Harborough District Council

Report to Planning Committee
Meeting of 18 February 2025

Title:	Planning Enforcement Update Report
Status:	Public
Key Decision:	No
Report Author:	Christine Zacharia Team Leader Planning Enforcement
Portfolio Holder:	Cllr Simon Galton
Appendices:	Appendix 1: Enforcement appeal decision(s)

Summary

A summary on the performance of the planning enforcement service, over a six-month period between 1 August 2024 to 31 January 2025.

Recommendations

That the Committee notes the information contained in the report.

Reasons for Recommendations

To ensure that Committee are kept updated on the performance of the Council's planning enforcement service

1. Purpose of Report

1.1 This report advises the Committee on the performance of the planning enforcement service, over a six-month period between 1 August 2024 to 31 January 2025.

2. Key Facts

2.1 Performance Targets

2.2 All complaints and enquiries received by the Planning Enforcement Service are categorised as one of the following:

- Top Priority Cases - where works are being carried out which will cause irreparable harm / damage.
- High Priority Cases - where works or uses are causing a significant and continued harm to amenity, time sensitive breaches or development that compromise safety.

- Standard Priority Cases – new structures or changes of use having limited degree of disturbance to residents or damage to the environment, which do not fall within the foregoing priority groups.

2.3 In order to assess whether the planning enforcement service is meeting its targets it is assessed monthly against four key performance indicators; these are set out in Table 1 below:

Table 1: Key Performance Indicators

PLANNING ENFORCEMENT KPI's*	**TARGET**
% of Cases responded to within target dates (**DM TPI 09**) Top priority cases within 1 working day High priority cases within 5 working days Standard priority cases within 10 working days	90%
% of Cases closed within 8 weeks of registration with no formal action deemed necessary or appropriate (**DM 30**)	90%
% of complainants updated on progress of planning enforcement investigations within 20 days of receipt of complaint **(DM TPI 11)**	90%
% of enforcement complaints registered and acknowledged within 3 days of receipt **(DM TPI 12)**	90%

** NB – all the time periods identified are working days.*

2.4 A summary of the planning enforcement service data for the above KPI's for the period between 1 August 2024 to 31 January 2025 is set out in Table 2 below. The data shows that in the main, the service is meeting its targets except for DM30. The Team continues to try and resolve a breach of planning control through mediation, which does sometimes impact on this KPI as cases will be open longer than 8 weeks for resolution without formal enforcement action having to be taken.

Table 2 - Performance between 1 August 2024 to 31 January 2025

Indicator	August 2024(%)	September 2024(%)	October 2024(%)	November 2024 (%)	December 2024(%)	January 2025(%)
DM TPI 09 (Target 90%)	95.2	95.5	95.5	66.7	90	100
DM 30 (Target 90%)	70	67.57	70	76.92	64	Data not yet available
DM TPI 11 (Target 90%)	85.7	95.5	95.5	95.2	100	Data not yet available
DM TPI 12 (Target 90%)	90.5	95.5	86.4	90.5	100	100

2.5 <u>Planning Enforcement Statistics</u>

2.6 Table 3 below is a summary of enforcement cases registered and closed between 1 August 2024 to 31 January 2025. The figures show that in the last six months, the team is closing

broadly the number of cases it receives, and that the enforcement team are meeting the demands for its service, and not creating a backlog of cases to be investigated

Table 3: Enforcement cases registered/closed - 1 August 2024 to 31 January 2025.

Month	Enforcement cases registered	Enforcement cases closed
August 2024	21	10
September 2024	22	37
October 2024	22	20
November 2024	21	13
December 2024	10	25
January 2025	18	10
Totals for 6-month period	***114***	***115***

2.7 Table 4 below sets out the types of cases reported between the period by breach type. The figures indicate that the highest number of complaints received are the alleged non-compliance with planning conditions.

Table 4: Types of breaches investigated - Figures 1 August to 31 January 2025

Breach type	
Advert	14
Condition non - compliance	38
Change of use	22
Unauthorised Development	21
Hedge removal	0
Unauthorised works to trees	5
Untidy Land	9
Works in a Conservation Area	2
Unauthorised works to listed buildings	3

2.8 Notices Served

2.9 Table 5 below shows that a total of 14 notices were issued between 1 August 2024 to 31 January 2025.

Table 5: Number of notices issued between 1 August 2024 to 31 January 2025 (excludes Planning Contravention Notices)

Month	Notices issued
August	0
September	1
October	3
November	2
December	0
January	7
Totals	***13***

2.10 The notices issued in this period are detailed below:

- Land Adj Hare Pie Farm, Cranoe Road, Hallaton – Temporary Stop Notice (works being carried out in area listed as scheduled monument)
- Land at the rear of 56 High Street, Kibworth, LE8 0HQ - Enforcement Warning Notice (change of use, rear garden area)
- 10 Brook Lane, Billesdon, Leicestershire, LE7 9AB - Planning enforcement notice (metal structure to side of house)
- The Old Police Station, Lower Leicester Road, Lutterworth, LE17 4NG - Listed building enforcement notice (unauthorised works – external doors)
- Bosworth Hall, Theddingworth Road, Husbands Bosworth, Leicestershire, LE17 6LZ – Listed building enforcement notice (unauthorised works internally and to the roof)
- 13 Geveze Way, Broughton Astley, Leicestershire, LE9 6HJ - Planning enforcement notice (front boundary fence)
- Illston Heights, Main Street, Illston On The Hill, Leicestershire, LE7 9EG - Planning enforcement notice (front boundary fence)
- 43 Forge Close, Fleckney, Leicestershire, LE8 8DA – Planning enforcement notice (structure erected to front of property)
- 29 Uppingham Road, Houghton On The Hill, Leicestershire, LE7 9HJ - Planning enforcement notice (front boundary fence)
- 23 School Lane, Husbands Bosworth, Leicestershire, LE17 6JU – Planning enforcement notice and concurrent stop notice (unauthorised rear extensions)
- Land at Fleckney Road, Saddington, Leicestershire – Breach of Condition Notice
- 15 Meriton Road, Lutterworth, Leicestershire, LE17 4QD - Untidy Land Notice (s215)

2.11 <u>Enforcement appeal decisions received between 1 August to 31 January 2025</u>

Land at Bowden Lane, Welham, Leicestershire, LE16 7UX – 2 appeals both dismissed, and Council's notice upheld. See Appendix A and the Inspector's report below for further details.

Breaches: Unauthorised change of use of land to provide a total of 2 no. Gypsy and Traveller pitches and erection of an American style barn.

3. Legal Implications

3.1 There are no direct legal implications arising from the report itself.

4. Equality Implications

4.1 The primary objective of the planning enforcement function is to remedy harm to public amenity resulting from unauthorised development. The Council will not take disproportionate action and will seek to redress any issue through the most appropriate means. Under the general principles of the Council's equality plan officers will have due regard of equality impacts during any investigation and before a decision is made.

5. Financial Implications

5.1 There are no direct financial implications from this update report.

6. Risk Management Implications

6.1 The integrity of the Development Management process depends on the Councils' readiness to take enforcement action when it is necessary to do so, to remedy the undesirable effects of unauthorised activity. Failure to take enforcement action when it is clearly required would damage the reputation of the Council's Planning Enforcement Service.

7. Data Protection Implications

7.1 None identified.

8. Consultation

8.1 The Portfolio Holder has been consulted on the content of this report.

9. Options Considered

9.1 Taking effective enforcement action for a breach of planning control is important as a means of maintaining public confidence in the planning system. However, the Council's decision to take enforcement action is discretionary and the Council will act proportionately in responding to suspected breaches of planning control.

10. Background Papers

10.1 None

Previous report(s): None

Information Issued Under Sensitive Issue Procedure: n/a

Ward Members Notified: No

Appendix A:

Enforcement appeal decision – Land at Bowden Lane, Welham, Leicestershire, LE16 7UX

The Planning Inspectorate

Appeal Decisions

Site visit made on 17 December 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 JANUARY 2025

Appeal A Ref: APP/F2415/C/24/3343384
Land at Bowden Lane, Welham, Leicestershire, LE16 7UX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Jamie Smith against an enforcement notice issued by Harborough District Council.
- The notice was issued on 13 March 2024.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land to a Sui Generis use comprising of a residential Gypsy and Traveller site; the stationing of caravans, a day room and parking of associated vehicles on the Land; and unauthorised operational development, comprising of the laying of hardcore which facilitate the change of use, along with the erection of a barn building ("the Unauthorised Development").
- The requirements of the notice are to (i) cease the unauthorised residential use of the Land as a Gypsy and Traveller caravan site, (ii) permanently remove from the Land all caravans (including static caravans), associated vehicles and domestic paraphernalia; permanently remove from the Land all associated works and operational development undertaken to facilitate the unauthorised use referred to in 5(i) above, including but not limited to hardcore, road planings, and surfacing materials, (iv) dismantle and remove from the Land the newly erected day room and barn building, (v) remove all refuse and waste materials to include any generated by compliance with steps ii and iv above from the Land and dispose of at a licensed waste transfer site, and (vi) reinstate the Land to its lawful equestrian use.
- The period for compliance with the requirements is 9 calendar months for requirements (i) and (ii) and 12 calendar months for requirements (iii), (iv) and (vi).
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 (as amended). 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.

Appeal B Ref: APP/F2415/W/24/3342250
Land at Bowden Lane, Welham, Leicestershire, LE16 7UX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Jamie Smith against the decision of Harborough District Council.
- The application reference is 23/01636/FUL.
- The development proposed is change of use of land for siting of 1 mobile home, dayroom, and hardstanding to provide 1 no. Gypsy and Traveller pitch (revised scheme of 22/01238/FUL) part retrospective.

Appeal C Ref: APP/F2415/C/24/3343386
Land at Bowden Lane, Welham, Leicestershire, LE16 7UX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Ruben Arrowsmith against an enforcement notice issued by Harborough District Council.
- The notice was issued on 13 March 2024.

- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land to a Sui Generis use comprising of a residential Gypsy and Traveller site; the stationing of caravans and parking of associated vehicles on the Land; and unauthorised operational development, comprising of the laying of hardcore which facilitate the change of use ("the Unauthorised Development").
- The requirements of the notice are to (i) cease the unauthorised residential use of the Land as a Gypsy and Traveller caravan site; (ii) permanently remove from the Land all caravans (including static caravans), associated vehicles and domestic paraphernalia; (iii) permanently remove from the Land all associated works and operational development undertaken to facilitate the unauthorised use referred to in 5(i) above, including but not limited to hardcore, road planings, and surfacing materials; (iv) remove all refuse and waste materials, to include any generated by compliance with steps ii and iii above from the Land and dispose of at a licensed waste transfer site, and (v) reinstate the Land to its lawful equestrian use.
- The period for compliance with the requirements is 9 calendar months for requirements (i) and (ii) and 12 calendar months for requirements (iii), (iv) and (v).
- The appeal is proceeding on the ground set out in section 174(2) (a), (f), (g) of the Town and Country Planning Act 1990 (as amended). 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.

Appeal D Ref: APP/F2415/W/24/3342312
Land at Bowden Lane, Welham, Leicestershire, LE16 7UX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Ruben Arrowsmith against the decision of Harborough District Council.
- The application reference is 23/01482/FUL.
- The development proposed is Change of use of land for siting of 1 mobile home with ramp access to provide 1 no. Gypsy and Traveller pitch (revised scheme of 22/01237/FUL).

Decisions

Appeal A Ref: APP/F2415/C/24/3343384

1. It is directed that the enforcement notice be varied by deleting all the words in section 6 and substituting them with *"For requirement (i) and (ii) above: 12 months following the date this notice takes effect and for requirement (iii), (iv), (v) and (vi) above: 15 calendar months following the date this notice takes effect".* Subject to the variations, the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/F2415/W/24/3342250

2. The appeal is dismissed.

Appeal C Ref: APP/F2415/C/24/3343386

3. It is directed that the enforcement notice be varied by deleting all the words in section 6 and substituting them with *"For requirement (i) and (ii) above: 12 months following the date this notice takes effect and for requirement (iii), (iv) and (v) above: 15 calendar months following the date this notice takes effect".* Subject to the variations, the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal D Ref: APP/F2415/W/24/3342312

4. The appeal is dismissed.

Preliminary Matters

5. The description of development on the planning application form for Appeal B states *'this will be a dayroom/bungalow to provide better accessibility for applicant's wife. It will be a single storey 2 bed structure to replace the existing stables. There is also a concrete base for a static mobile home'.* In the interests of precision, I have taken the description of development from the Council's refusal notice and appellant's appeal form in the banner heading above.

6. The description of development on the planning application form for Appeal D states *'change of use of land for siting of 1 mobile home to provide 1 no. Gypsy and Traveller pitch'.* In the interests of precision, I have taken the description of development from the Council's refusal notice and appellant's appeal form in the banner heading above.

7. Appeals A and B relate to the same site which is referred to by the appellant as *'Stable View'.* Appeals C and D relate to the same site which is referred to by the appellant as *'Cosy Corner Stables'.* The two sites are positioned alongside one another. The evidence indicates that there is some family interdependency across the two sites.

8. The National Planning Policy Framework was revised in December 2024 (the 2024 Framework). This replaces the previous version of the National Planning Policy Framework published in December 2023. Moreover, 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 (amended December 2023). I afforded the main parties the opportunity to comment on the implications of the 2024 PPTS and the 2024 Framework. I have considered the comments received as part of the determination of this appeal.

9. Of relevance to Appeals A and B (Stable View) is a dismissed appeal[1], dated 12 October 2023, which I considered under section 78 of the Act and was lodged by the same appellant. This related to use of the same land at Stable View for the change of use of the land for the siting of 1 mobile home to provide 1 No. Gypsy and Traveller pitch. The appeal decision is a material consideration of significant weight as part of the consideration of Appeals A (ground (a) appeal) and B. The main issues under consideration for the 2023 appeal related also to the risk of flooding and whether the site was sustainably located. In dismissing such an appeal, I reached a balanced decision having regard to matters such as the personal circumstances of the family on the land, the need and provision of Gypsy and Traveller pitches in the area, the lack of alternative available sites, the best interests of the children on the site, and health/disability considerations.

10. I noticed on my site visit that a wooden building had been erected on the Cosy Corner Stables site which included washing facilities, a shower, and a room with a television. This building is not under consideration in respect of appeals C and D. Nonetheless, it is understood that it is unauthorised. There was a

[1] Appeal reference APP/F245/W/22/3313559

stable building positioned close to the mobile home. The main parties pointed out and agreed on the site visit that this was lawful.

Reasons

Appeals A & B - ground (a) appeal and section 78 appeal

Main Issues

11. The appeal made under ground (a) of section 174(2) of the Act (Appeal A) is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. The reasons for issuing the notice and the reasons for refusing planning permission (Appeal B) are essentially the same, save for the 'barn building' element of the notice which is not considered to be acceptable by the Council for solely flood risk reasons. Indeed, a planning application has previously been considered by the Council for the erection of a barn on the land.[2]

12. The main issues for consideration are therefore (i) the risk of flooding, (ii) whether the site is sustainably located and accords with Policy H6(5)(b) of the adopted 2019 Harborough Local Plan 2011-2031 (LP), and (iii) if planning harm has been/would be caused, whether this is outweighed by other considerations sufficient to justify the grant of planning permission.

Risk of Flooding

13. I turn first to use of the identified land at Stable View as a Gyspy and Traveller residential caravan site. The appellant has submitted an updated Flood Risk Assessment prepared by STM Environmental (FRA –2021– 000168 Updated November 2023, Version 2) which I have considered, and this has also been reviewed by the Environment Agency. It is noteworthy that the FRA has been prepared to *'support a planning application for the construction of a single storey dayroom'* and so it does not relate to the siting of the residential caravans on the land. In this regard, it does not offer a comprehensive FRA for all development on the land, and this is indeed a point that has been raised by the Environment Agency (EA).

14. I am not certain why the appellant has also submitted a flood risk assessment for 'Wild Meadow Farm' dated August 2007, but this is out of date and so I have focussed my assessment on the more up-to-date flood risk assessment for the land and the representations made by the EA which are based on up-to-date flood risk mapping and modelling data.

15. The EA has also responded to the appellant's statement of case for Appeal B including comments made by him about the risk of flooding. I have taken the appeal representation from the Environment Agency into account, including the associated attachments, as part of the consideration of Appeals A and B.

16. The EA mapping shows that the appeal site is within flood zone 3. It is within the River Welland catchment floodplain (Flood Zone 3a) and the Stonton Brook floodplain (Flood Zone 3b). The land is defined by the Planning Practice Guidance (PPG) as having a high probability of flooding, i.e., greater than 1 in 100 (1%) annual probability of flooding. The site falls within functional

[2] Planning application reference 23/01180/FUL

floodplain. The PPG identifies functional floodplain as land which would naturally flood within an annual exceedance probability flood event of 3.3% greater in any year.

17. Caravans and mobile homes intended for permanent residential use are classified in the PPG and annex 3 of the National Planning Policy Framework 2023 (the Framework) as a *'highly vulnerable'* form of development. It is noteworthy that the EA has commented that the area has historical flooding records at the site, including flooding in 1998.

18. Table 2 of the Flood Risk and Coastal Change chapter of the PPG states that planning permission should *'not be permitted'* for highly vulnerable development in flood zone 3. The site is within flood zone 3 and use of it for residential purposes is a highly vulnerable form of development. The evidence is that the day room building on the land is being used to provide an accessible space to the appellant's wife who has a disability and receives support from health care professions. In this regard, I find that it is intended for permanent residential use. The caravans and day room fall within the highly vulnerable flood risk category. In this regard, the development fails to accord with the flood risk requirements of the Framework or the PPG. Given the clear policy position above, I find that the development should not be permitted. The occupiers of the proposed development would be at unacceptable risk from flooding. The view is also reached by the Environment Agency (EA).

19. The FRA includes a Flood Warning and Emergency Plan (FWEP) which indicates that the occupiers would subscribe to the EA flood warning direct service which would provide two-hour flood warnings by telephone, email, or facsimile.

20. The FWEP also includes mitigation measures relating to matters such as the use of sandbags, temporary barriers, drainage, gas and electricity, safe storage of records and insurance. It also states that safe egress to Flood Zone 1 would be available by a three-minute drive to Thorpe Langton. The evidence is that the mobile home would be positioned on a concrete pad 300 mm above ground level and fixed to an anchor point, and that rainwater tanks would provide attenuation in terms of the loss of permeable land arising from the siting of the mobile home.

21. I am not persuaded that the FWEP would reasonably ensure the safety of occupiers of the site in the event of a flood. It remains possible that the occupiers of the site may not receive flood warnings in time, either because they are sleeping, or owing to the failure of technology. If this were to happen, the occupiers of the site may be stranded given that the evacuation route may be flooded. Furthermore, the safety of members of the emergency services may be put at risk in this situation.

22. The appellant contends that an embankment on the west bank of Stockton Brook would limit flows in the event of a flood and hence the site would unlikely be flooded. The evidence is not persuasive in terms of this matter and I have no reason to disagree with the view expressed by the EA that 'any high ground in this location is a result of historic dredging and is not considered a formal defence and may not be able to withstand the weight of water should a flood event occur'.

23. The appellant states that based on the EA's long terms flood risk maps, the site is in an area of medium risk. The evidence does not support this view and in fact the evidence is that the site is in an area of high risk of flooding. I find that the FRA does not adequately consider the upstream nodes or consider the overland flow route to the north of Great Bowden Lane. While it is acknowledged that finished floor levels would/could be set 150mm above existing ground level only water compatible developments are considered appropriate in flood zone 3b.

24. The EA considers that land levels have been raised and that they may have been raised again after 2022. They state that this would account for the discrepancies identified in the FRA. I do not know with absolute certainty if this has occurred, but, if it has then the FRA does not deal with floodplain compensation in association with the development. If this has happened, then it would be a matter that would justify refusing planning permission as any such change in land levels may put other developments within the functional floodplain at further risk of flooding.

25. I turn now to the barn building which is also the subject of Appeal A. This is classified as *'less vulnerable'* (i.e., land and buildings used for agriculture and forestry) in table 2 of the PPG and annex 3 of the Framework. As the site falls within functional floodplain (zone 3b) table 2 states that such development should *'not be permitted'*. Moreover, I have not been provided with a detailed mitigation strategy to address the effects of the barn building on functional floodplain. In this regard, I cannot conclude that the development has not led to the increased risk of flooding both on the site and elsewhere as a result of the development occurring on functional floodplain.

26. The FRA (including the FWEP) does not lead me to reach a conclusion that the development that is the subject of appeals A and B would be safe for its lifetime. Furthermore, and, in any event, both the Framework and the PPG make it clear that highly vulnerable and less vulnerable development in this location should *'not be permitted'*. The risk of flooding is such that it would pose a danger to occupiers of the site and to the emergency and local services in the event of the need for an evacuation. I therefore conclude that the development does not accord with the flood risk requirements of policies CC3 and H6(5)(g)(iv) of the LP, chapter 14 of the Framework, and the PPG.

Whether Sustainably Located and Policy H6 of the LP

27. The appeal site is in an area of countryside which is a significant distance away from a reasonable level of day-to-day services and amenities. The very small settlements of Welham and Weston by Welland include a very limited range of services, but even the journey to the heart of these areas would be via the long and narrow Bowden Lane which is devoid of footpaths and is unlit. Hence, walking would be discouraged on a regular basis. The distances involved to settlements where there is a greater range of day-to-day facilities and services, such as Great Bowden or Market Harborough, are such that regular walking would not be likely and, furthermore, the routes to such settlements are again along highways which are unlit and do not include continuous footways.

28. There is no evidence before me of any bus stops or services near the appeal site. Owing to the distances involved, and the absence of streetlights, occupiers of the site would be unlikely to use bicycles on a regular basis to reach

settlements such as Market Harborough or Great Bowden. Indeed, I do not consider that these roads provide the sort of safe environment, particularly in the hours of darkness or when there is inclement weather, which is conducive to frequent walking (or indeed cycling) to a settlement.

29. I recognise that traffic survey information suggests that Bowden Lane has a peak hourly flow of two vehicles and a total of less than 100 vehicles per day (based on a 2022 survey), but nonetheless the potential for conflict between pedestrians and vehicles still exists should occupiers of the site decide to walk in Bowden Lane. I find that there is conflict with policy H6(5)(b) of the LP which requires Gypsy and Traveller sites to be within *'a safe walking distance of settlement'.*

30. I acknowledge that paragraph 110 of the 2024 Framework states that '*opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making'.* In this case, however, the regular potential to access an acceptable level of amenities and services in surrounding settlements, on foot or by bicycle, would be significantly inhibited for the reasons outlined above. Furthermore, the evidence does not indicate that there are suitable opportunities available for occupiers of the site to use public transport to access settlements which contain a reasonable level of day-to-day amenities and services.

31. The appellant states that it would be possible to use taxis to reach settlements and that grocery shopping could take place using home delivery services. While this type of living is of course possible, it would still likely involve motorised trips which would have the potential to lead to similar environmental harm. In any event, I am not persuaded that occupiers of the site would seek to rely on the use of taxis for all journeys and while home grocery deliveries may be possible, other trips would be necessary for the family on a day-to-day basis relating to school, leisure, and recreational activities.

32. I therefore find that the evidence indicates that car dependency would be very likely for access to day-to-day activities and, in this regard, there would be direct conflict with policy H6(5)(b) of the LP which states that Gypsy and Traveller sites will be permitted where '*the site is located within safe walking distance to a settlement and has access to a range of services including health and education provision'.* In this regard, I do not therefore find that the appeal site is in a sustainable location even accounting for the above flexible approach to addressing sustainable transport and accessibility matters as outlined in the Framework.

33. For the above reasons, I conclude that the proposal would not accord with the sustainable and accessibility requirements of policies GD1 and H6 of the LP and the Framework. This is a matter that weighs against allowing the appeal and, indeed, reflects the control advocated in paragraph 26 of the 2024 PPTS which is that *'local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan'.* Notwithstanding the views expressed by the appellant, I find that the site is 'away from' settlements for the purposes of determining the appeals.

34. In reaching this conclusion, I have considered the 2024 PPTS which does not specifically include reference to distance from or means of transport to shops and services. Nonetheless, the 2024 PPTS requires planning applications to be determined against criteria-based development plan policies for Gypsies and Travellers. While a settled base may mean that there was less travel when compared to a roadside existence, I do not consider, as detailed later in this decision, that a roadside existence need be an inevitable outcome if this appeal were to be dismissed. In any event, I do not find that the proposal would accord with policy H6 of the LP. It is not located in safe walking distance to a settlement and the evidence is that access to a range of services including health and education provision would, on a day-to-day basis, be private motor vehicle focussed. The conflict with Policy H6 of the LP and the 2024 Framework is an overriding matter in respect of this main issue.

Other Considerations

35. The evidence is that the appellant is married, has four children living on the site, and previously lived on a Traveller pitch at 'Greenacres' which belonged to another family. While not entirely certain, the evidence in the October 2023 appeal decision pointed to the likelihood of the appellant and his family needing to vacate 'Greenacres' when the other family returned.

36. There is no dispute that the appellant is a Traveller in PPTS terms. This was indeed a finding that I reached when I considered the planning appeal on the land in October 2023. In this regard, I have had regard to Article 8 of the European Convention on Human Rights, as incorporated into the Human Rights Act 1998 (HRA), which 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.

37. The Gypsy and Traveller Accommodation Assessment for Leicester and Leicestershire 2017 (2017 GTAA) identifies a need for Gypsy and Traveller pitches in the area for 2016-2031. It identifies a need for five pitches relating to Gypsies/Travellers in accordance with the definition in annex 1 of the PPTS. The Harborough District Authority Monitoring Report 2021/22 states that four of these five pitches have already been provided. In addition, Policy H6 of the LP allocates sites for Gypsies and Travellers and there is also 'reserve site' at Boneham's Lane, Gilmorton to meet future accommodation needs due to either an increase in the need of pitches arising from a change to the PPTS definition and/or sufficient evidence is provided that the identified 'unknown' Gypsy and Traveller population does not meet the PPTS definition of Gypsy and Traveller.

38. Policy H6 of the LP states that the need arising from non-PPTS definition Gypsies and Travellers, and 'unknown' Gypsies/Travellers, is identified as being respectively 24 pitches and 13 pitches. The Court of Appeal judgement of Smith v SSLUHC & Ors (2022) EWCA held that the PPTS definition of Gypsy and Travellers is discriminatory in so far that it does not include persons of nomadic habitat of life who, on the grounds of their own or family's dependants' educational or health needs or old age, have ceased to travel permanently.

39. In the context of the above, I find that when the full extent of non-PPTS definition need is considered, the evidence does not indicate that the local

planning authority (LPA) can demonstrate a five-year supply of deliverable Gypsy and Traveller pitches. Indeed, and, in this regard, the LPA's own data in the form of the *'pitch requirements and supply document'*, dated 12 October 2023, indicates 4.12 years supply for 2022-2027. This relies on the provision of pitches from the LP 'reserve' site. However, the evidence is not certain about whether Gypsy/Traveller pitches would be capable of being delivered on this site in the next five years. This adds additional uncertainty about the five-year supply position. The LPA has indicated that if pitches could not be provided on the reserve site within the next five years, the supply position would be 1.38 years.

40. I do not find that the evidence demonstrates that the LPA can demonstrate a five-year supply of deliverable Gypsy/Traveller pitches when a non-discriminatory approach to need and supply is considered. I find that the actual supply position is not entirely certain for the reasons outlined above and, in addition, the 2017 GTAA has not been reviewed for several years thereby resulting in further uncertainty in terms of whether the need for Gypsy and Traveller pitches has changed.

41. 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 in paragraph 11(d) of the National Planning Policy Framework apply*. I find that the LPA is not able to demonstrate a deliverable five-year supply of Gypsy/Traveller sites. This is the same position that I reached in terms of my October 2023 appeal decision, and this has not been disputed by the Council as part of Appeals A and B.

42. However, and while I afford positive weight to the provision of the Gypsy and Traveller site in the context of an undersupply position, the presumption in favour of sustainable development is not engaged in this case given paragraph 11(d)(ii) of the 2024 Framework which states that it does not apply where '*the application for policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing development proposed'*. Given my conclusion in respect of the flood risk main issue, and considering footnote 7 of the 2024 Framework, I find that this constitutes a strong reason for refusing the development.

43. The LPA has not indicated that there are currently any alternative available Gypsy and Traveller pitches in the area to accommodate the family. While there is no requirement for the appellant to demonstrate that there are no alternative available pitches in the area, the LPA does not dispute what the appellant says about this matter. This is therefore a matter which weighs in favour of allowing the appeals. Furthermore, I attribute some positive weight to the fact that the proposal would make more effective use of a previously developed site in accordance with paragraph 26(a) of the PPTS.

44. I am 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. The appellant has a number of children. The needs of the children must in law be a primary consideration in the determination of these appeals.

45. The evidence is that the appellant's children are of school age and attend local schools. I do not doubt that a settled base provides educational and emotional

stability for the children. This is therefore a matter to which I afford positive weight in favour of allowing the appeals. However, this is tempered to some extent as it may be possible for the appellant to secure planning permission on a new and alternative site which is outside of Flood Zone 3 (and accords with policy) and still allow the children to attend local schools. I reached this conclusion as part of my October 2023 appeal decision, and it is noteworthy that the appellant has not responded to this matter.

46. I note that in the October 2023 appeal, it was stated that the appellant and his family were registered with local health providers. I have no reason to doubt that this has changed. This provides some stability and certainty for the family in terms of health care. However, this is not a matter to which I afford very significant weight in favour of allowing the appeals, as there is no evidence before me to indicate why it would not be possible to explore the potential to secure planning permission on another site in the area, fully according with the requirements of policy H6 of the LP, while also continuing to benefit from health providers.

47. The evidence is that the appeal site includes previously developed land. This is a matter to which I afford positive weight in the overall planning balance considering paragraph 27a of the 2024 PPTS.

48. The appellant states that the day room is needed to accommodate his wife's health care requirements. It includes level access at the front door to allow easy access in and out and a wheelchair accessible bathroom. The remainder of the space is an open plan living room and kitchen. I do not doubt that the day room offers the appellant's wife a more comfortable and accessible space when compared to the mobile home, and that it also offers ease of access for health care works. It is clear from the evidence that the appellant's wife is undergoing treatment for a specified health condition that constitutes a disability from the point of view of long term and substantial effects on the ability to carry out normal day to day activities. For the purposes of this appeal, I have therefore considered this matter in respect of the requirements of the Equality Act 2010.

49. In respect of the above, I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I do not doubt that the certainty of a stable residential base, and a bespoke day room building, helps to alleviate and control some of the symptoms associated with the wife's disability. Moreover, I do not doubt the support that is provided from the occupiers of the adjacent unauthorised Gypsy and Traveller site (i.e., the site that is the subject of Appeals C and D) in terms of day-to-day help and support for the appellant's wife. These matters weigh in favour of allowing the appeals.

50. The Act also recognises that race constitutes a relevant protected characteristic for the purposes of the PSED. Romany Gypsies and Irish Travellers are ethnic minorities, and thus have the protected characteristic of race. In this regard, I afford positive weight to the fact that use of the land as a residential caravan site would enable the appellant and his family to live a nomadic lifestyle in accordance with their culture and values.

Planning Balance and Conclusions

51. The occupiers of the site would be at risk of flooding and the barn building has been built in functional floodplain without any detailed compensatory measures. The proposal includes a combination of *'highly vulnerable'* permanent residential development, and *'less vulnerable'* agricultural development, in Flood Zone 3. National planning policy states that such development should *'not be permitted'*. This is a matter to which I afford very substantial adverse weight in the planning balance. Furthermore, I have found that the proposal would not be sustainably located and there would be significant reliance on the private motor vehicle for most day-to-day trips. In particular, there is direct conflict with policy H6(5)(b) of the LP which states that Gypsy and Traveller sites will be permitted where '*the site is located within safe walking distance to a settlement and has access to a range of services including health and education provision'*. This also weighs significantly against allowing the appeals.

52. Weighed against the above are the other considerations to which I have referred. I acknowledge that the refusal of the planning applications would result in the family being made homeless. In this context, and despite the undisputed lack of other available alternative Gypsy/Traveller pitches in the area, I have not been provided with a credible reason as to why the appellant could not explore, within a relatively short period of time, the potential to secure planning permission and occupy a new Gypsy/Traveller site elsewhere in the locality which would fully accord with the requirements of policy H6 of the LP. Consequently, I find that permanent planning permission is not therefore justified. My conclusions on the main issues are matters of overriding concern. The other considerations do not collectively attribute sufficient weight to outweigh the harm that would be caused from the development in flood risk terms and in respect of locational sustainability and safety matters.

53. I have considered, in view of the other considerations outlined above, whether a temporary planning permission would be justified. The risk of flooding is a matter to which I afford very substantial adverse weight in the planning balance. National policy advises against permitting the development that is the subject of the appeals, and I take that to mean temporary or permanent planning permission. Indeed, it remains possible that a flood event could occur at any time, and, in this regard, I do not accept that a temporary permission would have the effect minimising the risk of flooding to occupiers of the site.

54. I recognise that the appellant's wife has a disability, but the risk associated with a flooding event is real and no doubt would be an ongoing psychological concern for all members of the family. Given these matters, coupled with the proposal's conflict overall with policy H6 of the LP, and the potential to secure planning permission for a Traveller pitch elsewhere, I do not find that a temporary planning permission is justified.

55. While I do not find that there is adequate justification to grant temporary planning permission, I have nonetheless decided to increase the compliance periods in the notice to respectively twelve months and fifteen months. I provide justification for this as part of the consideration of the ground (g) appeal for Appeal B, but, in summary, I find, on balance, that it is necessary, reasonable and proportionate given the personal circumstances of the family,

the best interests of the children, and to afford more time to find/secure planning permission on an alternative site.

56. In this case, a refusal of planning permission for appeals A and B will lead to a significant interference of rights under Article 8 of the European Convention on Human Rights as incorporated into the HRA. However, it remains possible that the appellant could source an alternative site in the area and seek planning permission on it for a Gypsy/Traveller pitch in accordance with policy H6 of the LP and within the varied compliance period. Therefore, a roadside existence need not be an inevitable outcome arising from these appeals being dismissed. In any event, the collective planning harm that I have identified is of such weight that a refusal of planning permission for appeals A and B is a proportionate, legitimate, and necessary response that would not violate those persons rights under Article 8.

57. In this case, I find that the protection of the public interest, and safety of occupiers of the site, cannot be achieved by means that are less interfering of the rights of the family arising from the refusal of the planning applications. Furthermore, and, having regard to the PSED, I find that the identified risk and harm caused by the proposal outweighs any benefits in terms of eliminating discrimination against persons with the protected characteristic of race and disability. In this regard, it is proportionate and necessary to dismiss the appeals.

58. For the above reasons, I conclude that the developments do not accord with the development plan for the area taken as a whole and there are no material considerations which indicate the decisions should be made other than in accordance with the development plan. Neither permanent nor temporary planning permission is justified in this case. Consequently, the ground (a) appeal fails (appeal A) and the planning appeal (appeal B) is dismissed.

59. In reaching the above conclusion, I have considered the various appeal decisions submitted by the appellant. None of these appeal decisions alter or outweigh my conclusion on the main issues, including the sustainable location main issue which has required me to exercise my own planning judgement. I note the appellant's inclusion of an appeal decision where flood risk was balanced against other material considerations. I have balanced the identified flood risk concerns with other material considerations and, in this case, have concluded that planning permission should not be approved.

Appeals C & D – ground (a) appeal and section 78 appeal

Main Issues

60. The appeal made under ground (a) of section 174(2) of the Act is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. The reasons for issuing the notice and the reasons for refusing planning permission (Appeal D) are the same. The main issues for consideration are therefore whether (i) occupiers of the site would be at risk of flooding, (ii) whether the site is sustainably located and accords with Policy H6(5)(b) of the LP, and (iii) if planning harm has been/would be caused, whether this is outweighed by other considerations sufficient to justify the grant of planning permission.

Risk of Flooding

61. The appeal site is adjacent to the land which is the subject of appeals A and B. It also falls within flood zone 3 and includes a mobile home which falls within the *'highly vulnerable'* category. For the same reasons as outlined in my consideration of appeals A and B, and noting that in this case appeals C and D do not include an agricultural barn, I conclude that occupiers of the site would be risk of flooding and, given the clear position set out in the PPG, and the comments from the EA, the development should *'not be permitted'*.

62. In this case, I find that the occupiers of the site would be at risk of flooding and, furthermore, the FRA does not lead me to conclude that the development would be safe for its lifetime. The risk of flooding is such that it would pose a danger to occupiers of the site and to the emergency and local services in the event of the need for an evacuation.

63. I therefore conclude that the development does not accord with the flood risk requirements of policies CC3 and H6(5)(g)(iv) of the LP, chapter 14 of the 2024 Framework, and the PPG.

Whether Sustainably Located and Policy H6 of the LP

64. The appeal site is adjacent to the land which is the subject of appeals A and B. For the same reasons as outlined in my consideration of appeals A and B, I find that the site is not located in safe walking distance to a settlement and the evidence is that access to a range of services including health and education provision would, on a day-to-day basis, be private motor vehicle focussed. In this regard, I conclude that there is conflict with Policy H6 of the LP and the 2024 Framework.

Other Considerations

65. The evidence is that the appellant is married and has one child who is of school age. There is some interdependency between this family and the family occupying the adjacent site known as Stable View which I have considered as part of appeals A and B. The evidence is that support and assistance are given to a member of the family at Stable View who has a disability. This includes helping in the home and caring for the children during periods poor health.

66. There is no dispute that the appellant is a Traveller in PPTS terms. In this regard, I have had regard to Article 8 of the European Convention on Human Rights, as incorporated into the Human Rights Act 1998 (HRA), which 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.

67. The Act also recognises that race constitutes a relevant protected characteristic for the purposes of the PSED. Romany Gypsies and Irish Travellers are ethnic minorities, and thus have the protected characteristic of race. In this regard, I afford positive weight to the fact that use of the land as a residential caravan site would enable the appellant and his family to live a nomadic lifestyle in accordance with their culture and values.

68. The Gypsy and Traveller Accommodation Assessment for Leicester and Leicestershire 2017 (2017 GTAA) identifies a need for Gypsy and Traveller

pitches in the area for 2016-2031. It identifies a need for five pitches relating to Gypsies/Travellers in accordance with the definition in annex 1 of the PPTS. The Harborough District Authority Monitoring Report 2021/22 states that four of these five pitches have already been provided. In addition, Policy H6 of the LP allocates sites for Gypsies and Travellers and there is also 'reserve site' at Boneham's Lane, Gilmorton to meet future accommodation needs due to either an increase in the need of pitches arising from a change to the PPTS definition and/or sufficient evidence is provided that the identified 'unknown' Gypsy and Traveller population does not meet the PPTS definition of Gypsy and Traveller.

69. Policy H6 of the LP states that the need arising from non-PPTS definition Gypsies and Travellers, and 'unknown' Gypsies/Travellers, is identified as being respectively 24 pitches and 13 pitches. The Court of Appeal judgement of Smith v SSLUHC & Ors (2022) EWCA held that the PPTS definition of Gypsy and Travellers is discriminatory in so far that it does not include persons of nomadic habitat of life who, on the grounds of their own or family's dependants' educational or health needs or old age, have ceased to travel permanently.

70. In the context of the above, I find that when the full extent of non-PPTS definition need is considered, the evidence does not indicate that the local planning authority (LPA) can demonstrate a five-year supply of deliverable Gypsy and Traveller pitches. Indeed, and, in this regard, the LPA's own data in the form of the *'pitch requirements and supply document'*, dated 12 October 2023, indicates 4.12 years supply for 2022-2027. This relies on the provision of pitches from the LP 'reserve' site. However, the evidence is not certain about whether Gypsy/Traveller pitches would be capable of being delivered on this site in the next five years. This adds additional uncertainty about the five-year supply position. The LPA has indicated that if pitches could not be provided on the reserve site within the next five years, the supply position would be 1.38 years.

71. I do not find that the evidence demonstrates that the LPA can demonstrate a five-year supply of deliverable Gypsy/Traveller pitches when a non-discriminatory approach to need and supply is considered. I find that the actual supply position is not entirely certain for the reasons outlined above and, in addition, the 2017 GTAA has not been reviewed for several years thereby resulting in further uncertainty in terms of whether the need for Gypsy and Traveller pitches has changed.

72. 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 in paragraph 11(d) of the National Planning Policy Framework apply'*. I find that the LPA is not able to demonstrate a deliverable five-year supply of Gypsy/Traveller sites. This is the same position that I reached in terms of my October 2023 appeal decision, and this has not been disputed by the Council as part of Appeals A and B.

73. However, and, while I afford positive weight to the provision of the Gypsy and Traveller site in the context of an undersupply position, the presumption in favour of sustainable development is not engaged in this case as paragraph 11(d)(ii) of the 2024 Framework states that it does not apply where *'the application for policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing development*

proposed'. Given my conclusion in respect of the flood risk main issue, and considering footnote 7 of the 2024 Framework, I find that this constitutes a strong reason for refusing the development.

74. The LPA has not indicated that there are currently any alternative available Gypsy and Traveller pitches in the area to accommodate the family. While there is no requirement for the appellant to demonstrate that there are no alternative available pitches in the area, the LPA does not dispute what the appellant says about this matter. This is therefore a matter which weighs in favour of allowing the appeals. Furthermore, I attribute some positive weight to the fact that the proposal would make more effective use of a previously developed site in accordance with paragraph 26(a) of the PPTS.

75. I am 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. The needs of the children must in law be a primary consideration in the determination of these appeals.

76. The evidence is that the appellant's child is home schooled. I do not doubt that a settled base provides educational and emotional stability for the child. This is therefore a matter to which I afford positive weight in favour of allowing the appeals. However, this is tempered to some extent as it may be possible for the appellant to secure planning permission on a new and alternative site which is outside of Flood Zone 3 (and accords with policy and still allow the child to be home schooled).

77. The evidence is that the appeal site includes previously developed land. This is a matter to which I afford positive weight in the overall planning balance considering paragraph 27a of the 2024 PPTS.

Planning Balance and Conclusions

78. The occupiers of the site would be at risk of flooding. The development includes *'highly vulnerable'* permanent residential development in Flood Zone 3. National planning policy states that such development should *'not be permitted'*. This is a matter to which I afford very substantial adverse weight in the planning balance. There is direct conflict with policy H6(5)(b) of the LP which states that Gypsy and Traveller sites will be permitted where *'the site is located within safe walking distance to a settlement and has access to a range of services including health and education provision'*. This conflict also weighs significantly against allowing the appeals.

79. Weighed against the above are the other considerations to which I have referred. I acknowledge that the refusal of the planning applications would result in the family being made homeless. In this context, and despite the undisputed lack of other available alternative Gypsy/Traveller pitches in the area, I have not been provided with a credible reason as to why the appellant could not explore, within a relatively short period of time, the potential to secure planning permission and occupy a new Gypsy/Traveller site elsewhere in the locality which would fully accord with the requirements of policy H6 of the LP. Consequently, I find that permanent planning permission is not therefore justified. My conclusions on the main issues are matters of overriding concern. The other considerations do not collectively attribute sufficient weight to

outweigh the harm that would be caused from the development from a flood risk and locational sustainability and safety point of view.

80. I have considered, in view of the other considerations outlined above, whether a temporary planning permission would be justified. The risk of flooding is a matter to which I afford very substantial adverse weight in the planning balance. National policy advises against permitting the development that is the subject of the appeals, and I take that to mean temporary or permanent planning permission. Indeed, it remains possible that a flood event could occur at any time, and, in this regard, I do not accept that a temporary permission would have the effect minimising the risk of flooding to occupiers of the site.

81. I recognise the interdependency between the occupiers of the site and the adjacent site at Stable View in terms of the support and care provided to an occupier who has a disability. However, the risk associated with a flooding event is real and no doubt would be an ongoing psychological concern for occupiers of both sites. Given these matters, coupled with the proposal's conflict overall with policy H6 of the LP, and the potential to secure planning permission for a Traveller pitch elsewhere, I do not find that a temporary planning permission is justified.

82. While I do not find that there is adequate justification to grant temporary planning permission, I have nonetheless decided to increase the compliance periods in the notice to respectively twelve months and fifteen months. I provide justification for this as part of the consideration of the ground (g) appeal for Appeal B, but, in summary, I find, on balance, that it is necessary and reasonable given the personal circumstances of the family (in particular the interdependency with the family at Stable View), the best interests of the children, and to afford more time to find/secure planning permission on an alternative site.

83. In this case, a refusal of planning permission for appeals C and D would lead to a significant interference of rights under Article 8 of the European Convention on Human Rights as incorporated into the HRA. However, it remains possible that the appellant could source an alternative site in the area and seek planning permission on it for a Gypsy/Traveller pitch in accordance with policy H6 of the LP and within the varied compliance period. Therefore, a roadside existence need not be an inevitable outcome arising from these appeals being dismissed. In any event, the collective planning harm that I have identified is of such weight that a refusal of planning permission for appeals C and D is a proportionate, legitimate, and necessary response that would not violate those persons rights under Article 8.

84. In this case, I find that the protection of the public interest, and safety of occupiers of the site, cannot be achieved by means that are less interfering of the rights of the family arising from the refusal of the planning applications. Furthermore, and, having regard to the PSED, I find that the identified risk and harm caused by the proposal outweighs any benefits in terms of eliminating discrimination against persons with the protected characteristic of race and disability. In this regard, it is proportionate and necessary to dismiss the appeals.

85. For the above reasons, I conclude that the developments do not accord with the development plan for the area taken as a whole and there are no material

considerations which indicate the decisions should be made other than in accordance with the development plan. Neither permanent nor temporary planning permission is justified in this case. Consequently, the ground (a) appeal fails (appeal C) and the planning appeal (appeal D) is dismissed.

86. In reaching the above conclusion, I have considered the various appeal decisions submitted by the appellant. None of these appeal decisions alter or outweigh my conclusions on the main issues, including the sustainable location and safety main issue which has required me to exercise my own planning judgement. I note the appellant's inclusion of an appeal decision where flood risk was balanced against other material considerations. I have balanced the identified flood risk concerns with other material considerations and, in this case, have concluded that planning permission should not be approved.

Ground (f) appeal (Appeal A)

87. An appeal on ground (f) of section 174(2) of the Act is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

88. The appellant's claim under the ground (f) appeal is that planning permission was granted in September 2017, under application No. 17/01297/FUL, for the change of use of the front half of the site to equestrian use, together with the laying of hardstanding and erection of stables. Planning permission was also granted in February 2021, under application No. 20/01723/FUL, for the change of use of the rear half of the site to equestrian use, together with the laying of hardstanding and erection of stables. The appellant states that these planning permissions were implemented and, the hardstanding laid, and stables erected. As such, he states that the hardstanding referred to in the enforcement notice was not laid to facilitate the change of use and, cannot be required to be removed.

89. The onus is on the appellant to demonstrate that the hardstanding was formed as part of the implementation of planning permission Nos. 17/01297/FUL and 20/01723/FUL and not in whole or in part in connection with the unauthorised material change of use of the land. The appellant has not provided clear, objective, and precise evidence in this regard. On the balance of probability, I cannot therefore conclude that the whole of the hardstanding that is on the land now was formed in connection with planning permission Nos. 17/01297/FUL and 20/01723/FUL.

90. As the appellant has not sufficiently proven that the whole of the hardstanding relates to the implementation of planning permission Nos. 17/01297/FUL and 20/01723/FUL, I find that the evidence is that at least part of it has facilitated the material change of use of the land. The laying of a hardstanding is not fundamental, or causative of the material change of use of the land. It is an ancillary element to it.

91. The purpose of the notice is to remedy the breach of planning control. The removal of hardstanding which facilitated the material change of use of the land is not an excessive requirement. It is noteworthy that the notice does not require the removal of any hardstanding which may be lawful. It simply

requires the removal of hardstanding which *'facilitated the unauthorised use'*. It is also noteworthy that the notice states *'reinstate the Land to its lawful equestrian use'*. The requirements of the notice would not prohibit the retention of lawful hardstanding in association with a lawful equestrian use.

92. For the above reasons, I conclude that the ground (f) appeal fails.

Ground (g) appeal (Appeal A)

93. An appeal made on ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.

94. The appellant's claim under the ground (g) appeal is that a period of nine months is too short to cease residential use of the land and that a period of eighteen months would be reasonable so that the family are not left homeless.

95. In the context that there are currently no alternative available Gypsy and Traveller sites in the area, and in view of the personal circumstances (including the interdependency with the family on the adjacent site) and the bests interests of the appellant's children, I find that it is reasonable and proportionate to increase the respective compliance periods from nine months to twelve months and from twelve months to fifteen months.

96. I find that the increased compliance periods strike a reasonable balance between providing more time to find/secure planning permission for an alternative Gypsy and Traveller site, to provide longer continuity of care and support from a settled base for the appellant's wife who has a disability and to provide stability for the appellant's children in education terms, while also bringing the harmful development to an end.

97. To the extent that the compliance periods will be varied, I conclude that the ground (g) appeal succeeds.

Ground (f) appeal (Appeal C)

98. An appeal on ground (f) of section 174(2) of the Act is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

99. The appellant's claim under ground (f) is that the hardstanding should not be removed as it was formed as part of the implementation of approved planning permission No. 20/01722/FUL for the change of use of the rear half of the site to equestrian use together with the laying of hardstanding and erection of stables.

100. The onus is on the appellant to demonstrate that the whole of the hardstanding on the land was formed as part of the implementation of planning permission No. 20/01722/FUL (or any other planning permission) and not in whole or in part in connection with the unauthorised material change of use of the land. The appellant has not provided clear, objective, and precise evidence in this regard. On the balance of probability, I cannot therefore conclude that the whole of the hardstanding that is on the land now was formed in

connection with planning permission No. 20/01722/FUL (or any other planning permission).

101. As the appellant has not sufficiently proven that whole of the hardstanding relates to the implementation of planning permission No. 20/01722/FUL (or any other planning permission), I find that the evidence is that at least part of it has facilitated the material change of use of the land. The laying of a hardstanding is not fundamental, or causative of the material change of use of the land. It is an ancillary element to it.

102. The purpose of the notice is to remedy the breach of planning control. The removal of the hardstanding which facilitated the material change of use of the land is not an excessive requirement. It is noteworthy that the notice does not require the removal of any hardstanding which may be lawful. It simply requires the removal of hardstanding which *'facilitated the unauthorised use'*. It is also noteworthy that the notice states *'reinstate the Land to its lawful equestrian use'*. The requirements of the notice would not prohibit the retention of lawful hardstanding in association with a lawful equestrian use.

103. For the above reasons, I conclude that the ground (f) appeal fails.

Ground (g) appeal (Appeal C)

104. An appeal made on ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.

105. The appellant states that a period of nine months is too short to cease residential use of the land and that a period of eighteen months would be reasonable so that the family are not left homeless.

106. In the context that there are currently no alternative available Gypsy and Traveller sites in the area, and in view of the personal circumstances (including the interdependency with the family on the adjacent site) and the bests interests of the child living on the land, I find that it is reasonable and proportionate to increase the respective compliance periods from nine months to twelve months and from twelve months to fifteen months.

107. I find that the increased compliance periods strike a reasonable balance between providing more time to find/secure planning permission for an alternative Gypsy and Traveller site, to provide longer continuity of care and support from a settled base for the disabled occupier of Stable View, and to provide stability for the appellant's child in education terms, while also bringing the harmful development to an end.

108. To the extent that the compliance periods will be varied, I conclude that the ground (g) appeal succeeds.

Conclusions

Appeal A Ref: APP/F2415/C/24/3343384

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

Appeal B Ref: APP/F2415/W/24/3342250

110. For the reasons given above, I conclude that the development would 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 appeal should be dismissed.

Appeal C Ref: APP/F2415/C/24/3343386

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

Appeal D Ref: APP/F2415/W/24/3342312

112. For the reasons given above, I conclude that the development would 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 appeal should be dismissed.

D Hartley

INSPECTOR