



## Appeal Decision

Site visit made on 13 February 2007

by **Steven Fox BAMA MRTPI**

an Inspector appointed by the Secretary of State for  
Communities and Local Government

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Date

20 Feb 2007

### Appeal A: APP/U2805/C/06/2017666

**Little Meadow, Corby Road, Cottingham, Market Harborough LE16 8XH**

- 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 Mr A Holland against an enforcement notice issued by Corby District Council.
- The Council's reference is ENF29.
- The notice was issued on 4 April 2006.
- The breach of planning control as alleged in the notice is the laying of an area of hardstanding comprising of tarmac road planings
- The requirements of the notice are to remove all road planings from the site and reseed the land as agricultural grassland.
- The periods for compliance with the requirements are one month for the first and 'during the next planting season after this notice comes into effect ie. 1<sup>st</sup> October 2006 to 31 March 2007' for the second.
- The appeal is proceeding on the ground set out in Section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The enforcement notice is quashed.**

### Appeal B: APP/U2805/A/06/2016152

**Little Meadow, Corby Road, Cottingham, Market Harborough LE16 8XH**

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr A Holland against the decision of Corby District Council.
- The application Ref 05/00383/COU, dated 13 September 2005, was refused by notice dated 17 January 2006.
- The development proposed is the installation of a mobile home.

**Summary of Decision: The appeal is allowed, and planning permission granted.**

### Matters Relating to the Enforcement Notice – Appeal A

1. Part 2 of the notice identifies the land to which it relates as being edged red on the plan attached. Part 3, in describing the alleged breach of planning control, specifically refers to the laying of hardstanding in the area hatched on the plan, implying that the works affect only part of the overall area identified. Unfortunately the plan attached to the notice does not identify the relevant area by hatching. I consider this omission makes the notice uncertain because a recipient would be unclear as to the exact extent of the alleged breach. I do not feel able to amend the plan because I cannot accurately define the area that the Council intends the notice to relate to.

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2. I am also concerned about the wording of Part 6 (b) (Time for Compliance). Section 173(9) of the Act says that a notice must specify the period or periods for complying with its requirements. The period or periods commence on the date the notice takes effect. This is a fundamental statutory provision and failure to comply renders the notice a nullity and incapable of amendment on appeal. The notice was issued on 4 April 2006 to take effect on 12 May 2006 and the period for re-seeding (6(b)) is specified as the next planting season after the notice comes into effect ie. 1 October 2006 to 31 March 2007.
3. For the purposes of the Act I do not consider that this constitutes the specifying of a period commencing on the date the notice takes effect. The term 'the next planting season' is imprecise. Whilst it may be possible to deduce a period for compliance from the dates given the right of appeal against the notice has to be taken into account. An appeal suspends the coming into effect of the notice. Therefore a recipient of this notice is placed in considerable difficulty because, depending on the date of issue of my decision, the end date for compliance may have passed, or the period reduced such that it is unreasonably short. Consequently my view is that the wording of 6(b) is seriously defective and fails to meet the requirements of Section 173(9). This is a fundamental flaw which, together with the failure to identify the area of the alleged breach, means that the notice is a nullity and incapable of correction. Therefore I shall quash the notice.

**Appeal B - The Refusal of Planning Permission**

4. The appeal site lies in the open countryside where structure and local plan policies restrict residential development to the re-use or replacement of existing dwellings or development necessary to meet agricultural and forestry needs. The site is also within a Special Landscape Area (SLA), with priority given to the protection of the character and quality of the area and the avoidance of visual intrusion. There is no dispute between the parties as to the appellant's status as a gypsy, consequently structure plan policy H9 is relevant. This says that local plans will determine the need for additional gypsy accommodation having regard to a number of criteria. Local plan policy C31 states that a short stay transit site has been provided at Gretton Brook Road. The consultation draft of the Local Development Framework - Site Specific Proposals sets out the preferred options for traveller sites (H7), recognising a need and stating an intention to refurbish the existing Gretton Brook Road site and provide an additional site. Because this document could be changed the weight attaching to it is reduced. I have also had regard to the relevant central government guidance, including ODPM Circular 01/2006 which gives advice on planning for gypsy and traveller caravan sites.
5. The appeal site is located in the open countryside to the east of Cottingham and stands on the south side of Corby Road, from which it takes access. The vehicular access and an area of hardstanding occupying the northern part of the site have been constructed from road plantings. The site is roughly rectangular and its eastern and western boundaries comprise mature hedgerows, with a further hedge on the road frontage and a 2m timber fence to the south. Its immediate surroundings are rural in character, with an area of woodland to the east and open land on other sides. Allotment gardens with an assortment of sheds, hutments and fences lie on the opposite side of Corby Road to the north-east.
6. With the policy framework in mind and from what I have seen and read I consider the main issue to be whether the character and appearance of the area would be harmed and, if so,

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whether such harm is outweighed by considerations relating to the provision of sites for gypsies and the personal circumstances of the appellant.

7. The appellant makes clear that the proposal involves the stationing of one mobile home and one touring caravan for use by his family and I have considered the appeal on that basis. I noted that the landscape around the site is characterised by open fields broken by mature hedgerows with interspersed blocks of woodland. The presence of mature hedges on three of the site's boundaries would assist in screening the caravans, associated vehicles and domestic paraphernalia. Visual impact could be further reduced by the careful siting of the caravans and limiting the extent of associated works; matters that could be controlled by planning conditions. However there would still be some erosion of the undeveloped character of the area, to the detriment of the appearance of this attractive rural landscape. In particular the formation of the access which incorporates gates and fence panels detracts from the rural character of the road frontage and opens up views into the site. Consequently I conclude that whilst the effect of the development on its surroundings could be reduced by conditions there would be harm to the character and appearance of the area by virtue of the visual impact referred to above, and therefore conflict with development plan policies for the protection of the SLA.
8. There is no dispute about the appellant's gypsy status. Also, the Council accepts that there is evidence of an immediate need for additional gypsy site provision. In my view this is demonstrated by the submitted bi-annual counts and the information relating to unauthorised encampments in the Borough. The emerging LDF document indicates that an additional site will be provided and I note that planning permission for this was granted in April 2006, with the application form indicating the provision of not less than three pitches. Planning permission has also been granted to upgrade the existing site although the Council says that it is fully occupied by new age travellers. But there is no evidence as to when the permissions are likely to be implemented and the Council says that the LDF will also consider the adequacy of provision and the availability of alternative sites.
9. The uncertainty regarding the level of need and the identification of suitable sites is compounded by the failure to carry out a Gypsy and Traveller Accommodation Assessment (GTAA) which, as 01/2006 says, is integral to the assessment of general accommodation needs and informing the preparation of development plan documents. Consequently there is evidence of an immediate need for additional sites but considerable uncertainty as to the level of that need, when an assessment will be completed and how and when site provision will be made.
10. The appellant's personal circumstances are clear from the evidence. He and his family have lived on a temporary basis at a number of unauthorised sites in Kettering and Corby, there being no pitches available on public sites in the area. If the appeal fails the family would be forced to continue living on the highway or on private land, with or without the consent of the land owner.
11. Although there is harm to the character and appearance of the area I consider that the circumstances of this case, in particular the uncertainty as to need and the provision of additional sites, justify the grant of a temporary planning permission in accordance with the advice in paragraphs 45 and 46 of 01/2006. A five year temporary consent would allow the Council to fully assess the unmet need for gypsy sites through a GTAA and bring forward

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more sites that will be realistically available to meet that need. I have taken into account all other matters raised but find nothing to alter my conclusion.

12. In addition to limiting the duration of the permission I consider other conditions to be necessary. The permission is granted on the basis of an unmet need for gypsy sites so it is appropriate to restrict occupation to those falling within the definition of a gypsy. Also, the application is based on the stationing of one mobile home and one touring caravan and it is necessary to control this by condition, as is the prevention of the carrying out of business activities on the land. Visibility at the access is good in both directions and the appellant controls the frontage on either side of the opening. But I agree with the Council that improvements are needed to the access itself and that details of these should be submitted and approved prior to the occupation of the site. In order to minimise visual intrusion the siting of the mobile homes and location of hardstanding for parking/manoeuvring are matters that also should be approved by the Council. It would be not be unreasonable to require submission and approval of details of additional planting, fencing and lighting in order to ensure that visual impact is reduced. I also noted that material stripped from the site has been banked against the hedges and consider that in the interests of the health of the trees and bushes the material should be removed and redistributed on the site.

**Formal Decision****Appeal A: APP/U2805/C/06/2017666**

13. I direct that the enforcement notice be quashed.

**Appeal B: APP/U2805/A/06/2016152**

14. I allow the appeal and grant planning permission for a the installation of a mobile home on land at Little Meadow, Corby Road, Cottingham, Market Harborough in accordance with the terms of the application, Ref 05/00383/COU, dated 13 September 2005, and the plans submitted with it, subject to the following conditions:
- 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
  - 2) The use hereby permitted shall be for a limited period being the period of five years from the date of this decision. At the end of this period the use hereby permitted shall cease and all caravans, materials and equipment brought on to the land in connection with the use shall be removed, and the land restored to its former condition.
  - 3) This permission does not authorise use of the land as a caravan site by any persons other than gypsies and travellers, as defined in paragraph 15 of ODPM Circular 01/2006.
  - 4) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be a static caravan or mobile home) shall be stationed on the site at any time.
  - 5) Any caravans positioned on the site shall be capable of being towed on the public highway, in accordance with the relevant Highways Act legislation, without division into separate parts.
  - 6) No caravan shall be brought onto the site until details of its intended siting have been submitted to and approved by the local planning authority in writing. The caravans

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- shall only be positioned in the approved locations, unless otherwise agreed in writing by the local planning authority.
- 7) No commercial activities shall take place on the land, including the storage of materials. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
  - 8) No caravan shall be brought onto the site until the means of vehicular access has been constructed in accordance with details to be submitted to and approved in writing by the local planning authority.
  - 9) No caravan shall be brought onto the site until hardstanding areas for the parking and manoeuvring of vehicles have been constructed in accordance with details to be submitted to and approved in writing by the local planning authority. Thereafter the areas so provided shall not be used for any other purpose.
  - 10) No development shall take place until full details of both hard and soft landscape works, together with a timetable for implementation, have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. The submitted details shall include means of enclosure, external lighting and the re-spreading of material stripped from the site and deposited alongside the site boundaries.

*Steven Fox*

Inspector