



Appeal Decisions

Inquiry Held on 29 & 30 November 2022

Site visit made on 30 November 2022

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2022

Appeal A: APP/P1615/C/22/3291233

Appeal B: APP/P1615/C/22/3291236

Callow Cottage, Ruddle, Newnham, Gloucestershire, GL14 1DS "The Land" shown edged red on the plan attached to the Notice "The Plan"

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Darren Larkham and Appeal B is made by Pitman Blackstock White Solicitors Executors of Mr F Larkin against an enforcement notice issued by Forest of Dean District Council.
 - The enforcement notice, numbered EN/0081/20, was issued on 24 December 2021.
 - The breach of planning control as alleged in the notice is '*without planning permission the material change of use of The Land for the sitting of an unauthorised static caravan with associated decking framework for residential purposes and the storage of static caravans*'.
 - The requirements of the notice are '1) cease the residential use of the static caravans within the redline area marked on the site location plan; (2) permanently disconnect all services from the static caravans within the redline area marked on the site location plan; (3) cease the use of the land for the storage of static caravans within the redline area marked on the site location plan; (4) remove from the land all static caravans and all associated residential paraphernalia within the redline area marked on the site location plan; (5) remove from the land the decking area (outlined in blue) marked on the site location plan; (6) remove from the land all resultant materials generated through compliance with steps 1-5 above, and (7) cease the use of the land as an unauthorised dock yard within the redline marked on the site location plan'.
 - The period for compliance with the requirements is 4 months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act) and Appeal B is proceeding on the grounds set out in section 174(2) (c), (d) and (f) of the Act. Since the prescribed fees have not been paid for Appeal B within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decisions

Appeal A: APP/P1615/C/22/3291233

1. It is directed that the enforcement notice be corrected by i) deleting all of the words in section 3 and replacing them with '*Without planning permission, the material change of use of the land for the siting of an unauthorised static caravan with associated decking framework for residential purposes as shown with the letter 'C' on the site location plan attached to the notice*'; ii) the deletion of all requirements in section 5(1) to (7) and replacing them with '5(1)

Cease the residential use of static caravan 'C' within the redline area marked on the site location plan, 5(2) permanently disconnect all services from caravan 'C' and remove all residential paraphernalia associated with caravan 'C' within the red line area marked on the site location plan, 5(3) remove caravan 'C' from the land within the redline marked on the site location plan, 5(4) remove from the land the decking framework area associated with caravan 'C', and 5(5) remove from the land all resultant materials generated through compliance with steps 1-5 above'; and iii) amending the site location plan attached to the notice in so far that it refers to caravan 'C'.

2. The corrected site location plan is provided at the end of this decision.
3. Subject to the above corrections and variations, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/P1615/C/22/3291236

4. In view of the corrections and variations made to the notice, I conclude that it has not been necessary for me to take any further action in respect of this appeal.

Application for costs

5. At the Inquiry, an application for costs was made by appellant A and appellant B against Forest of Dean District Council. These applications are the subject of separate Decisions.

Validity of appeal made by Mr Darren Larkham

6. The executors in respect of Appeal B comment that Mr Darren Larkham may not have an 'interest' in the land, i.e. they say he has no right to be on the land under the terms of his late fathers' will and that there is no provision in the will for him to occupy the land. They say that no written or oral permission has been given for him to occupy the site. To an extent these matters were addressed at appeal validation stage, but for the sake of completeness I provide my own views as follows.
7. The Procedure Guide: Enforcement Notice Appeals (England) 2022 (PG) states that to make an appeal against an enforcement notice, one must either have an interest in or be a relevant occupier of the land the enforcement notice relates to. Interest means either a legal or equitable interest in the land when the appeal is made (irrespective of one's status when the enforcement notice was served). This includes but is not limited to owners, lessees, some tenants, official receivers, mortgagees or other lenders. A relevant occupier is someone who, on the date on which the enforcement notice is issued, occupies the land through the consent of the owner whether oral, written or implied and continues to occupy the land when the appeal is made.
8. The last will and testament of Frederick Charles Larkham dated 16 December 2021 (this pre-dates the date of the enforcement notice of 24 December 2021) states that *'I give my property Callow Cottage Ruddle Newnham-on-Severn aforesaid which is my home to my children the said Susan Miranda Buck, Paula Larkham, Joy Hawes, Donna Larkham, Darren Larkham, Robin Larkham and*

Jason Larkham as tenants in common'. I am satisfied that Mr Darren Larkham has an interest in the land and hence his appeal is valid.

The Notice

9. There is a mismatch between the allegation and requirements of the original notice, in that requirement 5(7) requires the cessation of '*...the use of the land as an unauthorised dock yard within the redline marked on the site location plan*', but the allegation does not refer to a dock yard. Requirements should relate directly to the alleged breach of planning control. The Council and both appellants agree that requirement 5(7) should be deleted. The Council and appellant B confirmed that they were in agreement to making such a correction prior to the inquiry commencing in an email sent to all parties and the Planning Inspectorate on 11 October 2022. I am satisfied that varying the notice in this way would not in itself cause any injustice to any interested party. The three main parties at the inquiry confirmed that they shared this view. I shall therefore vary the notice accordingly.
10. As it stands, the notice refers to a mix of uses taking place on the site. The breach of planning control in the issued enforcement notice is targeted at the alleged storage of two static caravans and the siting of a static caravan with associated decking framework used for residential purposes. In respect of the two alleged stored caravans, the Council conceded at the inquiry that it no longer wanted to pursue these matters in respect of the issued enforcement notice. The Council confirmed that it was content for me to correct the allegation in the notice and the subsequent requirements so that there was no reference at all to the storage of caravans.
11. The Council's change of position was firstly in response to the oral evidence of Mr Darren Larkham who indicated that he agreed that the caravan adjacent to Callow Cottage was within the curtilage of such a dwellinghouse on the site and had been and was in use for a purpose incidental to the use of Callow Cottage as a dwelling house, i.e. occupied by friends and family as additional sleeping accommodation for many years in association with use of Callow Cottage.
12. There was no evidence from any party at the inquiry that this caravan had ever been used for any business or separate storage use in the past, although the Council had previously suspected this to be the case based on comments made by Mr Darren Larkham. In other words, the Council conceded on the basis of the oral evidence of Mr Darren Larkham at the inquiry that supported the case made by Appellant B, and other individuals, that such a caravan had been used for a purpose incidental to the enjoyment of the dwellinghouse known as Callow Cottage and hence, on the balance of probabilities, did not require planning permission. This caravan was referred to by all the main parties at the inquiry as caravan 'A'.
13. In respect of the second caravan that was allegedly being used for storage purposes, referenced by all of the main parties at the inquiry as caravan 'B', the Council's change of position in respect of this matter related essentially to an acceptance that it could not say, with any reasonable certainty, what lawful or unlawful use or uses were taking place on this part of the site when the notice was issued. In other words, the Council was not able to explain, with any certainty, why or if a material change of use of the land had occurred in respect of such a caravan. The Council's focus in terms of its change of position was in respect of '*saving time*' at the inquiry. This is a true reflection of what then

happened, but I do not find that it is reasonable to conclude that this was the only reason for the change.

14. At the inquiry, Appellant B confirmed its support to the Council's change of position in respect of the above. Both it and the Council indicated that they did not consider that injustice would be caused to any interested party if the allegation in the notice was corrected so that it referred only to the use of the land for the siting of a residential caravan with framework decking and with corresponding variations being made to the notice requirements so that they related only to such a caravan. This caravan was identified by all the main parties at the inquiry as caravan 'C'.
15. When questioned by me, appellant A did not support correcting and varying the notice in the manner outlined above. Concern was raised by Mr John Kendrick that the Council should have '*undertaken detailed and thorough enforcement investigations*' and that the notice should be quashed. When questioned by me, Mr John Kendrick did not, however, provide me with any reason(s) to substantiate his claim that the notice should be quashed.
16. Section 176(1) of the Act states that '*on an appeal under section 174 the Secretary of State may (a) correct any defect, error or misdescription in the enforcement notice; or (b) vary the terms of the enforcement notice, if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority*'. In this case, the agreement reached by the Council and appellant B in respect of correcting the allegation in the notice, as detailed above, would not, in my judgment, lead to injustice being caused to any interested party. When questioned by me, appellant A did not provide me with any reason(s) as to why injustice would be caused to them.
17. The ground (a) appeal relates solely to caravan 'C' and that would remain in terms of a corrected allegation. Furthermore, correcting the allegation, and by association the requirements of the notice, would not make such a notice more onerous. In fact, doing this would have the effect of narrowing the scope of the notice. Furthermore, I am satisfied that correcting the allegation in the notice would not have any negative consequences or lead to injustice for either appellant A or B in terms of the consideration of any of the other grounds of appeal.
18. Given the above, I shall therefore correct the allegation in the notice by deleting all of the words in section 3 and replacing them with:

'Without planning permission, the material change of use of the land for the siting of an unauthorised static caravan with associated decking framework for residential purposes as shown with the letter 'C' on the site location plan attached to the notice'.
19. In the interests of precision and certainty, and given the legal grounds of appeal pursued by appellant A, I have included the words '*material change of use of the land*' in the allegation. While some of the main parties questioned the need for this at the inquiry, it is noteworthy that Appellant A has pursued ground (c) and (d) appeals and this is on the basis of an alleged change of use of the land. I find that it is necessary to include the above words in the allegation in so far that the corrected notice is then on a certain footing.

20. The three main parties agreed at the inquiry that in the interests of precision, the site location plan attached to the notice should also be corrected so that it explicitly referred to caravan 'C' with its associated framework decking area. I have therefore corrected the plan on this basis and, in doing so, am satisfied that no injustice would be caused to any interested party.
21. Given the above corrections to the notice, it is therefore necessary for me to also correct the requirements. Given the corrected allegation in the notice, I am satisfied that no injustice would be caused to any interested party if all of the requirements in section 5(1) to (7) of the notice were deleted and replaced with:
- '5(1) Cease the residential use of static caravan 'C' within the redline area marked on the site location plan, 5(2) permanently disconnect all services from caravan 'C' and remove all residential paraphernalia associated with caravan 'C' within the red line area marked on the site location plan, 5(3) Remove caravan 'C' from the land within the redline marked on the site location plan, 5(4) remove from the land the decking framework area associated with caravan 'C', and (5)(5) remove from the land all resultant materials generated through compliance with steps 1-5 above'.*
22. I shall accordingly vary the requirements of the notice.

Appeals on ground (c) and (d)

23. The appeals made on ground (c) are that the matters alleged do not constitute a breach of planning control. The appeals made on ground (d) are that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
24. Given the corrected allegation in the notice, as agreed by appellant B, it is not now necessary for me to consider any further the grounds (c) and (d) appeals lodged by appellant B, which relate to caravans 'A' and 'B'. The ground (c) and (d) appeals for consideration therefore relate solely to caravan 'C', i.e. the appeals made by appellant A.
25. The evidence is that caravan 'C' was brought onto the site in 2017. It was subsequently moved to a different position on the site in about 2020 as shown with the letter 'C' on the corrected site location plan attached to the notice. When the notice was issued, the Council's photographs show that such a caravan had an associated framework decking. In my judgment, on the evidence before me, this was erected on the basis of being part and parcel of the use of the land for a residential caravan. In other words, the framework decking was erected to facilitate the use of the land as a residential caravan. Indeed, in oral evidence Mr Darren Larkham confirmed that it was always his intention to *'finish it off'* with railings and deck boarding to provide outside amenity space in association with use of the residential caravan.
26. The evidence is that caravan 'C' has been used as primary living accommodation by Mr Darren Larkham. My site visit revealed that the residential caravan was on wheels. Mr Darren Larkham has paid Council Tax in respect of the residential caravan with records indicating it is his 'second

home'. As a matter of fact and degree, the breach of planning control is a residential caravan and not a building.

27. I find that use of the land for residential caravan 'C' amounts to a primary use of the land. This part of the site does not have an intimate association with Callow Cottage and, as a matter of fact and degree, does not form part of its curtilage. Furthermore, and, in any event, no reasonable evidence has been provided by appellant A to indicate any functional relationship between use of caravan 'C' and Callow Cottage. At the inquiry, I was informed by Appellant B that Callow Cottage had been separately rented out. There was no suggestion from any party at the inquiry that caravan 'C' did not have all the facilities needed for day to day residential use or that when the notice was issued it was not being lived in by Mr Darren Larkham (and occasionally also his girlfriend) as a separate residential caravan.
28. At the inquiry, appellant A confirmed that the substance of the grounds (c) and (d) appeals related to a claim that there had been a residential caravan and/or camping use on the site for a sufficient period of time to have acquired immunity. In that regard, the claim made was that the provision of a further residential caravan on the site would not amount of a material change of use requiring planning permission.
29. I do not find that there is sufficient evidence before me to indicate that there is an established and lawful use of the site as a residential caravan and/or camping site. There are, for example, no photographs, witness statements, invoices, lease agreements or any details relating to the extent of continuous use. In oral evidence, neither Mr Darren Larkham, nor Mr John Kendrick, were able to provide any specific evidence to support such a contention.
30. The onus is on the appellant to make their case under grounds (c) and (d) and my above doubts about an established residential caravan and/or camping use on the site is exacerbated by the fact that appellant A submitted a planning application on 13 December 2021 (subsequently invalid) for the same development which was described as '*change of use to retain the caravan on the site for residential purposes for a period of three years*'¹. Furthermore, in oral evidence Mrs Susan Buck commented that she was very familiar with the site and had regularly visited for many years (since 2008) and that she '*did not remember tents on the site*' and that the land had '*not been used as a residential caravan site*'.
31. For the above reasons, I find that the evidence indicates that caravan 'C' does therefore amount to a breach of planning control. In respect of the decking framework, the evidence is that this has been constructed to facilitate the unauthorised use of the land as a residential caravan. I therefore conclude that the ground (c) appeal lodged by appellant A fails.
32. Under ground (d), appellant A says that the caravan is immune from enforcement action due to it being on the site for more than four years. Section 171(B) of the Act states '*where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach*'. No change of use of a building has taken place and so four years is not relevant. Section 171 (c) is

¹ Planning application P2046/21/FUL

relevant in respect of caravan 'C' which states '*in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach*'.

33. As detailed above, no persuasive evidence has been submitted from Appellant A to indicate residential use of the land by caravan 'C' for a period of ten years. I would also add that the evidence is that the decking framework was erected to facilitate the unauthorised change of use. On the balance of probabilities, I find that caravan 'C' was not immune from enforcement action when the notice was issued and hence enforcement action could be taken at this time. In this regard, I conclude that the ground (d) appeal lodged by appellant A fails.

Appeal on ground (e)

34. The appeal on ground (e) is that copies of the notice were not properly served on everyone with an interest in the land as required by s.172 of the Act.
35. The claim made by appellant A is that notice was not served on everyone with an interest in the land, namely all interested parties in the affairs associated with Mr Frederick Larkham's (deceased) estate. While it is clear that the Council did not serve the notice dated 24 December 2021 on all the individuals listed in Mr Frederick Larkham's last will and testament dated 16 December 2021, it did serve notice on the executors of the late Mr Frederick Larkham's estate (i.e. Pitman Blackstock White Solicitors) and it is noteworthy that they are a separate appellant taking part in this appeal. Furthermore, Appellant B confirmed at the inquiry that it had distributed copies of the notice to all beneficiaries of the late Frederick Larkham's will.
36. Notwithstanding the above, at the inquiry appellant A commented that the claim made under ground (e) was actually on the basis that Mr Robin Larkham had not been served with a copy of the notice. However, Mr Robin Larkham was in attendance at the inquiry and confirmed orally that he had in fact received a copy of the notice from the Executors (i.e. appellant B). Even if that had not taken place, Mr Robin Larkham was in attendance at the inquiry and was afforded the opportunity to speak.
37. I am satisfied that the Council did take all reasonable steps to serve a copy of the notice on the owner and occupiers of the site and everyone with an interest in the land that would be materially affected by such a notice as required by s.172 of the Act. This included obtaining land registry details. Therefore, I conclude that the ground (e) appeal fails.

Appeal on ground (a) and the deemed planning application

38. The appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice.
39. At the inquiry, I sought clarification from appellant A, who is the only appellant appealing under ground (a), that his deemed planning application was made solely in respect of the residential caravan with associated decking framework. Appellant A confirmed that this was the case. I am therefore determining the ground (a) appeal on the basis of only this matter noting that the allegation has now changed and, in any event, s.177(1) provides that planning permission may be granted '*in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates*'.

40. I have considered the reasons for issuing the enforcement notice in so far as it relates to caravan 'C'. In this regard, the main issues are (i) whether caravan 'C' is acceptable in land-use principle terms having regard to local and national policy, (ii) the effect of caravan 'C' (including the associated decking framework) on the character and appearance of the countryside, including landscape character; (iii) whether caravan 'C' is at risk of flooding and whether the sequential and exception tests are passed; (iv) the effect of caravan 'C' on biodiversity; (v) whether Caravan 'C' has acceptable outside amenity space; and (vi) whether Caravan 'C' constitutes a sustainable form of development.

Principle of use of the site for a residential caravan

41. Policy CSP.4 of the Forest of Dean District Council Core Strategy 2012 (CS) states that '*most changes in towns and villages will be expected to take place within the existing settlement boundaries, unless or until they are replaced by other LDF documents (for example an Area Action Plan). Exceptions to this may include affordable housing for local persons and building conversions and (rarely) new buildings for employment uses on the edge of settlements*'.
42. The appeal site is not within a town or village. The nearest settlement is relatively close at Newnham on Severn, but nevertheless the residential caravan is located within land designated as countryside in the CS.
43. I conclude that there is direct conflict with the strategic and locational requirements of policy CSP.4 of the CS in so far that caravan 'C' does not fall within an existing settlement boundary and the evidence does not support any claim that the development relates to affordable housing for a local person. Indeed, at the inquiry appellant A asserted that the caravan was being provided as a form of 'affordable housing', but I was not provided with any reasonable or objective evidence to support such a contention. There is no evidence before me to support a view that Mr Darren Larkham is in need of an affordable home, or that caravan 'C' qualifies as an affordable home for local persons. The identified conflict with policy CSP.4 of the CS is therefore a matter that weighs against allowing the ground (a) appeal.
44. Paragraph 80 of the National Planning Policy Framework 2021 (the Framework) states that in the rural area planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of circumstances a) to e) apply. The site is positioned within an area of countryside. Nonetheless, the site is relatively close to the settlement of Newnham on Severn and there is one dwelling (i.e. Callow Cottage) on the appeal site and some positioned on the main road. In my judgment (also shared by the Council), and for the purposes of considering paragraph 80 of the Framework, I find that the residential caravan is not far away from other places, buildings and people. I find that caravan C is not therefore an isolated home in the countryside. While this finding does not weigh against allowing the ground (a) appeal, it does not in itself overcome the development's conflict with policy CSP.4 of the CS.

Character and appearance including landscape character

45. The appeal site falls within the open countryside and is defined in the Council's Landscape Character Assessment 2002 (LCA) as being '*6b – Severn Vale*'. It is described as being deeply rural and with an absence of large settlements and with the predominant form of settlement in the form of isolated farm houses,

hamlets and small villages. While the appeal site is partly developed, it is nevertheless appreciated by passers-by on the river and from footpaths ENE20 and EAR46 as being set within a predominantly open, green and rural setting. The wider area is characterised as being devoid of any significant built form and the prevailing land form is comprised of areas of mature trees and woodland interspersed with pockets of open fields. This adds positively and distinctively to this countryside environment.

46. Caravan 'C' (including its associated framework decking) is positioned in a prominent position on the site when seen from the river. It can be seen at close distance, albeit glimpses, from public footpath ENE20, from the River Severn itself, and from longer distance views on the other side of the River Severn at public footpath EAR46.
47. Owing to its size, light colour and prominent position, I find that caravan C (including its framework decking) causes harm to the otherwise more open, green and rural setting that defines the landscape character of the area as a whole. I acknowledge that the appeal site is partly developed, but nevertheless the provision of a residential caravan is not a common characteristic in the wider landscape setting.
48. I acknowledge that the site is partly screened by trees, but nevertheless on my site visit I could see glimpsed views of the caravan between the trees from the public footpath to the side of the appeal site and then from higher ground where the footpath leaves the gate onto more open land. I recognise that the site does include some existing buildings. However, such buildings have muted tones. In contrast, the caravan is appreciated by passers-by as being bright and stark in the landscape and, in this regard, harm has been caused. I accept that the River Severn is not used frequently by those in boats, but nevertheless Mr Darren Larkham confirmed to me at the inquiry that some did pass through on occasion and in this regard the caravan is prominent and conspicuous given its close relationship with the water.
49. I accept that when viewed from footpath EAR46 the harm caused by the caravan and decking to landscape character is more limited in extent, given the separation distances involved. Nevertheless, I have considered the effect of the development in its totality when appreciated from main receptors and, overall, I find that caravan 'C', including the decking framework, has harmfully eroded the landscape character of the area and the intrinsic character and beauty of the countryside. This harm is greatest in respect of views from the River Severn itself and footpath ENE20. In effect, the development has unacceptably urbanised this countryside location.
50. While the ground (a) appeal is made on the basis of a temporary permission for residential use of caravan 'C' for three years, the development is not supported by local or national policies and, in any event, there would still be unacceptable harm caused to the character and appearance of the area, including landscape character, during this time period. I therefore conclude that harm would be caused to both landscape character and the intrinsic character and beauty of the countryside, without reasonable planning justification, and in this regard caravan 'C' does not accord with the landscape character, appearance, design and sustainability requirements of policies CSP.1, CSP.4, CSP.7 of the CS, policies AP 1 and AP 4 of the June 2018 Forest of Dean District Council

Allocations Plan 2006 to 2026 (Allocations Plan), or with paragraphs 130 and 174(b) of the Framework.

51. In reaching the above conclusion, I have taken into account the fact that new housing development has been approved on the other side/edge of the settlement of Newnham on Severn. This housing development has been allowed in accordance with a housing allocation for the site. While such development has clearly changed the settlement of Newnham on Severn, it has not fundamentally changed the landscape character of the area or materially altered the intrinsic character and beauty of areas of designated countryside. The existence of this housing development does not therefore alter or outweigh my conclusion above. Furthermore, the development plan policy position in respect of that site and the appeal site are not analogous.

Flood Risk

52. Based on Environment Agency (EA) information, Caravan 'C' falls partly within flood zone 2 and partly within flood zone 3. The appellant has submitted a flood risk assessment (FRA) prepared by Corner Water Consulting Ltd. It is not disputed that even after accounting for climate change and sea level rises, peak river levels are below the ground levels of caravan 'C'. Notwithstanding the 'highly vulnerable' categorisation of the residential caravan (i.e. based on annexe 3 of the Framework), the EA raise no objection to the location and residential use of caravan 'C' in terms of the safety and risk to occupants. I have no reason to disagree with the conclusions reached by the EA in this regard.
53. At the inquiry, and as part of the round table discussion, Mr Alan Corner of Corner Water Consulting Ltd, acting for appellant A, indicated that he did not consider the EA flood risk maps to be accurate and asserted that the site was in flood zone 1. He did nonetheless acknowledge that this view had not been verified by the EA. Furthermore, this was not a detailed matter that had been included in his proof of evidence. Even if there was some merit in the claim that the EA flood maps were inaccurate, I would have expected appellant A to have obtained the views from the EA about such a matter as part of the ground (a) appeal. This has not happened and hence I am unable to afford the claims made by Mr Alan Corner any material weight in the decision making process. In this case, I find that I should adopt a precautionary approach and determine the appeal on the basis of the EA published flood maps.
54. The Framework requires applications in areas of high flood risk to also include a sequential, risk-based approach to the location of development. The FRA does not include an assessment of potentially available and suitable sites in areas of lower flood risk. In the absence of a detailed sequential assessment, I cannot conclude that there is sufficient evidence that there are not reasonably available sites that would be appropriate for caravan 'C' in areas with a lower risk of flooding. Consequently, the sequential test is not passed and hence there is conflict with the flood risk requirements of chapter 14 of the Framework.
55. Furthermore, as the sequential test is not passed, I am not able to consider the development against the exception test. It is of note, in any event, that table 2 of the flood risk and coastal change chapter of the Planning Practise Guidance (PPG) requires an exception test for flood Zone 2 areas, but states that

'development should not be permitted' for 'highly vulnerable' development in flood zone 3.

56. I conclude that the sequential test has not been passed. Consequently, caravan 'C' does not accord with the flood risk requirements of policy CSP.1 of the CS, chapter 14 of the Framework and the PPG.

Biodiversity

57. The appellant has submitted an ecological appraisal prepared by NKM Associated dated January 2022. A site survey was conducted on 20 January 2022 and there was no evidence that the proposal would harm any protected species or birds. Nonetheless, paragraph 174 of the Framework states that decisions should contribute to and enhance the natural and local environment by *'minimising impacts on and providing net gains for biodiversity'*.
58. There are no proposals before me to provide a net gain for biodiversity. There was some discussion at the inquiry about whether this would be a matter that was capable of being conditioned. However, caravan 'C' has been sited on a hard standing area which Mr Darren Larkham indicated was not in place previously.
59. I do not know, with any detailed certainty, if the hardstanding has had an adverse impact on biodiversity more generally. In other words, there is no assessment before me about such a matter or indeed what implications that might have from a biodiversity net gain point of view. The notice does not seek to attack or remove the said hard standing area.
60. As discussed at the inquiry, there is no certainty in landownership/control terms that Mr Darren Larkham would be able to provide biodiversity net gains on the site as part of a condition should that be required. While not a determinative issue in respect of this appeal, appellant B commented at the inquiry that separate action was being taken to ensure that Mr Darren Larkham vacated the site. In this case, I am not satisfied that a condition requiring the approval of a biodiversity net gain scheme would meet the tests of reasonableness or enforceability.
61. For the above reasons, I conclude that the development does not accord with the biodiversity requirements of paragraph 174 of the Framework and policy CSP.2 of the CS.

Outside amenity space

62. Caravan 'C' includes an associated decking framework. Based on the Council's photographs, and comments made by Mr Darren Larkham at the inquiry, it is clear that the decking framework that existed when the notice was issued is not the same that exists on the site now. Nevertheless, it is necessary that I determine this ground (a) appeal on the basis of what was in situ when the notice was issued and not what exists now. This is a matter that was clearly understood and agreed by all three main parties at the inquiry.
63. I acknowledge that the framework decking, as provided when the notice was issued, would not be capable of being reasonably used for sitting out, relaxing or undertaking other domestic activities. However, I find that it would be possible to provide a solid top to the decking framework such that it could be used for outside amenity space and associated domestic purposes.

Furthermore, there was common ground at the inquiry that solid sides to parts of the decking would have the effect of ensuring acceptable privacy and peace and quiet for occupiers of caravan 'C', particularly in the context of a temporary three year planning permission and an acknowledgment that, at least at this moment in time, there was limited activity taking place on the rest of the red edged appeal site.

64. In the context of the above, the Council accepted at the inquiry that this main issue could be overcome by means of the imposition of a planning condition in respect of '*finishing off*' the framework decking area. Indeed, such a condition was drafted by the Council at the inquiry and agreed by appellant A.
65. Subject to a condition, and the temporary nature of a planning permission, I therefore conclude that the amount and quality of outside amenity space would be capable of being acceptable in living condition terms. In this regard, the ground (a) appeal development would not conflict with the amenity requirements of paragraph 130 (f) of the Framework.

Planning balance and conclusion - ground (a) appeal

66. I acknowledge that the provision of a residential caravan on the site would assist in making some temporary contribution to the supply of housing in the area. This is in the undisputed context that the local planning authority cannot demonstrate a five year supply of deliverable housing sites in the area. However, the contribution from a residential caravan and, importantly on the basis of a temporary three year planning permission, would not be material. Indeed, as permission is sought only for three years, the development would not come in to the five year housing land supply as it would have to be removed by condition within the same five year period.
67. There would be some economic benefits associated with occupants of the residential caravan supporting and utilising facilities, amenities and services in the nearby settlements/area, although this would not be a significant benefit given that only one residential unit is under consideration and as a three year planning permission is being sought.
68. I acknowledge that living on the site is convenient for Mr Darren Larkham in so far that the site is not very far from his business activities at Bullo Pill. I am not entirely certain if Mr Darren Larkham is also undertaking any land or water activities on the appeal site itself, but, in any event, I have not been provided with any reasonable evidence to indicate why it would not be possible to find alternative available accommodation within the immediate area that would also offer similar convenience. Mr Darren Larkham did comment at the inquiry that he considered that it was better to live on site as '*boats can sometimes become free*', but I am not persuaded that this has ever been a regular occurrence that would justify living on the site for three years.
69. The Council does not dispute the appellant's claim that the site is in an accessible location. I have no reason to disagree with this, noting that paragraph 105 of the Framework states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas and '*significant development*' should be focused on locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes.

70. Caravan 'C' is not significant development in the context of the above. However, I find that meeting accessibility requirements or compliance with paragraph 105 of the Framework is a matter of neutral consequence in the overall planning balance. Furthermore, owing to the location of the caravan, and its separation from Newnham Conservation Area and nearby listed buildings, I do not find that it has caused any harm to the setting or significance of such heritage assets. This is a position shared by the Council. In this regard, there is no conflict with policy AP5 of the Allocations Plan. Again, this is a matter of neutral consequence in decision making terms.
71. While the evidence is that the local planning authority cannot demonstrate a five year supply of deliverable housing sites, paragraph 11d (ii) of the Framework is not engaged owing to the fact that I have concluded that the proposal does not accord with the flood risk requirements of the Framework. This provides a clear reason for refusing caravan 'C' having regard to paragraph 11d (i) of the Framework and footnote 7.
72. While I have found, subject to a condition, that Caravan C would be acceptable in terms of the amount and quality of outside amenity space, harm has nonetheless been caused to the character and appearance of the countryside and to landscape character. Furthermore, I have been provided with no details to secure biodiversity net gain on the site and, in this case, I do not find that this is a matter that could be reasonably controlled by condition. In addition, the development does not satisfy the flood risk requirements of local and national planning policy and there is conflict with the strategic requirements for the location of development in respect of policy CSP.4 of the CS, the latter of which I find is consistent with the sustainability objectives of the Framework. Collectively, I afford very significant weight to the aforementioned conflicts and harms in the planning balance.
73. Overall, I find that the identified harms significantly outweigh the identified benefits of retaining caravan 'C' for a temporary three year period. In this case, I have found that paragraph 11d of the Framework is not engaged given the clear reason for refusal in terms of flood risk. However, even if one were to disagree with this, then I would have concluded that the adverse impacts of caravan 'C' with its associated decking framework on a three year temporary consent basis, would have significantly and demonstrably outweighed the identified benefits above when assessed against the policies in the Framework taken as a whole. Consequently, I conclude that the development does not amount to a sustainable form of development. Therefore, the ground (a) appeal fails.

Appeals on ground (f)

74. The appeals made under ground (f) are that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach. Given the corrected allegation and requirements above, which includes the removal of requirement 5(7) requiring ceasing the use of the land as '*an unauthorised dock yard*', it has not been necessary for me to consider the ground (f) appeal lodged by appellant B any further. At the inquiry, all three main parties agreed the wording in respect of the corrected allegation and requirements.

75. Appellant A claims that original requirement 5(4), which requires the removal of all static caravans and all associated residential paraphernalia, is excessive given that the enforcement appeal site includes existing residential uses such as that at Callow Cottage and including caravan A. Given the corrected site location plan that now refers specifically to caravan 'C', and the corrected allegation and requirements, it has not been necessary for me to consider this matter any further.
76. Appellant A claims that the framed decking would be permitted development if planning permission were to be allowed for caravan 'C' and hence should not be required to be removed. The ground (a) appeal has not succeeded and deemed planning permission has not been granted for caravan 'C'. Furthermore, the evidence is that the decking framework was constructed as part and parcel of the unauthorised use of the land for a residential caravan. For these reasons, this requirement is not excessive and it is necessary to remedy the breach of planning control.
77. I conclude that the ground (f) appeal made by appellant A does not succeed.

Appeal on ground (g)

78. The appeal on ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.
79. Appeal (g) is made by appellant A. He originally requested a period of 12 months on the basis that he was trying to provide *'other sources of accommodation and a new camping and caravan facility at nearby Bullo Pill'*. In the proof of evidence prepared by Mr Kendrick the request has been changed to 18 months on the basis that *'the local planning authority has carried out further enforcement actions against the appellant at nearby Bullo Pill'*.
80. The evidence is that a planning application for *'change of use of land for the stationing of four static caravans and five mobile caravans with engineering operation raising land levels (retrospective)'*² did not include the provision of permanent or temporary residential accommodation on such a site. In any event, the evidence is that such a planning application was refused on 25 July 2022. I do not therefore find that the appellant has provided reasonable justification that a period of 4 months to comply with the requirements of the notice falls short of what should reasonably be allowed.
81. I recognise that in upholding the notice, it would mean that the occupiers of the caravan 'C' would lose a home. In this regard, I have taken into account rights under Article 8 of the Human Rights Act 1998, which states that everyone has a right to respect for private and family life, their home and correspondence. In this case, there is no reasonable evidence before me to indicate that a significantly extended compliance period would be reasonably needed in order for occupants of caravan 'C' to find alternative accommodation.
82. Indeed, in oral evidence Mr D Larkham confirmed that he owned a second home in Cornwall that was empty and could therefore be occupied now. While I acknowledge that this dwelling is some distance away from Mr Darren Larkham's site at Bullo Pill, it would nevertheless be possible for him to consider either temporarily relocating to this property and/or putting it up for

² Planning application P2047/21/FUL

sale thereby enabling him to more easily rent or buy an authorised dwelling closer to Bullo Pill.

83. The appellant contends that he has attempted to '*achieve living and security accommodation for himself on either Bullo or Callow for over five years*'. There is no evidence before me to indicate that reasonable and justified attempts have been made to secure planning permission for residential use on the appeal site. Furthermore, and, in any event, I do not find that this in itself justifies extending the compliance period from four months.
84. In this case, I find that upholding the enforcement notice is a legitimate and proportionate response to addressing the breach of planning control in the public interest. This outweighs the loss of a home on the site taking into account rights under Article 8 of the Human Rights Act 1998. I find, on the evidence before me, that a period of four months to comply with the requirements of the notice is reasonable. Therefore, I conclude that the ground (g) appeal fails.
85. Notwithstanding the above, if it transpires that it can be subsequently reasonably justified that a longer period is needed to deal with the requirements of the notice then under s.173 (1) (b) of the Act, the local planning authority can waive or relax any requirements of such a notice and, in particular, may extend any period specified in accordance with s.173 (9).

Conclusions

Appeal A: APP/P1615/C/22/3291233

86. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

Appeal B: APP/P1615/C/22/3291236

87. In view of the corrections and variations made to the notice, I conclude that it is not necessary for me to consider this appeal any further.

D Hartley

INSPECTOR



Plan

This is the plan referred to in my decision dated: 06 December 2022

by D Hartley BA (Hons) MTP MBA MRTPI

Land at: **Callow Cottage, Ruddle, Newnham, Gloucestershire, GL14 1DS**

Reference: **Appeal A: APP/P1615/C/22/3291233 & Appeal B:
APP/P1615/C/22/3291236**

Not to scale



APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Christian Hawley, Barrister

He called

Mr Stephen Colegate, Principal Planning Officer and Team Leader Enforcement

FOR APPELLANT A:

Mr John Kendrick of John Kendrick Ltd

He called

Mr Darren Larkham

Mr John Kendrick was also a witness

FOR APPELLANT B

Mr Harry Spurr, Barrister

He called

Mr Ross White

Mrs Susan Buck

INTERESTED PERSONS:

Mr Robin Larkham

Documents submitted at the Inquiry

ID1 – Late representation from Joy Hawes dated 22 November 2022

ID2 – Appellant B opening submissions

ID3 – Council’s opening submissions

ID4 – Schedule of ground (a) appeal suggested conditions (Appeal A)

ID5 – Council’s closing submissions

ID6 – Appellant B closing submissions and costs application

ID7 – Appellant A costs application