

The Planning Inspectorate

ENFORCEMENT NOTICE APPEAL FORM (Online Version)

WARNING: The appeal **must** be received by the Inspectorate **before** the effective date of the local planning authority's enforcement notice.

Appeal Reference: APP/L2820/C/20/3262337

A. APPELLANT DETAILS

Name	Mr Patrick Gavin
Address	C/O Green Planning Studio Unit D-Lunesdale, Upton Magna Business Park Shrewsbury Shropshire SY4 4TT
Phone number	01743 709364
Email	appeals@gpsltd.co.uk
Preferred contact method	Email <input checked="" type="checkbox"/> Post <input type="checkbox"/>

A(i). ADDITIONAL APPELLANTS

Do you want to use this form to submit appeals by more than one person (e.g. Mr and Mrs Smith), with the same address, against the same Enforcement notice? Yes No

B. AGENT DETAILS

Do you have an Agent acting on your behalf? Yes No

Name	Mr. Matthew Green
Company/Group Name	Green Planning Studio Ltd
Address	Unit D Lunesdale Shrewsbury Upton Magna SY4 4TT
Phone number	01743 709 364
Fax number	01743 709 385
Email	appeals@gpsltd.co.uk

Your reference

15_733B

Preferred contact method

Email



Post



C. LOCAL PLANNING AUTHORITY (LPA) DETAILS

Name of the Local Planning Authority

Kettering Borough Council

LPA reference number (if applicable)

ENFO/2020/00013

Date of issue of enforcement notice

02/10/2020

Effective date of enforcement notice

02/11/2020

D. APPEAL SITE ADDRESS

Is the address of the affected land the same as the appellant's address?

Yes



No



Does the appeal relate to an existing property?

Yes



No



Address

Plot 24B Greenfields
Baybrooke Road
Market Harborough

Are there any health and safety issues at, or near, the site which the Inspector would need to take into account when visiting the site?

Yes



No



What is your/the appellant's interest in the land/building?

Owner



Tenant



Mortgagee



None of the above



E. GROUNDS AND FACTS

Do you intend to submit a planning obligation (a section 106 agreement or a unilateral undertaking) with this appeal?

Yes



No



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



The facts are set out in

the box below

Preliminary Issues

Disclosure of the expediency report from the Council was sought by way of email dated 5th October 2020. By way of email dated 8th October 2020 the Council declined this request. Disclosure of that report is still required to enable the Appellant to fully consider the Council's case. In the event that the Council maintain their refusal to disclose the expediency report, this will form part of an application for costs based on their unreasonable behaviour.

Ground (a)

Without prejudice to the remaining grounds, the Appellant contends, that pursuant to Ground a) planning permission should be granted for the breach of planning control as alleged.

The Appellant will demonstrate that the most relevant Local Plan policies are out of date and therefore the weighted balance in paragraph 11 of the NPPF 2019 is engaged, and that the development complies with National Policy.

In the alternative, the Appellant will demonstrate that the Council is, and as at the time of the Enforcement Notice was, unable to demonstrate a five-year supply of gypsy and traveller pitches. Paragraph 11 and footnote 7 of the NPPF will be engaged as a result of the lack of five-year supply of gypsy and traveller pitches.

The Appellant will establish, that any alleged harms, as a result of the development will not significantly and demonstrably outweigh the benefits of the development (material considerations), when assessed against the policies in the NPPF when taken as a whole.

Within the Enforcement Notice dated 2nd October 2020 the following harms are alleged:

1. Character and appearance and valued landscape

It will be demonstrated with reference to the NPPF, the relevant provisions of the North Northamptonshire Joint Core Strategy, the Northamptonshire Environmental Character Assessment (NECA) and the appeal decision of Creaney v Kettering Borough Council APP/L2820/W/16/3144399 (and others) dated 22nd March 2017 along with consideration of the area itself, that the Appeal Site does not lie in a valued landscape.

It will further be demonstrated that the existence of mobile homes is an established characteristic of the area which despite being rural, encapsulates a number of land uses (residential, commercial, and agricultural). The Appellant will set down that the additional pitch sought under this application is in-keeping with the immediate character of the wider area.

The Appellant will state that given the small scale of this development that any impact on appearance is likely to be limited, particularly given, that other mobile homes are located in close proximity to the appeal site.

If the Inspector considered appropriate a landscaping scheme could be conditioned so as to reduce any harm.

Material considerations in favour of the appeal

The material considerations outlined below will be advanced in favour of the appeal. Those material considerations are need (national, regional and local), lack of available, suitable, acceptable, affordable alternative sites, lack of a five year land supply, failure of policy, if necessary the personal circumstances of the site occupants (personal need, health, education, and the best interests of the child).

Need

Taking into consideration the latest available estimations of need for gypsy and travellers sites in the District, GPS Ltd are of the view that the relevant GTAA underestimates the level of need in the District. This is a material consideration of significant weight.

Lack of suitable, acceptable, affordable sites

Alternative sites must be available, acceptable and affordable (Angela Smith v Doncaster MBC). It appears from all of the available information that there are no alternative available sites for the Appellant to move to and there seems little likelihood that there will be in the foreseeable future. The lack of alternative sites is a material consideration of significant weight in favour of the appeal.

Five-year land supply

The LPA are unable to demonstrate a five-year land supply of deliverable land for gypsy and traveller sites. A lack of a five-year land supply is a matter that should attract considerable weight in favour of a grant of planning permission. The lack of a five-year land supply is a material consideration of significant weight in favour of the appeal.

Failure of policy

The LPA do not currently have a policy capable of delivering the required amount of pitches. The LPA are working towards too low a figure and will inevitably fail to meet the actual level of need in the District. Failure of policy is a material consideration of significant weight in favour of the appeal.

Personal circumstances

Personal circumstances only need to be considered if the Inspector determines a departure from policy and/or other harm and then finds that the other material considerations are insufficient to outweigh the identified harm. If necessary, personal circumstances can then be included to outweigh any harm.

These will be set down with appropriate weight indicated. In any event, the proposed site residents easily fulfil the definition of gypsy and travellers as per Annex 1 of the PPTS.

Best Interests of the Children

The best interests of the children on the site are of paramount consideration and no consideration

should be given greater weight than the best interests of the child when considering whether the material considerations outweigh any harm. In the assessment of proportionality there is an explicit requirement to treat the needs of the children on the site as a primary consideration (UNCRC Article 3, fully set out at para 80-82 of AZ).

Planning balance

If it is concluded that the paragraph 11 'weighted balance' does not apply and some conflict with the development plan is identified, the Appellant will demonstrate that, even applying the traditional planning balance, the material considerations relied upon outweigh any harm identified such that a permanent non-personal permission should be granted.

Permanent or temporary consent

It is common sense as well as case law Court of Appeal Judgment Moore v SSCLG and London Borough of Bromley [2013] EWCA Civ 1194 that a temporary consent means the harm is reduced. The appropriate time frame for a temporary consent will be considered in the Hearing Statement.

Human Rights Article 8 considerations

The Appellant will demonstrate that there is a clear obligation upon the Inspector to ensure that any decision made by a state body accord with the obligations under Article 8 ECHR. Incorporated into that obligation are the obligations set out under the United Nations Convention of the Rights of the Child, and in this case specifically Article 3. This obligation was not crystallised upon in the publication of AZ v SSCLG and South Gloucestershire District Council [2012] EWHC 3660 (Admin), but has existed for a number of years.

Best Interests of the Child

The best interests of the children are to enable them a safe environment where they have access to education and healthcare. Where the best interests of the child clearly favour a certain course, in this case a grant of planning permission, that course should be followed unless countervailing reasons of considerable force displace those interests.

There are no countervailing reasons of considerable force that have been relied upon to outweigh the need for the children to have a settled permanent base, which will enable amongst other things, access to education and to healthcare when needed.

It is submitted that the welfare and wellbeing of the child can only be safeguarded by the grant of a permanent planning permission, or in the alternative a temporary permission for a period that should give certainty of alternative suitable and lawful accommodation being secured by the LPA through the plan process.

(b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.



The facts are set out in

the box below

The Appellant will demonstrate that there are errors in the Enforcement Notice which require amendment.

The Enforcement Notice includes the incorrect date of the previous temporary planning permission citing 13th February 2015 as opposed to 13th February 2017. Further, the incorrect planning reference is used. The correct reference is KET/2015/0500.

The red line area on the Enforcement Notice plan is too large and extends beyond the area to which the planning permission applies. The red line area needs to be reduced to reflect the true area over which the planning permission applies.

The Enforcement Notice and Plan require amendment in this regard.

(c) That there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development").



(d) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.



(e) The notice was not properly served on everyone with an interest in the land.



(f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.

The facts are set out in

the box below

Without prejudice to the aforementioned grounds, requirement (2)7. of the Enforcement Notice requiring "the site to be returned to its natural state as a grassed field, ie bare ground to be re seeded with grass or new turf once the ground has been cleared" (sic) is excessive. Requirement (2) 7 goes beyond the requirements of the Restoration Scheme.

(g) The time given to comply with the notice is too short. Please state what you consider to be a reasonable compliance period, and why.

The facts are set out in

the box below

The time for compliance is 5 months. The Appellant considers that at least 2 years is required taking into account the lack of a five year supply of gypsy and traveller pitches, the lack of alternative available other sites and the LPA's failure of policy, to enable the occupiers living on the site to find alternative accommodation.

F. CHOICE OF PROCEDURE

There are three different procedures that the appeal could follow. Please select one.

1. Written Representations

2. Hearing

You must give detailed reasons below or in a separate document why you think a hearing is necessary. The reasons are set out in

the box below

The Inspector is likely to need to test the evidence by questioning or to clarify matters, the status or personal circumstances of the appellant are at issue, there is no need for evidence to be tested through formal questioning by an advocate or given on oath and the grounds of appeal, the alleged breach, and the requirements of the notice, are relatively straightforward.

Is there any further information relevant to the hearing which you need to tell us about? Yes No

3. Inquiry

G. FEE FOR THE DEEMED PLANNING APPLICATION

1. Has the appellant applied for planning permission and paid the appropriate fee for the same development as in the enforcement notice? Yes No

a) the date of the relevant application

09/06/2020

2. Are there any planning reasons why a fee should not be paid for this appeal? Yes No

the box below

The Appellant has applied for and paid the appropriate fee in relation to an application submitted on

09/06/2020 for the same development as alleged in the Notice. This application is currently the subject of appeal reference APP/L2820/W/20/3262332.

H. OTHER APPEALS

Have you sent other appeals for this or nearby sites to us which have not yet been decided? Yes No

Please give details, including our reference number(s), if known.

Appeal reference APP/L2820/W/20/3262332 at the same site address has been submitted on the same day. It is requested that these appeals are linked together.

I. SUPPORTING DOCUMENTS

01. Enforcement Notice:

see '[Appeal Documents](#)' section

02. Plan (if applicable and not already attached)

see '[Appeal Documents](#)' section

J. CHECK SIGN AND DATE

I confirm that all sections have been fully completed and that the details are correct to the best of my knowledge.

I confirm that I will send a copy of this appeal form and supporting documents (including the full grounds of appeal) to the LPA today.

Signature

Mr. Matthew Green

Date

30/10/2020 16:57:43

Name

Mr. Matthew Green

On behalf of

Mr Patrick Gavin

The gathering and subsequent processing of the personal data supplied by you in this form, is in accordance with the terms of our registration under the Data Protection Act 2018. Further information about our Data Protection policy can be found on our website under Privacy Statement.

K. NOW SEND

Send a copy to the LPA

Send a copy of the completed appeal form and any supporting documents (including the full grounds of the appeal) to the LPA.

To do this by email:

- open and save a copy of your appeal form
- locating your local planning authority's email address:
<https://www.gov.uk/government/publications/sending-a-copy-of-the-appeal-form-to-the-council>
- attaching the saved appeal form including any supporting documents

To send them by post, send them to the address from which the enforcement notice was sent (or to the address shown on any letters received from the LPA).

When we receive your appeal form, we will write to you letting you know if your appeal is valid, who is dealing with it and what happens next.

You may wish to keep a copy of the completed form for your records.

L. APPEAL DOCUMENTS

We will not be able to validate the appeal until all the necessary supporting documents are received.

Please remember that all supporting documentation needs to be received by us within the appropriate deadline for the case type. If forwarding the documents by email, please send to **appeals@pins.gsi.gov.uk**. If posting, please enclose the section of the form that lists the supporting documents and send it to Initial Appeals, Temple Quay House, 2 The Square, Temple Quay, BRISTOL, BS1 6PN.

You will not be sent any further reminders.

Please ensure that anything you do send by post or email is clearly marked with the reference number.

The documents listed below were uploaded with this form:

Relates to Section: SUPPORTING DOCUMENTS
Document Description: 01. The Enforcement Notice.
File name: ENFO.2020.00013.EN.BOC.pdf

Relates to Section: SUPPORTING DOCUMENTS
Document Description: 02. The Plan.
File name: ENFO.2020.00013.EN.BOC.pdf

Completed by MR. MATTHEW GREEN

Date 30/10/2020 16:57:43