
Appeal Decision

Hearing Held on 20 & 22 July 2021

Site visit made on 22 July 2021

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 12 August 2021

Appeal Ref: APP/E9505/C/20/3245609

**Black Gate Farm, High Mill Road, Cobholm, Great Yarmouth, Norfolk
NR31 0DL**

- 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 Larry Rooney against an enforcement notice issued by The Broads Authority.
- The enforcement notice was issued on 16 December 2019.
- The breach of planning control as alleged in the notice is without planning permission, operational development consisting of the surfacing of the Land in impermeable asphalt and the material change of use of the Land from a residential curtilage to a mixed use of a residential curtilage and the standing and use of seven static caravans for the purposes of a residential use in the approximate area marked with hatching on the plan attached to the notice.
- The requirements of the notice are:-
 1. To permanently cease the residential use of the seven static caravans and to permanently remove the seven static caravans and any structures, fixtures or otherwise upon which they sit from the Land.
 2. To permanently disconnect all the services which have been provided to the static caravans (water and electricity) and remove the pipework and cables which have been laid to provide these services, remove these from the Land and make good the excavated trenches to the same level as the surface of the adjacent land.
 3. To break up and permanently remove all the asphalt surface (other than that immediately adjacent to and forming part of the residential curtilage of the property Black Gate Farm) and to remove from the Land.
 4. Following the works at 3. to make good with topsoil the Land by making it up to the same level as the surface of the adjacent land, to level it and lay it to grass.
 5. To remove from the Land all materials arising from compliance with steps 1-4 above.
- The period for compliance with the requirements is:-
 - 6 months for step 1.
 - 7 months for steps 2 and 3.
 - 8 months for steps 4 and 5.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(c),(d),(f)&(g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal is allowed in part on grounds (c) & (g) and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Procedural Matters

1. The appeal site is located within The Broads Authority Area which has the same protection as a National Park. It also lies within various designated areas of national and international importance¹.
2. Ground (d) had originally been pleaded in respect of both the alleged operations and use. At the Hearing, the appellant withdrew his argument on ground (d) conceding that it cannot be shown that the unauthorised use continued for a period of 10 years in order to become immune from enforcement action.
3. An appeal on ground (f) was added at the Hearing over the extent of surfacing required to be removed. The Authority had opportunity to consider and respond to this additional ground of appeal and no prejudice arises in consequence.
4. Access to the appeal site is along a private track off the highway in Gapton Hall Road. Whilst the reasons for issue of the notice say "the access to the Land is inadequate" the Authority confirmed it has no comments with regard to the private access road. The local highway authority had expressed concerns over the risk of increased traffic causing queuing on the public highway network. However, no formal objection was raised or mitigation measures suggested. In light of this, the Authority confirmed withdrawal of the highways reason against the grant of planning permission in the ground (a) appeal.
5. Another reason given for issue of the enforcement notice concerns the suitability of the location for residential use in terms of sustainability. In its statement of case, the Authority confirms that having given the matter further consideration there are appropriate facilities and services nearby including a primary school, GP surgery and supermarkets. Accordingly, its objection to the development for this reason is withdrawn and the Authority invites me to strike out paragraph 4.5 from the enforcement notice if it is upheld.
6. As part of its response to the ground (a) appeal, the Authority maintained that a planning obligation deed is required under section 106 of the 1990 Act for the payment of a commuted sum towards the provision of off-site affordable housing, payable to Great Yarmouth Borough Council. This introduced a new matter not mentioned previously. No executed deed was submitted by the appellant, but this reason was subsequently withdrawn by the Authority at the Hearing.
7. The Secretary of State has issued a Screening Opinion under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 which determines that it is not development requiring an Environmental Impact Assessment (EIA). Although it recognises that the potential impacts on flooding or ecology and biodiversity are unknown at this stage it is considered unlikely that there would be an effect so significant that an EIA would be required. This is a consideration to which I shall have regard should the ground (a) appeal fall to be considered. However, it is a finding in relation only to the EIA Regulations and does not fetter or direct how the ground (a) appeal should be determined.

¹Namely, Impact Risk Zone of the Breydon Water Ramsar Site, Special Protection Area (SPA), Site of Special Scientific Interest (SSSI) and Local Nature Reserve (LNR). The site is also within the Impact Risk Zones of the Broadland Ramsar Site and SPA, the Broads Special Area of Conservation (SAC), the Halvergate Marshes SSSI, and the Great Yarmouth North Denes SPA and SSSI; along with the proposed Southern North Sea Special Area of Conservation (SAC).

8. A revised National Planning Policy Framework ('the Framework') was published the same day the Hearing opened on 20 July 2021 to replace the earlier version. This latest document must be considered in the ground (a) appeal. The parties were consulted on the revised version with opportunity to comment.

Matters relating to the enforcement notice

9. A number of issues arise from the description of the alleged breach of planning control. Whilst no appeal has been brought on ground (b) to argue that the matters alleged have not occurred, the appellant submitted at the Hearing that there is not impermeable asphalt laid at the appeal site. However, it was acknowledged that different types of porous surfacing have been laid. The parties disagreed on the permeability of the surfacing but agreed that the description in the notice could be changed to simply refer to 'hard surfacing'.
10. Hard surfacing has not been laid across the whole appeal site as the current wording might suggest. The laying of hard surfacing is ordinarily regarded as an engineering operation rather than operational development, as described. For those reasons, it was agreed at the Hearing that the first part of the allegation should describe 'operations' with reference to a new plan (marked 'B') added to the notice identifying the area in question.
11. A new plan had been produced in advance of the Hearing at my request to show the area of operations being attacked by the notice and the position of the caravans. During the Hearing the Authority modified the plan to reduce the area enforced against because it included the access strip to the dwelling which would then have to be removed if the notice was upheld.
12. Despite the modification, the appellant's agent stated that the area enforced against was still larger than he had realised. It includes hard surfacing around the southern and western boundaries where caravans are placed. The ground (c) and (d) appeals had been brought for a smaller area of hard surfacing. It was nevertheless confirmed that the appellant did not wish to extend those arguments to the larger area. He was content for the additional hard surfacing to be included in the notice and to which the ground (a) appeal would apply. The appellant confirmed that no injustice would arise to him.
13. A third plan was then produced to demarcate the area argued under grounds (c) and (d) within the revised area of hard surfacing. However, the location shown for caravan number 1 was incorrect. This error was confirmed on site when it also became apparent that the south-eastern corner of the site is grassed and not hard surfaced. Another plan was produced and agreed between the parties which shall be the one marked 'B' to be added to the notice.
14. The term 'curtilage' does not describe a use of land. It typically denotes a physical area surrounding a dwelling and forming one enclosure with it. In planning terms, it is most usually applied in respect of permitted development rights for householders or in respect of a curtilage to a listed building. Nevertheless, it is clear that the allegation is intended to mean a change in the use of part of the residential garden and this is the basis upon which the appeal has been made. The use which has taken place involving the stationing of the caravans would more accurately be described as a caravan site.
15. A 'caravan site' is a phrase recognised and defined in section 1(4) of the Caravan Sites and Control of Development Act 1960 as: 'land on which a

caravan is stationed for purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed'. For planning purposes, section 336(1) of the 1990 Act adopts the same definition. A caravan site is quite clearly a use of land i.e. a caravan put onto the land and lived in for residential purposes.

16. The parties agree that there is a single planning unit with the caravans positioned within the former garden of the dwelling. Therefore, the use to which the enforcement notice is directed would properly be described as 'the material change of use of the Land from a single dwellinghouse to a mixed use comprising a single dwellinghouse and a caravan site'. It is appropriate that the notice be corrected accordingly.
17. In consequence of the agreed corrections, the allegation would read: "*Without planning permission, (a) operations consisting of the hard surfacing of part of the Land shown in the approximate area coloured dark yellow on the attached plan 'B', and (b) the material change of use of the Land from a single dwellinghouse to a mixed use of a single dwellinghouse and a caravan site, (together "the Development").*"
18. For consistency and accuracy, a corresponding change should be made to the first requirement of the notice for the use as 'a caravan site' to cease (rather than the 'residential use'). It is not the residential use of the land which could constitute the breach of planning control but its use as a caravan site. There was also no need for the requirement to specify the number of caravans that must be removed and inserting a number can introduce ambiguity. The number should be deleted so that the notice requires 'the caravans' to be removed.
19. There is duplication in the second requirement where it states twice that pipework and cables should be removed. The words 'remove these' should be deleted from line 3 of paragraph 5.3.
20. It is not sufficiently precise in the third requirement how much of the hard surface can remain which forms 'part of the residential curtilage of the property' at Black Gate Farm. To avoid any doubt, the area of hard surfacing to be removed should be marked on the enforcement notice plan. Revised plan 'B' serves this purpose.
21. The parties agreed that there is no need for the fifth requirement to remove all materials from the Land following compliance with the previous steps because removal of such items is already incorporated within each step. Paragraph 5.5 of the notice should be deleted.
22. I am satisfied that all these corrections can be made without injustice to either party, having received confirmation of this from both parties at the Hearing.
23. A final point on the notice emerged at the Hearing. The notice specifies that the operations had occurred within the last 4 years, being the limitation period for operations under section 171B(1). At the Hearing the Authority took the position that the hard surfacing was laid to facilitate the unauthorised use and so a 10-year limitation period under section 171B(3) applies instead.
24. Case law has established that an enforcement notice directed at a material change of use can require the removal of ancillary operational development within the 10-year immunity period applicable to a material change of use, even when the 4-year limit has passed, if the works were intended to facilitate the

unlawful use. That is not the way that the notice was drafted in this case. Clearly, a change in the limitation period from that identified in the notice would have ramifications for the appellant's ground (d) appeal and injustice would be suffered as a result. However, the issue may not arise at all depending on the outcome of the ground (c) appeal which I shall deal with first.

Background

25. Planning permission was granted on appeal in 1996² for the "*proposed demolition of existing bungalow and erection of a new bungalow, garage and stables on land at Black Gate Farm*". The permission was subsequently 'renewed' on 16 May 2005 ('the 2005 permission'). Whilst described as a 'renewal' the decision constituted a new and separate grant of planning permission with additional conditions. One of those conditions required development to begin within 5 years. There is no dispute the permission was lawfully implemented prior to 16 May 2010. The erection of a front boundary wall and entrance gates were approved in 2011.
26. The new bungalow is completed and occupied by the appellant. The garage has been converted into part of the dwelling. The approved stables are not yet built. They would be located along the western boundary where mobile homes are sited (as enforced against).

The appeal on ground (c)

27. The onus is on the appellant under this ground of appeal to make out the case that there has not been a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission.
28. The appeal on this ground relates to the operations only; namely the surfacing works undertaken but excluding the hard surfacing around the outer edges where the caravans are sited. The appellant acknowledges that the latter was laid in 2017 for the purpose of siting caravans for residential use and cannot be permitted development. There is no suggestion that the residential use of the caravans benefits from planning permission.
29. None of the conditions attached to the 2005 permission removed 'permitted development' rights. The grant of permission related to the whole site as outlined on the enforcement notice plan without any caravan site use.
30. When the layout was amended and approved in 2009 a driveway was shown off the private road extending through the site with a turning area behind the garage. The driveway that has been laid takes a different entry point, is wider and follows a straighter alignment than that approved.
31. According to the appellant, the surfacing is a driveway and hardstanding built to provide access to the existing dwelling, the garage and proposed stables and is reasonably required to serve those approved developments.
32. As such, the appellant maintains that the surfacing benefited from the planning permission granted under Article 3(1) and Class F of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 ('the GPDO'). This Development Order came into effect on 15 April 2015

² Appeal ref: T/APP/E9505/A/97/284332/P2 dated 20 November 1997

and did not apply retrospectively. Therefore, I queried whether reliance was in fact being placed upon the earlier Town and Country Planning (General Permitted Development) Order 1995. In practical terms it makes little difference which Order applies as the relevant provisions falling for consideration are similar in each. The appellant relies upon an aerial image from May 2015 which shows the area of hardstanding to which the ground (c) appeal relates. The Authority's photographs from November 2014 show the hard surfacing as laid but without the edging or top surface. Works appear to be in progress. Based on these, I consider that the 1995 GPDO was the relevant Order.

33. Subject to certain limitations and conditions, Class F permits development consisting of the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such. Having discussed the criteria, there is no suggestion that an exception applies or that the conditions were not met.
34. The Authority argues that the surfacing falls outside the scope of Class F because it extends beyond the curtilage of the dwelling. The issue is not whether the surfacing *now* falls outside the curtilage of the dwelling following the material change of use to a mixed use. The pertinent point is whether the surfacing was within the curtilage of the dwelling at the time it was laid and the permission afforded by the GPDO crystallised.
35. The hard surfacing is separated from the dwelling by internal fencing erected atop a low level wall enclosing a small area immediately around the building. There are openings at the front and rear allowing access between the dwelling and surfaced area along with the remainder of the plot. Judging by an aerial image, the fencing appears to have been in place in 2015. The dwelling was present in 2015 albeit unclear from the image if it was completed by then³.
36. On the 2015 image, there appears to be a vehicle parked on the hard surfacing. A small outbuilding can also be seen on the hard surfacing towards the northern boundary which the appellant said was the same garden shed that remains on site. Apart from one caravan, the land closest to the southern and western boundaries appears to be mostly grassed. The entire appeal site appears to be enclosed at the outer perimeter forming one enclosure.
37. Whilst a domestic curtilage could be a smaller area within a larger single planning unit, that does not appear to be the case here. For a relatively large 5 bedroomed property, the scale of the enclosure as a whole is proportionate to the size of dwelling. At all times the land has been in single ownership. The land within the appeal site that surrounds the dwelling appears to have been closely related to it and used in conjunction with it. No other purpose is apparent. A domestic curtilage does not change simply because the land might be used for a different purpose in future.
38. In my judgement, as a matter of fact and degree, the hard surfacing was in all probability laid within the curtilage of the dwelling when the works took place.
39. The issue turns to whether the surfacing was laid for any purpose incidental to the enjoyment of the dwelling as such. If the surfacing was laid for any other purpose, then it would not be permitted by Class F. It is the Authority's case that the surfacing was formed in order to provide a base for the caravans.

³ The appellant stated that construction of the dwelling started in 2010 and was completed in 2015.

40. It is undisputed that the appellant lived in a caravan positioned towards the south-east corner of the site during the construction of the dwelling. It remains in situ and its residential use by other family members now forms part of the unauthorised mixed use. The appellant's occupation of a mobile home during the construction of the dwelling indicates nothing more than a residential use of the land. The stationing of a caravan for a purpose that comprises the lawful primary use does not involve a material change in the use of the land. Also, the occupation of a mobile home for residential purposes in connection with building works taking place within a site can amount to permitted development under Schedule 2, Part 5, Class A of the GPDO if used for the accommodation of a person/s employed in connection with those operations.
41. Although the quality of the 2015 aerial image is quite poor, a darker, even coloured area off the access point can be seen which extends through the site and wraps behind the dwelling. The edges are clearly defined and mostly straight. The shape correlates with the latest aerial image of April 2020.
42. The Authority sought to argue that the entire area of hard surfacing enforced against was laid as a single operation. That is not borne out by the evidence. The Authority's photograph from November 2014 shows the 'driveway' laid and grass where the caravans are now sited. When the 2015 aerial image was taken the hard surfacing still did not encompass that area. It is only in the photographs from October 2017 that the area occupied by the caravans has become hard surfaced. Notably, the caravans are sited on a different type and area of hard surfacing made up of crushed asphalt. There is clear demarcation on the ground between the two areas which is how it remains to date.
43. The evidence points firmly to the later addition of another area of hard surfacing. It is this area which has been used for the siting of caravans and which the appellant readily admits was laid for that purpose. According to the appellant, the caravan site use began in 2017. The appellant's reply to a planning contravention notice ('PCN') given in November 2019 states that the first caravan to be occupied was 'Park Home 10' since February 2017. The Council Tax records produced by the Authority start from October 2017.
44. There is nothing to indicate that the caravan site use began any earlier than 2017 when 3 more caravans appeared and a further area of hard surfacing laid. By that time the central area of hard surfacing had been in situ for some considerable time.
45. The Authority maintains that the 2015 image shows only that the hard surfacing had started, not that it was substantially complete. The time when unlawful development is substantially complete triggers the immunity period relevant in a ground (d) appeal but it is not the test for establishing if development is permitted under the GPDO. A planning permission granted by the GPDO is 'crystallised' when the development begins.
46. Had the hard surfacing been laid for incidental purposes and subsequently added to in order to facilitate an unauthorised use then those additional works would be unlawful. Similarly, if the mixed use had already taken place. None of that tallies with the facts. In this instance, the appellant maintains that the surface dressing was finished by mid-2015 with the works undertaken by a professional contractor. Whilst unsupported by documentation, it is plain that there are two different areas of hard surfacing which is consistent with separate

operations undertaken at different times. Moreover, it seems improbable that the shed was erected on an incomplete surface.

47. The Authority may suspect that the hard surfacing was laid with the intention of a future unauthorised use but that is merely speculative. Whilst the surfacing covers a large area it could still be laid for incidental purposes. To my mind, it is more likely that the appellant would have laid the entire area at the same time if the works were intended, back in 2015, for a caravan site use. As it is, the evidence indicates a considerable gap in time between the first area of hard surfacing being laid and the material change of use to a mixed use.
48. It so happens that the area already laid in 2015 provides a means of access for both occupiers of the dwelling and the caravans. It does not form the base for the caravans as the Authority asserts.
49. There is no evidence to contradict the appellant's version of events. Based on all that I have seen and heard, I find on the balance of probabilities that part of the hard surfacing was provided within the curtilage of the dwelling for purposes incidental to the enjoyment of the dwellinghouse as such. Therefore, that part of the hard surfacing was laid with the benefit of the planning permission granted under the GPDO, whether that be the 1995 or 2015 version.
50. I conclude that the matters alleged in the notice do not constitute a breach of planning control insofar as they relate to that part of the hard surfacing as shown on the 2015 aerial image and outlined by a bold broken line on plan 'B'. To that limited extent the appeal on ground (c) succeeds and I shall remove that part from the enforcement notice.
51. Given my findings on ground (c) in relation to part of the hard surfacing there is no need to go on to consider the ground (d) argument which applied to that same area only as did the appeal on ground (f).

The appeal on ground (a) and the deemed planning application

Background

52. The Local Plan for The Broads 2015-2036 ('LP') was adopted in May 2019. Pursuant to LP Policy DM35 new residential development will only be permitted within defined development boundaries and must be compatible with other policies of the development plan. The appeal site lies outside any defined development boundary as identified on the policies map. As such, the parties agree there is conflict in principle with the development plan albeit this needs to be viewed in the context of an existing authorised residential use for a single dwellinghouse. Indeed, the Authority concedes that the appeal site is not an unsustainable location inappropriate for residential use and withdraws its objection on this ground. Given that the appeal site includes a relatively newly built dwelling in close proximity to a retail park, I have no reason to disagree with the sustainability of the location.
53. The appellant is an Irish Traveller who now lives in the dwelling built on the site with the benefit of planning permission. Within part of the former garden the appellant has laid hard surfacing which accommodated a total of seven mobile homes in residential occupation at the time the notice was served. One further mobile home has since been added but I have no details of the occupants.

Main Issues

54. The main issues are:-

- Whether there would be a risk to safety from flooding and the effect of the surfacing on flood risk;
- Whether there is compliance with local and national policies for the provision of gypsy and traveller accommodation;
- The effect of the surfacing on the character and appearance of the area; and
- Whether there are any other considerations which outweigh any development plan conflict.

Reasons

Flood risk – the Use

55. The appeal site lies within Flood Zone ('FZ') 3a of the Environment Agency ('EA') flood maps. FZ3a is classified as having a 'high probability' of river or sea flooding as defined within the section on Flood Risk and Coastal Change of the national Planning Practice Guidance ('PPG').
56. The Flood Zones shown on the EA Flood Map for Planning (Rivers and Sea) do not take account of the possible impacts of climate change and consequent changes in the future probability of flooding. A Strategic Flood Risk Assessment ('SFRA') carried out by the local planning authority may refine the information on the EA maps and, if so, will provide a more up to date starting point for the application of the Sequential Test. Reference should therefore also be made to the SFRA when considering location and potential future flood risks to developments and land uses.
57. In the SFRA covering The Broads prepared in 2017 the site falls within indicative FZ3b being a 'functional floodplain' described in the PPG as a very important planning tool in making space for flood waters when flooding occurs.
58. The covering note to the SFRA explains that SFRA's are high level strategic documents which do not go into detail on an individual site-specific basis. The maps should only be used as indicative guidance for planning applications which may still need a FRA. Not all areas have been modelled and a precautionary approach has been adopted with the assumption that that the extent of FZ3b would be equal to FZ3a.
59. In the joint SFRA Position Statement produced by the Authority and EA in July 2018, it is stated: "*The SFRA provides more detail than the EA Flood Map for Planning. For example, the current Broads SFRA modelled overtopping of the flood defences so it shows actual flood risk, based on data available at the time of assessment, whereas the defined flood zones don't take account of any defences. The current Broads SFRA also includes the effects of a breach in terms of likely hazard at a predetermined coastal location, shows areas of Functional Floodplain (indicative FZ3b), and indicates how climate change is likely to lead to an increase flood risk.*"
60. LP Policy DM5 states that development within the EA's flood risk zones will be acceptable only when: i) it is compatible with national policy and when the sequential test and the exception test, where applicable, have been satisfied;

ii) a site-specific Flood Risk Assessment ('FRA'), where required, demonstrates an acceptable flood risk and/or suitable flood protection mitigation measures are incorporated into the proposals, where necessary, which can be satisfactorily implemented; and iii) it would not affect the ability for future flood alleviation projects to be undertaken.

National Policy and the Sequential Test

61. There are five classes of flood risk vulnerability as set out in Annex 3 to the Framework. Caravans, mobile homes and park homes intended for permanent residential use are classified as being 'highly vulnerable' to flooding. That is so whether within FZ3a or FZ3b. The Government's Planning Policy for Travellers Sites, 2015 ('PPTS') notes (at paragraph 13g) that, for this reason, traveller sites should not be located in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans.
62. In applying the Framework, "flood risk" is a combination of the probability and the potential consequences of flooding from all sources. Land within FZ3 is an area at risk of flooding for the purposes of the Framework. Paragraph 159 states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
63. The PPG explains that in decision-taking a 'sequential approach' should be taken where necessary for specific development proposals. The general approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk.
64. For some changes of use the Sequential and Exception Tests do not need to be applied. An exception is changes of use to a caravan site. The PPG states that the Framework sets strict tests to protect people and property from river and sea flooding and that where these tests are not met new development should not be allowed.
65. As stated in Paragraph 162 of the Framework, the aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the development in areas with a lower risk of flooding. The SFRA provides the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.
66. When determining any planning applications, Paragraph 167 of the Framework states that development should only be allowed in areas at risk of flooding, where in light of a FRA (and the Sequential and Exception Tests, as applicable) it can be demonstrated that, amongst other things (a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location, and (b) the development is appropriately flood resistant and resilient such that in the event of a flood, it could be quickly brought back into use without significant refurbishment.
67. The PPG advises that only where there are no reasonably available sites in FZ1 or 2 should the suitability of sites in FZ3 be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test if required.

The aim should be to keep development out of medium and high flood risk areas (FZ2 and 3) where possible. The flood zones as refined in the SFRA provide the basis for applying the Test.

68. The appellant argues that the Sequential Test is met because 82.5% of the Broads Authority area is covered by FZ3. The boundary has also been drawn tightly around the edge of the floodplain. Furthermore, no new gypsy and traveller sites have been allocated in the development plan and there are no extant permissions for such development. For these reasons it is maintained that there are no other reasonably available sites at lower flood risk.
69. Clearly, the very nature of the Broads Authority means that a high percentage of land is within FZ3 and will invariably make it more difficult to identify sites within a lower flood risk area. In this regard, I note the advice in the PPG that when applying the Sequential Test, a pragmatic approach on the availability of alternatives should be taken. In cases where there are large areas with a high probability of flooding, a site outside may be unlikely to provide a reasonable alternative if there is a need for the development to be within that area.
70. However, in this case it has not been demonstrated that any measures have been taken to try to identify an alternative suitable site at lower risk of flooding. It is the responsibility of the appellant to justify with evidence what area of search has been used. The fact that there are no allocated gypsy and traveller sites within The Broads area does not automatically mean that none are available. The desire and convenience of the family staying together as a group on the same site as the appellant who occupies the dwelling is understandable but it does not obviate the need to explore the availability of alternative sites.
71. In the absence of further particulars, it cannot be known with any level of clarity whether there are other sequentially preferable sites and if the Sequential Test is met. Accordingly, the development fails to accord with Paragraphs 159, 162 and 167 of the Framework which seek to steer new development to areas with the lowest risk of flooding. The Exception Test does not fall to be considered.
72. The appellant produced the Wisbech St Mary Appeal Decision⁴ where a change of use for residential use of touring caravans within FZ3 was allowed. The Sequential Test was found to be met in the particular circumstances of that case and where the Council was unable to identify any sites in FZ1 or FZ2. The Inspector noted that the Exception Test would not normally be relevant to caravans classified as 'highly vulnerable' within FZ3. Nevertheless, in an example case determined by the Secretary of State⁵ a similar conflict had occurred and a failure to meet policy on the location of development at risk of flooding was found to be just one of a number of material considerations to be weighed in the planning balance. Having regard to that case, the Inspector concluded that the benefits outweighed the local and national policy conflict.
73. In the Wisbech St Mary appeal there had been a FRA undertaken which confirmed that the site was in a passive, not functional, flood plain at a low risk of flooding. That is a notable difference with this appeal where there is no FRA for the development applied for. The previous appeal decision was fact sensitive and comparisons cannot be drawn with this case.

⁴ Ref: APP/D0515/C/18/3196061) of 24 September 2019

⁵ Appeal Decision ref: APP/Z2505/V/09/2119176

Flood Risk Assessment

74. Policy DM5 provides that the FRA will need to meet the requirements of the PPG and demonstrate or assess various listed factors. In particular, that the development is safe for its lifetime, taking into account the vulnerability of its users and climate change. In addition, the FRA will need to demonstrate or assess that sites at little or no risk of flooding are developed in preference to areas at higher risk.
75. The Broads Authority Flood Risk Supplementary Planning Document ('SPD') was adopted in May 2020. The SPD expands upon LP Policies DM5 and DM6 which address flood risk and surface water run-off, respectively. Whilst adoption of the SPD took place after the notice was issued, the development falls to be assessed against prevailing policy and guidance.
76. The Framework sets out when a FRA is required. This includes all development in Flood Zones 2 and 3 (footnote 55 to Paragraph 167).
77. Before the grant of planning permission in 2005 for the dwelling on the site, a FRA was carried out in June 2004. The FRA concluded that although the site is in FZ3a, the actual risk of site flooding from tidal waters was extremely low because of the existence of flood defences which were considered unlikely to be breached. With the inclusion of mitigation measures, such as raised ground floor levels, the site was recommended as adequately protected from flooding for the type of residential development proposed. Planning permission was granted on that basis with the imposition of conditions to protect against flood risk including minimum finished floor levels.
78. Levels were raised across the site to above 1.2m AOD when the new dwelling was built. In light of this, the appellant suggests that the appeal site should fall within FZ2 or even FZ1 as reflected in the Flood Risk Map for the North-East area of The Broads. The Authority disputed that this map shows the dwelling and front/rear gardens within FZ2 with part of the driveway in FZ1. In response, the Authority produced a map utilising latest EA sources from July 2021 and the SFRA 2017. A zoomed-in copy appears to illustrate that whilst part of the site is within FZ2 from EA source maps, the dwelling and caravans marked on the plan are still FZ3. The appellant challenged the accuracy of the map and queried the different coloured shades which are not all identified in the key.
79. Ultimately, whilst the parties disagree on what is shown on each map, they both agree that the land on which the caravans are sited remains within FZ3 on the EA maps and indicative FZ3b on the last SFRA.
80. Having been consulted on this appeal, the EA responded by letter dated 9 July 2021 to say that: "*The Broads Authority SFRA shows the caravans are in indicative Flood Zone 3b. No FRA has been submitted and therefore this has not been assessed in any further detail.*" It goes on to say: "*If the caravans are for permanent residential accommodation, these would not be compatible with Flood Zone 3a.....If this were the case, a FRA would need to be submitted and reviewed.*" The letter confirms EA support for the Authority in this appeal given the lack of assessment.
81. The EA long term assessment of flood risk of the site is "very low" from rivers, sea and surface water flooding. The appellant submits that this demonstrates that there is less than 0.1% annual probability of flooding occurring on the

appeal site so that the development (i.e. the mixed use) would be safe for its lifetime over 100 years.

82. Nevertheless, the appellant acknowledges that the appeal site remains categorised as FZ3 where development should not normally be permitted.
83. Moreover, the completed FRA related to the construction of a dwelling and not the residential occupation of caravans. The information provided in a FRA should be credible and fit for purpose. By their very nature caravans are at greater risk than a dwelling should flood occur, hence their 'highly vulnerable' classification within the PPG when used as permanent residential accommodation. The last FRA was undertaken some 17 years ago before the site was re-developed. The SPD (at paragraph 4.9.1) highlights how climate change is expected to result in increases in flood levels. It also emphasises how hazard is very site specific in the Broads Authority area.
84. The appellant produced a topographical survey carried out in June 2021 on which the site levels are plotted⁶ to demonstrate that the site levels vary very little across the site. The survey identifies the garden of the dwelling as the lowest part of the site at around 1.1m AOD. There are places where the levels are slightly beneath 1.2m AOD but most are above and rising to 1.3m AOD in the north-west corner. As such, the appellant argues that the ground levels are now more than double those of the model level for the caravans to be safe for the lifetime of the development.
85. In this regard, the SPD warns (at paragraph 7.3) against developers seeking to reduce the risk of flooding by raising the level of land stating that this approach is unlikely to be a viable option in The Broads. Several reasons are given including the risk of diverting water onto neighbouring plots and the risk of a site sinking over time.
86. The appellant also points to the appeal site being elevated 300mm above the level of the adjacent caravan site. This argument is unpersuasive as I gather the adjacent site does not benefit from the grant of planning permission and so the flood risks may well not have been properly evaluated and assessed.
87. The caravans could be anchored to the ground to prevent them floating away and a flood evacuation plan put in place, with both measures secured by planning condition. How effective those measures might be comparable to the level of risk is unclear in the absence of an up-to-date FRA for the type of development that now exists.
88. Thus, even if I had found the Sequential Test to be met, there is still no up-to-date FRA without which the appellant's arguments over reduced risk of flooding are unreliable. There is no specific independent analysis of the risk arising from the caravan site use. Utilising core data and information from 2004 does not suffice to constitute a FRA so many years on and for a different development.

The Operations – flood risk

89. Whilst the notice refers to surface water being diverted off-site from the 'impermeable asphalt', the Authority expressed concerns over the potential on-

⁶ These are not evident on the small-scale copy provided and I have relied upon the figures quoted by the appellant's agent.

site and off-site risks of surface water flooding on which the appellant was able to make submissions. There is no FRA to address those potential risks.

90. Even though part of the hard surfacing was laid as permitted development for purposes incidental to the dwelling, that is not now the development before me. More hard surfacing has been added and the combined effect must be considered in the context of a mixed use of the site as a whole, including caravans, where the flood risk differs from that of a single dwellinghouse use.
91. When the area of hard surfacing closest to the dwelling (which operates as a wide driveway) was laid as permitted development, there was no condition for it to be made of porous materials or to direct run-off water to a permeable or porous area. It so happens some soakaway channels have been installed, but I have no means of knowing whether they will suffice to prevent harm from surface water run-off and what the effect might be now there is additional hard surfacing.
92. Unlike the driveway, the additional hard surfacing does not appear to be formed of solid compacted material but crushed asphalt. In places, grass has grown up indicating that the surface is permeable. Even so, it is unclear whether there are implications from surface water run-off and how they might be addressed in the absence of any formal appraisal. That is particularly so with ground levels having been raised across the entire site which might have off-site implications.
93. The Authority acknowledged at the Hearing that, in principle, planning conditions could be feasible for a drainage survey or scheme to address their concerns, but without evidence in support they maintained their objection.
94. That strikes me as sensible. As set out in the PPG, a FRA will need to show how surface water run-off generated by the developed site will be managed. Indeed, a FRA should demonstrate that the site will be safe and that people will not be exposed to hazardous flooding from any source. Furthermore, LP Policy DM6, provides that all developments should incorporate measures to attenuate surface water run-off and the run-off rate should not be increased as a result of the development. Whether that is or can be achieved through mitigation measures is not sufficiently clear in the absence of further particulars.

Conclusions on flood risk

95. I cannot be satisfied, in the particular circumstances of this case that the occupiers of the caravans would be safe from flood risk as well as those who might have to rescue them. Therefore, the mixed use is contrary to LP Policy DM5 which aims to protect against flood risk. There is also conflict with Paragraph 167 of the Framework insofar as it seeks to avoid inappropriate development in vulnerable areas. For a gypsy and traveller site there would be conflict with the PPTS which seeks to ensure that such sites are not located in areas at high risk of flooding.
96. Nor can I be satisfied that the hard surfacing is acceptable in terms of surface water flood risk to accord with LP Policy DM6.

Gypsy/traveller status

97. LP Policy DM36 supports the provision of gypsy and traveller development where they meet an identified need and the development would not have an

adverse impact on the special qualities of The Broads. This is subject to several criteria. The policy only applies if the development is for gypsies and travellers.

98. The definition of "gypsies and travellers" within the PPTS is "*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 dependant's educational or health needs or old age have ceased to travel temporarily...*". The definition does not include those who have permanently ceased to travel.
99. Two of the mobile homes (described by the appellant as Park Home 1 and Park Home 10) are occupied by members of the appellant's extended family who are also Irish Travellers. They have been on the site since October 2018 and February 2017 respectively although it emerged at the Hearing that there is presently a tenant in Park Home 1 whilst the family are away travelling.
100. Based on the details given at the Hearing, including regularity of travel, I have no reason to doubt that the family members are persons of nomadic habit of life who meet the definition within the PPTS. The appellant stated that the tenant of No 1 is an English Traveller who previously occupied another caravan on the site. That tenant's pattern of travel is unknown and so it cannot be ascertained if they meet the PPTS definition.
101. As LP Policy DM36 is not expressed to be limited to those persons who meet the PPTS definition, it could capture a use by non-definitional gypsies/travellers.
102. However, it transpires that the remaining five mobile homes are advertised for rent on the open market for a minimum term of 6 months. The occupancy of those five units has fluctuated and regularly changed. They are not currently occupied by members of the gypsy/traveller community.
103. Thus, only Nos 1 and 10 are occupied by gypsy and travellers for the purposes of applying LP Policy DM36 and the PPTS. All the mobile homes belong to the appellant who says he intends to let them all to gypsies and travellers if permission is granted. Use of the caravan site would only be limited by condition, but the way the site was used at the time the notice was issued influences which policies are engaged. Clearly, Policy DM36 cannot apply to a use which is not gypsy and traveller development.
104. Where there is a ground (a) appeal, planning permission may be granted under section 177(1) in relation to the whole or any part of the matters alleged or in relation to the whole or any part of the land to which the notice relates. The two mobile homes occupied by gypsy families are self-contained and distinguishable from other parts of the appeal site. This raises the possibility of considering the use of those two pitches separately against local and national gypsy and traveller policies. Depending on the outcome, the gypsy and traveller pitches could be severed from the remainder of the appeal site to grant permission for part only.

Provision and need for gypsy/traveller accommodation

105. LP Policy DM36 requires there to be a "proven need" in order for gypsy and traveller sites to be considered within The Broads. According to the Norfolk Caravans and Houseboats Accommodations Needs Assessment ('GTAA'), including for Gypsies, Travellers and Travelling Showpeople, published in October 2017, there is no identified need for sites or pitches within the Broads Authority Executive area. The supporting text to Policy DM36 states that the

need could be identified through a local survey or through liaison with the district's housing team.

106. My attention was drawn by the Authority to potential modifications to the Great Yarmouth Local Plan Part 2 Examination which is currently under consultation. The Authority highlights how reliance is being placed upon the same 2017 GTAA as the most up-to-date evidence base. Under the proposed modifications, the nearby⁷ Council owned Gapton Hall gypsy and traveller site is to be safeguarded with potential reconfiguration or extension to increase its capacity from 24 pitches to help meet most or all of the recalculated need within the borough by 2030. Part of the Great Yarmouth borough falls within the Broads Authority area for which the Council is the housing authority. The Authority maintains that none of the recalculated need falls within its area.
107. The appellant contests the assessment of need and points out that one of the proposed modifications required by the Examining Inspector is a commitment to an immediate review of the evidence in relation to the needs of gypsies and travellers. Besides the appeal site, the appellant refers to the existence of three other unauthorised gypsy and traveller sites located nearby on Cobholm Island as evidence of a need for sites within the Authority's area. The appellant claims that one of those sites is occupied by six families. Further along the private road to the north of the appeal site there is an unauthorised site with two mobile homes. At the end of the road, I saw several touring caravans sited close together within an enclosed site which were clearly in residential occupation.
108. Details of those sites and occupants are unclear. For instance, there is no recorded information on the total numbers involved, how long they have been present, whether those sites are used as transit stops or longer term arrangements and whether the occupants have gypsy/traveller status.
109. In accordance with PPTS paragraph 10a), local planning authorities should identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. The last assessment from 2017 is some years old but it informed the current 2019 LP which resulted in no gypsy and traveller allocations. An update to the GTAA could not have been expected in 2020 given the global pandemic although I note that no caravan count information is provided. Even though the statistics could have changed, there is no reliable information before me to demonstrate a proven need within the area. The presence of other caravans may signify a small level of need within the Authority's area but whether it is the type of proven need to be addressed by land allocation is unclear.
110. The appellant states that the gypsy families whose homes are Nos 1 and 10 have nowhere else to go. From that viewpoint there is a personal need for gypsy/traveller accommodation. It may not constitute a 'proven need' in policy terms to trigger Policy DM36 but the provisions contain a benchmark for gypsy and traveller development warranting closer analysis.
111. LP Policy DM36 sets out 15 criteria. Following the Authority's concession that the appeal site is located within a reasonable distance of facilities/services and withdrawal of the highways reason, only criterion (n) remains in dispute. This requires that due regard has been given to all types of flood risk. This criterion is not unique within the development plan to gypsy and traveller development.

⁷ but lying outside of the Authority's area.

Indeed, LP Policy DM5 addresses flood risk for development generically within flood risk zones.

112. Given my findings above on flood risk, it follows that compliance has not been demonstrated with LP Policy DM36 and national policies within the PPTS and Framework which seek to ensure that gypsy and traveller sites are not located in areas at high risk of flooding.

Non-gypsy and traveller development

113. For non-gypsy and traveller development the Authority cites strategic policy SP15 but this concerns housing delivery. The deemed planning application is not for new housing. As a caravan site is a type of residential use the parties agreed that Policy DM35 applies. This provides that new residential development should not only be within defined development boundaries but must also be compatible with other policies within the development plan. Thus, regardless of whether gypsy and traveller policies are engaged only in part, matters of flood risk fall to be considered for all residential use.

114. There is not compliance with LP Policy DM35 in terms of residential use of caravans by non-gypsy/ travellers in light of my findings on flood risk against LP Policies DM5 and DM6.

The Operations – Character and appearance

115. The appeal site is located next to Gapton Hall retail park and an industrial estate. There is a mobile home on the adjacent site and a 'scrapyard' selling new and used tyres is also nearby. Against this backdrop, the Authority accepts that the site does not have the typical characteristics of The Broads. Even so, the low quality visual appearance of the surroundings does not negate the need to achieve high quality design for all development as provided by LP Policy DM43. Similarly, just because the hard surfacing is mostly obscured from view outside of the site does not necessarily make it satisfactory.
116. What was once part of the garden of the dwelling at Black Gate Farm is now a large expanse of hard surfacing with caravans sited on part. The Authority described the hard surfacing as 'industrial' looking. That is an apt description of the compacted black surfacing which I have found to be laid as permitted development and which could remain whatever I decide on the other grounds.
117. The addition of yet more hard surfacing to position the caravans overwhelms the site with a mass of hard surfacing, albeit different types, to the detriment of the character and appearance of the site and area. Apart from a couple of trees and small area of grass in the south-east corner, the site has a harsh developed appearance dominated by the large expanse of hard surfacing. A vast improvement could be secured through the introduction of planting and more grassed areas to off-set the stark appearance of so much hard-surfacing.
118. Subject to a condition for a soft landscaping scheme, there would be no adverse effect on the character and appearance of the area from the hard surfacing to achieve accordance with LP Policy DM43 and Paragraph 126 of the Framework which seek good design.

Other considerations

Personal circumstances and the best interests of the children

119. As established by case law, the best interests of the children are a primary consideration. No other consideration can be inherently more important than the need to safeguard and promote their welfare. It does not mean that the best interests of the children must be the one and only primary consideration. The importance or weight given to the best interests of the children and any other consideration will depend on all the circumstances of each case. It is possible for their interests to be outweighed by other factors when considered in context.
120. Of the two caravans occupied by gypsy and traveller families there are four children under the age of 18 years living in one, none of whom attend school. There is one child under school age in the other with a second child expected. The grant of planning permission would give the children a settled base close to services and facilities including healthcare provision. The welfare of the expectant mother is also an important consideration together with that of her unborn child.
121. It was emphasised on behalf of the appellant how the extended family is an important aspect of traditional gypsy/traveller lifestyle and I realise that the family wish to stay together to continue to live as an extended family group. As set out above, I recognise that there are no allocated sites within the Authority's area and there is a personal need for the gypsy families of the two caravans. As there are no identified alternative sites available, those families may well have to resort to another unauthorised site or roadside existence if the appeal fails.
122. As stated previously, I have no details of the English Travellers' personal circumstances temporarily living in Park Home 1 but who have previously occupied another unit on the site.

Intentional unauthorised development

123. The written ministerial statement issued on 31 August 2015 announced that it is national planning policy that intentional unauthorised development is a material consideration to be weighed in the determination of planning applications and appeals.
124. The appellant previously managed the nearby gypsy and traveller site at Gapton Hall lying within the Great Yarmouth area. Upon his acquisition of the appeal site the appellant developed the caravan site and progressively increased the number of mobile homes including a further one added after service of the enforcement notice. In his PCN reply from 2019 it is stated the "intention is to use the site as a residential caravan site with a total of 13 park homes".
125. The circumstances point firmly to the unauthorised use (and laying of additional hard surfacing to facilitate it) having occurred in the knowledge that there is not the required planning permission. This is a factor against the grant of planning permission to which I attach moderate weight.

Human rights and equalities

126. Under Article 8 of the European Convention on Human Rights, everyone has a right to respect for his private and family life. Upholding the enforcement notice would engage that right of the occupants residing on the site. However, Article 8

is a qualified right to be weighed against the wider public interest of protecting the environment from unacceptable forms of development.

127. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of The Equality Act 2010. This sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. It does not follow from the PSED that the appeals should succeed. Indeed, the provisions of The Equality Act do not outweigh those of the Town and Country Planning Act 1990.

Planning balance

128. In accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004 development must be in accordance with the development plan unless there are material considerations that indicate otherwise.
129. I have found no harm from the additional operations with regard to character and appearance, subject to the imposition of conditions, but that does not negate or outweigh the harm identified with regard to surface water run-off.
130. On the information before me, the mixed use does not accord with the development plan for any type of permanent residential use of caravans given the flood risk. There are no material considerations before me to outweigh that conflict in terms of non-gypsy and traveller development.
131. Turning to the use in part by gypsies and travellers. The development plan does not allocate any gypsy and traveller sites given the lack of identified need based on the 2017 GTAA. Even if there were a proven need for sites to meet the policy requirement, there is conflict with the development plan with regard to the provision of gypsy/traveller development for the same reasons on flood risk.
132. In favour of the part of the development in use by gypsy and travellers, I attach substantial weight to the best interests of the children known to live in Park Homes 1 and 10. Significant weight attaches to the personal needs of the definitional gypsy families in those two caravans who have nowhere else to go with a lack of any suitable alternative identified. The development would make a small contribution to the local supply of pitches but this carries very limited weight in an area with no identified need.
133. There would be some social benefits by affording the opportunity to promote peaceful and integrated co-existence with the settled community. In providing a settled base there would be social and environmental benefits by avoiding their need to travel from site to site and possible environmental damage caused by unauthorised encampment or a roadside existence. These matters attract moderate weight.
134. On balance, the harm identified from potential flood risk is so important that the conflict with the development plan is not outweighed by the other considerations to indicate the determination should be made other than in accordance with the development plan taken as whole. In arriving at this decision, I have considered whether permission should be granted for the whole or any part of the development applied for.

Conclusion on ground (a) and the deemed planning application

135. I have considered whether to grant a temporary permission. However, there is unlikely to be any material change in circumstances at the end of a temporary permission when there is not an identified shortage in the supply of sites at this time. Accordingly, a temporary permission would not be justified.
136. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

The appeal on ground (g)

137. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed.
138. Following success on ground (c), only part of the hard surfacing will be required to be removed, but the notice shall bite with respect to the remainder.
139. The Authority assumed that the extension of time sought by the appellant applied to the use only. That would make no sense because it would result in the hard surfacing on which the mobile homes sit being removed some months before the use of the mobile homes must cease and be removed. The appellant confirmed that the ground of appeal applies to both the use and operations with a period of 12 months sought to vacate the site and 18 months for the remaining steps. The Authority was given opportunity to respond on that basis.
140. There is a clear distinction in the way that the caravan site is being used. Whilst Park Homes 1 and 10 are the permanent base for gypsy and traveller families, the rest of the site has been available to rent on the open market. Particulars of those other families and their tenancies have not been provided. The details are scant with the appellant simply arguing that the site accommodates seven families, including seven children under the age of 18, for whom dismissal of the appeal will result in homelessness.
141. It is appreciated that site residents will need to search for and find alternative accommodation. However, it has not been demonstrated why that could not reasonably be achieved within the 6 month period for the caravans rented out.
142. The Authority acknowledged that the position was more complicated for the gypsy and traveller families and conceded to a 9 month period for step 1 for Park Home 10 where a child and pregnant woman reside. That fails to take account of Park Home 1 being the permanent base for other members of the appellant's family including children. There is no identified alternative site where either household could go. In those circumstances, 9 months is insufficient.
143. It is desirable that the breach of planning control is remedied without unnecessary delay in order to address the harm arising from it and I am also mindful of the potential flood risk implications which are unresolved. In line with the advice at Paragraph 59 of the Framework, effective enforcement is important to maintain public confidence in the planning system.
144. It seems to me that extending the compliance period for Park Homes 1 and 10 only to 12 months would strike a fair balance. It has not been justified why an extra 6 months would be needed to disconnect and remove services or to restore the land. In view of my decision on ground (c) there would be less hard

surfacing to remove. All things considered, 14 months for compliance with the remaining steps would be reasonable.

145. For the reasons given above, I conclude that the compliance period for corrected step 1 should be extended to 12 months for Park Homes 1 and 10 only and 14 months for the remaining steps. To this limited extent the ground (g) appeal succeeds.

Formal Decision

146. It is directed that the enforcement notice be corrected and varied as follows:-

- Marking the existing plan attached to the notice as 'A'.
- Adding plan 'B' attached to this Decision;
- Deleting the allegation at paragraph 3 and substituting:
"Without planning permission, (a) operations consisting of the hard surfacing of part of the Land shown in the approximate area coloured dark yellow on the attached plan 'B' but excluding the area outlined by bold black dashed lines, and (b) the material change of use of the Land from a single dwellinghouse to a mixed use of a single dwellinghouse and a caravan site, (together "the Development")."
- Deleting paragraph 4.5.
- Deleting paragraph 5.1 and substituting: *"(i) To permanently cease the use of the Land as a caravan site; and (ii) To remove the caravans and any structures, fixtures or otherwise upon which they sit from the Land."*
- Deleting the words "remove these" from line 3 of paragraph 5.2.
- Deleting paragraph 5.3 and substituting: *"To break up and permanently remove from the Land all the hard surfacing shown in the approximate area coloured dark yellow on the attached plan 'B' except for the area outlined by bold black dashed lines."*
- Inserting the words "the relevant part of" before "the Land" in paragraph 5.4.
- Deleting paragraphs 5.5 and 6.5.
- Deleting paragraph 6.1 and substituting:
"6.1.1 In relation to paragraph 5.1(i) above, 12 (twelve) months from the date this enforcement takes effect.
6.1.2 In relation to paragraph 5.1(ii) above, 6 (six) months from the date this enforcement takes effect except for caravans numbered 1 and 10 (shown in the approximate positions marked on plan 'B'), where the time for compliance shall be 12 (twelve) months from the date this enforcement takes effect."
- Substituting 14 (fourteen) months as the period for compliance in paragraphs 6.2 – 6.4 (inclusive).

147. Subject to these corrections and variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

KR Seward

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Cally Smith BSc,MA,MRTPI	Head of Planning
Natalie Beal BSc, MRTPI	Planning Policy Officer

FOR THE APPELLANT:

Philip Brown BA(HONS), MRTPI	Planning consultant
Mr Larry Rooney	Appellant

DOCUMENTS SUBMITTED AT THE HEARING

1. Revised map showing hard surfacing included within the notice
2. Corrected version of 1.
3. Revised map showing hard surfacing included within the notice and demarcating area of hard surfacing shown in the 2015 aerial image.
4. Corrected version of 3. as agreed between the parties.
5. Aerial image from 11 April 2020.
6. Flood zones map for The Broads with zoomed in version of the appeal site using Environment Agency July 2021 and SFRA 2017 sources.

Plan

This is the plan referred to in my decision dated: 12 August 2021

by K R Saward Solicitor

**Land at: Black Gate Farm, High Mill Road, Cobholm, Great Yarmouth, Norfolk
NR31 0DL**

Reference: APP/E9505/C/20/3245609

Scale: NOT TO SCALE

