The Planning Inspectorate

Appeal Decisions

Hearing held on 20 January 2022

Site visit made on 20 January 2022

by Grahame Kean B.A. (Hons), Solicitor HCA

an Inspector appointed by the Secretary of State

Decision date: 13 June 2022

Appeal A Ref: APP/B3030/C/18/3196972
Land to the north-west side of Winthorpe Road, Newark, Nottinghamshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms C Smith against an enforcement notice issued by Newark & Sherwood District Council.
- The notice was issued on 15 February 2018.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of land to residential occupation including the stationing of caravans and the erection of a structure.
- The requirements of the notice are:
  - A. Cease the use of the 'land' for residential occupation.
  - B. Remove from the land all caravans and residential 'paraphernalia' including all structures and any planting undertaken on the land.
  - C. Remove from the land, the structure marked 'X' on the attached plan.
- The period for compliance with the requirements is:
  - A. 56 days after this notice takes effect.
  - B. 58 days after this notice takes effect.
  - C. 63 days after this notice takes effect.
- The Appeal A is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- This decision supersedes that issued on 29 April 2019. That decision on the appeal was remitted for re-hearing and determination by consent order of the High Court.

Appeal H Ref: APP/B3030/C/18/3217010
Land to the north-west side of Winthorpe Road, Newark, Nottinghamshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms C Smith against an enforcement notice issued by Newark & Sherwood District Council.
- The enforcement notice was issued on 09 November 2018.
- The breach of planning control as alleged in the notice is: Without planning permission, undertaking operational development consisting of the carrying out of works to the land including, but not limited to the laying of materials to create hardstanding, the erection of a building and associated concrete base (marked X on the attached Plan A) and the burying of utility cables, pipes, containers and associated infrastructure.
- The requirements of the notice are:
  - A. Remove from the land all hard standing and all associated materials (including

but not limited to crushed stone and road plainings).

B. Remove from the land the building and associated concrete base as marked X on plan A.
C. Remove from the land all pipes, cables, containers and associated infrastructure.
D. Return the land to its former condition before the unauthorised developments took place.

- The period for compliance with the requirements is:
  A. 84 days after the notice takes effect.
  B. 56 days after the notice takes effect.
  C. 100 days after the notice takes effect.
  D. 112 days after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- This decision supersedes that issued on 29 April 2019. That decision on the appeal was remitted for re-hearing and determination by consent order of the High Court.

Decisions

Appeal A

1. It is directed that the enforcement notice be corrected and varied as follows:

   (i) Delete the words "to residential occupation including the stationing of caravans" from the description of the breach of planning control at section 3, and substitute "to use as a caravan site, including the stationing of caravans and their use for residential purposes";

   (ii) Delete the words "Cease the use of the 'land' for residential occupation" from the requirement at section 5A and substitute "Cease the use of the land as a caravan site"; and

   (iii) Delete the time periods for compliance and substitute: "For steps A, B and C, within 12 months of the date this notice takes effect".

2. Subject to those corrections and variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal H

3. It is directed that the enforcement notice be varied by substituting the time periods for compliance with: "For steps A, B and C, within 14 months of the date this notice takes effect".

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

Procedural matters

5. The original appeal decisions were challenged in the High Court under s289 of the Act. By a Consent Order dated 26 October 2020 it was ordered that the appeals be remitted for rehearing and redetermination in accordance with the opinion of the Court. The opinion of the Court is contained in its judgment

Smith v Secretary of State for Housing Communities and Local Government [2020] EWHC 3827 (Admin).

6. The previous decision letter of 29 April 2019 determined separate appeals (there referred to as Appeals B, C, D, E, F and G). It is only appeals A and H that will be reconsidered. The other appeals were considered by the Inspector on ground (g) only, but there were no s289 appeals against those decisions.

7. The challenge succeeded on a single ground that related to that part of the decision not to grant temporary planning permission, the reason being that it failed to apply paragraph 27 of the Government's policy statement, Planning Policy for Traveller Sites dated August 2015 (PPTS) and failed to treat the lack of a 5-year supply of deliverable sites as a "significant material consideration".[1]

8. Relevant changes in planning circumstances may now bear upon the original decision. I have read the decision and as to those parts not challenged, I agreed with the Inspector's findings and conclusions for the reasons there stated, save for one matter in relation to flood risk described below.

9. However I held a hearing to give an opportunity for the parties to express what planning circumstances if any had changed since the original appeal decision was issued, and to address how if at all the redetermination should differ from the original decision. I have considered the further evidence submitted in writing and given orally before me.

Main issues potentially affecting the redetermination

10. The importance of PTTS/paragraph 27 in this context is spelt out at in *Smith* at paragraph 66 of the judgment and at the end of paragraph 70 the court made it clear that the crucial point at issue was that the question of whether or not to grant a temporary planning permission "*did require weighing up competing harms to health and welfare which… means that a failure to treat the absence of a 5-year supply as a significant material consideration could have affected that balance in this case*."

11. The appellant's submission on "Material Changes in Circumstances" dealt with the following topics, I have altered slightly the headings to make better sense of the issues:

- the 2020 Gypsy and Traveller Accommodation Assessment (GTAA);
- the Open Break policy: August 2019 review;
- the Open Break policy: A46 Newark Bypass upgrade;
- road noise and subsequent grant of permission by the A1M in Newark;
- flood risk issues;
- personal circumstances; and
- implications of the Police, Crime, Sentencing and Courts Bill (PCSCB).

12. I made it clear in a pre-hearing note that I expected representations to identify exactly why any change in circumstances is crucial to the redetermination of the appeal in accordance with the reasons for the successful challenge, - ie why, having regard to the competing harms to health and welfare, the absence of a 5-year supply as a significant material consideration should affect the

[1] Paragraph [61] of the judgment.

balance that was made in the decision, when considering whether or not to grant a temporary planning permission.

13. Paragraph 27/PPTS is part of a suite of policy prescriptions known as "*Policy H: Determining planning applications for traveller sites*". The appellant's agent states that the weight to be attached to this policy is strengthened, by which I understand that the weight to be attached to the factors advanced in support of the appeal that come within the scope of Policy H, are now so strong as to require a different outcome. As was stated in her submissions, there has been no change to Policy H. It is a relevant national policy that I have to consider.

Reasons

2020 Gypsy and Traveller Accommodation Assessment (GTAA)

14. Before the issue of temporary permissions is reached, I should note that in paragraph 64 of *Smith* it is said that PPTS identifies the relevance of considering whether or not there is a 5-year supply more generally and "*it seems self-evident from those other references that it is intended to be a material consideration generally, both for plan making and decision making*", and, I might add for the avoidance of doubt, in considering permanent as well as temporary planning permissions.

15. The National Planning Policy Framework advises (footnote 38) that a five year supply of deliverable sites for travellers should be assessed separately, in line with the PTTS policy. In the absence of specific guidance as to the weight to be given when considering the grant of a permanent permission, the question of weight is clearly established as one for the decision maker.

16. In February 2020 the GTAA was published for the Council's area confirming a significant immediate and unmet need for more pitches. Clearly the options open to the appellant remain limited due to the absence of any socially provided Gypsy and Traveller sites and the fact that most pitches in the Council's area are on privately owned sites. The Council is developing a strategy for pitch delivery which, despite some delays, will help meet the need in an Amended Allocations & Development Management DPD.

17. However the Council remains unable to identify other sites that are currently available or deliverable for Gypsy and Travellers, and it is unable to demonstrate a five-year land supply contrary to PPTS.

18. I agreed with the previous Inspector that the lack of alternative sites and a five-year supply were matters that weighed in favour of a grant of planning permission. But these were matters that were essentially agreed at the earlier hearing (see paragraphs 14 and 15 of the decision letter). The attempt by the appellant (Ground 1 of the challenge in Smith) to say they had not been properly considered, failed.

19. Nevertheless I have taken into account the additional information on the progress made by the Council to reach a stage where alternative sites may become available. Also considered is the current state of play with the supply of pitches and the updated assessment of need, which appears to be immediate for 77 pitches during 2019-2024 to address unauthorised and temporary development. But as I say, the basic points about lack of alternative sites where the appellant could relocate to and the lack of a five-year supply (itself reflective of a local need) were already conceded. It is noteworthy that

neither the court nor the appellant subsequently criticised the Inspector for failing to give particular weight to these factors in the planning balance.

20. That said, I agree that the level of need is now appreciably larger than estimated in 2019, although the appellant agrees that there is no reason to believe that allocations will not be agreed within the next 5 years which will help to address the identified need. In my view the lack of a five-year supply of sites in the Council's area and the absence of any alternative site to which the appellant can relocate are matters to which I should give significant weight.

The Open Break policy: August 2019 review

21. In the Allocations and Development Management DPD, 2013 (DPD) there is an "Open Breaks" Policy NUA/OB/1 that aims to keep certain areas under development pressure free from built development. As the previous Inspector had found, the development in relation to both appeals has had a harmful effect on the open break between Newark and Winthorpe, contrary to the aims of this policy. The harm is substantial in terms of the development in Appeal A, and as it relates to Appeal H, contributes to the overall negative impact of the development. It is contrary to relevant development plan policy in that regard.

22. In August 2019 the Newark Open Breaks Review, published on behalf of the Council, assessed whether the extent of the open break designations was appropriate to meet policy objectives. The appellant now says that the concerns of the previous Inspector do not appear to be shared in the relevant passages of this assessment. However there was some confusion as to whether those passages actually referred to the appeal site or some other caravan storage use within the area. At any rate I see no good reason to disturb the findings of the previous Inspector (cf paragraph 25 of the DL) that the caravans on the appeal site have a noticeable and negative impact on the openness of the area on account of their size and prominence.

23. Nor do I see a good reason to revisit the concerns expressed by the Inspector about the visual impact of the development and so forth on this issue; they do not go to the weighing up of competing harms to health and welfare. Nor can the review paper reasonably be argued to be a change in planning circumstances. The appellant seeks to introduce new evidence which does not really amount to a change in planning circumstances and does not in any event cause me to take a different view than did the Inspector on the issue.

24. The appellant argues further, through their agent that it is unclear why the previous Inspector considered that such a condition could not be attached to an eventual permission limiting occupation to a fixed number of touring caravans.

25. This is an issue that should have been raised at the earlier hearing or the decision challenged as a material omission. In fact the Inspector made it quite clear (DL/26) that static units would be preferable anyway as offering more comfortable living standards for the families. It seems to me, reading the decision as a whole that he had clearly in mind the adverse noise impacts on the occupants, so that in doubling the number of vans as in fact was requested, the impact on openness would inevitably be notably worse than at present.

The Open Break policy: A46 Newark Bypass upgrade

26. The appeal site is within an "Important Noise Area" as identified under UK Noise Mapping, due to its proximity to not one, but two major highways, the A1

and A46. As noted in *Smith* (paragraph 70 of the judgment) the Inspector ultimately concluded in strong terms that his concerns in respect of noise were so great he could not conclude that continued occupation would be in the best interests of the children. I agreed with that conclusion. I also note that he took into account the noise assessment prepared for the appellant and others.

27. It is said now that Highways England proposes an upgrade to the A46 Newark bypass which if it goes ahead as proposed would impact the Newark to Winthorpe Open Break far more significantly than the appeal development.

28. Although the route options for the scheme have not been selected and work is only "potentially" scheduled to start in 2025, the bypass appears critical to the growth point status[2] of Newark. It seems that the new stretch of road would cross the Open Break to the east of Winthorpe Road through sub area 14 which is adjacent to sub area 13 wherein lies the appeal site.

29. I also note that whoever authored the Newark Open Breaks Review was of the view that it was sub areas 12 and 13 that provided an open break between Newark and Winthorpe[3]. Sub area 14 was not mentioned. It is too early to come to any firm view as to whether the proposals would impact significantly on the open break between the built-up area of Newark and Winthorpe such as would lessen the weight that must be given to the harm caused by the appeal development conflicting with Policy NUA/OB/1.

Road noise and grant of permission by A1(M)

30. The previous Inspector thoroughly assessed the available information about the noise environment and found that it was unsuited to the residential occupation of the caravans. I need not repeat that material. It formed a key part of his decision. I inspected the site including inside some of the caravans and I see nothing in his conclusions with which to disagree. The noise from nearby sources is indeed noticeable and likely to be disruptive, with potential for sleep disturbance. In policy terms the development is not in a place that would promote health and well-being with a high standard of amenity for existing and future users and is contrary to key development plan policies. There are adverse effects that cannot be adequately mitigated. National policy is to the effect that such living conditions should be avoided.

31. Now the appellant points out that the Council has since resolved to grant temporary permission for a traveller site immediately adjacent to the A1 Trunk Road and East Coast main railway line, and noise levels there were found to be not dissimilar to those for the current appeal site. I am not prepared to undertake a close comparison of the new traveller site with the appeal site because even if the noise levels at that development are what they are claimed to be, they do not provide a compelling reason to override the harmful effects of the road noise and noise from other sources that are and would be experienced by present and future occupants of the appeal site.

32. Indeed, and it is concerning that, in downplaying the harm to the open break policy due to the impending bypass works, nowhere does the appellant mention what effect, if any, the rerouting of the A46 in closer proximity to the appeal site, might have in terms of noise impacts. Considering the plans of the options

[2] Growth Points are centres of economic activities created or stimulated in disadvantaged regions with a view eventually to becoming centres of economic growth.
[3] p54 of the appellant's submissions.

provided by the appellant it seems clear to me that should the works be carried out and if the bypass became operational, the traffic would be that much closer to the families.

33. The works would expand the A46 running past and towards the appeal site to become a dual carriageway in both directions, in addition to creating a new flyover over the A1 in close proximity to the appeal site. The Council provided illustrations of the options, the "Noise Important Areas", the current layout and a visual representation of the proximity of the flyover to the appeal site. The detail of landscaping and other mitigation measures would have to be considered as the project develops, but I have no doubt that the potential exists for a greater adverse impact as a result of the closer proximity of a dual carriageway to the site.

34. Another matter raised by the appellant is whether one could require mobile homes to comply with BS 3632:2005. This standard is designed for park homes and to be more consistent with conventional forms of housing so that park homes are suitable for permanent residential use. The Inspector was quite clear (paragraph 58 of his letter) that it might be possible to design a mobile home with noise attenuation in mind, but occupants would have windows and doors open in warmer weather and it was unrealistic to expect windows to be closed for most of that time.

Flood Risk issues

35. The previous decision noted that the site is in Flood Zone 2 (FZ2), an area with a medium probability of flooding. The sequential test was passed on account of the absence of alternative available sites. However "highly vulnerable" development, including full-time occupation of caravans, should not be located in FZ2 areas unless the exception test were met, informed by a flood risk assessment (FRA). The Council accepted the first part of that test was met.

36. The second part required a site-specific FRA showing that the development will be safe for its lifetime, taking account of the vulnerability of its users, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall. The Inspector found that due to the "highly vulnerable" condition of its users and assessed risk of flooding using various models, it was not safe for occupants of any of the units to continue to reside at the site, and the development would not be safe in the terms of its physical characteristics.

37. There was no discussion of other sites with greater flood risk, but the Inspector noted several pitches in FZ2 or FZ3 in Newark had emergency plans setting out evacuation procedures and so forth. Given the additional strain on emergency services due to the vulnerability of the development he had concerns whether the residual risk could be managed safely, even if emergency plans were required by condition. Therefore the second part of the exception test was not met, contrary to paragraph 163(b) and (d) of the NPPF and Core Policy 5(6) of the CS and Core Policy 5(6) of the Amended CS. Those concerns weighed also against a grant of planning permission for the operational development.

38. I agreed with those concerns. The Council thought that the flood risk had not materially changed since the first hearing but the appellant's consultant had asked the Environment Agency (EA) about any change to flood modelling since the last appeal. The EA had contended that the outputs from the 1 in 1000 year event in the current model should be used as the proxy for the 1 in 100

year event, plus 50% allowance for climate change, meaning that on such an event all pitches on the site would be flooded.

39. Nowadays when assessing flood risks, account should be taken of potential impacts of climate change by applying "climate change allowances" set out in the Planning Practice Guidance (PPG). These allowances are predictions of anticipated change for peak river flows and other events that cause flooding. Different allowances are used for various climate scenarios at different periods over the next 100 years. The guidance aims to increase resilience to flooding, a key part of sustainable development.

40. During the hearing the main parties and myself consulted, by means of a link to the Defra web site, the peak river flow allowances for the Lower Trent and Erewash Management Catchment where the appeal site lies. The appropriate allowance for highly vulnerable developments in FZ2 areas uses the "central allowance" which is based on the 50th percentile, that is the point at which half of the possible scenarios for peak flow fall below it, and half fall above it.

41. The discussion between the EA and the appellant's expert was hampered firstly, by their virtual participation on the Teams platform that caused communication issues, but secondly, the main parties had not ensured that the experts on whom they relied had agreed in advance on what had materially changed, if anything, in terms of predicted flood levels on the appeal site.

42. If no precise modelling is established for particular scenarios of the development, including the question of a temporary permission, the experts should have been briefed in good time to enable them to produce an agreed bespoke position on what common ground exists or the material differences between them, if they wished to offer revised figures for estimated flood depths on the appeal site. In fact, at the end of their evidence the appellant's agent conceded that there had not been a lot of change, she considered Plot 6 only was at risk, and the access road. The Council maintained that the second part of the exception test was still unmet.

43. In the first place, I have doubts about whether the first part of the exception test is truly met, given that it expects there to be "*wider sustainability benefits to the community*". Elements of a sustainable location import, in my view environmental conditions that promote health and well-being, or at least no significant contraindications. The noise environment of the site is a significant constraint as it is in an Important Noise Area as identified under UK Noise Mapping, a locational constraint that in my view affects its wider sustainability.

44. For this part of the test to meaningfully assess whether wider community benefits outweigh the flood risk, it would seem logical to include the particular locational disbenefits to the community of an otherwise accessible site that meets a defined need, as integral to the assessment.

45. The agreed statement in the earlier hearing merely stated that "the sequential test is passed". It is also instructive to review the previous appeal statement as to Part 1 of the exception test (drafted by a different agent). There, the correct test is acknowledged and various decisions held up as examples, but emphasis was on the test being met due to sites meeting a defined need, without any demonstrable appreciation of the balancing exercise expressly required, ie whether the benefits actually do outweigh the assessed flood risk.

46. In the present appeal and setting aside the issue of "net" benefits to the wider community, it is unclear that in terms the evaluation was in fact judged to outweigh the flood risk. This can only sensibly be done, looking at the actual risk where information is available, not a generalised recognition there is a "medium probability" between a 1:100 and 1:1,000 annual probability of river flooding in a FZ2 area. Reviewing the evidence, the revised figures for predicted flood depths at these locations still give cause for concern. I consider the most vulnerable part of the site remains at the north, where pitch 5 (where the appellant resides) and pitch 6 are located, and the access road outside the site.

47. Then, the appellant seeks to compare sites on Tolney Lane where many traveller sites in the Council's area are located. It is said the flood risk is "far" greater and "more serious" than on the appeal site where the flood risk could be managed with an evacuation plan, and "*permission is sought for just 6 families*". I do not accept this argument. The fact that other sites may be at greater risk is hardly a compelling reason to accept occupation of a site which is in itself unsafe, the occupants would still be "highly vulnerable".

48. Another reason I do not accept this argument is that in effect the development being characterised as minor, and I note that although the PPG definition of "minor development" including changes of use, is excepted from sequential or exception tests, this does not apply to changes of use to a caravan site.

49. I conclude that it has not been satisfactorily demonstrated that the development passes the first part of the exception test, or that if it does, that it is otherwise appropriate or necessary and safe in its location, in accordance with the Framework.

Personal circumstances

50. All the previous information as to the appellant's circumstances is relevant. In addition I have taken into account the information and further information provided that relates to other families in the unchallenged appeal decisions, insofar as they might bear on the well-being of the appellant and her family, for example the degree of interdependence and support that the families give each other, which is a recognised feature of Gypsy culture.

51. In this connection I was provided with a statement detailing the material change in circumstances since the previous hearing with several exhibits, including statements and letters from doctors, hospital trusts, and schools. As noted previously, apart from the Smiths the other residents are not related to one another but are all English Gypsies with long-standing relationships and a strong desire to live together as a group.

52. The key changes on plot 5 are that SM is now living with his wife, the appellant. The appellant has health issues and her daughter A suffers with hypermobility issues and has ongoing referrals to hospital, she was due to start a college course soon. On plot 1, N will now have transferred to secondary school and Mr B Snr has had health issues. On plot 2, Mr D Snr has developed further health issues and on plot 3 L has experienced serious health issues. On plot 4 G is to re-marry someone with two young children, G has health issues and is awaiting surgery. On plot 6, G and her daughter B now live there with husband and father J. They have one new child and a 3rd is expected. B was to start college to prepare for an art foundation course, she has been out of

education for some years. J's health needs had not been fully explained previously and these were now detailed in the submitted correspondence.

53. In addition the headteacher of Mount CoE primary school wrote and spoke compellingly in support of the appeal, expressing her concern if the children of the appellant's family were forced to move on with no permanent home. I accept that the current location is a family home where the children have flourished in a positive and stable environment which has contributed to the academic and emotional progress of the children, and that to change this now would be detrimental to their social and emotional well-being as well as their ability to continue to thrive academically.

54. The Council did not dispute any of this information. I listened carefully to this and the other evidence from various family members and the appeal's supporters. The weight that should be given to the personal circumstances of the residents of the site, having particular regard to the best interests of the children, continues to be substantial, particularly the benefits associated with healthcare and schooling arrangements.

Implications of the Police, Crime, Sentencing and Courts Act 2022

55. The appellant's agent made submissions about the implications of a proposed new criminal offence where a person who resides or intends to reside on any public or private land without permission and is causing, has caused, or is likely to cause, significant harm, obstruction, harassment or distress. It was not then relevant as the proposals were not enacted, however the Bill received Royal Assent on 28 April 2022 and is now an Act of Parliament.

56. Powers to deal with unauthorised encampments are not new. However, the proposals now also amend the Criminal Justice and Public Order Act 1994 to broaden the list of harms that can be considered by the police when directing people away from land; and increase the period in which persons so directed must not return, from 3 to 12 months. Amendments to the 1994 Act allow police to direct trespassers away from land that forms part of a highway.

57. It is said that under the new powers, the nomadic lifestyle of travellers could be criminalised and they would live with the threat of their homes, ie caravans, and vehicles being impounded if they risked stopping on unauthorised roadside encampments. Now it is said, even a single Gypsy or Traveller could be caught by the Act, making life on the road a very difficult lifestyle to follow.

58. I do not agree with the appellant's agent's argument that it is a separate factor to weigh in the balance in this appeal, over and above the obvious risk of homelessness should the notice be upheld. She argues that use of the new powers would disproportionally affect a specific minority and ethnic community and would be likely to conflict with equality and human rights legislation.

59. It seems to me that this factor could only be material in an appeal such as the one before me where, either the primary legislation itself is incompatible with human rights and equality legislation or, notwithstanding the safeguards against the use of the powers, there was very strong evidence that they would or are being used in an arbitrary manner against Gypsies and Travellers.

60. As to the first argument, when the Bill was first introduced the government wrote to Rt Hon Harriet Harman QC MP Chair, Joint Committee on Human Rights explaining these issues and why the Act was compatible with the

European Convention on Human Rights (ECHR). It did recognise this as a sensitive issue, and that

"the offence, seizure power and amendments to the 1994 Act would interfere with the rights of anyone who lives in a caravan or movable vehicle, most notably the Gypsy Roma Traveller community, whose nomadic existence is given special consideration by the courts (see Chapman v United Kingdom (2001) 33 EHRR 18)."

61. In this appeal the rights of English Gypsies deserve no less consideration.

62. However the powers are in accordance with law, set out precisely in statute, and the aims of preventing crime and disorder and protecting the rights of landowners and the local community are clearly legitimate in our society. The government states that they are necessary to tackle harms caused by unauthorised encampments.

63. Secondly, there are safeguards inherent in the exercise of the powers. The damage, disruption or distress caused or likely to be caused by residing on land without permission, must be significant for there to be an offence. Moreover it is a reasonable excuse not to leave the land such that the police will be expected to take into account welfare considerations, such as children in the caravans, and would allow sufficient time for the families to move themselves and their vans to a new location. It is stated in the government's letter justifying the ECHR compatibility of the new powers, that a constable will conduct a balancing exercise between the rights of the person residing in their vehicle against the rights of the landowner and/or the local community. I do note however that this expectation is not made a statutory requirement.

64. At any rate removal from the appeal site would not inevitably expose occupiers to criminality, due to the balancing exercise that the police have to do in any given situation. Therefore whilst the general risk of homelessness is of course a significant consideration, the particular risk of families being criminalised just by being homeless and staying put on the roadside would seem to be lower in this appeal, precisely because of their vulnerable status and circumstances.

65. That of course depends on constables on the ground being able to evaluate fairly the balance required between the rights of the families in their caravans on the roadside (as that is where they may well will end up if the EN is upheld) on the one hand), and the "*rights of the landowner and the local community*" pertaining in any given situation, on the other hand.

66. The Council may be committed to removal of all illegal encampments in its district, and it may have been urged to consider a network of emergency stopping places to enable the Police to use their powers to move households on, but yet there is no formal transit provision in its area[4]. Such actions or inactions by the Council may well make life for homeless Gypsies and Travellers more perilous but as far as criminalising their behaviour is concerned, the duties of the office of a constable are exercised independently.

67. There is no actual evidence adduced by the appellant in this appeal to substantiate a view that such decisions would be taken arbitrarily, in a disproportionate way.

[4] February 2020 GTAA Final Report February 2020.

68. I would add that clearly there are measures that the Council could consider, given the Article positive obligation to facilitate the gypsy way of life and, as a minority group, to give special consideration to their needs and lifestyle, for example by alleviating the distress of families who find themselves homeless and on the road, by following the ORS recommendations to use negotiated stopping agreements, allowing caravans to be sited on suitable ground for an agreed, limited time, with limited services such as water, waste disposal and toilets. Unfortunately and as the report notes, there is no formal transit provision in Newark and Sherwood.

Planning balance and whether a temporary permission is justified

69. I have reviewed the planning balance in respect of Appeal A and Appeal H conducted by the previous Inspector. The harm to the designated open break policy is not diminished due to the new matters raised, and the combined harm resulting from this, the flood risk and the harm to living conditions of residents on the site is substantial. In my view and particularly significant is the harm arising from the noise environment which renders the site unsuited to residential occupation of caravans for any appreciable length of time due to concerns over disturbance and long-term health and well-being, not least in relation to the children occupying, or who may occupy the site in future. Road traffic noise is a known health hazard and whilst its effect specifically on children's health is less understood, this adds to my own concerns.

70. As previously found, the development is clearly contrary to, as well as national guidance, relevant policies of the development plan read as a whole. Some additional weight against the development must be accorded to the fact that it was intentionally undertaken without planning permission.

71. The lack of alternative sites immediately available for the occupants, the proven local need for gypsy and traveller accommodation in the district, and the admitted lack of a 5 year supply to meet that need, amount to significant considerations in favour of the development. Similarly, the fact that the site provides a settled base to facilitate access to education and healthcare enables the appellant family and the group to live together in a way conducive to gypsy culture, and bearing in mind the protected characteristics of that group in relation to public sector equality duties that have to be discharged, carry significant weight in favour of the development.

72. I have not found on the evidence that the existence of the new powers to criminalise trespass on another's land, is material in this appeal for the reasons given. Of course it is implicit that the lack of immediately available alternative sites may result in homelessness if the notices were upheld.

73. However, I have concluded that the combined harm and conflict with the development plan clearly outweigh the material considerations in favour of the development such that I should not grant a permanent planning permission for a caravan site, including the development to which Appeal H relates for the reasons previously given.

74. Nor do I consider that a temporary permission is appropriate in this case, for all the reasons given by the previous Inspector but in addition having for the avoidance of doubt, considered paragraph 27 of PPTS which advises that the lack of a 5-year supply of deliverable sites should be treated as a "significant material consideration" in this context. Although the identified harm might be

experienced for a limited period, the site is inherently unsuitable for the unauthorised use and continued presence of the development for longer than is necessary is unjustified. It would not be in the best interests of the occupants to remain there and it is uncertain when new sites may come forward. Continued occupation will only exacerbate the potential for harm to the health and well-being of occupants whether, for example, from the adverse noise environment or the unpredictable timing of a flood event.

75. The changes in circumstances put forward, insofar as they are material, taken with the now overt consideration of paragraph 27, do not strengthen the case for a temporary permission sufficiently to cause me to take a different view from the previous Inspector.

Proportionality assessment

76. Decisions that affect a community's ability to place their caravans on land interfere with the right to respect for their home and their ability to maintain their identity and to lead a private and family life that follows their nomadic tradition. Thus a refusal to grant permission for the family to continue to reside at the site engages Article 8 and concerning enjoyment of possessions, Article 1 of the First Protocol. Interference must be proportionate and necessary.

77. Article 3(1) of the United Nations Convention on the Rights of the Child also provides that the best interests of children must be a primary consideration in all actions of public authorities. The best interests of the children would include being able to continue education and accessing health facilities without the difficulties of access presented by not having a settled base.

78. The implications of having to leave the site are more significant for some, including the appellant family, than others as found previously. Review of the families' circumstances have pointed up continuing health and education concerns among individuals, the impacts of which are of course felt among the group as a whole. However although these impacts are concerning and I have great sympathy with those affected, I do agree with the previous Inspector that the interference with the home and family life of the appellant and her family is necessary and proportionate having regard to legitimate land use planning objectives of protecting the environment and public safety. It follows from the factors I have considered as to a temporary permission, that my conclusions on proportionality are the same here. Therefore to dismiss the appeals and uphold the enforcement notice would not result in a violation of the rights of the occupants under equalities or human rights legislation.

79. Dismissal of this appeal may well have the likely effect of forcing the families back onto the road and I recognise that will be in a situation where powers are available to criminalise behaviour of roadside travellers refusing to move, or perhaps simply being unable realistically to do so, as directed by the police.

80. Also considered in these appeals is the Public Sector Equality Duty (PSED) contained in the Equality Act 2010 that sets out the need to eliminate unlawful discrimination and advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. However, considering possible steps to address that inequality I find no alternatives that would be appropriate to the circumstances and have less harmful impacts. Weighing all the relevant considerations in the balance, I consider that upholding each of the notices would be proportionate.

Conclusion on the ground (a) appeals

81. For the reasons set out above, I conclude that planning permission should not be granted for the material change of use and operational development in relation to Appeal A or for the operational development in relation to Appeal H.

The ground (g) appeals

82. The issue here is whether the compliance periods are reasonable and proportionate. For the reasons given in the decision of 19 April 2019 I agree the notices should have appropriately extended compliance periods. The appellant now requests an extended compliance period of 12 months plus two months for the operational development for alternative accommodation to be sought, and schooling and other arrangements to be made, although she states that schooling is not the most important issue, but social well-being of families.

83. The Council has no objection to such extension. I agree that for these reasons a twelve months compliance period plus an extra 2 months for the operational development would be reasonable and proportionate periods within which to comply with the requirements of the notices.

84. Whether or not the Council might invoke its power to extend the compliance period without prejudicing its right to take further action, would be a matter entirely for the Council.

Conclusion on Ground (g) Appeals

85. For the reasons given above, I conclude that the period for compliance within the notices notice falls short of what is reasonable. Accordingly, I shall vary the enforcement notices prior to upholding them. The appeals on ground (g) succeed to that extent.

Grahame Kean

INSPECTOR

APPEARANCES

FOR THE APPELLANT

M Heine	Planning consultant, Heine Planning
Mr Walton	SLR Consulting Limited

FOR THE LOCAL PLANNING AUTHORITY

Ms Lockwood	Senior Planning Officer
Mr Briggs	Planning Enforcement Officer
Mr Norton	Business Manager, Planning Policy
Mr Barton	Environment Agency
Mr Goldsmith	Environment Agency

INTERESTED PERSONS

Mrs Kent	Headteacher, Mount Church of England Primary School
Ms Mounsey	Interested person