

Statement on behalf of the Claimant
Casey Derrett
First Statement
Exhibits attached "CD1"- "CD4"
Dated 7 April 2022

IN THE HIGH COURT OF JUSTICE

Claim No. QB-

CHANCERY DIVISION

BIRMINGHAM DISTRICT REGISTRY

BUSINESS AND PROPERTY COURTS

B E T W E E N:-

GLOUCESTER CITY COUNCIL

Claimant

-and-

(1) MR. JABUS SMITH

First Defendant

-and-

(2) PERSONS UNKNOWN (OWNERS/OCCUPIERS OF CARAVANS OR OTHER FORMS OF RESIDENTIAL OCCUPATION SITUATED ON THE LAND KNOWN AS AND SITUATED AT STAMPS MEADOW, LONGFORD, GLOUCESTER OR PERSONS UNDERTAKING OPERATIONAL DEVELOPMENT ON THE SAID LAND WITHOUT A LAWFUL PLANNING CONSENT)

Second Defendant

WITNESS STATEMENT OF CASEY DERRETT

I, CASEY DERRETT of Gloucester City Council, Shire Hall, 92 Westgate Street, Gloucester, GL1 2PE WILL SAY AS FOLLOWS:

1. I am a Planning Enforcement Officer working for Gloucester City Council from offices at Shire Hall. I am responsible for dealing with breaches of planning in the City of Gloucester.
2. I make this statement in support of the Council's application for an injunction against Jabus Smith who lives at 35 Willows Caravan Site, Sandhurst, Gloucester GL2 9NB and Persons Unknown in respect of activities in breach of Planning Control on land known as and situated at Stamps Meadow, Longford, Gloucester ("the Land").
3. This statement is based on facts which are within my own knowledge and belief or which are true to the best of my knowledge and belief from the sources indicated. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth. I am duly authorised to make this statement on behalf of Gloucester City Council.
4. The area of land subject to this statement lies to the north west end of Stamps Meadow a small residential cul-de-sac. The Land itself is a small plot of open countryside which up until recently was covered in tress and foliage. The Land is registered in the name of the First Defendant. I now have produced and shown to me marked Exhibit "CD1" true copies of the Office Copy Entries and Office Copy Plan of the Land.
5. The Land was purchased by the First Defendant on the 17 February 2020 and since this time the Land has slowly been cleared and fencing erected around the site, to enclose it to the front. There has also been some levelling of the land with vegetation removed.
6. In February 2022 it was reported by residents, and photographs supplied that a water supply had been connected to the site and the suggestion is that the intention for the site to be used as residential pitches for the Gypsy and Traveller community. I now have

produced and shown to me marked “CD2” true copies of a series of photographs of the Land which shows some of the development taking place.

7. I understand that following the sending of a letter by the Claimant’s Legal Representative to Mr. Smith enquiring of his intentions, he telephoned and explained that he had no intention of using the land for residential purposes and that the reason for the water supply was to provide water to goats and sheep that he intended to graze on the land. I now have produced and shown to me marked “CD3” true copies of the correspondence and Attendance Notes of telephone conversations that have taken place over the last few weeks, between the Legal Representatives and Mr. Smith.
8. I am highly sceptical that this is the true intent of Mr. Smith and other persons he is associated with. The connection of a water supply to the mains facility is wholly unnecessary and frankly excessive if it was simply intended to graze goats and sheep. Animals do not need a constant supply of water. The connection is far more suggestive of this being the first step towards residential development. The acquisition of land by Gypsy/Travellers and the summary arrival on the land with an intention to develop the land for residential purposes is very common. I am aware of at least 5 parcels of land where a Gypsy/Traveller has lawfully purchased land, but then unlawfully attempted to develop the land without having obtained the permission of the local planning authority.
9. My scepticism is not however solely based on the connection to the water supply being wholly disproportionate to the needs of a few sheep and goats. I am also aware from various discussions I have had in recent times with people close to the Gypsy/Traveller Community in the Gloucestershire area, that there is talk in the Community of the land being developed and that the claim that the water is simply for goats and sheep is completely false.
10. As a consequence of the enquiries and the evidence of the fencing and water supply, I am firmly of the view that there is a real and genuine concern that with the Easter Bank Holiday approaching that there is an intention for Gypsy/Travellers to move onto the Land and take up occupation.

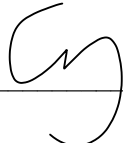
11. Environment Agency / County Council flood zone mapping indicates that the site at Stamps Meadow falls within Zone 3b, which is the functional flood plain and defined as '*land where water has to flow or be stored in times of flood*', and within flood zone 3a.
12. National Planning Practice Guidance 'Flood Risk and Coastal Change' indicates the flood risk vulnerability classification of types of development with caravans and mobile homes being classed as 'Highly Vulnerable'. Flood Risk vulnerability and flood zone compatibility clarifies that 'Highly vulnerable' uses should not be permitted in flood zone 3a or 3b. Therefore, I am quite sure that if planning permission was sought for residential pitches it would not be granted due to this constraint.
13. Recently a similar breach occurred on a parcel of land along Walham Lane, Gloucester. The land was purchased by a member of the Gypsy/Traveller community and four members of the family moved onto the land over the bank holiday Easter weekend of 2020. This parcel of land, also falls within flood zones 3a and 3b and therefore would not have been acceptable in planning terms due to the highly vulnerable classification of the homes and the flood risk. I now have produced and shown to me marked Exhibit "CD4"
14. The time involved in dealing with the planning breach associated with Walham Lane took circa 18 months. Much of this time involved officer time in investigating, compiling notices, liaising with consultants and ultimately resulting in an enforcement appeal hearing to then receiving the inspectors decision. This took up an incredible amount of council resources, particularly in officer time and cost to the council and resources taken away from other investigations and projects through the duration of the investigation.
15. The enforcement appeal was dismissed because of the factors discussed above; namely flood risk. However, the individuals living on the site were given an extended time for compliance; until November 2023. If ultimately, they do not comply this could result in more time and resources. A similar exercise in relation to the land would be extremely detrimental to the Council and its operations. It is therefore entirely justified for the Council to seek to prevent a repeat exercise with all the delay and cost associated with a planning breach.

16. Given the complaints that have been received since February 2022, from concerned residents who live within Stamps Meadows and the real and genuine fear that the change of use of the land to a Gypsy/Traveller site will occur over the Easter weekend, this injunction application is entirely justified. It would seem reasonable to take a pre-emptive approach, particularly regarding the significant amount of officer time and council resources it takes to deal with such breaches after the fact.

17. Of course it will not be lost on the Court that the relief being sought; namely a mandatory injunction for the removal of the connection to the water supply and a prohibitory injunction, prohibiting various activities is not, according to Mr. Smith's own statements, going to cause him any prejudice. He has said that the only use for the Land is for the grazing of goats and sheep. He maintains that he has no intention of using the Land for residential purposes. If that is truly the case, the injunctive relief sought will have no adverse affect on him. That is because there cannot be any prejudice or detriment to the Court making the Order sought, because Mr. Smith, apparently has no intention to develop the Land. The point that can therefore be simply made is that it isn't as if Mr Smith will suffer any loss as he is not intending, according to the information conveyed to the Legal Representative to occupy the Land.

18. In light of all that is said and the concerns raised by the activity on the Land, I respectfully request that the proposed injunctions, which include both mandatory and prohibitory orders, should be made. This will protect the Land from unlawful breaches of planning control and ensure the protection of the Land and the surrounding areas.

19. I confirm the contents of this Witness Statement are true

Signed  _____ Dated 07 April 2022 _____

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CHANCERY DIVISION**

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BUSINESS AND PROPERTY COURTS**

B E T W E E N:-

GLOUCESTER CITY COUNCIL

Claimant

-and-

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First Defendant

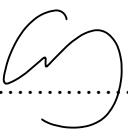
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Second Defendant

EXHIBIT "CD1"

I confirm this is Exhibit "CD1" referred to in the Witness Statement of Ms. Casey Derrett dated []


.....
CASEY DERTRETT

Dated this day of 2022

THIS IS A PRINT OF THE VIEW OF THE REGISTER OBTAINED FROM HM LAND REGISTRY SHOWING THE ENTRIES SUBSISTING IN THE REGISTER ON 4 FEB 2022 AT 14:56:36. BUT PLEASE NOTE THAT THIS REGISTER VIEW IS NOT ADMISSIBLE IN A COURT IN THE SAME WAY AS AN OFFICIAL COPY WITHIN THE MEANING OF S.67 LAND REGISTRATION ACT 2002. UNLIKE AN OFFICIAL COPY, IT MAY NOT ENTITLE A PERSON TO BE INDEMNIFIED BY THE REGISTRAR IF HE OR SHE SUFFERS LOSS BY REASON OF A MISTAKE CONTAINED WITHIN IT. THE ENTRIES SHOWN DO NOT TAKE ACCOUNT OF ANY APPLICATIONS PENDING IN HM LAND REGISTRY. FOR SEARCH PURPOSES THE ABOVE DATE SHOULD BE USED AS THE SEARCH FROM DATE.

THIS TITLE IS DEALT WITH BY HM LAND REGISTRY, GLOUCESTER OFFICE.

TITLE NUMBER: GR60696

There is no application or official search pending against this title.

A: Property Register

This register describes the land and estate comprised in the title.

GLOUCESTERSHIRE : GLOUCESTER

- 1 The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being Land being part of Stamps Meadow, Longford, Gloucester.
- 2 A new filed plan on an enlarged scale and based on the latest revision of the Ordnance Survey Map has been substituted for the original plan.
- 3 The land edged and numbered in green on the filed plan has been removed from this title and registered under the title number or numbers shown in green on the said plan.
- 4 Unless otherwise stated below transfers of the parts edged and numbered in green on the filed plan reserve rights of drainage, rights in respect of water gas electricity telephone and other supply services, rights of light or air and rights of entry for repair and maintenance and landscaping purposes.
- 5 The Transfer of the land edged and numbered GR90967 in green on the filed plan does not reserve the rights referred to above.
- 6 (26.07.2011) A new title plan based on the latest revision of the Ordnance Survey Map has been prepared.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (17.02.2020) PROPRIETOR: JABUS SMITH of 35 Willows Caravan Site, Sandhurst, Gloucester GL2 9NB.
- 2 (17.02.2020) The value stated as at 17 February 2020 was £5,000.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 A Wayleave Agreement and Consent dated 23 December 1985 made between (1) Winsland Homes Limited (Grantors) and (2) The Midlands Electricity Board (Board) contains provisions in the following terms:-

"The Grantor(s) hereby give the Board full and free licence and liberty and consent for the Board its servants workmen and other authorised by

C: Charges Register continued

them to lay and use and thereafter from time to time repair inspect and maintain re-lay and remove electric lines underground as the Board shall require for the transmission and distribution of electricity and the necessary service turrets ducts pipes and other apparatus appurtenant thereto (herein collectively referred to as the said electric lines) (the right hereby granted to include the right to lay additional apparatus to that originally laid in contradistinction from and in addition to the right already given to replace apparatus) over and or under the said land shown edged pink on the plan Nod. 0299272 annexed hereto and for any of the purposes aforesaid to enter upon the said land to execute all or any of such works as aforesaid and to break up and excavate so much of the said land as may from time to time be necessary and remove and dispose of any surplus earth PROVIDED that in so doing the Board shall cause as little damage as may be to the said land and shall so far as practicable make good and restore the surface thereof."

The said Agreement and Consent also contains the following conditions:-

"THE Grantor(s) hereby AGREE(S) with the Board:-

(i) That they will not erect or permit to be erected any building or erection of any kind whatsoever or plant any trees under over or in close proximity to the said electric lines without first obtaining the prior approval of the Board such approval not to be unreasonably withheld

(ii) Not to raise or lower the level of the said land which would in any way affect the rights hereby licensed

(iii) That they will on any sale lease or other disposition of the said land or any part thereof sell lease or dispose of such land subject to this agreement."

NOTE: The said land edged pink referred to is tinted pink on the filed plan.

- 2 The estate road and footpath are subject to rights of way.
- 3 The land is subject to rights of drainage and rights in respect of water, gas and electricity supply services.
- 4 The parts of the land respectively affected thereby which adjoin the parts edged and numbered in green on the filed plan are subject to rights of entry for repair and maintenance in respect of fences and buildings erected on or near the boundaries of the said parts edged and numbered in green.
- 5 An Agreement pursuant to Section 38 of the Highways Act 1980 dated 4 August 1986 made between (1) Winsland Homes Limited (2) National Westminster Bank PLC and (3) The Council of the City of Gloucester relates to the construction of an estate road.
- 6 An Agreement pursuant to Section 18 of the Public Health Act 1936 dated 4 August 1986 made between (1) Winsland Homes Limited (2) National Westminster Bank PLC and (3) The Council of the City of Gloucester relates to the construction of sewers.
- 7 The land tinted blue on the title plan is not affected by Entries Nod. 1, 5 and 6 above.
- 8 (05.01.1995) A Transfer of the land in this title and other land dated 21 November 1994 made between (1) Winsland Homes Limited (Transferor) and (2) Basilica Limited (Transferee) contains the following covenants:-

"THE TRANSFEEE hereby covenants with the Transferor

1. Not within 5 years from the date hereof to sell or otherwise dispose of the Property or any part of it other than to bona fide purchaser at arms length on the open market

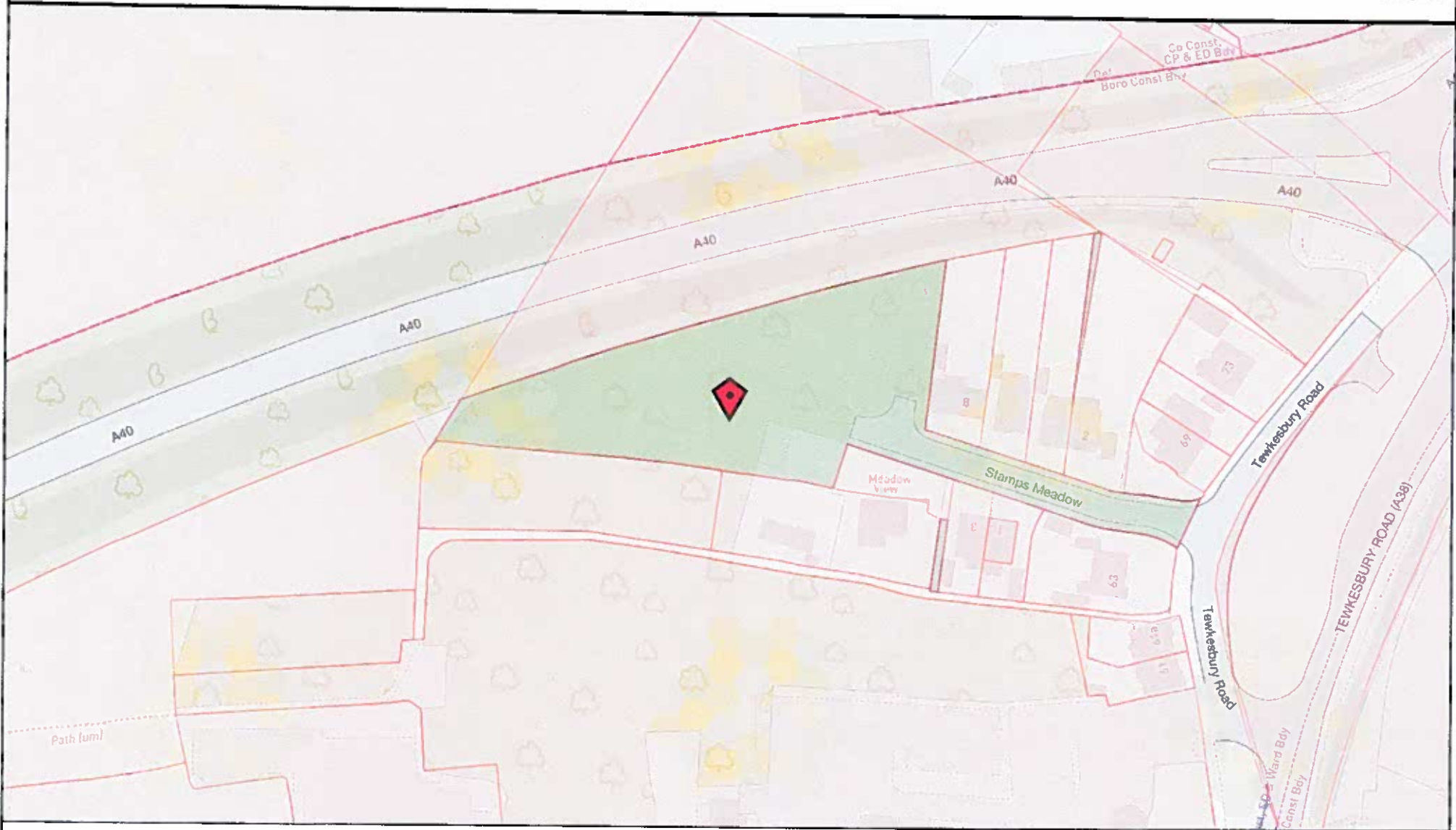
2. Within 14 days of the completion of any such sale to pay to the Transferor 30% of the sale price thereof after deducting from such sale

Title number GR60696

C: Charges Register continued

price all proper costs and expenses incurred by or on behalf of the Transferee in connection with and incidental to such sale to include inter alia solicitors and agents costs and expenses and costs including professional fees in obtaining any required planning consent."

End of register



0 5 10 15 20 25 30 35 40 50m

Map scale 1:1250

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This map is for reference purposes only. You are not permitted to copy, sub-license, distribute or sell any of this data to third parties in any form.

Data last updated 10:00pm 03 FEBRUARY, 2022



Title number	Estate information	Address
GR60696	Freehold	LAND BEING PART OF STAMPS MEADOW, LONGFORD, GLOUCESTER

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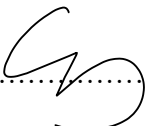
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Second Defendant

EXHIBIT "CD2"

I confirm this is Exhibit "CD2" referred to in the Witness Statement of Ms. Casey Derrett dated []


.....
CASEY DERTRETT

Dated this day of 2022

Photos provided 21 March 2022 by resident of water connection made to the site.



Photos provided 21 March 2022 by resident of water connection made to the site.



Photos provided 21 March 2022 by resident of water connection made to the site.



Photos provided 21 March 2022 by resident of water connection made to the site.



Photos provided 21 March 2022 by resident of water connection made to the site.



Stamps Meadow – Site visit 29.03.2022



Stamps Meadow – Site visit 29.03.2022



Stamps Meadow – Site visit 29.03.2022



Stamps Meadow – Site visit 29.03.2022

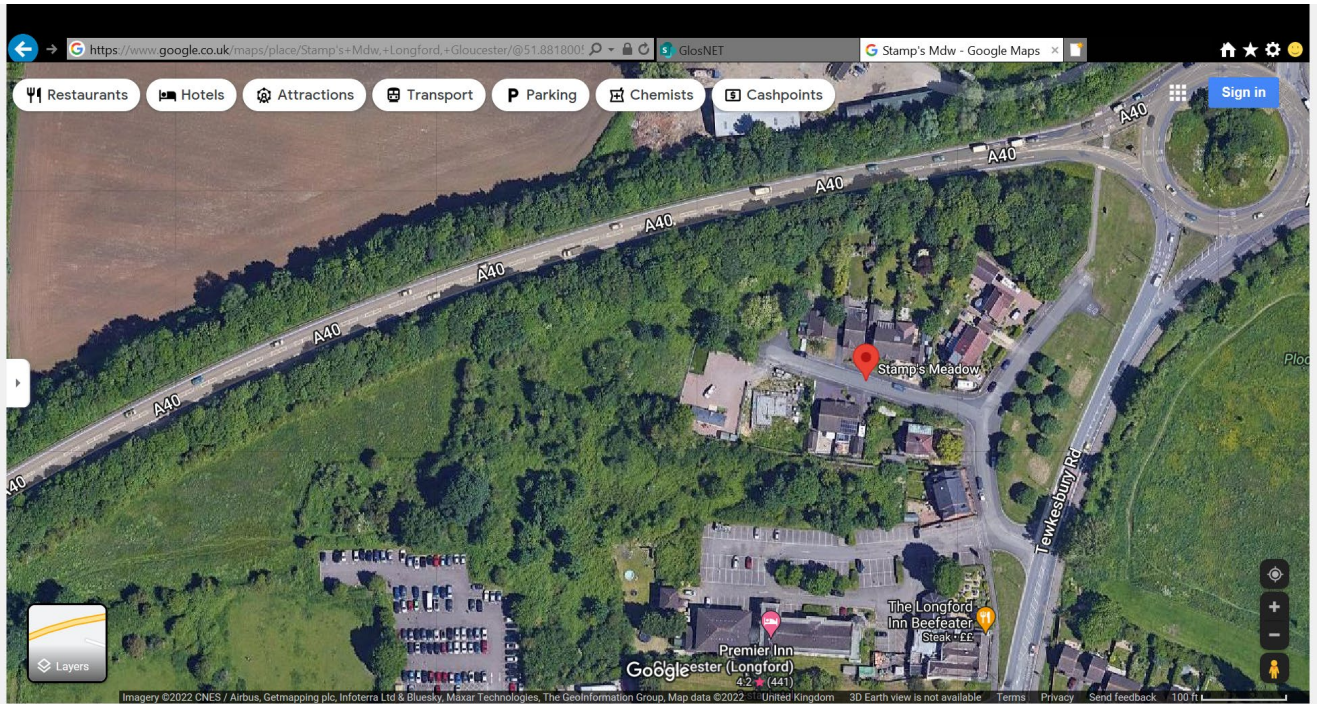


Stamps Meadow – Site visit 29.03.2022



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Annex A – Aerial Image of Stamps Meadow

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Second Defendant

EXHIBIT "CD3"

I confirm this is Exhibit "CD3" referred to in the Witness Statement of Ms. Casey Derrett dated []



.....

CASEY DERTRETT

Dated this day of 2022

CASE NOTE

Case ref: 27626
Date: 28 March 2022

Case:	Mr Jabus Smith GCY - Land at Stamps Meadow, Longford, Gloucester, GR60696
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Returning the telephone call from Mr Jabus Smith on 28 March 22 at 9:53

Mr Smith said he had called in response to my letter. Mr Smith asked me to explain the letter to him as he hadn't seen it. He had been away in Wales visiting a sick aunt. I explained that the Council believed that Mr Smith was planning to use the land at Stamps Meadow for residential purposes and that the Council was prepared to take injunctive action to prevent this from happening.

Mr Smith responded to say he already had a plot at the Willows Caravan site and he was not planning to move onto the land. Mr Smith said that the land has been prepared for goats and sheep and not residential use. The water has been connected for use in the water trough for the animals. Mr Smith said that he was gifted the land and it was very overgrown so he has cut it back and wants to use goats and sheep to maintain the overgrowth.

Mr Smith has been in trouble before for keeping horses on land without water so he didn't want to make the same mistake this time. He is not going to 'disconnect' the water.

I asked Mr Smith if he could provide written confirmation via email that we he would not be using the land for residential use which he confirmed he would do so.

5m 47s

Rachael Baldwin
Lawyer

CASE NOTE

Case ref: 27626
Date: 31st March 2022

Case:	Mr Jabus Smith GCY - Land at Stamps Meadow, Longford, Gloucester, GR60696
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Telephone call from Mr Jabus Smith at 4:27

Mr Smith called last night regarding his most recent letter. Mr Smith again asked me to explain what it meant. Mr Smith said he had been away in Wales visiting an uncle who was dying. I confirmed to him that if he was to put animals on the land it would change the use of the land to agricultural which would require planning permission. I suggested that it would be best for Mr Smith to obtain planning permission before he make any changes to the land.

Mr Smith confirmed that he understood this and said he would still like to put a few animals on the land but won't be doing it in the near future. He has asked if he could be sent information on how to apply for permission to keep animals on the land. I confirmed that I would ask for this to be sent to him.

5m 44s

Rachael Baldwin
Lawyer

IN THE HIGH COURT OF JUSTICE

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Second Defendant

EXHIBIT "CD4"

I confirm this is Exhibit "CD4" referred to in the Witness Statement of Ms. Casey Derrett dated []


.....
CASEY DERTRETT

Dated this day of 2022

Walham Lane - REF NUMBER: 20/00044/OPDEV

Flood Risk Information

Report By Tom Hitchen BEng Hons (Civil Engineering), Environment Officer – Flood Management

Contents

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1.0 Section 1 - Change Of Use Appeal

1.0.1 Alleged breach of planning from the expediency report:

- *Without planning permission, the material change of use of the land from agricultural land to a site used for the purpose of gypsy and traveller pitches for residential use with associated development including, but not exclusively, the installation of a septic tank, fencing to secure the site, four small sheds and other associated activities to support such a use.*

1.0.2 From expediency report (edited):

Environment Agency / County Council flood zone mapping indicates that 39% of the site falls within Zone 3b, which is the functional flood plain and defined as 'land where water has to flow or be stored in times of flood'. 36% of the site is within flood zone 3a, while the remaining 25% of the site is within flood zone 2. The flood zones are shown in Table 1, and Figure 1, below.

Paragraph 155 of the NPPF specifically states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Paragraph 163 provides that, ‘when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere’. Policy INF2 of the adopted Joint Core Strategy (JCS) reiterates the NPPF stating *“Development proposals must avoid areas of risk of flooding, in accordance with a risk based sequential approach. Proposals must not increase the level of risk to the safety of occupiers of a site, the local community, or the wider environment either on the site or elsewhere”*.

Table 2 of the National Planning Practice Guidance ‘Flood Risk and Coastal Change’ indicates the Flood Risk Vulnerability Classification of types of development, with caravans and mobile homes being classed as “Highly Vulnerable”. Table 3 of this Guidance titled “Flood risk vulnerability and flood zone compatibility” clarifies that “Highly Vulnerable “uses should not be permitted in Flood Zone 3a or 3b.

Any development in flood zone 2 would need to pass the sequential and exception tests.

JCS Policy SD13 relates to gypsy and travellers. The Gypsy and Traveller Accommodation Assessment (GTAA) was completed in March 2017 and identified a need for 2 non-travelling households at that point in time. It is possible that this need has increased since 2017.

Policy SD13 of the Joint Core Strategy identifies the criteria under which proposals for new permanent and temporary, residential and transit Gypsy, Traveller and Travelling show people sites should be assessed. Point iii provides: *“No significant barriers to development exist in terms of flooding, poor drainage, poor ground stability or proximity to other hazardous land or installation where other forms of housing would not be suitable”*.

The above indicates that the use of the land for a static caravan(s) and for touring vans would conflict with the above policies relating to flood risk and the location of gypsy and traveller accommodation.

Flood Zone	Area	%
Flood Zone 2	2,608	25%
Flood Zone 3a	1,952	36%
Flood Zone 3b	1,015	39%
Total		100%

Table 1: Flood zone classification of the site by % area

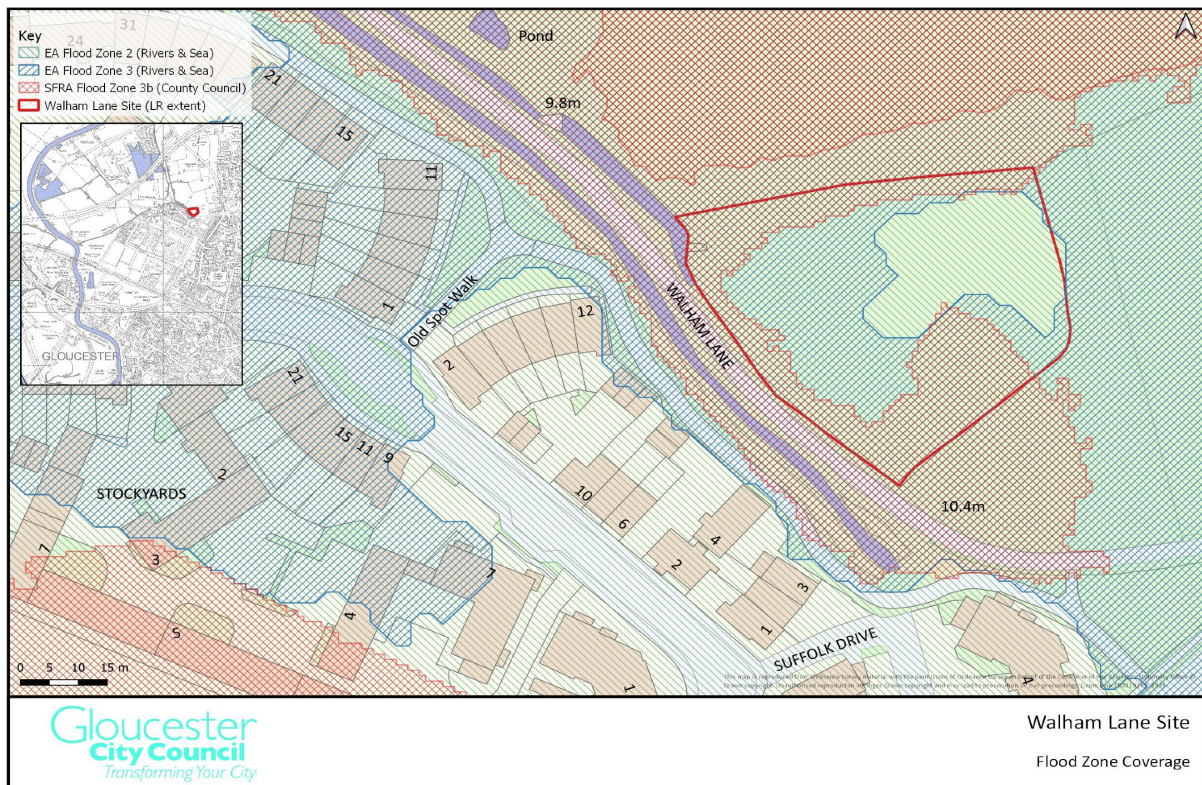


Figure 1: EA and County Council Flood Mapping

1.1 Response To Appeal Statement:

1.1.1 Ground 'a' Appeal : Part (vi):

'The site is shown on the Environment Agencies Planning flood map as being high risk. That said the Nelmes families who have lived off Walham Lane since the 1950s have not known this site to flood during the significant flood events. For example the site did not flood in 2007 or more recently in 2020 (February) when flood water extended to near the site's entrance along Walham Lane.'

1.1.2 The appellant implies that the flood maps are incorrect because the site did not flood in 2007 or 2020. Whilst historical flood events can be a useful reference, they, in themselves, are not strong enough evidence for overruling the EA / County Council flood mapping. This is because we often do not have accurately documented flood extents for historical events, and also, because the return period for rainfall can vary significantly across a catchment and may not equate to the flood mapping return periods.

1.1.3 The evidence set out in Part 2 of this document indicates that ground levels at the site have been raised over recent years. No planning consent has been granted for ground raising at the site and so any such ground raising is considered unauthorised.

Unauthorised ground raising cannot be used to support a claim that a site is no longer in a flood risk area.

- 1.1.4 It should be noted that planning permission would not normally be granted for ground level raising in flood zone 3a or 3b (without a suitable mitigation scheme) because raising ground levels in a high flood risk area has the net effect of displacing flood water elsewhere and increasing flood risk for others. This is contrary to the guiding principles of the NPPF.
- 1.1.5 Gloucester has been identified as a 'Flood Risk Area' by the Environment Agency following a preliminary flood risk assessment for river, sea and reservoir flooding, carried out to meet the requirements of the European Floods Directive (2007/60/EC) (transposed into the Flood Risk Regulations (2009)). It is therefore particularly important that Gloucester City Council adopts a robust approach to flood risk management, including on planning matters.

- 1.1.6 Ground 'a' appeal: part (vii):

'In the time available, the appellant's flood risk consultant advises that the 1 in 200 year + climate change flood level is 10.74 m AOD for this area. With reference to the appellant's topographical survey (Plan T_Walham Lane_S1) almost all the site is well clear of flooding, prior to any land raise. In addition if the site were to be in the flood risk area, prevention of flooding can be addressed through mitigation measures (see ground f).'

- 1.1.7 The appellant presents a flood level, but there is no Flood Risk Assessment (FRA) provided to evidence the source of this data or to justify its use for analysis. All planning applications in flood zone 2 or flood zone 3 require an FRA. As discussed above, the evidence presented in Part 2 indicates that unauthorised ground level raising has been carried out at the site (some of which the appellant admits to having carried out themselves). In the case that ground levels are restored to where they were prior to the unauthorised raising, then the flood risk situation will present a different picture.
- 1.1.8 For clarity, the reason an FRA is required for development in flood zone 2/3 sites such as this is to:
- Address the Sequential Test (flood risk). This is a statutory obligation for all developments in flood zone 2/3, including where a change of use involves caravans. The purpose of the Sequential Test is to steer development to lower risk flood areas. The appellant has not addressed the Sequential Test.
 - Address the Exception Test. This entails demonstrating that the development will: be safe for its lifetime for the users of the site; not increase flood risk elsewhere; offer sustainability benefits to the community that outweigh the flood risk. The appellant has not addressed the Exception Test.

1.1.9 Ground 'f' appeal , part (i):

'In respect of flooding the site we consider is almost all outside the higher risk flood zones. Caravans can be raised up on concrete blocks to ensure they are free from flood risk. The Utility buildings are not habitable buildings and are not flood sensitive. The fencing is of a height that is at or below the permitted development height for fencing. The site if not used for residential purposes could be re-used for non flood vulnerable uses, such as Storage, for which fencing would be required for security and screening. In addition the Environment Agency gives flood warnings starting 4 days before a major flood event occurs. The caravans could be removed from site in half a day. The appellants would sign up to the early warning service, although having lived along Walham Lane they have the knowledge of what flooding is likely to occur.'

1.1.10 The appellant reasserts their view that *'almost all [the site is] outside the higher risk flood zones'*. This item has been covered in Ground a Part (vi).

1.1.11 With regard to the discussion on raising caravans / floodable utility buildings / evacuation of caravans, none of the above is able to overrule the National Planning Practice Guidance which states 'highly vulnerable' development should not be permitted in flood zone 3a or flood zone 3b. Furthermore, even if caravans were in principle permissible at this location then the Sequential Test (flood risk) and Exception Test would need to be addressed and then passed. This has not been done.

2.0 **Section 2 - Operational Development Appeal**

2.0.1 Alleged breach of planning from the expediency report:

- *The unauthorised importation of material to raise the levels of the land within the flood zone 2, 3a and 3b which amounts to an engineering operation requiring planning permission. The response to the Planning Contravention Notice indicates that this was between 80-100 tonnes of road plainings (Inert Material), used across the site.*

2.0.2 As set out in the expediency report in Appendix 4, the land raising requires planning permission as it amounts to an engineering operation. This development is contrary to the NPPF, JCS Policy INF2 and City Plan Policy E6 as it removes capacity from flood zone 3b, the functional flood plain, and therefore increases the risk of flooding elsewhere.

- 2.0.3 LIDAR (ground level data) shows increases in ground level across the site occurred some time between 2009 and 2019. Some cross-sections through the site showing the increase in levels are shown in Appendix A, at the end of this document. The levels are typically shown to have increased on average between 130mm and 800mm.
- 2.0.4 No planning permission has been granted for raising ground levels at this site and so these level changes are considered to be unauthorised and unlawful as well as detrimental to the local flood risk situation.

2.1 Response To Appeal Statement:

2.1.1 Ground 'a' appeal: part (i):

'The site area over which material (road plainings) were spread to form a blinded surface is 2,033 m² based on the topographical survey undertaken by Monument Geomatics (Plan T_WalhamLane_S1). That equates to less than a 50 mm depth of cover across the site on average. That is de minimus, and if that amount required permission, approval should be granted. The Council's concern is flood risk and the impact of that amount of land rise over a relatively small area is insignificant. With reference to the change of use appeal, the site is almost wholly outside of a high flood risk area, based upon our initial investigation into flood risk.'

2.1.2 It is worth emphasizing that the figure for the amount of imported material has been derived from the appellant's completed PCN notice and is not from site measurements carried out by the LPA. Due to Covid pandemic, the planning authority was not able to access the site to carry out a site survey.

2.1.3 A topographical survey was received from the appellant on the 21st January. This does not allow adequate time for the LPA to commission a consultant to carry out an analysis on the volume of ground level raising at the site, prior to the appeal hearing.

2.1.4 Gloucester City Council does not consider the ground raising at the site to be *de-minimis* or insignificant. The cumulative effect of multiple losses of flood plain storage volume is also of importance.

2.1.5 Notes on the appellant's investigation into flood risk can be found above in Part 1 (*Ground 'a' appeal part (vii)*)

2.1.6 Ground A, part (ii)

'The raising of the site was undertaken many years ago by other parties before the appellant's family purchased it. A raise of 47 mm (using the Council's figure for deposited tonnage of material) is de minimus and insignificant. The material was

deposited to form a smoother surface rather than to increase the height of the land. ‘

2.1.7 The appellant would need to demonstrate that the ground level raising was done outside of their ownership. As discussed above, the figure for the deposited tonnage of material was provided by the appellant. As far as we are aware, the figure of 47 mm has not been proven by any analysis of survey data.

2.1.8 Gloucester City Council does not consider the ground raising at the site to be *de-minimis* or insignificant.

2.1.9 Ground ‘a’ appeal part (iii)

‘The works are not in breach of Local Plan and National policies and objectives and policies SD13 and INF2 are not harmed.’

2.1.10 We disagree with this conclusion. Reference to national policy has previously been made. Furthermore, Policy E6 of the Gloucester City Plan states:

‘Development shall be safe from flooding and shall not lead to an increase in flood risk elsewhere. In accordance with the National Planning Policy Framework, flood risk betterment shall be sought through the development process.’

and,

‘Planning permission will not be granted for any development in the functional flood plain (Flood Zone 3b) except for development with ‘water compatible’ and ‘essential infrastructure’ flood risk vulnerability development classifications.’

and,

‘Development proposals shall facilitate watercourse restoration, exploiting opportunities to open culverts, naturalise river channels, and protect and improve the floodplain,’

Clearly, raising ground levels in the floodplain is contrary to this.

Further, Section 5.3.4 of ‘Gloucester City Council Level 2 Strategic Flood Risk Assessment’ (September 2019) states:

‘For any development (both major and minor), that results in built volume below the design flood level (100-year plus climate change flood level), mitigation shall be required for loss in floodplain storage volume.’

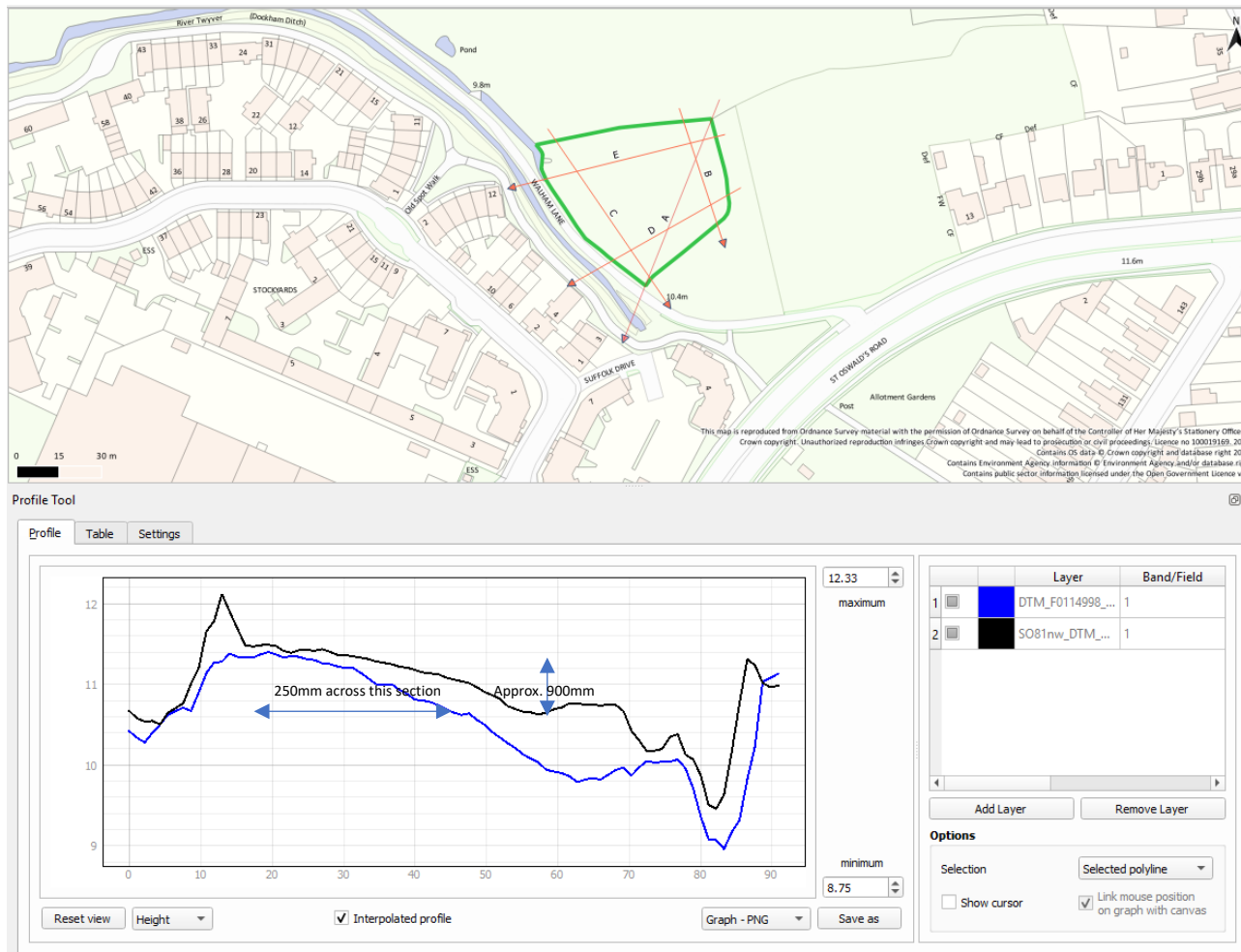
3.0 Conclusion

- 3.0.1 Flood mapping indicates that the majority of the site is in flood zone 3
- 3.0.2 'Highly vulnerable development such as this is not permitted in flood zone 3 (neither in 3a nor 3b).
- 3.0.3 As well as the ground raising that the appellant admits to having carried out, LIDAR ground level data indicates that there have been other ground level raising at the site in recent years.
- 3.0.4 No ground level raising at the site benefits from planning consent
- 3.0.5 The appellant has not provided an FRA and therefore has not addressed the Sequential Test or Exception Test. The Council cannot be satisfied that the development will be safe of its users over the lifetime of the development. Neither can we be satisfied that it does not increase flood risk elsewhere.

Appendix A – LIDAR Data

Using LIDAR data available from the Government's DEFRA Survey Data Download site two datasets were obtained to allow basic analysis of ground level changes at the site over a period of time. Both 2009 and 2019 datasets were used to produce the cross sections showing relative levels across the site presented below. The blue line indicates the ground levels from the 2009 dataset and likewise the black line refers to ground levels from the 2019 dataset. It should be noted that The LIDAR data is indicative only.

Section Line 'A'

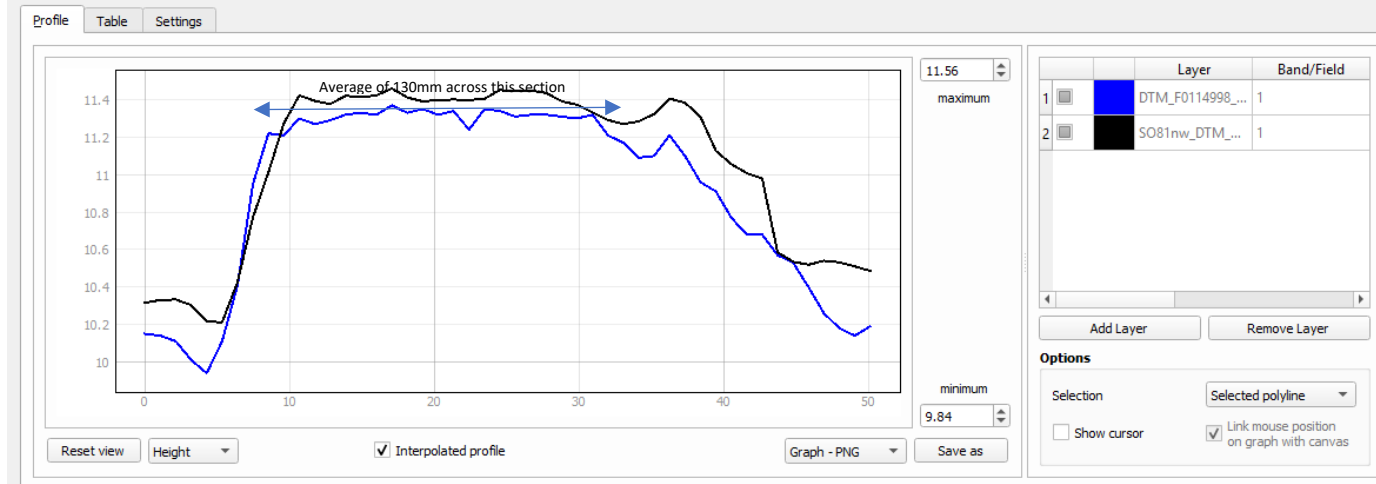


This section line 'A' indicates some 800 – 900mm increase at the southwest corner of the development. A general raising of approximately 250mm across the site from chainage 20 – 50m.

Section Line 'B'

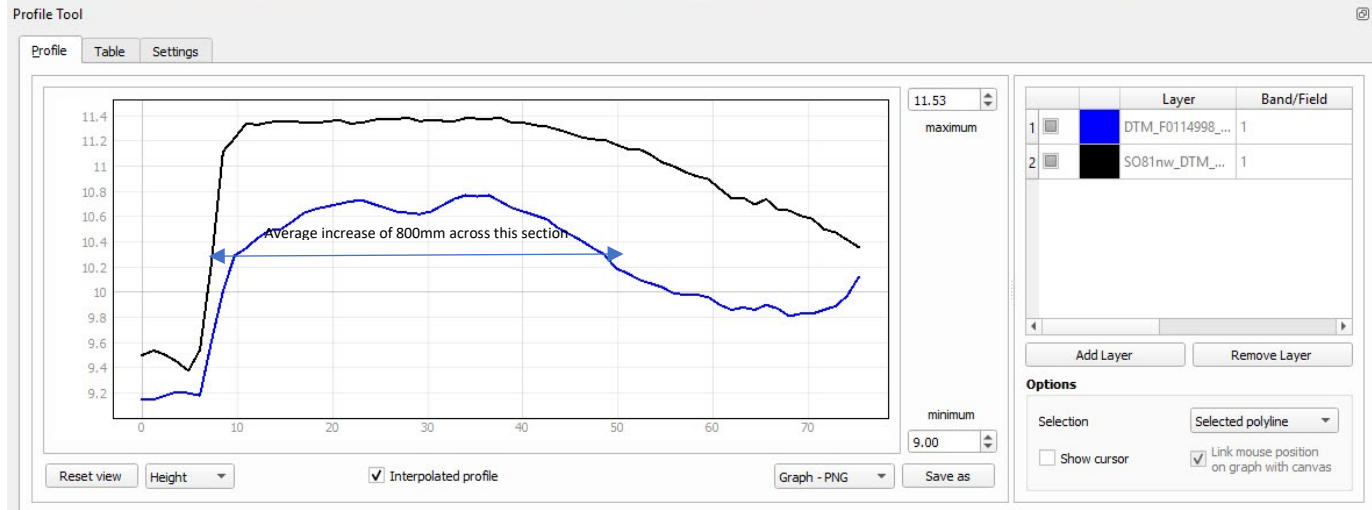


Profile Tool



Section line 'B' indicates an average increase of approximately 130mm across the chainage 10 – 40m

Section Line 'C'

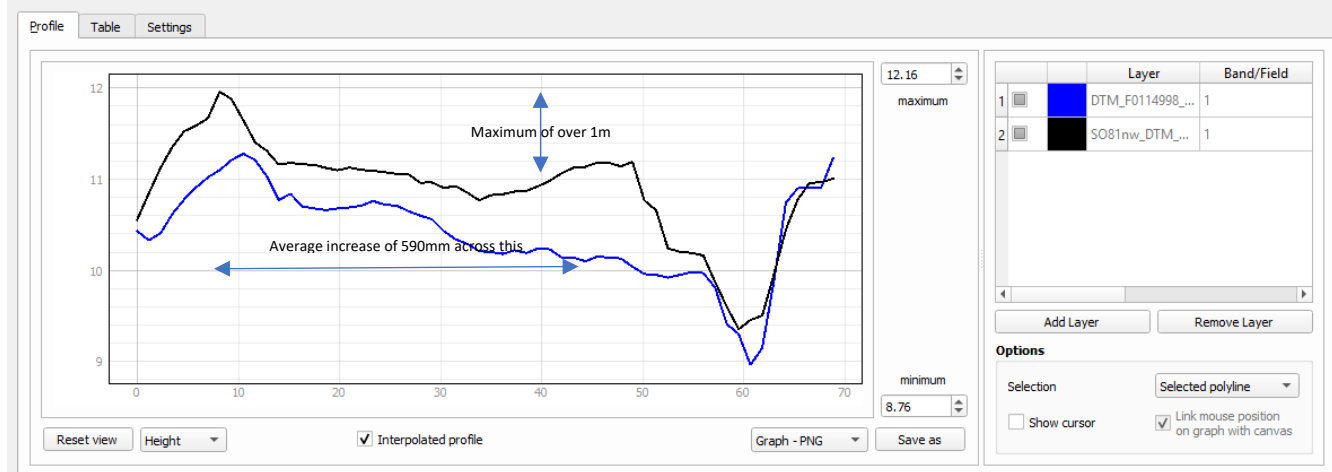


Section line 'C' indicates some 800mm average increase between chainage 10 – 60m with increases of over 1m at around the 50m chainage.

Section Line 'D'



Profile Tool

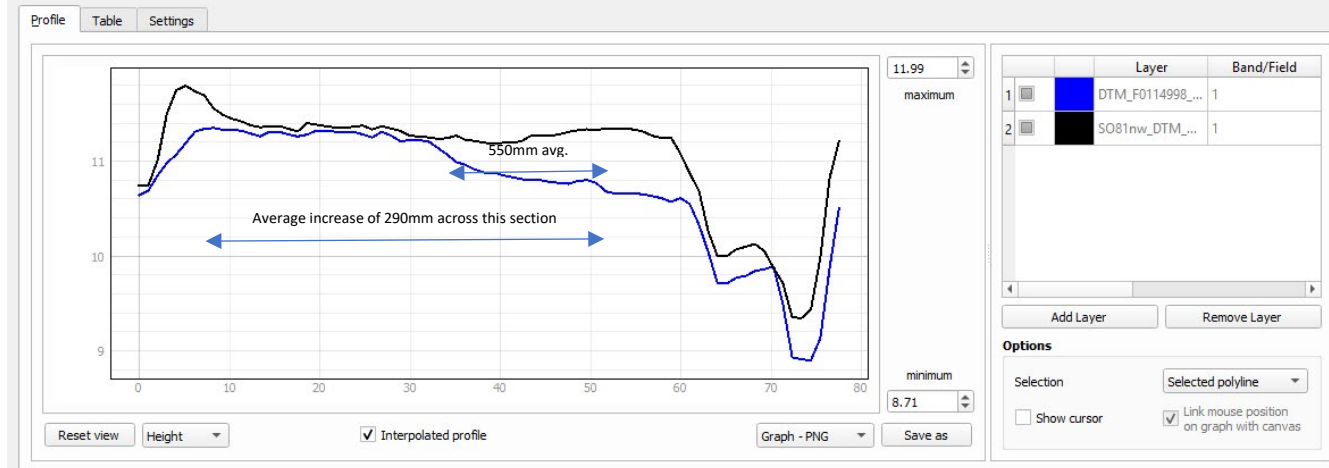


The average increase across section line 'D' between chainage 10 – 50m is 590mm with a large increase between 40 – 50m chainage of 970mm.

Section Line 'E'



Profile Tool



The average increase across this section line 'E' between chainage 10 – 60m is 290mm with larger average increases indicated of 550mm between chainage 40 – 60m.



Appeal Decisions

Site visit made on 25 June 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2021

Appeal A: APP/U1620/C/20/3255865

Land on the north east side of Walham Lane, Gloucester,

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Raymond Nelmes against an enforcement notice issued by Gloucester City Council.
- The enforcement notice was issued on 17 June 2020.
- The breach of planning control as alleged in the notice is Without the benefit of planning permission, the unauthorised change of use of the land from agricultural land to residential pitches, sheds and associated residential paraphernalia for the Gypsy/Traveller community.
- The requirements of the notice are Remove any static caravans and associated residential paraphernalia from the site; Remove all touring caravans and associated residential paraphernalia from the site; Remove all sheds from the site; Remove all the fencing that has been erected from around the site and remove from the site; Remove the septic tank, pipelines and all other utility connections that have been installed to facilitate the use from the site; Make good the land after the removal of all caravans and materials.
- The period for compliance with the requirements is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and a temporary personal planning permission is granted in the terms set out below in the Formal Decision.

Appeal B: APP/U1620/C/20/3255867

Land on the north east side of Walham Lane, Gloucester,

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Raymond Nelmes against an enforcement notice issued by Gloucester City Council.
 - The enforcement notice was issued on 17 June 2020.
 - The breach of planning control as alleged in the notice is Without the benefit of planning permission, the unauthorised importation of material to increase the levels across the site amount to an engineering operation requiring planning permission.
 - The requirements of the notice are Remove all the material that was deposited on the site to raise and level the site, which is suggested to be between 80-100 tonnes of material and restore the site back to its condition prior to work commencing.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - **Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.**
-

Preliminary Matters

1. It was agreed at the Hearing that the enforcement notice 'attacking' the use of the appeal site, which is the subject of Appeal A, should be corrected so that the requirements specifically include reference to ceasing the residential use of the land. I am satisfied that this correction can be made without resulting in injustice to the parties.
2. With regard to Appeal A, the appeal is lodged on grounds which include (a), that planning permission should be granted. Section 173(3) of the Act says an enforcement notice shall specify steps in order to achieve wholly or partly, any of the purposes set out in Section 173(4). These include, remedying the breach by making any development comply with the terms, including conditions, of any planning permission that has been granted in respect of the land.
3. In the event that I decide that planning permission ought not to be granted for the development, the appellant has suggested as an alternative that the caravans could be raised on blocks to ensure that they are free from flood risk.
4. This proposal does not benefit from planning permission. Accordingly, in the event that I find the development as alleged to be unsatisfactory, in order to give proper consideration to this alternative I need to deal with it under ground (a) and amongst other things consider whether this outcome could be achieved by granting planning permission "in relation to the whole or any part" of the matters alleged in the notice, either with or without conditions.

The appeals on ground (a)

Main Issues

5. The main issues are i) the effect of the developments on flood risk to the site and elsewhere; ii) the effect of the use of the land on highway and pedestrian safety; iii) the significance of the need for gypsy / traveller sites and iv) the personal circumstances of the site occupiers.

Reasons

Flood Risk

6. I have had regard to the flood risk policies as set out in the National Planning Policy Framework (the Framework) and the Government's Planning Practice Guidance in relation to flood risk and coastal change (PPG). The Framework is clear that caravans and mobile homes intended for residential use are to be regarded as 'highly vulnerable' to flood risk¹.
7. In terms of that risk, land is classified into flood zones 1, 2 or 3 which relates to the probability of flooding. Flood zone (FZ) 2 is defined as having between a 1 in 100 & 1 in 1000 annual probability of river flooding or between a 1 in 200 & 1 in 1000 annual probability of sea flooding; FZ 3a as having a 1 in 100 or greater annual probability of river flooding or a 1 in 200 or greater annual probability of sea flooding; FZ 3b is the area where water is stored or flows in times of flood.

¹ See Annex 3

8. The site is in close proximity to the River Twyver, which runs parallel to the western side of Walham Lane, from where access to the site is taken. Four pitches are proposed on the site. There is no dispute between the parties that the appeal site is shown on Environment Agency mapping as falling within FZs 2 and 3. However the appellant's flood risk assessment (FRA) challenges this classification in respect of the appeal site, their consultant maintaining at the Hearing that, in reality, the appeal site lies within FZ 1. I shall refer to this dispute in more detail later, however I need to begin with the assumption that FZs 2 and 3 are applicable, based on official flood mapping.
9. Where development is proposed in FZs 2 or 3 it is necessary to apply a so-called 'Sequential test' (ST). As set out in the Framework the aim of the ST is to steer new development to areas with the lowest risk of flooding. Under the ST development should not be permitted in areas known to be at risk now or in the future from any form of flooding, if appropriate sites are reasonably available in areas with a lower risk of flooding.
10. Neither of the parties were able to identify the availability of a potential alternative site anywhere within the City Council area, let alone in an area at lower risk of flooding. Whilst the Council suggested that it may be possible to identify a suitable alternative site within an adjoining Council area it could not be certain about this. I can only conclude from the information available that the ST would be passed.
11. Where a site falls within FZ 3a or 3b, the PPG advises that 'highly vulnerable development' should not be permitted even if the ST is passed, although paragraph 159 of the Framework states that where development is necessary in areas at the highest risk of flooding, it should be made safe for its lifetime without increasing flood risk elsewhere.
12. For land in FZ 2, and following the application of the ST, highly vulnerable development is required to meet an Exception Test. For the Exception Test to be passed it needs to be demonstrated firstly that the development would provide wider sustainability benefits to the community that outweigh the flood risk and secondly that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
13. The appellant's FRA sets out a table of estimated flood depths at the site. A design flood level of some 10.74mAOD is relied on which is based on a 200 year tidal event, whilst allowing for climate change, in combination with a 5 year fluvial event.
14. However, having regard to the same table, it seems to me that to be in accordance with the PPG, the higher 100-year fluvial level (including allowance for climate change) of 11.09mAOD should be considered as forming the boundary between FZs 2 and 3 and the 1000 year fluvial level of 11.41mAOD taken as forming the boundary between FZs 1 and 2. Put another way, ground levels below 11.09mAOD would fall within FZ 3, with levels between 11.09 and 11.41mAOD falling within FZ 2.
15. I acknowledge that the Council consider the appropriate 100-year fluvial level to be higher than that identified in the FRA, having regard to local knowledge and its experience of previous assessments. However, even if the appellant's data is accepted as robust and having regard to the topographical information

- submitted, and undisputed by the Council, the site levels are shown in several locations in the southern portion of the site to be within FZ 3, with a substantial part of the remaining area falling within FZ 2. It therefore seems to me, on this basis, that there would be a 1 in 100 or greater annual probability of a flood event effecting limited parts of the site to a depth of up to around 0.5 metres.
16. From the information provided, whilst there would be less likelihood of a substantial part of the site experiencing a flood event, this substantial part still falls within FZ 2, by reference to the appellant's own data, and as such, and notwithstanding anecdotal evidence from local residents, the risk cannot be discounted.
 17. Furthermore, substantial parts of Walham Lane itself, which facilitates access to the site are shown to be situated in FZ 3, and would therefore be at greater risk of flooding. Indeed the vulnerability of Walham Lane to flooding was accepted by the appellant at the Hearing. I have also had regard to the aerial photograph of the site provided by the Council, which shows the site and its surroundings during the 2007 flood event. This appears to show flood water covering Walham Lane itself and potentially also encroaching within the site.
 18. It is not sufficient to simply consider concentrating development in less vulnerable parts of the site, because, in keeping with the PPG, access and egress arrangements are a key consideration during a flood event. Having regard to undisputed data presented in the Council's flood risk statement², I consider that flooding on Walham Lane could pose a danger for at least some people, even if a more flexible approach is taken such that the velocity of flood water is assumed to be low.
 19. The appellant proposes that in a flood scenario, an emergency plan would be implemented to ensure early evacuation of the site. However I am mindful that site occupiers may be disinclined to leave the site on a precautionary basis if a suitable temporary alternative site was not perceived to be available. On this basis, even if the appeal site could be regarded as providing wider sustainability benefits to the community, I am not persuaded that it can be regarded as safe for its lifetime.
 20. The suggestion of physically raising the caravans in order to overcome the risk of being flooded would not overcome the aforementioned issue regarding the need for satisfactory access and egress arrangements.
 21. Turning to the matter of flood risk elsewhere, the appellant confirms that ground levels have been raised, since the site was occupied, estimated to be on average in the order of some 45mm. He also previously indicated, within a Planning Contravention Notice (PCN), that ground levels were raised in 2017, although was unsure by how much at that time. The latest changes were therefore adding to an original phase of ground level works.
 22. Whilst the appellant has since sought to retract the PCN admission, comparative data provided by the Council from 2009 and 2019 shows ground levels on the site to have increased between these times³ (the Council says on average between 130mm and 800mm). Although the Council concede that the

² DEFRA / Environment Agency Flood Risk Assessment Guidance for New Developments – Danger to people for different combinations of depth and velocity

³ LIDAR ground level data

data provided may not be entirely accurate, I noted during my visit that the appeal site levels were noticeably higher than Walham Lane and also when compared to the land levels immediately to the north and south of the site. In the absence of evidence to the contrary, I consider, on the balance of probability, that the phases of ground level raising are likely to have removed flood storage capacity from parts of the site.

23. Though I acknowledge that there is no information before me to indicate that the appellant was responsible for the original phase of ground level changes, the fact remains that the FRA does not consider the effect of level changes on the surrounding area. Even when setting aside the original ground works, I am unable to conclude that the risk to flooding elsewhere will not have been increased when simply considering the importation of material to bring about the latest phase of changes. The appellant regards the recent increase in the level of the site as trivial. Whilst the level change may seem to be relatively small, its effect is not necessarily insignificant when applied across the site as a whole.
24. Therefore, even if it could be accepted, as suggested by the appellant, that a satisfactory evacuation plan could be devised to cope with an emergency situation, I am unable to conclude that the development will not have resulted in increased flood risk elsewhere. Accordingly, the development would not be able to satisfy the Exception Test in its entirety.
25. I conclude that the developments mean that site residents would be at risk from flooding and that a material impact on flooding elsewhere cannot be ruled out. The same conclusion applies regardless of whether or not the caravans are raised. The developments would therefore be in conflict with Policies SD13 and INF2 of the Gloucester, Cheltenham and Tewksbury Joint Core Strategy 2017 (JCS) and with Policy E6 of the emerging Gloucester City Plan (GCP), which amongst other things require development to avoid areas at risk of flooding and not to cause flooding elsewhere. They would also be at odds with guidance in the Planning Policy for Traveller Sites 2015 (PPTS) which states that sites should not be located in areas at high risk of flooding, given the particular vulnerability of caravans.

Highway and Pedestrian Safety

26. The appeal site is served by Walham Lane, a relatively informal track and cul de sac, which apart from the four pitches on the appeal site, also serves an established gypsy site further to the north west, in relation to which it was confirmed by the appellant that there are eight pitches present. Walham Lane joins the dual carriageway, known as St. Oswalds Road, a little way to the south east of the appeal site, with the roads being aligned at an oblique angle to one another. Traffic flows into and out of Walham Lane are restricted to left turning manoeuvres only.
27. The Council is concerned that the development, when considering the width and alignment of Walham Lane, will result in vehicles unable to pass one another and therefore forced to carry out unsafe reversing manoeuvres to the detriment of driver and pedestrian safety. The entrance to Walham Lane is itself relatively wide but thereafter the lane narrows to a width of around 5 metres towards the appeal site. It was agreed by the parties at the site visit that an area of grass verge had recently been removed and resurfaced with

- road planings, with the apparent intention of increasing the width of the lane. Nearer to the site entrance the lane appears to widen considerably.
28. In terms of vehicle conflict, I consider that with the present condition of the access road, non-commercial vehicles would be unlikely to have difficulty passing one another between the site and the junction with St Oswalds Road. Whilst conflict would be more likely if the grass verge remained in place, when taking into account the limited use of Walham Lane by pedestrians and other vehicle users, I consider reversing a vehicle towards the site to allow for passing would be unlikely to result in a complicated or unsafe manoeuvre. It seems to me that this would be a more logical action as it would eliminate the need and desirability for a driver to reverse in the opposite direction, onto the dual carriageway, which I agree would potentially amount to a dangerous manoeuvre. Given the short distance to the site along Walham Lane and the alignment of that road it is likely that vehicles would be travelling relatively slowly, also that the ability to see any approaching pedestrians or cyclists would not be unduly restricted, such that they would be able to pass one another safely. I do not therefore consider that the development would serve to deter the use of Walham Lane by pedestrians.
29. I agree that the alignment of the roads would make access to Walham Lane a less than straight forward manoeuvre. However there is nothing to persuade me that this would be dangerous if taken slowly.
30. I consider the chances of a meeting at the junction involving a larger commercial / refuse vehicle or a vehicle(s) pulling a caravan, which might present a more difficult manoeuvring challenge, to be relatively low, even when considering the vehicular use of Walham Lane could be around 50 percent busier as a result of the development. However were this to happen, as set out above I consider that reversing a vehicle towards the site to allow for passing would be unlikely to be unduly complicated or unsafe and would remain a possibility. Whilst access to the site for emergency service vehicles may not be easy, should attendance ever be required, I have not been provided with evidence to persuade me that such a manoeuvre would not be possible.
31. I accept it is possible that in a worst-case scenario vehicles may be forced to wait on the dual carriageway before being able to enter Walham Lane. However in my judgement such occurrences are likely to be rare given the amount of development in question. Furthermore the speed of traffic on St. Oswalds Road is restricted to 40mph and I am not persuaded that in such circumstances there would be any significant disruption to the safety or free flow of traffic. In addition I give weight to the consideration that an absence of any serious traffic accidents associated with the use of the junction, including during the time that the appeal site has been operational, is undisputed by the parties.
32. It was apparent from my visit that despite the presence of a large tree situated near to the junction, the visibility of on-coming traffic for drivers joining St Oswalds Road from Walham Lane was of a high standard and would not be a cause for concern.
33. Drawing the above considerations together, I conclude that the use of the site does not result in harm to highway and pedestrian safety. It therefore accords with Policies INF1 and SD13 of the JCS and Policy G1 of the GCP insofar as

they seek to achieve safe and accessible connections to the transport network for vehicles and pedestrians.

Need for Gypsy and Traveller sites

34. Paragraph 7(b) of the PPTS states that local planning authorities should prepare and maintain an up-to-date understanding of the likely accommodation needs of their areas over the lifespan of the development plan. The PPTS also states that local planning authorities should identify a 5-year supply of specific deliverable sites.
35. Based on the Gypsy and Traveller Accommodation Assessment 2017 (GTAA), the Council's JCS sets out the requirement for traveller pitches in the Boroughs of Gloucester, Cheltenham and Tewksbury until the plan end date in 2031. With regard to Gloucester City, a need for two pitches for non-travelling households was identified. However, no additional need for travelling households was identified over this period, that is to say those who would meet the definition of gypsies and travellers as set out in the PPTS.
36. It is undisputed that the appellant and the site occupiers are travellers. The Council said at the Hearing that it regards the four pitches that are the subject of this appeal as evidence of demand for, rather than need for, additional sites. Whilst each of the pitches appear to be occupied by members of the same extended family, related to the appellant, I have no reason to doubt, based on information provided at the Hearing, that each of the pitches accommodates a distinct household which would translate as need for a site.
37. When also considering that the baseline data upon which the GTAA is based is now several years old, I consider that the circumstances of the travellers in this case are indicative of unmet need for sites. The Council is unable to identify an alternative site which might be utilised instead. Whilst I acknowledge the Council's representations regarding constraints on land availability in the Borough, because of factors such as flood risk, it confirmed that the duty to cooperate exercise with other Council's in this regard has not to date yielded any possible alternative sites within neighbouring authorities. I am not persuaded that neighbouring authorities can be relied on to satisfy the need for sites.
38. Had a more recent GTAA exercise been conducted by the Council I cannot rule out that this would have identified the need for the four pitches that are the subject of this deemed application, and that as such the need for traveller pitches would no longer continue to be regarded as zero. This therefore leads me to conclude that the Council's GTAA is out of date and that the Council is unable to demonstrate a 5-year supply of deliverable sites. Together with unmet need these factors attract significant weight in support of the development in the overall planning balance.

Personal Circumstances

39. Article 8 of the Human Rights Act 1998 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. Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the

protection of the environment and upholding planning policies. 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.

40. 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.
41. It is undisputed by the Council that one of the households present on the site includes three young children aged five years, three years and one year respectively. Reference was made at the Hearing to the children being walked to the local primary and nursery school at Kingsholm, which is a relatively short distance from the site.
42. There can be no doubt that if the appeal was unsuccessful it would take away a settled base for that household, who may potentially need to resort to living on the roadside and face disruption to the children's educational provision as a result. I am mindful that it may be difficult to enrol children in school and /or maintain the children's attendance if they have no fixed address. I consider that because there would be a clear benefit to the children of remaining on site, as part of a settled base, that this should attract significant weight in the planning balance.
43. It is also undisputed that the children's mother is a main carer for her brother who suffers from mental health issues. The brother lives a short distance from the site. It is necessary for daily visits to be made in order for essential medication to be administered and also for medical related visits to be organised.
44. It would appear that in relation to a second household on the site, the occupier is visited on a weekly basis by his teenage children. It seems to me that a settled base at which to visit their father would be beneficial to their social development. The failure of the appeal could mean that it would be more difficult to meet up in future.
45. Drawing the above considerations together I attach significant weight to personal circumstances in this case.

Other Matters

46. There have been a number of further representations received from third parties. Some residents have raised the concern that they are disturbed by the noise of a power generator operating on the site. This impact has been acknowledged by the appellant who confirms the intention to connect to mains electricity. I am satisfied that in the event of a successful appeal a condition could be imposed to secure adequate noise attenuation measures in the interests of protecting living conditions.
47. The site is substantially set back from the main road and also benefits from a significant degree of screening, due to perimeter fencing and the presence of mature trees. The development does not therefore result in visual harm.

48. There is no evidence to persuade me that waste cannot be managed or that wildlife would be harmed.
49. With regard to concerns raised about the impact of the development on property value and the availability of house insurance, it is not the purpose of the planning system to protect the private interests of individual parties, and as such this consideration would not attract weight in the planning balance.

Planning Balance

50. The site is at risk from flooding and of causing flooding elsewhere. For the above reasons I give very significant weight to this consideration, as a reason to resist the development.
51. The development would cause no unacceptable harm to highway and pedestrian safety. This 'absence of harm' does not, however, weigh in favour of the appeal.
52. I am not persuaded, on the evidence before me, that the requirement to remove the deposited material would make the site more unsightly or any future use there less viable.
53. However, there are considerations which support the appeal. I attach significant weight to the need for and under-supply of traveller sites in the Borough, including the lack of any available, suitable alternative site. I also attach significant weight to personal circumstances.
54. However for the reasons given, having regard to the PPTS and even when considering the best interests of the children, I find that these considerations do not outweigh the harm identified. The grant of a permanent planning permission would not therefore be appropriate.
55. I also need to consider, by way of alternatives, the possibility of temporary or personal planning permissions instead. In principle I consider that a temporary permission (personal to the occupiers) would serve to reduce the severity of harm identified because the risk of flood related issues would be significantly reduced. It would also allow for an increased possibility of alternative suitable sites becoming available within the Borough or neighbouring Boroughs and would result in reduced impact in terms of personal circumstances. On this basis I consider that a personal planning permission, limited to a temporary two-year period would be appropriate. For the avoidance of doubt I would have arrived at the same conclusion even if I had found there to be an up to date 5-year supply of deliverable sites, because of the present situation regarding immediate unmet need.
56. By contrast a temporary planning permission, that was not personal to the occupiers would not be appropriate, as the grant of temporary permission can only be justified by the additional weight of the personal circumstances attributable to some of the households on the site, when also considering the benefits of the four households living in an extended family group for mutual care and support.

Conditions

57. I have considered the suggested conditions contained in the Statement of Common Ground as discussed with the parties at the Hearing. Conditions

confirming that planning permission is granted for a temporary period of two years only; that occupation is restricted to site occupiers and resident dependants and requiring remediation of the site following the expiry of the temporary permission or prior cessation of use, are necessary in the interests of environmental protection and mitigating flood risk. I have excepted the removal of perimeter fencing and gates from this condition, as I consider this measure to be unnecessary in order to restore the site to an acceptable level.

58. Conditions limiting the number of pitches and caravans stationed and commercial vehicles parked and preventing commercial activity on the site are all required in the interests of helping to safeguard the character and appearance of the area and the living conditions of residents.
59. Conditions confirming the loss of the permission unless details are submitted for approval (including a timetable for implementation) concerning foul and surface water drainage, external lighting, the internal site layout, noise attenuation measures and flood evacuation arrangements and withdrawing permitted development rights for future means of enclosure are required in order to ensure the site is serviced with adequate infrastructure and to help safeguard the character and appearance of the area and the living conditions of residents.

Conclusion

Appeal A

60. For the reasons given above I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the development as described in the notice, subject to conditions.
61. The appeals on grounds (f) and (g) do not therefore fall to be considered.

Appeal B

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

Appeal B on ground (f)

63. The appeal is that the steps required to comply with the requirements of the notice exceed what is necessary to remedy the breach of planning control. The notice requires the removal of material deposited on the site which has resulted in the level of the site being raised. I have already concluded as part of the ground (a) appeal that the material in question cannot be ruled out as contributing to increased flood risk elsewhere.
64. Given that the purpose of the notice is to remedy the breach of planning control, this can only be achieved by the removal of the deposited material. To require that does not, therefore, exceed what is necessary and the appeal on this ground must fail.

Appeal B on ground (g)

65. The appeal on ground (g) is that the time given to comply with the requirements is too short and that more time should be allowed to remove the

deposited material. I have set out above that in relation to the use of land I intend to grant temporary planning permission for a two-year period. Logically the removal of the deposited material would follow the use ceasing and the site being vacated.

66. The appellant accepted at the Hearing that once the use of the site had ceased, a three to four-month period for the material to be removed would be acceptable. On this basis I propose to vary the notice accordingly. The ground (g) appeal succeeds to this extent.

Formal Decisions

Appeal A

67. It is directed that the enforcement notice be corrected by inserting the wording "Cease the residential use of the land" as the first bullet point in paragraph 5.
68. Subject to this correction the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the unauthorised change of use of the land from agricultural land to residential pitches, sheds and associated residential paraphernalia for the Gypsy/Traveller community at Land on the north east side of Walham Lane, Gloucester as shown on the plan attached to the notice and subject to the conditions in the schedule below.

Appeal B

69. It is directed that the enforcement notice be varied by the deletion of the words "12 months" in paragraph 6 and the substitution of the words "28 months" instead.
70. Subject to this variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The use hereby permitted shall be carried on only by the following: Pitch 1: Raymond Nelmes; Pitch 2: Wayne Nelmes; Pitch 3: Billy Dean Nelmes; Pitch 4: John Nelmes and their resident dependants, and shall be for a limited period being the period of two years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 2) When the premises cease to be occupied by those named in condition 1 above, or at the end of two years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought onto, or erected on the land, or works undertaken to it in connection with the use (with the exception of perimeter fencing and gates),

shall be removed and the land restored to its condition before the development took place.

- 3) There shall be no more than four pitches on the site. Each pitch shall comprise no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, stationed on the site at any time (of which no more than one shall be a static caravan).
- 4) No more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the respective caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight.
- 5) No commercial activities shall take place on the land, including the storage of materials.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within **28 days** of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within **three months** of the date of this decision a scheme for the means of foul and surface water drainage of the site; proposed and existing lighting on the boundary of and within the site; the internal layout of the site including the siting of caravans, individual pitches to be identified by numbers 1 to 4, hardstanding, parking and amenity areas; noise attenuation measures; a flood warning and evacuation plan (hereafter referred to as the 'site development scheme') shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation;
 - ii) If within **nine months** of the date of this decision the local planning authority refuse to approve the site development scheme or fail to give a decision within the prescribed period, a valid appeal shall have been made to the Secretary of State;
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State;
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable and shall thereafter be retained for the lifetime of the development.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected within the site, with the exception of the fencing and gates already erected around the perimeter of the site and any boundary treatment approved under condition 6 above.

END OF SCHEDULE OF CONDITIONS

