



## Appeal Decision

Hearing held on 5 June 2025

Site visit made on 5 June 2025

by **H Nicholls MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 June 2025

### Appeal Ref: APP/L3245/W/24/3355842

### Heartlands Farm, Northwood, Ellesmere, Shropshire SY12 0NQ

- 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 Ms Kathleen Roberts against the decision of Shropshire Council.
- The application Ref is 24/01005/FUL.
- The development proposed is change of use of land to a mixed use for the keeping of horses (existing) and use as a residential caravan site for an extended Gypsy family, with a total of 4 No. caravans, including the laying of hardstanding and erection of 4 No. amenity buildings.

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The description of the development refers to the use of the land for residential purposes for the siting of up to 4 caravans. It was clarified at the hearing that there would be four pitches, each of which would accommodate only one caravan. As such, I am content that the description of development adequately reflects the nature of the proposal.
3. The ownership status of the site and relevant certificate of notice were updated prior to the hearing and thus, no prejudice has occurred to any interested party.
4. A unilateral undertaking was received on the 12 June 2025 in connection with recreational mitigation payments towards the Colemere Heritage Site as part of the Midlands Meres and Mosses Ramsar Site. I return to this further below.

### Main Issues

5. The main issues in this appeal are:
  - a) whether the proposal would be at risk from flooding and whether it would be served by an adequate means of non-mains foul water drainage;
  - b) the need and supply considerations relating to Traveller pitches; and
  - c) the accommodation needs and other personal circumstances of the proposed occupiers.

### Reasons

#### *Flood Risk*

6. The appeal site is a broadly rectangular area of around 0.4 hectares with an access lane that connects to an unclassified rural road known as Brookmill Lane.

The site is generally enclosed by post and rail fencing and is surrounded by additional grazing land with nearby blocks of stables and a horse exercise ménage. A stream runs in a north/ south direction around 75 metres from the edge of the appeal site and a further drainage channel runs to the north of the site. In a wider context, the site lies in close proximity to a cluster of dwellings, known locally as the area of Brookmill, and is around 1.5 km from the closest village of Penley. The town of Ellesmere is some 6 km to the south-west.

7. The proposal would involve the change of use of land to a mixed use to allow the continued keeping of horses but also the permanent residential occupation of the site by four members of an extended family within their own pitches. One large and three smaller amenity buildings would be provided alongside the pitches. The existing point of vehicular access would be utilised.
8. In terms of flood risk, the site falls partially within Flood Zones 1, 2 and 3. Due to the site's proximity and relationship to the watercourse, the area to the east and south-east largely falls within the lower risk Flood Zone 1. Though most of the area containing caravans and amenity buildings would fall within Flood Zone 1, the only access route to and from the site is affected by Flood Zones 2 and 3.
9. Policy CS18 of the Shropshire Adopted Core Strategy 2011 (CS) deals with flood risks and sustainable drainage. The Policy requires that planning proposals should be in accordance with the tests contained in 'PPS25' and have regard to the *Strategic Flood Risk Assessments* (SFRAs) for Shropshire. PPS25 is the now superseded Planning Policy Strategy 25: Flood Risk, though the tests it contained are now set out within the National Planning Policy Framework (the Framework) in any event. Policy MD2 of the *Site Allocations and Management of Development Plan* (adopted 2015) (SAMDev) also requires developments to integrate sustainable drainage systems as an integral part of good design so as to minimise the risk of flooding.
10. The Framework requires that a sequential risk-based approach should be applied to individual applications in areas known to be at risk now or in future from any form of flooding, the aim of which is to steer new development to areas with the lowest risk of flooding from any source. It goes on to state that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding and that the relevant SFRA will provide the basis for applying this test.
11. Paragraphs 175 of the Framework indicate that the sequential test should be applied except in situations where a site-specific flood risk assessment (FRA) demonstrates that no built development within the site boundary, including access or escape routes would be located on an area that would be at risk of flooding from any source, now and in the future, having regard to potential changes in flood risk. The exceptions to the requirement for the sequential test approach are set out in paragraph 176 and footnote 62; the effect of which indicate that the use of land for the siting of residential caravans is a situation where the sequential test approach shall be applied.
12. If in the event it can be satisfactorily concluded that it is not possible for development to be located in areas with a lower risk of flooding using the sequential test approach, the Framework indicates that the exception test may

need to be applied. To pass the exception test, both of the following should be satisfied:

*“a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and*

*b) 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 nature of the proposal and the extent to which the site is within the higher risk flood zones necessitates the application of the sequential test. No evidence of testing has been submitted with the appeal proposal though the site-specific FRA<sup>1</sup> sets out that the sequential test is considered to be passed with the exception test no longer applicable. The conclusion in respect of the sequential test appears to have been reached on the basis that the caravans and buildings would be sited within Flood Zone 1. This is an incorrect assumption given the Framework’s clarification that the sequential approach should be applied where accesses and escape routes are within higher risk Flood Zones. The suggestion that the exceptions test is not applicable is not clarified further.
14. The submitted Statement of Common Ground (SoCG) sets out the parties’ agreement that the ‘built development’ would be located within Flood Zone 1 and outside of Flood Zones 2 and 3 with caravans and buildings at a floor level of at least 47.610m above datum (AOD). The SoCG does not explicitly note the Council’s agreement that the sequential test has been passed, but the reason for refusal focusses specifically on the lack of evidence to indicate that future occupants would be able to safely access and egress from the site during a peak flood event or that the proposed foul water drainage system would operate correctly during the same. There is no evidence of a systematic consideration of any sequentially preferential sites having been discounted and the appellant’s position at the hearing, clarified verbally, was that there are no allocated Gypsy and Traveller sites, no suitable alternative sites identified by the Council and thus, absent of any permissions for vacant sites, no suitable, sequentially preferable sites were considered reasonably available.
15. Even if I were to agree with the main parties and find that the site was the only one available for the development proposed, I do not agree that the exceptions test is no longer applicable. With regard to the sustainability benefits required under part a) of the exceptions test, the matters of need and the balance of benefits are assessed below. Part b) of the exception test is of particular relevance in this case and requires the development to be safe for its lifetime taking account of the vulnerability of its users and at least without increasing flood risk elsewhere.
16. The FRA states that because the finished floor level heights of the caravans would be above the 1 in 100 year plus climate change flood level, that safe refuge will be provided and no internal flooding would be anticipated. It also says that flood depths would be between 300mm and 600mm. However, there is limited evidence to clarify how the future occupants would be safe for the lifetime of the development on the basis of the regularity and predicted durations of flood events, the velocity and related depths of flood water and any other risks that would occur in trying to access or leave the site. How long occupants would need to postpone

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<sup>1</sup> SNR ENG Ltd, May 2024

everyday activities, such as attending school, shopping or attending a place of work, to take refuge from such flood events is not clear. Nor is it clear to what level of risk the emergency services would be exposed in the event of a flood where the need to access the site were unavoidable.

17. It was suggested that a flood evacuation plan could form a requirement of a condition, particularly in the absence of a local flood warning system being in place. However, given the limited information on which to assume the personal safety of future occupiers during any flood event, such a condition could not make the development acceptable in planning terms. It is necessary to understand the possibility of evacuation and the way in which such could be assured to be reasonably safe before the detail of such a plan is left to the requirement of a planning condition.
18. The other suggestion was to secure a means of foul water drainage by way of a planning condition. This was because the submitted Drainage Strategy for a below-ground package treatment plant had not been proven capable of operating continually through a flood event in the event of submergence or becoming backfilled with flood water. The certainty of a continual power supply also appeared to be a matter of unspecified certainty. This is an aspect that could form the requirement of a pre-commencement planning condition as such a solution could be designed to take proper account of the various constraints.
19. However, even if it were possible to secure aspects in relation to foul drainage by way of condition, the submitted information does not provide me with the necessary confidence that the proposal would be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, reducing flood risk overall. This would not be adequately addressed by means of a pre-commencement condition as there is no certainty that the proposal would be safe for its future occupiers. The exception test has not been passed in this regard.
20. Planning policy for traveller sites (2024) (PPTS) states in paragraph 13 g) that local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally and that policies do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans. This part of the PPTS relates to plan making rather than decision-making. However, if I apply this paragraph to the proposal, it would not meet it as it has not been demonstrated that the proposal, taken as a whole, would not be at high risk from flooding.
21. Whilst reference has been made to a previous temporary permission for the use of land for residential occupation, that use of land has since ceased and the flood risk constraints of the site and policy context have materially changed since then. As such, I attribute this aspect limited weight. The documents submitted at the hearing<sup>2</sup> which suggest that the site is at a low risk of flooding from surface water and ground water sources do not alter my findings above. Similarly, the examples of appeal decisions submitted by the appellant that cover this particular aspect are also of some age and do not direct me to a different conclusion.
22. In conclusion, it has not been demonstrated that the proposal would not be at risk from flooding and that the future occupiers of the site would be safe in the event

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<sup>2</sup> Hearing documents 1 and 2

that flooding occurred. The proposal is therefore contrary to CS Policy CS18, Policy MD2 of the SAMDev. For similar reasons, the proposal does not accord with the flood risk expectations of the Framework.

### *Need and supply*

23. Under the PPTS, Local Planning Authorities, in the production of its local plan, should identify and update annually, a supply of specific deliverable Traveller sites sufficient to provide 5 years' worth against their locally set target. When considering planning applications, where a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable Traveller sites, the provisions in Framework paragraph 11(d) apply.
24. The SoCG details that the most recently published consideration of need is the *Gypsy and Traveller Accommodation Assessment (GTAA) Update*, published in 2019, though the Council is in the process of preparing another GTAA to update this again. The 2019 GTAA Update indicated that there would be a cultural need for 113 pitches between 2016/2017 and 2037/2038.
25. The Council accepts that the 2019 GTAA Update is not a robust evaluation of current levels of need for Gypsy and Traveller pitches. Thus, the position is that it cannot demonstrate a five year supply of sites.
26. In terms of supply, over the same period, 27 permanent pitches have been granted permission since the 2019 baseline using the criteria-based CS policy CS12. The Council could not identify any available, suitable alternative pitches onto which the appellant and her extended family could relocate together.
27. In these circumstances, the tilted balance as per paragraph 11(d) of the Framework is engaged. I return to this below.

### *Personal circumstances*

28. In terms of statutory duties and rights, the PSED<sup>3</sup> requires that when carrying out its functions, a public authority must foster good relations between persons who share a relevant protected characteristic and persons who do not. The Human Rights Act<sup>4</sup> establishes a right to respect for private and family life, his home and his correspondence. Article 3 of the United Nations Convention on the Rights of the Child requires a child's best interests to be a primary consideration, and no other consideration must be regarded as more important or given greater weight.
29. The appeal site is intended to be occupied by the appellant, her two sons and the appellant's sister, with their respective partners and dependent children (where relevant). The SoCG confirms that the Council's Liaison Officer knows of the appellant and has confirmed that she and her sons have Traveller status, such that their protected characteristic is not in dispute. It is confirmed that the family have a strong local connection to Shropshire under the requirements of CS Policy CS12 and that none have permanent pitches. Written evidence was also submitted in connection with the personal safety risks which have resulted in the appellant seeking the security of family around her. This particular evidence is not disputed by the Council and has been taken into consideration.

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<sup>3</sup> Public Sector Equality Duty under the Equality Act, 2010

<sup>4</sup> Article 8 of the European Convention on Human Rights as enshrined in the Human Rights Act (1998)



30. Additional detail was provided verbally at the hearing that each of the respective family groups currently has unsuitable or accommodation on only a temporary basis. The reasons given related to overcrowding (current or imminent); being on an unsuitable transit site, or due to pitches only being available on a temporary basis. It was also confirmed that there are five dependent children that would move onto the appeal site, with enrolment into a relatively local school being the intention for at least some of these children.
31. There would be advantages for the general well-being of all members of the extended family through having a permanent settled base together, with reasonable access to amenities and schools. The dismissal of the appeal would leave the respective households without the certainty of accommodation being available on an ongoing basis. This is a disbenefit but given the potential risks of occupying the appeal site, I cannot conclude that the certainty of accommodation it offers would genuinely be in the best interests of the future adult occupants, let alone any respective children.

### **Other Matters**

32. The appeal site is within influence of the Cole Mere part of the Midlands Meres and Mosses Phase 2 Ramsar Site (the Protected Site).
33. It cannot be ruled out that residential development in this location, both individually and cumulatively with other schemes, would have significant effects on the features of interest of the Protected Site due increased recreational use and other domestic activity. The Cole Mere Management Plan 2020-2025 contains mitigation measures to address increased recreational pressure through visitor management. This takes the form of a financial contribution per-bedroom, secured through an obligation under section 106 of the Town and Country Planning Act 1990. The parties do not dispute that this can be mitigated through contributions which the appellant has committed to pay by way of submitted unilateral undertaking.
34. As the circumstances that could have led to the granting of planning permission are not present, it is not necessary for me to ascertain the appropriateness and delivery of the mitigation. Consequently, as I am dismissing the appeal for other reasons, I have not taken this matter further.
35. Concerns have been raised about a wide range of issues, including potential effects on highway safety; character and appearance; biodiversity and overdominance of the local community. None of these aspects are in dispute between the main parties and I find no reason to disagree. However, as I am dismissing this appeal, I have not addressed these matters any further.

### **Planning Balance**

36. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that development should be in accordance with the development plan unless material considerations indicate otherwise. Section 70(2) of the Town and Country Planning Act 1990 requires the authority to have regard to the provisions of the development plan, insofar as they are material to the application. There is conflict with the development plan with regard to flood risk.

37. The acknowledged inability of the Council to demonstrate a five year supply in Traveller pitches is a significant material consideration which engages the provisions of paragraph 11(d) of the Framework.
38. The provision of four pitches and absence of alternative sites are factors that weigh significantly in favour of the scheme. However, it has not been demonstrated that the proposal would not be at risk of flooding or that the occupiers would be safe over the lifetime of the development. Areas at risk of flooding are listed in Framework footnote 7 as areas where Framework policies can provide a strong reason for refusing the development proposed. In this case, I find that the risk of flooding is a strong reason for refusing the development proposed. Thus, the proposal does not constitute sustainable development under the terms of the Framework.
39. I find that the benefits indicated would not be sufficient to justify the proposal in light of the harm identified and would not justify a decision otherwise than in accordance with the development plan.
40. Given the harm I have found, a permanent planning permission is not appropriate. The appellant did not seek a temporary permission but I have considered whether such a permission would be a more proportionate response. However, it would not be suitable to allow either a temporary permission as it would potentially place the future occupiers' lives and property at risk, which, absent of evidence to the contrary, would not be mitigated. Though the personal circumstances of the appellant and her wider family have also been considered, granting a personal permission would not be an appropriate response for similar reasons.

## **Conclusion**

41. For the reasons given above, the appeal should be dismissed.

*H Nicholls*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Mr Philip Brown	Agent, Philip Brown Associates Limited
Ms Kathleen Roberts	Appellant
Ms Marcia Jones	Landowner

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Mark Perry	Shropshire Council - Senior Planning Officer
Mr John Bellis	Shropshire Council – Drainage and Flood Risk Manager
Ms Emma Green	Shropshire Council – Planning Manager

### INTERESTED PARTIES:

George Jones	Local resident
Ann Jones	Local resident
Matthew Bell	Local resident
Victoria Bell	Local resident
Guy Wellsbury	Local resident
Karen Bland	Welshampton & Lyneal Parish Council
Mike Piotrowski	Colliers
Daniel Howlett	Colliers
John Griffiths	Vice Chair Maelor South Community Council
Robin Peel	Local resident

### HEARING DOCUMENTS:

Document 1	Extract from EA website mapping in re to surface water flood sources
Document 2	Extract from EA website mapping in re to ground water flood sources
Document 3	Heartlands Farm Transport Statement

### DOCUMENTS RECEIVED AFTER THE HEARING:

Document 4	Email from Council in respect of varied/additional conditions
Document 5	Email from agent in connection with conditions
Document 6	Unilateral undertaking (UU) dated 12.06.2025

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