

**Officer Delegated Decision Report
Planning Enforcement – ENF21/0003**



**SOUTH
KESTEVEN
DISTRICT
COUNCIL**

Report to:	Jeff Upton Interim Head of Planning		
Report by:	Jonathan Short Senior Enforcement Officer		
Report date:	29/03/2021		
Site Address:	Land off Valley Lane, Long Bennington, Lincolnshire, NG23 5EE	Enquirer: Third party	Date case received: 05/01/2021
Alleged Breach:	Unauthorised residential occupation of land by traveller family and erection of close-boarded fencing.		
Purpose of report:	To agree a Delegated Decision, in accordance with the Council's Constitution and adopted Planning Enforcement Policy (October 2014), that having undertaken an investigation into the case below, for the reasons set out it is expedient to pursue formal Enforcement action.		
Crime and Disorder implications:	It is considered that the breach of planning control will not have any significant or detrimental crime or disorder implications.		
Human Rights Act:	Article 6 (Right for fair decision making) and Article 8 (Right to private family life and home) of the Human Rights Act have been taken into account in making this recommendation. It is considered that given the specific constraints of the site no relevant Article of that Act will be breached.		
Impact analysis (Equality, Safeguarding etc.)	Impact analysis is considered not to be applicable as there are no impacts which require further analysis or consideration.		
Legal Comments	Legal advice has been sought by Officers prior to submission of final notice(s) and the potential legal implications have been considered. It has been determined that any potential legal implications do not override the need to take enforcement action in this instance due to the site-specific constraints as identified by the Planning Committee in their reasons for refusing the planning application		
Finance, Resources, Risk	There are no significant finance, risk or resource implications.		

Summary of investigation

Reports that travellers had moved caravans onto the land were received on 5th January 2021. The land has been subject to an application seeking permission to use the land as a traveller site for one traveller family at the time of the allegations being received. However, the application had not been determined at the time of the reported occupation, as additional information had been requested from the applicant's agent, which had not been submitted by this time.

A site visit was carried out by [REDACTED] [REDACTED] planning permission had been granted.

[REDACTED] No further development had taken place by the time of this initial visit.

Further visits to the site over the weeks following receipt of the initial enquiry confirmed reports that close boarded fencing of over 2m was in the process of being erected around a portion of the site from 21st January onwards.

No further development has been noted on the site.

Planning application S20/0669 was recommended for approval by officers at Planning Committee on 17th February 2021. Due to this recommendation, it was not felt to be reasonable or proportionate to consider enforcement action until the application was determined.

Planning Committee resolved to refuse planning permission on 17th February 2021 and confirmed their reasons for doing so, confirming the refusal at a previous hearing on 17th March 2017.

Assessment of Case & Reason for Recommendation

The Site

The site is a field off Valley Lane, just outside Long Bennington. It is situated to the west of the junction of Valley Lane and the northbound slip-road to the A1.

The A1 runs to the east of the field, between the site and the village. To the south of the site is a maggot farm. The site is accessed from Valley Lane to the north, using an existing field gated entrance.

The field is mostly laid to grass, with an area of informal hardstanding to the north eastern portion of the field which is where the caravans are currently situated.

Mains water has not been connected, although, it is understood that there is a mains water pipe that is ready to be connected to, close to the vehicular access into the field. No drainage treatment or septic tanks are believed to have been connected/installed.

Description of the development

close-boarded fence of between 2-2.5m has been constructed around a portion of the field.

Planning History

S20/0669 – To be refused following Planning Committee decision 17/02/2021 & 17/03/2021.

Reasons for Refusal:

1. Noise from the A1 and odour from the adjacent Long Bennington bait maggot farm have potential to adversely impact on the residential amenity of the occupiers of the proposed accommodation. Insufficient information has been submitted to fully assess these impacts and therefore planning permission should not be granted as there is potential conflict with Local Plan Policy H5, criterion a. Other material considerations, including the personal circumstances of the applicant and the need for are not considered to outweigh this conflict.
2. The proposed development by virtue of its design, siting and layout would fail to make a positive contribution to local distinctiveness and the character of the area contrary to Local Plan Policy DE1 and Planning Policy for Traveller Sites (2015), para 26.

S19/2018 – Application returned – Invalid 18/02/2020

Erection of Log Cabin and barn for machinery storage

S19/1306 – Refused 09/09/2019

Erection of log cabin and use of land for touring caravan for a forestry and agricultural worker.

Reasons for Refusal:

1. No evidence or justification to demonstrate the essential need for agricultural or forestry workers to be accommodated at this location has been submitted. This conflicts with Core Strategy Policy SP1 which requires proof that there are no other more sustainable options available for development to be permitted on a less sustainable site and the NPPF (para 79) which states isolated homes in the countryside should be avoided unless there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.

2. 2 The proposed location of the development is outside the existing village boundary and would therefore conflict with Long Bennington Neighbourhood Plan Policy LB1.
3. 3 The development is likely to impact on the existing biodiversity and ecological networks within the site which is required to be assessed in accordance with Core Strategy Policy EN1. Further, the NPPF (para 170) requires planning decisions to minimise impacts and provide net gains for biodiversity. Insufficient information has been submitted to fully assess these impacts and therefore planning permission should not be granted.
4. 4 Noise from the A1 has potential to impact on the residential amenity of the occupiers of the proposed accommodation. Insufficient information has been submitted to fully assess this impact and therefore planning permission should not be granted as there is potential conflict with Core Strategy Policy EN1 and the NPPF (section 12).
5. 5 Odour from the adjacent Long Bennington bait maggot farm has potential to impact on the residential amenity of the occupiers of the proposed accommodation. Insufficient information has been submitted to fully assess this impact and therefore planning permission should not be granted as there is potential conflict with Core Strategy Policy EN1 and the NPPF (section 12).

S18/1922 – Application withdrawn by applicant following request for further information pertaining to traveller status 03/07/2019.

Change of use of land to travellers' site for the provision of one mobile home and one touring caravan.

Relevant Planning Policies

SKDC Local Plan 2011 - 2036

SP5 – Development in the open countryside
 H5 – Gypsies and Travellers
 EN1 – Landscape Character
 EN2 – Protecting Biodiversity and Geodiversity
 EN4 – Pollution Control
 EN5 – Water Environment and Flood Risk Management
 DE1 – Promoting Good Quality Design
 Policy ID2 – Transport and Strategic Transport Infrastructure

National Planning Policy Framework and Planning Practice Guidance

Section 5 – Delivering a sufficient supply of homes
 Section 12 – Achieving well-designed places
 Section 15 – Conserving and enhancing the natural environment
 Planning Policy for Traveller Sites (2015)

Assessment

The site has been occupied in breach of planning control before any planning permission had been granted.

Officers recommended approval for the development on a temporary basis, in line with guidance in the National Planning Policy for Traveller Sites (2015) at Planning Committee on 17th February 2021. The Planning Committee resolved that they were minded to refuse the application and returned to Planning Committee on 17th March 2021 to consider the reasons for refusal.

The Officer Report for the 17th February Committee discusses the Policy considerations at length. Following the submission of the proposed reasons for refusal to the Committee Meeting on 17th March, it was resolved to refuse planning permission on the grounds that:

1. Noise from the A1 and odour from the adjacent Long Bennington bait maggot farm have potential to adversely impact on the residential amenity of the occupiers of the proposed accommodation. Insufficient information has been submitted to fully assess these impacts and therefore planning permission should not be granted as there is potential conflict with Local Plan Policy H5, criterion a. Other material considerations, including the personal circumstances of the applicant and the need for traveller pitches in the district are not considered to outweigh this conflict.
2. The proposed development by virtue of its design, siting and layout would fail to make a positive contribution to local distinctiveness and the character of the area contrary to Local Plan Policy DE1 and Planning Policy for Traveller Sites (2015), para 26.

While the site is a similar distance from the A1 to properties in the village to the east, caravans do not provide as much protection from noise as dwellinghouses with solid wall construction. It is therefore felt that the noise from A1 dual carriageway is such that it adversely impacts on amenity of the occupiers of the site.

In addition to the noise from the A1, smells from the neighbouring Maggot Farm to the south of the site during the summer months, is such that it will lead to unacceptable living conditions for the occupants for at least part of the year.

The harm from the noise of traffic using the A1 and smells from the maggot farm result in unacceptable living conditions for the occupants of the site. The unauthorised development is therefore in conflict with Local Plan Policy H5 and NPPF Section 12.

The expanse of close-boarded fencing that has been erected around part of the site is a clearly visible, incongruous feature on a site in the open countryside, characterised by agricultural field boundaries and hedges. It is therefore harmful to the character and appearance of the area, contrary to Local Plan Policy DE1, NPPF Section 12 and National Planning Policy for Traveller Sites (2015).

Human Rights

[REDACTED]
[REDACTED]
[REDACTED] There are not understood to be any available allocated pitches for travellers in SKDC or in the wider locality.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

It is felt that any Enforcement Notice should include a period for compliance that takes into account the occupant's situation and current government guidance that Councils should consider being tolerant to additional pressures [REDACTED] especially during periods of restrictions through the COVID pandemic.

While the Government's COVID Roadmap has not set any fixed dates, as the situation needs to be reviewed at every proposed step, it does provide some measure of assurance that restrictions will have at least been eased through the coming months into the summer.

Article 6 (Right for fair decision making) and Article 8 (Right to private family life and home) of the Human Rights Act have been taken into account in making this recommendation. However, the occupants of the site [REDACTED] the planning application process had concluded and [REDACTED]. It is therefore considered that no relevant Article of that Act will be breached.

The Physical steps that will be required to comply with the notice are relatively straightforward, as operational development is limited to the erection of close boarded fences. With consideration given to the Government's advice [REDACTED] and current understanding of COVID restrictions easing, it is felt to be reasonable to require a compliance period of 3 months.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Conclusion

The development constitutes a breach of planning control, as defined by Section 171A(1)(a) of the Town and Country Planning Act 1990.

Following the refusal of the planning application for the development subsequent to reports to the Planning Committee on 17th February 2021 and 17th March 2021, for the reasons set out above, it is felt that the harm caused by the development is contrary to Local Policies H5 and DE1, The NPPF Section 12 and National Traveller Policy (2015). This harm is not felt to be outweighed by the needs of the family or the Council's lack of allocated traveller pitches. As such, it is felt to be expedient to serve an Enforcement Notice under section 172 of the Town and Country Planning Act 1990 (As Amended).

A Planning Enforcement Notice should be served requiring the use of the land for [REDACTED] and the removal of close boarded fencing from parts of the site.

The Reasons for Issuing the Notice are recommended to be:

The proximity of the site to the neighbouring Maggot Farm and the A1 is harmful to the amenity of the site's occupants, creating unacceptable living conditions, contrary to Local Plan Policy H5 and NPPF Section 12.

The close-boarded fencing which has been erected around parts of the site is not in keeping with the rural character of the area. As a result, the development does not make a positive contribution to local distinctiveness and the character of the area and is contrary to Local Plan Policy DE1, NPPF Section 12 and Planning Policy for Traveller Sites (2015), para 26.

The Council do not consider that planning permission should be granted for the development, and it is expedient to take enforcement action because it is not considered that planning conditions could overcome these issues.

The Period for Compliance should be 3 months from the date on which the notice takes effect.

Recommendation:
Authorise Enforcement Notice

Recommendation agreed:



Date:
31/03/21