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## Appeal Decisions

Site visit made on 4 June 2024

**by Bhupinder Thandi BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 05 September 2024**

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### **Appeal A Ref: APP/P0119/W/23/3329144**

#### **Field north and east of Crossing Cottage, Latteridge Road, Iron Acton BS37 9TL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
  - The appeal is made by Mrs C Mullane and Mrs M Doherty against the decision of South Gloucestershire Council.
  - The application Ref DOC23/00070 sought approval of details pursuant to conditions Nos 4, 5 and 6 of planning permission Ref C/20/3264071, granted on 25 August 2022.
  - The application was refused by notice dated 16 August 2023.
  - The development proposed is the material change of use of the land to a mixed use as a Gypsy/Traveller residential caravan site and for equestrian purposes, along with associated development.
  - The details for which approval is sought are: condition 4 (verification of imported material), 5 (site development scheme) and 6 (flood evacuation plan) attached to appeal APP/P0119/C/20/3264071.
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### **Appeal B Ref: APP/P0119/W/23/3317250**

#### **Field north and east of Crossing Cottage, Latteridge Road, Iron Acton BS37 9TL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
  - The appeal is made by Mrs C Mullane and Mrs M Doherty against the decision of South Gloucestershire Council.
  - The application Ref DOC22/00421 sought approval of details pursuant to conditions Nos 4, 5 and 6 of planning permission Ref C/20/3264071, granted on 25 August 2022.
  - The application was refused by notice dated 31 January 2023.
  - The development proposed is the material change of use of the land to a mixed use as a Gypsy/Traveller residential caravan site and for equestrian purposes, along with associated development.
  - The details for which approval is sought are: condition 4 (verification of imported material), 5 (site development scheme) and 6 (flood evacuation plan) attached to appeal APP/P0119/C/20/3264071.
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### **Decision**

1. Appeals A and B are dismissed.

### **Procedural Matters**

2. As set out above there are two appeals. I have considered each appeal on its individual merits. However, to avoid duplication I have dealt with the two together, except where otherwise indicated.

3. The Council's evidence makes reference to Condition 3 (maximum number of caravans) and Condition 7 (streetlights). However, the planning application form indicates that approval is sought for the details submitted in respect of Condition 4 (verification of imported material); Condition 5 (site development plan) and Condition 6 (flood evacuation plan). I have considered the appeal on the basis of the details submitted in respect of the conditions outlined on the planning application form.

### **Background and Main Issues**

4. Planning permission was granted for the change of use of land to a mixed gypsy and traveller and equestrian site on 25 August 2022 subject to a number of conditions.
5. Condition 4 requires details of the source of the soils and hardcore materials imported onto site to demonstrate they are free from contamination. Condition 5 requires submission of a Site Development Scheme including, details of the site layout, boundary treatments, site levels, external lighting, access and ecological enhancements and Condition 6 requires submission of a Flood Evacuation Plan.
6. The appellant's Statement of Case sets out the background to the appeal and the information that was submitted by the appellants in respect of the conditions imposed on the planning permission. The Council's case comprises a letter to the appellants setting out what the Council consider to be the shortcomings of the submitted information.
7. In this context, the main issue is whether the submitted details in respect of conditions 4, 5 and 6 are adequate in respect of the living conditions of the occupiers, the character and appearance of the area and flood risk.

### **Reasons**

#### *Verification of imported material*

8. Condition 4 requires documentation to verify the source of soils and hardcore imported onto site or the sampling of imported materials to ensure that they are free from contamination. The appellant has chosen the former.
9. The appellant has provided an undated letter from Ben's Tiles & Reclamation Ltd stating that clean hardcore was delivered to the site in 2020, 2021 and 2022. A further letter, dated 6 September 2023, has been provided from the same company indicating that clean loads consisting of bricks and stone free from waste materials and vegetation were delivered in 2020, 2021 and 2022.
10. In addition, the appellant has provided photographs of Waste Transfer Notes (WTN) for two loads of hardcore. However, the WTN submitted include limited information in respect of the quantity of materials or its origins. Furthermore, the evidence in respect of the materials does not cover the entire period that they were brought onto site, nor does it stipulate that they are free from contaminants. As such, these details would not meet the requirements of the condition, as it does not provide clarity in respect of the source of the materials brought onto site or demonstrate they are free from contamination.

11. Accordingly, I find that the information submitted does not meet the requirements of Condition 4 and therefore I am not satisfied that the materials imported on to site are free from contamination.

#### *Site Development Scheme*

12. Condition 5 requires submission of a Site Development Scheme including details of the site layout; steps to mitigate contamination; the reduction in site levels; a scheme of landscaping; external lighting; site access and surfacing and ecological enhancements.
13. Based on the evidence before me it is apparent that the appellant has submitted information to adequately meet the requirements of criteria a, d, e, f, g and h of part i) of the condition.
14. In respect of criterion b which requires steps to mitigate contamination given my concerns outlined earlier in respect of Condition 4 I am not satisfied that this has been fully addressed.
15. The appellant has submitted drawing 001 Rev 3 in pursuant of criterion c. Note 10 on the plan states 'Site to be restored to pre-development levels shown by Drawing 002. Selection of levels shown for illustrative purposes only'. By describing the proposed levels as 'illustrative' I concur with the Council that this note fails to provide sufficient clarity and creates a degree of uncertainty that the proposed site levels will be restored to pre-development levels as required by the condition.
16. The appellant has indicated a timetable of 9 months for implementation of the Site Development Scheme required under part ii) of the condition. The Council, on the other hand, consider 6 months would be more reasonable.
17. In respect of part ii) and having regard to the requirements of the condition, the works involved in implementing the Site Development Scheme and the personal circumstances of the appellants I am of the view that 9 months is more reasonable and proportionate to implement the works.
18. Accordingly, as matters in respect of contamination and site levels have not been fully addressed the information submitted does not satisfy the requirements of Condition 5.

#### *Flood Evacuation Plan*

19. The appellants have submitted a Flood Evacuation Plan (FEP) indicating an implementation period of 12 months. However, no information has been provided as to why it would take 12 months to implement the FEP. Taking into account the FEP has been prepared and relates to the safety of the occupiers I see no reason why such a long implementation period is required and no explanation has been provided.
20. In the event of any substantive evidence to indicate otherwise I concur with the Council that an implementation period of 12 months for the FEP is excessive. As such, I find that the information submitted does not satisfy the requirements of Condition 6.

## **Other Considerations**

21. It is apparent that the Council have not delivered a sufficient number of pitches and cannot demonstrate a 5-year supply of pitches for gypsies and travellers. Therefore, there is an unmet need. I attach great weight to this matter. That said, my attention is focused on assessment of the evidence submitted to satisfy the conditions rather than the merits of the original planning permission.

## **Planning balance and conclusion**

22. I have found that the information submitted does not satisfy the requirements of the conditions imposed to the previous planning permission. It is reasonable to expect the details before me and the scheme overall to be consistent with the terms of and reasons for the conditions and the planning permission. Therefore, with particular regard to contamination and flooding I cannot be satisfied that the development would provide a safe living environment for the appellants and their dependants. I attach significant weight to this matter.
23. I have had regard to the rights of the appellants under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. Article 8 affords the right to respect for private and family life and home, including the traditions and culture associated with the 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.
24. In coming to my decision, I have paid regard to the personal circumstances of the appellant's and their families. In my judgement, however, they do not outweigh my concerns regarding land contamination, flood risk and the potential consequences upon their personal safety.
25. Dismissing the appeal would interfere with the appellants' rights under Article 8, since the consequence might be that the appellants and their families 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: the protection of the living conditions of occupiers and their safety.
26. Based on the available information there are other means by which to satisfy the conditions and therefore the submitted details are not the only way to discharge the outstanding conditions.
27. I have also had due regard to the Public Sector Equality Duty set out under the Equality Act 2010. The harm to personal safety caused by allowing the appeal outweighs its benefits in terms of eliminating discrimination against persons with the protected characteristics, advancing equality of opportunity for those persons and fostering good relations between them and others.
28. For the reasons set out above both appeals do not succeed.

*B Thandi*

INSPECTOR

### **Conditions subject of this appeal**

- 4) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land and buildings erected for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
- i) EITHER: within 3 months of the date of this decision, written documentation shall be submitted to the local planning authority to verify the source of the soils and hardcore materials imported onto the site, and to show that they are free from contamination. Documentation which may be considered satisfactory could include supplier details, site of origin, waste transfer notes and quantities of materials supplied; OR; in the absence of such evidence, or if the local planning authority refuse to agree its acceptability, within 6 months of the date of this decision detailed investigations including sampling of the imported materials shall be carried out by a suitably qualified and experienced person to identify the extent, scale and nature of any contamination including the presence of asbestos materials, and a report shall be submitted to the local planning authority describing the potential risks to human health, property/buildings and service pipes, adjoining land, ground waters and surface waters, and ecological systems. Where unacceptable risks are identified, the report shall include an appraisal of available remediation options, the proposed remediation objectives or criteria, and identification of the preferred remediation option/s. The programme of works should be described in detail including a timetable for the implementation of the various parts and the methodology that will be applied to verify that the works have been satisfactorily completed.
  - ii) within 8 months of the date of this decision, the above details or report shall have been approved by the local planning authority, or, if the local planning authority refuse to approve the details or report, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted details or report shall have been approved by the Secretary of State.
  - iv) any approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 5) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land and buildings erected for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (v) below:
- i) within 3 months of the date of this decision a scheme, hereafter referred to as the Site Development Scheme, including details of (a) site layout clearly identifying the location of the pitches, including the siting of caravans; areas for vehicular access and turning and manoeuvring; areas of hardstanding; fencing and other means of enclosure fences; dayrooms, stables, manure pile, wildlife buffer zone and the location of services. For the avoidance of doubt, the fencing used shall be designed to allow the free passage of floodwaters through the site and the WC/utility/day blocks shall have flood

resilience design measures; b) any works or steps required to mitigate contaminants and/or remove materials as necessary in accordance with condition 4; c) the reduction of the levels of the site so that they correspond with "pre-development levels" as recommended in the document entitled "Hearing Statement of Ian Walton" dated May 2022 (SLR Ref: 407.XXXXX.00001). For the avoidance of doubt, the "pre-development levels" are taken to correspond to the levels shown in the topographical plan dated 30 September 2019 (AVH\_574) to the west of the area labelled 'new hardstanding'; d) foul and surface water drainage systems, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development; e) a scheme of landscaping which includes all hard and soft landscaping and details of existing boundary trees/hedges and measures for their protection and retention; f) proposed external lighting on the boundary of and within the site; g) details for the provision of a site access, including surfacing, that enables all vehicles using the site to enter the site without stopping on the public highway, and h) a scheme for the ecological enhancement of the wildlife buffer zone, shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.

- ii) within 6 months of the date of this decision the Site Development Scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted Site Development Scheme shall have been approved by the Secretary of State.
- iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable, and works comprised in the scheme shall be thereafter retained for the duration of the development.
- v) Any contamination found during the course of construction of the development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found additional remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development, or relevant phase of the development, is resumed or continued.

6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land and buildings erected for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

- i) within 3 months of the date of this decision a scheme, hereafter referred to as the Flood Evacuation Plan, prepared in accordance with Annex 09 of the document entitled "Hearing Statement of Ian Walton"

- dated May 2022 (SLR Ref: 407.XXXXX.00001) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
- ii) within 6 months of the date of this decision the Flood Evacuation Plan shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted Flood Evacuation Plan shall have been approved by the Secretary of State.
  - iv) the Flood Evacuation Plan shall have been implemented in accordance with the approved timetable, and shall be thereafter retained and complied with for the duration of the development.