



Appeal Decisions

Inquiry opened on 7 June 2022

Site visit made on 8 June 2022

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 25 August 2022

Appeal A Ref: APP/P0119/C/20/3264071

Appeal B Ref: APP/P0119/C/20/3264072

**Land at Field North and East of Crossing Cottage , East Of Railway
Latteridge Road, Iron Acton, BS37 9TL**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms C Mullane (Appeal A) and Mrs Mary Doherty (Appeal B) against an enforcement notice issued by South Gloucestershire Council.
 - The enforcement notice, numbered COM/19/0783/OD/2, was issued on 17 November 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of use of the land from agricultural to a mixed use of residential caravan site (Gypsy/Traveller residential site) and equestrian. The erection of fencing, gates and pillars; the erection of wooden and metal buildings, the stationing of caravans and a portable day room, the laying of hardstanding and the associated engineering operation to facilitate the Gypsy/Traveller residential use.
 - The requirements of the notice are: 1. Cease the residential use of the land; 2. Cease the use of the land for the siting of caravans and mobile homes for residential use; 3. Remove from the land all caravans and mobile homes sited for residential occupation and their associated facilities (including but not exclusively – the septic tanks and foul drainage removal systems, water pipes and electricity lines); 4. Remove from the land all stored caravans and mobile homes; 5. Remove all buildings and their associated materials from the land (including but not exclusively – all wooden and metal sheds, day rooms, other wooden buildings and a Wendy house); 6. Remove all engineering operations and their associated materials from the land (including but not exclusively – all hardcore/hardstandings including that forming a track, concrete bases and paving laid); 7. Remove all fences, gates and posts, and their associated materials from the land; 8. Remove all streetlights and their associated materials from the land; 9. Remove all non-agricultural equipment from the land (including but not exclusively all non-agricultural vehicles/trailers (e.g. diggers)); 11. Cease the equestrian use of the land and remove any associated paraphernalia; 12. Restore the land to its condition before the breach took place.
 - The period for compliance with the requirements is 6 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (e), (f) and (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 also falls to be considered.
 - Appeal B is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e), (f) and (g).
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Appeal C Ref: APP/P0119/W/20/3264070
land adjacent to Crossing Cottage Estate, Latteridge Road, Iron Acton,
BS37 9TL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs C & M Mullane & Doherty against the decision of South Gloucestershire Council.
 - The application Ref P20/00717F, dated 9 January 2020, was refused by notice dated 22 October 2020.
 - The development proposed is the creation of two traveller pitches & permission to relocate approved stable/tack room block (under pt17/1427/f), two utility/day rooms, parking for personal touring caravans and vehicles and access drive.
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Decisions

Appeal A

1. It is directed that the enforcement notice be corrected by the deletion of the description of the breach of planning control in Section 3 and its replacement by the following:

Without planning permission, the material change of use of the Land to a mixed use as a Gypsy/Traveller residential caravan site and for equestrian purposes, along with associated development.

And, in Section 5, by the deletion of requirements 1, 2, and 11, their replacement by the following, and the re-numbering of the remaining requirements:

1. Cease the use of the Land for a mixed use as a Gypsy/Traveller residential caravan site and for equestrian purposes.
2. Subject to these amendments, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for use of the Land at Field North and East of Crossing Cottage , East Of Railway Latteridge Road, Iron Acton, South Gloucestershire shown on the plan attached to the notice for a mixed use as a Gypsy/Traveller residential caravan site and for equestrian purposes, subject to the conditions in the Schedule of Conditions attached to this decision.

Appeal B

3. The appeal is dismissed.

Appeal C

4. The appeal is allowed and planning permission is granted for Creation of two traveller pitches & permission to relocate approved stable/tack room block (under pt17/1427/f), two utility/day rooms, parking for personal touring caravans and vehicles and access drive at Land adjacent to Crossing Cottage Estate, Iron Acton, BS37 9TL in accordance with the terms of the application, Ref P20/00717F, dated 9 January 2020, and the plans submitted with it, subject to the conditions in the Schedule of Conditions attached to this decision.

Applications for costs

5. Applications for costs were made by the appellants and the Council against each other. These are the subject of separate decisions.

Preliminary Matters

6. The appeal site is a roughly rectangular former paddock, some 0.8ha, to the north of Latteridge Road. It is in the open countryside about 0.4km east of the village of Latteridge. Between the road and the site is a small industrial estate, a railway line runs alongside the eastern side, apparently now used for minerals transportation, and Ladden Brook, a tributary of the River Frome, runs along the western boundary. Access is via a track leading from Latteridge Road between the railway and the industrial estate. The site is in the Bristol and Bath Green Belt.
7. Planning permission was granted in 2017 (Ref PT17/1427/F) for the change of use of the land from agricultural to equestrian use and the erection of stables and tack room. A derelict building on the land is required to be removed by enforcement notices issued in 2006.
8. The Appeal C application proposed 2 traveller pitches with hardstanding for parking and the stationing of caravans, along with the siting of a dayroom on each pitch, to be restricted to discrete areas on the eastern side of the site alongside the access track. A wildlife buffer zone would be established along Ladden Brook and the northern hedgerow, a paddock would be retained in the north of the site for horses, and the proposed stable block would be sited towards the eastern side just to the north of the pitches.
9. The development the subject of Appeals A and B differs significantly from that proposed above. Although development has largely been confined to the pitch areas indicated in the planning application, extensive areas of hardstanding have been laid, raising land levels across much of the proposed pitches, caravans and dayrooms have been sited much closer to Ladden Brook, close boarded fencing has been erected rather than the hit-and-miss fencing proposed, and septic tanks have been installed rather than package treatment plants. However, what is now sought under ground (a) and the deemed planning application is more akin to the Appeal C scheme. A key difference is that an additional pitch is sought, for reasons I set out later.
10. I should also note that the land the subject of the enforcement notice, and hence the deemed planning application site, is the whole of the paddock, whereas in Appeal C the application site is a smaller area covering the pitches and stable block. In practical terms however they do not need to be treated differently since the land outside the red-line in the Appeal C application plans is in the same ownership or control, as indicated by the blue line on the layout plan and includes the same related works and uses.
11. The appeal on ground (c) was withdrawn at the outset of the Inquiry.

Appeals A and B – The notice

12. The enforcement notice alleges a mixed use, comprising in this case two primary uses existing within the same planning unit. However, although the use has different components, the use itself is the single mixed use with all its component activities. In these circumstances it is not appropriate to require the

cessation of the component uses individually, not least because a component use may be a lawful use to which the land could revert. I shall therefore correct the requirements by removing reference to cessation of the individual primary component uses and replacing those with a requirement that the mixed use cease. As set out below under ground (b), I shall also remove reference to agriculture as the use from which the material change was made. It is not strictly necessary to refer to the preceding lawful use, and in circumstances where it is contentious it is often best omitted.

13. There is also possible ambiguity about whether the operation developments described in the notice are attacked separately or, as acknowledged by the Council, as development associated with the material change of use. I shall amend the description for clarity.
14. These corrections or amendments to the notice were discussed at the outset of the Inquiry and it was agreed that they could be done without injustice to the parties.

Appeals A and B – ground (e)

15. This ground is that copies of the enforcement notice were not served as required by section 172 of the Act. Specifically, it was alleged that copies were not served in a timely fashion on all occupiers or those with an interest in the land. When the Council was advised of this it carried out further investigations, including consulting the Land Registry, and sent notices on to previous owners, who were registered as having a charge on the land, and Network Rail, who may have an easement. As it happens the previous owners say they have no interest in the land, and Network Rail did not respond, albeit they had provided a consultation response to the Appeal C application.
16. The appellants have not actually identified anyone upon whom the notice should have been served but was not. It seems clear to me that those subsequently advised of the notice by the Council have no real interest in the appeals, nor does it appear to me that they would have been materially affected by the notice, as required by section 172(2). As far as I can see, there was no failure to properly serve the notice, but even if there had been, section 176(5) allows me to disregard that if neither the appellant nor any person who should have been served, but was not, has been substantially prejudiced.

Appeals A and B – ground (b)

17. This ground is that the matters alleged have not occurred, as a matter of fact. This ground is often used to raise minor errors or discrepancies. In this case the appellant maintains that the use prior to the use enforced against was equestrian rather than agriculture. This argument is also now made under ground (d), albeit the original basis of the appeal on ground (d), and no longer pursued at the Inquiry, was that there had been a caravan site use for over 10 years when the notice was issued.
18. While it is not strictly necessary to state the previous use, and I had proposed in any case to amend the notice in that respect, the basis for subsequently resurrecting an appeal on ground (d) in respect of equestrian use was that the 2017 equestrian use permission was implemented, and hence that was the last lawful use. This is not a ground (d) matter, nor is it relevant to ground (f)

given the amendments to the notice set out above. I shall deal briefly with it nonetheless, because of the potential relevance to ground (a).

19. The equestrian use application was made in March 2017. The application records the existing use as Agriculture/Horse grazing, in other words agriculture, and states that the proposed use had not started. A site visit by the Council in respect of that application found the site to be inaccessible and overgrown. When the officer gained access, having requested path clearance, the site was confirmed as being consistent with an agricultural use. The planning permission is dated 6 October 2017.
20. The current registered owner, a relative of the appellants, is recorded in the Land Register as having purchased the site on 30 August 2018. By this stage works had begun, apparently in July 2018, which could only be described as for the purposes of the current development. The site was visited by Council officers investigating those works on 3 August, 24 August and 29 August 2018. On the latter visit the entire site had been surface stripped. On none of these visits were horses seen on the site. There were subsequent visits on 7 and 8 February 2019 and 4 September 2019. There were no records of horses being kept on the site. The Appeal C planning application is dated 9 January 2020, and it records both the current and last lawful uses as Agriculture/Horse grazing.
21. The claim that the 2017 permission was implemented relies solely on a claim that horses were being kept on the land, as opposed to merely grazing, from 2018 or 2019. Mrs Doherty recalled, in evidence in chief, the current registered owner having kept 2 horses on the land, using one of the buildings still there in breach of a 2006 enforcement notice as stables for about 2 years before she herself moved onto the site in January 2020, and she claimed to have kept a horse there herself for the previous year. Subsequently, in cross-examination, she said that the registered owner had horse/es on the site at least 8-9 months before January 2020.
22. So far as Mrs Doherty's evidence on horse use goes, it is inconsistent regarding the timing of horses being kept there. The initial claimed periods of use also do not tally with the ownership history. If Mrs Doherty's evidence on this point was accurate, then the registered owner would have had to have kept horses there long before she bought it, which I consider highly unlikely. That no horses were seen there during the initial extensive clearance works was said to be because they would have been moved temporarily, but given that the clearance works started even before the purchase was completed, I consider it more likely than not that there had not been any horses kept there up until then. Given the extent of the works, including engineering operations, that had taken place by the end of August 2018 for the purposes of the development enforced against, and which continued at various points thereafter, including the laying of hardstanding, up until the point where actual residential use commenced, even if some horses had been kept there in say, the 8-9 months before January 2020, as later claimed by Mrs Doherty, I consider that the 2017 permission would by then have become incapable of implementation because it was incompatible with the development enforced against, which was well advanced by then, and the works already carried out. I find that the development the subject of the 2017 permission never began and the permission expired on 6 October 2020.

23. The claim is also inconsistent with the Appeal C application, which, along with the description of the use as agriculture, claimed that the site was vacant. In fact there are many inconsistencies, and very little in the way of reliable evidence, let alone precise and unambiguous evidence, of solely equestrian use as opposed to equestrian use as a component of a mixed use, at any time. The burden of proof in this matter is on the appellants, and it has not been discharged.
24. I have amended the notice to remove reference to the previous use, but I do not base that on any success on ground (b). Accordingly, I dismiss the appeal on this ground. There are no other matters to address on ground (d).

Appeal A – ground (a) and the DPA, and Appeal C

25. As set out earlier, the deemed planning application on Appeal A seeks permission for a 3-pitch site within the bounds of the 2-pitch site the subject of Appeal C. Initially developed as 2 pitches, the son of one of the appellants, and who had a role as her carer, got married and moved to a separate fenced plot within the outlined pitch area for the southernmost of the 2 pitches. That was the situation when the enforcement notice was issued, hence it falls within the terms of the Appeal A deemed planning application, being part of the development enforced against.
26. Only 2 pitches are shown on the layout plan in Appeal C, and the description of development in the application is for 2 pitches. I shall deal with Appeal C on that basis.
27. Since the Appeal A breach of planning control is the material change of use of the land, it is open to me to consider alternative layouts to that which existed when the notice was issued. Site layout, particularly the siting of caravans, buildings and hardstanding, is nonetheless a material consideration of substantial significance when considering issues such as local character and appearance and flood risk. The appellants indicated that the layout they wanted considered would be as close as possible to the 2-pitch layout, which is the basis of the flood risk submissions in particular. An indicative 3-pitch site layout (Drawing SD0169/2 Pitch Layouts) was provided at my request to demonstrate that could be accommodated within the 2-pitch layout envelope, and I am satisfied that that is the case. However, it was not considered in detail and I shall treat it as illustrative rather than incorporate it as a proposed layout for due consideration. I should note that the additional pitch sought is for a single touring caravan and does not include an additional utility building.
28. No stables were built when the enforcement notice was issued, but since the deemed planning application is for a mixed use including equestrian use, I consider it reasonable, and within the terms of the deemed planning application, to include the erection of the stable block, as associated development, in the position shown in the Appeal C layout. Unsurprisingly, in view of the grant of permission in 2017 for private equestrian use, including a stable block, the merits of that part of the mixed use were not at issue at the Inquiry.
29. The Flood Risk Assessment submitted with the Appeal C application indicated that the static caravans would be fitted with cantilever systems to help address flood risk. That is no longer sought, and I consider this to be an acceptable amendment that prejudices nobody.

30. Only where necessary will I distinguish between the 2 appeal developments.

Main Issue

31. The traveller status of the appellants and other occupants for Planning Policy for Travellers Sites 2015 (PPTS) purposes, is not disputed. Having heard the oral evidence of the appellants I see no reason to disagree, and I have determined the appeals on that basis.
32. The development is inappropriate development in the Green Belt, which may only be permitted where there are very special circumstances. Accordingly, the main issue is whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, and if so, would this amount to the very special circumstances required to justify the proposal, on either a permanent or temporary basis.
33. In terms of possible harm in addition to the definitional harm due to inappropriateness, this requires consideration of the effect on the openness of the Green Belt and the purposes of including land in it, the effect on the character and appearance of the area, on highway safety, and the flood risk implications of the development. Other considerations include the need for, and provision of, gypsy/traveller sites, the availability of alternative sites, policy deficiencies, personal considerations, including the best interests of the children, human rights and equality considerations, and the unauthorised nature of the development.

Policy context

34. National policy is contained within PPTS and the National Planning Policy Framework (NPPF) and these are material considerations. PPTS, which must be read in conjunction with the NPPF, aims to ensure fair and equal treatment for travellers in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community. Amongst other things, it expects local planning authorities to increase the number of traveller sites in appropriate locations to address under-provision and maintain an appropriate level of supply.
35. The development plan includes the South Gloucestershire Local Plan: Core Strategy (CS), adopted in 2013, and the South Gloucestershire Local Plan: Policies, Sites and Places Plan (PSP), adopted in 2017. CS Policy CS21 addresses gypsy and traveller accommodation. Provision to meet identified needs through a development plan document or new local plan policy has not occurred, and there remains considerable unmet need, but the policy also sets out criteria against which to assess proposed sites. It indicates a preference for locations within a reasonable distance of local services and facilities, though it accepts that more remote sites may be acceptable.
36. Other relevant policies include CS Policies CS5 and CS34 and PSP Policy PSP7 which support the protection of the Green Belt from inappropriate development, CS Policy CS1, which expects a high quality of design, PSP Policies PSP1 and PSP2, which require consideration of local distinctiveness and landscape, and CS Policy CS9 and PSP Policy PSP20 which direct all new development away from areas of flood risk and seek to ensure that any development does not increase off-site flood risk or harm water quality.

Openness and green belt purposes, local character and highway safety

37. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Openness is an essential characteristic of the Green Belt. Save for the buildings required to be removed in accordance with the 2006 enforcement notice, prior to the development the site was entirely open. Both schemes involve considerable loss of openness by the introduction of caravans, hardstanding, utility buildings, the stable block and fencing erected to enclose and sub-divide the site, along with normal domestic paraphernalia associated with the use. The development also conflicts with one of the purposes of including land in the Green Belt, namely that of assisting in safeguarding the countryside from encroachment. Substantial weight must be given to any harm to the Green Belt.
38. So far as the effect on the character and appearance of the area is concerned, the development has an urbanising effect that is at odds with the prevailing strong rural character. However, the siting of caravans and buildings towards the railway side of the site would serve to substantially reduce the visibility of the development from the main public vantage points on the approach along the B4059/Latteridge Road from the west, including the nearby layby. I consider it likely however that the site will be visible and noticeable in mid-distance views when the mainly deciduous hedgerows are not in leaf. Traveller sites are commonly located in the countryside, but the evident domestication of the site would nonetheless cause some harm to local character and appearance.
39. In terms of highway safety, the visibility splay from the entrance of Latteridge Road is sub-standard to the east, mainly because of the presence of level-crossing gates. However, traffic approaching from that direction will have just negotiated a sharp bend and the railway level-crossing just before the entrance is a further traffic calming feature, as is the presence of double white lines in the carriageway. The access has been in use for over 2 years without apparent incident, and the entrance gates are set well back from the highway, so vehicles entering will not have to pause or wait on the highway. Overall, I consider that its use as proposed does not pose a significant risk to highway safety, and so accords with Policy CS21 of the CS in that regard.
40. As noted above, while there is a preference for site locations close to services and facilities, CS Policy CS21 accepts that sites may be in more remote locations. Due to its location it is unlikely that occupiers would access services and facilities other than by private car, but the site does enable the present occupiers to access important services by relatively short journeys, and the district does have a significant need for suitable additional sites, many of which are likely to be similarly placed with regards to proximity to services. In the circumstances I consider that the location would not result in unsustainable patterns of travel, or pose an insurmountable obstacle to peaceful and integrated co-existence with the local community. On balance I consider that the site's location would not be contrary to the guidance in PPTS or CS Policy CS21.

Flood risk

41. The appeal sites lies within the functional floodplain (Flood Zone 3b) of Ladden Brook, which is identified by the South Gloucestershire Strategic Flood Risk Assessment as having the highest probability of flooding. Caravans and mobile

homes intended for permanent residential use are considered to be highly vulnerable development for planning policy purposes, and the Planning Practice Guidance states that such development should not be permitted in Flood Zone 3. PPTS also advises that local planning authorities should ensure that their policies do not locate traveller sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans. PSP Policy PSP 20 expects development to follow the sequential approach, which would preclude caravan site development, and CS Policy CS9 expects development to be located away from areas of flood risk. Clearly, the proposed developments are contrary to national policy and in conflict with the development plan.

42. It was common ground at the Inquiry the Appeal A development as it has been carried out is unacceptable in terms of flood risk due to the extent of land raising. The appellants argue nonetheless that the appeal developments can be made safe for their lifetime, taking into account the vulnerability of the occupiers, without increasing flood risk elsewhere. This would require levels to be restored and the imposition of, and compliance with, planning conditions that would see any mobile homes on the site have floor levels set above predicted flood levels, any buildings or other structures to be of permeable construction, and the site occupants to evacuate the site as a principal means of managing flood risk whenever a Flood Warning is issued for a nearby Flood Warning Area.
43. A site specific flood risk assessment (FRA) was submitted with the Appeal C planning application and is also relied up for Appeal A and B, albeit it has been further developed by the appellants' flood risk consultant. Notwithstanding the current position, save for some minor levelling there is to be no significant change in the pre-development ground levels, which will require substantial remedial works to return to. On that basis, overlaying estimated flood levels on a topographic survey of the site that preceded most development indicates that mobile home floor levels, raised to 1m above ground, would be likely to remain above water levels in a 1 in 100 year flood event (including climate change allowance), and so would provide a safe place of refuge in the event that occupiers were caught unawares. However, the strategy relies primarily on evacuation on receipt of a Flood Warning for the 'Bristol Frome from downstream of Nibley to Stapleton flood warning area'. The appeal site is about 2.5km upstream of the reach of the River Frome upon which the warning would be based, but the catchments are of similar size and the appeal site catchment is more rural, and so can be expected, broadly speaking, to respond more slowly to a given storm event. As such it is submitted that it provides a good surrogate for flood development at the appeal site. This was not disputed by the Council and seems to me to be reasonable in the circumstances.
44. Analysis of flood characteristics in the Ladden Brook for a 1 in 100 year event adjusted for climate change indicates that the time for flood waters from topping the bank to reaching ground levels at the proposed siting of the mobile homes in the Appeal C layout would be about 6 hours, and 8 hours to reach the access road, leading to a flood depth on the access road of 0.25m on the access after 10 hours. At estimated flow velocity of 0.1ms^{-1} and a depth of 0.25m, the EA's *Hazard to People Classification* for use of the access would be considered as 'Very low hazard – Caution'. The northernmost of the two static mobile homes in the Appeal C layout is 150m to the site entrance off the B4059, then a further 150m to higher ground beyond the flood envelope along the B4059. The draft Flood Evacuation Plan would see the touring caravans

leave the site promptly, and the appellants confirmed that they have nearby relatives' plots where they would be able to stay temporarily, so that there would be no call on emergency services or relief. Water pollution would be avoided through appropriate specification of sewage disposal systems, and with the touring caravans off the site there would be little likelihood of increased risk off-site.

45. The Council accepted in evidence that, with one exception, in principle the updated FRA put forward at the Inquiry would be acceptable. Issue was taken with the rate of flood rise in the vicinity of culvert running along the southern boundary which is lower than the bank of the Brook, such that water will likely flow over the access track earlier than estimated in the updated FRA, but in view of the overall slow rate of rise, and the moderate depths of inundation on the track, I consider that this would not cause serious concern. Being the riparian bank owners, it is suggested in any case that a site specific flood alarm device be installed at the site which could be calibrated to avoid access inundation issues. This can be made part of a flood related condition.
46. The Council also takes issue with the reliance upon the site occupants to, first, ensure that the necessary remedial works are undertaken, without which the appellants' flood advisor concedes that there would likely be unacceptable off-site impacts due to changes in floodplain capacity, and second, the likelihood that the appellants would fulfil the requirements of the evacuation plan at all times.
47. On the first point, I accept the assurances made by the appellants that the resources to restore the site levels are available to them, and this can be conditioned in a form that would negate the benefit of any permission without compliance. So far as the commitment to observe the requirements of the evacuation plan so long as the site remains in use, on the basis of the evidence given at the Inquiry I am confident that they understand fully the requirements and would be capable flood wardens, and further that they appreciate the dangers that they and their families would face if the evacuation plan was to be ignored or not properly implemented.
48. Overall, I am satisfied that, subject to appropriate condition the developments can be made safe for their lifetime, taking into account the vulnerability of the occupiers, without increasing flood risk elsewhere. The developments would remain, nonetheless, in conflict with development plan and national policies so far as flood risk is concerned.

Other considerations

The need for, and provision of, traveller sites and the availability of alternative sites

49. PPTS requires local planning authorities to make their own assessment of need for the purposes of planning, to set pitch targets for travellers which address the likely needs, and to identify a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. The most recent assessment found a need for 61 additional pitches over the period 2017 to 2032, and there is not a 5 year supply. There is no strategy to address outstanding need through the development plan process that can be given any weight at present, and there is a history of policy failure in this regard, the Council having been directed by the Secretary of State to make significant

improvement to supply and delivery. Save for the criteria for assessing windfall sites and the objective to safeguard existing authorised pitches at specified sites, CS Policy CS21 is out of date.

50. Further, the Council has not been able to point to any suitable and available alternative sites for the appellants within the District or the wider area, and it has acknowledged that it is likely that many, if not most, new sites that will have to be found will be in what is currently Green Belt.
51. These are all matters to which I accord substantial weight in favour of the appeals.

Personal circumstances

52. The two families living at the site formerly lived on Council owned sites in the district which were not suitable for their circumstances, due mainly to overcrowding, social and health issues. This has been acknowledged by the Council. They have strong connections to the area, including extended family who provide significant support. A number of the occupants have significant health issues, and living at the site has been highly beneficial in this respect, not least in terms of the positive environment it provides for the children's upbringing. The children have been able to access education, including mainstream education, and all of the occupants have good access to health care. The need for the additional pitch in Appeals A and B is to accommodate an adult child of one of the appellants who has been providing significant health care for her, and will continue to do so, but is now married and needs a separate space.
53. Subject to satisfactorily addressing the matter of flood risk, it is clearly in the best interests of the children to continue to live at the site, there being no identifiable alternative, and this is a primary consideration. Dismissal of the appeals would see the families having to leave the site, which would also interfere with their rights under Article 8 of the European Convention on Human Rights, the right to respect for their private and family life. Again, these are matters to which I shall accord substantial weight.

Intentional unauthorised development

54. It is government planning policy that intentional unauthorised development is a material consideration that should be weighed in the determination of planning applications and appeals. The written ministerial statement announcing this policy expressed concern that where the development of land has been undertaken in advance of obtaining planning permission there is no opportunity to appropriately limit or mitigate the harm that may have been caused. The appellants have undertaken to carry out remedial work to undo the physical harm to the site that has occurred to date, but the works that have taken place in advance of the planning application has prevented proper assessment of the ecological interests that may be affected. In the circumstances therefore I consider that the unauthorised nature of the developments should attract some adverse weight.

Planning balance

55. By definition, inappropriate development is harmful to the Green Belt, and further harm arises through the loss of openness and encroachment on the countryside. Each of these carries substantial weight, and I have also found

harm to local character and conflict with local and national policies on avoiding flood risk. The intentional nature of the unauthorised development also weighs against a grant of permission.

56. The sum of this harm must be balanced against the factors in favour of the proposal. At present, the District has a significant level of unmet need for traveller sites, as is the case regionally and nationally, and the Council has a very poor record of bringing forward sites through the development plan process. There is not a 5-year supply of sites, nor is there any alternative site at present, and the previous strategy for addressing need has simply not come to fruition. I am reluctant to say that there is no strategy in train to overcome the policy and actual provision failures to date, but none has been brought to my attention. I cannot therefore have any confidence that the needs of the occupants are likely to be met in the foreseeable future.
57. So far as the question of whether the weight of other considerations clearly outweighs the harm goes, the Council's position, as reflected in the reasons for refusal and for issuing the notice, was that it would, were it not for the flood risk. I consider that the site can be made safe from flooding for its lifetime so long as it is satisfactorily remediated and the Flood Evacuation Plan thereafter strictly adhered to, but I accept that there would still be a residual element of risk that could be avoided altogether if the site was not located in a flood plain. However, that must be viewed in the context of the current lack of alternatives and the poor outlook for future provision for the occupants, and its likely very negative consequences, I consider that residual risk to be acceptable. The beneficial aspects of the site for its occupants, particularly so when it comes to the interests of the children, would also assist in terms of the duty to advance equality of opportunity for the occupiers who, by virtue of their ethnicity, are at risk of discrimination, harassment, and victimisation.
58. In balancing these opposing considerations and their respective weights, I consider that the Green Belt and other harm is clearly outweighed by that of the other considerations in this case. It follows that the very special circumstances necessary to justify a grant of planning permission for the developments in the Green Belt exist. As such, the developments accord with CS Policy CS21. I have identified other development plan policy conflicts, but these have all been part of the balancing process, so I find that there is no overall conflict with the development plan, read as a whole.
59. I will however restrict the occupancy of the site to those currently living there, a personal permission in other words. I do this because of the weight that I have accorded to their personal circumstances and the reliance I have placed on their assurances of compliance with the requirements of the evacuation plan, without which I would have insufficient confidence in its efficacy.

Conditions

60. I have considered the conditions suggested by the Council and discussed with the parties at the Inquiry. Conditions limiting occupation as described above, and to travellers as defined in PPTS, are necessary in view of their contribution to the establishment of very special circumstances. In the interests of local character, amenity and flood resilience I shall also limit the number of pitches and caravans. The planning permissions are granted on the basis of a return to pre-existing site levels. The materials brought onto the site are currently of unknown provenance and may contain some contamination. Conditions are

necessary to address this, ensure that any retained on the site is free from contamination and any to be removed is disposed of appropriately. Conditions to ensure that the site is developed appropriately, in terms of layout, drainage, fencing and external lighting are also necessary, in the interests of flood risk, character, amenity and environment. Details of dayrooms, stables, mobile home foundations and landscaping, buffer zone retention and enhancement, and precluding non-approved fencing are necessary in the interests of local character, flood resilience and the environment, as are conditions precluding the burning of materials, the external storage of materials, the parking of large commercial vehicles and carrying out commercial activities. I shall also preclude commercial use of the equestrian land and facilities, restrict the number of horses and manure storage in the interests of local character and to reflect the terms of the 2017 permission which underlies the principle of equestrian use of the site or wider site, as the case may be.

61. To mitigate flood risk, I shall require approval of, and compliance with, a Flood Evacuation Scheme. A detailed condition was proposed by the Council, but I consider that a detailed Flood Evacuation Scheme to form the basis of the condition allows a more bespoke, site specific, approach.
62. A condition proposed to erect additional fencing along the railway boundary to prevent trespass is not necessary since trespass on the railway land is covered by other legislation.
63. In view of the retrospective nature of the developments, the construction of some conditions is to ensure that the requisite works or actions are carried out, otherwise the benefit of the permissions will fall away.

Conclusion

64. Very special circumstances have been demonstrated in both appeals sufficient to justify a grant of planning permission personal to the appellants and to Mrs Mullane's eldest son and his partner. The appeals succeed accordingly.
65. Since I am granting permission on the deemed planning application, the enforcement notice, as amended will be quashed, hence the appeals on ground (f) and (g) do not require consideration.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alan Masters
of Counsel

He called	
Ian Walton	Flooding
Mary Doherty	Appellant
Caroline Mullane	Appellant
Angus Murdoch	Planning

FOR THE LOCAL PLANNING AUTHORITY:

Horatio Waller
of Counsel

He called	
Scott Jones	Flooding
Jason Grove	Planning

DOCUMENTS

- 1 Opening submissions and costs application - Council
- 2 Copy of appeal decision APP/P0119/C/20/3263107
- 3 Copy of planning permission PT17/1427/F
- 4 Copy of Butler v Bath and North East Somerset District Council & Ors [2003] EWCA Civ 1614
- 5 Legal note 1 - Waller
- 6 Signed Statement of Common Ground
- 7 Letters of support
- 8 Indicative 3-pitch layout
- 9 Legal note 2 - Waller
- 10 List of conditions (draft)
- 11 Council's closing submissions
- 12 Appellant's closing submissions
- 13 Appellant's costs application

SCHEDULE OF CONDITIONS: Appeal A: APP/P0119/C/20/3264071

1. The site shall be occupied only by Mrs Caroline Mullane, Mrs Mary Doherty, Patrick Mullane and his wife Mary Ann Dolan, and their resident dependants.
2. The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
3. There shall be no more than 3 pitches on the site. No more than five caravans (of which no more than two shall be a static caravans), as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time.
4. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land and buildings erected for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) EITHER: within 3 months of the date of this decision, written documentation shall be submitted to the local planning authority to verify the source of the soils and hardcore materials imported onto the site, and to show that they are free from contamination. Documentation which may be considered satisfactory could include supplier details, site of origin, waste transfer notes and quantities of materials supplied; OR; in the absence of such evidence, or if the local planning authority refuse to agree its acceptability, within 6 months of the date of this decision detailed investigations including sampling of the imported materials shall be carried out by a suitably qualified and experienced person to identify the extent, scale and nature of any contamination including the presence of asbestos materials, and a report shall be submitted to the local planning authority describing the potential risks to human health, property/buildings and service pipes, adjoining land, ground waters and surface waters, and ecological systems. Where unacceptable risks are identified, the report shall include an appraisal of available remediation options, the proposed remediation objectives or criteria, and identification of the preferred remediation option/s. The programme of works should be described in detail including a timetable for the implementation of the various parts and the methodology that will be applied to verify that the works have been satisfactorily completed.
 - ii) within 8 months of the date of this decision, the above details or report shall have been approved by the local planning authority, or, if the local planning authority refuse to approve the details or report, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, 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 details or report shall have been approved by the Secretary of State.
 - iv) any approved scheme shall have been carried out and completed in accordance with the approved timetable.

5. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land and buildings erected for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (v) below:
 - i) within 3 months of the date of this decision a scheme, hereafter referred to as the Site Development Scheme, including details of (a) site layout clearly identifying the location of the pitches, including the siting of caravans; areas for vehicular access and turning and manoeuvring; areas of hardstanding; fencing and other means of enclosure fences; dayrooms, stables, manure pile, wildlife buffer zone and the location of services. For the avoidance of doubt, the fencing used shall be designed to allow the free passage of floodwaters through the site and the WC/utility/day blocks shall have flood resilience design measures; b) any works or steps required to mitigate contaminants and/or remove materials as necessary in accordance with condition 4; c) the reduction of the levels of the site so that they correspond with "pre-development levels" as recommended in the document entitled "Hearing Statement of Ian Walton" dated May 2022 (SLR Ref: 407.XXXXX.00001). For the avoidance of doubt, the "pre-development levels" are taken to correspond to the levels shown in the topographical plan dated 30 September 2019 (AVH_574) to the west of the area labelled 'new hardstanding'; d) foul and surface water drainage systems, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development; e) a scheme of landscaping which includes all hard and soft landscaping and details of existing boundary trees/hedges and measures for their protection and retention; f) proposed external lighting on the boundary of and within the site; g) details for the provision of a site access, including surfacing, that enables all vehicles using the site to enter the site without stopping on the public highway, and h) a scheme for the ecological enhancement of the wildlife buffer zone, 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) within 6 months of the date of this decision the Site Development Scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, 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 scheme shall have been carried out and completed in accordance with the approved timetable, and works comprised in the scheme shall be thereafter retained for the duration of the development.
 - v) Any contamination found during the course of construction of the development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried

- out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found additional remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development, or relevant phase of the development, is resumed or continued.
6. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land and buildings erected for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
- i) within 3 months of the date of this decision a scheme, hereafter referred to as the Flood Evacuation Plan, prepared in accordance with Annex 09 of the document entitled "Hearing Statement of Ian Walton" dated May 2022 (SLR Ref: 407.XXXXX.00001) 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) within 6 months of the date of this decision the Flood Evacuation Plan shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, 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 Flood Evacuation Plan shall have been approved by the Secretary of State.
 - iv) the Flood Evacuation Plan shall have been implemented in accordance with the approved timetable, and shall be thereafter retained and complied with for the duration of the development.
7. All streetlights shall be removed from the site within 3 months of the date of this decision. Upon implementation, the lighting shall thereafter be limited to that set out in the approved Site Development Scheme.
8. Any trees or other plants planted in accordance with the approved Site Development Scheme which, within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
9. No fencing or other means of enclosure shall be erected at the site other than those set out in the approved Site Development Scheme.
10. Construction of any dayrooms/utility blocks shall not commence until details of materials proposed for the external surfaces of the buildings have been submitted to and approved by the local planning authority. The dayrooms/utility blocks shall be completed strictly in accordance with the details approved.
11. Construction of the stable block shall not commence until details of materials proposed for the external surfaces of the buildings have been submitted to and approved by the local planning authority. The stable block shall be completed strictly in accordance with the details approved.

12. The wildlife buffer zone detailed in the approved Site Development Scheme shall be maintained free of any structure or hardstanding at all times.
13. Manure/muck shall only be stored in the position indicated on the approved Site Development Scheme.
14. The stables and land shall be restricted to personal use only and not used as a DIY livery, riding school or any other business.
15. The number of horses kept on the land shall not exceed 4.
16. Within 12 months of the date of this decision the remains of the pre-existing building and hardstanding in the south-west corner of the site shall be demolished, all resulting materials permanently removed from the site, and the land levelled and reseeded.
17. No commercial activities shall take place on the land, including the storage of materials.
18. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
19. No burning of materials, including straw and manure, shall take place on the site at any time.

SCHEDULE OF CONDITIONS: Appeal C: APP/P0119/W/20/3264070

1. The site shall be occupied only by Mrs Caroline Mullane, Mrs Mary Doherty, Patrick Mullane and his wife Mary Ann Dolan, and their resident dependants.
2. The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
3. There shall be no more than 2 pitches on the site. No more than five caravans (of which no more than two shall be a static caravans), as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time.
4. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land and buildings erected for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) EITHER: within 3 months of the date of this decision, written documentation shall be submitted to the local planning authority to verify the source of the soils and hardcore materials imported onto the site, and to show that they are free from contamination. Documentation which may be considered satisfactory could include supplier details, site of origin, waste transfer notes and quantities of materials supplied; OR; in the absence of such evidence, or if the local planning authority refuse to agree its acceptability, within 6 months of the date of this decision detailed investigations including sampling of the imported materials shall be carried out by a suitably qualified and experienced person to identify the extent, scale and nature of any contamination including the presence of asbestos materials, and a report shall be submitted to the local planning authority describing the potential risks to human health, property/buildings and service pipes, adjoining land, ground waters and surface waters, and ecological systems. Where unacceptable risks are identified, the report shall include an appraisal of available remediation options, the proposed remediation objectives or criteria, and identification of the preferred remediation option/s. The programme of works should be described in detail including a timetable for the implementation of the various parts and the methodology that will be applied to verify that the works have been satisfactorily completed.
 - ii) within 8 months of the date of this decision, the above details or report shall have been approved by the local planning authority, or, if the local planning authority refuse to approve the details or report, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, 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 details or report shall have been approved by the Secretary of State.
 - vi) any approved scheme shall have been carried out and completed in accordance with the approved timetable.
5. The development hereby permitted shall be carried out in accordance with the following plans, except in respect of any deviation from the plans

agreed in the Site Development Scheme approved under condition 6: Location plan 01b; Block plan existing 02b; Proposed block plan 03b; Floor Plans and elevations of utility building 04; Stable Floors plans 05a; Stable elevation 06a; Muck heap 07; Proposed elevations 08a; Treatment Plant 09; Existing site survey 010; Existing site survey (2) 011; Flood risk assessment; Preliminary Ecological Appraisal; Planning statement and justification report with appendix; all received 10/1/2020.

6. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land and buildings erected for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (v) below:
 - i) within 3 months of the date of this decision a scheme, hereafter referred to as the Site Development Scheme, including details of (a) site layout clearly identifying the location of the pitches, including the siting of caravans; areas for vehicular access and turning and manoeuvring; areas of hardstanding; fencing and other means of enclosure fences; dayrooms, stables, manure pile, wildlife buffer zone and the location of services. For the avoidance of doubt, the fencing used shall be designed to allow the free passage of floodwaters through the site and the WC/utility/day blocks shall have flood resilience design measures; b) any works or steps required to mitigate contaminants and/or remove materials as necessary in accordance with condition 4; c) the reduction of the levels of the site so that they correspond with "pre-development levels" as recommended in the document entitled "Hearing Statement of Ian Walton" dated May 2022 (SLR Ref: 407.XXXXX.00001). For the avoidance of doubt, the "pre-development levels" are taken to correspond to the levels shown in the topographical plan dated 30 September 2019 (AVH_574) to the west of the area labelled 'new hardstanding'; d) foul and surface water drainage systems, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development; e) a scheme of landscaping which includes all hard and soft landscaping and details of existing boundary trees/hedges and measures for their protection and retention; f) proposed external lighting on the boundary of and within the site; g) details for the provision of a site access, including surfacing, that enables all vehicles using the site to enter the site without stopping on the public highway, and h) a scheme for the ecological enhancement of the wildlife buffer zone, 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) within 6 months of the date of this decision the Site Development Scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, 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 scheme shall have been carried out and completed in accordance with the approved timetable, and works comprised in the scheme shall be thereafter retained for the duration of the development.

- v) Any contamination found during the course of construction of the development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found additional remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development, or relevant phase of the development, is resumed or continued.
- 7. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land and buildings erected for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme, hereafter referred to as the Flood Evacuation Plan, prepared in accordance with Annex 09 of the document entitled "Hearing Statement of Ian Walton" dated May 2022 (SLR Ref: 407.XXXXX.00001) 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) within 6 months of the date of this decision the Flood Evacuation Plan shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, 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 Flood Evacuation Plan shall have been approved by the Secretary of State.
 - iv) the Flood Evacuation Plan shall have been implemented in accordance with the approved timetable, and shall be thereafter retained and complied with for the duration of the development.
 - 8. All streetlights shall be removed from the site within 3 months of the date of this decision. Upon implementation, the lighting shall thereafter be limited to that set out in the approved Site Development Scheme.
 - 9. Any trees or other plants planted in accordance with the approved Site Development Scheme which, within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
 - 10. No fencing or other means of enclosure shall be erected at the site other than those set out in the approved Site Development Scheme.
 - 11. The wildlife buffer zone detailed in the approved Site Development Scheme shall be maintained free of any structure or hardstanding at all times.
 - 12. Manure/muck shall only be stored in the position indicated on the approved Site Development Scheme.

13. The stables and land shall be restricted to personal use only and not used as a DIY livery, riding school or any other business.
14. The number of horses kept on the land shall not exceed 4.
15. Within 12 months of the date of this decision the remains of the pre-existing building and hardstanding in the south-west corner of the field shall be demolished, all resulting materials permanently removed from the site, and the land levelled and reseeded.
16. No commercial activities shall take place on the land, including the storage of materials.
17. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
18. No burning of materials, including straw and manure, shall take place on the site at any time.
19. Construction of any dayrooms/utility blocks shall not commence until details of materials proposed for the external surfaces of the buildings have been submitted to and approved by the local planning authority. The dayrooms/utility blocks shall be completed strictly in accordance with the details approved.
20. Construction of the stable block shall not commence until details of materials proposed for the external surfaces of the buildings have been submitted to and approved by the local planning authority. The stable block shall be completed strictly in accordance with the details approved.