithstanding the above, it is noteworthy that the appellant has indicated that he would accept a condition which prevented commercial use of the site including the storage of commercial materials. In essence, this is how the appellant wants me to consider the ground (a) appeal and the deemed planning application.

34. Subject to the imposition of a condition which prohibited commercial use/storage of the site, I do not find that the breach of planning control would cause material harm to the living conditions of the occupiers of surrounding residential properties arising from the comings and goings of vehicles and people. Consequently, and, to this extent, I find no conflict with the amenity requirements of policies HG9(c) and ST1 of the LP, and paragraph 135(f) of the Framework.

Highway safety

35. Brickyard is an unmade road and I noticed on my site visit that it is in a relatively poor condition. It is currently likely to restrict traffic speeds to below 30 mph. However, the condition of the road might be improved at some point. Therefore, I cannot assume that traffic speeds would always be the same. There are a small number of dwellings served from Brickyard to the north of the appeal site. The evidence is that planning permission has been approved for a two storey dwellinghouse opposite and a new dwellinghouse is under construction further down Brickyard. In addition, a new dwellinghouse is under construction next to the appeal site. It is clear that a number of vehicles and pedestrians will pass the appeal site on a day-to-day basis.

36. I acknowledge that there are other walls and boundary treatment in the locality which front Brickyard. I do not know the precise circumstances which led to these being constructed. It might be the case that sightlines are poor in respect of some of these existing walls/gates. If that were the case, I do not find that it would justify allowing the appeal wall/gates to remain.

37. Vehicular visibility is poor when leaving the appeal site owing to the height of the associated wall fronting Brickyard. I consider that there is potential for conflict to occur between vehicles and/or vehicles and pedestrians if the wall were allowed to remain at its current height. I accept that traffic speeds are likely to be lower than 30 mph owing to the current condition of the road. This was indeed the conclusion reached by another Inspector who considered a planning application for a dwellinghouse opposite the appeal site in 2021⁴. However, the road may not always be in the same condition, and, in any event, an accident could still occur at traffic speeds that are less than 30 mph. Therefore, I do not find that the position and height of the unauthorised boundary wall is acceptable in planning terms.

⁴ Appeal reference APP/W3005/W/21/3267864 – planning permission approved on 14 July 2021

38. Notwithstanding the above, I find that the evidence is that a reduction in the height of the wall to a maximum of one metre above ground level may be capable of ensuring acceptable vehicular sightlines for those leaving the site. That said, I have not been provided with a plan showing the wall altered and the achievement of acceptable visibility splays.
39. A reduction in the height of the wall may also allow the planting of a hedge behind the altered wall and, to a limited extent, this would help to soften the harmful effects of the mobile home and hardstanding. That said, any such planting would need to be positioned outside the required vehicular visibility splays (i.e., suitably set back from the altered wall) and, in any event, this would not overcome my overall conclusion on the character and appearance main issue. Moreover, there is no evidence before me to indicate that the planting of any such hedge would deliver a biodiversity net gain position relative to the baseline position on the site prior to the breach of planning control occurring.
40. Subject to the imposition of a condition requiring relevant parts of the boundary wall to be reduced in height to one metre above ground level, and evidence being provided in plan form that the required visibility splays can be fully achieved, I find that the breach of planning control would not have an unacceptable impact on highway safety. Subject to compliance with such a condition, I find no conflict with the highway safety requirements of policy ST1 of the LP and paragraph 115 of the Framework.

Other considerations - need and provision for Traveller sites in the area

41. The most up to date and objective assessment of need for Gypsy and Traveller pitches in the area is drawn from the Greater Nottingham and Ashfield District Council Gypsy and Traveller Accommodation Assessment March 2021 (GTAA). Based on planning permission being approved for a Gypsy and Traveller site at Chesterfield Road, Huthwaite⁵, the evidence is that the Council has been able to meet the identified GTAA need for Gypsy and Traveller sites between 2020 and 2025, i.e., the need for one pitch between 2020-2025 has been met by the Chesterfield Road planning permission.
42. Notwithstanding the above, the appellant is of the view that the GTAA underestimates existing permanent pitches and so therefore underestimates future needs. This is a matter that was considered by the Inspector who considered the Chesterfield Road planning application. She commented that '*for the reasons suggested by the appellants, the needs anticipated by the GTAA, which is yet to go under examination, are if anything an underestimate*'. I have not been presented with any objective evidence from the Council which would lead me to depart from the conclusion reached by the Inspector who determined the Chesterfield Road planning application. Moreover, and, notwithstanding the conclusion of the Inspector, the evidence is that there is also need for four additional pitches in the period 2025 to 2038 based on the GTAA. In this regard, the proposal would contribute positively to the supply of Gypsy/Traveller pitches needed for the post 2025 period.
43. For the above reasons, I find that there is uncertainty regarding whether the GTAA fully accounts for pitch need in the area. The evidence is that it does

⁵ Appeal reference APP/W3005/W/23/3320752 – planning permission approved on 25 October 2023

not. Hence, I cannot conclude with certainty that the Council can demonstrate a five-year supply of deliverable Gypsy/Traveller pitches. This is therefore a matter which weighs in favour of allowing the appeal, noting that paragraph 27 of the PPTS states that *'if a local planning authority cannot demonstrate an up-to-date five year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission'*.

Other considerations - the availability of alternative Traveller sites and the cultural way of life

44. Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998 (HRA) states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.
45. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
46. Furthermore, in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment, and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race. I am not entirely clear of the reason why the appellant's child needs six-month check-ups at the hospital (see below), but for the purposes of this appeal I have assumed that this relates to a disability which is also a protected characteristic.
47. There is no requirement for the appellant to demonstrate that there are no alternative available Gypsy/Traveller sites in the area. However, it is noteworthy that the Council has not indicated that any alternative Gypsy/Traveller sites are available to accommodate the needs of the family or disputed the appellant's evidence about this matter in his statement of case. In this regard, I have determined this appeal on the basis that there are currently no alternative available Gypsy/Traveller pitches in the area for the family.
48. The above weighs in favour of allowing the appeal. However, the weight that I afford to such a matter is tempered by the fact that the evidence indicates that the appellant does not appear to have an aversion to living in bricks and mortar accommodation. Indeed, he has previously obtained planning permission for a dwellinghouse on the site. He also applied temporarily to site a residential mobile home on the land until such a dwellinghouse was built. In my judgement, this indicates a clear intention to occupy a bricks and mortar dwellinghouse.
49. I am not certain why work on the approved dwellinghouse ceased, but the appellant has not provided any evidence to suggest that he has a particular aversion to living in bricks and mortar accommodation. In this context, and

should the notice be upheld, I find that there may be opportunities for the family to find temporary residence elsewhere (to rent or buy) in bricks and mortar accommodation. I shall return to this matter later as part of the consideration of the ground (g) appeal.

Other considerations - the best interests of the children

50. The site is occupied by the appellant, his wife and four children. His wife is expecting a baby. I do not doubt that the appellant's wife will need emotional and health care support when the baby is born. In this regard, and, in the context of the family at large, I acknowledge that health care support is easier to come by when compared to a transient or roadside existence.
51. I note that one child requires hospital checkups every six months. Again, having a stable base will assist in terms of this matter when compared to a roadside or transient existence.
52. Two children already attend a local primary school, and the youngest child is about to start nursery school. The site offers stability and security for the children from an education and emotional well-being point of view. This level of stability and security would be unlikely to be achieved to the same extent from a roadside or more transient existence. These matters weigh in favour of allowing the appeal, but it is still necessary that I weigh such matters against the identified planning harm.

Planning balance and ground (a) appeal conclusion

53. I have concluded that very significant harm has been caused to the character and appearance of the area. I have also been unable to conclude that the development would be capable of achieving biodiversity net gain. This is also an adverse matter that weighs significantly against granting permanent planning permission. Highway safety concerns would likely be capable of being addressed by means of the imposition of a planning condition and so I find that this is a matter of neutral consequence in the overall planning balance.
54. Weighed against the above harms, are the identified personal circumstances of the family, including the best interests of the children, the uncertainty relating to Gypsy/Traveller pitch need and hence an inability to demonstrate a five-year supply of deliverable Gypsy and Traveller sites, and the lack of available alternative Gypsy/Traveller pitches in the area. The weight that I afford these considerations is tempered somewhat by the fact that while I have found that the appellant is an Irish Traveller, the evidence is that he does not have an aversion to living in bricks and mortar accommodation. Indeed, in the appellant's statement of case it states that the appellant '*wishes to remain living on the site in his mobile home until the house is completed*'.
55. In the above context, and while there is no evidence before me that there are currently any available alternative Gypsy/Traveller pitches in the area, I find that it may be possible for the family to source alternative bricks and mortar accommodation, whether that be permanently, or indeed temporarily until an approved dwellinghouse has been built on the land. This option would potentially offer continuity of education and health care support for the family,

particularly if temporary bricks and mortar accommodation was sought in the local area, while at the same time bringing the harmful breach of planning control to an end.

56. In this case, I do not find that permanent planning permission is justified. The personal circumstances of the family, including the best interests of the children, as well as Gypsy and Traveller pitch need and availability considerations, do not outweigh the collective harm that I have identified in respect of matters relating to the character and appearance of the area, and to biodiversity.
57. I have considered whether temporary planning permission would be justified. While the harm caused to the character and appearance of the area would not endure for as long if temporary planning permission was approved, there would nonetheless still be harm. There is no evidence from the appellant to counter the option of temporarily or permanently living in bricks and mortar accommodation elsewhere, or temporarily finding an alternative site for the mobile home until an approved dwellinghouse has been built on the appeal land. This tempers the weight that I afford to Gypsy/Traveller pitch supply and availability concerns. In addition, harm to biodiversity would remain even if temporary planning permission was approved. In this case, I do not find that there is justification to grant temporary planning permission.
58. In reaching the above conclusion, I have also considered the Article 8 rights of the family who would be made homeless if the notice was upheld, as well as the benefits of a settled base for the children from a well-being, health and education point of view. My decision not to grant a temporary planning permission considers these matters. It is also in the context of my ground (g) appeal conclusion below which is to increase the compliance period to cease residential use of the land from five to twelve months and the removal of the wall, gates, and hardstanding from six to thirteen months.
59. The increased compliance period would give the family more time to find alternative accommodation, and potentially while a dwellinghouse was being built on the land. It would also seek to minimise disruption caused to the children's education, the health care and emotional support needed for the appellant's wife who is expecting a baby, and to the appellant's child who attends hospital every six months.
60. On balance, I therefore conclude that the ground (a) appeal fails. The collective harm that I have identified is of such weight that neither permanent nor temporary planning permission is justified. The identified harms (including conflict with policy HG9 of the LP) significantly and demonstrably outweigh the identified other considerations above when assessed against the policies in the Framework taken as a whole. Therefore, the breach of planning control would not deliver sustainable development.
61. While I have found that the appellant does meet the PPTS definition of a Gypsy and Traveller in respect of the determination of this appeal, this is not, in any event, a matter that has been decisive in terms of my decision to refuse planning permission. Had the appellant not met the definition of a Gypsy and Traveller, my conclusions in respect of the character and appearance and biodiversity main issues would still have been matters of overriding concern when considered against relevant development plan

policies. Indeed, such overriding concerns would not have been outweighed by other material planning considerations.

62. I find that a refusal of planning permission is a proportionate, legitimate, and necessary response that would not violate the rights of the family under Article 8 of the HRA. Moreover, the identified harm is such that I find that it is necessary and proportionate to refuse planning permission having regard to the requirements of the PSED. In reaching this overall conclusion, I have considered the supportive comments made by the occupiers No. 42 Brickyard. These do not alter or outweigh my overall conclusion on the ground (a) appeal.

Appeal on ground (f)

63. An appeal on ground (f) of section 174(2) of the Act is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
64. The appellant's claim under the ground (f) appeal is that hard surfacing related to the approved dwellinghouse on the land has taken place and so therefore the step of requiring the removal of all the hard surfacing is excessive. The appellant also claims that the removal of the gates and wall is excessive and a reduction in height to one metre adjacent to the highway would be sufficient to remedy the breach of planning control.
65. While reducing the frontage wall to one metre in height may be acceptable in terms addressing highway safety matters, a reduction in the height of the wall/gates to one metre in height to reflect an alleged permitted development fallback position under Class A of Part 2 of the Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) would render the harmful hard surfacing and mobile home being more visible to passers-by. Furthermore, the evidence is that the wall/gates that have been erected on the land have facilitated a material change of use of the land. That material change of use of land is unauthorised. Paragraph 3(5) of the GPDO states that the permission granted by Schedule 2 does not apply if '*(b) in the case of permission granted in connection with an existing use, that use is unlawful*'. There is therefore no fallback position as such in respect of the wall/gates that are the subject of this appeal.
66. The onus is on the appellant to prove that a material operation was carried out under section 56 of the Act and hence that approved development was initiated/begun. The appellant has not provided me with sufficient objective or compelling evidence to demonstrate that a material operation was carried out in respect of the approved dwellinghouse. Moreover, on my site visit there was no visible evidence to demonstrate that a material operation had been initiated. A contiguous hardstanding was apparent across most of the appeal land. Therefore, on the balance of probability, the evidence is neither precise nor clear from the appellant in terms of this matter.
67. Overall, the evidence before me is not sufficient to support the appellant's view that step 6(4) is excessive. The purpose of the notice is to remedy the

breach of planning control. The evidence is that the hard surfacing and front boundary wall/gates facilitated the material change of use of the land to a mixed mobile home/caravan residential use and a commercial storage use. The hard surfacing and wall/gates are not fundamental elements to the material change of use of the land. In my judgement, they are ancillary elements that have facilitated the material change of use of the land. It is not therefore excessive to require the removal of the hard surfacing and wall/gates.

68. For the above reasons, I conclude that the ground (f) appeal fails. It is perhaps worthy of note that should it lawfully transpire after this appeal that part of the hard surfacing has the benefit of planning permission, then section 180 of the Act states that the notice shall cease to have effect so far as being inconsistent with that permission.

Appeal on ground (g)

69. An appeal made on ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.
70. The compliance period for ceasing the residential use of the land is five months. The appellant states that the appeal site is the appellant's home and that a period of twelve months is required for the appellant to relocate his family and avoid becoming homeless.
71. As per my ground (a) appeal reasoning, I find that additional time should be given to enable the appellant and his family to find alternative accommodation (temporary or otherwise) and, if still desired, for a dwellinghouse to be built on the land. I acknowledge the Council's point that for some time the appellant and his family have been living on the site. However, the appellant was entitled to appeal the subject notice and may have been successful in this regard. The period of unauthorised development is not therefore a relevant consideration in respect of this ground (g) appeal.
72. I find that a period of twelve months to cease residential use of the land strikes a reasonable balance between bringing the unauthorised and harmful development to an end in the public interest, while also giving additional time for the family to relocate elsewhere (whether that be permanently or temporarily should they wish to pursue erecting a dwellinghouse on the land) and for the children's education to be not disrupted to the same extent. The additional time would also ensure that appellant's wife, who is expecting a baby, has the stability of a settled base and the health support needed during the early months of the life of the newborn baby. An extended compliance period would also allow one of the appellant's children to attend more hospital appointments in the knowledge of a settled base.
73. I recognise that the appellant may want to consider some form of entrance wall/gates in association with the possible erection of an approved dwellinghouse on the land. The additional compliance period would also give the appellant the opportunity to discuss this matter with the Council, including, if necessary, the submission of a planning application relating to such a matter.

74. For the above reasons, I conclude that the compliance period for ceasing residential use should be increased from five months to twelve months and, in turn, the compliance period for removing the boundary wall and gates and hard surfacing should be increased from six months to thirteen months. I find that upholding the enforcement notice, with such variations, is a legitimate and proportionate response to addressing the breach of planning control in the public interest. This outweighs the loss of a home on the site considering the rights of the family under Article 8 of the HRA. Therefore, I conclude that the ground (g) appeal succeeds.

Conclusion

75. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and 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).

D Hartley

INSPECTOR