

Report of the Chief Executive

ENFORCEMENT APPEAL DECISION

Application Number:	20/000209/ENF
Location:	Land Adjacent 313 Nottingham Road Toton Nottingham NG9 6EG
Proposal:	Change of use to residential including retention of static mobile home, touring caravan, utility/day room building, raised site levels and parking

Case History

Decision by Broxtowe Borough Council - notice of refusal for planning permission ref: 20/00272/FUL dated 29 September 2020

Reasons for refusal –

- 1 The development by virtue of its siting within flood zone 3b would fail to accord with the NPPF (2019) (paragraphs 155 and 159), Policy 1 of the Broxtowe Aligned Core Strategy (2014), and Policy 1 of the Broxtowe Part 2 Local Plan (2019).
- 2 The development by virtue of its layout, position of development, temporary appearance of the static home and design of the utility building, would fail to accord with Policy 10 of the Broxtowe Aligned Core Strategy (2014), and Policy 17 of the Broxtowe Part 2 Local Plan (2019).
- 3 The static home, by virtue of its position within the site and the proximity of windows to the common boundary with 313 Nottingham Road, would fail to accord with Policy 10 of the Broxtowe Aligned Core Strategy (2014), and Policy 17 of the Broxtowe Part 2 Local Plan (2019).

Level of decision: delegated

APPEAL AGAINST REFUSAL FOR THE GRANT OF PLANNING PERMISSION REF: 20/00272/FUL

APPEAL DISMISSED – 20 JUNE 2022

APPEAL AGAINST ENFORCEMENT NOTICE DATED 20 SEPTEMBER 2022

APPEAL DISMISSED WITH SOME VARIATION TO TIMESCALES FOR COMPLIANCE – 8 NOVEMBER 2024

The Enforcement Notice dated 20 September 2022 required the following:

- (i) Permanently cease the use of the land for residential purposes and cease the occupation of the mobile home.
- (ii) Permanently remove the static mobile home from the land.

- (iii) Permanently remove the hard surfacing materials, used for raising of the site levels, from the land and reinstate the ground levels of the land to LiDAR heights as provided by the Environment Agency of between 27.36mAOD and 28.1m AOD as set out in the Environment Agency's Statement of Case, Page 3, paragraph 2.5 dated 19 October 2021 (enclosed) and suitably dispose of the resultant waste materials.
- (iv) Reduce the height of the close boarded boundary fence so that it does not exceed 2 metres from the reinstated ground level as required by (iii) above.

The periods for compliance with the requirements were:

- (i) 8 weeks from the effective date of the notice.
- (ii) 12 weeks from the effective date of the notice.
- (iii) 12 weeks from the effective date of the notice.
- (iv) 12 weeks from the effective date of the notice

The Inspector has varied the above compliance periods as follows:

- (i) and (ii) in each case amended to 4 months (from the date of the appeal decision)
- (iii) and (iv) in each case amended to 5 months (from the date of the appeal decision)

The Inspector has also amended the wording of requirement (iii) and has replaced the wording "suitably dispose of the resultant waste materials" with "remove the resultant waste materials from the site".

Subject to these variations, the appeal is dismissed, the enforcement notice is upheld and planning permission has been refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

GROUND OF APPEAL

The appellant appealed the enforcement notice under two grounds of appeal and I shall address these in turn.

Ground A - that planning permission should be granted for what is alleged in the notice.

Within his report the Inspector considers the main issues to be:

- Whether the proposal would be inappropriate development in the Green Belt and the effect of the proposal of the openness of the Green Belt;

The Inspector found that the development as described in the notice would be harmful to the Green Belt and therefore inappropriate development within the Green Belt. No very special circumstances were submitted for consideration. He further considered that the installation of a mobile home and associated domestic

paraphernalia such as the large area of hardstanding, and brick gate piers had an adverse effect on the openness of the site.

- Character and appearance;

Within his decision, the Inspector discusses the boundary treatment of the site which undermines the generally open character of the area and is at odds with the open character of the properties on either side of the road. Additionally, the brick piers and large gates across the frontage add to the incongruity compared to the adjacent development, this is exacerbated by the hard-surfaced gravel covering most of the plot and its enclosure by the close boarded timber fences.

- Flood risk;

The raising of land levels within the site is considered to contribute to the flood risk of local properties by virtue of causing flood water to be displaced and impede drainage. The Inspector expressed very serious concerns about flooding on the site. Caravans used for permanent residential occupation are highly vulnerable to potential impacts of flooding. Images from Storm Babet in 2023 had been submitted to the Inspector and he noted that the site and adjacent properties were flooded during that event. No new evidence has been submitted which could provide effective protection as detailed commentary provided by the EA demonstrates.

The Inspector concludes that the elevation of the land has further exposed the neighbours to flood risk with no additional measures proposed by the appellant.

- Living conditions of neighbouring occupiers, including 313 Nottingham Road;

The Inspector notes that the position of the mobile home reduces the privacy for the neighbour at no 313. The appellant had suggested changing the position of the caravan on site to avoid the portion of the site included within the green belt designation. This could meet the policy requirements however the effects of the development on the neighbouring property and its occupiers must be considered as part of the flood risk issue.

- Provision for gypsy and traveller sites;

The appellant asserts that the site is suitable for a gypsy and traveller site and maintains that the need for two permanent pitches as identified in LP Policy 16 is outstanding and unmet. The GTAA assessment dated March 2021 identified that at the time of the report there was no identified need for accommodation forecasts for between 2020 and 2038 in its area. The GTAA has been found by Inspectors not to be robust and that it under estimates the true level of need. The need for two permanent pitches remains outstanding. The lack of deliverable sites is a significant material consideration in favour of this appeal, as it was in the previous appeal decision.

- Whether appellants/occupants have overriding need for accommodation, and;

Following the previous appeal decision, the site was visited by the Council's Environmental Health Team in August 2021. At that time the site was occupied by two persons, not the appellant or his wife and children. It was unclear whether the occupiers had gypsy and traveller status however, the visiting officer was advised that they had moved onto the site as a temporary measure following the sale of their property in Beeston. The previous application was for a change of use to residential and it was claimed to provide accommodation for a person or family of tipsy or traveller status. However, there is no evidence to suggest that the applicant or his family have ever lived on the site and he was not in occupation at the time of the Inspector's visit. There is no evidence to suggest that the current occupier, a mother and young child, have gypsy or traveller status. The appellant has allowed the caravan to be tenanted for the entire time period in the knowledge that the use is unauthorised in planning terms.

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

In reference to PPT, Policy E, the best interests of the child, personal circumstances and unmet need outweigh harm to the green belt. The best interests of the child are a significant fact. The site is however only partly within the green belt. The appellant did not provide any information pertaining to himself or the current occupiers to the Inspector's consideration. The Inspector further finds that the lack of supply of deliverable traveller sites is a significant material consideration. This would not however overcome the serious concern relating to flood risk.

The Inspector therefore concludes that the development is contrary to the local development plan as a whole as well as national guidance. No other considerations carry sufficient weight to cause this appeal to be decided otherwise than in accordance with the policies and therefore the appeal on ground (a) fails.

Ground G - That any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

The appellant argued that the time period of 8 weeks was too short to expect the occupier to find alternative accommodation and asked for a period of at least 12 months. The Inspector considers the flood risk and Article 8 of the human rights act and finds that a period of 4 months would give the tenants a reasonable opportunity to find alternative accommodation.

The Inspector also adjust the time period for reducing the fence height, removing the hard surfacing and reinstating the ground levels to give one month following the removal of the caravan.