

Planning Inspectorate Reference:

APP/E2530/C/21/3274182

SKDC Ref: ENF21/0003

Appeal by: Mr S Smith

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

**Appeal against Enforcement Notice for Unauthorised occupation of traveller caravans
on land**

Statement of the Local Planning Authority

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1.0 Introduction

- 1.1 The Local Planning Authority's case assessment of the application is set-out in section 4 of this report. The Local Planning Authority (LPA) maintain their position that the enforcement notice should be upheld and planning permission should be refused for the reasons set out in the Assessment of Case below.

2.0 Background

2.1 Description of the Site

- 2.1.1 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.
- 2.1.2 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.
- 2.1.3 The field is mostly laid to grass, with an area of informal existing hardstanding to the eastern portion of the field which is where the caravans are currently situated.
- 2.1.4 Mains water has not been connected, although, it is understood that there is a mains water pipe that is ready to be connected into, close to the vehicular access into the field. No drainage treatment or septic tanks are believed to have been connected/installed.

2.2 Description of the development

- 2.2.1 The land has been occupied by the owner and his family in two touring caravans and a close-boarded fence of between 2-2.5m has been constructed around a portion of the field. Trailers and vehicles connect to the owner's work as a landscaper/tree worker and the residential occupation of the land are also sited within the site.

2.3 Planning History

2.3.1 S20/0669 – Application refused 6/04/2021 following Planning Committee decision 17/02/2021 & 17/03/2021.

One static and one touring caravan for occupation by single traveller family.

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 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.

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

Erection of Log Cabin and barn for machinery storage

2.3.3 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. The proposed location of the development is outside the existing village boundary and would therefore conflict with Long Bennington Neighbourhood Plan Policy LB1.
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. 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. 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).

2.3.4 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.

2.4 Relevant Planning Policies

2.4.1 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

2.4.2 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)

3.0 Enforcement Notice

- 3.1 The Council's Senior Enforcement Officer visited the site on 5th January 2021 following reports that caravans were being moved onto the land.
- 3.2 The Enforcement Officer established that the appellant was in the process of moving his family on to the land in the knowledge that planning permission was not in place, as his current application had not yet been determined.
- 3.3 Due to Government advice during the Covid Pandemic not to evict potentially vulnerable tenants, it was felt that potential enforcement action should be held until the outcome of the planning application S20/0669 was known.
- 3.4 The Enforcement Notice was served under Section 171A(1)(a) on 01/04/2021 by placing a copy on the entrance to the site and posting a copy to the appellant's agent for application S20/0669
- 3.5 The Notice alleged that the matters which appeared to constitute the breach of planning control:

Without planning permission, the making of a material change of use of the land from agricultural land to a mixed use for the occupation of caravans for residential purposes, storage of vehicles and equipment related to the occupant's business and for the grazing of animals.

- 3.6 The reasons given for the service of the Notice were:

It appears to the Council that the above breach of planning control has occurred within the last 10 years.

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.

- 3.7 The Steps required in the notice were:
1. *Cease the use of the land for the occupation of caravans for residential purposes, storage of vehicles and equipment related to the occupant's business and for the grazing of animals.*

2. *Remove from the land any caravans, trailers, portable toilets, vehicles, equipment related to the occupant's business and any other domestic or business paraphernalia related to the unauthorised use of the land*
3. *Remove from the land all close boarded fencing and gates.*
4. *Restore the field gate to the vehicular access to the site.*

3.8 The period for compliance is given as:

3 months from the date this Notice takes effect.

3.9 The Grounds for the Appeal are:

Ground (a): that planning permission should be granted for what is alleged in the notice.

Ground (g): that the time given to comply with the notice is too short

4.0 Assessment of Case

4.1 The Appeal on Ground (a)

4.1.1 Planning Application Ref: S20/0669 for a proposed development of "one mobile home and one touring caravan for a traveller that works in forestry" was presented to the Council's Planning Committee on 17 February 2021 and the decision notice issues at the same time as the service of the Enforcement Notice. The Planning Officer's assessment can be summarised as follows:

"Having regard to the location of the site and the scale and design of the proposal, it is considered that for a temporary 3 year period, the proposal would not significantly detract from the character of the area nor would it impact on the residential amenities of the occupiers of the adjacent settled community.

Although insufficient information has been submitted to make a full assessment of the appropriateness of the living conditions of the site in respect of noise impact from the A1 and odour impact from the adjacent maggot farm, this needs to be considered against the observations from the site visits and the location of other existing properties in the village. Further, consideration needs to be given to the fact that the Council is unable to demonstrate a sufficient supply of traveller pitches and that the alternative living arrangements for the applicant would involve living roadside. Accordingly, it is considered appropriate that any permission should be temporary and personal to the applicant, until the living conditions of the site, including noise and odour impacts, have been fully assessed'.

4.1.2 As such, the Officer's recommendation to the Committee was that the proposal should be approved subject to conditions, which included a restriction on occupation for a period of three years.

4.1.3 Following debate of the application, Members resolved to refuse the application, contrary to Officers' recommendation, for the following reasons:

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), paragraph 26.

4.1.4 The application was refused for the above reasons on 06/04/2021.

4.1.5 In respect of reason for refusal 1, as part of the consultation on the application, the Council's Environmental Protection team requested the submission of additional information to enable an appropriate assessment of the noise impacts from the A1 and odour impacts from the adjacent maggot farm. This information was not forthcoming at the time of the determination of the application. However, the Appellant has subsequently submitted as Noise Impact Assessment and an Odour Assessment, produced by NoiseAir Limited (June 2021).

4.1.6 The submitted Noise Impact Assessment concludes the following:

"The results of the noise survey and initial site noise rise assessment show that areas of the development have a "Low" to "Medium" Risk of adverse effect in accordance with the Pro-PG without mitigation.

Performance requirements with windows closed are based on BS 3632:2015 which states that each building must offer at least 35db attenuation excluding door, window and ventilation apertures.

With windows open, the recommended internal noise limit is likely to be exceeded in most habitable rooms at the development site. On occasions, this may be acceptable to a resident, but when quiet conditions are required, the residents should be able to close the windows whilst maintaining adequate ventilation.

Some form of ventilation has been recommended for the development site. The recommendations provided are for both passive and active ventilation and advice is provided on both options".

4.1.7 In respect of the above, Officers have engaged with the Council's Environmental Protection team who have provided the following comments:

"There is no proposal from the applicant in the design or specification of the residential development that the modular building and/or caravan will meet the acoustic consultants' recommendations. Table 12 (6.2.3) on page 22 provides a summary of internal noise levels with a partially open window and on the east facing elevation (towards A1 and slip road) there is the potential of a +10db (daytime) and +13db (nighttime) for maximum events over the internal noise level. Exceedance of up to 5 dB(A) in accordance with BS8233:2014 is likely to be acceptable to future residents and therefore is unlikely to breach the LOEL however greater than +5 dB, on occasions, may be acceptable to a resident, but when quiet conditions are required, the resident should be able to close the windows whilst maintaining adequate ventilation. No scheme of acoustic ventilation for the building or caravan have

been submitted by the applicant. The author of the acoustic report also acknowledges this "It is likely that either a passive or active ventilation system can be adopted at the development site, however it should be noted that ventilation requirements for future occupants of the proposed development are outside the scope of this report".

In summary the impact of noise from the A1 and adjacent slip road would require to be mitigated in the design and construction of dwelling on the proposed development site. No evidence is given that the modular building or caravan could achieve the acceptable BS8233 standard for internal noise levels as a residential dwelling".

- 4.1.8 With regards to the potential odour conditions on the site, the submitted Odour Assessment concludes the following:

"Taking into consideration the results of the Field Odour Surveys and Risk Assessment, although odour from Bennington Bait may be experienced at the development site during specific conditions, this is not predicted to cause loss of amenity at the proposed dwellings. As such, the overall residual effect of odour is considered to be slight.

Based on the results of the staged assessment, the overall odour effects on the site are considered to be not significant. As such, odour is not considered a constraint to planning consent for the development".

- 4.1.9 In connection with the above, the Council's Environmental Protection team have provided the following comments:

"The odour impact assessment produced by NoiseAir consultants has been reviewed, which involved an actual onsite odour observation survey being undertaken on three separate days. On all odour surveys completed the observer witnessed unpleasant odours of "rotting meat" above the normal background of odour of vegetation. The rotting meat odour is indicative of the operations that take place at the maggot breeding facility. The reports' author categorises them as a negligible or slight impact. The surveys undertaken only provided a snap shop when meteorological conditions are taken into account. From experience of regulation of odorous processes and maggot breeding facilities odour concentrations can greatly increase during warmer weather, high pressure weather systems with limited dispersion and summer months where an occupant of a dwelling is likely to have windows open and need ventilation. With the observer recording odours associated with the maggot breeding facility (rotting, rotting meat) on each survey occasion then there is a high potential that those odours, due to various metrological conditions could become intensive and potentially offensive to the occupants of the proposed development site so resulting in a loss of amenity".

- 4.1.10 Consequently, following the submission of a Noise Impact Assessment and Odour Assessment, the Council have reviewed the submitted information and considers that noise and odour levels at the appeal site would result in unacceptable impacts on the residential amenity of the occupiers of the proposed accommodation. The Council's position is that these identified impacts could not be appropriately mitigated with appropriate planning conditions. As such, it is considered that the proposed development site would not provide an acceptable living environment in accordance

with the requirements of adopted South Kesteven Local Plan 2011-2035 Policy H5(a).

- 4.1.11 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise. In this case, it is acknowledged that the Council cannot currently demonstrate a sufficient supply of Gypsy and Traveller accommodation. Paragraph 27 of the Planning Policy for Traveller Sites (2015) (PPTS) identifies that in circumstances where the LPA cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any decision when considering applications for temporary planning permission, unless one of the identified exceptions applies. In the case of the proposed site, it is acknowledged that it does not fall within one of the identified exceptions. In connection with the above, it is also noted that the alternative living arrangements for the occupant would involve living roadside. However, it is also noted that the applicant acquired this site without seeking any pre-application planning advice from the Council and occupied the site prior to the determination of the planning application. These matters are relevant material considerations in the determination of the proposals.
- 4.1.12. Notwithstanding the above, it is the Council's assessment that, on balance, the material considerations in this case would not be sufficient to outweigh the identified policy conflict. Similarly, it is the Council's position that the identified noise and odour impacts could not be mitigated to an appropriate level through the imposition of conditions. Whilst mitigation is recommended in respect of noise impacts, it is not clear whether this is practicable or could be achieved with a mobile home/ caravan.
- 4.1.13 With regards to reason for refusal and issue of the enforcement notice #2, the appeal site is a previously undeveloped site located outside of the main built-up area of any settlement within the district, the nearest being Long Bennington which is located approximately 600 metres to the west of the site entrance. The site is bound to the north by Valley Lane; to the west by the A1 slip road; and to the south by Bennington Bait. The site is considered to be predominantly rural in character and contributes to the rural gateway entrance into the village of Long Bennington, when travelling from the west along Valley Lane.
- 4.1.14 The refused application sought permission for the change of use of the land to a travellers' site for the provision of one mobile home and one touring caravan for a forestry worker. Since the application was submitted, a 2 metre high closed boarded fence has been erected around the site, including at the proposed site entrance located along Valley Lane. There are currently two touring caravans, as well as a portaloos, works transit vans and trailers within the site. The caravans and trailers are situated to the east of the site, contrary to the position shown in the plans for planning application S20/0669. This is as a result of the discovery of an existing area of overgrown hardstanding within the site which has been utilised by the occupants, rather than laying a new hard bound area.
- 4.1.15 Local Plan Policy DE1 (Promoting Good Quality Design) requires (amongst other criteria) all developments to make a positive contribution to the local distinctiveness, vernacular and character of the area. Proposals should reinforce local identity and not have an adverse impact on the streetscene, settlement pattern or the landscape / townscape character of the surrounding area. Proposals should be of an appropriate scale, density, massing, height and material, given the context of the area.

- 4.1.16 It is the Council's assessment that the proposed development, including the introduction of the 2-2.5m high close boarded fencing and revised siting of the caravans and trailers etc, results in a change in the character and appearance of the land by virtue of introducing elements of domestic built form as well as caravans, other domestic paraphernalia and commercial vehicles associated with the applicant's business within the site. The introduction of such features are readily visible on the entrance to Long Bennington along Valley Way and detract from the site's rural context, resulting in an overall adverse impact on the character and appearance of the area.
- 4.1.17 As such, it is the Council's position that the proposed development by virtue of its design, siting and layout fails 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), paragraph 26.
- 4.1.18 In respect of material considerations and the overall planning balance, it is the Council's assessment that, on balance, the material considerations, as referenced above, in this case would not be sufficient to outweigh the identified policy conflict.

4.2 The Appeal on Ground (g)

- 4.2.1 The Council feels that the period for compliance with the notice of 3 months is sufficient to carry out the steps required in the notice.
- 4.2.2 The occupants have confirmed that they moved onto the site in the knowledge that they did not have planning permission to do so, as they had nowhere else to go and they could not wait any longer for the planning application to be determined. There are not understood to be any available allocated pitches for travellers in SKDC or in the wider locality.
- 4.2.3 A Preliminary Welfare Assessment visit was carried out by Officers on 22nd January 2021.
- 4.2.4 The owner of the site confirmed that there were no special healthcare or educational needs with the family. However, they have not been able to find a suitable, authorised pitch to accommodate the family and have been living roadside or staying with friends at various locations around Newark.
- 4.2.5 It was felt that the Enforcement Notice should include a period for compliance that takes into account the occupant's situation and government guidance, at the time, that Councils should consider being tolerant to additional pressures on unauthorised encampments, especially during periods of restrictions through the COVID pandemic.
- 4.2.6 While, at the time of service of the notice, the Government's COVID Roadmap had not set any fixed dates, as the situation needed to be reviewed at every proposed step, it did provide some measure of assurance that restrictions will have at least been eased through the coming months into the summer.
- 4.2.7 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 chose to move onto the land before the planning application process had concluded and did so knowing that this was a breach of planning control. It is therefore considered that no relevant Article of that Act was breached in the service of the notice.

- 4.2.8 The Physical steps that are required to comply with the notice are relatively straightforward, as operational development is limited to the erection of close boarded fences and gates. With consideration given to the Government's advice on unauthorised encampments and current understanding of COVID restrictions easing, it is felt to be reasonable to require a compliance period of 3 months.
- 4.2.9 The occupants of the site were notified, in a covering letter accompanying the enforcement notice, of where they can access further housing assistance from the Council's Housing team. However, in the Provisional Welfare Assessment that was carried out on site on 22/01/2021, the appellant was clear that he would not wish to engage with the Council to consider more traditional housing solutions.

5.0 Conclusion

- 5.1 The Local Planning Authority maintain their position that the Appeal against the Enforcement Notice should be dismissed, and planning permission should be refused, for the reasons set out on the Enforcement Notice.
- 5.2 As a result of the identified noise and odour levels at the site, associated with the adjacent A1 and Bennington Bait maggot farm, the unauthorised development fails to provide an appropriate living environment for the occupants contrary to the requirements of Local Plan Policy H5(a). Furthermore, the development is also considered to fail to make a positive contribution to local distinctiveness and the character of the area and is therefore contrary to Local Plan Policy DE1, The NPPF Section 12 and Planning Policy for Traveller Sites (2015), paragraph 26. The proposed development is therefore contrary to the adopted Development Plan for the area and, having regard to the overall planning balance, it is considered that the material considerations of this case, including the circumstances of the applicant and the need for traveller pitches in the District, do not outweigh the identified planning policy conflict.
- 5.3 The Council also feel that the time given for compliance with the Enforcement Notice are reasonable
- 5.3 Consequently, for the above reasons, the Inspector is kindly invited to dismiss the appeal on Grounds (a) and (g).

6.0 Planning Conditions

6.1 If on the balance of all relevant material considerations, the Inspector is minded to allow the appeal on Ground (a), the following conditions are suggested:

1. *The use hereby permitted shall be carried on only by the following: MR SAM SMITH and their resident dependents, and shall be for a limited period being the period of three years from the date of this decision. At the end of the three years, the use of the land shall cease and the site vacated.*

Reason: For the avoidance of doubt and to allow the Council to re-assess its planned allocation of gypsy and traveller sites as required by the early Local Plan Review.

2. *Within 3 months of the site being vacated, or the temporary period of 3 years ending, the land shall be returned to the same condition prior to occupation, including the removal of any caravans, trailers, vehicles, commercial equipment and tools, fencing, new hard standings, drainage equipment and any other commercial or domestic paraphernalia.*

Reason: In order to ensure that the land is returned to its former condition, at the end of the temporary permission period.

3. *Within 3 months of the date of this decision, a scheme showing the proposed final layout of the site to include not more than one residential pitch including one mobile home and one touring caravan, as well as defined areas for the residential use, grazing and storage related to the occupants' business shall have been submitted to the Local Planning Authority for approval in writing.*

Reason: To define the permission and for the avoidance of doubt.

4. *Within 1 month following the approval of the site's layout, the site shall be laid out in accordance with the approved site layout plan for one residential pitch including one mobile home and one touring caravan. No additional caravans shall be sited or additional plots or pitches provided without planning permission having first been obtained from the Local Planning Authority.*

Reason: In order to control the number of permanent residential pitches on the site to protect the character of the area in accordance with Policies DE1 and H5 of the adopted South Kesteven Local Plan and in order that the development is commenced in a timely manner, as set out in Section 91 of the Town and Country Planning Act 1990 (as amended).

5. *Within 3 months of the date of the decision, a scheme for the treatment of surface and foul water drainage shall have been submitted to and approved in writing by the Local Planning Authority.*

Reason: To ensure the provision of satisfactory surface and foul water drainage in accordance with Policy EN5 of the adopted South Kesteven Local Plan.

6. *Within 1 month of the details required to show the surface and foul water drainage scheme, submitted under Condition 4, being approved, the works to provide the surface and foul water drainage shall have been completed in accordance with the approved details.*

Reason: To ensure the provision of satisfactory surface and foul water drainage in accordance with Policy EN5 of the adopted South Kesteven Local Plan.

7. *Within 3 months of the date of the decision, the applicant shall implement the recommendations and mitigation measures for noise as set out within Section 6.3 of the Noise Impact Assessment Report, produced by NoiseAir Limited, dated 23 June 2021. The implemented measures shall be retained for the duration of this permission.*

Reason: To ensure occupants of the development benefit from appropriate living conditions in respect of noise in accordance with Policy DE1, EN4 and H5 of the adopted South Kesteven Local Plan.

8. *No commercial activities shall take place within the site, other than those related to the landscaping and tree surgery business operated by the applicant.*

Reason: In the interests of visual amenity and to protect the character of the area in accordance with Policy DE1 of the adopted South Kesteven Local Plan.

9. *No floodlighting, security lighting or other external lighting shall be installed or operated on the site other than in accordance with details which shall have been previously submitted to and approved in writing by the Local Planning Authority.*

Reason: To protect the visual amenity of the area and limit pollution in accordance with Policies EN4 and DE1 of the adopted South Kesteven Local Plan.