
Appeal Decisions

Hearing Held on 15 October 2019

Site visit made on 15 October 2019

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2020

Appeal A Ref: APP/D0840/C/18/3202328

Land South East of Minorca Lane, Cornwall PL26 8QN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr L Thomas against an enforcement notice issued by Cornwall Council.
- The enforcement notice, numbered EN17/01666, was issued on 10 April 2018.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land for the stationing of four gypsy/traveller pitches including 4 static caravans, 6 touring caravans, for the purposes of independent human habitation. Also the provision of an access and hardstanding.
- The requirements of the notice are:
 1. Cease the use of the Land identified in red on the plan attached to the notice for residential purposes.
 2. Remove all caravans, all block bases, marked in the approximate position with a black rectangle on the plan attached to the notice, from the land.
 3. Remove all animal housing and all sheds and their bases from the Land, as marked with an 'X' on the plan attached to the notice.
 4. Remove all septic tanks, gas bottles, outdoor seating and all other domestic items and associated paraphernalia brought onto the land for the purposes of the unauthorised residential use, from the Land outlined in red.
 5. Restore the Land to its condition before the breach took place and where the land profile has been altered re-profile the Land to previous levels. To include seeding the land with grass seed.
 6. Remove all hard core imported to facilitate the access to the site and hard core used in the construction of the site.
 7. Remove all services connected to the Land.
- The period for compliance with the requirements is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: no action is taken in respect of this appeal.

Appeal B Ref: APP/D0840/W/18/3210209

Land South East of Minorca Lane, Bugle, Cornwall PL26 8QN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Luke Thomas against the decision of Cornwall Council.
- The application Ref PA17/08193, dated 23 November 2017, was refused by notice dated 2 August 2018.
- The development proposed is the change of use of land to 4 no. Gypsy/Traveller pitches with associated works including 3 No. mobile homes, 4 no. touring caravans, 3 no. day rooms, 3 no. sealed septic tanks, 5 no. sheds and hardstanding.

Summary Decision: the appeal is allowed and planning permission is granted subject to the conditions set out in the attached Schedule of Conditions

Preliminary and Procedural Matters

1. The address of the appeal site is described slightly differently in the enforcement notice, the application form for the development proposed in planning application PA17/08193 and the Council's formal Decision Notice in respect of that application. I am nevertheless satisfied that they all relate to the same site and that the descriptions above are adequate.
2. In a Pre-Hearing Note, I had raised initial concerns that the requirement at paragraph 5(1) of the enforcement notice was not consistent with the allegation at paragraph 3 of the notice. At the Hearing, there was also discussion about whether the allegation in the notice was consistent with other requirements in the notice, particularly those at paragraph 5(3) in relation to the animal shelters and paragraph 5(5) insofar as it refers to re-profiling the land to previous levels. As a result of these discussions, it became apparent that I could not correct and/or vary the notice without causing injustice to the appellant. The Council indicated that it would withdraw the notice, which it formally did shortly after the Hearing. As a result, I have taken no further action in relation to Appeal A.
3. It is, of course, open to the Council to issue a fresh enforcement notice should it be considered expedient to do so. That possibility then becomes a material consideration in relation to some of the issues canvassed at the Hearing and discussed below.
4. The development proposed under planning application Ref PA17/08193 has been amended from that originally submitted. The proposal as now amended is described on the Council's formal Decision Notice as being the change of use of the land to 4 no. Gypsy/Traveller pitches with associated works including 3 no. mobile homes, 4 no. touring caravans, 3 no. day rooms, 4 no. sealed septic tanks and hardstanding. This is repeated on the appeal form. I have taken the description in the header above from these two documents.
5. However, the amended layout plan submitted with the application and on which the application was determined (Drawing No.1744/02A) clearly shows 4 separate pitches with a total of 4 no. mobile homes and 3 touring caravans. That is consistent with the description of development in the appellant's Appeal Statement, stated as being 4 no. Gypsy/Traveller pitches with associated works including 4 no. mobile homes, 3 no. touring caravans, 3 no. day rooms, 4 no. sealed septic tanks and hardstanding. It is apparent that the number of mobile homes and touring caravans proposed has been transposed in the Council's formal Decision Notice and carried over on the appeal form. I have therefore adopted the description of development in the appellant's Appeal Statement as being the development for which planning permission is applied. I am satisfied that I can amend the description of development without causing prejudice.
6. Although the description of development clearly refers to a change of use, in the interests of clarity I consider that the description should properly refer to both a change of use of the land for the siting of caravans and the residential use of those caravans. I am again satisfied that I can amend the description of development without causing prejudice to any party.

7. The description of development also refers to 'associated works' but includes within that the mobile homes and the touring caravans. Those are not works associated with the proposed use of the land as gypsy/traveller pitches and I shall amend the description accordingly.
8. The appellant and his family already occupy the appeal site. There are currently four static mobile homes on the site, together with three touring caravans and some animal shelters, but no day rooms. The caravans are located in positions approximate to that shown on the original layout plan submitted with the application (Drawing No.1744/02) but in areas of the site subsequently found to have a high probability of flooding. In response to that flood risk, the amended proposal envisages a different site layout, as shown on amended drawing No.1744/02A.
9. For that reason, and also because day rooms are proposed as part of the application but are not currently present on the site, the amended proposal is not an application for retrospective planning permission. Consequently, notwithstanding the presence of caravans on the site at present, I have considered this appeal on the basis that it is a proposal for new development. As I understand it, should planning permission be granted for that development, the appellant's intention is to relocate the static mobile homes and touring caravans in accordance with the revised layout shown in Drawing No.1744/02A.

Appeal B Ref: APP/D0840/W/18/3210209

Main issues

10. The appeal site is in an area of open countryside and outside of any settlement boundary. It is therefore in a location in which the Planning Policy for Traveller Sites (PPTS) indicates that new traveller sites should be very strictly limited. However, it was clarified at the Hearing that the first reason for refusal was directed at the effect on the character and appearance of the countryside rather than the location of the site away from existing settlements. The main issue raised is therefore whether the appeal site is a suitable location for the proposed development, having particular regard to the effect of the proposed development on the character and appearance of the area and flood risk.

Character and appearance

11. The site lies within Landscape Character Area LCA20 – Mid Cornwall Moors (Landscape Character Area), as defined in the Cornwall and Isles of Scilly Landscape Character Study (Landscape Character Study). The key landscape characteristics of this Landscape Character Area, as identified in the Landscape Character Study, include pastoral land use on rising ground, with large expanses of open low-lying wetland with wet woodland and rough grazing. Another of the key landscape characteristics of this Landscape Character Area identified in the Landscape Character Study is that the area is lightly settled.
12. The appeal site and surroundings exhibit some of the key landscape characteristics of the Landscape Character Area. In particular, the appeal site is surrounded by fields and areas of woodland, with areas of wet woodland to the immediate south and east. Furthermore, with the exception of the Minorca Lane caravan site to the north-west, the area surrounding the appeal site is lightly settled with only isolated farms and occasional dwellings in evidence.

13. The development as proposed includes a total of four mobile homes, three touring caravans and three day rooms. The proposed site layout as amended (as shown on Drawing No.1744/02A) shows two of the mobile homes and one of day rooms located close to the eastern boundary of the site, more or less centrally along that boundary. The remaining two mobile homes (and the associated day rooms) would be located close to the western boundary, one towards the northern end of the site and the other towards the southern end. Much of the remaining site area is shown as being laid to grass, albeit each of the mobile homes is shown as being surrounded by hard surface (noted on Drawing No.1744/02A as being stones) with a vehicular access running centrally down two-thirds of the site.
14. As the Council points out, mobile homes falling within the statutory definition under the Caravan Sites Act 1968 can extend to a maximum of 20 metres in length and 6.8 metres in width, with a height of 3.05 metres. The proposed day rooms would each have a footprint measuring 6 metres by 5 metres, with a ridge height of 4 metres. The latter would be substantial structures, considerably in excess of the dimensions for day rooms set out in the Council's Gypsy and Travelling Communities Strategy. The combination of the mobile homes and the day rooms would have a significant visual presence on the site that would be harmful to the appearance of this rural area. Moreover, by reason of their size and bungalow-like appearance, the introduction of these structures into an area that is otherwise lightly settled would harm its rural character.
15. The cumulative harm resulting from these mobile homes and day rooms would be exacerbated by the proposed layout of the site. I recognise that the location of the mobile homes and day rooms is largely dictated by the need to safeguard against the risk of flooding and that there are no viable alternatives to the layout proposed in that respect. Nevertheless, the spread of the mobile homes and substantial day room buildings across the site would be out of keeping with prevailing pattern of development surrounding the site and within the Landscape Character Area generally. The extensive area of hard surface surrounding each mobile home and running down the centre of the site would also be out of keeping with the surrounding landscape, as would the proposed fencing around the mobile homes.
16. The proposed development would therefore result in the introduction of a form of development that would not be in keeping with the Landscape Character Area, and which would be intrinsically harmful to the character and appearance of the area. This would be particularly apparent from within the site itself from where, in my view, the harm would be significant.
17. In reaching that conclusion, I am mindful that the PPTS accepts that gypsy and traveller sites can be located in rural areas. However, on my reading, that cannot be taken to mean that gypsy and traveller sites would necessarily be appropriate in all rural locations. Each case must be considered on its own merits. In my view, given the particular attributes and value of the Landscape Character Area, the proposed development would be harmful in this location.
18. In that context, I am mindful that the Minorca Lane caravan site itself represents a form of development that is not in keeping with the surrounding landscape character. It also covers a significantly larger area than the proposed development. Nevertheless, the appeal site is located some distance

from the Minorca Lane site and is separated from it by an area of open countryside, including an area of woodland. The Minorca Lane site is not visible from the main body of the appeal site, and consequently there is no visual association between the two sites. For that reason, the presence of mobile homes on the Minorca Lane site provides no justification for a development on the appeal site that is out of keeping with the surrounding area.

19. I recognise, however, that the proposed mobile homes, touring caravans and day rooms would not be widely visible from outside the appeal site itself. The only location from where views of the proposed development from outside of the site would be possible is from the public footpath runs alongside the Criggan Stream, and therefore parallel with the eastern boundary of the site. One of the existing mobile homes is located on the eastern boundary of the site, in approximately the same position as one of the proposed mobile homes. I noted that the roof of the existing mobile home is plainly visible from that footpath although, due to intervening vegetation, the lower part of the mobile home is not. In my judgment, the roofs of at least one and possibly both of the two mobile homes proposed to be sited in a similar position close to that eastern boundary would equally be visible from the public footpath.
20. This is significant because of the way in which that view of the mobile home(s) would be experienced. Up until that point, a walk along that stretch of the public footpath affords very few views of residential development, whether of built form or caravans. The sudden encounter of residential development in the form of the roof(s) of mobile homes would be both unexpected and discordant, and would betray the presence of a development that would not be in keeping with its surroundings.
21. I acknowledge that the visual impact of the development could to some extent be filtered and softened by additional landscaping, and that this could be secured through the imposition of a suitably worded condition. It would not be prudent to rely upon landscaping in seeking to entirely screen views of the mobile homes, but additional landscape could reduce the extent to which the mobile homes would be visible from outside of the site. With such landscaping in place, the harm resulting from the proposed development to the Landscape Character Area would be reduced to moderate harm.
22. I conclude that the proposed development would harm the character and appearance of the area, albeit that harm would be moderate. I therefore conclude that the proposed development would be contrary to Policies 2, 12 and 23 of the Cornwall Local Plan: Strategic Policies 2010-2030 (Cornwall Local Plan). These policies require, amongst other things, that development proposals identify the value and sensitivity of the character and importance of landscapes, and will need to sustain local distinctiveness and character.
23. For the same reasons, the proposed development would also be contrary to the Luxulyan Neighbourhood Development Plan 2018-2030. Policy LLNE1 of that plan relates to local landscape character and provides, amongst other things, that proposals that would have an adverse impact on the Mid Cornwall Moors Landscape Character Area will not be supported.
24. The Council has also cited Policies 1, 7, 11, 21, 22 and 26 of the Cornwall Local Plan in the reason for refusal. I have had regard to these policies, but in my view the policies identified in paragraph 22 are the most relevant in relation to this main issue.

Flood risk

25. The majority of the appeal site lies within Flood Zones 3a and 3b, and therefore has a high probability of flooding. The Flood Risk Assessment (FRA) submitted in support of the application indicates that flood depths in the lower part of the site could be up to 0.9 metre deep in a 1 in 100 year return period flood event, albeit the velocities of the incoming flood water would be low: typically 0.25 metres per second. It is also likely that the duration of such a flood event would be relatively short, and probably measured in hours rather than days.
26. However, the FRA also indicates, and the Environment Agency (EA) accepts, that some parts of the site fall within Flood Zone 1 and therefore have a low probability of flooding. These areas form a number of 'dry islands', over which shallower and low velocity flooding would occur to a depth of approximately 0.3 metres in a 1 in 100 year return period flood event. In that sense, I recognise that the term 'dry islands' is a misnomer and that in practice the whole of the site could be submerged to varying depths. The proposed site layout (as shown on Drawing No.1744/02A) shows all of the mobile homes to be stationed on one of these dry islands.
27. The Planning Practice Guidance (PPG) indicates that caravans and mobile homes intended for permanent residential use are classed as highly vulnerable to flood risk. The PPG indicates that development classed as highly vulnerable to flood risk should not be permitted in Flood Zones 3a or 3b, but is appropriate in Flood Zone 1. It is the appellant's view that, because the mobile homes are stationed on the dry islands and therefore in Flood Zone 1, the proposed development should be regarded as being appropriate in flood risk terms.
28. I have some difficulty with the appellant's approach in this respect. Although described as dry islands, it is apparent that in a 1 in 100 year return period flood event the whole of the site could potentially be submerged in flood water to a depth of 0.3 metres or more. Moreover, the Council questions the accuracy of the flood maps. I note also that the tolerances as to whether the mobile homes are stationed in Flood Zone 1 or Flood Zone 3 are in some cases quite fine. I therefore cannot be certain that the mobile homes would be stationed on land that is within Flood Zone 1. For these reasons, I consider that the development as a whole should be classed as being highly vulnerable to flood risk. It therefore follows that it is necessary to apply the Sequential Test.
29. The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. The Council acknowledges that it cannot point to any available Gypsy and Traveller sites with a lower probability of flooding than the appeal site. In that context, it became evident at the Hearing that the site at Bowling Green, in relation to which planning permission for 10 pitches was granted in 2016, is a private family site and is not available to the appellant. I am therefore satisfied that no sites with a lower probability of flooding are available and that the Sequential Test is met.
30. Even though the Sequential Test is met in this case, the PPG advises that development classed as being highly vulnerable to flood risk should not be permitted in areas with a high probability of flooding. I therefore conclude that the proposed development does not comply with National planning policy in

relation to flood risk, as set out in the National Planning Policy Framework (Framework) and the PPG.

31. Nevertheless, it is incumbent upon me to consider whether the proposed development would be safe for its lifetime having regard to the practical risk of flooding as opposed to a purely policy-based risk assessment. This requires consideration of the facts surrounding this particular case.
32. In this context, I recognise that the floor level of the mobile homes would be raised above ground level by some 0.6 metres and accept that the occupiers would be able to take refuge in the mobile homes to escape the flood waters. I am also mindful that the velocity of the flood waters would be low and that the duration of any flood event relatively short. The site is within the St Austell and Par Rivers flood warning and alert area. The EA issue a Flood Alert to properties within that area whenever flooding is possible to enable residents to take appropriate action. The flood risk would also be managed through a Flood Emergency Plan that, amongst other things, would be founded on the principle of preservation of life and would require the occupiers to evacuate the site upon receipt of a Flood Alert.
33. Against that, the Council refers to the Guidance Document titled 'Flood Risks to People' produced jointly by the Department for Environment and Rural Affairs (DEFRA) and the EA in March 2006. This guidance indicates that there is a relationship between the depth of water in which an adult person is able to stand and the velocity of that water. The guidance in that document is that some people will be at risk when the water depth is only 0.5 metres if the velocity of that water is 1 metre per second, and that some people would be unable to stand in 0.3 metres of water if the velocity increases to 2 metres per second.
34. The Council notes that in some parts of the site the depth of the water could reach 0.9 metres and considers that even with a low velocity of water some adults would be unable to stand. The Council is therefore not satisfied that safe access and egress can be provided.
35. I share some of the Council's concerns in this respect. I am particularly mindful that the occupiers of the site include a number of children, some of relatively young age. In my view, a site wholly covered in flood water, potentially up to nearly 1 metre in depth and even if slow-moving, would not be a safe environment for a young child.
36. The DEFRA/EA guidance assumes that egress from a flooded site would be on foot. The appellant explains that in this case egress in the event of flooding could *with care* (my emphasis) be achieved by vehicle and by moving the touring caravans off the site. Moreover, whilst some parts of the site could potentially flood to a depth of 0.9 metres, the EA indicates in a consultation response dated 1 August 2018 that the access track would only be likely to suffer shallow flooding. The EA goes on to confirm that access to that track from the mobile homes would be through flood water of up to 0.3 metres depth having a low velocity. The EA considers that this would present a 'danger for some' in the most extreme flood events, but during most events it would be a lower risk. Moreover, at 0.25 metres per second, the velocity of flood water likely to be experienced at this site is well below that at which adults would be unable to stand in 0.3 metres of water.

37. Having regard to the above, it appears to me that egress from the site could be achieved using the access track and without venturing onto those parts of the site suffering the deepest flooding. Furthermore, whilst egress along the access track might present a danger for some in the most extreme flood events, I am satisfied that on the majority of occasions the actual risk would be lower. I am reassured that the Flood Alerts provided by the EA would give ample warning of an impending flood event and, with a Flood Emergency Plan in place that requires the occupiers to evacuate the site upon receipt of a Flood Alert, there is every reason to believe that egress could be safely achieved before the flood levels reached their maximum. As a last resort, in the event that the occupiers were not able to egress the site safely, they would be able to take safe refuge in the mobile homes for what is likely to be the short duration of a flood event. Taken together, these considerations lead me to the view that the actual risk from flooding is acceptable and that the development would be safe for its lifetime.
38. I remain mindful that the proposed development does not comply with National planning policy in relation to flood risk. However, having regard to the actual risk of flooding, I conclude that the site does nonetheless provide a suitable location for the proposed development. I therefore conclude that the proposed development would accord with Policy 26 of the Cornwall Local Plan which, amongst other things, requires that development is designed in a manner that minimises flood risk on the site. In addition to that cited above, this policy contains a number of separate requirements relating to flood risk. I have had regard to all the separate requirements in this policy, and am satisfied that the proposed development either complies with them or that they are not directly relevant to the development proposed.
39. Policy 11 of the Cornwall Local Plan relates specifically to Gypsies, Travellers and Travelling Showpeople. Although not cited in the reason for refusal in relation to flood risk, criterion 5 of this policy indicates that new residential sites will be approved where they avoid areas at high risk of flooding that would have a detrimental impact on the health and well-being of travellers that may locate there. For the reasons set out above, I am satisfied that the proposed development complies with this aspect of Policy 11.

Consideration against other relevant policies in the development plan

40. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. Up to this point, I have considered the development plan only insofar as it relates to the main issues identified above. However, the Cornwall Local Plan includes a policy that relates specifically to Gypsies, Travellers and Travelling Showpeople: the aforementioned Policy 11. This policy sets out a series of criteria against which proposals for new residential sites will be assessed. This policy therefore provides a useful vehicle for assessing other factors raised by the appellant in support of his appeal, although it is convenient to depart from the sequence in which the criteria are set out in the policy itself.
41. The appeal site is an appropriate size for the number of occupants, and the proposed layout would provide all the facilities considered necessary in the Council's Gypsy and Travelling Communities Strategy (albeit the day rooms

exceed the indicative dimensions for day rooms set out in that document). The proposed layout would also provide sufficient residential amenity and play areas. The nearest settlement to the site is Bugle, which is approximately 1.5 kilometres away. The proposed development would not dominate that community. The proposed development would therefore accord with criteria 1. and 6. of the policy.

42. Criterion 2 of the policy requires that the development takes account of the particular and differing needs of different groups of Gypsies and Travellers. The appellant is a Romany Gypsy, his status as such being recognised by the Cornwall Council Gypsy and Diversity Team. The appellant, Mr L Thomas, is a qualified electrician and travels away for work. When not travelling, he earns a living by restoring caravans. The other male occupants of working age residing at the site are a carpet fitter and a carpenter respectively, both of whom travel to obtain work. Consequently, with the exception of two individuals who have ceased travelling due to their age and health issues, the adult occupants require the appeal site as a permanent base from which to travel. I am therefore satisfied that criterion 2 of the policy is met.
43. Furthermore, because the occupiers of the site primarily travel for work, there is no specific requirement to provide opportunities for them to live and work from the same location. Accordingly, criterion 7 of the Policy is not engaged.
44. The nearest facilities to the appeal site are in Bugle, and include a school, shops and public transport. Policy 11 does not specify a distance for 'reasonable access' to such facilities for permanent sites but the Officer Report for the application considers the distance of 1.5 kilometres to be reasonable. I see no reason to take a different view. Criterion 3 of the policy is therefore met.
45. The access to the site is from Minorca Lane. The Council has raised no safety concerns regarding the use of this access and again I see no reason to take a different view. There is sufficient space within the site for the parking and turning of vehicles. Criterion 4 of the policy is met.
46. The remaining criterion in Policy 11 relates to the health and well-being of any travellers that locate to the site and cover issues such as noise and flood risk. I have already considered flood risk as a separate main issue, and have found that the site is suitable in that regard. There is also a possibility that the ground of the appeal site may contain some contaminants, although it is likely that any harms resulting from that could be safely mitigated. I therefore have no reason to believe that the site would have a detrimental impact on the health and well-being of the occupants. This criterion is also met.
47. The proposed development therefore accords fully with Policy 11 of the Cornwall Local Plan, and complies with a policy in the development plan that is specifically directed at that form of development.

Other considerations

48. I have found that the proposal fails to accord with the development plan in only one respect. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

Supply and availability of gypsy and traveller sites in Cornwall

49. Overarching all the above is that the Council cannot demonstrate an up-to-date five-year supply of gypsy and traveller sites. The most recent assessment of the need for gypsy and traveller sites in Cornwall, commissioned in 2015 as part of the preparation for the Cornwall Local Plan, identified a need for 139 pitches at that time. That figure increases to 198 by 2020 through family formation and to 318 pitches by 2030. The Cornwall Annual Monitoring Report 2018 indicates that the Council has been approving pitches in the Mid Cornwall area at a higher rate than for the first five years. Nevertheless, in order to meet the target for the remaining years of the plan, the average approval rate would need to be significantly higher than the current rate. The corollary is, in my view, that the Council may struggle to reach the target set out in the most recent assessment. In accordance with the PPTS, this inability to demonstrate an up-to-date five-year supply of gypsy and traveller sites is a material consideration to which I attach significant weight.
50. In addition to not being able to demonstrate an up-to-date five-year supply of gypsy and traveller sites, the Council is not able to point to any alternative sites that would be available to the appellant and his family. The imminent prospect of eviction from the appeal site has receded with the withdrawal of the enforcement notice. Nevertheless, the notice was withdrawn due to flaws within it rather than because of any shift in the Council's position regarding the breach of planning control alleged in the notice.
51. One of the reasons for issuing the notice was the siting of the mobile homes in those parts of the site with a high probability of flooding which, until and unless those mobile homes are relocated to the positions now proposed, would remain the case. I therefore cannot discount the possibility that a new enforcement notice could be issued, irrespective of whether planning permission was or was not forthcoming through this appeal. Given the non-availability of an alternative site, on the evidence before me it is more likely than not that the occupiers of the site and their families would have to resort to a roadside existence if planning permission was not granted for the proposed development. This is also a consideration to which I attach significant weight, particularly in view of the effect on the children who occupy the site and the impact a roadside existence would have on their education and well-being.

Best interest of the children

52. At the Hearing, Mr Matthew Robins, a Year 9 Form Teacher at the school attended by the older children residing at the site, expressed his concerns that moving off the appeal site would adversely affect the education of those children. He explained that the children have excellent attendance records, supporting that with documentary evidence. Mr Robins went on to explain that the grades achieved by the children are in line with national expectations and that the children are following separate pathways to GCSE's in order to pursue stated career objectives. Some of the children are also taking part in extra-curricular activities. The children are establishing and maintaining appropriate friendships at the school, both with other children from the travelling community and with children from the settled community. In addition to potentially not achieving the academic achievements that appear likely at present, Mr Robins is concerned that moving away from the school would harm the emotional well-being of these children.

53. I was also provided with documentary evidence to show that the younger children residing at the site attend a school or early years group in Bugle. I have no evidence in relation to attendance records, but was advised by their respective parents that the children are settled and doing well at the school/early years group.
54. I was advised that some of the children residing on the site suffer from health issues. Although I heard details of these at the Hearing, it is neither appropriate nor necessary for me to set them out here. It is sufficient to say that the various conditions from which these children suffer do require regular medical treatment, in some cases from specialist consultants.
55. It therefore seems to me that having a settled base from which these children can access education and health services would be in their best interests. This is a primary consideration, and one that is at the forefront of my mind.

Personal Circumstances

56. In addition to the above, the personal circumstances of other individuals residing at the site are a material consideration. The appellant's father suffers from mental health issues, as a consequence of which he is prone to panic attacks when in public places. This gentleman has been receiving medical treatment for this condition for over ten years, but nevertheless his condition still severely limits his ability to undertake activities without assistance. This same gentleman has been attacked when out in public, for which he received support from the Victim Care Team at Devon & Cornwall Police.

Human Rights

57. Although the prospect of imminent eviction from the appeal site has now receded, the appellant and the other occupiers would still face the prospect of ultimately losing their homes should this appeal not succeed. This would interfere with their rights under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA). In particular, their rights under Article 8 (right for respect for private and family life, home and correspondence) and Article 1 of the First Protocol (right to respect to property) would be interfered with. Both of the above are qualified rights, and interference with them may be justified where lawful and in the public interest.
58. In this case, the public interest would be the harm to the character and appearance of the area resulting from the views of the mobile home(s) from the public footpath adjoining the Criggan Stream. Subject to appropriate landscaping, I have found that the harm in this respect would be moderate. I am also mindful that the appellant occupied the site without the benefit of planning permission, albeit that the development that has taken place on the site is not that for which planning permission is now sought. It follows that the Written Ministerial Statement in relation to intentional unauthorised development is a material consideration to which I attach very little weight in this case.
59. Against that, the non-availability of alternative sites is a factor that I have taken into account. As indicated above, the practical consequences of not being able to relocate to an alternative site is that, more likely than not, the occupiers of the site would have to resort to a roadside existence. I am also

mindful that the appellant and the other occupiers are Romany Gypsies, and that Article 8 imposes a positive obligation to facilitate the gypsy way of life. I therefore consider that the appellants' rights under HRA, together with those of the other occupiers, would be interfered with if planning permission was not granted for the proposed development.

Public Sector Equality Duty

60. As Romany Gypsies, the appellant and his family have a protected characteristic for the purposes of the Public Sector Equality Duty (PSED) set out in the Equality Act 2010. The non-availability of alternative sites for gypsies and travellers in Cornwall points to an inequality of housing opportunity for the appellant and his family. Furthermore, dismissing this appeal could result in an inequality of opportunity between the appellant and his family compared with the settled community, not least in terms of access to education and health care facilities. I am also mindful that the older children residing at the site are reported as forming appropriate friendships with children in the settled community, and depriving them of that opportunity could work against fostering good relations with persons that do not share a protected characteristic with those children. For all these reasons, the PSED adds weight in support of granting planning permission.

Mid Cornwall Moors SSSI

61. Although the appeal site itself is not within the Mid Cornwall Moors SSSI (SSSI), the SSSI lies just beyond the southernmost tip of the site. This SSSI is described as supporting a diverse mosaic of semi-natural habitats, and is of special interest for nationally important features that occur within those habitats. In relation to the appeal site, the latter includes wet and dry broad-leaved woodlands and a population of the marsh fritillary butterfly.
62. Natural England have not formally commented on the planning application, other than to confirm that the development has not encroached onto the SSSI. The proposed site layout (Drawing No.1744/02A) includes a 10 metre buffer zone at the southern end of the site. This area of land would be laid to grass and separated from the remainder of the site by a fence. I am satisfied that this buffer zone would provide adequate protection to the SSSI, and is necessary to prevent harm to the SSSI.

Conditions

63. I have given careful consideration as to what conditions might be necessary in order to make the proposed development acceptable in planning terms. In addition to the standard time condition, and in particular to ensure that the occupation of the site is safe in relation to flood risk, it is necessary that the development is carried out in accordance with the approved plans. This specifically includes the siting of the mobile homes, which should be precisely in accordance with the proposed site layout as shown on Drawing No.1744/02A.
64. The Council also suggests that a general site development condition is required, this to cover matters such as the finished floor levels of the day rooms; landscaping; fencing and external lighting. I agree that such a condition is necessary in order to safeguard the character and appearance of the area, although it would be prudent to impose a separate condition in

relation to landscaping. In addition, a condition preventing development within the buffer zone for the SSSI is also necessary.

65. The Council suggests that occupation of the site should be limited to gypsies and travellers as defined in Annex 1 of the PPTS, and I agree that such a condition is necessary. There was also discussion at the Hearing as to whether any permission granted should be made personal to the appellant. However, whilst many of my conclusions above derive directly from the fact the appellant and his family are Romany Gypsies and the considerations that flow from that, many of those considerations would apply equally to other gypsies and travellers. In particular, the unmet need for sites would apply equally to all those having gypsy and traveller status. Considerations relating to the best interest of children, the HRA and the PSED are also likely to be relevant in many cases. The PPG indicates that there may be exceptional circumstances where granting planning permission could be justified on planning grounds because of who would benefit from the permission. For the reasons stated above, this is not one of those situations.
66. There was also discussion as to whether the permission should be for a temporary period only. The PPG indicates that circumstances where a temporary permission may be appropriate include where it is expected that the planning circumstances may change in a particular way at the end of that period. In this case, whilst the Council has been approving gypsy and traveller pitches at a higher rate in recent years, it is likely that the Council may nonetheless struggle to reach its target for the provision of pitches during the plan period. There is, in my view, even less prospect that the Council will achieve its target within the duration of a temporary planning permission. It is therefore likely that circumstances, both in this respect and in others, will not have changed significantly by the end of a temporary planning permission. It follows that a temporary planning permission would not be appropriate in this case.
67. Given that much of the site is within Flood Zone 3, it would be necessary to restrict the development to four pitches, each able to accommodate one static mobile home and one touring caravan. For the same reason, and also given the proximity to the SSSI, it is reasonable that no commercial activities take place on the site itself. The appellant sought an exception to that in relation to the sale of livestock, which in my view would be reasonable at the low intensity envisaged and provided that it was incidental to the use of the land as a caravan site. It is evident that the appellant and his family rely upon vehicles to work away from the site, but I concur with the Council that the number of commercial vehicles kept on the site should be limited. The Council suggests that this should be limited to one commercial vehicle per plot but I see no reason why this could not be increased by one vehicle to the 5 vehicles sought by the appellant.
68. Due to the potential presence of heavy metals and gas in the ground, I agree with the Council that conditions relating to contaminated land would be necessary. The suggested conditions advanced by the Council contemplate a scenario in which the development has already commenced. However, as indicated above, I have approached this appeal on the basis that the application proposes new development. Conditions relating to land contamination would therefore need to be drafted as conditions precedent and as if no development had taken place on the site.

69. In relation to mitigating flood risk, conditions are necessary to require the floor levels of the mobile homes to be raised above ground level and requiring the submission of a Flood Emergency Plan.

The planning balance

70. I have found that the proposed development would harm the character and appearance of the area albeit, subject to additional landscaping, that harm would be moderate. The proposed development would be contrary to the development plan in that respect. However, this is the only aspect in which the proposed development would be contrary to the development plan: other potential harms, including that in relation to flood risk, could be overcome through the imposition of suitably worded conditions.
71. Weighed against that moderate harm, the proposed development would be in full accordance with a specific policy in the development plan relating to gypsy and traveller sites. In this respect, the proposed development benefits from the force attributable to the development plan pursuant to section 38(6) of the 2004 Act. The Council is not able to demonstrate a five-year supply of such sites, and concedes that no alternative sites are available to the appellant. The corollary is that, more likely than not, the appellant and his family would have to resort to a roadside existence in the event that planning permission was not granted for the proposed development. The latter are all matters to which I attach significant weight.
72. The personal circumstances of the appellant and his family are further considerations that weigh in favour of granting planning permission. Furthermore, granting planning permission would be in the best interests of the children that reside on the site. That is a primary consideration in its own right, but is also supported by considerations relating to PSED and the HRA that apply equally to those children and to other members of the appellant's family.
73. In weighing the overall planning balance, I conclude that the material considerations in support of the proposed development outweigh the moderate harm to the character and appearance of the area. I therefore conclude that in this case determination should be made otherwise than accordance with the development plan, and that planning permission ought to be granted.

Conclusion

74. I conclude that planning permission should be granted for the proposed development, subject to conditions.

Formal Decision

Appeal B Ref: APP/D0840/W/18/3210209

75. The appeal is allowed and planning permission granted for the change of use of land to use for the siting of caravans for residential use comprising four Gypsy/Traveller pitches, including 4 no. mobile homes, 3 no. touring caravans, 3 no. day rooms, 4 no. sealed septic tanks and hardstanding, in accordance with the terms of the application Ref: PA17/08193, dated 23 November 2017, in relation to land South East of Minorca Lane, Bugle, Cornwall PL26 8QN, subject to the attached Schedule of Conditions.

Paul Freer

INSPECTOR

SCHEDULE OF CONDITIONS

- 1 The development hereby permitted shall begin not later than three years from the date of this decision.
- 2 The development hereby permitted, including the siting of the mobile homes, shall be carried out in accordance with the following approved plans: Drawing Nos. 17144/01; 17144/02A; 1744/03; PA03 LT17.
- 3 The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of the Planning Policy for Traveller Sites.
- 4 There shall be no more than four pitches on the site and on each of the pitches not more than 2 caravans shall be stationed at any time, of which only 1 shall be a static caravan/mobile home.
- 5 Other than for the sale of livestock incidental to the use of the land as a caravan site, no commercial activities shall take place on the land, including the storage of materials.
- 6 No more than a total of 5 commercial vehicles shall be kept on the land for use by the occupiers of the caravans hereby permitted, and no such vehicle shall exceed 3.5 tonnes in weight.
- 7 Prior to the commencement of the development hereby permitted, details of the following shall be submitted to and approved in writing by the local planning authority:
 - (i) finished floor levels of the day rooms
 - (ii) fencing, including the erection fencing within the site
 - (iii) external lighting

No part of the development hereby permitted shall be occupied until the development has been carried out in accordance with the details approved.
- 8 The development hereby permitted shall not commence until a scheme of landscaping of the site has been submitted to and approved in writing by the local planning authority. The landscaping scheme shall include:
 - (a) The grassed areas, as shown on Drawing No. 17144/02A.
 - (b) Existing trees and shrubs to be retained.
 - (c) A specification for new planting along the eastern boundary of the site, to include details of species, size, spacing and location.

All landscaping works shall be carried out in accordance with the approved details. All planting, seeding or turfing comprised in the landscaping works shall be carried out in the first planting and seeding seasons following the occupation of the caravans or the completion of the operational works that form part of the development, whichever is the sooner.

Any trees or planting which within a period of 5 years from the completion of development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size or

- species, unless the local planning authority gives written consent to any variation.
- 9 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, no development shall take place within the Buffer Zone for the Mid Cornwall Moors SSSI, as shown on Drawing No. 17144/02A, and no part of the Buffer Zone shall be used for the storage of general domestic paraphernalia.
 - 10 Prior to first occupation, the floor level of each of the static mobile homes shall be raised to a minimum height of 600mm above surrounding ground level. The floor level of each static mobile home shall be retained at that height thereafter.
 - 11 None of the caravans hereby permitted shall be occupied until a Flood Emergency Plan has been submitted to and approved in writing by the local planning authority. Copies of the approved Flood Emergency Plan must be displayed in each of the mobile homes at all times when they are occupied.
 - 12 The development hereby permitted shall not commence until an assessment of the risks posed by any contamination have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
 - 13 No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.

- 14 Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.

End of Schedule

APPEARANCES

For the appellant:

Mr Luke Thomas	Appellant
Dr Simon Ruston MRTPI	Ruston Planning
Mr Ian Walton BSc (Hons) MSc DIC MICE CEng	SLR Consulting Limited
Mr Matthew Robins	Year 9 Form Teacher
Mr Ben Thomas	
Mr Scott Thomas	

For the Local Planning Authority:

Mr James Holman MRICS MRTPI FAAV	Principal Planning Officer
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Interested Persons

Ms Sally-Anne Saunders	Councillor, Cornwall Council
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DOCUMENTS SUBMITTED AT THE HEARING

1. School attendance records for the Thomas family children.
2. Confirmation of attendance by the Thomas family children at a school and/or Early Years Group in Bugle.
3. Devon & Cornwall Police: Victim Care Team; conformation of incident reported by a member of the Thomas family, September 2018.
4. Copy of Planning Permission Ref: PA15/06796, dated 23 November 2015, in relation to land at Bowling Green, St Austell, Cornwall PL26 8RN
5. Certificate of Lawfulness for Existing Use or Development Ref: PA19/05407, dated 4 October 2019, in relation to land at Bowling Green, St Austell, Cornwall PL26 8RN
6. Copy of Policy LLNE1 of the Luxulyan Neighbourhood Development Plan 2018-2030.

7. Correspondence between Mr Luke Thomas and Natural England in relation to land in the appellant's ownership within the Mid Cornwall Moors SSSI.
8. Mid Cornwall Moors SSSI: description (submitted electronically after the Hearing).