The Planning Inspectorate

Appeal Decision

Site visit made on 26 February 2025

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 MARCH 2025

Appeal Ref: APP/C3430/C/24/3351497
Land at Whiston, Penkridge, Staffordshire, ST19 5QH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Billy Joe Lee against an enforcement notice issued by South Staffordshire District Council.
- The notice was issued on 21 August 2024.
- The breach of planning control as alleged in the notice is (i) the unauthorised material change of use of the Land to a mixed use for agriculture and a residential Gypsy Traveller caravan site, and (ii) unauthorised operational development to facilitate the unauthorised use comprising of (a) a wooden shed in the approximate position marked in pink on the Plan; (b) the laying of hardstanding shaded in purple on the Plan; and (c) the construction of closed board entrance gates which exceed 2 metres in height from ground level.
- The requirements of the notice are to (i) permanently cease the unauthorised use of the Land as a residential Gypsy Traveller caravan site and remove all caravans from the Land; (ii) permanently remove from the Land the wooden shed and the area of hardstanding located in the position coloured purple on the attached plan; (iii) either remove from the Land the entrance gates or reduce the height of the entrance gates to a height no greater than 2 metres from ground level, and (iv) remove from the Land all materials arising from compliance with 5(ii) and 5 (iii) above.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (c) of the Town and Country Planning Act 1990 (as amended) (the Act). 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 Act.

Decision

1. 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 1990 Act as amended.

Preliminary Matters

2. The National Planning Policy Framework was revised in December 2024 (the 2024 Framework) and was subsequently amended on 7 February 2025 to correct cross-references from footnotes 7 and 8 and amend the end of the first sentence of paragraph 155 to make its intent clear. For the avoidance of doubt, the amendment to paragraph 155 does not constitute a change to the policy set out in the 2024 Framework. The 2024 Framework replaces the previous version of the National Planning Policy Framework published in December 2023.

3. The Government's Planning Policy for Traveller Sites was also revised in December 2024 (the 2024 PPTS) and this replaces the Planning Policy for Travellers Sites dated August 2015 (as amended in December 2023).

4. I afforded the main parties the opportunity to comment on the implications of the revised 2024 PPTS and the 2024 Framework. I have considered the comments made as part of my assessment of the deemed planning application.

Ground (b) appeal

5. While the appellant has not ticked the relevant box on the appeal form in respect of lodging a ground (b) appeal, he has nonetheless made a claim under ground (b) of section 174(2) of the Act as part of his statement of case. The Council has responded to such a claim. An appeal made on ground (b) of section 174(2) of the Act is that the matters alleged in the notice have not occurred. The onus is on the appellant to make his case on any legal grounds of appeal.

6. The appellant considers that the alleged material change of use of the land to a mixed use for agriculture and a residential Gypsy Traveller caravan site has not occurred. He states that planning permission[1] for use of the land for the keeping of horses including the erection of stables and a haybarn, the laying of hardstanding, the construction of a menage, and the improvement of the access, was partly implemented prior to the alleged material change of use of the land occurring and, that prior to the notice being issued, the land was being used for a horsiculture use and not for an agricultural use. The appellant claims that the alleged unauthorised mixed agriculture and residential Gypsy and Traveller caravan site use has not occurred.

7. The evidence is that as far back as 2012, the land appears to have been used for agricultural purposes. The Council's Google Street-View image shows an informal track leading from the main road to polytunnels in 2012. The evidence indicates that some hardstanding has been formed on the land. Some of it appears to accord with the location of the hardstanding shown on the approved plans associated with planning permission on the land. I do not know with certainty whether such hardstanding was formed with the express intention of ever being used in connection with planning permissions 21/00235/FUL or 21/00235/AMEND, although it is noteworthy, in any event, that the notice does not require all hardstanding to be removed from the land. For the purposes of this appeal, I shall take the view that part of the hardstanding on the land was formed for the purpose of partly implementing the above planning permission and, in this regard, that development commenced in accordance with section 56 of the Act. The Council do not appear to disagree with such a view.

8. Notwithstanding the above, there is no evidence of the planning permission being fully implemented. Importantly, there is no evidence of the approved stables or menage being constructed on the land, or indeed any evidence of horses being kept on the land, as distinct from say, simply grazing. Put simply, there is no precise or certain evidence before me to demonstrate that the land has been lawfully used for the keeping of horses.

9. The onus is on the appellant to substantiate his ground (b) appeal. In my judgement, the appellant's evidence does not clearly and precisely demonstrate that when the notice was issued, the land was not being used as a mixed agriculture and residential Gypsy and Traveller caravan site use.

10. I therefore conclude that the ground (b) appeal fails.

[1] 21/00235/FUL and 21/00235/AMEND

Ground (c) appeal

11. An appeal made on ground (c) of section 174(2) of the Act is that those matters (if they occurred) do not constitute a breach of planning control. The onus is on the appellant to make the case on any legal grounds of appeal.

12. There is no claim made by the appellant that the material change of use of the land as alleged in the notice does not require planning permission. Indeed, the use of the land from agriculture to a mixed agriculture and residential Gypsy Traveller caravan site use constitutes a material change of use of the land and hence amounts to development under section 55 of the Act. Planning permission is required for the material change of use of the land. As a matter of fact and degree, I find that there is a significant difference in the character of the activities on the land from what has lawfully gone on previously.

13. The appellant's ground (c) appeal claim relates to the part of the allegation which refers to unauthorised operational development comprising the *'laying of hardstanding shaded in purple on the Plan'*. The Claim made by the appellant is that this hardstanding was approved in respect of planning permissions 21/00235/FUL or 21/00235/AMEND and so does not constitute a breach of planning control.

14. I have been provided with copies of the above planning permissions including the associated drawings. The purple area on the plan attached to the notice is about the same size as the *'sand arena'* shown on the plans approved as part of the above planning permissions. I was able to see on my site visit that this part of the site includes crushed permeable stone and not sand. As a matter of fact and degree, I find that when the purple area on the plan is considered as a whole, it comprises a new hardstanding which is not associated with planning permissions 21/00235/FUL or 21/00235/AMEND. The hardstanding amounts to an engineering operation in association with the unauthorised material change of use of the land. It amounts to development under section 55 of the Act and planning permission is required for it.

15. For the above reasons, I find that the unauthorised development constitutes a breach of planning control. Therefore, I conclude that the ground (c) appeal fails.

Ground (a) appeal and the deemed planning application

Main Issues

16. The appeal site falls within land designated as Green Belt. I have considered the reasons for issuing the notice as well as the Council's statement of case. The deemed planning application main issues are: -

    - *whether the development is inappropriate development in the Green Belt including its effect on the openness and purposes of Green Belt;*
    - *the effect of the development on the character and appearance of the area;*
    - *the effect of the development on the setting of Whiston Mill which is a Grade II listed building;*
    - *the effect of the development on the integrity of the Cannock Chase Special Area of Conservation (SAC);*

- *whether the occupiers of the site would be at risk of flooding;*
- *the effect of the development on highway safety;*
- *whether the development has occurred on previously developed land;*
- *whether the development impedes the use of a public right of way;*
- *the effect of any intentional unauthorised development occurring on the land; and,*
- *whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.*

Reasons

Green Belt

17. The appeal development falls within land designated as Green Belt. The Council does not dispute that the appeal site is being occupied by four households that meet the definition of a Gypsy/Traveller in annex 1 of the 2024 PPTS. I have no reason to doubt that the occupiers of the site meet the definition of a Traveller. I note the undisputed evidence that the families on the site have lived on other Traveller sites elsewhere and/or have previously been forced to live on the roadside. There is nothing to suggest that occupiers of the site are not persons of a nomadic habit of life.

18. The Government's 2024 PPTS states, at paragraph 16, that Traveller sites (temporary or permanent) in the Green Belt are inappropriate development unless the exceptions set out in chapter 13 of the 2024 Framework apply. It goes on to say that the Golden Rules, set out in chapter 13 of the 2024 Framework, do not apply to Traveller sites.

19. I have considered whether paragraph 155 is relevant in this case in so far that the breach of planning control might constitute the development of homes on 'grey belt' land. Annex 2 of the 2024 Framework defines grey belt land as comprising previously developed and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b) or (d) in paragraph 143. It also states that grey belt excludes land where the application of policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development. Annex 2 of the 2024 Framework defines what is previously developed land.

20. I have considered the Council's additional comments about the contribution that the land makes to Green Belt purposes (a), (b) and (d) of paragraph 143 of the 2024 Framework. The Council's evidence, which includes a Green Belt study dated July 2019[2] (parcel S32), does not indicate that the site forms part of land that strongly contributes to Green Belt purposes (a), (b) and (d). I have no reason to disagree with such evidence. However, given my later conclusions in respect of the SAC, flood risk and listed building setting main issues, these are strong reasons for refusing the development. For these reasons, the land is therefore excluded from the 2024 Framework glossary definition of grey belt land.

[2] South Staffordshire Green Belt Study July 2019

21. Moreover, paragraph 155 (c) of the 2024 Framework requires that the development is in a sustainable location and that in respect of Traveller sites *'particular reference should be made to Planning Policy for Traveller sites paragraph 13'*. Paragraph 13(g) requires that Traveller sites are not located in *'areas at a high risk of flooding, including functional floodplains, given the particular vulnerability of caravans'*. The evidence indicates that the mixed-use planning unit falls within an area of flood risk. Given my conclusion on the flooding main issue, I do not therefore find that the breach of planning control is sustainably located and hence the requirements of paragraph 155(c) are not met.

22. For the reasons outlined above, the breach of planning control does not meet the exception to inappropriate development in the Green Belt in paragraph 155 of the 2024 Framework.

23. I have considered whether the breach of planning control meets the exception in paragraph 154(g) of the 2024 Framework relating to the partial or complete redevelopment of previously developed land (including a material change of use to a residential or mixed use including residential) subject to it not causing *'substantial harm to the openness of the Green Belt'*. It is not clear or certain from the evidence whether some of the hardstanding on the site was formed with the express intention of implementing either planning permission 21/00235/FUL or planning permission 21/00235/AMEND. However, the notice does not attack areas of hardstanding that are associated with planning permission on the land and hence this would, in any event, have been a deemed approval under section 173(11) of the Act if the notice was upheld and there was compliance with its requirements.

24. The definition of previously developed land (PDL) is in annex 2 of the 2024 Framework. I deal with this matter later in the decision and, for the reasons outlined, do not find that the land comprises PDL. The hardstanding has not been formed in connection with any *'permanent structures'* which were or are on the land. In any event, this is not a determinative matter in terms of the application of paragraph 154(g) of the 2024 Framework. This is because for this exception to be met, it is necessary for the unauthorised development to also not cause substantial harm to the openness of the Green Belt. I deal with this matter below.

25. The evidence is that a significant part of the hardstanding on the land has been formed to facilitate the material change of use of the land as alleged in the notice. This hardstanding is not shown on the approved plans associated with any of the said permissions. The extent of hardstanding that exists on the site now far exceeds that which was authorised by the said permissions.

26. The essential characteristics of Green Belts are their openness and their permanence. The Court of Appeal[3] has confirmed that the openness of the Green Belt can have both a spatial and a visual dimension.

27. The breach of planning control comprises a mixed agricultural and residential caravan site use and includes the erection of a shed and closed board gates exceeding two metres in height above ground level. I find that the pitches on the site, with their associated caravans, vehicles, domestic paraphernalia, and

[3] *Turner v SSLG & East Dorset Council [2016]*

the erection of the shed and gates, has caused very significant spatial harm to the openness of the Green Belt in relative terms. I recognise that the Council has approved planning permission for use of the site for the keeping of horses and that this includes the erection of stables, a hay barn, and the formation of a sand arena. The approved stables and the hay barn are closely aligned on the land and are relatively tight knit up against the road frontage hedge.

28. In contrast, the caravans/pitches, shed (currently used as a W.C/washing facility), associated vehicles, and domestic paraphernalia, are positioned across the whole site and the gates are higher and more solid than what existed previously. Moreover, the extent of hardstanding is much greater than approved under the above planning permissions. Overall, the unauthorised development has a much more urban and engineered finish in relative terms. Even accounting for the planning permissions that have been approved on the site, I find that substantial harm has been caused to the openness of the Green Belt. Therefore, the breach of planning control does not meet the exception in paragraph 154(g) of the Framework.

29. I have also considered the breach of planning control against paragraph 154(h)(v) of the 2024 Framework which states that material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds) is not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. In the judgement of Royal Borough of Kingston upon Thames v SSLUHC [2023] EWHC 2055 (Admin), the judge confirmed that residential uses do not fall within this exception. Furthermore, it was held that it is not an open-ended category, but rather, because of the words "such as", the uses that will be within it should take their flavour or extent from the examples given.

30. I do not therefore find that paragraph 154(h)(v) of the 2024 Framework is relevant to the breach of planning control. Even if one were to disagree with such a view, I find, in any event, that owing to the position, extent and size of the pitches, caravans, mobile homes, hardstanding, shed, and domestic paraphernalia on the land, coupled with the height of the gates, the unauthorised development has not preserved the openness of the Green Belt even accounting for the possibility of the appellant fully implementing planning permissions 21/00235/FUL or 21/00235/AMEND. Furthermore, and as acknowledged by the appellant, I find that owing to the type, position, and extent of development under consideration, some conflict has occurred with one of the Green Belt purposes, i.e., safeguarding the countryside from encroachment.

31. Indeed, when I compare the unauthorised development with the site that existed historically, or with the development which is the subject of planning permission, I consider that the otherwise more rural character and appearance of the site has been fundamentally changed. Therefore, the breach of planning control does not preserve the openness of the Green Belt and there is conflict with one of the purposes of the Green Belt. Therefore, even if paragraph 154(h)(v) of the 2024 Framework related to the breach of planning control, the unauthorised development would not accord with it.

32. For the reasons outlined above, I conclude that the development which is the subject of the breach of control constitutes inappropriate development in the

Green Belt. Substantial harm has been caused to the openness of the Green Belt, and there is conflict with one of the purposes of the Green Belt. The harm that has been caused to the Green Belt is a matter to which I afford substantial adverse weight in decision making terms. For these reasons, the development does not accord with the Green Belt aims of policies GB1 and H6 of the South Staffordshire Core Strategy Development Plan Document 2012 (CS), the 2024 Framework, and the 2024 PPTS.

Character and Appearance

33. Other than Whiston Mill, which is immediately to the east of the appeal site, the locality is characterised as being predominantly open and undeveloped. The area is experienced as being rural in character. The lanes, including Whiston Lane, are lined with mature hedges. There are views of other open fields between the gaps in the hedges, or the low lying/open bar field gates. These attributes given the area its positive and distinctive rural character. The small settlement of Whiston, which includes the Swann Inn and is more built up, is to the west of the appeal site and is visually disconnected from it.

34. The breach of planning control has changed what was otherwise a site which was more open, undeveloped, and rural in character. The extensive hardstanding, solid gates, shed, stark white caravans, vehicles, and other domestic paraphernalia, have significantly urbanised the appeal site. While some of the development is not very conspicuous from Whiston Lane owing to the existence of the boundary hedges, the site is nonetheless more open to the north and west. Moreover, I observed on my site visit, while passing in both directions on Whiston Lane in my motor vehicle, that the stark white caravans were conspicuous above the hedge. Moreover, glimpses of large parts of the unauthorised development could be seen through the hedge which was without leaf.

35. While it may be possible to put in place more landscaping to screen the appeal site, it is noteworthy that prior to the unauthorised gates being erected on the site, passers-by could appreciate unrestricted views across the site and to other open fields thereby gaining a pleasing appreciation of a prevailing open and rural countryside location. Moreover, any planting would take several years to mature, and it cannot, in any event, be guaranteed that planting (including the existing roadside hedge) would endure forever. I therefore afford limited weight to the suggestion that additional planting would fully mitigate the harm caused to the character and appearance of the area.

36. I acknowledge the point made by the appellant that the 2024 PPTS does not prohibit Traveller sites in the countryside. Nonetheless, context is important, and, in this case, I find that the site is appreciated as being visually disconnected from the built-up settlement of Whiston. I find that its development as a residential caravan site, in conjunction with an agricultural use, causes moderate harm to the character and appearance of the countryside.

37. Even accounting for additional planting, and the existence of the planning permissions on the site for an alternative albeit rural character and form of development, I find that moderate harm has been caused to the character and appearance of the area. The harm is particularly apparent when viewed from the adjacent Byway Open to All Traffic (BOAT) known as 'Penridge 0.1044'. There are open views towards the appeal site from the part of the BOAT which

is adjacent to the watercourse and there are glimpses of the appeal site between gaps in the vegetation along other parts of the BOAT. In my judgement, the unauthorised development has harmed the way that users of the BOAT now experience the essentially open and rural character of this countryside location. The development looks out of place when experienced from the BOAT and constitutes an unacceptably urbanised visual distraction to those that use this route.

38. For the above reasons, I conclude that the breach of planning control does not accord with the character, appearance, and design requirements of policies H6 and EQ11 of the CS, and chapter 12 of the 2024 Framework.

Grade II listed Whiston Mill

39. Immediately to the east of the appeal site is Whiston Mill which is grade II listed. This appears to be in residential use. The listing includes the mill and the mill house. The mill building is three storeys and is random bond red brick with a plain tiled roof. There is a covered wheelhouse with two channels which has a separate, lower roof, to the north of the building. The wheel has now gone but the axle survives and this and the form of the wheel pit suggest that it was of the breast shot type.

40. The north gable end has a cambered headed door which gives access to the wheelhouse. The east front has a two-light casement at ground floor and first floor levels, and the two wheelhouse arched openings have stone dressings. Attached to the south and flush with the mill building is the mill house which has been extended to the south and east and considerably altered during the twentieth century with a large plate glass picture window to the ground floor east.

41. The mill complex is listed for its historic and architectural significance. It is positioned within verdant grounds and has two accesses from Whiston Lane. The appeal site is positioned close to the boundary with Whiston Mill. There is a mixture of evergreen and deciduous vegetation on this boundary. The Whiston Mill buildings are largely concealed from views from Whiston Lane owing to the boundary vegetation. The setting to Whiston Mill includes the westerly access drive from Whiston Lane which is visually appreciated in the context of the appeal site. I find that the setting of Whiston Mill also includes surrounding land (this encompasses the appeal site) which has an essentially rural character and where there is a degree of tranquillity and peacefulness arising from limited activity, comings and goings and the presence of any significant built development.

42. The appeal site, which includes numerous caravans, parked cars, a shed, solid and high gates, and extensive hardstanding, appears much more urban and developed than the otherwise undeveloped and softer countryside environment that existed prior to the unauthorised development taking place. In this regard, one is visually distracted from the way that Whiston Mill, set within spacious and verdant grounds, is now experienced. In my judgement, the breach of planning control has caused significant harm to the otherwise more open and rural character of the land which forms the setting around the Whiston Mill complex.

43. The appeal site is characterised as being distinctly more urbanised when judged against its appearance historically, and when seen in conjunction with

the westerly access and associated grounds leading to Whiston Mill. Moreover, while there is vegetation on the boundary with the appeal site, I was able to see as part of my site visit that there were glimpses of parts of the listed mill and its grounds from the appeal land, and from the adjacent BOAT.

44. Such intervisibility between Whiston Mill and the appeal site is most apparent in the winter when deciduous vegetation is without leaf. On my site visit, I observed that a significant number of loose branches and/or twigs had been positioned on the outer face of the otherwise relatively open wire fence associated with the boundary of Whiston Mill and forming part of the boundary of the BOAT. I do not know why these branches/twigs have been placed in this location. They were without roots and, in time, will therefore decompose and some may fall to the ground. This will therefore make the intervisibility between Whiston Mill and the appeal site more apparent to those who seek to appreciate and experience the listed mill and its associated spacious and verdant grounds.

45. Moreover, I find that the white caravans and regular comings and goings of vehicles and pedestrians on the land is in stark contrast to the more tranquil and rural character and appearance of this surrounding land which has historically and otherwise positively defined the wider setting of Whiston Mill.

46. I acknowledge that the Council has approved a different form of development on the appeal site. However, it is not a residential form of development. Even if that development were to be fully implemented, I find that it would have a more rural character and would not have the same harmful impacts as the breach of planning control. In addition, and, in my judgement, it is unlikely that there would be the same level and regularity of vehicular and pedestrian activity and comings and goings arising from the possible implementation of the approved development on the site.

47. Overall, I find that the breach of planning control has caused harm to the setting of Whiston Mill and to its overall significance as a listed building. The appeal development unacceptably competes with the otherwise rural character of the land immediately surrounding Whiston Mill in so far that it draws unacceptable attention away from the appreciation of its architectural and historic significance, set within a verdant environment, and then surrounded by an otherwise more open, peaceful and rural landscape character. I find that the rural and peaceful character of the land surrounding Whiston Mill adds positively and distinctively to its setting. The appeal development has harmed the setting and has caused harm to the significance of Whiston Mill.

48. In the context of paragraph 215 of the Framework, I find that less than substantial harm has been caused to the significance of Whiston Mill as a designated heritage asset. While there are public benefits associated with the delivery of additional Traveller pitches in the area, in the context of the Council being unable to demonstrate a five-year supply of deliverable Traveller sites, neither this nor any other public benefits are sufficient to outweigh the less than substantial harm caused to the significance of Whiston Mill as a designated heritage asset.

49. I conclude that the breach of planning control does not preserve the significance of Whiston Mill as a grade II listed building given the harm caused to its setting. Therefore, it does not accord with the conservation requirements of policy EQ3 of the CS, and paragraph 215 of the Framework.

Effect on the SAC

50. Policy EQ2 of the CS safeguards the Cannock Chase Special Area of Conservation (SAC), which has been designated for its unique heathland habitat. The evidence is that adverse effects on the SAC would arise from an increase in recreation over the local plan period and comprise the creation of new paths, path widening, erosion and nutrient enrichment from visitor use and vehicle emissions.

51. The above is controlled in respect of the Council's 'Guidance to Mitigate the Impact of Residential Development' 2022 (SAC Guidance). The SAC Guidance states that evidence produced to inform the production of the development plan for the area, by consultants Footprint Ecology, together with that of partner Local Planning Authorities in the Cannock Chase SAC Partnership (Stafford Borough, Cannock Chase, Lichfield, East Staffordshire, Walsall Metropolitan Borough Council and Wolverhampton City Council), shows that the in combination impact of proposals involving a net increase of one or more dwellings within a 15 kilometre radius of the SAC would have an adverse effect on its integrity unless avoidance and mitigation measures are in place. The evidence is that the appeal site lies within the consultation zone of influence of the SAC.

52. The SAC Guidance requires mitigation to include a financial payment to be used towards the funding of specific projects as listed in table 1 at paragraph 3.1. The payment in the SAC Guidance is set for each net new home created through development within 15km of the Cannock Chase SAC.

53. In this case, and considering the information in the SAC Guidance, I find that the residential development, on its own and in combination with other residential development, would be likely to lead to recreational pressure in the SAC. In the absence of a controlling mechanism to deal with necessary mitigation, the unauthorised residential development would be likely to have significant effects on the European protected site. On the evidence that is before me, and, as part of my appropriate assessment, I find that the proposal would on its own and in combination with other projects adversely affect the integrity of the SAC.

54. As the competent authority, I must therefore consider whether measures could be put in place to avoid or mitigate the impacts of increased recreational pressure arising from the proposed development. It is necessary for the appellant to provide me with a completed planning obligation to include a financial payment to be used towards strategic access management and monitoring measures to mitigate against the adverse impacts of recreational activities on the integrity of the SAC.

55. The appellant submitted what is said to be a planning obligation (i.e., unilateral undertaking) to the Planning Inspectorate on 23 February 2025. However, it is not a dated planning obligation and so it has no effect.

56. In the absence of a completed planning obligation, I find that the residential development has an adverse effect on the integrity of the SAC. In this regard, I therefore conclude that the residential development does not accord with the biodiversity requirements of policies EQ2 and H6(8) of the CS, paragraph 193

of the 2024 Framework and the Conservation of Habitats and Species Regulations 2017 (as amended). Paragraph 195 of the 2024 Framework states that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitat site (either alone or in combination with other plans or projects) unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

Flood Risk

57. As part of the appeal, both the appellant and the Council have submitted an Environment Agency flood map. This shows that the mixed-use appeal site is partly in flood zone 3 (i.e., a small area to the north of the site and adjacent to the river), partly in flood zone 2 and partly in flood zone 1. The evidence is that the hardstanding is mainly in flood zone 1, although there is dispute about whether part of it is also in flood zone 2. The appellant has attempted to draw or annotate the boundary of the hardstanding/residential element of the mixed use onto the Environment Agency flood map. Given its small size and absence of a scale, I cannot be certain of its accuracy. The latter would have been possible had the appellant downloaded the Environment Agency flood map in PDF format (1:2500 scale).

58. Based on the Council's evidence, including the Environment Agency Flood map at appendix 9 of its statement of case, I do not consider that the appellant has sufficiently demonstrated that all the residential element (including hardstanding) of the unauthorised mixed use is confined solely to flood zone 1. Moreover, there is no dispute that the mixed-use appeal land is as a whole in an area of high flood risk. As part of this appeal, the Environment Agency has commented that *'whilst we understand that the residential caravans are located within a portion of the site that falls within flood zone 1, the low-risk Zone, a flood risk assessment would still need to be submitted with any planning application if parts of the site do fall within flood zone 2. This should confirm that the development is safe and would not increase flood risk to third parties'.*

59. The residential caravans fall within the 'highly vulnerable' category of the flood risk vulnerability classification in annex 3 of the Framework. On the evidence that is before me, the agricultural element of the unauthorised mixed use, which is defined as a 'less vulnerable' use of the land, falls within flood zone 3.

60. Given that the mixed-use appeal site includes land that is at risk of flooding, there is a requirement for the appellant to submit a sequential assessment. Paragraph 175 of the 2024 Framework states that the sequential test should be applied except in situations where a site-specific flood risk assessment demonstrates that no built development, access and escape routes, or other potentially vulnerable elements, would be located in an area that would be at risk of flooding from any source, now and in the future (having regard to potential changes in flood risk). The appellant has not submitted a site-specific flood risk assessment and hence a sequential assessment is needed.

61. The appellant has not submitted a sequential assessment to demonstrate that sites with a lower risk of flooding are not reasonably available. I do not know, on the evidence that is available, if other sites might be capable of being available to meet the needs of occupiers of the site and in areas which are at a lower risk of flooding. In this regard, the sequential test is not passed. Even if the sequential test had been passed, given the 'highly vulnerable' category of

the residential caravans on the mixed-use site, it would also be necessary for the appellant to pass the exception test. I cannot determine that the exception test has been passed as the appellant has not submitted a site-specific flood risk assessment which would demonstrate that the development would be safe for its lifetime, considering the vulnerability of its users, and without increasing flood risk elsewhere.

62. For the above reasons, I conclude that neither the sequential nor the exception tests are passed, and I cannot conclude that the occupiers of the site would be safe from the risk of flooding. In this regard, the development does not accord with the flood risk requirements of chapter 14 of the 2024 Framework. This weighs significantly against allowing the deemed planning application.

Highway Safety

63. The appeal development includes the provision of static and touring caravans. Whiston Lane is a 60mph road. New gates have been erected at the site. While the gates are set back from the road, thereby enabling a motorised vehicle to safely leave the highway prior to them being opened, I do not find that there is sufficient distance for the full extent of a vehicle towing a caravan to safely leave the highway prior to the gates being opened. This arrangement has the potential to interrupt the free flow of traffic and, if vehicles were travelling at very high speed, could result in conflict between vehicles.

64. I find that this matter could be suitably controlled by means of a gates/boundary treatment planning condition which required the appeal gates to be repositioned and the submission and approval of a scheme which ensured that there was a sufficiently long refuge in place for vehicles (including those towing a caravan) to leave Whiston Lane before reaching the gates. While such a condition would not overcome my concern about the gates from a character and appearance point of view, it would nonetheless suitably address the Council's highway safety concerns. The part of the access directly off Whiston Lane could also be required to be finished in tarmacadam so that stone was not deposited on the highway.

65. Subject to the imposition of a planning condition, I do not find that the breach of planning control would cause unacceptable harm to highway safety. In this regard, there would be no conflict with the highway safety requirements of policy H6 of the CS, and paragraph 116 of the 2024 Framework.

Previously Developed Land

66. The appellant claims that the appeal site includes previously developed land (PDL). Paragraph 27 of the 2024 PPTS states that weight should be afforded to the consideration of Traveller applications which make *'effective use of previously developed (brownfield), untidy or derelict land'.* While the evidence is that part of the hardstanding which is the subject of the breach of planning control accords with the location of hardstanding approved under planning permission 21/00235/AMEND, and that a 'concrete base' has be laid in the location where a building was approved under the said permission, the definition of PDL is contained within annex 2 of the 2024 Framework.

67. I do not find that the site includes PDL when the definition of PDL in annex 2 of the 2024 Framework is considered. This is because neither the concrete base, nor an element of the hardstanding, which appear to be positioned as per the

planning permission on land, is or was laid in connection with any *'permanent structures'* on the land. This development comprises engineering operations. It is also noteworthy that prior to the formation of the hardstanding and concrete base, the evidence is that the site was in use for agricultural purposes. The definition of PDL excludes land that is or was last occupied by agricultural or forestry buildings.

68. It may be the case that the land would be capable of being PDL in the future if planning permission 21/00235/AMEND was fully implemented. However, the point is, as a matter of fact and degree, that the evidence demonstrates that the site was not lawfully PDL when the notice was issued.

69. For above reasons, I conclude that the appeal site is not PDL. Therefore, this is not a matter to which I can afford positive weight in favour of allowing the deemed planning application in the context of paragraph 27 of the 2024 PPTS.

Public Right of Way (BOAT)

70. The Council originally alleged that the development had impeded the use of the BOAT. On the site visit, the main parties considered the confirmed position of the BOAT relative to the red edged plan appended to the notice and which relates to the breach of planning control.

71. The Council agreed on the site visit that the breach of planning control did not in fact have any adverse impact on the BOAT. The main parties agreed that the BOAT, which is relatively narrow, is adjacent and outside the appeal site. The BOAT is positioned between the appeal site and Whiston Mill. I have no reason to disagree with this common ground position based on my own site visit observations.

72. I therefore conclude that the breach of planning control has not caused harm to the use or position of the BOAT.

Intentional Unauthorised Development

73. The Department for Communities and Local Government policy statement 2015 introduced planning policy to make intentional unauthorised development (IUD) a material consideration that would be weighed in the determination of planning applications and appeals from 31 August 2015.

74. In respect of IUD, planning permission should not be refused simply on the basis that the development was carried out without planning permission or is unlawful. A finding of IUD must be supported by evidence of something more than this, i.e., that the appellant intended the development to be unauthorised or actively sought to harmfully flout the rules.

75. In this case, the undisputed evidence is that a planning application was submitted (24/00320/FUL) for use of the site as a residential caravan site on the same day that the unauthorised development occurred (i.e., 7 April 2024). The appellant's agent was informed that the planning application was invalid and that various documents were needed to make the planning application valid. It is understood that this included a requirement to address matters relating to flood risk and the SAC. The appellant was given several weeks to submit additional documents to ensure that the planning application could be validated, but such documents were not forthcoming. It is understood that use of the appeal site as a residential caravan site continued during this time.

76. I acknowledge that at least one family on the appeal site had previously been leading a roadside existence. While I can appreciate the desire to have a settled base for the families, including for the children, unauthorised development has occurred. In this case, and, based on the evidence that is before me, I find the unauthorised action was intentional. The evidence is that while a planning application was submitted, this was essentially while the unauthorised development took place.

77. I am mindful that neither the appellant nor the Council have been able to refer me to the availability of any alternative available Gypsy/Traveller pitches in the area or elsewhere. There is nothing before me to suggest that the position was different when the families moved onto the site. This matter tempers the adverse weight that I afford to IUD. I therefore conclude that IUD carries moderate adverse weight in decision making terms.

Other Considerations

Gypsy and Traveller Status

78. There is no dispute between the main parties that the occupiers of the site meet the definition of Travellers in annex 1 of the 2024 PPTS. I have no reason to disagree with this common ground position.

79. Article 8 of the European Convention on Human Rights as incorporated into Human Rights Act 1998 (HRA) states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.

80. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.

81. Furthermore, in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.

Provision and Need for Gypsy and Traveller Sites

82. The Council has prepared a Gypsy and Traveller Accommodation Assessment 2024. This identifies a need for 142 pitches to 2042 and a five-year supply of 92 pitches between 2024 and 2028. There is no dispute between the main parties that there is a shortfall in pitch provision against the five-year need identified through the GTAA update 2024. The Council cannot therefore demonstrate a five-year supply of deliverable Traveller sites against the most up-to-date position of objectively assessed need[4].

83. Moreover, there is a current failure of development plan policy. The Gypsy and Traveller pitch strategy which underpins the development plan is based on an out-of-date GTAA. The current development plan is not delivering what is

[4] A conclusion also reached by an Inspector in September 2024 in respect of appeal reference No. APP/C3430/W/24/3343269

needed from a need and supply point of view. The evidence is that a new development plan is being prepared and that it is scheduled to be adopted in winter 2025/2026.

84. Paragraph 28 of the 2024 PPTS states that if a local planning authority cannot demonstrate an up to date 5-year supply of deliverable sites, the provisions of paragraph 11(d) of the 2024 Framework apply and hence the presumption in favour of sustainable development. However, it is noteworthy that paragraph 11(d)(i) of the 2024 Framework states that the presumption in favour of sustainable development does not apply where '*the application of policies in the Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed'*. In this case, I have found that harm has been caused to the setting of a listed building, the green belt, and to the SAC. Moreover, the development fails to accord with flood risk policy requirements, and I cannot conclude that occupiers of the site would be safe from the risk of flooding. These are all strong reasons for refusing the unauthorised development and hence the presumption in favour of sustainable development is not engaged.

Availability of Alternative Sites

85. Case law has determined that appellants are not required to demonstrate that alternative available sites do not exist. Nonetheless, the Council does not dispute what the appellant says about this matter. I have no reason to doubt what the appellant says about the pitches identified in paragraph 5.27 of his statement of case, and, specifically, that they are not likely to be made available to non-family members. The lack of alternative available sites is a matter that therefore weighs in favour of allowing the ground (a) appeal.

86. The above is, however, tempered somewhat by the fact the compliance period in the notice is twelve months. This time would afford the extended family the opportunity of considering sourcing and applying for planning permission on a site elsewhere. In other words, there may be other sites which might be capable of according with the requirements of policy H6 of the CS.

87. Moreover, a new development plan is scheduled to be adopted in about twelve months, and this will seek to address current supply and provision failings. The appellant has stressed that about 80% of the district is designated as Green Belt. He asserts that it is therefore likely that new Gypsy and Traveller sites will therefore need to be found in the Green Belt. As a proportion of the district is not in the Green Belt, it does not automatically follow that all sites that come forward as part of the review of the development plan will be in Green Belt or, in any event, that less harmful sites will not be allocated or come forward in the Green Belt following the development plan Examination process.

Best Interests of the Children and Personal Circumstances of the Family

88. The evidence is that none of the occupiers of the site have any health or medical conditions. Nonetheless, there are three children on the site and a fourth is expected to be born soon.

89. I am mindful that the Lee families were forced to leave a site in Penkridge due to conflict, and that they have previously had to live on the roadside or in bricks and mortar accommodation which was not suitable based on their

cultural way of life. I also note that the Scarrott families have had no settled base and have travelled from one unauthorised encampment to another.

90. In the context of the above, I do not doubt that a settled base for the families offers the stability needed from the point of view of educating the children and in terms of the children's social development. However, these benefits are tempered somewhat as it is not in the best interests of the children to live on a site where I cannot conclude that they would be safe from the risk of flooding.

91. I note that the occupiers of the site are registered with a general practitioner and that they have access to appropriate health services. I accept that access to such services is more likely from having a settled and permanent base as distinct from leading a roadside existence or more transient way of life.

92. The above matters weigh in favour of granting planning permission.

Planning Balance and Ground (a) Appeal Conclusion

93. I have found that subject to the imposition of a condition, the breach of planning control would not have an unacceptable impact on highway safety. Moreover, I do not disagree with the common ground position of the main parties that the unauthorised development does not have any adverse impact on the use or position of the BOAT. In addition, I do not find that the land is PDL. These are therefore matters of neutral consequence in the overall planning balance.

94. The harm that has been caused to the Green Belt is a matter to which I afford substantial adverse weight in decision making terms. I find that substantial harm has been caused to the openness of the Green Belt. Moreover, I have found that moderate harm has been caused to the character and appearance of the area, and less than substantial harm has been caused to the significance of the grade II listed Whiston Mill arising from harm to its setting. Furthermore, moderate adverse weight is given to IUD. I cannot conclude that residential use of the site would not continue to cause harm to the integrity of the SAC, and hence can proceed, or that the occupiers of the site (including the children) would be safe from the risk of flooding. Collectively, these are adverse matters which weigh very substantially against allowing the development. Given the harms identified, I also find conflict with policy H6 of the CS.

95. Weighed against the above, is the failure of policy in terms of ensuring that an up-to-date strategy is in place to deliver the need for Traveller pitches in the area, the current lack of alternative Traveller pitches in the area to accommodate occupiers of the site, and the personal circumstances of the families on the land. The latter includes the best interests of the children on the site, including the stability arising from a settled base in terms of their education, health and social development.

96. In this case, the compliance period in the notice is twelve months. As outlined elsewhere in this decision, this will afford the families the potential to secure another site and to obtain planning permission on it for a residential use in accordance with the requirements of policy H6 of the CS and national planning policy. Moreover, by the winter of 2025/2026, it is likely that Traveller pitch need/provision will be addressed in terms of the adoption of a new development plan for the area. Put another way, it is possible that a settled

base may be capable of being found elsewhere within the twelve-month notice compliance period.

97. Overall, I conclude that the harm caused to the Green Belt by reason of inappropriateness, and the other identified harms, are not clearly outweighed by the other identified considerations, so as to amount to the very special circumstances necessary to justify granting permanent planning permission for the development. I emphasise that even if I had received a completed and satisfactory planning obligation relating to the SAC, I would have concluded that the harm caused to the Green Belt by reason of inappropriateness, and the other identified harms, were not clearly outweighed by the other identified considerations, so as to amount to the very special circumstances necessary to justify granting permanent planning permission for the development.

98. I have considered whether a temporary planning permission would be justified. I accept that the harm caused to the Green Belt, the setting of the neighbouring listed building, and the character and appearance of the area, would not endure for as long if temporary planning permission was approved. Nonetheless, I find that the collective harms would still be significant even if were to grant a temporary planning permission over and above the twelve-month compliance period in the notice. Moreover, I cannot conclude that the site would be safe from the risk of flooding. A flooding event could occur at any time, and, in this regard, such a risk is not therefore necessarily reduced because a planning permission is temporary.

99. In addition, in the absence of a completed planning obligation, I am unable to conclude that the integrity of SAC would not be harmed from the grant of temporary planning permission. It is noteworthy that in respect of this matter, paragraph 193(a) of the 2024 Framework states that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. I do not have a completed planning obligation before me and for this reason alone planning permission should be refused.

100. I find that a refusal of planning permission would not necessarily make the occupiers of the site homeless. It remains possible that an alternative site could be sourced (including obtaining any necessary planning permission) within the twelve-month notice compliance period. In this regard, I also do not find that a temporary planning permission is justified.

101. Overall, I do not find that temporary planning permission is justified. Indeed, the harm caused to the Green Belt by reason of inappropriateness, and the other identified harms, are not clearly outweighed by the other identified considerations, so as to amount to the very special circumstances necessary to justify allowing the development on a temporary basis. I emphasise that even if I had received a completed and satisfactory planning obligation relating to the SAC, I would have concluded that the harm caused to the Green Belt by reason of inappropriateness, and the other identified harms, were not clearly outweighed by the other identified considerations, so as to amount to the very special circumstances necessary to justify granting temporary planning permission for the development.

102. In reaching the above findings, I have considered Article 8 of the European Convention on Human Rights, as incorporated into the HRA, which provides

that everyone has a right to respect private and family life, their home and correspondence. My decision to not grant permanent or temporary planning permission would deny occupants of the site the opportunity to live on the site and upholding the notice would result in the loss of existing homes.

103. In this case, my decision to refuse planning permission and to uphold the notice would lead to a significant interference of Article 8 rights. However, the collective planning harm that I have identified (whether from a permanent or a temporary planning permission) is of such weight that a refusal of planning permission is a proportionate, legitimate, and necessary response that would not violate those persons' rights under Article 8. I find that the protection of the public interest cannot be achieved by means that are less interfering of the rights of members of the family on the site. A refusal of planning permission is therefore necessary and proportionate. It remains possible that the occupiers of the site may be able to source and occupy a site elsewhere within the twelve-month compliance period. Hence, a roadside existence need not necessarily be an inevitable outcome for occupiers of the site.

104. I conclude that the unauthorised development does not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the ground (a) appeal fails.

Overall Conclusion

105. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

D Hartley

INSPECTOR