



Appeal Decisions

Hearing Held on 17 January 2023

Site visit made on 18 January 2023

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 March 2023

Appeal A Ref: APP/D0121/C/19/3238791

The Field, Summer Lane, Banwell

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Kathleen Kiely against an enforcement notice issued by North Somerset Council.
 - The enforcement notice, numbered 19/00095/UAW, was issued on 5 September 2019.
 - The breach of planning control as alleged in the notice is, without planning permission, the creation of a hardstanding and access track.
 - The requirements of the notice are to remove the hardstanding and access track and all resulting materials from the land.
 - The period for compliance with the requirements is 8 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g), of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/D0121/W/19/3238762

Land off Summer Lane, Banwell BS29 6LP

- 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 Ms Kathleen Kiely against the decision of North Somerset Council.
 - The application Ref 19/P/0314/FUL, dated 29 January 2019, was refused by notice dated 13 June 2019.
 - The development proposed is the use of the land for the stationing of caravans for residential purposes as a single pitch gypsy traveller site and the erection of a day room ancillary to that use.
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Appeal C Ref: APP/D0121/C/20/3257536

Land off Summer Lane, Banwell BS29 6LP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Kathleen Kiely against an enforcement notice issued by North Somerset Council.
 - The enforcement notice, numbered 20/00186/COU, was issued on 21 July 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of agricultural land to a use as a single pitch traveller site.
 - The requirements of the notice are:
 1. Cease the use of the land as a single pitch traveller site.
 2. Remove all items associated with the use as a Land as a single pitch traveller site.
 3. Return the land to its previous form.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (g) of
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the Town and Country Planning Act 1990 as amended.

Summary Decisions:

Appeal A: the appeal is dismissed and the enforcement notice is upheld with corrections and a variation.

Appeal B: the appeal is allowed and planning permission is granted subject to the conditions set out in the attached Schedule.

Appeal C: the appeal is dismissed and the enforcement notice is upheld with corrections and a variation

Application for costs

1. At the Hearing an application for costs was made by Ms Kathleen Kiely against North Somerset Council. This application is the subject of a separate Decision.

Preliminary and procedural issues

2. The appeal site is variously described in the enforcement notices and the planning application as 'The Field' or 'Land off' Summer Lane, Banwell. It is apparent that the appeals all relate to the same site and I am satisfied that no confusion arises. However, it is the convention in enforcement notices to cite the address to which the notice relates with the prefix 'Land at' and I will correct the enforcement notices to follow that convention. I am satisfied that no injustice would be caused by so doing.
3. In January 2017, planning permission was granted for, in part, the erection of a stable block, exercise yard surrounding the stables and stone access track (Council ref: 16/P/2495/F). That permission, granted to a previous owner of the land, included a 20m x 20m hardstanding and an access track of 3m width. There is no dispute that the previous owner of the land made a material start on that planning permission at some point before the appellant purchased it through the laying of a base layer for the hardstanding and access track.
4. Following his purchase of the land in October 2018, the appellant laid an additional area of hardstanding and laid the tarmac layer across the whole of the hardstanding as enlarged, by then measuring some 40m x 42m. The appellant accepts that area of hardstanding laid by the appellant after 2018 does not benefit from planning permission 16/P/2495/F. The Council accepts that the smaller area of hardstanding benefits from planning permission 16/P/2495/F and cannot now be enforced against.
5. Consequently, the Council produced an amended plan (dated 18 January 2023) that shows the area of hardstanding as enlarged by the appellant edged in blue, but omits the area of hardstanding and the access track permitted by planning permission 16/P/2495/F. By so doing, the breach of planning control constituted by the matters stated in the notice is confined to the area of hardstanding edged in blue on that plan. The appellant accepts that those matters do constitute a breach of planning control. I am therefore satisfied that I can correct the notice by substituting that amended plan (attached to this Decision as Plan A) for the plan attached to the notice as issued. I am satisfied that doing so would not cause injustice. The substitution of that plan dispenses with the appellants' appeal on ground (c) on Appeal A, and I take no

- further action on it. It also dispenses with the appellant's appeal on ground (f) on Appeal A and I take no further action on that either.
6. As issued, the enforcement notice now subject to Appeal C covered an area that included the paddock also in the appellants' ownership in addition to the land being used as a single pitch traveller site. This led the appellant to conclude that the appeal site depicted on the plan attached to the notice formed a single planning unit that was in a mixed use of agriculture and as a single pitch traveller site. This then formed the basis of the appellant's appeal on ground (b) in Appeal C. The appellant then goes on to suggest that the incorrect identification of the planning unit in the notice could be rectified by amending the notice to allege the mixed use of agriculture and the stationing of caravans for residential purposes.
 7. The difficulty in amending the notice as suggested by the appellant is that, in the event that the appeal is allowed, the use as a single pitch traveller site could occur across much of the appeal site provided, that is, that an element of the mixed use was retained. Following discussion of this point, the Council's response was not to amend the breach of planning control alleged, but rather to amend the red line to which the notice relates to omit the paddock. This would leave the use as a single pitch traveller site taking place within a single planning unit that was physically and functionally separate from the paddock.
 8. The Council produced an amended plan to that effect dated 18 January 2023, and requested that this plan be substituted for the plan attached to the notice as issued. I am satisfied that the Council's amended plan (attached to this Decision as Plan B) adequately deals with the point raised by the appellant. Since the area subject to the notice would be reduced, I am also satisfied that the notice could be corrected in this respect without causing injustice. The substitution of that plan dispenses with the appellants' appeal on ground (b) on Appeal C, and I take no further action on it.
 9. In refusing planning application 19/P/0314/FUL (Appeal B), the Council included a reason for refusal relating to highway safety (Reason 3). The Council now accepts that this is a matter that can be dealt with through the imposition of conditions. I agree. In reaching that conclusion, I have taken into account the views expressed in third party representations, not only in terms of highway safety but also in terms of the convenience of other highway users.
 10. Based on the evidence submitted, the Council now accept that the appellant and her family follow a nomadic habit of life and travel for economic purposes. I see no reason to take a different view.

Appeal A: the appeal on ground (a) and the deemed planning application

11. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issue raised is the effect of the development on the character and appearance of the area.
12. The appeal site falls within the western section of the River Yeo Rolling Valley Farmland landscape character type, as set out in the North Somerset

Landscape Character Assessment SPD (the SPD). The key characteristics of this landscape type include a rural pastoral landscape comprised of irregular medium sized fields set among a gentle rolling landform, with scattered farmsteads plus large villages on higher grounds. The SPD explains that there are differences between the eastern and western parts of this landscape character area, and describes the grazing land north of Banwell as being affected by the extensive settlements and ribbon developments along roads. Consequently, the SPD describes this part of the character area as having a less rural feel than the valley to the east.

13. The appeal site is located between Summer Lane to the east and the M5 motorway to the west. The main area of hardstanding does not directly adjoin Summer Lane, being some 100 metres from the highway. There is a paddock, not in the appellant's ownership, between the bulk of the hardstanding and Summer Lane. The M5 Motorway provides a physical and visual divide that, at least in terms of character, separates the appeal site from the land to the west of the motorway. The wider area to the east of the M5 motorway comprises, for a considerable distance, predominantly open fields and paddocks with only isolated buildings or small groups of buildings.
14. Consequently, whilst there are some urban influences in the surrounding area, the main influences on character are the paddocks and open fields that immediately surround the appeal site set amidst a wider rural landscape. I am mindful of the description in the SPD that this part of the landscape character area as having a less rural feel than the eastern section. However, although perhaps less rural than other parts of the wider landscape area, the particular surroundings of the appeal site share many of the key characteristics of the River Yeo Rolling Valley Farmland landscape character type, including being on a gentle slope and surrounded by irregular medium sized fields. I therefore conclude that the character of the appeal site is rural.
15. The deemed planning application that arises out of this ground of appeal is only for the operational development comprised by the hardstanding shown on the amended plan. There is no associated use to which that hardstanding could be put. I am mindful that planning permission 16/P/2495/F is extant and could potentially be fully implemented. Furthermore, there is no evidence before me as to how the hardstanding would be used in connection with the stables granted by that permission or whether that use would justify the retention of the hardstanding. Indeed, the stables were proposed and granted planning permission on the basis of much smaller area of hardstanding, suggesting that the smaller area of hardstanding is adequate to serve that use.
16. Viewed in isolation, and therefore without any associated function or use, the extensive area of hardstanding appears as an incongruous feature in this rural context. By reason of its extent and the poor-quality materials used, the hardstanding and access track are unacceptably harmful to the rural character of the area. That harm could not be overcome by landscaping, given that the landscaping of an area of hardstanding without purpose would itself be incongruous in this rural landscape.
17. I conclude that the breach of planning control alleged in the notice would unacceptably harm the character and appearance of the area. I therefore conclude that the development is contrary to Policies CS5 and CS12 of the North Somerset Core Strategy (Core Strategy), as well as policies DM10 and

DM32 of the North Somerset Development Management Policies: Sites and Policies Plan Part 1 (Sites and Policies Plan). These policies provide, amongst other things, that the character of North Somerset's landscape will be protected and that development should not have an unacceptable adverse impact on the designated landscape character of the District.

Appeal B and Appeal C: the appeal on ground (a) and the deemed planning application

18. The Council has stated three substantive reasons for issuing the enforcement notice subject to Appeal C, from which the main issues raised are:

- whether the stationing of caravans for residential use is appropriate in this location
- the effect of the development on the character and appearance of the area
- whether the site provides adequate living conditions for the occupiers, specifically in relation to the noise environment.

Those main issues are the same raised by Appeal B.

Whether the stationing of caravans for residential use is appropriate in this location

19. There are two aspects to this main issue: whether or not the site is in open countryside, and accessibility to services. It is convenient to consider each in turn before reaching an overall conclusion.

Whether or not the site is in open countryside

20. Paragraph 25 of the Planning Policy for Traveller Sites (PPTS) states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements. I concur with the appellant that there are two elements to this policy: that the site is in within open countryside and is away from existing settlements. These elements need to be considered separately.

21. In relation to the first element, the main body of the appeal site is in the middle of a grassed paddock(s). There is a further field/paddock to the immediate south, with further fields for a considerable distance to the south after that. To the immediate north is a track, beyond which is a further field. Beyond that is a small industrial area that is itself enclosed by fields. To the east are some buildings facing onto Summer Lane, that are themselves otherwise surrounded by fields. There are then open fields for a considerable distance to the east of that. To the west is the M5 motorway, beyond which a large residential development (Locking Parklands Village) is in the course of construction.

22. In my view, the M5 motorway acts as both a physical and visual barrier. An earth bund constructed on the western side of the motorway as part of the Locking Parklands Village development prevents views of the land beyond. With that in mind, the land to the north, south and east of the site is largely open fields for a considerable distance in each direction. There is therefore no doubt in my mind that the appeal site is in open countryside.

23. In relation to the second element, the appellant maintains that rather than being away from existing settlements, the appeal site is actually within the non-nucleated settlement of Wolvers Hill. I accept that there are buildings in various uses spaced across the landscape, in particular fronting on to Wolvershill Road where there is a ribbon of dwellings that could be reasonably considered to form a hamlet. However, I am not convinced that the remaining collection of buildings do constitute a settlement as such and, even if they do, it is impossible to define where that settlement begins or ends.
24. There is no definition of 'away' for the purposes of the PPTS and the PPTS does not require any specific relationship with a settlement. The appellant quotes an appeal decision relating to a site near Carlisle where the Inspector found that the site was located within walking distance of the village and therefore did not consider the site to be away from the settlement in the context of the PPTS (APP/E0915/A/12/2182881). The Inspector does not provide much further information in his Decision about the context of the site but, in my view, the approach adopted by the Inspector in that case is too narrow in the particular circumstances of the case before me.
25. The Oxford English Dictionary defines 'away' as to or at a distance. To my mind, that connotes more than a just consideration of walking distance. It connotes a spatial distance as well as an element of separation. The ribbon of dwellings that could be reasonably described as a hamlet are located some distance to the north-west of the appeal site. They are separated from the appeal site by open fields. Consequently, whilst that hamlet is within walking distance of the appeal site, I consider that the appeal site must be considered away from that settlement for the purpose of the PPTS.
26. The same applies to the Locking Parklands Village development which, when completed, will be within walking distance of the appeal site. However, given the visual and spatial separation between the two, I consider that the appeal site must be considered to be away from the Locking Parklands Village development for the purposes of the PPTS.
27. I conclude that, when looked at in the round, the appeal site is in open countryside and is away from existing settlements. The appeal site is therefore in area where, in accordance with the PPTS, new traveller site development should be very strictly limited. I acknowledge that 'very strictly limited' does not necessarily mean that permission should be refused. However, in this case, this is a material consideration that weighs against planning permission being granted and one to which I attach significant weight.
28. The Council also points out that CS33 of the Core Strategy strictly controls development outside of identified areas. The appeal site is not within one of those identified areas. Policy CS33 applies in the countryside generally and not just in open countryside. The development subject to these appeals, both existing and proposed, is/would be contrary to that policy.

Accessibility to services

29. The appeal site is located some 1.2km from the village of Banwell, where there are a range of facilities, including a primary school, a doctor's surgery, churches, a general store, a pharmacy and a post office. The Locking Parklands Village development currently under construction will, when completed, provide a wide range of facilities, including retail space, a post

office and a school. Those services would be accessed by initially walking northwards along Summer Lane and then over the bridge across the M5 before proceeding southwards. It is likely that these facilities will be located within a walking distance of less than 1km from the appeal site.

30. The appellant considers that 2km is an acceptable walking distance, and 5km as an acceptable cycle distance, based on the guidance in the now superseded Planning Policy Guidance Note 13. Whilst I accept that those distances are reasonable, there are other factors to take into account as well as just linear distance. The walking environment is also important to the likelihood of those routes being used for day-to-day activities.
31. The route to Banwell from the appeal site is along either Summer Lane or Wolvershill Road. Both are classified roads having a speed limit of 60 mph. Both are narrow, without footpaths and in some places bordered by hedgerows, with no pedestrian refuge should an oncoming vehicle be encountered. They are unlit for practically the whole of their length. Neither is an attractive environment for pedestrians or, for that matter, cyclists. Summer Lane is not served by a bus route. The nearest bus stop is located on the A371 to the south, some 0.95 km away. There are three bus services that operate from Banwell, with routes to Western-Super-Mare and Wells, a which link with a train station at Western-Super-Mare. Consequently, whilst there are opportunities for combined trips to facilities further afield, given that reaching the nearest bus stop itself involves a walk of approximately 13 minutes from the appeal site and that Banwell itself is then not much further on, I consider accessing buses would not be viable for day-to-day shopping trips.
32. I therefore consider it highly unlikely that the appellant or her family would walk, cycle or take a bus to Banwell on a regular basis for day-to-day activities, especially when carrying heavy shopping, when pushing a pushchair or when with young children. My conclusion in this respect is reinforced by comments made in third party representations, including one where the author describes having given up escorting her child to school along Summer Lane because of safety concerns and now drives her child to school every day.
33. The route to Locking Parklands Village development is on a track that is rutted in several places. At the time of my site visit, there were numerous patches of standing water and/or ice which in places were difficult to negotiate, even without escorting young children and/or with a pushchair. There is a relatively steep gradient leading up to the bridge over the motorway on the return journey, when possibly laden with heavy shopping. There is no lighting on the route and much of it is subject to high noise levels from the motorway traffic, resulting in an unattractive walking environment.
34. I recognise that the Council has aspirations to formalise the track over the motorway bridge as a public right of way linking directly into the Locking Parklands Village development. If achieved, that would considerably shorten the distance and make walking the route a more viable proposition. However, the ownership of that track is presently unknown and in any event modifying the Definitive Map to record this as a public right of way requires a lengthy application process, with no guarantee of success. The Council's aspirations in this respect are therefore unlikely to be fulfilled in the short term. Until, and unless, that link is formalised and the surface improved, the pedestrian route

to the facilities in Locking Parklands Village development would not be viable for day-to day activities.

35. Paragraph 13 of the PPTS indicates that local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally, having regard to a range of factors (a to h inclusive) set out in that paragraph. Those factors include promoting access to appropriate health services and ensuring that children can attend school on a regular basis. I am satisfied that the location of the appeal site meets both those criteria. However, in order to reach those facilities, and also to meet other day-of-day needs, it is more likely than not that the occupiers of the appeal site would require the use of a car. That is consideration that needs to be weighed in the overall balance, together the benefit arising through the provision of a settled base that reduces both the need for long-distance travelling and possible environmental damage caused by unauthorised encampment.
36. I conclude that the appeal site does not provide adequate accessibility to services by foot or by public transport. I therefore conclude that the breach of planning control subject to Appeal C, and development proposed in Appeal B, are not supported by Policy CS18 of the Core Strategy which, amongst other things, requires that the proximity of the site and to local services and facilities will be taken into consideration in determining the location of gypsy and traveller sites.
37. I find that the appeal site is located in the open countryside and does not provide adequate accessibility to services. I therefore conclude overall that the stationing of caravans for residential use is not appropriate in this location.

Character and appearance of the area.

38. The appeal site is not widely visible in long-distance views from the south or, by reason of intervening vegetation and terrain, from the west across the motorway. From the east, with one exception, only glimpsed views through vegetation are possible from Summer Lane. That exception is a newly created vehicular access just north of the appeal site, which does provide clear views of the appeal site but which may be unauthorised. I will therefore discount that view.
39. However, the site is clearly visible (in places) from the track that runs to the north of the site and from the turning area at the start of the track, where it meets Summer Lane. That track does not currently appear as a public right of way on the Definitive Map. However, the appellant maintains that the site is regularly used by the public without challenge and, as indicated above, the Council has aspirations to designate this track as a public right of way. I will accordingly treat that track and turning area as places from which members of the public can view the appeal site.
40. In views from that track and turning area, not only is the lengthy flank elevation of the mobile home clearly visible, so too are the small structure next to it, the day room and (at the time of site visit) a motorhome. In addition, the lengthy fencing that surrounds the site is plainly visible. These features give the appeal site an overtly domestic appearance. Painting the mobile home a darker colour, as discussed at the Hearing, would do little to reduce the visual prominence of the appeal site as a whole in these views.

41. When viewed from the track and turning area, the appeal site is seen against the backdrop of the wooded ridge that extends in an east-west direction some distance to the south. Specifically in views from the turning area, the appeal site is viewed in the foreground directly below a prominent church in the background, the squat and decorated tower of which is a distinctive feature in the landscape and an important component of that particular view. In these views, the prominence of the appeal site in its exposed position in the foreground distracts from, and detracts from, the panoramic views of the landscape in the background, including of the distinctive church.
42. It is significant that, due to the terrain, the M5 motorway is not visible at all in views from the turning area. For the same reason, the site is not generally viewed in conjunction with the motorway in views of the appeal site from the track. The M5 motorway is clearly an urbanising feature in the wider landscape. Nonetheless, in those positions from which the appeal site is clearly visible (the turning area and the track) the motorway has no visual influence at all. In views from other directions, from where the site might be viewed in conjunction with the motorway, the site is largely screened by intervening traffic or is only glimpsed from moving vehicles. Consequently, whilst the M5 motorway is clearly visible from within the appeal site itself, in the particular context of views of the appeal site from outside of it, the motorway has very little influence on the rural character and appearance of the site.
43. For the reasons set out above, I find that the appeal site in its current form sticks out as a visually jarring, intrusive and incongruous feature against the panorama of the rural landscape to the south and which displays many of the characteristics of the River Yeo Rolling Valley Farmland landscape character type. The provision of landscaping would soften that appearance, particularly the extensive fencing. However, no amount of landscaping could alter or negate the prominent and exposed location of the site.
44. In relation to Appeal B, the site proposed is considerably smaller than that existing. Nevertheless, the components of the proposed use would be essentially the same. The proposed mobile home is shown as being stationed on the same orientation as existing, and therefore presenting the longest elevation to the track to the north. There would be a day room and a touring caravan/motorhome. The proposed block plan (Drawing No 18_950_003) also shows that the stables permitted under planning permission 16/P/2495/F. Consequently, whilst over a smaller area, the proposal subject to Appeal B would still stick out as a visually jarring, intrusive and incongruous feature against the panorama of the rural landscape to the south in those key views from the north.
45. I conclude that the breach of planning control alleged in the notice subject to Appeal C, and the development proposed under Appeal B, do/would seriously harm the character and appearance of the area. I therefore conclude that the developments are/would be contrary to Policies CS5 and CS18 of the Core Strategy, as well as policies DM10 and DM32 of the Sites and Policies Plan.

Whether the site provides adequate living conditions for the occupiers, specifically in relation to the noise environment

46. The mobile home on the appeal site is located just over 100 metres from the boundary of the M5 motorway. At this point, the motorway is partly in a cutting. The ground levels then fall to the south, such that there is then a clear

line of sight between the motorway and the appeal site from the south-west direction. It is noticeable when on the site that the main source of noise is from the south-west. Nonetheless, traffic noise from the motorway is clearly audible across the whole of the appeal site. Furthermore, an aural observation revealed that the traffic noise was clearly audible within the mobile home, albeit reduced when the windows were closed.

47. The appellant has provided an Environmental Sound Survey and Noise impact Assessment (appellant's noise assessment) in response to the reason for issuing the notice and refusal of planning permission. The appellant's noise assessment was undertaken using ProPG: Planning & Noise (2017) as the most up-to-date guidance and which was considered to reflect the Government's overarching Noise Policy Statement for England. In accordance with ProPG, there were two stages to the appellant's noise assessment; the initial assessment of the prevailing sound environment, followed by a Full Assessment with Acoustic Design Statement.
48. ProPG sets out target internal levels within a residential property during the daytime of 35 dB LAeq for a living rooms and bedrooms. During the night-time period, ProPG sets out target internal levels of 30 dB LAeq with windows closed or 45 dB Lmax with windows open. ProPG indicates that individual noise events should not normally exceed 45 dB Lmax more than 10 times a night.
49. The sound levels for the appellant's noise assessment were obtained on 1 September 2020 (a Tuesday) and 1/2 September for night-time levels, as this was considered to represent a worst-case scenario rather than the typical levels. The appellant's noise assessment indicated a daytime level of 62.4 dB LAeq (16h). At night-time, the noise levels were 61.7 dB LAeq (8h) and 75.5 dB Lmax (8h) respectively. The appellant is proposing a closed fence acoustic barrier along the southern, western, and northern boundaries of the site of 2m height which, the appellant calculates, would provide attenuation of 7.7 dB.
50. The orientation of the current mobile home on the site is such that the elevations most affected by noise are the western and southern elevations. The western elevation has no windows and as such benefits from the full effect of the construction of the mobile home. With the most up to date construction applied, the internal level is predicted to be 12.4 dB LAeq (16h) for daytime resting and 11.7 dB LAeq (8h) for sleeping, both well below the target levels in ProPG. However, in my view those results must be treated with some caution. Although the western elevation is itself windowless, the bedroom at that end of the mobile home is served by an openable window on the southern elevation. The noise environment within that room would be affected by the presence of that window, irrespective of the solid construction of the western elevation.
51. The bedroom at the western end has only the one southern aspect window. When that window is open, the internal daytime levels would be 39.7 dB LAeq (16h) and night-time of 39.0 dB LAeq (8h), based on the barrier attenuation of 7.7 dB and an open window providing 15 dB of attenuation. These are both above the target internal levels set out in the ProPG.
52. However, the appellant seeks to rely on a study into open window attenuation which not only confirms the average of 15 dB attenuation for an open window, but also demonstrates the range due to varying factors: for example, hung windows provide greater attenuation from sound arriving on the hinge side. The degree to which the window is open was also found to be a factor.

- Applying the findings of this study to the bedroom window on the southern elevation of the mobile home, where the hinge is on the side with the greatest impact and which is likely to provide a smaller opening when used for ventilation, this scenario would give daytime and night-time internal levels of 33.7 dB LAeq (16h) and 33.0 dB LAeq (16h) respectively. Daytime noise levels would be compliant ProPG and night-time compliant *with* the relaxing of guidance levels given in BS 8233:2014 and ProPG (my emphasis).
53. The appellant's noise assessment provides a useful table (Table 5.1) that summarises the assessment of compliance. According to that table, the only rooms in the mobile home would not be compliant with guidance are the bedroom served by the windows in the southern elevation, and the two bedrooms served by windows in the northern elevation. On each case, that applies only at night and with the windows open. All other rooms in the mobile home are considered to comply with guidance, subject to mitigation in the form of the acoustic barrier and with the application of the relaxed guidance provision.
 54. In relation to noise in the external amenity space, the appellant calculates that the measured free field level of 62.4 dB LAeq (16h) would be reduced to 54.7 dB LAeq (16h) by the noise barrier. This would provide an amenity area below the guidance level of 55 dB LAeq (16h) at the height of an average person.
 55. The Council instructed a suitably qualified noise consultant to comment on the appellant's Environmental Sound Survey and Noise impact Assessment, and to provide its own assessment (Council's noise assessment). The Council's noise assessment uses a Cadna noise model, and 1m height contours to show the level of screening afforded to the site from the natural topography of the land between the M5 and the site. The Council considers that it is the difference between a direct path from the nearest carriageway on the motorway and indirect path following the land contours (path difference) that determines the barrier attenuation.
 56. This path difference demonstrates that the site already benefits from a reasonable degree of screening from the terrain adjoining the M5. This leads the Council to conclude that a 2m high noise barrier placed within the site boundary would not significantly increase the path difference, and that a noise barrier within the site would need to be substantially larger to achieve the benefits claimed. The Council calculates that a noise barrier of 6-7m height would be needed to achieve the reduction of 7.7 dB claimed by the appellant.
 57. The Council also produced its own evidence in relation to noise levels. The figure for night-time for the western elevation was calculated as being 61 dB LAeq (8h), both with barrier in place and without the barrier. The south elevation the figures were 61 dB LAeq (8h) and 60 dB LAeq (8h) respectively. I note that these figures are similar to, and if anything slightly lower than, the figures recorded in the appellant's noise assessment. To my mind, that affords credibility to the results of the Council's noise assessment and therefore the weight I can attach to it.
 58. The Council goes on to suggest that if traffic growth and peak days are taken into account, night-time noise levels could be as high as 65 dB at the west elevation, 62 dB on the northern elevation and 64 dB on the southern elevation. It would follow that, allowing for a 15 dB reduction for an open window, the night-time internal noise level in the mobile home would not meet the BS8233:2014 criterion of 30 dB

L_{Aeq} (16h) with windows partly open and that the BS8233:2014 daytime criterion of 35 dB L_{Aeq} (16h) in living rooms and bedrooms is likely to be exceeded with windows partly open.

59. There was considerable discussion at the Hearing about the respective merits of each approach, including whether the use of the Calculation of Road Noise would have provided a more accurate estimation of the potential for noise attention from the acoustic barrier. The appellant is confident that the attention of 7.7 dB is correct. However, the salient point, it seems to me, is the data on which the respective positions were reached.
60. The Council's results were based on a Cadna noise model. The base data inputted into that model was not made available to the Hearing, and therefore could not be tested. The example of path difference given by the Council is just that: one example. That example explored the path difference that arose from the cutting through the M5 motorway passes across just part of the site. There was no similar example given for a direct line of sight from the south-west to show the absorption of sound as it passed over soft ground and the path difference that would result from a 2m high barrier.
61. The appellant's noise assessment was conducted in September 2020, at which time the country was easing out a lockdown caused by the Coronavirus pandemic. The appellant's noise assessment candidly acknowledges that the heightened traffic following the easing of national lockdown cannot be quantified numerically. The assessment accepts that the similarity of the daytime and night-time figures at that time would suggest that more vehicles were travelling by night to avoid the daytime traffic. This would in turn suggest, the assessment accepts, that the measurements of traffic flow may not reflect the annual average data on which the target levels are based and therefore do not represent typical conditions.
62. To put that into context, analysis of the 2022 Webtris data for the M5 reveals peak daily flows of up to 114,000 compared to the annual average flow of 84,000 for 2020: a difference of 30,000 movements. Put another way, that equates to a difference of over one third compared to 2020 levels. The Council estimates that this could equate to a potential increase of 1.5dB. I accept that there are complications in using Webtris due to the uncertainty over the direction that traffic took at the junctions either side of the appeal site. I am also mindful that traffic speeds, and therefore traffic noise, could decrease when the motorway becomes busier. Nevertheless, the sizeable difference between traffic flows in 2020 compared to 2022 cannot be ignored.
63. This is a case where the acceptability of the internal noise levels rests on relatively fine margins. For example, the noise levels for the external amenity area would be only 0.3 dB below the guidance level of 55 dB L_{Aeq} (16h). The acceptability of that amenity space in noise terms would therefore be potentially vulnerable to any significant error in the data used in the appellant's noise assessment. Moreover, according to the appellant's own noise assessment, there were ten night events at or above 72.5 dB L_{Amax}. The barrier (7.7 dB) and the open window (15 dB) would reduce the internal noise level to 52.8 dB L_{Amax}. That is on the very limit of acceptability indicated by ProPG. The appellant then relies upon the findings of the study in order to arrive at a compliant figure for daytime internal levels of 33.7 dB L_{Aeq} (16h). However, in order to arrive at a complaint figure for night-time noise of 33.0 dB L_{Aeq} (8h),

which is itself 3 dB over the upper limit in the guidance, the appellant has to additionally rely upon the relaxation provided in ProPG.

64. ProPG indicates that where it is not reasonably practical to achieve this guideline the judgment of acceptability will depend not only on maximum noise levels but also on factors such as the source, number distribution, predictability and regularity of noise events. The appellant's noise assessment was undertaken over a single 24-hour period in neutral weather conditions, during a year when traffic flows as a whole were over a third lower than in the year (2022) for which the latest data is available. The Department for Transport Road Traffic statistics for 2019 for the M5 south of Summer Lane show a total of 93, 066 movements in that year. That figure fell to 59, 676 for 2020, the year in which the appellant's noise survey was undertaken. That is a fall of 33,390, or again approximately one third of the total for the previous year and the lowest total since at least 2004. The latest figures that are available, for 2021, show that the figure rose to 67,117.
65. One interpretation of this data is that traffic flow may be increasing again following the Coronavirus pandemic. In any event, I cannot escape the fact that the appellant's noise survey was undertaken at the time of the lowest traffic flows over the consecutive period of eighteen years covered by the data. I therefore cannot discount the possibility that the appellant's noise assessment does not reflect current or future traffic flows on this stretch of the M5 motorway.
66. In view of the uncertainty surrounding the data on which the respective surveys and assessments are based, I am not persuaded that I can make the necessary judgment required by ProPG that the appellant relies upon. Neither can I be certain that the measurements recorded on the single 24-hour period on a weekday in September 2020 do necessarily represent the worst-case scenario, as the appellant claims. More data is required to support that contention. As it stands, I am not certain that I can make an informed conclusion on noise levels that affect the site, the noise environment in which the appellant's currently live or what the living conditions for those residing on the site are likely to be in the future.
67. The appellant and the Council both referred me to Appeal decisions in which the impact of noise from motorways was a main issue. I have taken those decisions into account. However, the facts in those cases are materially different to the facts and circumstances in this case. I am particularly mindful of the terrain through which the M5 motorway passes at this point, the relative proximity of the mobile home to the carriageway and the orientation of the mobile home. For those reasons, whilst I note the approach adopted by the Inspectors in those cases, the decisions themselves do not greatly assist me.
68. I conclude that, on the evidence before me, the appellant has not demonstrated that the appeal site provides adequate living conditions for the occupiers, specifically in relation to the noise environment. I therefore conclude that the breach of planning control alleged in the notice subject to Appeal C, and the development proposed under Appeal B, are/would be contrary to Policy CS3 of the Core Strategy and Policy DM32 of the Sites and Policies Plan. These policies require, amongst other things, that development would result in environmental pollution or harm to amenity will only be permitted if the potential adverse effects would be mitigated to an acceptable level through the imposition of planning conditions. In this case, I am not persuaded that the imposition of conditions, including the require the erection and maintenance of the noise

barrier, would mitigate the impact of noise from M5 motorway to an acceptable level.

Other considerations

69. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the developments subject to Appeal B and Appeal C fail to accord with up-to-date policies in the development plan in the above respects. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

The need for gypsy and traveller sites

70. Policy B of the PPTS states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. The Gypsy and Traveller Accommodation Assessment (GTAA) produced by Opinion Research Services (ORS) for the Council was published June 2022. The GTAA identifies an overall need for 114 pitches. The appellant criticises the GTAA, including in relation to its methodology. However, I do not need to consider the appellant's criticisms in detail: the scale of need identified in the GTAA is apparent in any event.
71. The Council concedes that it cannot demonstrate an up-to-date five year supply of deliverable sites and that there is a need for further sites for gypsies and travellers in the area. That is a consideration to which I attach significant weight. The scale of the need also suggests a failure of policy. There is evidence that the Council has sought to address that need but to date has not gone far enough to meet it. That is also a matter to which I attach significant weight.

Personal circumstances of the appellant and her family

72. The personal circumstances of the appellant and her family were set out in detail at the Hearing. Those circumstances included sensitive information and for that reason I do not propose to rehearse those details here. The Council heard those details for the first time at the Hearing and, upon doing so, indicated that a personal planning permission would be appropriate in the circumstances. This is a consideration to which I attach significant weight.

Best interests of the children

73. There are three children of school age residing on the site, plus one infant. The school-age children attend a local school. I have no doubt that it would be in the best interest of all the children residing on the site to remain there as a stable home life and a base from which to access education and medical facilities. However, equally it cannot be in the interests of any of the children residing on the site to live in an environment subject to such high levels of noise and which appellant has not demonstrated can be successfully mitigated. The best interest of these children is a primary consideration, and inherently carries as much weight as any other consideration, but overall I am not persuaded that remaining on the site is in the best interest of those children.

Human Rights and the Public Sector Equality Duty

74. Paragraph 3 of the PPTS states that the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life for travellers while respecting the interests of the settled community. In that regard, interference with rights held under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA), is a key consideration. In this case, there is interference with rights under Article 8 (right for respect for private and family life, home and correspondence). That is a qualified right, and interference with it may be justified where it is in accordance with the law and it is necessary in a democratic society.
75. In this case, the potential interference with the appellant's Article 8 rights arises from an enforcement notice issued under section 171 of the 1990 Act. The interference with the appellant's Article 8 rights is therefore lawful. The protection of the countryside and promoting sustainable forms of development are legitimate and well-established planning policy aims. Indeed, promoting sustainable development is an overarching aim of national planning policy, as set out in the Framework. The protection of the countryside is therefore in the public interest.
76. The harm to the countryside in this case would be serious, and would be exacerbated by the need for a closed fence sound barrier of 2m in height. The noise environment and the poor access to facilities do not result in the use of the site as single gypsy pitch being a sustainable form of development. For all these reasons, I consider that the appeal site is not in an appropriate location for stationing of caravans for residential purposes as a single pitch gypsy traveller site. In total, I consider the harm resulting from the development, proposed and existing, to be substantial.
77. Against this harm, the Council cannot point to a five-year supply of sites. There are no suitable alternative sites available. Upholding the notice would therefore result in the appellant and her family losing their home and, in all likelihood, would oblige the appellant to resort to a roadside existence, with all the implications that would bring. In that context, I am acutely mindful of the personal circumstances of the appellant as explained at the Hearing. I also have the best interests of the children residing on the site at the forefront of my mind. However, as previously indicated, I consider that it cannot be in the interests of any of the children residing on the site to live in an environment subject to such high levels of noise and which the appellant has not demonstrated can be successfully mitigated.
78. Balancing all these factors, I consider that the interference with the Article 8 rights held by the appellant and his family would not only be significant, but due to the personal circumstances of the appellant would be wholly disproportionate in the circumstances. In reaching that conclusion, I am satisfied the policy objective could not be achieved by means that interfere less with the appellant's rights.
79. The appellant and her family share the protected characteristic of race for the purposes of the Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010. Upholding the notice or refusing to grant a permanent permission would impact negatively on the appellant's way of life and would reduce the opportunities available to her and her family. It would also deny or

reduce the opportunities available to the appellant and her family to foster good relations with the settled community, including those of the children at their school. I am also mindful that a more positive outcome in respect of the aims of PSED exists in the form of a temporary and/or a personal planning permission.

Conditions

80. If I am to afford weight to the personal circumstances of the appellant and her family, then a condition limiting occupation specifically to them is necessary, as is a condition requiring that the land is fully restored should the named occupiers vacate the site. Such a condition would prevent occupation of the site by anyone other than those named therein, and therefore a further condition restricting occupation of the site by other people of a nomadic habit of life would not be necessary. In view of the seriousness of the environment harm caused by the proposed development, a temporary permission would also be necessary to ensure that the harm can be rectified at the earliest opportunity should circumstances change. Given that the Council is unlikely to be in a position to identify alternative sites within at least five years, a temporary permission for that period would be appropriate.
81. In order to safeguard the character and appearance of the area and comply with the terms of the application, a condition requiring that the development is carried out in accordance with the approved drawings is necessary. In the interests of safeguarding the character and appearance of the area, conditions limiting the number of caravans on the pitch, that no commercial activities shall take place on the land and removing permitted development rights for the erection of additional gates/fencing are all necessary and reasonable. A condition(s) requiring the submission of details regarding matters including a suitable acoustic fencing/barrier, foul water drainage arrangements, external lighting and soft landscaping is necessary. In the interests of highway safety, conditions requiring the existing entrance gate to be relocated and the provision of a vehicle turning area are necessary. In view of the noise environment at the site and to achieve satisfactory living conditions for the occupiers, a condition requiring the any caravan is fitted with acoustic ventilators is necessary, as is a condition requiring that any touring caravan/motorhome on the site shall not be used as separate residential accommodation.
82. Modern static homes are constructed to a standard that accords with the relevant British Standard in relation to noise attenuation. A separate condition to that effect is therefore not necessary. A caravan used for residential purposes does not benefit from permitted rights provided by Town and Country Planning (General Permitted Development) (England) Order 2015 for the erection of buildings and therefore a condition removing those rights is not necessary.

Balancing exercise and conclusion on the appeals on ground (a)

83. The Council cannot demonstrate an up-to-date five year supply of deliverable sites. The National Planning Policy Framework states that achieving sustainable development means that the planning system has three overarching objectives: an economic objective, a social objective and an environmental objectives. The provision of one single pitch gypsy traveller site would have a very limited effect on meeting the overall need identified in the

GTAA. It would provide a stable home life and a base from which the children residing on the site could access education and health facilities but, overall, remaining on the site would not be in the best interests of those children due to the noise environment. Granting planning permission for the development would therefore make only a limited contribution towards achieving the social objective. The use of the site as a base from which the appellant could travel work would be an economic benefit but, in the wider context, would make only a limited contribution to the economic objective.

84. Against those limited contributions to achieving the economic and social objectives, the development would incur serious harm to character and appearance of the area, would require the use of a car to access services and would subject the occupiers to high levels of noise. The development would therefore not achieve the environmental objective set out in the Framework. In weighing the overall balance, I conclude that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
85. Put another way, the appeal site is simply in the wrong location for the development as existing and proposed. In other circumstances, I would have dismissed the appeals, upheld the enforcement notice and refused to grant planning permission. However, in this case, there is an overarching material consideration: the personal circumstances of the appellant and her family. From what I heard at the Hearing, it would be wholly disproportionate to force the appellant and her family to leave their home. That in itself is a material consideration of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan when balanced against the lesser (but nonetheless still serious) environmental harm resulting from the smaller development proposed under appeal B.
86. I will therefore grant a personal and temporary permission which, because it would enable the site to eventually be fully restored, reduces the harm caused. In order to minimise the harm to the character and appearance of the area, I will only grant a planning permission for the smaller development proposed under Appeal B and will uphold the enforcement notice subject to Appeal C.
87. I shall also uphold the enforcement notice subject to Appeal A. In accordance with Section 180(1) of the 1990 Act, the enforcement notice subject to appeal A shall cease to have effect insofar as it is inconsistent with the planning permission granted under Appeal B.

Appeals A and C: the appeals on ground (g)

88. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice subject to Appeal A is eight weeks. The period for compliance specified in the notice subject to Appeal C is six months. The appellant's original grounds in relation to Appeal A have been overtaken by events through all three appeals relating to this site being heard together. The appellant seeks a period of compliance 2 years in respect of Appeal C.
89. The first point to make is that, in view of my conclusions above, it is logical that the period of compliance should be the same for both notices. The sequence of events that would enable the appellant to occupy the smaller area

provided under Appeal B would involve firstly the re-positioning of the mobile home, removing some sections of the existing fencing and some outbuildings, and then removing the hardstanding shown edged in blue on the plan attached to this decision. I see no reason why that could not be achieved within one year, especially as works required in relation to the planning permission granted would also need to take place during that time. There is no evidence before me that the two years requested by the appellant would be required.

90. I shall vary both notices to provide a compliance period of one year. Accordingly, the appeals on this ground succeed to that extent.

Conclusion

91. I conclude that the Appeal B should succeed and I will grant planning permission subject to conditions. For the reasons set out above, I conclude that Appeals A and C should not succeed. I will therefore dismiss those appeals and uphold the enforcement notices with corrections and variations.

Formal Decisions

Appeal A Ref: APP/D0121/C/19/3238791

92. It is directed that the notice is corrected by:

- in paragraph 2, deleting the words 'The Field, Summer Lane, Banwell' and substituting there the words 'Land at Summer Lane, Banwell BS29 6LP'
- deleting the plan attached to the notice and replacing it with Plan A attached to this Decision, and dated 18 January 2023.

93. It is directed that the notice is varied by:

- in paragraph 6, deleting the words '8 weeks' and substituting there the words 'one year'.

94. Subject to those corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal B Ref: APP/D0121/W/19/3238762

95. The appeal is allowed and planning permission is granted for the use of the land for the stationing of caravans for residential purposes as a single pitch gypsy traveller site and the erection of a day room ancillary to that use at land off Summer Lane, Banwell BS29 6LP, subject to the conditions set out in the attached Schedule.

Appeal C Ref APP/D0121/C/20/3257536

96. It is directed that the notice is corrected by:

- in paragraph 2, deleting the word 'Off' and substituting there the word 'at'
- deleting the plan attached to the notice and replacing it with Plan B attached to this Decision, and dated 18 January 2023

97. It is directed that the notice is varied by:

- in paragraph 6, deleting the words 'six months' and substituting there the words 'one year'

98. Subject to those corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer
INSPECTOR

APPEARANCES

For the appellant

Mr Patrick Kiely	On behalf of the appellant
Mr Matthew Green	Green Planning Studio Ltd
Mr Timothy Green	TGS Acoustics

For the Local Planning Authority

Mr Simon Exley	Applications & Consent Service Manager
Ms Dee Mawn	Environmental Health Service Manager
Ms Claire Courtois	Principal Planning Policy Officer
Mr Richard Perkins	Mott MacDonald Ltd

APPEAL B: SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the approved drawings – 18:950_001; 18:950_003 Rev A and 18:950_005 except as controlled or modified by conditions of this permission.
2. The site/premises shall not be occupied other than by Ms Kathleen Kiely, Mr Patrick Kiely and Ms Martina O'Connor and her dependants and shall be limited for a period of five (5) years from the date of this permission. At the expiration of a period of five years, or when the premises cease to be occupied those named above, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to the condition agreed in writing by the local planning authority in accordance with condition 3 below.
3. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one 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 site development scheme) giving details of:
 - a scheme to restore the land to its condition before the development took place (or such other restoration as agreed in writing by the local planning authority) when the site ceases to be occupied by those permitted to do so in accordance with Condition 2
 - the specification, design, location and timetable for the installation of a suitable acoustic fencing/barrier along the northern, southern and western boundaries of the site
 - the foul water drainage arrangements
 - external lighting
 - a vehicle turning area to be kept clear of obstructions and made permanently available for the turning of vehicles
 - soft landscaping (including details of species, plant sizes and proposed numbers and densities).shall have been submitted for the written approval of the local planning authority. The said site development scheme shall include a timetable for implementation and shall be carried out in accordance with the details approved by the local planning authority. Unless so indicated by the local planning authority in approving the details, matters approved as part of the site development scheme shall thereafter be retained as approved.
 - ii) within 11 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.
4. The permission hereby approved shall be for no more than 1 gypsy pitch and there shall be no more than 2 caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the caravan sites Act 1968 as amended) on the pitch at any one time, of which only one shall be a static caravan.
 5. Within three (3) months of the date of this Decision, or any alternative period of time agreed in writing with the local planning authority, any caravan stationed on the site for residential purposes shall be fitted with an acoustic ventilator(s). Thereafter, any caravan stationed on the site for residential purposes not fitted with an acoustic ventilator(s) shall be immediately removed.
 6. Any touring caravan stationed on the site, including any motorhome used in that capacity, shall not be used as separate residential accommodation.
 7. Within three (3) months of the date of this Decision, the existing entrance gate shall be relocated to a position no less than 12 metres from the edge of the highway (Summer Lane). No gates of any description shall thereafter be installed, erected or positioned between the relocated entrance gate and the edge of the highway (Summer Lane).
 8. No commercial activities shall take place on the land, including the storage of materials.
 9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no walls, fences, gates or other means of enclosure other than those shown on the approved plans or approved as part of the site development scheme shall be erected on the site unless details of their size, materials and location shall have previously been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

End of Schedule of Conditions



Plan A

This is the plan referred to in my decision dated: 2 March 2023

by Paul Freer BA (Hons) LLM PhD MRTPI

Land at: Summer Lane, Banwell BS29 6LP

Reference: APP/D0121/C/19/3238791

Scale: Not to Scale





Plan B

This is the plan referred to in my decision dated: 2 March 2023

By Paul Freer BA (Hons) LLM PhD MRTPI

Land at: Summer Lane, Banwell BS29 6LP

Reference: APP/D0121/C/20/3257536

Scale: Not to Scale

