

**5 BOGGS COTTAGES, KEELE ROAD, KEELE**  
**MR THOMAS MAUGHAN**

**16/00969/FUL**

The Application seeks to vary condition 1 of planning permission N21428 restricting occupancy of the property 5 Boggs Cottages, a mobile home, to Mr Edwards and any relatives/dependants living with him. The variation sought is to allow the occupation of the mobile home by Eileen McDonough, her partner Thomas Maughan, and their resident dependents.

The application site is within the Green Belt and a Landscape Maintenance Area as defined on the Proposals Map to the Local Plan.

**The statutory 8 week determination period for the application expires on 5<sup>th</sup> January 2017.**

**RECOMMENDATION**

**Refuse for the following reason:-**

- 1. The proposed variation of condition 1 of planning permission reference N21428 would result in a dwelling on this site, which would constitute inappropriate development within the Green Belt. The arguments advanced for the retention of the mobile home without compliance with the current condition do not constitute the very special circumstances required to justify inappropriate development in the Green Belt. The proposal is therefore contrary to Policy S3 of the Newcastle-under-Lyme Local Plan 2011 and the NPPF.**

**Reason for Recommendation**

On balance it is considered that as it has not been demonstrated that granting planning permission is in the best interests of the children allowing for the fact that if planning permission is refused the family would continue to live on the side of the road. In light of this it is considered that the personal circumstances of the applicants do not clearly outweigh harm to the Green Belt and any other harm so as to establish the very special circumstances required to justify approval.

**Statement as to how the Local Planning Authority has worked in a positive and proactive manner in dealing with this application**

It is considered that the proposals are unsustainable and do not conform to the core planning principles of the National Planning Policy Framework and it is considered that the applicant is unable to overcome the principal concerns in respect of the location of this development.

**KEY ISSUES**

The application seeks to vary condition 1 of planning permission for the use of a mobile home as dwellinghouse reference N21428, which is worded as follows;

*“The permission hereby granted shall enure for the benefit of Mr Leonard Edwards only and any relatives or dependents living with him.”*

The variation of the condition as proposed seeks to allow the occupation of the mobile home by Eileen McDonough, Thomas Maughan, and their resident dependents instead of it being for the benefit of Mr Edwards and any relatives or dependents living with him. The family in question are Irish Travellers and includes two children of primary school age. The agent appears to be proposing that the above condition should be amended to read as follows

*“The permission hereby granted shall enure for the benefit of Mr Leonard Edwards, Eileen McDonough and Thomas Maughan only and any relatives or dependents living with them”.*

The application site is within the Green Belt and as such the key issues to address are whether the proposed variation of condition results in inappropriate development within the Green Belt; and if it is inappropriate development consideration is required as to whether the necessary very special circumstances that would justify granting planning permission apply in this case.

#### Is this inappropriate development in the Green Belt?

Both national and local policy restricts development within the Green Belt to that which is defined as appropriate, except in very special circumstances. The NPPF indicates, at paragraphs 89 and 90 when the construction of new buildings and certain other forms of development are not inappropriate in Green Belt. The retention of the mobile home for residential occupation does not fall within any of the exceptions identified. In addition it would be contrary to Policy S3 of the Local Plan which identifies which forms of development may be permitted within the Green Belt and is broadly consistent with national policy. The national planning policy for traveller sites referred to below also indicates that traveller sites (temporary or permanent) in the Green Belt are inappropriate development

As such it is concluded that the development does constitute inappropriate development in the Green Belt and should therefore not be permitted unless very special circumstances exist.

#### Are there very special circumstances that justify inappropriate development in the Green Belt?

The NPPF indicates, at paragraph 87, that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. At paragraph 88 it states that local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

Policy CSP7 of the CSS sets out criteria for the location of additional gypsy and traveller pitches which are where they:

- Provide good access to shops, education, healthcare facilities and other essential services.
- Provide safe and convenient access to public transport and the highway network
- Have the capacity to incorporate all necessary on-site infrastructure e.g. parking, storage, waste disposal, play and residential amenity space.
- Minimise any negative impacts upon local landscapes, environments and neighbouring communities.

In addition to the NPPF, there is additional national policy set out in [Planning Policy for Traveller Sites \(August 2015\)](#) (PPTS) that is material to the determination of the planning application and relevant to the identification of any very special circumstances. Paragraph 16 of policy E (traveller sites in Green Belt), indicates that subject to the best interests of any child involved, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. Within policy H of the PPTS (determining planning applications for traveller sites), at paragraph 24, it states that LPAs should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:

- a) The existing level of local provision and needs for sites
- b) The availability (or lack) of alternative accommodation for the applicants
- c) Other personal circumstances of the applicant
- d) Locally specific criteria or policy.
- e) They should determine applications for sites from any travellers and not just those with local connections.

It goes on to reiterate the point made at paragraph 16.

At paragraph 27 it states that where an LPA cannot demonstrate an up-to-date 5 year supply of deliverable (traveller) sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. An identified exception is on land designated as Green Belt. A footnote advises that there is no presumption that a temporary grant of planning permission should be granted permanently.

The applicant's case is that the development constitutes inappropriate development in the Green Belt, that would at least reduce openness to a limited extent in the longer term (the contention being that there is no immediate such impact because of the alleged unenforceability of the Enforcement Notice). They submit that on balance, however, the unmet need for sites; the Maughan family's personal accommodation needs and personal circumstances; the absence of alternative sites for this vulnerable family; substantial compliance with the Council's locally specific criteria set out in policy CSP7; the failure of the development plan to bring forward suitable land for traveller sites in a timely manner; and the needs of the Maughan children, clearly outweigh the harm to the Green Belt and any other harm. Very special circumstances therefore exist, they submit, to justify the granting of planning permission.

The [Newcastle-under-Lyme, Stoke-on-Trent, Staffordshire Moorlands and Stafford Gypsy and Traveller and Travelling Showperson Accommodation Assessment 2015](#) assesses the supply and the need for pitches over the next 5 years and identifies that there is a shortfall of one pitch. Over the 15 year period 2019/20 to 2033/34 the Assessment identifies a requirement for pitches for six new households, although the assessment indicates that this is an indicative figure and that further monitoring is required.

The applicant's case starts by suggesting that the Enforcement Notice in place that requires the removal of the mobile home on the site is of no practical effect because the use alleged is not occurring. Legal advice has been received on this point. The advice indicates that because the mobile home was not being used as a dwellinghouse at the time the Enforcement Notice was issued there was a breach of planning control as the stationing of a mobile home on the land with no specified use requires a separate planning permission. In any event as the Notice was not appealed against and it has now come into force so it cannot now be argued that there was or is no breach of planning control at the site as identified in the Enforcement Notice.

As the mobile home will not be retained on the site if planning permission is refused on this application, there is no 'fall back' position to take into consideration in this case. The retention of the mobile home will have an adverse impact on the openness of the Green Belt and that it is not visible from public vantage points does not lessen this impact.

The applicant's point that there is unmet need is supported by the above Assessment, but as set out in national policy need is unlikely to clearly outweigh harm to the Green Belt. On that basis it is considered that very little weight can be given to this point, particularly in the absence of any evidence of the applicants' unsuccessful attempts to meet their need on sites outside of the Green Belt.

It is acknowledged that the current Development Plan is not bringing forward suitable traveller sites and that it will be some considerable time before the emerging Local Plan or Neighbourhood Plans do so. As such the Council does not have a five year supply of deliverable sites, however this does not weigh in favour of granting planning permission as the proposal is not for a temporary site as it would remain at all times that Eileen McDonough and Thomas Maughan live on the site. One option which the Council can, and should, consider is whether it would be appropriate to grant a permission that is both personal to the above two individuals and also only for a specified temporary period say related to the timescale of the preparation of the Joint Local Plan and the development of any traveller site proposals that may be within it – on the grounds that there is, at least for the moment, no 5 year supply of deliverable traveller sites. Whilst that is a significant material consideration that weighs in support of the proposal, current national policy considers that there should be no presumption in favour of granting permission for such development on Green Belt land.

That the application site does satisfy some of the criteria set out in policy CSP7 of the CSS which addresses where additional gypsy and traveller pitches should be located wherever possible, does not weigh in favour of granting permission on a site within the Green Belt.

It is clear within national planning policy that if it can be demonstrated that the best interests of any child involved is met on a Green Belt site this weighs significantly in favour of development in the Green Belt. The applicant's case is that the family need a settled base where the children can be enrolled into school. That the best interests of the children would be met by their consistent education is not disputed. It would, however, appear that the children are not currently enrolled in a school in Newcastle and that when they have been it has not been at the catchment school for the site. As such

it cannot be said that the children would have to move schools if planning permission was not granted and the family were unable to live on the site or that the children would not have access to education consistently. There is therefore an absence of any evidence that this is the only site where the needs of the family would be met.

On balance it is considered that as it has not been demonstrated that granting planning permission, even for a temporary period, is in the best interests of the children allowing for the fact that planning permission is refused the family would continue to live on the side of the road, the personal circumstances of the applicants do not clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. After balancing such planning consideration the rights set out in Article 8 of the Human Rights Act 1998, in particular Article 8(1), does not change this conclusion.

## **APPENDIX**

### **Policies and Proposals in the approved development plan relevant to this decision:-**

Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006 - 2026 (Adopted 2009) (CSS)

Policy ASP6: Rural Area Spatial Strategy  
Policy CSP7: Gypsy and Travellers

Newcastle-under-Lyme Local Plan 2011 (NLP)

Policy S3: Development in the Green Belt  
Policy H1: Residential development: sustainable location and protection of the countryside  
Policy N19: Landscape Maintenance Area

### **Other Material Considerations include:**

National Planning Policy Framework (March 2012)  
Planning Practice Guidance (2014)  
[Planning Policy for Traveller Sites \(August 2015\)](#)  
[Newcastle-under-Lyme, Stoke-on-Trent, Staffordshire Moorlands and Stafford Gypsy and Traveller and Travelling Showperson Accommodation Assessment 2015](#)  
Human Rights Act 1998

### **Relevant Planning History**

In 1986 planning permission was granted, at appeal, for the siting of a mobile home on the site subject to a restriction to the occupancy of the dwelling to Mr Edwards only and any relatives or dependents living with him (reference N14847). Planning permission was granted in 1992 for a larger mobile home on the site and additional land, subject to the same restrictions on occupancy (reference N21428).

An application to remove condition 1 of planning permission N21428 was refused in 2007 (reference 07/00146/FUL). A further application to remove the condition submitted the same year was also refused and a subsequent appeal against that decision was dismissed (reference 07/00532/FUL) on the grounds that the removal of the condition would result in a permanent dwelling in the Green Belt which would constitute inappropriate development and reduce the openness of the Green Belt which would be harmful to the purpose of the Green Belt. The other considerations put forward at the appeal did not outweigh the harm to justify it on the basis of very special circumstances.

In September 2013 it was brought to the attention of the Council that the occupation of the mobile home had ceased. In January 2016 a report was brought to Planning Committee on this matter. Committee was advised that the mobile home was no longer in use as a dwellinghouse by Mr Edwards in accordance with the personal planning permission that was granted previously. In the absence of any other permission for the retention of the structure the continued siting of the mobile home on the land was considered to be a breach of planning control. It was considered that the siting of a mobile home on the site constituted inappropriate development within the Green Belt and the very special circumstances that existed at the time permission was granted no longer existed, and no other very special circumstances had been identified. The continued siting of the mobile home was considered to adversely affect the openness of the Green Belt and was contrary to one of the purposes of the Green Belt which is to safeguard the countryside from encroachment. In light of the harm that was identified the Committee resolved to take enforcement action to secure the removal of the mobile home.

An Enforcement Notice was subsequently issued which came into force on 13<sup>th</sup> July 2016. The notice requires the removal of the mobile home and associated paraphernalia by 13<sup>th</sup> January 2017.

### **Views of Consultees**

The views of **Keele Parish Council** and the **Housing Strategy Section** have been sought, however as they have not responded by the due date it is assumed that they have no comment.

### Representations

Three objections have been received indicating that there is no justification to vary the condition as proposed and that there have already been numerous unsuccessful attempts to remove/vary the condition in the past. There is insufficient evidence to demonstrate that there are the required very special circumstances to justify such inappropriate development in the Green Belt. The proposal is contrary to policy, including the emerging Keele Neighbourhood Plan 2017. In addition there is the potential for the proposal to have a significant impact on other users of the access road and a right of way is being blocked by the current owner.

### Applicant/agent's submission

Supporting information has been provided which is summarised as follows:

- The enforcement notice is of no practical effect because the use alleged is not occurring and it cannot take away the lawful use of the land for the stationing of a mobile home for residential purposes.
- There has been a mobile home on the site since 1986 and the permission remains extant whilst Mr Edwards remains alive. Upon Mr Edwards' death, the stationing of the mobile home on the land will be a breach of condition but, even so, there is no requirement for the land to be restored to its former condition. The land will retain its appearance as a residential garden containing a large domestic garage. Occupation of the mobile home by a "gypsy" family is no more inappropriate than its occupation by Mr Edwards, or long-term retention of the land as residential garden.
- Long term retention of the mobile home would result in a loss of openness, a contributory factor to inappropriateness and a material consideration in its own right. Harm by reason of inappropriateness must be given substantial weight, but the additional harm by reason of loss of openness is very small.
- The development does not encroach into the countryside, or prejudice any of the other purposes of including land in the Green Belt. It does not harm the character or appearance of the surrounding area.
- The fact that residential use of the mobile home can continue for as long as Mr Edwards retains an interest in the land, albeit as a holiday home, weighs in favour of its retention for occupation by a "gypsy" family. This is particularly the case because of the identified need for additional gypsy sites in Newcastle and Stoke as identified in the Gypsy and Traveller Accommodation Assessment (October 2015).
- The accommodation needs of gypsies and travellers will be addressed through the Joint Local Plan but it is not expected to be adopted before December 2018 and the failure to meet the identified need through the development plan is a matter which weighs in favour of this proposal.
- In the meantime new sites can only come forward through the current development plan, which has not produced any new pitches in the Borough in the past 5 years. The site complies with policy CSP7 of the Core Spatial Strategy and the absence of alternative sites is a matter which weighs in favour of the proposal.
- The family's current lack of a settled site is clearly impacting on Eileen McDonough's health and on her children's education and the provision of a settled site would be of immense benefit in providing safety and stability, access to adequate health care, and regular schooling for the children.
- National policy makes clear that unmet need and personal circumstances are unlikely to outweigh harm to the Green Belt and any other harm. However, this does not mean that these factors will never outweigh harm, that they cannot carry at least equal weight to harm the Green Belt or, that there will not be other factors which tip the balance in favour of approval. The policy makes clear that the needs of the children is one such factor that can tip the balance in favour of approval.
- Recent case law (*AZ v. Secretary of State and South Gloucestershire District Council*) has established that the needs of the children are a primary consideration to be taken into account. The Council has a statutory duty to consider the effects of its decision on the

applicant's children and consider whether it is in their best interests to be living on the side of the road, or living on the application site.

- On balance the factors referred to above clearly outweigh harm to the Green Belt and any other harm. Very special circumstances therefore exist to justify the granting of planning permission.

The application form and location plan and supporting information are available for inspection at the Guildhall and on the website that can be accessed by following this link <http://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/16/00969/FUL>

### **Background Papers**

Planning Policy documents referred to  
Planning files referred to

### **Date report prepared**

15<sup>th</sup> December 2016