

**Report to** Planning applications committee  
13 June 2019

**Item**

**Report of** Head of planning services

**5(k)**

**Subject** Enforcement Case 18/00003/ENF – Land at Holt Road,  
Norwich

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<b>Summary</b>	
<b>Description of breach</b>	Without planning permission the change of use of the land for the stationing of caravans for residential purposes, the siting of domestic sheds, the laying of a hard surface, the stationing of a portaloo, the erection of a 2m boundary fence and gate.
<b>Recommendation</b>	Authorise enforcement action to cease the use of the land for the stationing of residential caravans and remove any caravans, sheds, portaloo, and hardstanding.
<b>Ward</b>	Catton Grove
<b>Contact Officer</b>	Robert Webb <a href="mailto:robertwebb@norwich.gov.uk">robertwebb@norwich.gov.uk</a>



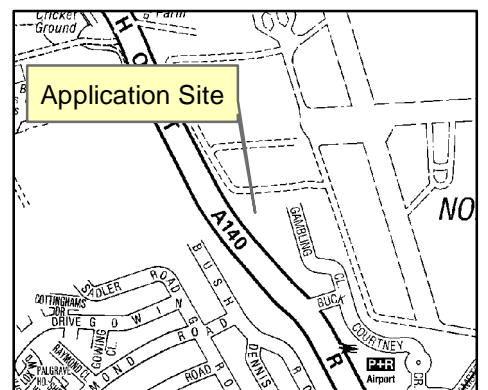
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Planning Application No 18/00003/ENF  
 Site Address Land at Holt Road  
 Scale 1:2,000



**NORWICH**  
 City Council

PLANNING SERVICES



## **Background**

1. This matter was previously reported to this committee on 9 August 2018 and 11 October 2018. It was deferred at the August meeting for further consideration, and at the October meeting members of the planning applications committee resolved not to take full enforcement action as recommended by officers but to 'underenforce', which would involve serving an enforcement notice placing a number of requirements on the occupants but effectively allow them to remain on the land providing the requirements are complied with. The requirements are set out in paragraph 4 of the report dated 11 October, which is appended to this report. It should be noted that members resolved not to apply requirement (d).
2. Since that time, officers have refrained from serving the notice due to ongoing investigations resulting from further complaints about the site, in particular the discovery that a substantial amount of waste had been imported onto the land. Following intervention from officers, the majority of this waste has now been removed from the site.
3. Following an update on the enforcement investigation at the last planning applications committee meeting on 9 May 2019, members requested the matter be reported back to committee for further consideration.

## **Site**

4. The site is a paddock next to the A140 Holt Road, adjacent to land controlled by Norwich Airport and immediately to the south of the main airport runway. To the east is Gambling Close, including the headquarters of the East Anglian Air Ambulance Service. To the south are further paddocks, with the A140 to the west and allotments on the opposite side of the road. The site is accessed via an informal vehicle access from Holt Road. The caravans and portaloo are located close to the access on the western side of the site next to Holt Road. The majority of the site which includes the remainder of the paddock remains undeveloped.

## **The breach**

5. The breach of planning control is the change of use of the land for the stationing of caravans for residential purposes. At the time of writing this includes a 'portakabin' type building and a static caravan, however there has previously been a touring caravan on the land too. Additional development which does not benefit from planning permission includes a 2m high (approx.) fence alongside the frontage with Holt Road, a portaloo, an area of gravel surfacing and a tarmacked driveway from the road to the entrance which has recently been laid.
6. Further information about the history of the breach and the circumstances of the occupiers is contained within the appended reports. The occupiers are a husband and wife who are Romany gypsies, and have occupied the land since October 2017. In terms of ownership the land is unregistered and to date no evidence of land ownership has been provided by any party.

## **Update since October 2018**

7. In January this year it was discovered that a substantial amount of waste had been imported onto the site and was being stored in the paddock behind the caravans. This included bricks, rubble, plastics, metals, piles of soil and tyres. Officers have been working to ensure the removal of this and whilst it has taken a few months to achieve the majority of the waste has now been cleared.
8. A further static caravan has been brought onto the land, in addition to the portakabin and touring caravan that were already there, although the touring caravan has recently been removed. It is understood the portakabin will be also be removed but this has not yet happened. A hedge has been planted along the frontage to Holt Road and a hard surface has been laid over the vehicular access to the site.
9. The council has continued to receive complaints about the site, including from Norfolk Police, Norwich Airport, the East Anglian Air Ambulance Service which is located to the east of the site and also from members of the public.
10. Norfolk Police have raised a particular concern about the number of calls they receive in relation to animals escaping onto the A140 Holt Road, and the associated danger this poses to highway safety for road users. Norwich Airport has complained about the potential for waste items to blow towards the airport runway, causing an airport safeguarding risk, and also animals entering Airport land from the site. The East Anglian Air Ambulance has complained about disruption being caused by animals escaping onto their land. Further complaints have been received regarding additional people moving onto the site to live. It is understood that they were family members who were staying temporarily and have since moved on.

## **Planning considerations**

11. The detailed planning considerations are largely unchanged from the ones set out within the appended reports from last year. It is the view of officers that the site remains unsuitable for any kind of permanent residential use, due to the proximity to the airport and the associated noise impacts from aeroplanes, the unsafe access onto the A140, the lack of a safe route for pedestrians to access the site, and the conflict with the employment allocation within the Norwich Local Plan.
12. Although it has now been largely cleared, the use of the site for the storage of waste was unacceptable in terms of its impact on the local environment and did pose concerns about items blowing towards the airport runway at times of high winds, which would represent a safeguarding risk for aeroplanes. The ongoing problems caused by domestic animals escaping has caused safety concerns, particularly on the A140 which is part of the strategic highway network and has a 60mph speed limit in the vicinity of the site.
13. Notwithstanding the aforementioned conflicts with local planning policy, it is concluded that the amenity impacts which have arisen from the occupation of the

site for residential caravans have had an unacceptable impact on local amenity and has been a cause for concern in terms of the potential risk to operations at Norwich Airport.

14. In terms of the approach agreed at the previous planning committee, it has become apparent through legal advice received in relation to other cases that the approach of 'underenforcement' (whereby a notice is served to remedy part of a breach but can have the effect of allowing the remainder of the breach to become lawful) is problematic and not all the measures outlined at paragraph 4 of the October 2018 report are likely to be effective in this instance. In practice, it has become apparent that requirements which require ongoing 'compliance' as opposed to the carrying out of physical works cannot generally be imposed as part of an enforcement notice. Therefore it is now considered that restrictions to limit use to the current occupier and restrictions on the number of caravans are unlikely to be enforceable through an enforcement notice. Such restrictions could however be placed on a planning consent were the occupier to apply.
15. As a result of this, should members decide that they do not wish to take full enforcement action, the alternative option would be to decide it is not expedient to take enforcement action at all. This would mean that the use may become lawful after 10 years. A further option would be to encourage the occupier to submit a planning application.
16. The availability of alternative sites is a material consideration and it should be noted that at the time of writing there are no available pitches on local authority traveller sites in Norfolk. However there is a proposal to expand the site at Swanton Road for which planning permission has been granted and it is anticipated that additional provision will become available there in the not too distant future. Notwithstanding this, it is understood that the occupiers would prefer not to live at a local authority site alongside other traveller families and may seek an alternative solution.
17. Although the lack of alternative provision is a consideration in this case, it does not automatically follow that the use of the land at Holt Road is acceptable because no other pitches are immediately available. In officers' opinion the aforementioned planning harm resulting from the use is significant and outweighs the benefits which in this case are limited to one family.

## **Conclusion**

18. As previously identified, the use of the land conflicts with local and national planning policies due to the unsafe access onto the A140, the unsuitable location of the site next to Norwich Airport, the lack of a safe access for pedestrians and the conflict with the local plan allocation of the land for employment development. In addition to this, the site has been used for the storage of substantial amounts of waste which is unacceptable in planning terms and there is a risk of ongoing issues with this in the future.

19. Further amenity and road safety impacts have arisen as a result of the occupancy of the site as described above which adds weight to the judgement that this is not a suitable site for the siting of residential caravans.
20. Regard is had to the lack of available traveller pitches in the Norwich area at the time of writing but the harm arising from the use of land in this location is significant and outweighs the more limited benefits of allowing the use to continue.

### **Recommendation**

21. It is recommended that members authorise full enforcement action to cease the use of the land for the siting of residential caravans, including the removal of all structures and materials related to the residential occupation, with the exception of the front boundary fence and gates.
22. It is recommended that a compliance period of 12 months is imposed, to allow the occupants to have a reasonable period of time to arrange an alternative place to live and time to clear the site, but also to ensure the use of land is brought to an end within the near future. This is a shorter period than was originally recommended, however regard is to the fact that 8 months have passed since that recommendation, and the occupancy of the site is already approaching 2 years.
23. Officers will liaise with the traveller sites and tenancy manager at Norfolk County Council to assist the occupants in applying for an alternative caravan pitch, should they wish to pursue this option.

### **Equality and Diversity considerations**

45. The Human Rights Act 1998 came into effect on 2nd October 2000. :
  - (a) Article 1 of the First Protocol (the peaceful enjoyment of one's possessions), is relevant in this case. Parliament has delegated to the council the responsibility to take enforcement action when it is seen to be expedient, proportionate and in the public interest.
  - (b) Article 6: the right to a fair hearing is relevant to the extent that the recipient of the potential enforcement notice and any other interested party ought to be allowed to address the Committee as necessary. This could be in person, through a representative or in writing.
46. Article 8(1) of the European Convention on Human Rights (ECHR) is engaged. This states the following:
  1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
  2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the*

*economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

47. Enforcement action to require the occupation of the land for residential purposes to cease would represent an interference of the rights contained within Article 8(1). However it is noted that the ECHR provisions do not go as far as to allow an individual's preference for their place of residence to override the general public interest. The planning merits of the development have been assessed in accordance with planning law and it has been found by officers that the harm caused to the general interest outweighs the needs of the individuals in this case. It is therefore concluded that the Article 8 rights are not violated.

### **Equality Act 2010**

48. As part of the Public Sector Equality Duty (PSED), which is set out in section 149 of the Equalities Act 2010, A public authority must, in the exercise of its functions, have due regard to the need to—

*(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*

*(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*

*(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

49. In addition, the following further requirement at section 149(3) of the above mentioned act applies:

*Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—*

*(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;*

*(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;*

*(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.*

50. A 'relevant protected characteristic' includes race, which is relevant in this case because it concerns ethnic Romany people.

51. In interpreting this legislation, a case could be made that in light of the current lack of provision for traveller sites in the Norwich area, it would not be expedient to take enforcement action to require the use of land to cease because this would run counter to the aims of the PSED legislation. Accordingly weight is

attached to this matter in the overall balancing exercise. However weight is also attached to the unsuitable nature of the site for long term residential occupation, which it should be noted is considered to be just as unsuitable for a C3 'bricks and mortar' residential dwelling as it is for the stationing of caravans for residential use by travellers. It is therefore considered that allowing travellers to reside at land which is considered unsuitable for any form of residential occupation could represent a form of discrimination, which the Act aims to prevent.

52. On the basis of this balancing exercise, it is concluded that taking action to ensure the use of the land ceases would not conflict with the PSED requirements. In addition, allowing a reasonable period for compliance is considered to be a proportionate measure which would assist in meeting the requirements of the PSED legislation.



**Report to** Planning applications committee  
11 October 2018

**Item**

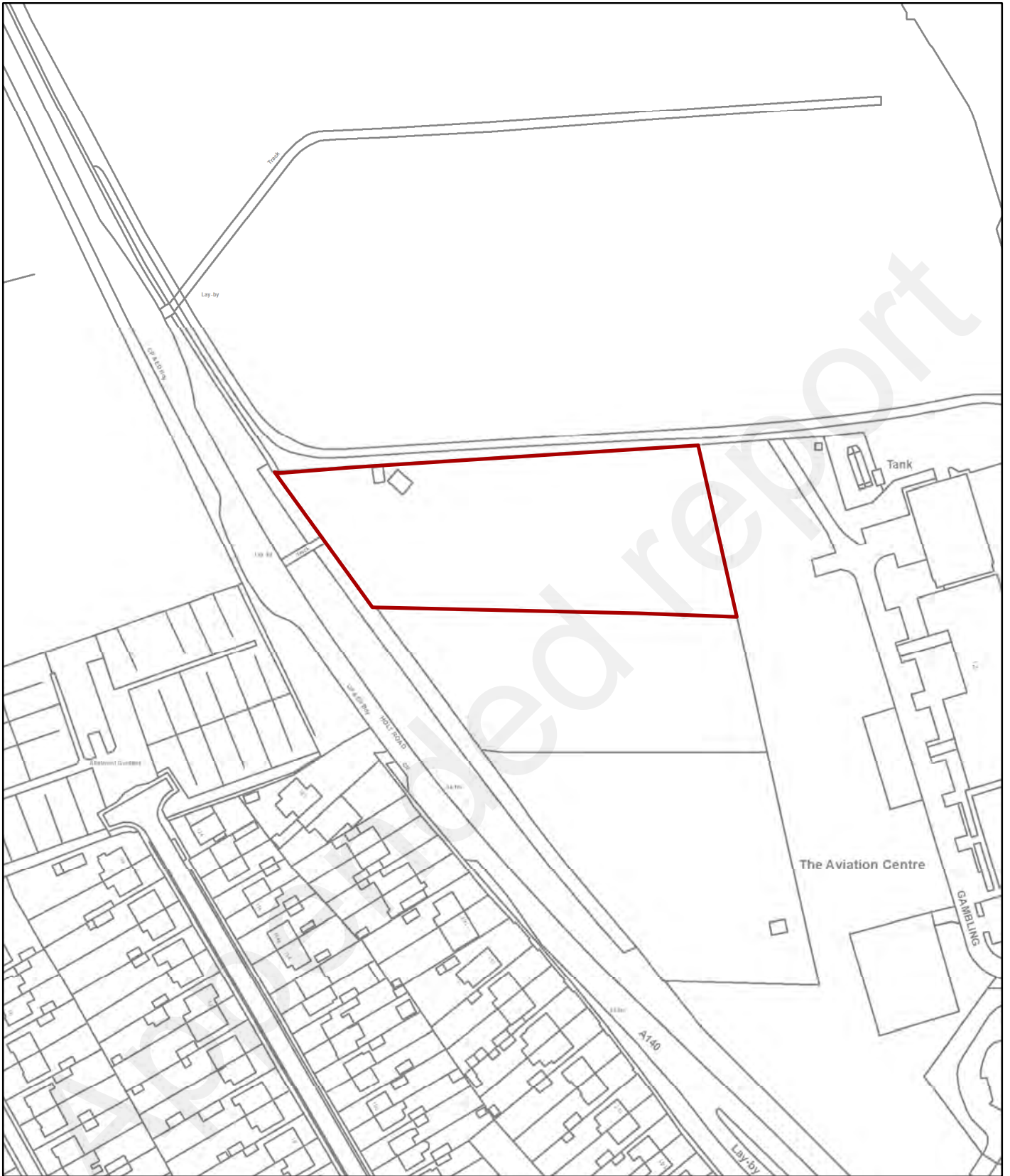
**Report of** Head of planning services

**4(f)**

**Subject** Enforcement Case 18/00003/ENF – Land at Holt Road,  
Norwich

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<b>Summary</b>	
<b>Description of breach</b>	Without planning permission the use of the land for the stationing of caravans for residential purposes, the laying of a hard surface, the stationing of a portaloo, the storage of waste and the erection of a 2m boundary fence and gate.
<b>Recommendation</b>	Authorise enforcement action to cease the use of the land for the stationing of residential caravans and remove any caravans, portaloo, frontage fence and hardstanding.
<b>Ward</b>	Catton Grove
<b>Contact Officer</b>	Robert Webb <a href="mailto:robertwebb@norwich.gov.uk">robertwebb@norwich.gov.uk</a>



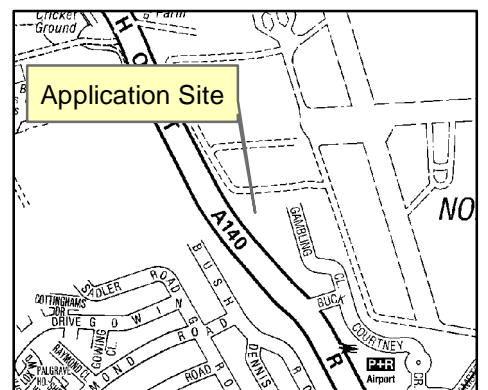
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Planning Application No 18/00003/ENF  
 Site Address Land at Holt Road  
 Scale 1:2,000



**NORWICH**  
City Council

PLANNING SERVICES



## Report

### The breach

1. The breach of planning control is that without planning permission the land is being used for the stationing of residential caravans. Additional development which does not benefit from planning permission includes a 2m high (approx.) fence alongside the frontage with Holt Road, the siting of a portaloo, an area of gravel surfacing, and an area where waste has been deposited and is being stored. Further details on the land and development are provided within the previous report includes in Appendix A.

### Background

2. The case was reported to committee on 9 August 2018 with a recommendation to authorise enforcement action to cease the use of the land for the stationing of residential caravans (see Appendix A), albeit with an 18 month compliance period. At that meeting members did not support the recommendation and resolved to defer the item to allow consideration of the option of under enforcement, whereby the use of the land could be allowed to continue subject to certain measures being implemented. Officers were asked to investigate the option of under-enforcement, and report the matter back to a future meeting.
3. This report provides a summary of measures which in the view of officers, having had reference to government guidance and case law could and could not be sought via an enforcement notice.

### Measures which could be required via the serving of an enforcement notice

4. The following measures could be required via an enforcement notice. A reason is provided as to why it would be expedient to require the measure.
  - a) A requirement that the site be occupied for residential purposes by the particular individual concerned and his immediate family only and should the family cease to occupy the land for residential purposes the use of the land for residential purposes shall cease and all caravans and portaloo's shall be removed from the land.

Reason: The development conflicts with development plan policies however regard has been had to the particular circumstances of the individual and his family and the current lack of available traveller pitches in the Norwich area.

- b) A requirement that no more than two caravans be stationed on the land for the purposes of residential occupation.

Reason: To minimise the impacts on the amenity of the area and to avoid an over-intensive use of the vehicular access.

- c) A requirement to limit the extent of the residential curtilage to a defined area close to Holt Road. No caravans shall be sited outside of this area.

Reason: To minimise the impact of the development on the amenities of the area.

- d) A requirement to set the boundary fence back by 2m and reduce its height to no higher than 1.8m.

Reason: to improve the visual appearance of the site and to allow suitable space for a hedge to be planted.

- e) A requirement to plant a hedge along the frontage of the boundary to screen the fence.

Reason: To improve the visual appearance of the site.

- f) A requirement to ensure that any access gates shall be hung to open inwards, set back, and thereafter retained a minimum distance of 5 metres from the near channel edge of the adjacent carriageway.

Reason: In the interests of highway safety.

### **Matters which could not be resolved via an enforcement notice**

5. Members are asked to note that the above measures would not resolve the primary planning concerns regarding the use of the land for the stationing of residential caravans, which relate to highway safety, an unsustainable location, noise impacts and drainage.
6. In relation to highways, it is the position of Norfolk County Council as Highway Authority that the A140 Holt Road is a Principal Route in the County Council Route Hierarchy with its primary intention being to carry traffic freely and safely between centres of population. Accordingly there are strong restrictions on new accesses or any intensification of use of existing access which will interfere with the free flow of traffic on the Principal Route. The Highway Authority has requested it to be reported that it continues to object in principle to the creation of a new residential vehicular access in this location due to highway safety concerns.
7. In addition to this, even if the principle of a new access was accepted in this position, it would require significant highway improvement works which would not be proportionate to require given the relatively small scale of development, and the fact it would involve works on land outside of the occupiers control.

8. In terms of the location, it would not be possible to require a new footpath to be constructed linking to the existing built up area further to the south, because it would not be proportionate and also because it would involve works to land which is outside of the occupiers control.
9. With regard to noise, given the proximity of the site to the airport runway, there is no mitigation which could be reasonably sought which would adequately address the significant noise impacts on the site, particularly given the low levels of sound insulation of a typical caravan.
10. Consideration has been given to whether a more permanent foul drainage solution could be provided, such as a septic tank or package treatment plant. However such systems are costly and it is unlikely to be considered reasonable to require the implementation of such a system through an enforcement notice. It is also unknown whether the ground conditions are suitable for such a system.
11. For these reasons officers remain concerned that the option of under-enforcement would adequately address the planning harm caused by the development including on the amenities of the occupiers of the land.

#### **Other matters**

12. Since the item was last reported to committee, Norwich Airport has raised a concern regarding waste which is being stored at the site. There is a concern that there is potential for rubbish and debris to blow onto Airport land causing a safety issue. There is further concern that a number of animals have escaped from the paddock onto Airport land. The Council could utilise powers under section 215 of the Town and Country Planning Act 1990 to require the removal of waste from the land and it is likely this option will be pursued if the situation does not improve. The control of animals is not a planning matter and this is the responsibility of the owner.
13. A concern has been raised by the owner of the neighbouring paddock to the south regarding animals escaping onto their paddock and the potential for waste to blow onto the site. Once again the control of animals is not a planning matter and the owner of the paddock has the ability to secure the site through the erection of fencing along the boundary should they wish to. The serving of a Section 215 notice would assist in dealing with any problems relating to waste.

#### **Conclusion and recommendation**

14. The officer view on the planning merits of the case remains the one which is set out in the previous committee report which is included in Appendix A, and the recommendation remains that enforcement action is taken to require the use of the land to cease, after 18 months.
15. Notwithstanding this, at the request of Members a number of requirements which could be enforced whilst allowing the use to continue have been set out in this report. The scope of these requirements is limited and they would not overcome the main planning concerns which officers have regarding the use of the site.

16. However should members be minded to allow the use to continue, it is recommended that authority is granted to allow officers to take enforcement action using the method of under-enforcement, up to and including prosecution, to require the occupier to carry out and comply with the measures and restrictions set out in paragraph 4 of this report in full.

Appended report

**Report to** Planning applications committee  
09 August 2018

**Report of** Head of planning services

**Subject** Enforcement Case 18/00003/ENF – Land at Holt Road,  
Norwich

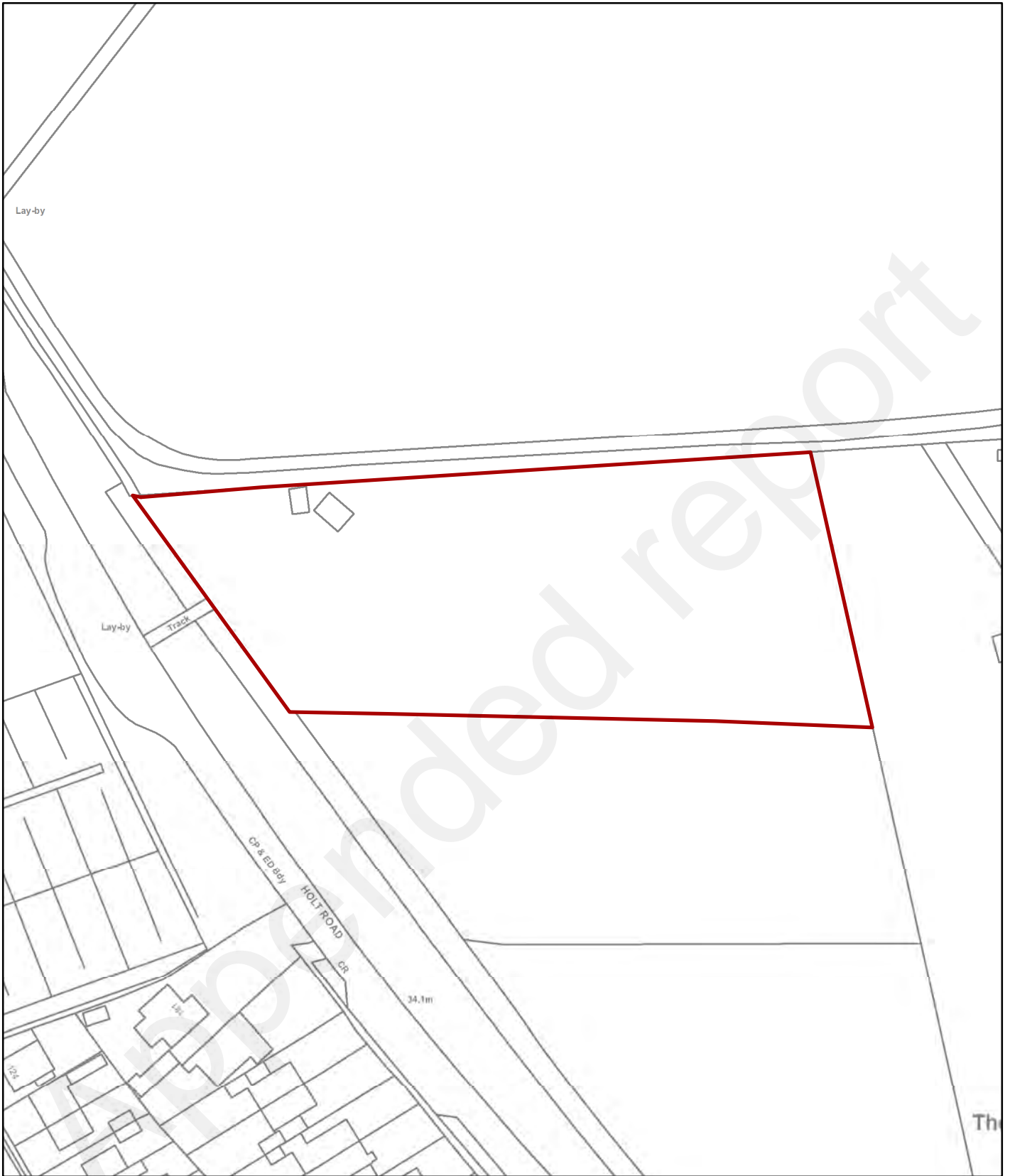
Item

4(g)

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**Summary**

<b>Description of breach</b>	Without planning permission, the use of the land for the stationing of caravans for residential purposes, the laying of a hard surface, the stationing of a portaloo, the storage of waste and the erection of a 2m boundary fence and gate.
<b>Recommendation</b>	Authorise enforcement action to cease the use of the land for the stationing of residential caravans and remove any caravans, portaloo, frontage fence and hardstanding.
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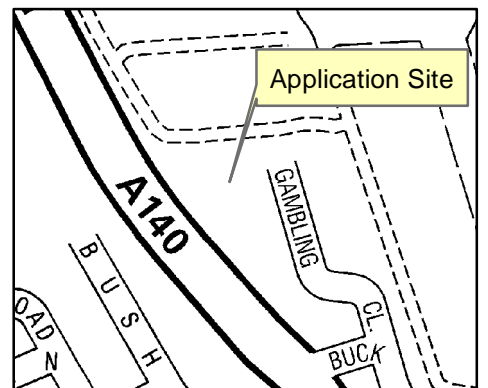
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Planning Application No 18/00003/ENF  
 Site Address Land at Holt Road  
 Scale 1:1,250



**NORWICH**  
 City Council

PLANNING SERVICES





## **The site**

1. The site is a paddock next to the A140 Holt Road, adjacent to land controlled by Norwich Airport and immediately to the south of the main airport runway. To the east is Gambling Close, including the headquarters of the East Anglian Air Ambulance Service. To the south are further paddocks, with the A140 to the west and allotments on the opposite side of the road. The site is accessed via an informal vehicle access from Holt Road. The caravans and portaloo are located close to the access on the western side of the site next to Holt Road. The majority of the site which includes the remainder of the paddock remains undeveloped.

## **Relevant planning history**

2. There is no relevant planning history for the site.

## **The breach**

3. The breach of planning control is that without planning permission the land is being used for the stationing of residential caravans. Additional development which does not benefit from planning permission includes a 2m high (approx.) fence alongside the frontage with Holt Road, the siting of a portaloo, an area of gravel surfacing, and an area where waste has been deposited and is being stored.
4. The breach was reported to planning officers in January 2018. In the first instance, officers visited the site to ascertain what works had been carried out. A Planning Contravention Notice was served in May 2018 in order to establish the facts of the case. Officers have subsequently met with the family and partner services to establish their circumstances. The family are ethnic Romany gypsies and have stated that they have occupied the land since October 2017.
5. In terms of the unauthorised development, at the time of writing (July 2018), there are two touring caravans on the land which are being occupied for residential purposes and a portaloo. There is a close boarded timber fence on the front (western) boundary which is approximately 2m high and requires permission by virtue of its height and the fact it is adjacent to a highway. In addition there is gravel hardstanding at the point of access and within the western part of the site, and there is an area where waste has been deposited close to the northern boundary.
6. There are a number of structures which have been stationed/erected which do not require planning permission. These include animal huts, gates and fencing within the site which is not higher than 2m and is not adjacent to a highway. Historic photos suggest there has been an informal access from Holt Road at this location for some time. It is likely this was used to access the paddock on an infrequent basis. It is therefore not suggested that a new vehicular access has been created, however the laying of gravel has formalised the access and the residential occupation has led to an intensification of its use.

7. In terms of landownership, the occupiers have stated they are the owners of the land, however no evidence has been forthcoming to prove this. No other person claiming to own the land has come forward. The land is currently unregistered. The planning merits of the development are assessed irrespective of land ownership.

### **Assessment**

8. The government's definition of gypsies and travellers, for the purposes of planning policy, is set out in the *National Planning Policy for Traveller Sites, August 2015* document. This states "gypsies and travellers" are:

"Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such."

9. The family has stated that they are ethnic Romany gypsies who in the past have led a nomadic habit of life. However they have sought to find a permanent base in order to provide their young children with a more settled environment, in particular to help them get an education. It is considered therefore that the occupiers meet the government's definition of gypsies and travellers for the purposes of planning policy, and relevant policies pertaining to gypsies and travellers apply.
10. In accordance with planning law, the merits of the case are determined in accordance with relevant development plan policies, which include policies within the Norwich Development Management Policies Document (adopted 2014), the Norwich Site Allocations and Site Specific Policies Document (adopted 2014) and the Joint Core Strategy for Broadland, Norwich and South Norfolk (adopted 2011, amendments adopted 2014). Material considerations include policies in the revised National Planning Framework (NPPF) July 2018, the National Planning Policy for Traveller Sites, August 2015, the Council's standing duties, other policy documents and guidance detailed above and any other matters referred to specifically in the assessment below.
11. In terms of the planning merits of the case, there are a number of factors weighing for and against the development. These must be weighed as part of a planning balancing exercise in order to determine whether it is expedient to take enforcement action or whether the use of land is considered acceptable and it is not expedient to take action.

### **Development plan policy**

12. The site is part of a larger site specific allocation within the Site Specific Allocations and Site Specific Policies Plan, under policy R30, for airport related development or business development for B1/B2/B8 purposes. Outline planning permission has recently been granted for a commercial vehicle hire company to operate from the southern part of the allocated site, to the south of the paddock

which is occupied by caravans. In addition the Norwich Northern Distributor Road (NNDR) has recently been completed, which improves road links within close proximity of the site. It is reasonable to assume these factors are likely to result in demand for the remainder of the site to be developed for commercial uses in the future. The use of the land for residential purposes is not consistent with this allocation and this weighs against the use of the land for residential occupation.

13. Policy DM14 of the Development Management Policies Plan sets out criteria for dealing with proposals for new gypsy and traveller sites. The policy states:

“Proposals for the development of additional sites within Norwich to meet the identified needs of the traveller community will be permitted where:

- (a) safe access to the site can be obtained through an appropriate layout with good visibility, without the loss of natural screening;
- (b) the site has good access to public transport, services and community facilities including shops, healthcare facilities and schools;
- (c) the development will not have a significant detrimental impact on the character and amenity of the area; and
- (d) the proposed site is of sufficient size and in a location to meet the on-site needs of occupiers, having regard to current national standards for site design and management, including for the provision of appropriate services and infrastructure.”

14. With regard to criterion (a), there is significant concern about the transport implications of the proposal. Norfolk County Council Highways has indicated that it objects in principle to the more intensive use of the access associated with residential use at this point on the A140, because increased vehicle turning movements in this location impacts upon the free-flow of traffic on what is part of the strategic highway network. It should be noted that Policy DM 30 of the Development Management Policies Plan document states that new access onto such routes will only be permitted where there is no practical alternative from a more minor route and they would not prevent or restrict the implementation of necessary highway or junction improvement works associated with the corridor.

15. A further problem is that there is no pedestrian footpath leading directly to or from the site. Anyone wishing to walk to or from the site needs to walk along a grass verge and cross the busy A140 to get to the nearest footpath. Access on foot is therefore not particularly safe and the arrangement is likely to lead to a reliance on the private car. This is not considered to represent a safe or sustainable location/access for the siting of a residential caravan(s), and conflicts with policies DM28 and DM30 of the Development Management Policies Plan Document and policy 6 of the Joint Core Strategy.

16. With regard to criterion (b), although the site is located close to the urban area of Norwich, with its associated facilities, as stated above there is no footpath access to the site. Trips to local services and facilities are therefore likely to rely on the use of the car, or by an unsafe walking route.

17. In terms of criterion (c), the site is enclosed by a severe looking and large timber fence, which is not sympathetic to the character of the area, which is generally one of hedgerow boundaries. The current situation therefore causes harm to the character of the area, contrary to the provisions of policies DM3, JCS2 and JCS12. However this could potentially be mitigated by an alternative form of boundary treatment, which may include some planting. In terms of other amenity impacts, it is not considered that material harm would occur because the use is residential for one family and there are currently no other properties immediately adjacent to the site.
18. With regard to criterion (d), the site is of a sufficient size to meet the on-site requirements of the occupiers. However another factor weighing against the proposal is the close proximity of the Norwich airport runway and airport land which is directly to the north of the site. Whilst exact noise levels are unknown, it is reasonable to assume that the presence and proximity of the runway is likely to cause significant noise disturbance for occupiers when planes are taxiing, taking off and landing. The caravans are also sited very close the A140, which in combination with the airport is likely to result in high levels of background noise which are unlikely to be suitable for residential occupation, particularly given the low levels of sound insulation provided by a typical caravan. This conflicts with policy DM2 of the Development Management Policies Plan Document.
19. A further consideration is that the development represents a very low density form of development, being for one family on a relatively large piece of land. Such a low density of development does not make for an efficient use of the land and also means the benefits of the proposal are somewhat limited.
20. In addition, policy DM14 states:
- “The council is committed to meeting the recognised need for at least 21 additional pitches for Gypsies and travellers in Norwich over the remainder of the plan period, of which a minimum of 8 pitches should be provided by the end of March 2016. The council is seeking to meet at least the immediate needs through grant applications to be submitted by the end of 2014. This may also address some or all of the remaining need to 2026.
- Should it not be possible to identify sites capable of meeting needs up to 2026 through the above process, the council will produce a short focussed Local Plan which will have the objective of identifying and allocating additional sites for Gypsies and travellers to meet identified needs up to 2026. The Local Plan may be produced for Norwich or a wider area through joint working with adjoining local authorities and, if needed, will be commenced within one year and completed within two years of adoption of this plan.”
21. The aim of providing 8 additional pitches by the end of March 2016 has not been met. Planning permission for a further 13 pitches at the existing site in Swanton Road was granted in January 2017 however this has not yet been delivered due to an ongoing legal dispute. To date the Council has not produced a ‘short focussed Local Plan’ as potentially envisaged by the second paragraph.

22. In terms of assessing the development against the requirements of policy DM14, whilst the proposal does not accord with the criteria for new sites, it is also concluded that to date the Council has not met the identified need set out within the final two paragraphs of the policy.

### **National guidance**

23. The revised NPPF contains a number of relevant policies which are pertinent to the development. Paragraph 59 emphasises the importance of addressing the needs of groups with specific housing requirements which taken in isolation, the use accords with this aim.

24. Paragraph 80 states that “significant weight should be placed on the need to support economic growth, and productivity, taking into account both local business needs and wider opportunities for development”. Paragraph 91 emphasises the importance of creating healthy communities, including enabling and supporting healthy lifestyles and layouts which encourage walking and cycling. Paragraph 102 requires consideration to be given to the impact of development on transport networks, and paragraph 108 aims to ensure “safe and suitable access to the site can be achieved for all users”. Paragraph 109 expects planning permission to be refused on highways grounds if there would be an unacceptable impact on highway safety. Paragraph 123 states “where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site...local planning authorities should refuse applications which they consider fail to make efficient use of land”. Paragraph 124 deals with good design, and emphasises the need to ensure that developments “will function well and add to the overall quality of the area...are visually attractive...are sympathetic to local character...which promote health and well-being, with a high standard of amenity for existing and future users.” The development is considered to conflict with all of these requirements.

25. Paragraph 58 states:

“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.”

26. Guidance within the National Planning Policy for Traveller Sites is a material consideration in the assessment of the breach. Although there is no specific policy or guidance relating to enforcement, in relation to planning applications it states that:

“Local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:

(a) the existing level of local provision and need for sites;

- (b) the availability (or lack) of alternative accommodation for the applicants;
- (c) other personal circumstances of the applicant;
- (d) that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites;
- (e) that they should determine applications for sites from any travellers and not just those with local connections.”

27. In terms of criterion (a), there are no sites currently available for travellers in the Norwich Area. There are plans to extend the traveller site at Swanton Lane in Mile Cross, but it is anticipated it may be another year before additional pitches are available. In terms of the need for sites, data from the *Norfolk Caravans and Houseboats Needs Assessment* (October 2017) states that demand for gypsy and traveller pitches in the ‘Greater Norwich’ area (which includes Broadland, Norwich and South Norfolk) currently exceeds supply. Between 2017 and 2022, for families that ‘have not permanently ceased to travel’, it is estimated that based on a supply of 22 pitches and a need of 37 pitches, an additional 15 pitches are required.
28. It is concluded that the lack of current available pitches, together with the evidenced need for more sites between 2017 and 2022, weighs in favour of the use of the land.
29. With regard to criterion b), it is understood that although the family who are occupying the site have family in the local area, they do not currently have alternative accommodation in terms of a permanent pitch available to them. They have stated that they have an aversion to living in bricks and mortar, which is a characteristic which is commonly held by gypsies and travellers. In relation to criterion (c), the occupiers have stated that they have sought to find a permanent base in order to provide their daughters with a more settled environment, in particular to help them get an education. It is considered that the need of the family is genuine, and weight should be attached to their circumstances.
30. In terms of (d), the *Norfolk Caravans and Houseboats Needs Assessment* (2017) sets out likely key considerations in identifying new sites to include:
- (a) The affordability of land suitable for the development of new sites and the cost of development
  - (b) The need to ensure that new provision are within reasonable travelling distance of social, welfare and cultural services
  - (c) The need to carefully consider the proximity of new provisions to existing provisions i.e. whether social tensions might arise if new provisions are located too close to existing provisions
  - (d) The sustainability of new provisions i.e. ensuring that they do not detrimentally impact on the local environment and do not place undue pressure on the local infrastructure.

31. The document also identifies the need to connect to public transport and provide highways access and utilities. The suitability of the site in terms of the suggested criteria is therefore mixed because it meets some but not all of the locational criteria, notwithstanding the planning policy considerations which have been set out in this report.
32. The family do have local connections, with members of their extended family residing in South Norfolk. It is therefore considered that criterion (e) is not relevant.

### **Housing land supply position**

33. The matter of housing land supply is relevant both in terms of consideration of the permanent use of the land for the stationing of caravans to be occupied by gypsies and travellers, and also for the temporary use of the land as such. The current five year housing land supply for the Norwich Policy Area (NPA) is set out within the Greater Norwich Growth Board's Joint Core Strategy annual monitoring report on 14 March 2018. The housing land supply assessment shows that against the Joint Core Strategy (JCS) requirements there is 4.61 years supply in the Norwich Policy Area, a shortfall of 1,187 dwellings. Consequently relevant policies for the supply of housing in the NPA cannot be considered up-to-date.
34. Paragraph 11 of the revised NPPF reaffirms the presumption in favour of sustainable development. For decision taking, the revised NPPF sets out that where the policies which are most important for determining the application are out-of-date, permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. A situation where relevant policies may be out-of-date includes where the local planning authority cannot demonstrate a five year supply of deliverable housing sites. It is therefore necessary to establish whether the proposal represents sustainable development, as defined within paragraph 8 of the NPPF, which refers to the economic, social' and environmental objectives.
35. **The economic objective** - The use of land would not result in much economic benefit, except for the very modest impact of an additional family spending money in the area. It does however have the potential to prevent the development of land for employment purposes or airport related development, which represents a significant adverse impact in terms of the economy. There is also the possibility that the presence of a traveller site in such close proximity to the airport could give rise to future complaints about airport expansion which could inhibit economic growth. The proposal therefore has a significant adverse effect in terms of the economic objective.
36. **The social objective** - In terms of this objective the use assists in meeting the needs of one family in terms of the requirement for land on which to settle. However this land is not considered to be a safe or accessible location for residential development. The impact in terms of the social objective is therefore considered to be neutral.

37. **The environmental objective** - Regard is had to the current visual appearance of the site, which is not in keeping with the character of the area. Consequently the development is considered to have a moderate adverse effect in terms of the environmental objective.
38. Overall, when measured against the above objectives, the development does not represent sustainable development. It is therefore considered that the presumption in favour of development as set out in paragraph 11 of the revised NPPF does not apply to the permanent use of the land for the stationing of residential caravans.
39. A further material consideration, applying to the grant of temporary planning permission is set out in paragraph 27 of the *National Planning Policy for Traveller Sites* document. This states:
- “If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. The exception is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).”
40. Whilst an application for temporary permission has not been made, it is necessary to consider the merits of a temporary use when deciding whether it is expedient to take enforcement action. Whilst significant weight is attached to the land supply situation, it is noted that significant conflict has been found with a number of development plan policies which do not relate to housing supply, and are therefore considered up-to-date. Further significant conflict with the revised NPPF has also been identified. The level of conflict is such that it would be inappropriate to grant any form of planning permission. However, in having regard to the land supply situation and the needs of the family, a lengthy period with which to comply with the notice (18 months) is recommended.

### **Planning balance**

41. In terms of the planning balance, it is clear that there are factors weighing strongly both in favour and against enforcement of the unauthorised development. The following matters weigh significantly in favour of the development and against enforcement:
- (a) The current lack of gypsy and traveller site provision in the Norwich area;
  - (b) The lack of a 5 year housing land supply;
  - (c) The personal circumstances of the family concerned that have ceased to travel due to the educational needs of their children.
42. The following matters weigh significantly against the development and in favour of enforcement:



- (a) The objection in principle from the highway authority to the formalisation and intensification of the vehicle access onto the A140. An alternative option would be to provide an access from Gambling Close, however this would not be easy to secure because the land is in private ownership. It would not therefore be reasonable to require the occupier to move the access, and therefore the harm caused cannot be easily mitigated.
- (b) The lack of a footpath leading to the site combined with the position of the site on a busy 'A' road where vehicles travel at high speed means the access is not safe for pedestrians and likely to lead to a reliance on transport by private car. This could be mitigated by the provision of a new pathway, but it would need to be a very long pathway which would not be proportionate to require, and the occupier does not have control of the land to help secure such a path. It is therefore considered this harm is not easy to mitigate against.
- (c) The proximity to the airport runway and associated significant noise impacts from airplanes taking off and landing on occupiers of the site. By its nature, a caravan is unlikely to contain particularly good sound insulation and noise from aeroplanes is likely to be very difficult to mitigate.
- (d) The visual harm to the character of the area caused by the appearance of the land, in particular the close boarded fencing on the site frontage. It is considered this could be mitigated with a replacement boundary treatment which is more in keeping with the character of the area.
- (e) The conflict with the site allocation for employment/airport development. It is not possible to mitigate against this conflict.

43. The following matters weigh moderately against the development:

- (a) Locating new residential development in such close proximity to the airport runway may inhibit future expansion by Norwich Airport, to the detriment of the local and regional economy. It would not be possible to mitigate against this conflict.
- (b) The development is very low density and does not make an efficient use of the land.

44. On balance, whilst the needs of the family are acknowledged and there are clear factors which weigh in favour of the development, it is noted that the benefits are limited to one family. The factors weighing against the proposal are considerable and most of them are very difficult or impossible to mitigate against. In this instance it is considered that the harm outweighs the benefits, because despite the identified need the site is simply not suitable or sustainable for residential occupation, when assessed against policies of the development plan and national guidance. The proposal conflicts with development plan policies DM2, DM9, DM28, DM30 of the Norwich Development Management Policies document, policy R30 of the Site Allocations and Site Specific Policies

document, policies JC2, JCS6 and JCS12 of the Joint Core Strategy and relevant policies of the revised NPPF.

### **Equality and Diversity considerations**

45. The Human Rights Act 1998 came into effect on 2 October 2000. :

- (a) Article 1 of the First Protocol (the peaceful enjoyment of one's possessions), is relevant in this case. Parliament has delegated to the council the responsibility to take enforcement action when it is seen to be expedient, proportionate and in the public interest.
- (b) Article 6: the right to a fair hearing is relevant to the extent that the recipient of the potential enforcement notice and any other interested party ought to be allowed to address the Committee as necessary. This could be in person, through a representative or in writing.

46. Article 8(1) of the European Convention on Human Rights (ECHR) is engaged. This states the following:

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

47. Enforcement action to require the occupation of the land for residential purposes to cease would represent an interference of the rights contained within Article 8(1). However it is noted that the ECHR provisions do not go as far as to allow an individual's preference for their place of residence to override the general interest. The planning merits of the development have been assessed in accordance with planning law and it has been found by officers that the harm caused to the general interest outweighs the needs of the individuals in this case. In addition a generous period of compliance is recommended, which allows the occupiers to continue living on the land in the short term and represents a reasonable time period to find an alternative site. It is therefore concluded that the Article 8 rights are not violated.

### **Equality Act 2010**

48. As part of the Public Sector Equality Duty (PSED), which is set out in section 149 of the Equalities Act 2010, A public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

49. In addition, the following further requirement at section 149(3) of the above mentioned act applies:

“Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.”

50. A ‘relevant protected characteristic’ includes race, which is relevant in this case because it concerns ethnic Romany people.

51. In interpreting this legislation, a case could be made that in light of the current lack of provision for traveller sites in the Norwich area, it would not be expedient to take enforcement action to require the use of land to cease because this would run counter to the aims of the PSED legislation. Accordingly weight is attached to this matter in the overall balancing exercise. However weight is also attached to the unsuitable nature of the site for long term residential occupation, which it should be noted is considered to be just as unsuitable for a C3 general needs residential dwelling as it is for the stationing of caravans for residential use by travellers. It is therefore considered that allowing travellers to reside at land which is considered unsuitable for any form of residential occupation could represent a form of discrimination, which the Act aims to prevent.

52. On the basis of this balancing exercise, it is concluded that taking action to ensure the use of the land ceases would not conflict with the PSED requirements. In addition, allowing a reasonably lengthy period for compliance, as set out below, is considered to be a proportionate measure which would assist in meeting the requirements of the PSED legislation.

### **Recommendation**

53. On the basis of the above assessment it is recommended that the planning committee authorises enforcement action, up to and including to ensure the use of the land for the stationing of residential caravans ceases, together with ensuring the removal of the caravans, portaloo, frontage fencing, gravel surfacing and waste, up to and including .

54. Taking account of the needs of the family, relevant appeal history and case law in similar circumstances in other parts of the country, it is recommended that a relatively long period of compliance is imposed. This will allow the family to

continue living at the site in the short term, minimising disruption to them whilst allowing them ample time to relocate. It is therefore recommended that a compliance period of 18 months is imposed from the date of an enforcement notice being served.

### **Alternative options**

55. Members may not wish to take enforcement action, but this option is not encouraged because it would lead to an unsustainable form of development as outlined above.
56. Members may wish to authorise enforcement action but impose a shorter compliance period, to ensure the use ceases more quickly. Having looked at similar instances where local authorities have attempted this for a single family unit, Inspectors have tended to impose longer compliance periods following appeals. This is because of the needs and rights of the individuals concerned, and the fact that it is not easy to find alternative accommodation or land, particularly where family members attend a local school or have health issues and attend a local GP practice. Therefore a shorter compliance period is not recommended.
57. Members may wish to authorise enforcement action but impose a longer compliance period. Having had regard to other cases involving unauthorised traveller pitches a timescale of 18 months is fairly consistent with the approach taken elsewhere. Members may have their own view taking into account the facts of the case, but in this instance 18 months seems a reasonable length of time that balances the need for the occupiers to find alternative land whilst ensuring that the harm that is caused by their occupation of the site does not persist longer than is necessary.