



Appeal Decision

Site visit made on 24 August 2022

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 June 2023

Appeal Ref: APP/U1620/C/22/3290133

Land at Severnside Farm, Walham, Gloucester GL2 9NF, also known as New Farm, Longhorn Avenue, Gloucester GL1 2BZ, title number GR356602

- The appeal is made by Mr S Gorman under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 21/00014/ECOU) issued by Gloucester City Council on 2 December 2021.
- The breach of planning control as alleged in the notice is: without the benefit of planning permission, the unauthorised change of use of the land from agricultural land to residential pitches for caravans (both mobile and static), with sheds, fencing, septic tanks(s) [sic] pipework, utilities connections and any other associated residential paraphernalia.
- The requirements of the notice are to:
 - Cease residential use of the site
 - Remove any static caravans and associated residential paraphernalia from the site
 - Remove all touring caravans and associated residential paraphernalia from the site
 - Remove all sheds from the site
 - Remove all the fencing that has been erected from around the site and remove from the site
 - Remove the septic tank, pipelines and all other utility connections that have been installed to facilitate the use from the site
 - Make good the land after the removal of all caravans and materials
- The period for compliance with the requirements is twelve (12) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with corrections and a variation as set out in the Formal Decision.

PRELIMINARY MATTERS

The Appeal Site

1. The enforcement notice describes the land to which it relates as having two different names and postcodes. This is potentially confusing, but the Land Registry title number is correct, and the site is properly shown on the plan attached to the notice.
2. The appellant owns Severnside Farm. He recently made appeals against enforcement notices which related to other plots within the freehold and were issued by Tewkesbury Borough Council as well as Gloucester City Council¹. I decided those appeals by decision letter issued on 31 October 2022, but they have no bearing on this case.

¹ Appeal refs: APP/G1630/C/20/3260558, 3262694, 3262696, 3262698, 3262701, 3262703, 3262706, 3262708, 3262710 and 3262711.

The Enforcement Notice

3. Under s176(1) of the Town and Country Planning Act 1990 (TCPA90), an Inspector may correct any error, defect or misdescription in an enforcement notice provided that will cause no injustice to the appellant or the Council. If injustice would be caused, the notice will be not correctable and invalid.
4. A notice is null if it is so defective on its face that it does not amount to an enforcement notice in law at all and the question as to whether corrections would cause injustice cannot arise. That might be the case if the notice is hopelessly ambiguous and uncertain, or its contents do not include what is required under s173 of the TCPA90 and the Town and Country Planning (Enforcement Notices and Appeals) Regulations 2002.
5. The appellant argues that the notice subject to this appeal is null on the basis that it was not properly issued². The Council's Constitution provides that the taking of planning enforcement action may be delegated from Members of the Council to the Corporate Director known as the 'Head of Place', who in turn can sub-delegate functions 'to Officers of suitable experience and seniority'. The appellant objects that the Council has not shown whether their 'Planning Development Manager' had the authority to sign the notice.
6. However, local authority procedures are rarely within an Inspector's remit or relevant to whether a notice is defective on its face. The evidence related to the issuing of the notice does not show that the contents of the notice are inconsistent with s173 or hopelessly ambiguous and uncertain. Without prejudice, any concern that the Council did not act in accordance with their Constitution may only be remedied by an application for judicial review.
7. The appellant also argued that the notice is null because he did not know whether the Council considered the human rights of the site occupiers. The Council's enforcement report does in fact mention human rights but, even if it had not, that would not result in a defect on the face of the notice. I can only consider human rights in relation to the ground (a) and (g) appeals.
8. The allegation set out in the notice is somewhat imprecise, but it is not hopelessly ambiguous or uncertain. I am satisfied that the notice is not null. It is also not invalid, because it would cause no injustice for me to correct the allegation to explain that there has been a **material** change of use from agricultural to residential **use**, and there **is** residential paraphernalia.
9. I can further correct the requirements of the notice so that they are more precise and succinct but not more onerous to comply with. However, I shall return to the wording of the notice further to the grounds of appeal below.

THE APPEAL ON GROUND (C)

10. An appeal on ground (c) is that what is alleged does not constitute a breach of planning control. The onus is on the appellant to make that case on the balance of probabilities.
11. The header to the notice suggests that enforcement action is taken only in respect with a change of use of land. The appellant therefore suggests that the allegation should not refer, as it does, to sheds, fencing and other

² The appellant actually claimed that the notice was null on the basis of how it was 'served' but the matters raised in respect of the Council's Constitution concern the issue and not service of the notice.

structures and chattels on the site. However, the header is not a statutory component of a notice, and it does not strictly limit what is in the allegation.

12. The appellant also contends that the structures should be excluded from the notice because they are not in breach of planning control. For example, the appellant argues that the alleged fencing is permitted under Article 3(1) of and Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, it is not necessary or me to address whether that particular submission is correct.
13. Since the notice describes a 'change of use...from...to...**with**', it is clear that the sheds, fencing and other structures and chattels mentioned are being enforced against on the basis that they are part and parcel of the residential use. It is well-established that the making of any material change of use may necessitate and involve the stationing of structures, carrying out of operations and/or placement of chattels on land.
14. The appellant has made no case that the alleged change of use does not require planning permission. He has not sought to demonstrate that the sheds, fencing and other structures and chattels did not facilitate the residential use. It follows that, even if the sheds, fencing or other structures and chattels did not require permission in their own right, and even if they were not mentioned in the allegation, the notice could require their removal³.
15. It would cause no injustice for me to make the allegation explicit that the structures and chattels facilitate the change of use. On the balance of probabilities, the alleged change of use is in breach of planning control and the works described by the notice were integral to or facilitated that breach. The appeal fails on ground (c).
16. In this situation, it is in the appellant's interests that I do not delete the references to the sheds, fencing and other structures and chattels from the allegation because that provides the description of development for ground (a). The appellant should have the opportunity to gain express permission for the whole development. I shall correct the allegation to read:

'Without the benefit of planning permission, the material change of use of the land from agricultural to residential use, facilitated by the siting of mobile and static caravans as well as the installation of sheds, fencing, septic tanks, pipework, other utilities connections and other residential paraphernalia.'

THE APPEAL ON GROUND (A) AND THE DEEMED PLANNING APPLICATION

The Site, Development and Occupiers

17. The site is a rectangular plot of land on the north side of Bonnie's Lane. The site does not include Bonnie's Lane itself, although that provides the only means of pedestrian and vehicular access to the development. Bonnie's Lane leads to the site from Longhorn Avenue and St Oswald's housing estate to the southeast; it continues past the site to a vehicle repair workshop and a house in multiple occupation, and then to open countryside in the north and west.
18. The site was subject to a planning application (ref: 18/00585/FUL) for the use of land for four transit pitches for Gypsy or Traveller families with associated

³ This is the *Murfitt* principle described by the Council, following *Murfitt v SSE* [1980] JPL 598.

works and warden's accommodation⁴. I shall refer to the '2018 application', although it was not in fact refused by the Council on 27 October 2020.

19. The land is now subdivided into six or seven pitches, each of which is used for residential purposes by a separate family or household living in caravans⁵. The appellant seeks, in the first instance, that planning permission is granted on a permanent basis for the residential use of the entire site. I shall consider the appeal primarily on that basis.
20. It is undisputed that the site is and would remain occupied by persons who 'accord with the definition of Gypsies and Travellers'. That means, for the purpose of this appeal, they are persons of nomadic habit of life, including where they have ceased to travel temporarily or permanently for their own or their dependant's educational or health needs or old age⁶. Conditions could be imposed on any permission granted to specify the number of pitches and caravans, and limit occupation to Gypsies and Travellers.
21. It is also necessary for me to consider options for making a 'split decision' and granting permission only in respect of part of the site or development, perhaps for fewer pitches than there are. Where residential use is carried out in caravans, it is also possible to impose conditions so that the use may only be carried out by named persons and/or for a temporary period.

Main Issue

22. I consider that there is one main issue in this case, namely whether the use of land as a residential caravan site gives rise to an unacceptable risk of flooding such that planning permission should not be granted.
23. Deciding this issue involves addressing specific questions:
 - a) What is the 'flood risk classification' of the site and how 'vulnerable' to flooding would the development be?
 - b) Could the development be directed, though the 'Sequential Test', to an area with a lower risk of flooding?
 - c) Is the development necessary?
 - d) Would it be safe for its lifetime without increasing flood risk elsewhere?
24. I shall also address other matters raised by interested parties. In my overall conclusion, I shall consider the rights of the appellant and site occupiers under the Human Rights Act 1998 (HRA98) and Equality Act 2010 (EA10).

Planning Policy and Guidance

25. The enforcement notice refers to Policies SD13 and INF2 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS). Policy SD13 sets out criteria against which proposals for new residential Gypsy and Traveller sites should be assessed. The criteria include that no significant barriers to such development should exist in terms of flooding.

⁴ A 'transit' site provides short-stay pitches, where the occupiers may only stay for temporary periods.

⁵ From the Council's suggested 'personal' condition, which in turn is based on the appellant's response dated 27 July 2021 to a planning contravention notice, the occupied pitches are numbered 1-6 plus 1A.

⁶ As defined in Annex 1 to the Planning Policy for Traveller Sites and interpreted in the light of the Court of Appeal judgment in *Smith v SSHLUC* [2022] EWCA Civ 1391.

26. JCS Policy INF2 is concerned with flood risk management generally. It states, amongst other matters, that development proposals must avoid areas at risk of flooding in accordance with a risk-based sequential approach and must not increase the level of risk to the safety of the occupiers of a site or the local community or wider environment.
27. I do not know if the Gloucester City Plan (GCP) has been adopted, but the 'main modifications' version (MMGCP) was published in April 2022 following an examination in public. MMGCP Policy E4 expects, amongst other matters, that development shall be safe from flooding and not lead to an increase in flood risk elsewhere. I shall attach weight to Policy E4 as far as it is consistent with Policy INF2 and national planning policy.
28. On that note, I shall have regard to the Government's Planning Policy for Traveller Sites (PPTS) and National Planning Policy Framework (the Framework). The latter sets out national policy in respect of development and flood risk which is supplemented by the Planning Practice Guidance (PPG).
29. I do not take the references to climate change in the Council's statement of case as amounting to 'the introduction of new material'. The notice referred expressly to the Framework and PPG, and they both clearly expect that flood risk is assessed with regard to 'the current and future impacts of climate change'⁷. The appellant has himself relied on the Framework and PPG; he cannot be surprised that their full contents are in play.

Reasons

Flood Risk Classification and Vulnerability

30. The PPG explains that flood risk is a combination of the probability and potential consequences of flooding. Flood risk may arise from various sources, including rivers or the sea, rainfall on the ground surface, rising groundwater, overwhelmed sewers and drainage systems, reservoirs or canals, and the interactions between the different sources.
31. The confluence of two rivers, the Severn and its subsidiary the Twyver, is less than a kilometre to the southwest of the site. The Twyver passes to the south of the site and underneath Bonnie's Lane by the eastern site boundary. The Severn loops around the north as well as west of the site, albeit at a distance. Figure 1 in the Council's site-specific Flood Risk Assessment (FRA)⁸ indicates that there is a 'flood culvert' to the south of the site, while the appellant notes that ditches to the north and west drain into the Twyver.
32. The Framework and PPG classify land in terms of 'flood zones'. Since river or 'fluvial' flooding is agreed to be the main source of flood risk in this case, the relevant definitions of the flood zones are:
 - Land in Flood Zone 1 (FZ1) has a less than 0.1% (1 in 1000 years) annual probability of river flooding.
 - In FZ2, there is a 0.1-1% annual probability of river flooding.
 - In FZ3a, there is a 1% (1 in 100 years) or greater annual probability of river flooding.

⁷ For example, see paragraph 161 of the Framework

⁸ Appendix 8 to the Council's statement of case.

- FZ3b is functional floodplain, where there is a 3.3%+ annual probability of flooding, or where water from rivers must flow and be stored, even if only in extreme flood events.
33. Flood risk maps provided by the Environment Agency (EA) suggest that the whole of the appeal site is within FZ3, but they do not distinguish between FZ3a and 3b. The Gloucestershire County Council Strategic Flood Risk Assessment (SFRA) suggests that the site is largely within the latter, but the information is still presented broad-brush. Both parties have therefore referred to more detailed EA 'Severn model node data'.
34. As I understand it, this is data produced from computer-based modelling of fluvial flood risk whereby, in a 'design flood event', the flow and levels of water at 'node' points along the Severn is estimated, and the impact on pathways (such as watercourses and pipes) and receptors (properties and infrastructure) is modelled with regard to the topography of land. The parties agree that, to show which parts of the site are actually within FZ3, the design flood event in this case should be a 1 in 100-year river flood event.
35. The appellant's site-specific FRA, contained within the 'May 2022 report', relies on EA data published on 7 July 2020. It shows that, in the design flood event, water levels at Severn node point LCR18 would reach approximately 10.80m above ordnance datum (AOD)⁹. The appellant argues that LCR18 is the relevant node because it is upstream of the site, it is in a similar location to the site in terms of Severn tidal flooding and it was 'referred to' and 'accepted' when the 2018 application was made and determined.
36. As discussed below, the May 2022 report also contends that land levels on the site are mostly higher than 10.80m AOD. The appellant accepts that Pitch 6, at the far eastern end of the site, 'is located within the 1 in 100-year return period floodplain...that defines the extent of' FZ3. He claims, however, that Pitches 1-5 would not be below water in a design flood event and are in FZ2.
37. The Council rejects the appellant's findings on the basis that:
- The July 2020 data is superseded by that published by the EA in September 2020.
 - The most relevant node point is PUMPUS, because it is closer than LCR18 to both the site and the confluence of the Severn and Twyver, from where flows would back up in a flood event.
 - The 10.80m AOD figure relied on by the appellant did not include an allowance for climate change as required by the Framework and PPG.
38. The appellant refutes that they used out of date information, but that makes the least difference to the outcome. Critically, I agree that PUMPUS is the relevant node and, when considering whether to grant permanent permission, the design flood event must include an allowance for climate change. On that basis, flood water would be expected to reach 11.56m AOD¹⁰.
39. The appellant and Council agree that ground levels vary across the site; it is also clear that the site is lowest towards the east, where it is closest to the

⁹ Or above sea level.

¹⁰ Even on the old EA data, Table 4.1 in the May 2022 report indicates that a design flood event with an allowance for climate change would mean water at LCR18 being 11.23m AOD.

Twyver. The parties disagree as to the actual or lawful land levels, but I find that the entire site is lower than 11.56m AOD and therefore within FZ3:

- If the appellant is right that land levels on the site range from 10.21 to 11.22m AOD, water on the site would be 1.35m-0.34m AOD deep.
 - If the Council is correct that land levels range from 10.04 to 11.45m AOD, flood waters would be 1.52-0.11m deep.
40. Overall, I find the Council's evidence more reliable. In deciding whether to grant permanent permission and therefore applying an allowance for climate change, I accept that some 70.3% of the site is within FZ3b; 29.4% is within FZ3a and only 0.3% of the site is within FZ2. It follows that none of the pitches are wholly within FZ2, as the EA flood risk map and SFRA suggest.
41. As noted above, I will consider later whether to grant personal or temporary permission. The PPG states that residential development can be assumed to have a lifetime of at least 100 years, unless there is specific justification for considering a different period, perhaps because the development is subject to a time-limited condition.¹¹
42. The Council has not referred to recent EA modelling that makes no allowance for climate change. I must therefore rely on the slightly older data appended to the May 2022 report, which suggests that a hypothetical 1% fluvial flood event would result in water at PUMPUS reaching a depth of 11m AOD. Unfortunately for the appellant, the topographical survey also appended to the report suggests that every pitch has a low point of 11m AOD or less¹².
43. I could not find that any pitch is within FZ2 on any timeframe. Adding weight to that finding, aerial photographs show that only the tops of trees were visible above water on the site during actual flood events in July 2007 and December 2012. Whether or not the land has been raised since then¹³, I find that every pitch would probably be flooded in a 1% annual probability river flood event with or without an allowance for climate change.
44. The appellant suggests that land levels on the site are similar to those where nearby bricks and mortar houses were constructed, but I am not aware of the design of those buildings or the circumstances in which they were permitted. The stationing of caravans for permanent residential use is considered 'highly vulnerable' to flooding according to Annex 3 of the Framework, and the same is not true of dwellinghouses.

Sequential Test

45. Paragraph 162 of the Framework states that development should not be permitted if there are reasonably available and appropriate sites in areas with a lower risk of flooding. To pass the 'Sequential Test', which is also required under JCS Policy INF2 and MMGCP Policy E4, it must be shown in this case that there are not any reasonably available and appropriate Traveller sites with a lower risk of flooding. The answer to that question is clear.

¹¹ PPG paragraph ref ID: 7-006-20220825

¹² From the position of fencing shown on the topographical survey, Pitch 6 is 10.21m AOD at its lowest point, and the same figures for Pitches 5, 4 and 3 are 10.85, 11.00 and 10.91m AOD. The remaining land, which must include Pitches 1, 1A and 2, is as low as 10.96m AOD on its eastern side and 10.73m AOD to the west.

¹³ The 2018 application was refused in part because the raising of land levels had led to the loss of flood storage capacity and increased the risk of flooding elsewhere. However, I have no remit to decide if there were positive or negative effects of any ground works, including the laying of hardcore, because they are not subject to the notice.

46. Paragraph 3.10 of the MMGCP states that the Council has 'reviewed all possible site opportunities...and concluded that there are none that are suitable, available and viable'. The Council's Enforcement report says: 'Alternative sites – None'. The Council's appeal statement also admits that they 'cannot presently draw the Inspector's attention to an alternative site...to provide pitches for the residents of the Site'.
47. In this situation, there is no burden on the appellant to somehow conjure up land. I find that the development could not be steered to any reasonably available and appropriate alternative site, let alone one that has a lower risk of flooding. The Sequential Test is passed.
48. Where highly vulnerable development is proposed within FZ3a or FZ3b, as is the case here, the 'Exception Test' described in the Framework and PPG is not required even if there are no alternative sites in FZ1 or FZ2¹⁴. However, paragraph 159 of the Framework provides that where development would be inappropriate in areas at risk of flooding but is nonetheless necessary, it should be made safe for its lifetime without increasing flood risk elsewhere.

Necessity

49. In the supporting text to JCS Policy SD13, Table C4 records a need for one new permanent Traveller pitch between 2016 and 2021 in Gloucester. None are needed between 2021 and 2026, but one more will be required between 2026 and 2031¹⁵. The evidence behind Table C4 was provided in a Gypsy and Traveller Accommodation Assessment (GTAA) published in 2017. On that basis, paragraph 3.10 of the MMGCP indicates that two pitches are needed between 2016 and 2031. It appears, however, that the Travellers counted by the GTAA did not include those now residing on the appeal site.
50. Planning permission was granted on appeal¹⁶ on 12 August 2021 for a change of use of land at Walham Lane in Gloucester, so as to create four residential caravan pitches for Travellers. However, the 'Walham Lane permission' was subject to 'temporary' and 'personal conditions', meaning that it does not meet the need for permanent pitches set out in Table C4 and is not available for occupation by anyone other than the persons specified in the condition.
51. For the purposes of this appeal, it is irrelevant that the GTAA was found to be robust when the JCS was examined, and that it was relied upon by the Inspector who determined an appeal relating to a different local authority in December 2021¹⁷. It is also irrelevant that the Inspector who examined the GCP found that the Council made sufficient provision for sites based on the GTAA. Those colleagues of mine were not deciding whether to grant planning permission for six or seven pitches on the current appeal site.

¹⁴ If the Sequential Test shows that there are no available sites in FZ1, the PPG provides that highly vulnerable development proposed within FZ2 should be subject to the 'Exception Test', whereby permission may be granted if the development would provide wider sustainability benefits that outweigh flood risk and be safe for its lifetime without increasing flood risk elsewhere; PPG paragraph ref ID: 7-031-20220825 and Table 2.

¹⁵ Table C4 distinguishes between 'travelling households', 'non-travelling households' and households where it is 'unknown' if they have a nomadic lifestyle. The reason for the distinction is that the 'planning definition' of Travellers in PPTS Annex 1 excludes those who have ceased to travel permanently, but the Court of Appeal found that definition unlawful in *Smith v SSHLUC* [2022] EWCA Civ 1391. For that reason, and since the numbers are low in any event, I shall assume for the purposes of this appeal that all those counted in Table C4 are Travellers.

¹⁶ Appeal ref: APP/U1620/C/20/3255865

¹⁷ Appeal ref: APP/G1630/C/20/3259091

52. On the evidence before me, there is likely to be a greater unmet need for Traveller pitches than the JCS or MMGCP recognise. The Council still needs to provide the one pitch required by 2021 in accordance with Table C4 plus another six or seven pitches to accommodate the Traveller households living on the site. A further four pitches will probably be required for the families living at Walham Lane when their permission expires on 12 August 2023.
53. The GCP Examining Inspector found that the Council is actively working with the other JCS authorities to bring forward new Traveller sites, and that Policy SD13 is the appropriate policy mechanism to ensure such sites are granted planning permission and delivered. I accept that evidence, but the fact remains that no such delivery has occurred.
54. Thus, the development is necessary not only because there are no available alternative sites, but also because the Council does not have a supply of specific deliverable sites to address its unmet need or to provide, as required by PPTS, five years' worth of pitches against the targets set out in Table C4. I see little prospect of sites being delivered in the near future when the Council has not referred to any permission being granted or sought apart from that at Walham Lane; the GCP will not allocate any land for development for Traveller pitches; and there is no proper timetable for review of the JCS or GTAA.
55. The development is also necessary from the human perspective of the occupiers of the site. Regardless of the extent to which any of them travel, they will all need settled bases and see the site as their home. Indeed, I saw that the pitches are domesticated and personalised, as the notice suggests in its references to sheds and other items. If I uphold the notice when it requires the cessation of the residential use, and there are no available alternative sites, it is highly probable that the occupiers will be made homeless. The consequences would be severe for each and every individual.
56. The appellant is clear that the occupiers include children who attend local schools. It is well-established that homelessness is damaging to the health and welfare of children. Being moved from one place to another can foster physical ill-health, insecurity, trauma and lifelong emotional problems, and it is disruptive to both education and medical care. I fully accept that the children need somewhere permanent and safe to live.
57. However, while the appellant rightly expects that consideration is given to the human rights of the occupiers, he has not invoked personal circumstances in support of this appeal¹⁸. His evidence does not set out the ages or number of children on each pitch; which school(s) they go to; whether any have special educational needs; whether any other occupiers are babies, infants, pregnant, elderly or disabled; or whether any occupier has medical needs being met by a local health practitioner.
58. Those observations do not change my earlier finding that the development is necessary in human terms. And it might have made no difference if the appellant had given more information because babies, children, pregnant women and unwell, disabled and elderly people would be at greatest risk in the event of a flood. Even so, I make the simple point that the appellant has made no case to justify a 'personal' permission in respect of any pitch.

¹⁸ Even if the appellant could not have given the Council information about the site occupiers before the notice was issued, he had opportunity to provide me with evidence in his appeal representations.

59. I accept that the development is sustainable as far as it complies with the non-flooding related criteria for Traveller sites set out in JCS Policy SD13 and PPTS paragraph 13. Bonnie's Lane provides safe access in general highway terms, and the site is well-located in relation to local amenities, services and facilities. The development promotes access to appropriate health services and ensures that children can attend school on a regular basis. It provides a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampments.
60. Given my findings below regarding the representations from local residents, I agree with the appellant that allowing this appeal would promote peaceful and integrated co-existence between the Travellers living on the site and members of the settled community. Where new residential development has the benefit of planning permission, and new children in an area attend local schools, their families and homes are normally accepted over time by existing residents.
61. Any other Traveller site, especially one that is similarly located on the urban fringe, could provide the same benefits; none of those listed above are exceptional. But since there are no other sites, the beneficial aspects of the development add weight to my finding that it is necessary.

Safety

62. Paragraph 167 of the Framework states that 'development should only be allowed in areas at risk of flooding where...it can be demonstrated that' certain criteria are met. I shall assess the question of safety on this structured basis.
63. Under paragraph 167a), the most vulnerable development within a site should be located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location. I have found that every pitch is within FZ3 and excluding Pitch 6 from any permission would not result in the most vulnerable development being located at lower risk. The appellant has not put forward any other measures to minimise the risk to caravans and their occupiers.
64. In my view, the May 2022 report does not properly address paragraph 167b) which expects that development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment¹⁹. The Council's site-specific FRA refers to EA guidance that finished floor levels should be set at least 600mm above the design flood level. The appellant has not shown whether or how the floors of the caravans could be permanently secured at 12.16m AOD (11.56 + 0.6), 11.60m AOD (11 + 0.6) or even 11.40m AOD (10.80 + 0.6).
65. The Council's FRA also refers to government guidance on 'flood hazard ratings' that are based on the velocity as well as the depth of flood water plus a 'debris factor'²⁰. The Council has not explained how the ratings should be used in a planning context or whether velocity has already been factored into the node data modelling. However, I take the general points that flood water could move across the site at a 'significant' velocity, given the proximity of the Twyver, and the debris factor should be that of an 'urban' area.

¹⁹ And that is surprising because, if the site had been within FZ2 and subject to the Exception Test, as the appellant claimed, he would have still needed to address flood resistance – and c) sustainable drainage.

²⁰ Set out in guidance published by the Department for the Environment, Farming and Rural Affairs.

66. Indeed, the May 2022 report notes that: 'even at shallow depths, the velocity of floodwater could be enough to knock someone off their feet...manhole covers...may have been lifted off...creating a serious hazard...movement through floodwater should be avoided where possible...' Yet the report does not identify what manholes are on or close to the land or discuss measures to prevent caravans from being lifted by water pressure. It does not show that the residential use is appropriately flood resistant and resilient, or that it could resume without significant site refurbishment after a flood event.
67. The May 2022 report also omits to consider whether a sustainable drainage system could be implemented on the site, or whether or how any residual risk can be managed as required by Framework paragraphs 167c) and 167d). A condition could be imposed to ensure the approval and implementation of suitable foul and surface water drainage facilities. However, the appellant has not provided details of the existing septic tanks or any potential alternatives. He has not shown whether or how surface water run-off could be managed in a 1 in 100-year flood event or otherwise.
68. Moreover, as noted above, the aerial photographs show that the site was covered in trees and vegetation during the flood events of 2007 and 2012. Some water might then have been expected to soak into the roots and soil, consistent with land being partly within FZ3b. The site is now, as described in the May 2022 report, 'formed predominantly from gravel/stone hardcore'.
69. I am not considering the lawfulness or merits of the ground works; new surfacing could in any event be secured by condition. However, there is still a question unanswered by the appellant as to whether the land has or could have the same flood storage capacity that it had in 2007 and 2012. Even if it does, water would still be above ground as it was then. If it does not, flood risk on the site and elsewhere would likely be increased.
70. Finally, Framework paragraph 167e) requires that safe access and escape routes be included in development where appropriate, as part of an agreed emergency plan. The May 2022 report sets out a Flood Evacuation Management Plan (FEMP) whereby the site would be registered with the EA flood warning service and supplied with an emergency 'flood kit' plus signs setting out evacuation information. The report may be right that due to the nature of the Severn, 'flooding is gradual and so suitable warning...can take place days in some case[s] before flooding takes place'.
71. However, I agree with the Walham Lane Inspector that occupiers might be loath to leave the site if they have only received a flood warning and nowhere else to go. The FEMP proposes that the appellant take on the role of a 'lead flood co-ordinator' charged with, for example, organising or triggering site evacuation 'should it be appropriate and safe to do so'. However, the FEMP does not say what the lead flood co-ordinator should do – apart from ringing 999 – if occupiers need to be evacuated when it is not 'appropriate and safe'.
72. The PPG expects that access and escape routes are designed so that occupiers can safely access and exit their dwellings in design flood conditions, not just on receipt of a flood warning²¹. The May 2022 report suggests that Bonnie's Lane varies in level from 10.96-11.13m AOD with the lowest levels again being to the east and over the Twyver. It follows that, in a design flood event,

²¹ PPG paragraph ref ID: 7-047-20220825

with or without allowance for climate change, Bonnies Lane would be below water in the direction of the city centre and local services. The higher part of the road leads only to an area of countryside that is closer to the Severn.

73. A condition could ensure that a new FEMP is submitted in writing and implemented as approved. However, I am not satisfied on the evidence before me that the site occupiers would or could have safe access and escape routes or that, overall, the development could be made safe for **any** lifetime without increasing flood risk elsewhere.

Other Matters

74. I have considered the representations of interested parties. Their concern at the loss of trees on the site is understandable but the development has not caused any unacceptable loss of green space or intrusion into the countryside. The site is between a housing estate and a house in multiple occupation; it is not unusual to see caravans in or on the edge of residential areas such as this. I am satisfied that the development causes no unacceptable harm to the character and appearance of the area.
75. I also consider that the development does not unacceptably harm the living conditions of any off-site residents; indeed, the site is in the same use as the nearby houses. Residential activity does not usually give rise to unacceptable noise or light pollution, and no such harm is likely to arise here because the site is separated from dwellings by several metres, various boundary treatments and the Twyver. I am not persuaded that traffic from the site causes unacceptable amenity, parking or highway safety problems.
76. With regard to the loss of trees, there is no evidence that the development has caused an unacceptable loss of biodiversity. I also note that permission could be granted for the residential use – on this site as any other – subject to conditions controlling refuse storage and collection as well as drainage facilities. The development need not cause unacceptable environmental harm.
77. I attach little weight to the objections regarding anti-social behaviour because that may arise in any residential area, and the allegations in this case are not supported by evidence that could justify dismissing the appeal. I also attach little weight to the fact that the development took place without planning permission; even if it amounted to ‘intentional unauthorised development’, the appellant is now seeking to regularise the situation and the enforcement system is remedial not punitive.
78. I find, therefore, that the development causes no unacceptable planning harm in any respect other than flooding. However, that finding will be neutral in the planning balance; it is not a positive consideration which might tip the scales.

The Planning Balance, Human Rights, Equality and the Overall Conclusion

79. The site is largely within FZ3a and 3b, and the development would be highly vulnerable to the high risk of flooding. However, it could not be directed to an area with a lower flood risk, and the Sequential Test is passed, because there are not any reasonably available and appropriate alternative sites.
80. For the same reason and given the unmet need for sites, the lack of a five-year supply of sites, the lack of any GCP allocations or timetable for JCS review, the fact that the site is occupied by families with children and because

it is in other respects sustainable, the development is necessary. However, it has not been shown that any pitch could be made safe for any lifetime without increasing flood risk elsewhere. The development conflicts with JCS Policies SD13 and INF2, MMGCP Policy E4 and the Framework, PPTS and PPG.

81. Ultimately, this case comes down to balancing the need for and benefits of against the risks arising from the development; in my view, the latter must carry more weight. The use for stationing residential caravans gives rise to an unacceptable risk of flooding such that planning permission should not be granted on a permanent basis whether for the whole or any part of the site.
82. Underpinning that conclusion, PPTS paragraph 13 and Policy SD13 are clear that Traveller sites should not be located in areas at high risk of flooding given the particular vulnerability of caravans – and yet the appellant’s evidence persistently under-estimates the risks and impacts of flooding. It disregards key tenets of planning policy by calculating flood risk with no allowance for climate change, and by failing to demonstrate that the site or wider area would be safe. The FEMP does not even show that site occupiers would have safe access and escape routes in a short-term design flood event.
83. Paragraph 27 of the PPTS states that, if an LPA cannot demonstrate an up-to-date five-year supply of deliverable sites, that should be a significant material consideration when considering applications for the grant of temporary permission. The Walham Lane Inspector found against the development before him in flood risk and safety terms but, partly because of the under-supply of sites in Gloucester, he granted permission for a period of two years.
84. However, parts of the Walham Lane site are in FZ2. By contrast, every pitch on the site before me would be at least partly within FZ3 even for the period of a temporary two-year permission. The Walham Lane Inspector also had reasons to grant ‘personal’ as well as temporary permission. As noted above, the appellant has referred to the occupiers generally but not as individuals. I could not justify granting a ‘personal’ permission in respect of any pitch.
85. Nonetheless, I have given serious consideration to granting temporary permission in order to give the children in particular more time on the site and at their schools. The pitches are clearly laid out as family homes, and I do not underestimate the difference that even two more years could make to the health, wellbeing and life chances of the children.
86. However, I am discouraged from granting temporary permission by the PPG, which advises that doing so may be appropriate where it is expected that the planning circumstances will change in a particular way at the end of the temporary period. Notwithstanding the optimistic GCP Examining Inspector’s report, I cannot point to any concrete actions being taken to increase the supply of pitches. I could not find that any available alternative sites or a five year’s supply of deliverable sites might exist in two or even five years’ time.
87. Moreover, there is another way – in principle – for me to give the occupiers longer on the site: through consideration of what is a reasonable period for compliance with the notice pursuant to the appeal on ground (g). If I granted temporary permission, the notice would be quashed, and another enforcement notice might need to be issued if the occupiers did not vacate the site at the end of the period. Upholding the notice with reasonable time for compliance is more likely to ensure that the residential use ends at an appropriate time.

88. The disadvantage of allowing any use to continue without planning permission is that no conditions can be imposed. In this case, my view is that conditions would have no significant beneficial effect. The use is restricted because there is little room for more caravans between those existing and the sheds, fencing and other items. Requiring the appellant to invest in a sustainable drainage scheme would be unreasonable if the permission is only for the short-term and the site would not be demonstrably made safer anyway. The FEMP is not so robust as to justify a grant of temporary permission.
89. I have had regard to the rights of the appellant and the site occupiers under Article 8 of the European Convention on Human Rights as incorporated into the HRA98. Article 8 affords the right to respect for private and family life and home, including the traditions and culture associated with the Romany Gypsy way of life and the best interests of the children. It is a qualified right, and interference may be justified where that is lawful and in the public interest. The concept of proportionality is crucial.
90. Dismissing the appeal or granting a time-limited permission would interfere with the rights of the occupiers under Article 8, since the consequence would probably be that they are rendered homeless at some point. However, the interference would be in accordance with the law and in pursuance of a well-established and legitimate aim: avoiding highly vulnerable development in areas at high risk of flooding.
91. Given the circumstances overall, and particularly the appellant's failure to show that the occupiers of the site would be safe for any period, I find that a refusal of any kind of planning permission would be proportionate and necessary. That is the only decision I can make, on the evidence before me, to protect the occupiers and their homes from unacceptable risk of flooding. The protection of the public interest, the interests of all of the occupiers and the best interests of the children cannot be achieved by means that are less interfering with their rights under Article 8.
92. As Gypsies or Travellers, the occupiers of the site and the appellant share the protected characteristic of race for the purposes of the PSED set out under s149 of the EA10. Since the risks associated with the appeal development outweigh its benefits, I find that refusing permission is proportionate and necessary in order to eliminate discrimination against persons with that protected characteristic, and to advance equality of opportunity for those persons and to foster good relations between them and others.
93. No case has been made that the sheds, fencing or any other structures should be permitted without the residential use. With regard to all other matters raised, I conclude that it is proportionate and necessary to dismiss the appeal on ground (a) and refuse the deemed planning application.

THE APPEAL ON GROUND (F)

94. Ground (f) is that the requirements of the notice exceed what is necessary in order to remedy the breach of planning control or, as the case may be, the injury to amenity caused by the alleged development.
95. The appellant suggests that the notice should be varied so it only requires the cessation of the use and removal of works on Pitch 6. I have already considered the planning merits of the development through the ground (a)

appeal. The suggested variation would not remedy the injury to amenity caused by the development because every pitch is at least partly within FZ3.

96. Moreover, the purpose of the notice is to remedy the breach of planning control; that is apparent because the notice alleges that there has been a change of use and it requires the use to cease. Varying the notice so that the use can continue to any extent would not remedy the breach. Given the appellant's arguments in relation to ground (c), I also reiterate that removing the shed, fencing and the other structures and chattels which facilitated the change of use is also necessary to remedy the breach.
97. As indicated above, I shall correct the requirements of the notice so that they align with the corrected allegation and are more precise and succinct. Even so, I conclude that the appeal fails on ground (f).

THE APPEAL ON GROUND (G)

98. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant seeks 24 rather than 12 months to comply with the notice on the basis that the development does not conflict with planning policy in terms of flood risk to the extent suggested by the Council; that it complies with planning policy in all other respects; there is a need for more Traveller sites and none are available; and to protect the human and other rights of the site occupiers, including the children.
99. I have found that the risk of flooding on the site and the associated conflict with planning policy is every bit as 'extensive' as suggested by the Council. I have also noted that the appellant has given me little information about the children themselves or measures to keep them and their families and homes safe in any flood event.
100. However, the chance of a flood occurring would be reduced in the short-term. It is clear from the evidence set out above that the occupiers of the site are unlikely to have any other place to live. If and when they are made homeless, the health, wellbeing and education of the children will be disrupted. It is desirable, in my view, that the period for compliance with the notice should not require that children be taken out of school during the academic year.
101. I am also concerned that the occupiers of the site – for whatever reason – have not participated in this appeal. I cannot control when they will receive this decision letter or any assistance in understanding it, let alone support to find somewhere else to live. For those reasons, I find that the 12-month period for compliance given by the notice falls short of what is reasonable.
102. I have explained why it would be preferable in this case to extend the period of compliance and not grant temporary permission. I conclude that it is reasonable and proportionate to vary the notice so as to extend the period to 14 months, so that the use will be required to cease during the 2024 school summer holiday. To that extent, the appeal succeeds on ground (g).

CONCLUSION

103. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation, and I shall refuse to grant planning permission on the application deemed to have been made under s177(5) of the TCPA90.

FORMAL DECISION

104. It is directed that the enforcement notice be corrected and varied by:

- Deleting the text of paragraph 3 and substituting: *Without the benefit of planning permission, the material change of use of the land from agricultural to residential use, facilitated by the siting of mobile and static caravans as well as the installation of sheds, fencing, septic tanks, pipework, other utilities connections and other residential paraphernalia.*
- Deleting the bullet points set out in paragraph 5 and substituting:
 - *Cease the residential use of the land.*
 - *Remove from the land all mobile and static caravans sited to facilitate the change of use to residential use.*
 - *Remove from the land the sheds, fencing, septic tanks, pipelines, other utility connections and other residential paraphernalia installed to facilitate the residential use.*
 - *Make good the land after the removal of all caravans and the sheds, fencing, septic tanks, pipelines, other utility connections and other residential paraphernalia.*
- Deleting 12 months and substituting 14 months as the period for compliance with the notice.

105. Subject to the corrections and variation, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990.

Jean Russell

INSPECTOR