



Appeal Decision

Inquiry Held on 17 & 18 August 2021

Site visit made on 20 August 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 October 2021

Appeal ref: APP/P0119/C/20/3263107

Land at Field near Lime Kiln Court, Tytherington, South Gloucestershire

- 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 Bill Buckley against an enforcement notice issued by South Gloucestershire Council.
- The enforcement notice was issued on 15 October 2020.
- The breach of planning control as alleged in the notice is Without planning permission, the change of use of the land from agricultural use to use as a mixed use Gypsy/Traveller Residential Site and Equestrian Site, with the stationing of 2no. touring caravans; The erection of boundary fencing and gates, the construction of wooden buildings and the laying of hardstanding to facilitate the Gypsy/Traveller Residential Use; Erection of fences and a wooden stable building, and the laying of hardstanding to facilitate the Equestrian Use.
- The requirements of the notice are 1. Cease the use of the land as a Gypsy/Traveller Residential Site and Equestrian site; 2. Remove all static and touring caravans from the land; 3. Remove all operational development, including the fencing and gates, areas of hardstanding and any other building or engineering operations; 4. Return the land to its condition before the breach took place.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and personal planning permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected in the terms set out below in the Formal Decision.

The appeal on ground (c)

1. The appeal is that there has not been a breach of planning control. The appellant's ground (c) appeal is limited to the alleged equestrian use and the wooden stable building. It is argued that there is no equestrian activity at the site, with horses simply grazing there; also that the alleged stable is actually a movable structure and as such does not constitute development requiring planning permission.
2. The appellant's argument in respect of the equestrian use is therefore more akin to a hidden ground (b) appeal, namely that the development as alleged has not occurred. I shall therefore deal with the appeal in this context.
3. The appeal site is linear in form, comprising a succession of rectangular enclosures. The residential use, including buildings, hardstanding and various

paraphernalia is concentrated in the initial enclosure. Beyond this there are three enclosed paddocks. The grazing of horses is defined within the Act as falling within the definition of agriculture and as such the use of land for such purposes would not constitute development requiring planning permission.

4. For an equestrian use to be occurring I would expect there to be evidence that the keeping of horses had developed beyond simply grazing activity. At the time of my visit there were no horses present on the site. Notwithstanding this, and also despite the presence of hardstanding which I understand may help to facilitate the occasional movement of horses to and from the site, I have been provided with no evidence to suggest that the site itself is used for broader horse care, exercising or recreational purposes.
5. I therefore conclude, on the balance of probability, that equestrian use is not taking place on the site and the existence of horse sheltering facilities would, in itself, not make that use more likely. The ground (b) appeal therefore succeeds in this regard. I shall allow the appeal insofar as it relates to the alleged equestrian use and in doing so shall delete from the notice references to it from the allegation and the requirements.
6. In terms of the stable building, the appellant reported during my visit that this had now been removed from the site because the structure had broken during a recent failed attempt to relocate it.
7. It is settled case law that the appropriate criteria for determining whether a structure constitutes a building includes the question of its permanence. I have not been provided with any evidence to suggest that the stable was successfully moved during the time it was on site, despite claims that it has been, and which would have indicated it not being permanently sited in a single location. Indeed the recent fate of the structure does cast doubt on whether it was actually capable of being moved at all in one piece.
8. The appellant has not provided sufficient evidence for me to conclude, on the balance of probability, that the stable did not constitute a permanent building and that as such was not development that would have required planning permission. In this regard the ground (c) appeal therefore fails.

The appeal on ground (a)

Preliminary Matters

9. I have set out above that the wooden stable would have required planning permission. The building no longer exists on site and as such I am unable to assess the merits of this development. Accordingly it would not be appropriate to grant permission for the stable building and the notice, as corrected, will be upheld in this respect.
10. The ground (a) appeal is that planning permission should be granted. The deemed planning application is for the development as constructed at the time the notice was issued, and in accordance with s177 of the Act I need to consider the merits of that development either in whole or part. In terms of the operational development undertaken on the site, if I am minded to allow the appeal there is therefore no scope to impose a condition allowing for the possibility of any increased scale of development there. This would mean that any proposal to increase the size of the day rooms currently present on the site would need to be the subject of a separate planning application.

Main Issues

11. The main issues are:

- Whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
- The effect of the development on the openness of the Green Belt;
- The effect of the development on the character and appearance of the area;
- The effect of the development on highway and pedestrian safety.
- Whether the site can be regarded as being in a sustainable location;
- The storage and accessibility of household waste;
- Whether intentional unauthorised development has occurred.
- If the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Green Belt

12. Paragraph 137 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 138 notes that the Green Belt has five purposes which include safeguarding the countryside from encroachment. Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
13. There is no dispute between the parties that the site lies within the Bristol and Bath Green Belt and that the proposal would amount to inappropriate development. Indeed the Government's Planning Policy for Traveller Sites (PPTS) expressly states that such sites in the Green Belt are inappropriate development.
14. The assessment of impact on openness is about considering the presence of the development in the context of national policy which seeks to keep Green Belt land permanently open, thus avoiding urban sprawl. This specific assessment is not about the quality of the development, including the suitability of materials used, in itself, or its effect on the character and appearance of the area.
15. The Court of Appeal has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect¹. The development includes two touring caravans and two wooden buildings that provide dayrooms, and boundary fencing, gates and hardstanding that facilitate the residential use of

¹ *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466

the site. The existing development on the site, despite its limited scale, would take up space that would previously have been free from development.

16. Aside from taking up space, it was apparent from my visit that the development and associated paraphernalia would result in a degree of visual intrusion viewed from within the site itself. From my visit I was able to observe that the site is substantially enclosed by mature boundary vegetation and is generally well screened by dense hedges along the bridleway providing access to the site.
17. Notwithstanding some visibility of the tops of buildings from adjacent fields, which I accept may be emphasised by reflective construction materials, from my visit there was no evidence of any significant visibility of the site from public rights of way because of a combination of separation distance, topography and the presence of boundary features. This includes from the so-called Jubilee Way bridleway which leads to and passes the site entrance and from paths running across fields to the north and north-west of the site.
18. Drawing the above considerations together, including scale and visibility and whilst allowing for seasonal leaf fall, I conclude that the development results in limited harm to the openness of the Green Belt.

Character and Appearance

19. The ground level of the appeal site along with general surrounding topography rises towards the north-west. The site is located in an undulating agricultural landscape characterised by open fields and boundary hedges. However the site is not far from substantial infrastructure developments, with the M5 motorway and electricity pylon routes passing nearby. These features have a very strong and imposing physical presence in the landscape.
20. For the reasons set out above the visibility of the site is generally well concealed from the public domain. Furthermore from greater distance the scale of the aforementioned infrastructure features tends to draw the eye, more so than the site, as being at odds with the natural characteristics of the landscape.
21. Whilst the entrance gates to the site are relatively tall and wide, given their dark colouring and densely planted surroundings, I found them to be recessive in appearance and not an alien feature within this rural environment. The close boarded boundary fencing and hardstanding areas (aside from a relatively limited section at the site entrance) are generally well screened from public view because they are located inside dense boundary hedges. However it would be possible to impose a condition requiring the fencing to be finished in a darker brown colour, more fitting to the countryside location.
22. I therefore conclude that the development does not result in harm to the character and appearance of the surrounding area. Accordingly I find that it does not conflict with Policies CS1, CS9 and CS34 of the South Gloucestershire Local Plan Core Strategy 2013 (CS) or with Policies PSP1 and PSP2 of the South Gloucestershire Policies, Sites and Places Plan 2017 (PSPP) insofar as they seek to secure the highest possible standards of design and to protect the quality and character of the landscape.

Highway and Pedestrian Safety

23. The site is accessed from and is at the junction of two bridleways (OTY 36 and OTY 37). These bridleways, which are of single vehicle width, link to the main road network in Itchington, to the south west, and at Tytherington to north east. Use of these bridleways would be necessary in order to gain access to the site, including by vehicles.
24. The Council's concerns are that vehicular access to the site would be unlawful, also that this would result in conflict with other vehicles, pedestrians, cyclists and horse riders using the route.
25. In terms of lawfulness, and by implication the practicality of gaining access to the site in a vehicle, it is not within my remit to determine whether such rights exist for the appellant. That would be a matter for another tribunal. It seems to me however that I am required to consider whether there is at least a realistic prospect of such rights existing.
26. The lawfulness of vehicular access to the site is in dispute between the parties. Setting aside how it is utilised in practice the parties do not dispute that the route to the site from Itchington Road and from West Street in Tytherington is formally classed as a bridleway. I am also mindful of the Council's submission that under section 34 of the Road Traffic Act 1988 it is an offence to drive a mechanically propelled vehicle without lawful authority on a bridleway. There is no information before me to ascertain the ownership of the bridleway, nor to suggest that the appellant has expressly been allowed to drive on it.
27. However, I have had regard to the Natural Environment and Rural Communities Act 2006. This states at section 67(5) *"Where immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had an interest in that part only, the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land."*
28. It is part of the appellant's submissions that Mr McMurtary, his transport consultant, relies on this legal provision in concluding that there remains a right of access by vehicle to the appellant's land. It is also apparent from third party correspondence that the previous landowner used the bridleway to take vehicular access to the same field. Therefore whilst not definitive, I cannot rule out a realistic prospect of a private vehicular right of way to the site being in existence. Accordingly, although the definitive position regarding lawful vehicular access for the benefit of the appellant remains inconclusive, for the above reasons I do not consider that this should count against the appellant's case in this appeal.
29. From my visit it was apparent that the bridleways, because they are narrow corridors and because of the presence of signage deterring unauthorised vehicular access, are very unlikely to be an attractive option for use by traffic other than vehicles seeking to access land directly from the bridleway itself. Furthermore the use of Itchington Road, the design of which appeared to me to be far more amenable to general vehicular use, does not result in a significantly longer route between Itchington and Tytherington.

30. Aside from vehicles associated with the appeal site I am not therefore persuaded that regular use of the bridleway by vehicles other than local farm related traffic and occasional delivery vehicles would be likely. When taking into account the limited amount of development and therefore likely traffic movements connected with the two small households occupying the appeal site, I consider that the chances of vehicles meeting one another would be relatively small.
31. Also, mitigated by the narrow nature of the track, vehicle speeds would tend to be low, and I noted during my visit that the existence of occasional field entrances would act as informal passing places for vehicles. If necessary, it seemed to me that a vehicle could be reversed slowly and with caution to a passing place without any undue safety or convenience concerns. The point was made in submissions that field entrances could become blocked or relocated in future and as such their continuity could not be depended on. Whilst this is possible, I have no information to persuade me how this scenario would result in a significant benefit such that it would be likely to materialise. In general the safe passage and manoeuvring of vehicles along the route would be aided by its concrete surface, acknowledged to have been previously provided by others in years gone by.
32. From my visit it was evident that there is adequate room within the site for vehicles to be able to park and turn. In terms of vehicles leaving the site, I noted that visibility to the left would be significantly compromised due to the alignment of the site entrance with the bridleway. However I am satisfied that because of the limited amount and speed of traffic using the bridleway that this would be unlikely to result in a hazardous manoeuvre. I am not persuaded that the limited number of vehicle movements associated with the site would be likely to result in harm to the safety and free flow of traffic on the wider highway network.
33. The bridleways form part of the long-distance route known as the Jubilee Way, which is formally recognised within the Council's development plan as an Active Travel Route (ATR). The Council are concerned that the development would be detrimental to the existing utility, amenity and safety of the ATR.
34. During my visit I did not encounter any pedestrians, cyclists, or horse riders using the bridleway, which would tend to accord with the experience of the appellant and his transport consultant in terms of limited and sporadic use. I am of course mindful that my own experience allowed only for a relatively brief snapshot of the character of use, and I consider it to be entirely plausible that the bridleway would attract greater use at weekends and outside working hours. This said, I have not been provided with any evidence, other than assertion, to suggest that the route is used more than sporadically by pedestrian or other non-vehicular traffic.
35. From the evidence provided it seems to me that the thoroughfare, though evidently used, is not particularly busy. In the event of a pedestrian or cyclist encountering a vehicle, I concur with the appellant that conflict could be easily avoided by stepping onto grassed verge areas which exist for most of the bridleway's length. A horse rider may need to take similar action to that of an obstructed vehicle in order to allow for safe passage. The use of the route by a disabled person using a wheelchair could of course not be ruled out, however I consider that any such conflicts are likely to be rare and, in any event, would

- not be impossible to overcome on the basis of a driver taking the same sort of corrective action as described above.
36. However, I am firmly of the view that such conflicts are unlikely to be a regular occurrence, and the notion that the development would result in harm to highway and pedestrian safety or to the enjoyment of the route, any significant inconvenience to the free flow of traffic or would act as a significant deterrent to the use of the route and therefore material harm to the ATR is simply not compelling.
37. I am also mindful that use of the bridleway by vehicles is not only attributable to the appeal site. It is undisputed that vehicles connected with a nearby farm have used the bridleway for many years and that the previous landowner also drove on the route for farm related purposes. Indeed I witnessed farm vehicles using the bridleway at the time of my visit. Therefore whilst the amount of traffic may have increased, the principle of pedestrians having to step out of the way of vehicles on the bridleway is unlikely to be new.
38. Nor am I persuaded from the evidence before me that resorting to the use of verge margins or field entrances in order to allow vehicles and pedestrians to pass one another would result in acts of trespass. Whilst I accept that the unlit nature of the route would lead to an increased risk to pedestrian safety during the hours of darkness, I consider that by its nature the route would in general be unlikely to attract use at such times in any event.
39. Despite the claim that numerous reports have been made to the Police regarding unauthorised use of the bridleway and near miss incidents, I have not been provided with evidence of this or with any formal records of accidents having occurred in the time that the appeal site has been operational.
40. The Council suggests that the impact on the ATR should be given further weight as the harm has a bearing on the best interests of children using the right of way and that this is a primary consideration. As I have found that the development would not result in an unsafe route for pedestrians, this concern does not attract weight.
41. I acknowledge that the part of the bridleway connecting the Lime Kiln Court development with Itchington Road, to the south west of the appeal site and enabling vehicular access to that development, appears to be wider and finished to a higher standard than a majority of the route serving the appeal site. It would appear that this section of the bridleway was upgraded several years ago in connection with the residential development at Lime Kiln Court. Even so, this does not serve to alter the above findings.
42. I conclude that for the aforementioned reasons the development would not conflict with Policies CS8 and CS21 of the CS or with Policies PSP10 and PSP11 of the PSPP insofar as they seek to safeguard highway and pedestrian safety, ensure adequate provision for vehicular access, parking and manoeuvring and to safeguard Active Travel Routes.

Sustainable Location

43. The PPTS states that local planning authorities should very strictly limit new traveller site development in the open countryside that is 'away from' existing settlements or outside areas allocated in the development plan. Policy CS5 of the CS seeks to strictly limit new development in the open countryside.

- Policies CS8 of the CS and PSP11 of the PSPP seek to reduce travel demand and car dependency by concentrating development nearer to existing facilities and services and public transport infrastructure.
44. The site is located in the open countryside, accessed from and at the junction of two bridleways (OTY 36 and OTY 37). These bridleways link the village of Tytherington to the north east with the more dispersed properties associated with the hamlet of Itchington to the south west. The centre of Tytherington is around one kilometre away from the site, with properties associated with Itchington located closer than this. The nearest residential properties to the site are on Itchington Road to the south and the aforementioned Lime Kiln Court development is around 500 metres to the south west.
45. Tytherington, has limited facilities and services. These include a playground and convenience store / post office which is apparently operated by volunteers and with restricted opening hours. There is also a bus stop in the village, undisputed to be around a 1.1 kilometre walk from the site (approximately 15 minutes). From here it is possible to use bus services to Thornbury and Yate, both of which would provide a greater range of services and facilities.
46. The appellant stated at the Inquiry that use is made of the bridleway in order to walk to facilities in Tytherington. However it would be realistic to conclude that for convenience reasons, and also safety given that the route would not be lit during the hours of darkness, there would likely be significant reliance on the private car in order to gain access to a full range of services and facilities.
47. Nevertheless, the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Despite the likelihood of a very high degree of reliance on the private car, when considering the relative proximity of Thornbury to the site it seems to me that the length and duration of journeys necessary to access essential services and facilities would not be excessive for a rural location. Furthermore I am mindful that the limited scale of development involved in this case would serve to restrain the number of car dependent journeys arising.
48. I am also mindful that whilst journeys would need to be planned carefully, there are opportunities to gain access to services and facilities by sustainable means of travel. For the aforementioned reasons I consider the site occupiers would not be totally car dependent and would have reasonable access to key services and facilities. I consider that this weighs significantly in favour of the conclusion that the appeal site should not be regarded as 'away from' existing settlements and that it is within a relatively sustainable location.
49. I am mindful that the Framework states that the development of isolated homes in the countryside should, subject to certain limited exceptions be avoided. Whilst the appeal site is physically separate from the nearest settlement of any size, I have concluded, in accordance with guidance in the PPTS, that the site would not be 'away from' existing settlements. When considering the relatively dispersed settlement pattern of Itchington and that there are clusters of residential properties within a relatively short walking distance of the site it does not seem to me that the appeal site is in an isolated location.
50. Drawing the above considerations together I conclude that the development does not conflict with Policies CS8 or PSP11.

Household waste

51. Although it is undisputed that there is sufficient space for the storage of household and recyclable waste within the appeal site, the Council raises the concern that accessibility constraints mean that the site is not suitable for attendance by Council waste collection vehicles. It considers that excessive reversing of vehicles would be necessary, which would be in conflict with guidance in its Waste Collection: guidance for new developments Supplementary Planning Document 2015.
52. At present it is apparent that the appellant personally transports household refuse to a designated household waste and recycling centre. He confirmed at the Inquiry that in the event of a successful appeal he would accept a planning condition with a view to engaging a private waste collection company to service the site. The Council did not oppose such a condition.
53. In terms of principle the need for access to the site for refuse and recycling collection purposes would be very infrequent, and I do not envisage any difficulty for a commercial vehicle of this nature being able to enter and leave the site in a forward gear. For the reasons set out above I do not consider that this would result in material harm to highway or pedestrian safety. On this basis I find that the development would not conflict with Policy CS1 of the CS insofar as it requires sufficient space to be made for the storage and collection of waste.

Intentional unauthorised development

54. There is a clear difference of opinion regarding the timing of planning advice received by the appellant from the Council in the early stages of the case. The appellant disputes the Council's narrative that he had advised them that the gates and hardstanding related only to access for a horsebox. The Council states that the appellant proceeded to develop the site, contrary to its advice, and that the intentional unauthorised nature of the development is a material consideration in line with Government policy, that should be given adverse weight.
55. I agree that this dispute is not satisfactorily explained. However in terms of its practical implications I consider that there remains scope to control the further development of the site through appropriate planning conditions. I am also mindful that the Act makes provision for a grant of retrospective planning permission and planning enforcement that is remedial rather than punitive. I also consider the argument that the appellant's intentions need to be viewed in the context of a longstanding need for alternative site provision (discussed below) has merit in this case. In light of these considerations I attach only very limited weight to the intentional unauthorised nature of the development.
56. The Council has referred to an appeal decision in relation to which great weight was attached to the finding of intentional unauthorised development². However in that case it appears that various structures were erected after enforcement and stop notices were issued. I am not therefore persuaded that the circumstances of the two cases are sufficiently similar to necessitate the issue in this case being weighted in the same way.

² Ref APP/V1505/C/18/3212159

Other Matters

57. There have been a number of further concerns raised by third parties. I have not been provided with any evidence to suggest that the site would be at risk as a result of flooding. Similarly there is no evidence to persuade me that a water and electricity supply cannot be achieved, or waste from the site managed. The question of adequate access for the emergency services, should this ever be required, was also raised. However again, no substantiated evidence has been provided that this would be an insurmountable problem.
58. In terms of wildlife interests, there is no evidence before me to suggest that the site should be protected for habitat reasons or that any protected species would be threatened.
59. The appellant accepts that he has installed CCTV cameras at the entrance to the appeal site. However I find nothing unusual about this innovation, which in my experience tends to be a commonly utilised feature on residential properties in order to provide an additional measure of security.
60. I have considered the argument that the grant of planning permission would set a precedent for similar developments. However each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not, in itself, justify withholding planning permission in this case.

Other Considerations

Need for Gypsy and Traveller sites

61. The PPTS states that local planning authorities should identify, and update annually, a 5-year supply of specific deliverable sites. Paragraph 7(b) of the PPTS states that local planning authorities should prepare and maintain an up-to-date understanding of the likely accommodation needs of their areas over the lifespan of the development plan.
62. The Council accepts that it is unable to demonstrate a 5-year supply of deliverable sites and furthermore that there has been a failure over several years to deliver a sufficient quantity of new sites. It is undisputed that 60 additional pitches will be required by 2032.
63. The Council has not been able to identify any suitable and available alternative sites for the appellant within the District or the wider area, a further indication that there is an immediate need for sites there. It says that it aims to adopt a new local plan by the end of 2023 and that a combined authority spatial development strategy is being prepared along similar timelines. However I have not been provided with any firm indication of where sites may be allocated and when they will become available. These considerations therefore weigh in favour of the development.

Personal circumstances

64. Article 8 of the Human Rights Act 1998 states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the

economic well-being of the country, which has been held to include the protection of the environment and upholding planning policies. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.

65. Furthermore in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.
66. It is undisputed by the Council that the appellant lives on the appeal site with his partner on one pitch and that a second pitch is occupied by his son and his son's partner who have two young children. It is apparent that the older child suffers from a serious mental health disorder; also that he was due to start school soon and that funding has been secured to enable one-to-one educational support. Confidential medical evidence has been provided in support of this position, the veracity of which I have no reason to doubt and which the Council did not seek to challenge.
67. There can be no doubt that if the appeal was unsuccessful it would take away a settled base for the family, who may potentially need to resort to living on the roadside and face disruption to their general healthcare and the older child's educational provision as a result.
68. I am mindful that it may be difficult to enrol children in school and /or maintain the children's attendance if they have no fixed address. I consider that because there would be a clear benefit to the appellant's grandson of remaining on site, as part of a settled base and with the support of an extended family, which would otherwise be likely to result in serious detriment to his social and educational development, that this should attract significant weight in the planning balance.

Green Belt Balance

69. National planning policy attaches great importance to Green Belts. Therefore when considering any planning application substantial weight should be given to any harm to the Green Belt. The appeal site is inappropriate development in the Green Belt. In addition, the residential use and associated structures cause a loss of openness and harm to the purposes of including land in the Green Belt. Very limited weight is attached to the intentional unauthorised nature of the development.
70. The development would not result in harm to the character and appearance of the area or to highway and pedestrian safety and I do not consider the site to be poorly located in relation to services and facilities. I do not find harm in terms of the storage and management of household waste on site. These 'absences of harm' do not, however, weigh in favour of the appeal.
71. There are considerations which support the appeal. Having regard to advice in the PPTS when considering sites in Green Belt locations, I attach moderate weight to the lack of any alternative site being available to the appellant now,

to the lack of an up-to-date 5-year supply of deliverable sites and to historic policy failure in this regard. I also attach significant weight to the appellant's personal circumstances.

72. The PPTS states that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. It does not however state that these factors can never amount to such circumstances.
73. I have balanced the harm to the Green Belt against the other considerations referred to above. For the reasons given, having regard to the PPTS and when considering the best interests of the children, I find that when including the appellant's personal circumstances the harm identified is clearly outweighed. The requirement to cease the residential use in light of these circumstances would be disproportionate. The very special circumstances necessary to justify the development have therefore been demonstrated. The grant of a permanent planning permission (personal to the site occupiers) would therefore be appropriate.
74. On this basis I consider that the development would accord with the criteria set out in Policy CS21 of the CS, relating to sites for gypsies and travellers, which are that the development would not have unacceptable environmental effects; the land is not subject to unacceptable levels of different types of pollution; the amenities of neighbouring occupiers would not be unacceptably prejudiced and that adequate provision is made for vehicles. Because of the very special circumstances demonstrated it would also be in accordance with the Green Belt protection strategy of the Framework and Policies CS5 of the CS and PSP7 of the PSPP.
75. By contrast I find that a permanent planning permission, that was not personal to the present site occupiers would not be appropriate, as the grant of permission can only be justified by the additional weight of the appellant's personal circumstances. This said I find that the further restriction of a temporary permission would not be appropriate due to the lack of certainty as to when deliverable sites might come forward.

Conclusion

76. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice as corrected and refuse to grant planning permission for the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Conditions

77. I have considered the conditions suggested by the Council and discussed with the parties at the Inquiry. Conditions confirming that occupation is restricted to the appellant, his son, their respective partners, and resident dependants and requiring remediation of the site prior to cessation of use are necessary in the interests of environmental protection.
78. Conditions limiting the number of pitches and caravans stationed, the size of vehicles parked and preventing commercial activity on the site are all required

in the interests of helping to safeguard the character and appearance of the area, the living conditions of residents and highway and pedestrian safety.

79. Conditions confirming the loss of the permission unless details are submitted for approval (including a timetable for implementation) concerning the layout of the site, landscaping works, external lighting, finishing of boundary treatment, waste storage and collection and drainage are required in order to ensure the site is adequately serviced and to help safeguard the character and appearance of the area.
80. Conditions controlling additional future lighting and means of enclosure on the site are required in the interests of protecting the character and appearance of the area.

The appeal on grounds (f) and (g)

81. As I shall be granting a personal planning permission for the residential use of the site, the appeals on grounds (f) and (g) are limited to the stable building. However, as it is undisputed that this building has now been removed from the site there is no need for me to consider these grounds further, other than to say that I see no difficulty with the requirement to return the land to its condition before the breach took place.

Formal Decision

82. It is directed that the enforcement notice is corrected by:

Deleting the wording of paragraph 3 and substituting the following wording instead:

“Without planning permission, the change of use of the land from agricultural use to use as a Gypsy/Traveller Residential Site, with the stationing of 2no. touring caravans; The erection of boundary fencing and gates, the construction of wooden buildings and the laying of hardstanding to facilitate the Gypsy/Traveller Residential Use; Erection of fences and a wooden stable building, and the laying of hardstanding associated with the grazing of horses.”; and by

Deleting the words “and Equestrian site” in paragraph 5 of the notice.

83. Subject to these corrections the appeal is allowed insofar as it relates to the change of use of the land from agricultural use to use as a Gypsy/Traveller Residential Site, with the stationing of 2no. touring caravans; The erection of boundary fencing and gates, the construction of wooden buildings and the laying of hardstanding to facilitate the Gypsy/Traveller Residential Use; Erection of fences and the laying of hardstanding associated with the grazing of horses and a personal planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended at Land at Field near Lime Kiln Court, Tytherington, South Gloucestershire as shown on the plan attached to the notice and subject to the conditions in the schedule below.
84. The appeal is dismissed and the enforcement notice is upheld, as corrected, insofar as it relates to a wooden stable building and planning permission is refused in respect of this development at Land at Field near Lime Kiln Court,

Tytherington, South Gloucestershire, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Pitch 1: Bill Buckley and Ellen Marie Ayres; Pitch 2: Joseph Buckley and Danielle Beaney.
- 2) When the land ceases to be occupied by those named in condition 1 above the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.
- 3) There shall be no more than two pitches on the site and on each of the two pitches hereby approved no more than one caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed at any time (of which none shall be a static caravan).
- 4) No commercial, industrial or business activities, including storage of vehicles, equipment and materials, shall take place on the land.
- 5) No more than one commercial vehicle per pitch shall be kept on the site for use by the occupiers of the caravans hereby permitted and this vehicle shall not exceed 3.5 tonnes in weight.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected other than such development authorised by the grant of this planning permission.
- 7) No external lighting, other than that included within the agreed site development scheme pursuant to condition 8, shall be installed at any time.
- 8) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within **three months** of the date of this decision a site development scheme with details for the internal layout of the site including the extent of the residential pitches, the location of the caravans and vehicle parking and any buildings and hard standings; external lighting; hard and soft landscaping and screen planting including details of species, plant sizes and proposed numbers and densities; the colouring of boundary treatments; a waste management plan setting out how waste will be stored and disposed of; foul and surface water drainage shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation;
- ii) If within **eleven months** of the date of this decision the local planning authority refuse to approve the site development scheme or fail to give a decision within the prescribed period, a valid appeal shall have been made to the Secretary of State;
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State;
- iv) The approved site development scheme shall have been carried out and completed in accordance with the approved timetable and shall thereafter be retained for the lifetime of the development.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

END OF SCHEDULE OF CONDITIONS

APPEARANCES

FOR THE APPELLANT:

Mr Alan Masters

He called

Bill Buckley – Appellant
Danielle Beaney – Appellant’s family
Brian Woods – Planning consultant
David McMurtary – Transport consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Michael Fry

He called

Owen Hoare – Planning Enforcement Officer

INTERESTED PERSONS:

Jo Davis – Itchington Action Group

Councillor Jon Lean

Documents submitted following the Inquiry:

1. Suggested conditions
2. Closing submissions