

KING'S BENCH DIVISION

IN THE MATTER

BETWEEN :-

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

(1) MR THOMAS STOKES
~~(2) PCS HOMEBUILD LTD~~
~~(3) MR PAUL CHRISTOPHER SMITH~~
(4) PERSONS UNKNOWN

Defendants

HEARING BUNDLE – 11 DECEMBER 2023

	Document	Page No
1.	Claim Form	1
2.	Witness statement by Neill Whittaker	6
	NJW1	19
	NJW2	23
	NJW3	25
	NJW4	27
	NJW5	31
	NJW6	35
	NJW7	50
	NJW8	56
	NJW9	71
	NJW10	74
	NJW11	86
	NJW12	92
	NJW13	95
	NJW14	98
3.	Draft Order	128
4.	Application Form	135
5.	Skeleton Argument	140
6.	Note of hearing 30 November 2023	149
7.	Sealed Order 30 November 2023 Interim Injunction	154
8.	Certificates of Service	162
9.	Witness statement and exhibits- Izindi Visagie	170
10.	Application form 7 December 2023	182
11.	Draft Order Ermin Stables Return Date	187
12.	Skeleton for return date	193



Claim Form (CPR Part 8)

In the High Court of Justice Kings Bench Division	
Claim no.	KB-2023-004501
Fee Account no.	
Help with Fees - Ref no. (if appli- cable)	H W F - <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/>

Claimant

West Berkshire District Council
Market Street
Newbury
Berkshire
RG14 5LD



KB-2023-004501

Defendant(s)

- (1) Mr Thomas Stokes, Ermin Street Stables, Ermin Street, Lambourn Woodlands, Hungerford RG17 7BL and Mayfair, Bath Road, Beenham, Reading RG7 5QE
- (2) PCS Homebuild Ltd, Manley Bungalow, Pirton Road, Hitchin SG5 2ES and 173 Station road, Lower Stondon, Hendon, SG16 6JQ
- (3) Mr Paul Christopher Smith, 173 Station Road, Lower Stondon, Henlow, SG16 6JQ
- (4) Persons Unknown, Ermin Street Stables, Ermin Street, Lambourn Woodlands, Hungerford RG17 7BL

Does your claim include any issues under the Human Rights Act 1998? Yes No

Details of claim (see also overleaf)

Claim under Section 187B of the Town and Country Planning Act 1990 (as amended) to prevent continuing breaches of planning control.

The Claimant seeks an Order for alternative service pursuant to CPR 6.14, 6.15, 6.26 and 6.27.

The Claimant also seeks its costs.

1. The Claimant seeks an injunction pursuant to Section 187B of the Town and Country Planning Act 1990 (as amended) to prevent continuing breaches of planning control.
2. The Claimant is the Local Planning Authority for the area including the Land known as "Ermin Street Stables, Ermin Street, Lambourn Woodlands, Hungerford, RG17 7BL" registered at HM Land Registry under Title Number BK143882 ("the Land").
3. Section 187B of the Town and Country Planning Act 1990 provides that:

Defendant's
name and
address

(1) Thomas Stokes, Ermin Street Stables,
Ermin Street, Lambourn Woodlands,
Hungerford RG17 7BL and Mayfair, Bath
Road, Beenham, Reading RG7 5QE
(2) PCS Homebuild Ltd, Manley Bungalow,
Pirton Road, Hitchin WG5 2ES and 173
Station Road, Lower Stondon, Hendon
SG16 6JQ
See attached continued

	£
Court fee	569.00
Legal representative's costs	
Issue date	

For further details of the courts www.gov.uk/find-court-tribunal.

When corresponding with the Court, please address forms or letters to the Manager and always quote the claim number.

Details of claim (continued)

- (1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.
 - (2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.
 - (3) Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.
 - (4) In this section “the court” means the High Court or the county court.
-
4. As set out in the witness statement of Neill Whittaker, Planning Associate instructed by the Claimant, works have taken place and it is the Council’s position that works have been undertaken to prepare the Land for residential occupation.
 5. The First Defendant has an interest in the Land as is understood to be the owner of the Land despite not being registered at HM Land Registry.
 6. The Second Defendant is the registered owner of the Land at HM Land Registry.
 7. The Third Defendant is the director of the Second Defendant.
 8. The Fourth Defendant is identified only as “Persons Unknown” and refers to those persons who are not named Defendants to this Claim who may have an interest in the Land or undertaking or intending to undertake works or entering onto the Land intending to occupy the Land in breach of planning control. The Claimant relies upon Paragraph 20.2 of the Practice Direction Part 8A of the CPR. The Claimant is unable to describe the Fourth Defendant with any greater particularity than the description herein.
 9. The change of use of the Land is development for the purposes of Section 55 of the Town and Country Planning Act 1990 and requires planning permission. Works have already been undertaken to the Land.
 10. The Land is located within the open countryside, outside of settlement boundaries, within an Area of Outstanding Natural Beauty and any change of use requires full consideration by the local planning authority.
 11. The Claimant considers that it is likely that the Defendants are intending to undertake further works to facilitate the residential use of the Land.
 12. In the circumstances set out in the witness statement of Mr Whittaker and having regard to the provisions of section 187B of the Town and Country Planning Act 1990 and having regard to Human Rights issues and the Equality Act 2010 and all the circumstances of this matter, it is considered necessary and expedient in the public interest to seek an injunction to prevent further breaches of planning control on the Land.
 13. CPR Part 8 applies to this Claim.
 14. The Claimant seeks its costs for and incidental to the claim and any other relief the court considers appropriate.

Ivy Legal Limited
4th floor, 33 Cannon Street
London EC4M 5SB
Email: izindi@ivylegal.co.uk
Ref: West Berks/Ermin

Claimant’s or claimant’s legal representative’s address to which documents should be sent if different from overleaf. If you are prepared to accept service by DX, fax or e-mail, please add details.

Statement of Truth

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 believe that the facts stated in these particulars of claim are true.
- The Claimant believes that the facts stated in these particulars of claim are true. I am authorised by the claimant to sign this statement.

Signature



- Claimant
- Litigation friend (where claimant is a child or a Protected Party)
- Claimant's legal representative (as defined by CPR 2.3(1))

Date

Day	Month	Year
28	11	2023

Full name

Izindi Visagie

Name of claimant's legal representative's firm

Ivy Legal Limited

If signing on behalf of firm or company give position or office held

Partner

Find out how HM Courts and Tribunals Service uses personal information you give them when you fill in a form: <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter>

Addresses of Defendants (3)- (4)

(3) Mr Paul Christopher Smith, 173 Station Road, Lower Stondon, Henlow, SG16 6JQ

(4) Persons Unknown, Ermin Street Stables, Ermin Street, Lambourn Woodlands, Hungerford RG17 7BL

H.M. LAND REGISTRY

TITLE NUMBER

BK 143882

ORDNANCE SURVEY
PLAN REFERENCE

SU 2877/2977

Scale
1/2500

COUNTY BERKSHIRE

DISTRICT NEWBURY

© Crown copyright

NOTE: AREAS ON THIS PLAN ARE EXPRESSED
IN ACRES AND HECTARES.

ADMINISTRATIVE AREA WEST BERKSHIRE

BERKSHIRE
NEWBURY DISTRICT
LAMBOURN PARISH

WILTSHIRE
KENNET DISTRICT
BAYDON PARISH

FILED PLAN
H.M. LAND REGISTRY
3197

FILED PLAN
H.M. LAND REGISTRY
1877

1800
6-811ha
16-83

4900
1-719ha
4-25

This is a print of the view of the title plan obtained from HM Land Registry showing the state of the title plan on 19 October 2023 at 21:18:24. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

This title is dealt with by HM Land Registry, Gloucester Office.

© Crown Copyright. Produced by HM Land Registry. Reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number 100026316.

Statement on behalf of the Claimant
Witness: Neill Whittaker
1st Statement
Dated: 28.11.2023

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

CLAIM NUMBER KB-2023-004501

**IN THE MATTER OF SECTION 187B OF THE TOWN AND COUNTRY
PLANNING ACT 1990 (AS AMENDED)**

BETWEEN:

WEST BERKSHIRE COUNCIL

and

MR THOMAS STOKES (1)

PCS HOMEBUILD LTD (2)

MR PAUL CHRISTOPHER SMITH (3)

PERSONS UNKNOWN (4)

WITNESS STATEMENT

STATEMENT OF: Neill Whittaker

AGE: Over 21

OCCUPATION: Senior Planning Associate

ADDRESS: Ivy Legal, 4th Floor, 33 Cannon Street, London, EC4M 5SB

1. I make this witness statement in support of the Claimant's claim for an Injunction against the Defendants pursuant to Section 187B of the Town & Country Planning Act 1990 in relation to land at Ermin Street Stables, Ermin Street, Lambourn Woodlands, Hungerford, RG17 7BL ('the Site'). I am duly authorised by the Claimant to make this witness statement. I make it from my own information, knowledge and belief save where otherwise stated.
2. I have been instructed by West Berkshire Council ("the Council") to investigate breaches of planning control relevant to this claim. I am employed by Ivy Legal Ltd as a Planning Associate. I hold a Master's Degree in Planning, am a full member of the Royal Town Planning Institute and former Chairman of the National Association of Planning Enforcement (NAPE). I have been employed in planning enforcement roles for the last 19 years.
3. The Defendants in this case are the registered owners of the land namely PCS Homebuild Ltd and its sole director Paul Smith and the purported new owner of the site Thomas Stokes who is a gypsy/traveller.
4. The Site is made up of two parcels of land located within the open countryside and the North Wessex Area of Outstanding Natural Beauty (AONB). The land registry title (BK143882) for the site is exhibited as **NJW1**. The northern parcel of land is an open paddock field. The southern parcel of land is made up on an open paddock to the east, with the western part of the site comprising of a former stable yard area upon which a single building remains along with the partial remains of a stable building.
5. Both parcels of land are accessed via roadway from Ermin Street with the western part of the site having a locked field gate which leads down a gravel track to another unlocked field gate which then leads into the main former stable yard area. To the north of the site is a separate detached residential dwelling known as Middle Pond. To the west of the site is the M4 motorway. An aerial photograph of the Site and surrounding area is exhibited as **NJW2**.
6. The Site was previously used as a horse training establishment following the grant of planning permission for this use in 1984. Further planning applications were made over the years for additional buildings and the storage of horse boxes, however this use appears to have ceased in around January 2015 when the then owner of the Site sold the land. The majority of the stables on site burnt down in around 2017 with what remaining ones falling into a state of disrepair.
7. In June 2020 the Council was made aware of an advert for the sale of the land which stated that it would be 'ideal for a travellers site.' A copy of this advert is exhibited as **NJW3**. It appears that the current registered owner of the site (PCS Homebuild Ltd) purchased the site in May 2020. In November 2020 a pre-application planning enquiry was submitted to the Council by the owner of the site, Paul Smith who is the sole director of PCS Homebuild Ltd, for the redevelopment

of the stables at the site along with a new dwelling to re-establish a horse training facility. The Council responded to this enquiry on 17th December 2020.

8. On 5th July 2021 the Council refused planning permission (ref. 21/00840/FUL) for the erection of replacement stables at the Site. A copy of this decision is exhibited as **NJW4**. A further planning application was then submitted for the erection of replacement stables at the Site, however this application was withdrawn on 17th October 2022.
9. In December 2022 a pre-application planning enquiry was submitted for the change of use of land to provide 10no. plots for gypsy and traveller families with associated development, including fencing, hard standing and retention of 2no.existing buildings to be used as day rooms with new access. A copy of this enquiry is exhibited as **NJW5**. The Council provided a response to this enquiry on 19th January 2023 which concluded, in summary, that the use was unacceptable due to the unsustainable location of the site and possible impact of the use of the residential amenity levels of the adjoining dwelling Middle Pond. A copy of the enquiry and the Council response is exhibited as **NJW6**.
10. On 7th September 2023 the Council received a complaint to say works had been taking place at the site over the preceding 3 weeks. Officers visited the site on 8th September 2023 and met Thomas Stokes who informed officers that he was the owner of the land and told them of his plans to keep horses for his children in the paddock and to re-build the dilapidated stables so they can be used again as stables. New perimeter fencing, earthmoving and post-and-rail fencing were noted on site. An existing shed building also appeared to have been refurbished externally. Notes and photos from this site visit are exhibited as **NJW7**.
11. At the time of the visit, Mr Stokes also informed officers that there was a pending planning application being considered by the Council to extend the number of pitches at his property known as 'Mayfair', Bath Road, Beenham.
12. Following the officer's visits reports have been received that Mr Stokes has been active on site bringing in what appears to be waste material and burning. This has prompted a number of calls from complainants to the Council's Environmental Health Team, the Environment Agency, the Police, and the Fire Brigade due to the severity of the black smoke and the proximity of the site to the M4 motorway. Local residents have reported that the police have visited along with the fire brigade to put out the fires.
13. I visited the Site on 20th October 2023 and I noted that the area where the stables were previously present to be almost entirely clear apart from some fencing stored in a bundle in the middle of the Site along with some large red gas cannisters which were being stored in part of the derelict stable building. I made an inspection of the recently refurbished shed building at the eastern end of this part of the Site. Inside

the building which was just a shell were a few tools and stored materials. I noted an unconnected soil pipe adjacent to the eastern elevation of the building which might suggest a toilet is to be installed at some point. I also noted what appeared to be water and electricity connections.

14. Beyond this building to the east through post and rail fencing is an open paddock field. In the field was a grey Land Rover vehicle (AF07 FWB), a horse and a horse box. There was also a field shelter/stables adjacent to the northern boundary of the field which had a small enclosed wire fenced area in front of it. Other than what has been described above the Site was clear of any further development, stored materials, skips or vehicle. Photographs I took at the time of this visit are exhibited as **NJW8**.
15. Whilst it is correct that none of the works undertaken so far constitute breaches of planning control (save for possibly the bringing on of waste material), the part of the Site where the former stables and yard are located has been entirely cleared with integral fencing and overgrown vegetation removed. Use of the Site for the bringing on of waste material and burning in my view demonstrates a disregard for seeking authorization for use of land and is inconsistent with any lawful use of the Site.
16. With regard to Mr Stokes' planning application at Mayfield, Bath Road, Beenham (as mentioned to Council officers at the time of their visit on 8th September 2023) this relates to an application (Ref 23/01425/FUL) to extend an existing gypsy site from 1 pitch to 5 pitches. Mr Stokes was the applicant and signed certificate A on the planning application forms to say he was the owner of the site, however the land registry title for the Mayfair site is not in his name and there is no indication on the land registry that the site had recently been sold to him.
17. It has since transpired that the submission of this planning application had followed officers from the Council's Environmental Health and Public Protection Partnership investigating the Mayfair site for its use as an unlicensed caravan site. Mayfair benefits from planning permission for a single gypsy caravan pitch. At the time of the officers' first visit to the Mayfair site on 27th February 2023, officers established that the main mobile home on this site was occupied by Thomas Stokes and his family. They also noted a further 5 static caravans on the site.
18. Officers were able to gain access to one of the caravans which they had received a complaint about relating to the living conditions of the occupants. Living in the caravan was a pregnant woman and her daughter. Officers noted a number of property defects and hazards. Officers left their details with the wife of Thomas Stokes and requested that they contact them about the site.
19. Council officers again visited the Mayfair site on 12th April 2023 having obtained a warrant of entry pursuant to Section 26 of the Caravan Sites and Control of

Development Act 1960, from Reading Magistrates on 11th April 2023. At the time of the visit officers noted the same 5 static caravans on site. Four of these caravans were confirmed to be occupied. Rent being paid was between £550 and £750 per month. A family of 4 occupying one of the caravans were immediately placed in temporary accommodation by the Council and left the site.

20. On 5th June 2023 the Council wrote a letter to Mr Stokes confirming that: (1) The caravan site does not have a valid licence. (2) The caravans on site were too close to each other, being less than 2 metres apart rather than 4 over 6 metres as required under Communities and Local Government Model Standards 2008 for Caravans Sites in England (3) Mr Stokes needed to contact the Council and confirm what steps he will take to achieve compliance with the relevant legislation and planning permission. A copy of this letter is exhibited as **NJW9**.
21. On 10 June 2023 Mr Stokes emailed the Council confirming in writing that one of the three caravans on the right hand side of the entrance had been removed. On 12th June a planning application, as mentioned above, (Ref 23/01425/FUL) was submitted by Mr Stokes. A planning officer subsequently visited the site and confirmed that 4 caravans in addition to the main mobile home remained on site. A further touring caravan was however noted. Photographs of this site visit are exhibited as **NJW10**.
22. The planning statement that supported the planning application stated – *‘The application seeks to provide accommodation for 4 additional households only, through 4 mobile homes and 4 touring caravans which are proposed for occupation by extended Gypsy/Traveller family of the now owner of the site.’* The planning statement further sets out - *‘The purpose of this application is to provide the extended family group with much needed accommodation, and whilst the applicant has been able to reside on the authorized site, their extended family have been leading a roadside existence due to the absence of any available pitches at a sub-regional level for them to resort.’*
23. Planning application Ref 23/01425/FUL was refused by the Council on 12th October 2023, a copy of the decision notice is exhibited as **NJW11**.
24. On 20 October 2023 the Council prosecuted the owner Mr Thomas Stokes under Section 1 of the Caravan Sites and Control of Development Act 1960 which provides:
(1) Subject to the provisions of this Part of this Act, no occupier of land shall after the commencement of this Act cause or permit any part of the land to be used as a caravan site unless he is the holder of a site licence (that is to say, a licence under this Part of this Act authorising the use of land as a caravan site) for the time being in force as respects the land so used.
25. On 20 October 2023 Mr Stokes pleaded guilty to the offence of operating a caravan

site at Mayfair without the appropriate license. He was fined £600. Costs were not awarded as the Court was persuaded that Mr Stokes was of limited means. A copy of the attendance note for the hearing from the Council's solicitor is exhibited at **NJW12**.

26. On 31 October 2023 & 1 November 2023 Mr Stokes emailed the Council to state that he had served eviction notices in relation to 2 of the caravans. These eviction notices were not section 21 notices and appear to have been made using a template from the US state of Wisconsin. A copy of the notices are exhibited as **NJW13**. The eviction notices gave the occupants 28 days to vacate the caravans meaning they would have to leave by the 27th & 28th November 2023 respectively.
27. Given the above evidence in my view it is likely Mr Stokes may well consider Ermin Street Stables as a potential site for a further caravan site, notwithstanding the officers' pre-application response that the Site would not likely get planning permission for use as a gypsy caravan site. The minimal fine given by the court for the unauthorised caravan site at Mayfair compared to the rental income he was receiving is also likely to be a factor in favor of starting another unauthorised caravan site.
28. The Site is certainly capable of supporting a number of caravans due to its size and it appears to benefit from electricity and water connections as well as a possible septic tank as noted on the recent site visit. The majority of the south-western part of the site is covered in hardstanding which would be capable of supporting the weight of a caravan or mobile home. Therefore caravans/mobile homes could be moved onto the site relatively quickly as there is adequate vehicular access from Baydon Road (Ermin Street) into the site, with very little work required to live on site in caravans.
29. I believe that an injunction is needed because there is on balance a likelihood that Mr Stokes purchased the land with the intention of using it as a travellers' and or caravan site and had been clearing the land to facilitate the bringing on of caravans. I note that within his pre-application enquiry to the Council about the use of the site in December 2022 exhibited as **NJW5**, he states *"I have acquired the site as part of an ongoing project in which I hope to be able to provide homes for the gypsy and traveller community due to the lack of sites available at the moment. I have four children who I will need to provide a home for and my current home is just not big enough."*
30. Recent events at the Mayfair site means it is likely that those occupiers will need to move elsewhere. In my view, there is plenty of space on the Site for a number of caravans and or mobile homes to be brought onto the land and occupied without the need for any further development works as the Site benefits from an adequate access point from Ermin Street, a large area of existing hardstanding and appears to have a water and electricity supply along with an existing septic tank/cess pit.

As noted above a pre-application enquiry was submitted for the site in December 2022 for the use of the site for 10 pitches.

31. In short my concerns can be summarised as follows:

1. The Site was advertised for use as a GT site
2. Mr Stokes, the new owner, is himself a gypsy
3. Mr Stokes has sought pre-application advice to use the Site as a GT site, explaining there is a need for sites for his family members
4. Mr Stokes has recently cleared the Site
5. The access, hardstanding and access to services on the Site can facilitate the use for caravans without any further development
6. Mr Stokes needs to move residents off his site at Mayfair by the end of the month and has been prosecuted for breaches of his caravan licence there which makes it more likely that he will move his Mayfair tenants into the Ermin Street Stables site
7. The past conduct of Mr Stokes – Mr Stokes plainly has a disregard for planning and other controls and complying with requirements. His use of the Mayfair site breached planning control, he has been prosecuted in connection with that site; his use of the Site has necessitated intervention from the Fire Brigade and other enforcement agencies.

The pre-application enquiry – whether planning permission is likely to be granted

32. The Council's response to the February 2023 pre-application enquiry, in summary, was that such a use of the site in such a highly unsustainable location was unlikely to be acceptable and it also raised concerns about the use of the Site and its impact upon the occupants of the immediately adjoining property at Middle Pond. The location within an AONB¹ was also raised, however given its visually contained location this was considered to be less of an issue. The response also recognised however that the use of the Site would provide additional pitch capacity within the borough.

Need for pitches in the District

33. Demonstrating a 5-year supply of pitches for the Gypsy and Traveller Community is an important requirement for the Council, as set out in national policy contained in the Planning policy for traveller sites ("the PPTS). However, as a result of the Lisa Smith Court of Appeal judgment ([2022] EWCA Civ 1391), although the PPTS has not changed in how five-year supply is measured, Local Planning Authorities are encouraged to review all of their need.

¹ The National Planning Policy Framework provides at para 176 that "Great weight should be given to conserving and enhancing landscape and scenic beauty in...Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues"

34. The Council has done so. The West Berkshire Gypsy and Traveller Accommodation Assessment 2021 Update (GTAA) provides the latest available evidence to identify the accommodation needs of Gypsies and Travellers and Travelling Showpeople across the district, to understand an updated 5 year supply position. The GTAA consultant already applies a filter to the PPTS need to take account of the circumstances of those not travelling in accordance with the Lisa Smith judgment. This judgement found that the definition of gypsy/traveller within the PPTS which states that they are Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such, discriminates against disabled and elderly members of the community.
35. The Council have allocated a site at Paices Hill as part of the Housing Site Allocations Development Plan Document (Policy TS1), to convert 8 of the 16 transit pitches to permanent pitches. This policy is proposed to be carried forward in the Local Plan Review, and the site actually benefits from planning permission. Thus, 8 of the 9 permanent pitches needed in the 5 year period to 2025/26 are accounted for in terms of allocations, in PPTS terms.
36. The Council are seeking to redevelop the Council operated site at Four Houses Corner. Before the site was decanted of residents there were 16 pitches. It is planned, subject to planning permission, to redevelop the site for 17 pitches (permission was originally granted for 21 pitches). Thus, the additional pitch enables the Council to demonstrate that it has a 5 year supply of Gypsy and Traveller sites when measured against the PPTS. This was confirmed by recent appeal decisions, one for a Gypsy and Traveller pitch on land at Ermin Street (adjacent to Zoe's Farm), Lambourn (reference APP/W0340/W/22/3292939) which was allowed and one for 7 Gypsy and Traveller pitches on land at Lawrence's Lane, Thatcham (reference APP/W0340/W/22/3292211) which was dismissed. A copy of the most recent appeal decision at Lawrence Lane is exhibited as **NJW14**. The Inspector confirmed that the Council can demonstrate a 5 year supply for the purposes of the PPTS and has a shortfall of at least 3 pitches to meet cultural need [99] which he concluded was of small scale [105].
37. There is an overall need in the plan period for 30 pitches, or 20 pitches in applying the PPTS filter. Taking into account the planned 8 pitches at Paices Hill, Aldermaston, additional pitch at Four Houses Corner, and permitted pitch on land at Ermin Street (adjacent to Zoe's Farm) this leaves a residual need in the plan period for 20 pitches, or 10 pitches in applying the PPTS filter.
38. The appeal decision for Lawrence's Lane recognised that the Council had a need for more Gypsy and Traveller pitches, and moderate weight was given to this.

However, the Inspector concluded that the GTAA 2021 identifies only a small cultural shortfall, and that the Council are taking steps to address it, through the preparation of a Gypsy and Traveller Accommodation Development Plan Document. Moderate weight was given to the general cultural need for additional pitches.

39. Policy CS7 of the Council's adopted Core Strategy notes that to meet the identified need for Gypsies, Travellers and Travelling Show people pitches within the District, the Council will make appropriate provision through the identification of sites within the Site Allocations and Delivery DPD. The requirement for transit sites will be addressed through the same DPD.

Whether there is compliance with the policy relevant to G&T site applications

40. In allocating sites, and for the purpose of considering planning applications relating to sites not identified in the relevant DPD, the following criteria will need to be satisfied for sites outside settlement boundaries:

- Safe and easy access to major roads and public transport services;
- Easy access to local services including a bus route, shops, schools and health services;
- Located outside areas of high flooding risk;
- Provision for adequate on site facilities for parking, storage, play and residential amenity;
- The possibility of the integrated co-existence between the site and the settled community, including adequate levels of privacy and residential amenity both within the site and with neighbouring occupiers;
- Opportunities for an element of authorised mixed uses;
- The compatibility of the use with the surrounding land use, including potential disturbance from vehicular movements, and on site business activities;
- Will not materially harm the physical and visual character of the area;
- Where applicable have regard for the character and policies affecting the North Wessex Downs AONB.

41. The Site is located outside of any development boundaries but part of the land at least would be considered as Previously Developed Land (PDL) given the former horse training facility use, hard standing and remains of buildings on the site. There is sufficient safe access into the site from the main road give the existing access which also serves Middle Pond. The site itself would be 3 miles from Lambourn and about a mile from Baydon. The site does not have access to public transport and the nearest train station and bus stop would necessitate a car journey to get there.

42. However it should be noted that the site is less than half a mile from the recently allowed (on appeal) single gypsy/traveller pitch adjacent to Zoe's Farm, Ermin Street to the east. Within this appeal decision the inspector took the view that the

location of the site did conflict with relevant CS and DPD policies due to the site's lack of access to sustainable modes of transport within walking distance of the site and attached moderate weight to this conflict.

43. The site is not within a floodplain, there would be adequate facilities on site for parking storage, play and residential amenity. However there would be serious concerns about the impact of any residential caravan use of the site on the residential amenity levels of Middle Pond to the north, particularly if there was any mixed use of commercial and residential at the site.

44. The use of the site as a residential caravan site would not be compatible with surrounding land use given there is only a single residential dwelling to the north, with open fields and the M4 motorway surrounding the site. Such a use also, depending on the scale of the use, materially harms the physical and visual character of the area and also North Wessex Downs AONB, however as already noted within the pre-application advice for the site this harm is likely to some extent to be limited due to the containment of the site and its location adjacent to the M4. There would also be concern about the noise impacts on any occupants due to the site proximity to the M4, though these concerns could possibly be mitigated.

45. Therefore in conclusion on balance it is unlikely that planning permission would be granted for the use of Ermin Street Stables as a gypsy/traveller residential caravan site. In the event that the Site is used as a residential caravan site which is not occupied by gypsy/travellers, in my view this would increase the unacceptability in planning policy terms given the absence of the planning considerations related to gypsy/traveller need.

Other considerations

46. I am acutely aware that members of the gypsy traveller community possess protected characteristics under the Equality Act. I am satisfied that the relief sought is proportionate pending the proper consideration, and determination of the planning application. As set out above the pre-application advice was that planning permission was unlikely to be granted at this location for this development. Such a planning application needs full consideration. The restraint prevents the defendants from doing that which they are not entitled to do pending any such determination.

47. I am aware that there is a high duty of candour when claims are issued ex parte. I have reflected upon what points could properly be said in favour of the defendants.

48. Whilst I consider that it is unlikely that planning permission will be forthcoming, I recognise that a decision maker may come to a different conclusion. If permission is granted in the future, the use would be retrospectively regularised. But, I remain

of the view that this does not provide a cogent reason to decline to grant an injunction which simply seeks to hold the ring at this stage.

Application without notice

49. The Council has not made this application on notice because I believe that if notice is given, Mr Stokes is likely to bring caravans onto the Site immediately and before the hearing is heard. Once these caravans/mobile homes are on the land, the planning harms will be more difficult or impossible to reverse. It is clear that there will be pressure for the occupants of the Mayfair site to leave imminently and the Site provides an obvious location for them. Furthermore, as set out above, Mr Stokes has shown prior conduct of proceeding with development or activities unlawfully.

Persons unknown

50. The Council is also making application against Persons Unknown and I explain below why I consider the principles set out in the case of *Boyd & Corre v Ineos Upstream & Friends of the Earth* [2019] EWCA Civ 515 apply here:

1. *There must be a sufficiently real and imminent risk of a tort being committed to justify quia timet relief.* As set out above, I believe there is a real and imminent risk that caravans will be brought onto the Land for residential purposes.
2. *It is impossible to name the person(s) likely to commit the tort unless restrained.* Although I have made best efforts to ascertain the names of the persons involved in undertaking the works and have undertaken new land registry searches, in my experience land registry records are often inaccurate particularly on Countryside sites such as these where ownership changes regularly. It is very likely that ownership can change very quickly again, or in fact has already changed since land registry records were last updated.
3. *It is possible to give effective notice of the injunction and for the method of such notice to be set out in the order.* If secured, the injunction order will be served by affixing a copy in a water-proof envelope at a conspicuous location at the entrance to the land so that it comes to the attention of any visitors and load up a copy of the documents on to the Council's website.
4. *The terms of the injunction must correspond to the threatened tort and are not so wide that they prohibit lawful conduct.* The land is Open Countryside and within an AONB with no apparent lawful use. The proposed terms of the injunction correspond to the breaches threatened and are therefore appropriate and correspond to the protection afforded to the land by virtue of its Open Countryside and AONB status.

5. *The terms must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do.* The proposed order is drafted in clear terms that set out exactly what must not be done.
6. *The injunction should have clear geographical and temporal limits.* The extent of the land the subject of the application is clearly defined and delineated on a plan. The court is asked to make an order with a return date of 11th December 2023.

Alternative Service

51. The Claimant also applies for an Order for service of any Injunction Order the Court may grant by way of the alternative method set out in the draft attached.
52. There is an urgent need to serve any Order granted to restrain further breaches of planning control. It is the Claimant's experience that Orders served in the manner proposed are effective in bringing such Orders to the attention of the Defendants and their servants or agents.

Conclusions

53. Ultimately the injunction is being sought to prevent further works from being undertaken and to apprehend the anticipated breach of planning control by preventing the stationing of residential caravans on the land. The Council has carefully considered its options. It could issue a Stop Notice but the only action it could take for breach is criminal proceedings which are lengthy and the only penalty is financial. The Council has considered issuing an enforcement notice but this would not have immediate effect, would not prevent the occurrence of the anticipated unauthorised development and is likely to result in a lengthy appeal timetable and would not prevent further works or development at the site. In the circumstances, it is considered that there is sufficient evidence of an intended breach of planning control that cannot be effectively restrained or apprehended by any means other than an injunction,
54. The Council respectfully asks for an order from the Court to prevent unauthorised development and occupation of the Land which could give rise to welfare and human rights concerns and make future enforcement action more difficult.

I believe that the facts stated in this witness statement are true. 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.

Dated 28 November 2023

Signed : 

Neill Whittaker

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

Claim No. KB-2023-004501

IN THE MATTER

B E T W E E N : -

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

- (1) MR THOMAS STOKES**
- (2) PCS HOMEBUILD LTD**
- (3) MR PAUL CHRISTOPHER SMITH**
- (4) PERSONS UNKNOWN**

Defendants

**THIS IS THE EXHIBIT MARKED 'NJW1' REFERRED TO IN THE
WITNESS STATEMENT OF NEILL WHITTAKER**

THIS IS A PRINT OF THE VIEW OF THE REGISTER OBTAINED FROM HM LAND REGISTRY SHOWING THE ENTRIES SUBSISTING IN THE REGISTER ON 17 NOV 2023 AT 07:11:47. 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: BK143882

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.

WEST BERKSHIRE

- 1 The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being Ermin Street Stables, Ermin Street, Lambourn Woodlands, Hungerford (RG17 7BL).
- 2 (03.03.1997) The land edged and lettered A in red on the title plan added to the title on 3 March 1997.
- 3 (03.03.1997) The land edged and lettered A in red on the filed plan has the benefit of the following rights granted by but is subject to the following rights reserved by the Conveyance dated 31 July 1978 referred to in the Charges Register:-

"TOGETHER WITH (so far as the Vendors can grant the same) a right of way at all times and for all purposes over and along the access way shown coloured brown for identification on the said plan but excepting and reserving to the Vendors and their successors in title the owners and occupiers for the time being of the land shown for identification edged in blue on the said plan the right of free passage for the running of water through the pipe the approximate position of which is shown coloured green thereon."

NOTE: Copy plan filed.

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 (19.06.2020) PROPRIETOR: PCS Homebuild Ltd (Co. Regn. No. 10608163) of Manley Bungalow, Pirton Road, Hitchin SG5 2ES and of paulsmith.welwynservices@live.co.uk and of sarahcannon01@aol.com.
- 2 (19.06.2020) The price stated to have been paid on 18 June 2020 was £60,000.

C: Charges Register

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

- 1 (03.03.1997) A Conveyance of the land edged and lettered A in red on the filed plan dated 31 July 1978 made between (1) Edwin James Cracknell and Elizabeth Ann Cracknell (Vendors) and (2) David Louis

C: Charges Register continued

Hanley (Purchaser) contains the following covenants:-

"The Purchaser for himself and his successors in title covenants with the Vendors and their successors in title the owners or occupiers for the time being of the said land edged blue that the Purchaser will at all times maintain stock proof fencing along the boundary marked "T" on the said plan and will not use or allow to be used the land hereby conveyed for any purpose other than one connected with agriculture (but excluding a market garden) grazing or the business of a trainer of race horses."

- 2 (03.09.2001) An Agreement pursuant to s.106 of the Town and Country Planning Act 1990 dated 9 August 2001 made between (1) Susan Kim Bristow and Ian Mark Davis (2) Ian Mark Davis (3) Barclays Bank PLC and (5) West Berkshire District Council contains covenants relating to the development of the land in this title.

NOTE: Copy filed.

End of register

H.M. LAND REGISTRY

TITLE NUMBER

BK 143882

ORDNANCE SURVEY
PLAN REFERENCE

SU 2877/2977

Scale
1/2500

COUNTY BERKSHIRE

DISTRICT NEWBURY

© Crown copyright

NOTE: AREAS ON THIS PLAN ARE EXPRESSED
IN ACRES AND HECTARES.

ADMINISTRATIVE AREA WEST BERKSHIRE

BERKSHIRE
NEWBURY DISTRICT
LAMBOURN PARISH

WILTSHIRE
KENNET DISTRICT
BAYDON PARISH



2165
5.449ha
13.47

3444
8.636ha
21.34

3956
4.54ha
1.12
Pit (disused)

Settlement
(site of)

1738
4.70ha
1.16

2333
0.12ha
0.03

1934
0.032ha
0.08

2730
0.057ha
0.14

2528
3.98ha
9.8

2524
3.77ha
9.3

2323
5.51ha
1.36

2534
1.006ha
2.49

3022
1.86ha
4.6

3625
1.216ha
3.01

3220
0.032ha
0.08

3619
0.12ha
0.03

4219
1.13ha
2.8

3618
0.045ha
0.11

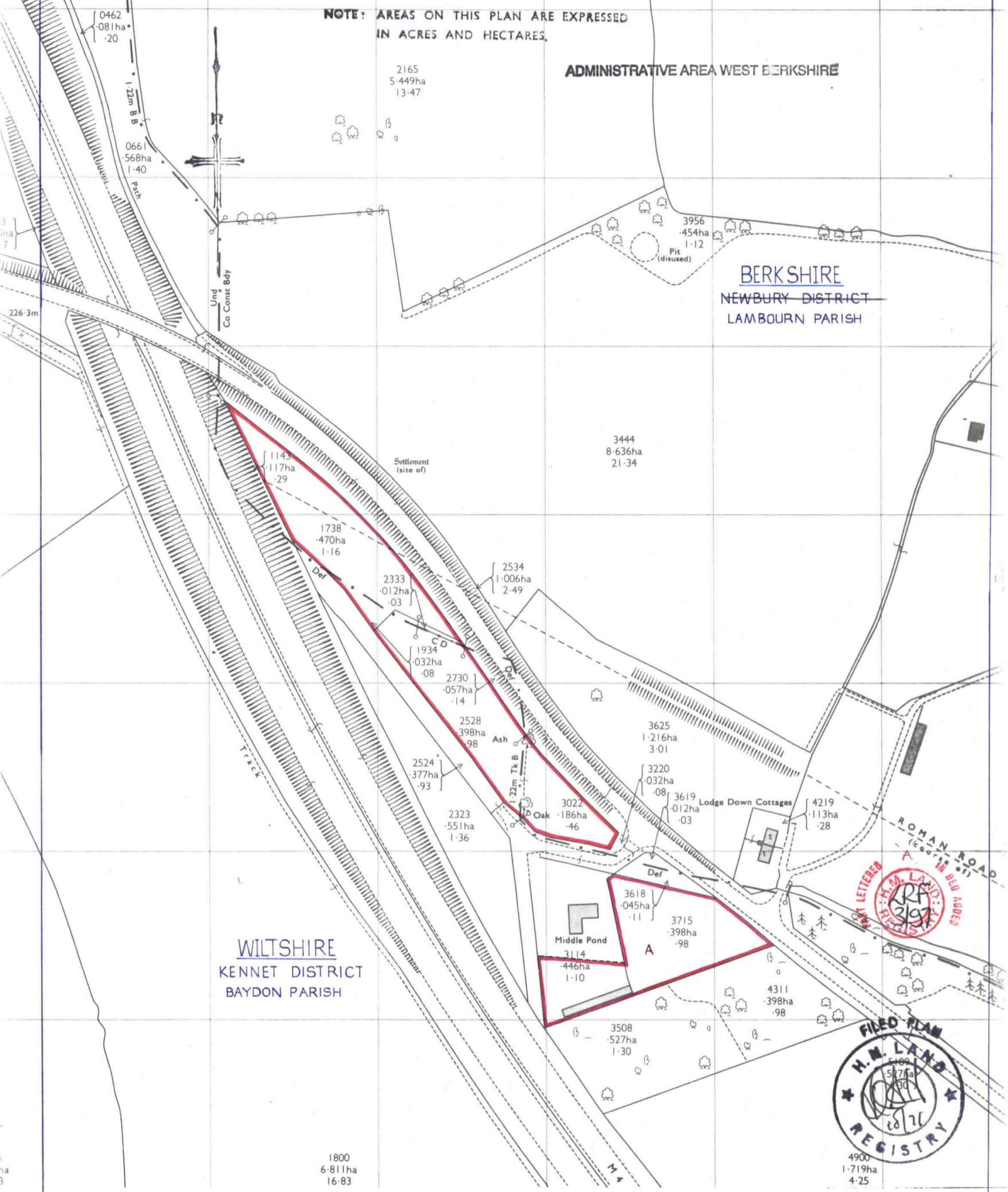
3715
3.98ha
9.8

4311
3.98ha
9.8

3508
5.27ha
1.30

1800
6.811ha
16.83

4900
1.719ha
4.25



This is a print of the view of the title plan obtained from HM Land Registry showing the state of the title plan on 17 November 2023 at 07:13:16. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

This title is dealt with by HM Land Registry, Gloucester Office.

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

Claim No. KB-2023-004501

IN THE MATTER

B E T W E E N : -

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

- (1) MR THOMAS STOKES**
- (2) PCS HOMEBUILD LTD**
- (3) MR PAUL CHRISTOPHER SMITH**
- (4) PERSONS UNKNOWN**

Defendants

**THIS IS THE EXHIBIT MARKED 'NJW2' REFERRED TO IN THE
WITNESS STATEMENT OF NEILL WHITTAKER**



**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

Claim No. KB-2023-004501

IN THE MATTER

B E T W E E N : -

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

- (1) MR THOMAS STOKES**
- (2) PCS HOMEBUILD LTD**
- (3) MR PAUL CHRISTOPHER SMITH**
- (4) PERSONS UNKNOWN**

Defendants

**THIS IS THE EXHIBIT MARKED 'NJW3' REFERRED TO IN THE
WITNESS STATEMENT OF NEILL WHITTAKER**



Land for sale, Lambourne, Berkshire, 9 and a half acres. Ideal for travellers site. Promotion for a mobile home with overnight stay. An acquisition centre, stables and out buildings.

Price: POA

Location: Lambourne

Contact: Paul

Phone: **07973 827309**

[Add to Favourites](#)

[Link to Advert](#)

[Share](#)

[Advice to Buyers](#)

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

Claim No. KB-2023-004501

IN THE MATTER

B E T W E E N : -

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

- (1) MR THOMAS STOKES**
- (2) PCS HOMEBUILD LTD**
- (3) MR PAUL CHRISTOPHER SMITH**
- (4) PERSONS UNKNOWN**

Defendants

**THIS IS THE EXHIBIT MARKED 'NJW4' REFERRED TO IN THE
WITNESS STATEMENT OF NEILL WHITTAKER**

STL Architecture Ltd
3 Thames Court
2 Richfield Avenue
Reading
RG1 8EQ

Applicant:
PCS Homebuild Ltd

PART I - DETAILS OF APPLICATION

Date of Application

24th March 2021

Application No.

21/00840/FUL

THE PROPOSAL AND LOCATION OF THE DEVELOPMENT:

Erection of replacement stables, demolition of the existing stable structures which has become no longer fit for purpose.

Ermin Street Stables, Ermin Street, Lambourn Woodlands, Hungerford West Berkshire
RG17 7BL

PART II - DECISION

In pursuance of its powers under the Town and Country Planning Act 1990, West Berkshire District Council REFUSES planning permission for the development referred to in Part I in accordance with the submitted application form and plans, for the following reason(s):-

1. The proposed works would result in an overdevelopment and intensification of use of the existing site which would have a negative impact on the sensitive nature of the character and appearance of the North Wessex Downs AONB. Guidance regarding the amount of pasture required for the grazing of horses demonstrates that the application site does not provide sufficient land for eleven horses. The number of horses on the land is an intensification of use which could lead to significant changes to the landscape as well as biodiversity on the application site including the potential impact of intensification of use.

The proposal is therefore considered to be contrary to advice contained within the NPPF and West Berkshire Core Strategy 2006-2026 policies ADDP5, CS12, CS14, CS18 and CS19 as it would not respect or enhance the character and the appearance of the area and would seek to overdevelop and intensify the use of the site by accommodating a larger number of horses than recommended in guidance by the British Horse Association, contrary to the requirements of Policy ENV29 of the West Berkshire District Local Plan Saved Policies 2007.

2. Insufficient information has been submitted to enable assessment as to whether protected species would be detrimentally impacted by the proposed development.

The application is therefore contrary to policy CS 17 of the West Berkshire District Core Strategy 2006 to 2026 and advice contained within the NPPF regarding the preservation and enhancement of ecology and biodiversity.

If you require further information on this decision please contact the Council via the Customer Call Centre on 01635 519111.

INFORMATIVE:

- 1 In attempting to determine the application in a way that can foster the delivery of sustainable development, the local planning authority has approached this decision in a positive way having regard to Development Plan policies and available guidance to try to secure high quality appropriate development. In this application whilst there has been a need to balance conflicting considerations, the local planning authority has also been unable to find an acceptable solution to the problems with the development so that the development can be said to improve the economic, social and environmental conditions of the area.

Decision Date :- 5th July 2021



Gary Lugg
Head of Development and Planning

TOWN AND COUNTRY PLANNING ACT 1990

Notification to be sent to an applicant when a local planning authority refuse planning permission or grant it subject to conditions

Appeals to the Secretary of State

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.
- If you want to appeal against the local planning authority's decision then you must do so within 6 months of the date of this notice.
- Appeals must be made using a form which you can get from the Planning Inspectorate at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or online using the Planning Portal at www.planningportal.co.uk.
- The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to him that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based their decision on a direction given by him.

Purchase Notices

- If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.
- In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

Claim No. KB-2023-004501

IN THE MATTER

B E T W E E N : -

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

- (1) MR THOMAS STOKES**
- (2) PCS HOMEBUILD LTD**
- (3) MR PAUL CHRISTOPHER SMITH**
- (4) PERSONS UNKNOWN**

Defendants

**THIS IS THE EXHIBIT MARKED 'NJW5' REFERRED TO IN THE
WITNESS STATEMENT OF NEILL WHITTAKER**



West Berkshire Council Pre-Application Form

Office Use Only Ref No:

Acknowledged:

Date Registered:

1. Your Details

Name: C/O AGENT

Address: 6A CHURCH ST, REIGATE
SURREY

Postcode: RH2 0AN

Tel:

Email: dmorleyltd@gmail.com

2. Agent (if any)

Name: DAISY MORLEY LTD

Address: 6A CHURCH STREET
REIGATE
SURREY

Postcode: RH2 0AN

Tel:

Email: dmorleyltd@gmail.com

3. Location of proposed development

Site Address: ERMIN STREET STABLES
ERMIN STREET
LAMBOURN WOODLANDS
HUNGERFORD
WEST BERKSHIRE

Postcode: RG17 7BL

4. WBC policies (Development Plan / Core Strategy) and other guidance

Please provide details of the WBC policies/guidance that you have referred to when preparing your scheme:

WBC CORE STRATEGY (2006-2026) POLICY CS7
PPTS PARAGRAPH 26
GTAA - OVERALL UNMET NEED FOR SITES
FHC COUNCIL RUN SITE
APPEAL DECISION FOR LAND AT ERMIN ST
APP/W0340/W/22/3292939

5. Pre-application Required – please select one option

Advice in Principle

Option A

Option B

Option C

Option D

Additional Options

Further Advice

Fast Track request

6. Description of Proposal

Please provide an accurate, detailed description of the proposed development:

I HAVE ACQUIRED THE SITE AS PART OF AN ONGOING PROJECT IN WHICH I HOPE TO BE ABLE TO PROVIDE HOMES FOR THE GYPSY AND TRAVELLER COMMUNITY DUE TO THE LACK OF SITES AVAILABLE AT THE MOMENT.

I MYSELF HAVE FOUR CHILDREN WHO I WILL NEED TO PROVIDE A HOME FOR AND MY CURRENT HOME IS JUST NOT BIG ENOUGH. I WOULD LIKE TO PROVIDE MOBILE HOMES FOR LOCAL GYPSY & TRAVELLER FAMILIES WHO ARE NOW SUFFERING WITH THE NEW LAW WHICH HAS PREVENTED ROADSIDE STOPS.

THEREFORE THE DEVELOPMENT WILL BE:

CHANGE OF USE OF LAND TO PROVIDE 10NO PLOTS FOR GYPSY AND TRAVELLER FAMILIES WITH ASSOCIATED DEVELOPMENT, INCLUDING FENCING, HARDSTANDING AND RETENTION OF 2NO EXISTING BUILDINGS TO BE USED AS DAYROOMS WITH NEW ACCESS.

7. Plans and Supporting Information

A site location plan clearly identifying the site or building in question must be submitted. The level of further detail required will be dictated by the complexity of the proposal. If you are unsure about the level of detail to be submitted, please contact us for further advice. Please specify plans/details that have been submitted.

- Site Location Plan
- Block Plan
- Elevation Sketch Plan
- Photographs


Other Supporting Material (please specify)

WE WILL SUPPLY DETAILS OF SURFACE WATER DRAINAGE

Fee Enclosed £ 300.00

Declaration:

I confirm that I have noted that any advice provided under this service will be given on the basis of the professional opinion of the officer(s) concerned, based on the information provided and the planning policies/guidance prevailing at the time, and any views expressed are not intended to prejudice the Council's determination of any subsequently submitted formal application.

Signed:  *On Behalf: Date: 18/10/2022
*delete as appropriate

Once you have completed this application please email the completed form, fee receipt and the documents to planapps@westberks.gov.uk

Alternatively, please print and post your documents to:

**Development and Regulation
West Berkshire Council
Council Offices
Market Street
NEWBURY
RG14 5LD**

For more information about Planning in West Berkshire please visit our website: www.info.westberks.gov.uk/planning or email us at planapps@westberks.gov.uk or telephone the Contact Centre on 01635 551111.

IN THE HIGH COURT OF JUSTICE

Claim No. KB-2023-004501

KING'S BENCH DIVISION

IN THE MATTER

B E T W E E N : -

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

- (1) MR THOMAS STOKES**
- (2) PCS HOMEBUILD LTD**
- (3) MR PAUL CHRISTOPHER SMITH**
- (4) PERSONS UNKNOWN**

Defendants

**THIS IS THE EXHIBIT MARKED 'NJW6' REFERRED TO IN THE
WITNESS STATEMENT OF NEILL WHITTAKER**

19/01/23



Daisy Morley Ltd
6A Church Street
Reigate
Surrey
RH2 0AN

By email: dmorleyltd@gmail.com

Development & Regulation

Council Offices
Market Street, Newbury
Berkshire, RG14 5LD

Our Ref: 22/02567/PREOPA

Contact Centre: 01635 519111

Email: planapps@westberks.gov.uk

Dear Daisy Morley

Planning pre-application advice

Reference: 22/02567/PREOPA

Site: Ermin Street Stables Ermin Street Lambourn Woodlands Hungerford
RG17 7BL

Proposal: Change of use of land to provide 10no plots for gypsy and traveller families with associated development, including fencing, hardstanding and retention of 2no existing buildings to be used as dayrooms with new access.

Thank you for submitting the above request for pre-application advice. This letter seeks to provide a detailed assessment of the planning merits of the proposal, identifying the main issues that are likely to be raised during the consideration of a planning application. Where possible advice on the likely outcome of any planning application will be given. The annex provides important procedural advice.

Planning policy

Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The statutory development plan for West Berkshire comprises a number of documents which together provide a plan for the future development of the district, against which development proposals are to be assessed.

The relevant policies from the development plan documents are set out below. You can download copies of these documents from <https://www.westberks.gov.uk/planning-policy> or by clicking on hyperlinks within the table below.

Document	Relevant Policies
West Berkshire Core Strategy 2006-2026	Spatial Strategy <ul style="list-style-type: none">• Area Delivery Plan Policy 1 - Spatial Strategy• Area Delivery Plan Policy 5 - North Wessex Downs Area of Outstanding Natural Beauty (AONB)

	<p>Core Policies</p> <ul style="list-style-type: none"> • Policy CS1: Delivering New Homes and Retaining the Housing Stock • Policy CS7: Gypsies, Travellers and Travelling Showpeople • Policy CS13: Transport • Policy CS14: Design Principles • Policy CS16: Flooding • Policy CS17: Biodiversity and Geodiversity • Policy CS18: Green Infrastructure • Policy CS19: Historic Environment and Landscape Character
Housing Site Allocations DPD 2006-2026	<p>Gypsy, Traveller and Travelling Showpeople Accommodation</p> <ul style="list-style-type: none"> • Policy TS3 - Detailed Planning Considerations for Traveller Sites <p>Parking Standards for New Residential Development</p> <ul style="list-style-type: none"> • Policy P1 - Residential Parking for New Development
West Berkshire District Local Plan 1991-2006 (Saved Policies 2007)	<p>Chapter 1 Introduction and Overall Strategy</p> <ul style="list-style-type: none"> • Policy OVS5 Environmental Nuisance and Pollution Control • Policy OVS6 Noise Pollution • Policy OVS7 and OVS8 Hazardous Substances

The following documents are material considerations that are of particular relevance to this proposed development:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- North Wessex Downs AONB Management Plan 2019-2024
- North Wessex Downs AONB Position Statement on Housing
- North Wessex Downs AONB Position Statement on Setting
- North Wessex Downs AONB Position Statement on Renewable Energy
- West Berkshire Landscape Character Assessment (2019)
- North Wessex Downs AONB Integrated Landscape Character Assessment (2002)

Site location, designations and constraints

The site is in open countryside, in the North Wessex Area of Outstanding Natural Beauty. It lies adjacent to the M4 motorway and comprises in part previously developed land, being stables. One dwelling lies immediately adjacent to the application site.

Principle of development

According to Policy ADPP1, most development will be within or adjacent to the settlements in the hierarchy, and related to their transport accessibility and level of services. The urban areas will be the focus for most development. The scale and density of development will be related to the site's accessibility, character and surroundings. Only appropriate limited development in the countryside (outside of the defined settlement boundaries) will be allowed, focused on addressing identified needs and maintaining a strong rural economy.

The DCLG publication Planning policy for traveller sites (PPTS) (August 2015) sets out the Government's planning policy for traveller sites, which should be read in conjunction with the NPPF. The Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.

According to paragraph 24 of the PPTS, local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:

- a) The existing level of local provision and need for sites
- b) The availability (or lack) of alternative accommodation for the applicants
- c) Other personal circumstances of the applicant
- d) That the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites
- e) That they should determine applications for sites from any travellers and not just those with local connections

Paragraph 25 of the PPTS states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing undue pressure on the local infrastructure.

According to paragraph 26 of the PPTS, when considering applications, local planning authorities should attach weight to the following matters:

- a) effective use of previously developed (brownfield), untidy or derelict land
- b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness
- c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children
- d) not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community

Any proposal would have to have regard to these section of policy but also local policies CS7 and TS7 as below.

Policy CS7 (Gypsies, Travellers and Travelling Showpeople) is the principal development management policy for this proposed development. It reads as follows

(bullet points have been replaced by letters for ease of reference):

'To meet the identified need for Gypsies, Travellers and Travelling Showpeople pitches within the District, the Council will make appropriate provision through the identification of sites within the Site Allocations and Delivery DPD. The requirement for transit sites will be addressed through the same DPD.'

In allocating sites, and for the purpose of considering planning applications relating to sites not identified in the relevant DPD, the following criteria will need to be satisfied for sites outside settlement boundaries:

- a) *Safe and easy access to major roads and public transport services;*
- b) *Easy access to local services including a bus route, shops, schools and health services;*

- c) *Located outside areas of high flooding risk;*
- d) *Provision for adequate on site facilities for parking, storage, play and residential amenity;*
- e) *The possibility of the integrated co-existence between the site and the settled community, including adequate levels of privacy and residential amenity both within the site and with neighbouring occupiers;*
- f) *Opportunities for an element of authorised mixed uses;*
- g) *The compatibility of the use with the surrounding land use, including potential disturbance from vehicular movements, and on site business activities;*
- h) *Will not materially harm the physical and visual character of the area;*
- i) *Where applicable have regard for the character and policies affecting the North Wessex Downs AONB.'*

In response to policy CS7 it is considered that the location of the site means that access to public transport services and the access to local services would not be easy. The Council is concerned that the development site is a large site of 10 proposed pitches in a highly unsustainable location. The development can only be accessed by private car, every trip to and from school for children of the site would need to be in a car as there are no bus routes, pedestrian paths and the roads being national speed limit roads would be unsuitable and unlit for children to cycle on.

The proposed site plan does not go into enough detail to be sure that the development would provide adequate on site facilities for parking, storage, play and residential amenity. The site plan does not show parking for cars or touring caravans. It does not show any amenity space for children to play. However the number of day rooms is considered to be acceptable. Any application should address these matters, perhaps by reducing the number of pitches proposed.

The development would be isolated from the nearest largest village of Lambourn so integration into a local community is likely to be difficult. However, there would be a high level of privacy for the occupants of the site. The Council is concerned by the quantum of development in regards to the immediate neighbour of Middle Pond and the potential impact to their amenity in terms of noise, overlooking and disturbance from the entrance road. The Council is accordingly concerned that the proposal would have issues in regards to compatibility of the use with the surrounding land use, including potential disturbance from vehicular movements, and on site business activities

The site is located outside areas of high flooding risk. As it is less than 1ha in extent no flood risk assessment will be required to be submitted with an application.

To give clarity on the supporting information expected from development proposals a detailed planning considerations policy is included within the Housing Site Allocations DPD. **Policy TS3 (Detailed Planning Considerations for Travellers Sites)** reads as follows (bullet points have been replaced by letters for ease of reference):

'Proposals for development will be expected to comply with policies within the West Berkshire Development Plan and have regard to guidance outlined in the Government's good practice guide on Designing Gypsy and Traveller Sites where appropriate. In addition proposals will:

- a) *Provide an integrated water supply and drainage strategy in advance of development to ensure the provision of adequate and appropriate infrastructure for water supply and waste water, both on and off site. Development will be occupied in line with this strategy. All sites that are not connected to the mains sewerage system will ensure there are no deleterious effects to Special Area of Conservation (SACs) and river and wetland Site of Special Scientific Interest (SSSIs).*

- b) *Incorporate appropriate vehicle access and turning space.*
- c) *Include appropriate landscaping proposals, retaining and incorporating key elements of landscape character into the site design.*
- d) *Be well designed and laid out with shelter and amenity buildings which are appropriately located and constructed of sympathetic materials suited for the purpose.*
- e) *Provide a mix of residential and business use where appropriate.*
- f) *Provide a Flood Risk Assessment in accordance with Policy CS16 of the adopted Core Strategy.*
- g) *Demonstrate that surface water will be managed in a sustainable manner through the implementation of Sustainable Drainage Methods (SuDS).*
- h) *Include measures to improve accessibility by, and encourage use of, noncar transport modes. These measures should be set out in a Travel Plan for the site.*
- i) *Identify internal walking routes and show how they will be linked to existing routes including the Public Rights of Way network. They will also take advantage of the landscape features of value within the site. Opportunities to improve external routes to services and facilities will be sought.*
- j) *Identify measures to be provided to mitigate the impact of development on the local road network as identified by a site specific Transport Assessment or Transport Statement.*
- k) *Identify appropriate green space/green infrastructure in line with the Council's adopted standards as set out in Policy RL1 of the Local Plan 1991 – 2006 (Saved Policies 2007).*
- l) *Provide necessary infrastructure to meet the needs that arise from the development as a whole, in accordance with both the most up to date Infrastructure Delivery Plan (IDP) and through conformity with the appropriate standards.*
- m) *Provide a Landscape and Visual Impact Assessment (LVIA) in accordance with the Landscape Institute Guidelines for Landscape and Visual impact Assessment 3rd ed. 2013.*
- n) *This will inform the development design and layout of the site and requirements for green infrastructure.*
- o) *Provide an extended phase 1 habitat survey together with further detailed surveys arising from that as necessary. Appropriate avoidance and mitigation measures will need to be implemented, to ensure any protected species are not adversely affected.*
- p) *Provide appropriate mitigation to offset impact on key species and habitats through appropriate buffering, on-site mitigation and off-site compensation measures.*
- q) *Provide a design, layout and siting plan for the development.'*

The proposed development would be required to satisfy each of these points in detail to create a comprehensive planning submission. Each point would require a report or plan to show how the development complies with the policy. The essential reports would consist of but are not limited to

- Ecology extended phase 1 habitat survey with detailed surveys in necessary
- Landscape visual impact assessment
- Noise impact assessment due to proximity with the M4
- Highways assessment in regards to access and vehicle movements.
- Site layout plan with parking, amenity buildings, parking for both cars, touring and static caravans, open space, and landscaping.
- Tree Survey

Design, character and appearance

According to Policy CS14, new development must demonstrate high quality and sustainable design that respects and enhances the character and appearance of the area, and makes a positive contribution to the quality of life in West Berkshire. Good design relates not only to

the appearance of a development, but the way in which it functions. Considerations of design and layout must be informed by the wider context, having regard not just to the immediate area, but to the wider locality. Development shall contribute positively to local distinctiveness and sense of place.

Policy CS19 states that particular regard will be given to (a) the sensitivity of the area to change, (b) ensuring that new development is appropriate in terms of location, scale and design in the context of the existing settlement form, pattern and character, and (c) the conservation and, where appropriate, enhancement of heritage assets and their settings. It further states that proposals for development should be informed by and respond to the distinctive character areas and key characteristics identified in relevant landscape character assessments, features identified in various settlement character studies including the Quality Design SPD, community planning documents which have been adopted by the Council such as Parish Plans and Town and Village Design Statements.

Assessments of landscape and visual amenity can be by way of a formal Landscape and Visual Impact Assessment (LVIA) or an informal Landscape and Visual Appraisal (LVA). Policy TS3 seeks applications for traveller sites to be accompanied by Landscape and Visual Impact Assessment (LVIA).

The site is rural in nature within the AONB, an area of nationally significant landscape importance. The site is poorly related to and distant from the existing pattern of residential development in the area and is considered to be located in the open countryside. Lighting is an important factor that needs to be considered as dark skies within the AONB should be preserved. Prior to the site being developed without planning permission, the site comprised a field in equestrian use with a stable block located to the west. A Landscape and Visual Impact Assessment (LVIA) accompanying the application would aid the decision maker in determining the overall impact on the rural character and AONB. The development may appear alien in the landscape given the number of caravans, hardstanding and associated infrastructure and paraphernalia of the site. The proposed works could appear at odds with the surrounding rural character and have an urbanising effect on the character and appearance of the area. Having noted that, in terms of the potential wider visual impact of the proposal on the wider AONB character, quality and landscape, from an informal site visit it is considered that the site is visually reasonably well contained by the M4 to the south, the dwelling to the west, the road to the north and existing vegetation to the east. Accordingly, subject of course to a robust landscaping scheme, it is possible that the scheme if approved and implemented may have little visual harm on the wider AONB and so potentially accord with the advice in policy ADPP5 in the WBCS. This would be entirely down to the detail of an application to demonstrate and is by no means a foregone conclusion.

Amenity

According to Policy CS14, new development must demonstrate high quality and sustainable design that makes a positive contribution to the quality of life in West Berkshire. Paragraph 127 of the NPPF states planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Consequently, all development should be designed in a way to avoid any unacceptable harm to neighbouring living conditions. Applications will typically be assessed in terms of any significant loss of light, overlooking of neighbouring buildings or land, and whether the proposal would result in any undue sense of enclosure, overbearing impact, or harmful loss of outlook to neighbouring properties.

Environmental impacts such as noise, disturbance, fumes and odours can also be relevant considerations. According to Policy OVS.6, the Council will require appropriate measures to be taken in the location, design, layout and operation of development proposals in order to minimise any adverse impact as a result of noise generated.

Specific to traveller sites, Policy CS7 also seeks to provide adequate levels of privacy and residential amenity both within the site and with neighbouring occupiers; and to consider the compatibility of the use with the surrounding land use, including potential disturbance from vehicular movements, and on site business activities.

In regards to neighbouring amenity the Council is concerned by the developments potential impact on the occupants of Middle Pond immediately adjacent to the site. The Council is concerned that the access road would run adjacent to the rear garden creating noise disturbance for the occupants of the dwelling. The Council is also concerned that the caravans in an elevated position on wheels could have direct overlooking to windows and the rear gardens of Middle Pond. The inclusion of a 2 metre high close boarded fence is unlikely to provide the protection from static caravans which are elevated off the ground and from noise disturbance from users of the access track. Given Middle Ponds existing isolated position to the proposed 10 neighbouring units is likely to be impacted significantly by the occupants. This is a matter the Council as local planning authority will need to carefully take into account in any future application, if submitted.

The Council is also concerned by the layout of the site in regards to the amenity of future users. There appears to be a close relationship between the mobile homes with no boundary fences denoting plots. The caravans are spaced evenly but this may create issues of noise breakout or overlooking between caravans. Furthermore amenity rooms are not provided for each plot and no open space is identified for the site occupants. This would be essential given the isolated nature of the site.

The site is located in close proximity to the M4 motorway to the south, as well as alongside Ermin Street. No information on air quality and noise impacts has been submitted to accompany this application, and this raises significant concerns in terms of the residential amenity and health of the future occupants of the site. If an application is submitted suitable acoustic control mechanisms must be put in place to protect future occupiers of the site from noise, if the application is approved by the Council or indeed at appeal—without prejudice.

Highways

The Highway Authority would be consulted on any planning application. Without prejudice to their considered comments, the following considerations for this proposal have been identified at planning officer level.

Issue	Remarks
Access	Whether safe and suitable access can be achieved for the intended uses. This will need to be considered even where the access is existing because the proposal could result in the intensification of the access. The proposed application should be accompanied with drawings of visibility splays at the access.
Parking	Sufficient parking levels will need to be provided for all existing and proposed units. Supporting information should accompany the application, either based off TRICS or surveys of the site. This will be particularly important given that the site being in a non sustainable location, will be largely accessed by private vehicles.

Manoeuvrability	It will need to be demonstrated that all vehicles can enter and exit the site in forward gear, with sufficient space to manoeuvre between the proposed building/landscaping layout and parking arrangements. Tracking plots should be provided for larger vehicles to demonstrate that this can be achieved.
Vehicle movements	Details of the anticipated vehicle movements should accompany any application, including numbers and vehicle type. This is to ensure that the amount and character of traffic generated by the development is suitable for the rural road network.

Biodiversity

It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before any planning permission can be granted, otherwise all relevant material considerations may not have been addressed in making the decision. In this instance it is considered that there is a reasonable likelihood of protected species being present and affected by the development. As such, a phase 1 preliminary ecological assessment should be undertaken before a planning application is made, together with any phase 2 detailed surveys that are deemed necessary by the phase 1 assessment. Any planning application should be accompanied at the outset by all surveys/assessments which are required.

Phosphates and nutrient neutrality

In rivers and estuaries, increased levels of nutrients (especially nitrogen and phosphorus) can harm wildlife. These nutrients are affecting the condition of internationally protected rivers - such as the River Lambourn. This means that, for planning applications in the River Lambourn catchment area and the River Test catchment area, the Council needs to consider the possibility of adverse effects, as a result of additional nutrient loads (including from residential developments), as part of a Habitat Regulations Assessment (HRA).

The proposed application site is located in the identified catchment of the SSSI of the River Lambourn. New development proposals within, and next to, the designated area will require statements on how drainage and surface water runoff will be treated at the time of submission. Failure to provide this information may lead to an automatic refusal. Further information relating to the River Lambourn Special Area of Conservation which is in unfavourable condition as a result of excess phosphates, can be found online: <https://www.westberks.gov.uk/phosphates-nutrient-neutrality>

The introduction of 10 additional mobile home pitches will increase sewerage output in the area so this matter must be taken into account in any application submitted.

Trees protection

It has been identified that existing trees may be affected by the development, therefore the following information should therefore be provided to support any formal application:

- Tree survey in accordance with BS5837:2012
- Tree constraints plan
- Arboricultural implications assessment
- Details of proposed tree protective fencing, including type, layout (on a plan), informed by the above assessments
- Indicative landscaping proposals

Other planning policy considerations. Need and provision of pitches across the District looking forward over the Plan period.

Consultation on the Submission version of the Local Plan Review (LPR) (Regulation 19) is due to start on 20th January, and ending on Friday 3rd March. This follows on from the Emerging Draft version of the Local Plan (Regulation 18). A site is allocated for Gypsy and Travellers, at Paices Hill, Aldermaston, for 8 pitches as recommended in the GTAA. This would seek to address most of the short term need. As no sites were promoted to the Council the Local Plan Review does not allocate any other sites, and will prepare a Gypsy and Traveller Accommodation Development Plan Document. Work will start in early 2023, with evidence gathering, and ultimately will be planned for adoption by 2027. This will seek to address the long term need, as well as updating the GTAA.

Policy DM20 in the Submission version of the LPR is relevant for all gypsy and traveller sites, and contains a number of criterion used to assess planning applications. The weight to attach to the policy itself is still limited, and therefore cannot be relied at this stage. The LPR does show the direction of travel and Policy DM20 includes a summary of need, as outlined below.

As the Council will be preparing a Gypsy and Traveller Accommodation Development Plan Document to seek to allocate sites for gypsy and travellers, the applicants could seek to promote the Ermin Street site through this process. It is likely that there will be call-for-sites, although the timetable for this is not currently known due to the work leading up to the LPR consultation which has taken priority.

Gypsy and Traveller and Travelling Showpeople Accommodation Assessment (GTAA) (2021 refresh)

The GTAA 2021 provides an update to the 2019 version, to understand an updated 5 year supply position. The GTAA identifies a ‘cultural’ need and a ‘PPTS’ need (PPTS is the Planning Policy for Traveller Sites document produced by Central Government). An overall ‘cultural’ need for pitches looks at the overall need for the Travelling community and takes into account the Human Rights Act 1998, the Equalities Act 2010 and the Housing and Planning Act 2016 section 124. A PPTS filter is then applied to identify the level of need associated with those households meeting the definitions set out in the PPTS Annex 1. The needs arising from the PPTS analysis establishes the level of need under which a 5 year land supply is assessed.

The following table is from the GTAA 2021, and provides a breakdown of the cultural need, and then applies the PPTS policy filter to provide the PPTS need.

Table ES1 Plan period Gypsy and Traveller pitch need 2021/22 to 2037/38		
	Cultural need	Of which: PPTS need
5yr Authorised Pitch Shortfall (2021/22 to 2025/26) (A)	13	9
Longer-term need		
<i>Over period 2026/7 to 2030/31 (B)</i>	5	3
<i>Over period 2031/32 to 2035/36(C)</i>	9	6
<i>Over period 2036/37 to 2037/38(D)</i>	3	2
<i>Longer-term need TOTAL to 2037/38 (13 years) E=(B+C+D)</i>	17	11
NET SHORTFALL 2021/22 to 2037/38 (A+E) (17 years)	30	20

The Council have allocated a site at Paices Hill as part of the Housing Site Allocations Development Plan Document (Policy TS1), to convert 8 of the 16 transit pitches to permanent pitches, which now benefits from planning permission. This policy is proposed to be carried forward in the Local Plan Review. Thus, 8 of the 9 permanent pitches needed in the 5 year period to 2025/26 are accounted for in terms of allocations. The Council are seeking to redevelop another site in the District for 17 pitches. Thus, the additional pitch enables the Council to demonstrate that it has a 5 year supply of Gypsy and Traveller sites. This was confirmed by a recent appeal decision for a Gypsy and Traveller pitch on land at Ermin Street, Lambourn (reference APP/W0340/W/22/3292939 21/02045/FUL). The permitted site at Ermin Street further increases the supply by one additional pitch.

Demonstrating a 5 year supply is an important requirement for the Council, as set out in the PPTS. However, meeting that need is not a planning reason for preventing unallocated sites coming forward which would mean that the short term supply exceeds the short term need. As the above table illustrates there is an overall need in the plan period for 30 pitches, or 20 pitches in applying the PPTS filter, or 20 pitches, or 10 pitches in applying the PPTS filter, taking into account the planned 8 pitches at Paices Hill, Aldermaston, the additional 17 pitches at the site noted [not currently in the public domain] and permitted pitch on land at Ermin Street. This proposed site at Ermin Street Stables would therefore meet the longer term need, when measured against the PPTS need. This weighs in favour of the scheme, though needs to be balanced against the assessment of the scheme against the relevant planning policies.

Conclusion on planning merits

Overall the proposed scheme needs significant development in regards to its layout and design. There are many technical reports that will be required to justify the developments impact. Following on from these the Council is concerned that the proposed development is in a highly un-sustainable location with a potential 10 families isolated from communities and requiring to use the private car whenever they need to leave the site. The Council is also concerned for potential future occupiers in regards to noise from the M4 and concerned with the disturbance to Middle pond from noise and overlooking. I note that the application form states that you currently have a home but that it would not be big enough. These personal circumstance will not automatically justify the harm the Council has identified above.

However the “advantages” of the proposal is that *if* the application were approved it would provide additional pitch capacity across the District over the Plan period, and the site is visually relatively well self contained and is may therefore not result in harm to the wider AONB.

Disclaimer and scope of response

Whilst our pre-application advice is made in good faith and every effort is made to ensure it is accurate, please note that these preliminary comments are made at officer level only, based on the professional judgement of officers and the information that has been provided at this stage. These comments are made without prejudice to any future comments, discussions, submissions or decisions, as there is no way that officers can prejudge the final outcome of any application that may be submitted. The comments on these issues have been made without consideration of any representations of interested parties that may be received during the consideration of any forthcoming application. Elected members of the planning committee are also not necessarily bound to follow the advice of planning officers, particularly where matters of planning judgement are to be exercised. These comments are made in light of the current planning policy position. Please be aware that there may be

subsequent changes to relevant policies, regulatory controls or guidance, which would need to be taken into account if they occur before a formal decision is made.

Making an application

You have requested planning pre-application advice, which is an optional and informal service offered by the Council to identify the main issues which are likely to be raised in a formal submission. This letter does not constitute a formal decision of the Council. If you wish to proceed with the development, you will need to make a formal application. You can apply online at www.planningportal.gov.uk. Alternatively, all application forms are available to download from the Council's website (www.westberks.gov.uk/planning). The application forms are accompanied by guidance notes which explain what information is required to be submitted. Please also refer to the published Local List for details of possible submission requirements.

I trust the above is helpful advice, but if you have any queries you may contact the planning officer below.

Yours sincerely

Michael Butler
Principal Planning Officer
Development and Regulation

West Berkshire Council,
Market Street, Newbury, RG14 5LD
01635 519583
Michael.butler@westberks.gov.uk |
www.westberks.gov.uk

ANNEX – PROCEDURAL ADVICE

This annex provides procedural advice which may be of assistance should you proceed to submit a formal application. It is given without prejudice to the pre-application advice on the merits of the proposal.

Community engagement

The Framework strongly encourages applicants to engage with the local community before submitting their applications. Applicants will be expected to work closely with those directly affected by their proposals to evolve designs that take account of the views of the community. Proposals that can demonstrate this in developing the design of the new development should be looked on more favourably. It is therefore advisable to discuss the proposals with any neighbours, or other parties, which may be affected by the development.

EIA

Given the scale and complexity of the proposal, it appears that the proposal may constitute 'EIA development' under the terms of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. I therefore recommend that you request a screening opinion from the Local Planning Authority to ascertain whether an Environmental Statement would be required before submitting any planning application.

Plans and drawings

As a minimum, applicants will need to submit a 'location plan' that shows the application site in relation to the surrounding area. Additional plans and drawings will in most cases be necessary to describe the proposed development, as required by the legislation (see [article 7\(1\)\(c\)\(ii\) of the Town and Country Planning \(Development Management Procedure \(England\) \(Order\) 2015](#)). These may be requested by the local planning authority through their local list of information requirements, where it is reasonable to do so. The Council's local list is available from this webpage: <http://info.westberks.gov.uk/planningforms>

Any plans or drawings must be drawn to an identified scale, and in the case of plans, must show the direction of north. Although not a requirement of legislation, the inclusion of a linear scale bar is also useful, particularly in the case of electronic submissions. **Please note that any “do not scale” or similar disclaimers will not be accepted and may delay validating your application.**

A location plan should be based on an up-to-date map. The scale should typically be 1:1250 or 1:2500, but wherever possible the plan should be scaled to fit onto A4 or A3 size paper. A location plan should identify sufficient roads and/or buildings on land adjoining the application site to ensure that the exact location of the application site is clear.

The application site should be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (for example, land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings). A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site.

Ownership and validation

A certificate which applicants must complete that provides certain details about the ownership of the application site and confirms that an appropriate notice has been served on

any other owners (and agricultural tenants). The forms of notice are in [Schedule 2 to the Town and Country Planning \(Development Management Procedure \(England\) \(Order\) 2015](#). The ownership certificates are at the end of all application forms.

An application is not valid, and therefore cannot be determined by the local planning authority, unless the relevant certificate has been completed. It is an offence to complete a false or misleading certificate, either knowingly or recklessly, with a maximum fine of up to £5,000.

The ownership certificates ensure that the owners of land, tenants with at least 7 years to run on their tenancies, and all agricultural tenants are informed that a planning application is being made. In order to validate an application for planning permission, local authorities have to be in possession of one of the following:

- Certificate A: signed by or on behalf of the applicant stating that up to 21 days prior to the submission of the application the applicant was the owner of the land.
- Certificate B: signed by or on behalf of the applicant indicating that notice has been served on the owner of the land. The certificate should include; (i) the names of the persons, (ii) the addresses at which notice of the application was given to them respectively, and (iii) the date of the service of the notice.
- Certificate C: stating that not all owners' names and addresses are known to an applicant after a process of attempting to identify them including the publishing of the notice in a local newspaper.
- Certificate D: stating that an applicant, after taking all reasonable steps to identify the owner of the land, has been unable to ascertain any owner's names.

It should be noted that the legislation is explicit that informing the owner of land about an application by means of electronic communications does not constitute giving "requisite notice". Copies of the standard notice can be downloaded from the Council's website: <http://info.westberks.gov.uk/planningforms>

Please note that all owners of land within the application site (outlined in red) must be notified of the application in the prescribed manner before submission, unless the applicant is the sole land owner. This could include serving notice on personal/business partners, and/or businesses owned by the applicant that are not named as applicants.

If the site incorporates any land under the ownership of the local highways authority, requisite notice should be served on the Head of Highways & Transport, West Berkshire Council, Market Street, Newbury, RG14 5LD. If the site incorporates any unregistered land, then all reasonable steps to identify the owner of the land must have been carried out, and Certificate D completed accordingly.

This advice is given because many planning applications are found to be invalid, often late in the application process, because the applicant has failed to serve the correct notice on any other land owners. In such an instance the application would be rendered invalid as the certification requirements were not complied with, and therefore the application would be returned with no further action to be taken by the authority. A fresh, valid application, and certification, would then need to be submitted. It is therefore strongly recommended that any notification requirements and the ownership certificates are carefully completed before submitting the application. It may be advisable in some cases to undertake a Land Registry

search of the application site to ensure that the correct notice and certification is undertaken before making an application.

Delegated authority

Most applications are determined by planning officers under 'delegated authority' from the Council. However, in some instances applications will be referred to the area planning committee for a decision (e.g. level of objection, call-in by local councillor). The planning committee consists of elected local councillors. In the event that your application must be determined by the area planning committee, you will be notified and given full details of the arrangements, including an opportunity to make representations direct to the committee.

Community Infrastructure Levy

Community Infrastructure Levy (CIL) is a levy charged on most new development within the local authority area. The money is used to pay for new infrastructure required as a result of the new development. This infrastructure can be wide-ranging, including schools, road schemes, health facilities and sports and leisure facilities.

The rates for West Berkshire are set out in the CIL Charging Schedule, and will be charged on residential (C3 and C4) and retail (A1 - A5) development. The following types of development may be liable for CIL:

- Any new dwellings (including replacement dwellings), regardless of their size
- New building (such as extensions) where the gross new build floor area comes to more than 100 square metres
- A change of use from non-residential use, when the building in question has not been occupied in its lawful use for a continuous period of six months in the previous three years (the end point of the three years is taken from the date on which Planning Permission is granted)

The Council's [Local List of Documents](#) sets out the documents required to be submitted for certain application types. It details the additional information that must be provided for developments that may be liable for CIL. If your application is, or may be, liable for CIL please complete and submit the appropriate [CIL forms](#) in accordance with the Local List of Documents. Failure to submit all the required information will render the application invalid and may cause delays.

More information of the Council's CIL is available online: www.westberks.gov.uk/cil.

Reports to be submitted if an application is submitted.

Design and access statement.
Planning assessment particularly relating to need.
Transport/sustainability statement.
LVIA
Acoustic statement.
Phase 1 ecology assessment.
Nutrient neutrality assessment and potential mitigation.

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

Claim No. KB-2023-004501

IN THE MATTER

B E T W E E N : -

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

- (1) MR THOMAS STOKES**
- (2) PCS HOMEBUILD LTD**
- (3) MR PAUL CHRISTOPHER SMITH**
- (4) PERSONS UNKNOWN**

Defendants

**THIS IS THE EXHIBIT MARKED 'NJW7' REFERRED TO IN THE
WITNESS STATEMENT OF NEILL WHITTAKER**

Appendix 1 – Initial Site Visit Report from FW

Ermin Street Stables, Ermin Street, Lambourn Woodlands, RG17 7BL

Unannounced Site Visit on Friday 8th September 2023 – FW and BD in attendance.

Report on engagement with Mr Thomas Stokes, Landowner

FW received a phone call from WBC customer services with a person requesting to speak to Planning Enforcement. The call was from the owner of Middle Pond, Ermin Street, Lambourn Woodlands, RG17 7BL to advise that they had concerns over activities taking place on the land behind the property.

A brief history was given over the phone to advise that the land was sold to Mr Thomas Stokes on 30th September 2022 (but Land Registry was not yet up to date). A covenant was placed on the field stating that the field could only be used for equestrian / agricultural purposes.

Overnight, a campervan arrived on site, along with a pile of post and rail fencing and children were racing their quad bikes around the area which was 'leisure' and not in accordance with the covenant. Concern was raised that there was a potential breach of planning law with regards to change of use.

FW called CW / BD via Teams to advise that this was a concern and the large quantity of post and rails sounded similar to what happened at Hermitage when a number of paddocks were erected before the caravans moved in. It was agreed that an unannounced site visit would be conducted by FW and BD with the purpose to assess the situation and take photographs of the site. FW and BD met in Lambourn Village and travelled to the site in one car.

Upon arrival, it was noted that there was activity on the site, including a digger and quad bikes. FW and BD walked around Middle Pond along the track to the land to the south and east of Middle Pond and were met with Thomas Stokes on a digger and two boys on quad bikes.

Thomas turned off the digger, asked for the quad bikes to be switched off and came to greet us both. We introduced ourselves and advised that we were on a visit to see what activity was occurring and to check that it was within planning control.

Thomas informed us of his plans to keep horses for his children in the paddock and to re-build the dilapidated stables so they can be used again as stables. He asked if we had been sent due to a complaint and nodded in the direction of Middle Pond. Both BD and FW stated that we were there as a check-up only and did not disclose the phone call received this morning.

He re-iterated this this was all being done for his family. He continued to chat amicably regarding the plans and said that he had had a visit before from 'Rebecca' from 'Newbury Council' and I assumed he was referring to Rebecca Ali, Principal Planning Enforcement Officer who left her position and the Authority on 23rd June 2023. I knew that Rebecca had previously had cases involving Thomas Stokes which confirmed to me that this was the same Rebecca he was talking about.

FW asked what the post and rail fencing was for (as the paddock was already well enclosed and the remainder of the field with the dilapidated stables in it was also well enclosed. He didn't really answer that and just said about securing the horses.

Thomas was happy for us to take photos of the area, and me and BD took a number of photos between us.

Thomas re-iterated that he wanted to work with us and was keen to engage, he does have a live planning application at 'Mayfair', Bath Road, Beenham and this is due to be decided on soon.

Appendix 2 – Initial Site Visit Photos







IN THE HIGH COURT OF JUSTICE

Claim No. KB-2023-004501

KING'S BENCH DIVISION

IN THE MATTER

B E T W E E N : -

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

- (1) MR THOMAS STOKES**
- (2) PCS HOMEBUILD LTD**
- (3) MR PAUL CHRISTOPHER SMITH**
- (4) PERSONS UNKNOWN**

Defendants

**THIS IS THE EXHIBIT MARKED 'NJW8' REFERRED TO IN THE
WITNESS STATEMENT OF NEILL WHITTAKER**





















IN THE HIGH COURT OF JUSTICE

Claim No. KB-2023-004501

KING'S BENCH DIVISION

IN THE MATTER

B E T W E E N : -

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

- (1) MR THOMAS STOKES**
- (2) PCS HOMEBUILD LTD**
- (3) MR PAUL CHRISTOPHER SMITH**
- (4) PERSONS UNKNOWN**

Defendants

**THIS IS THE EXHIBIT MARKED 'NJW9' REFERRED TO IN THE
WITNESS STATEMENT OF NEILL WHITTAKER**

Mr Stokes
Mayfair Caravan Site
Bath Road
Beenham
Berkshire
RG7 5QE

**Public Protection Partnership
Environmental Health and Licensing
West Berkshire Council
Civic Offices
Market Street,
Newbury, Berkshire RG14**

05 June 2023

Please ask for: Mary Glomé
Direct Line: 01635 519 932
Fax: 01635 519172
e-mail: Mary.glome@westberks.gov.uk

Dear Mr Stokes

**Caravan Sites and Control of Development Act 1960 (as amended)
Mobile Homes Act 2013
Address: Mayfair Caravan Site, Bath Road, Beenham, Reading RG7 5QE**

I refer to my visit at the above address on Wednesday 12th April 2023 and my subsequent discussions with you.

During the visit on 12th April 2023 it was established that the site known as Mayfair does not have a caravan site licence as required by The Caravan Sites and Control of Development Act 1960. We also identified a number of people occupying 5 additional mobile homes located on site. These caravans were being used as residential homes. As the site was not licenced it is alleged that this amounts to an offence under Part 1 of the Caravan Sites and Control of Development Act 1960 (as amended) and The Mobile Home Act 2013. **This matter remains under investigation and an investigating officer will be in contact with you in due course.**

Furthermore and as previously discussed, the caravans observed on site are positioned too close together. The spacing standards as given in the Model Standards 2008 state caravans must not be less than 6 metres apart for fire safety reasons. The three caravans observed (one being marked 248) were measured at less than 2 metres apart thus compromising fire safety of any occupant(s).

My understanding is that the tenants that left their properties on the 12th April 2023 have now returned indicating that you may still be in breach of the above mentioned legislation. Given the concerns set out above this site needs to be brought into compliance by holding

the relevant planning permission and site licence or reverting to a site not caught under the provisions of the above legislation and in accordance with the existing planning conditions.

In light of the above please can you set out within seven days what steps you are taking to achieve compliance with the relevant legislation and planning permission. I would remind you that as things stand (and assuming the caravans are occupied) that on-going offences may be being committed.

If you have any queries regarding this matter, please contact me.

Yours sincerely

A Ewins

PP

Mary Glomé
Principal Environmental Health Officer
Public Protection Partnership

Cc: Trading Standards & Planning Enforcement

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

Claim No. KB-2023-004501

IN THE MATTER

B E T W E E N : -

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

- (1) MR THOMAS STOKES**
- (2) PCS HOMEBUILD LTD**
- (3) MR PAUL CHRISTOPHER SMITH**
- (4) PERSONS UNKNOWN**

Defendants

**THIS IS THE EXHIBIT MARKED 'NJW10' REFERRED TO IN THE
WITNESS STATEMENT OF NEILL WHITTAKER**























**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

Claim No. KB-2023-004501

IN THE MATTER

B E T W E E N : -

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

- (1) MR THOMAS STOKES**
- (2) PCS HOMEBUILD LTD**
- (3) MR PAUL CHRISTOPHER SMITH**
- (4) PERSONS UNKNOWN**

Defendants

**THIS IS THE EXHIBIT MARKED 'NJW11' REFERRED TO IN THE
WITNESS STATEMENT OF NEILL WHITTAKER**

WS Planning and Architecture
Mr Spencer Copping
5 Pool House
Bancroft Road
Reigate
Surrey
RH2 7RP

Applicant:
Mr Stokes

PART I - DETAILS OF APPLICATION

Date of Application

14th June 2023

Application No.

23/01425/FUL

THE PROPOSAL AND LOCATION OF THE DEVELOPMENT:

Demolition of existing stables, and provision of additional 4 Gypsy/Traveller pitches at existing 1 Pitch Gypsy/Traveller site, accommodating a net increase of 4 Static Caravans and 4 touring caravans.

Mayfair, Bath Road, Beenham, Reading RG7 5QE

PART II - DECISION

In pursuance of its powers under the Town and Country Planning Act 1990, West Berkshire District Council REFUSES planning permission for the development referred to in Part I in accordance with the submitted application form and plans, for the following reason(s):-

1. Impact to Local Highways Network

The proposed development is considered to not comply with Core Strategy Policies CS7 and CS13 of the development plan. The increased number of units on site would generate more vehicular movements. There would be an increase in towed vehicle movements to and from the site given different families would travel at different times of the year. The towing vehicles would have to wait on the A4 to move into the site due to the location of the gated access. Vehicles must not stop on the A4 due to its importance as a transport link and diversion route if the M4 is closed. The development therefore fails to mitigate the impact on the local transport network and the strategic road network. Waiting on a busy A road to turn could increase incidences of car accidents and would therefore not promote safe travel.

The development fails to show appropriate swept paths can be achieved for the site for towed vehicles.

The proposed development is considered to conflict with Core Strategy Policies CS7 and CS13 and could lead to impacts on the local Highways network and issues of highways safety. The development also fails to comply with policy CS 7 by not providing safe and easy access to major roads and public transport services.

2. Government Pipeline and Storage System (GPSS)

The GPSS Pipeline System has an easement of 3.1 meters either side of the pipeline, which runs east to west across the northern boundary of the site, creating a 6.2-meter-wide easement to facilitate the maintenance of the pipeline. The proposals encroach on this strip in the northwest half of the site. Concerns are raised surrounding the two Mobile homes and four touring caravans within this area on the plans.

The building of property, or instillation of structures which may impede access to the high-pressure aviation fuel pipelines, regardless of the quantity of groundworks to be done on site, is very much against the operating principles in this case and creates an unacceptable degree of risk.

The site plan places caravans in such a way as to obstruct access by excavators or other associated maintenance equipment from getting to the pipeline from the direction of the A4/ Bath Road in the event of an emergency. This is risks extending the repair process in the event of damage to the pipeline.

This would not only put the GPSS pipeline system at risk but also future residents of the site at risk if anything was to fail with the pipeline. The development would conflict with the National Planning Policy Frameworks and Core Strategy Policy CS14 objectives in regard to creating high quality and safe environment for future occupants, it would not make a positive contribution to the quality of life in west Berkshire given the health and safety implications of building and restricting access for maintenance to necessary infrastructure.

3. Lack of Information Noise

The proposed site is located adjacent the busy A4, and close to Aldermaston Railway Station and railway line and Marley Tile works, gravel pit and Porsche.

The application is considered to lack sufficient information in regard to Noise Impacts to potential future residents from the above noise sources. Policy OVS.6 notes that noise sensitive development should have regard to existing sources of noise and have appropriate sound insulation levels. Core Strategy Policy CS14 notes that new development must demonstrate high quality and sustainable design that respects and enhances the character and appearance of the area and makes a positive contribution to the quality of life in West Berkshire. Good design relates not only to the appearance of a development, but the way in which it functions.

The proposed development does not have sufficient information in regard to the noise impacts from the surrounding uses to determine whether future occupiers which have a sufficient quality of life.

4. SUDS

No surface water drainage details have been provided. Given the application is retrospective in nature as some of the caravans are already present on site this information would need to be secured during the course of the application and could not be left to conditions. Core Strategy Policy CS16 and Housing Site

Allocations Development Plan Document Policy TS3 requires that on all development sites, surface water will be managed in a sustainable manner through the implementation of Sustainable Drainage Methods. The application lacks specific detail on SuDS and therefore conflicts with Core Strategy Policy CS16 and Housing Site Allocations Development Plan Document Policy TS3..

5. Lack of Information Trees

Core Strategy Policy CS17 notes that Biodiversity and geodiversity assets across West Berkshire will be conserved and enhanced.

The application would require an increased hardstanding within the site which would be closer to trees internally and externally. Those include nearby mature Poplar trees to the NE border which act as screening to the adjacent site. The NE boundary fence is already very close to one or two of these. Any increase in hardstanding is likely to fall within the root protection area of these trees. If the ground is cut and new hard surfacing installed, this could significant implications on the Root Protection Areas (and potentially structural roots) of those trees. An Arboricultural report in line with BS 5837:2012 to be carried out in order to properly understand the implication of the development for offsite trees.

The lack of Arboricultural survey mean the LPA lacks sufficient information and to whether the biodiversity of the site and boundaries would be conserved.

6. Lack of Information Ecology

Housing Site Allocations Development Plan Document (HSA DPD) Policy TS3 requires proposed development to provide the following

- o Provide an extended phase 1 habitat survey together with further detailed surveys as necessary.
- o Provide appropriate mitigation to offset impact on key species and habitats.
- o Provide a design, layout and siting plan for development.

Core Strategy Policy CS17 notes that Biodiversity and geodiversity assets across West Berkshire will be conserved and enhanced.

No ecology assessment has been provided as part of this application. The planning statement refers to the previous inspectors' conclusions however, these are nearly 10 years old at the time of writing. HSA DPD Policy TS3 requires an extended phase 1 habitat survey amongst other aspects to address the ecology of the site. The proposed development therefore lacks sufficient information to determine the impact on the biodiversity of West Berkshire. It lacks the required information to determine if biodiversity is conserved and enhanced in accordance with Core Strategy Policy CS17 and does not accord with HSA DPD TS3.

7. Site Layout

With regards to licensing for a caravan site each mobile home must be a minimum of 6 metres from any other mobile home or any other structures on site, and that any caravan or mobile home must be a minimum of 2m from any internal site roadway and 3m from any site boundary in order to be granted a caravan site licence. Although licensing is separate from the planning process this is considered in the

context of being 'well designed' and 'appropriately located'. Core Strategy Policy CS14 advocates a high quality of life, where development will be expected to create safe environments. The Licensing requirements are based on protection of caravans from fire spreading. There is also a need to create well designed sites that preserve internal amenities within the site.

The development would not adhere to Core Strategy Policy CS14 which advocates a high quality of life, where development will be expected to create safe environments because the site might fail to achieve a license and therefore fail to achieve a base line for fire safety. This it is not considered to create a safe environment in respect of the provisions of Core Strategy Policy CS14.

If you require further information on this decision please contact the Council via the Customer Call Centre on 01635 519111.

INFORMATIVE:

1 In attempting to determine the application in a way that can foster the delivery of sustainable development, the local planning authority has approached this decision in a positive way having regard to Development Plan policies and available guidance to try to secure high quality appropriate development. In this application whilst there has been a need to balance conflicting considerations, the local planning authority has also been unable to find an acceptable solution to the problems with the development so that the development can be said to improve the economic, social and environmental conditions of the area.

Decision Date :- 12th October 2023

Bob Dray
Interim Development Control Manager

TOWN AND COUNTRY PLANNING ACT 1990

Notification to be sent to an applicant when a local planning authority refuse planning permission or grant it subject to conditions

Appeals to the Secretary of State

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.
- If you want to appeal against the local planning authority's decision then you must do so within 6 months of the date of this notice.
- Appeals must be made using a form which you can get from the Planning Inspectorate at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or online via <https://www.gov.uk/appeal-planning-decision>.
- The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to him that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based their decision on a direction given by him.

Purchase Notices

- If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.
- In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

Claim No. KB-2023-004501

IN THE MATTER

B E T W E E N : -

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

- (1) MR THOMAS STOKES**
- (2) PCS HOMEBUILD LTD**
- (3) MR PAUL CHRISTOPHER SMITH**
- (4) PERSONS UNKNOWN**

Defendants

**THIS IS THE EXHIBIT MARKED 'NJW12' REFERRED TO IN THE
WITNESS STATEMENT OF NEILL WHITTAKER**

ATTENDANCE NOTE

File No.: 009141

Date: 22 October 2023

Subject: Rex (West Berkshire District Council v Thomas Stokes)

BV attending Reading Magistrates' Court (Court 6) on Friday 20th October 2023.

Discussions prior to the Court Hearing

Thomas Stokes attended Court and BV had a discussion with him before the Court hearing. Thomas Stokes had asked to see the duty solicitor but had been advised by the clerk that as the offence was non-imprisonable he was very unlikely to be entitled to see the duty solicitor.

BV asked Thomas Stokes if he wanted to instruct a solicitor in relation to this matter. He confirmed that he wanted to get the matter done and sorted today and that he didn't want to instruct a solicitor.

BV explained that if he wanted to adjourn today's hearing to seek independent legal advice that would be fine from our point of view because the papers were only served on the 13.10.2023. Thomas Stokes confirmed he did not want to do this, and he was happy to have a discussion with BV ahead of the court hearing. BV explained that if he wanted to get the matter dealt with today, he would need to plead guilty and explained the difference between pleading guilty and not guilty and what the procedure was.

Thomas Stokes confirmed that he would be pleading guilty today. He said that he had been a bit disappointed with how the Council had treated him – he said that Mary Glome had said that we would work with him, and he had taken out the middle caravan and then he had received the Court Paperwork. He also explained that he was no longer going to operate as a caravan site and that he would need around a month to move everyone out of the caravans. **Thomas Stokes made it clear that he didn't want to be contacted by anyone at the Council – he just wanted time to move everyone out of the caravans. BV explained that she would report this back to officers.**

Court Hearing

Thomas Stokes pleaded guilty to the offence – Mr. Stokes had said he just wanted to get the matter out of the way.

The legal advisor explained we would hear the facts and if there was any issue, we could deal with it because he had an opportunity to put forward his version of events.

BV read out the statement of facts but did not mention the names of the individuals in the caravans because she didn't feel this was necessary – she kept it vague and mentioned "a couple and family etc". BV explained the aggravating features of the case (vulnerable people, risks to health and safety, offence committed knowingly) but also acknowledged that Mr. Stokes had pleaded guilty at the first opportunity. It was also a continuing offence.

BV made an application for costs as set out in the statement of facts.

Mr. Stokes provided his mitigation. He explained that the site did have a gypsy traveller licence but there were 5 caravans on the site. He had been informed by Mary Glome that they could come to some agreement, and he moved the middle caravan. A gentleman named Brian Woods had submitted a

planning application for him at a cost of £3,000 for two caravans. He had told Brian about the interview under caution and the subsequent prosecution, and he had told him that there was nothing they could do about it, and he hadn't heard anything further. He has three caravans, and he wants them to go. The man and woman who had left went to a hostel and when they found out there was a two- year waiting list for a house they had come knocking on his door again. He doesn't like anyone to be on the streets. They had a lovely home – new patios, gas everything they could want. He found the Council officers a little bit rude. He wasn't insulting anyone, he has pleaded guilty, and he will move everyone out of the site.

There was then some deliberation by the magistrates' court about the guilty plea because Mr. Stokes had mentioned about the gypsy traveller licence and BV confirmed there was no caravan licence in relation to the site and the offence was operating a caravan site without a licence.

The Magistrates' decided to accept the guilty plea.

The Magistrates' asked the Defendant about his income. He explained that he has a lot of bills and has had a health problem for two years. He gets an income from the caravans but not anymore. He confirmed that he was not paying benefits. He was just about keeping his head above water.

Sentence:

Fine = £600 (this would have been £900 but he pleaded guilty)

Statutory sur-charge - £240

No order was made for costs due to the Defendant's limited means; they were uncertain about income and therefore they didn't think it was appropriate to make an order for costs.

A Collection Order was made for enforcement purposes and the whole amount is due within 28 days.

Discussion after the Court Hearing

BV informed Sean Murphy about what the Defendant had said about moving people off the caravan site within a month of the court hearing and that he didn't want to be contacted by officers. Sean confirmed that he would let Housing know and confirmed that this was a good result – it was a continuing offence and wouldn't have stopped without the prosecution.

Beth Varcoe

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

Claim No. KB-2023-004501

IN THE MATTER

B E T W E E N : -

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

- (1) MR THOMAS STOKES**
- (2) PCS HOMEBUILD LTD**
- (3) MR PAUL CHRISTOPHER SMITH**
- (4) PERSONS UNKNOWN**

Defendants

**THIS IS THE EXHIBIT MARKED 'NJW13' REFERRED TO IN THE
WITNESS STATEMENT OF NEILL WHITTAKER**

WISCONSIN LEASE TERMINATION

28-Day Notice to Vacate

30.10.2023

To: GRAY STEPHANIK

Rental Address: 174 FAIR BATH ROAD 2975QE

YOU ARE HEREBY NOTIFIED THAT, under the terms of: (Check one)

- Your tenancy (if no original agreement)
- The Lease Agreement dated _____, 20__
- The Rental Agreement dated _____, 20__
- The Residential Lease Agreement dated _____, 20__
- Other: _____

(the "Lease") for the rent and use of the premises listed above now occupied by you:

YOUR MONTH-TO-MONTH TENANCY WILL BE TERMINATED IN TWENTY-EIGHT (28) DAYS FROM THE DATE OF DELIVERY OF THIS NOTICE. You therefore must deliver possession of the premises to me on such date. You are further notified that unless you vacate the premises by such date, legal action may be initiated against you.

THIS NOTICE IS PROVIDED TO YOU IN ACCORDANCE WITH THE LEASE AND WISCONSIN STATUTES 704.19(3). NOTHING IN THIS NOTICE IS INTENDED OR SHALL BE CONSTRUED AS A WAIVER BY THE LANDLORD OF ANY RIGHTS OR REMEDIES THE LANDLORD MAY HAVE UNDER THE LEASE OR UNDER STATE OR FEDERAL LAW.

[Signature]
Signature

30.10.23
Date

Landlord's Contact Information:

Name: Thomas STOKES
Address: 174 Fair Bath Road 2975QE
Phone Number: 0757114432

WISCONSIN LEASE TERMINATION

28-Day Notice to Vacate

01.11.2023

To: Mr David Ezeugo

Rental Address:
Mayfair North Road
Q975Q6

YOU ARE HEREBY NOTIFIED THAT, under the terms of: (Check one)

- Your tenancy (if no original agreement)
- The Lease Agreement dated _____, 20__
- The Rental Agreement dated _____, 20__
- The Residential Lease Agreement dated _____, 20__
- Other: _____

(the "Lease") for the rent and use of the premises listed above now occupied by you:

YOUR MONTH-TO-MONTH TENANCY WILL BE TERMINATED IN TWENTY-EIGHT (28) DAYS FROM THE DATE OF DELIVERY OF THIS NOTICE. You therefore must deliver possession of the premises to me on such date. You are further notified that unless you vacate the premises by such date, legal action may be initiated against you.

THIS NOTICE IS PROVIDED TO YOU IN ACCORDANCE WITH THE LEASE AND WISCONSIN STATUTES 704.19(3). NOTHING IN THIS NOTICE IS INTENDED OR SHALL BE CONSTRUED AS A WAIVER BY THE LANDLORD OF ANY RIGHTS OR REMEDIES THE LANDLORD MAY HAVE UNDER THE LEASE OR UNDER STATE OR FEDERAL LAW.

[Signature]
Signature

01.11.2023
Date

Landlord's Contact Information:

Name: Theresa Stokes
Address: Mayfair North Road Q975Q6
Phone Number: 07577114432

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

Claim No. KB-2023-004501

IN THE MATTER

B E T W E E N : -

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

**(1) MR THOMAS STOKES
(2) PCS HOMEBUILD LTD
(3) MR PAUL CHRISTOPHER SMITH
(4) PERSONS UNKNOWN**

Defendants

**THIS IS THE EXHIBIT MARKED 'NJW14' REFERRED TO IN THE
WITNESS STATEMENT OF NEILL WHITTAKER**



Appeal Decision

Inquiry opened on 6 December 2022 and closed (in writing) on 6 April 2023

Site visit made on 5 December 2022¹

by David M H Rose BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th May 2023

Appeal Reference: APP/W0340/W/22/3292211

Land at Lawrences Lane, Thatcham, RG18 3LF²

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ms C Gumble against the decision of West Berkshire Council.
 - The application Reference 21/02112/FUL, dated 13 August 2021, was refused by notice dated 19 November 2021.
 - The development proposed is change of use to 7 no. Gypsy/Traveller pitches comprising 7 no. static caravans, 7 no. day rooms, 7 no. touring caravans, and associated works.
-

Decision

1. The appeal is dismissed.

Application for costs

2. At the Inquiry, an application for costs was made by West Berkshire Council (the Council) against Ms C Gumble (the Appellant). This application is the subject of a separate Decision.

Preliminary Matters

(i) The Inquiry

3. I opened the Inquiry on 6 December 2022 and, following opening submissions and appearances for Thatcham Town Council³ (the Town Council), I conducted two round table sessions on highways and transportation, and ecology.
4. On the morning of 7 December 2022, at an early stage in the round table discussion on drainage, the Appellant's expert witness sought to introduce further oral evidence, unsupported by documentation. This went to the nub of the Council's longstanding concerns about the lack of technical evidence to support the Appellant's proposition that it would be possible to achieve a technical solution which could be secured by condition(s).
5. I expressed concern about the manner in which the Appellant was seeking to evolve its case and the potential implications for adjournment and costs. I also indicated that I would need to be satisfied that any condition(s) would be capable of satisfying the recognised tests and, if not, the possible adverse implications for the planning balance.

¹ I made further unaccompanied site visits on 31 January and 7 March 2023

² Taken from the Application for Planning Permission (A subsequent unilateral undertaking identifies the postcode as RG18 9HS)

³ A Rule 6(6) Party

6. King's Counsel for the Appellant requested an adjournment to take instructions. On return, later in the morning session, a formal request was made for me to adjourn the Inquiry as other topics to be heard would be consequential on the revised drainage evidence that would be submitted.
7. The adjournment was not resisted by either the Council or the Town Council. The parties were asked to agree a timetable for the submission of further details; consultation as necessary; formal responses through Statements of Common Ground; and revised proofs of evidence in the event of failing overall agreement and withdrawal of the reason for refusal.
8. During the adjournment, a number of additional documents were submitted, including iterations of the Outline Sustainable Drainage Strategy, culminating in Issue 4⁴. A Statement of Common Ground followed, and the Council's Planning Proof of Evidence – Post Adjournment Update confirmed that the Council no longer intended to pursue drainage related matters set out in reasons for refusal 2 and 7. An updated co-ordinated site layout, Revision B⁵, includes the revised drainage arrangements, landscape strategy and arboricultural mitigation measures.
9. The Inquiry resumed on 1 February 2023, sitting for one day, to hear landscape evidence, in round table format, and the Council's case on need. The Inquiry was then adjourned, by prior arrangement, until 8 March when I heard planning evidence for the Council and the Appellant. On 9 March, four of the site residents and two interested persons gave testimonies.
10. Discussion on draft planning conditions and a draft unilateral undertaking, and closing submissions took place virtually on 14 March 2023. The Council's application for costs, and the Appellant's response, were tabled in writing supplemented by the Council's oral response on the same day.
11. I set a timetable for the amendment and completion of the unilateral undertaking (as further extended); and asked to be informed of the outcome of an Experimental Traffic Regulation Order, Lawrences Lane, following a meeting to be held on 16 March 2023.
12. The subsequent unilateral undertaking, which meets the relevant tests, is dated 14 April 2023⁶. Its principal purpose is to prevent the alienation, grant of any lease, or continuation/implementation of a previously approved equine use, in order to tie the appeal site with land in the same ownership for the purposes of landscaping and Biodiversity Net Gain.

(ii) Planning background

13. The development which is the subject of this appeal commenced on Friday 13 August 2021 when engineering operations, without the benefit of planning permission, were undertaken. The Council served a temporary stop notice and subsequently applied for, and was granted, an injunction⁷ pursuant to section 187B of the Act⁸ which, by consent, remains in place to prevent further breaches of planning control. In short, at the time of the Inquiry, the site had limited occupation (restricted by the injunction) and further works, or development, were precluded.

⁴ ID24 sets out the process leading to 'Issue 4' and related consultation

⁵ ID25

⁶ It is to be noted that the Undertaking 'Interpretation' erroneously refers to 'the Site' 'as land on the south-west side of Lawrences Lane' whereas the site is on the south-east side of that lane. Nothing turns on this error.

⁷ CD6.3

⁸ Town and Country Planning Act 1990 (as amended)

(iii) Reasons for Refusal

14. The Council's decision notice records nine reasons for refusal under the following broad headings: (1) inaccurate drawings; (2) principle of development; (3) substandard road; (4) substandard pedestrian access; (5) landscape and visual amenity; (6) neighbouring amenity; (7) drainage; (8) green infrastructure; and (9) trees.
15. Following the lodging of the appeal, amended and additional details were submitted and were the subject of formal consultation⁹. I am satisfied that no party is prejudiced as a result and these documents (as subsequently updated during the course of the Inquiry) should inform my consideration of the appeal.
16. The Council's ensuing revised statement of case¹⁰ confirmed that it was no longer pursuing the reasons relating to inaccurate drawings (1); substandard road (subject to incorporation of a passing place) (3); and trees (subject to conditions relating to the route and specification of pedestrian access) (9). With reference to Dr Ruston's second proof of evidence, it was confirmed that the decision had been taken to remove a proposed pedestrian access from the site on to Lawrences Lane.

Main Issues

17. At the opening of the Inquiry, the main issues were:
 - 1) the effect of the proposal on the character and appearance of the area;
 - 2) whether or not it has been shown that any adverse impacts on ecology, biodiversity and the natural environment would be adequately mitigated or compensated;
 - 3) would the proposed drainage strategy provide an effective means for the disposal of surface water from the site;
 - 4) whether the proposal would facilitate safe and suitable access;
 - 5) whether, or to what extent, the development complies with the development plan and national policy set out in Planning policy for traveller sites (PPTS) and the National Planning Policy Framework (the Framework); and
 - 6) whether there are material considerations, including unmet need for sites, and/or the personal circumstances of intended occupants, which outweigh any conflicts with the development plan and national policy and any other identified harm resulting from the appeal proposal.

Reasons

The first main issue: the effect of the proposal on the character and appearance of the area

18. The appeal site is located in open countryside as defined by Area Delivery Plan Policy 1 (ADPP1) of the West Berkshire Core Strategy (Core Strategy). In open countryside *'only appropriate limited development in the countryside will be allowed, focused on addressing identified needs'*

⁹ CD8.1 – CD8.9

¹⁰ CD10.1

19. Core Strategy Policy CS 7 (Gypsies, Travellers and Travelling Showpeople) indicates that applications for sites outside settlement boundaries must satisfy a number of criteria including: *'will not materially harm the physical and visual character of the area'*¹¹.
20. Policy TS 3 (Detailed Planning Considerations for Traveller Sites) of the Housing Sites Allocations Development Plan Document (DPD) contains a number of criteria including the provision of: *'appropriate landscaping proposals, retaining and incorporating key elements of landscape character into the site design'*; and *'a Landscape and Visual Impact Assessment (LVIA) in accordance with the Landscape Institute Guidelines for Landscape and Visual Impact Assessment 3rd ed. 2013. This will inform the development design and layout of the site and requirements for green infrastructure'*¹².
21. In turn, Core Strategy Policy CS 19 a) and b) (Historic Environment and Landscape Character) sets out that particular regard will be given to, amongst other things: *'the sensitivity of the area to change; and ensuring that new development is appropriate in terms of location, scale and design in the context of the existing settlement form, pattern and character'*. A further requirement is that *'proposals for development should be informed by and respond to: a) the distinctive character areas and key characteristics identified in relevant landscape character assessments'*. Policy CS 14 (Design Principles) also calls for new development to *'..... contribute positively to local distinctiveness and sense of place'*.
22. Finally, Core Strategy Policy CS 18 (Green Infrastructure) seeks to protect and enhance the District's green infrastructure and *'developments resulting in the loss of green infrastructure or harm to its use or enjoyment by the public will not be permitted'*.
23. Importantly, paragraph 25 of the PPTS anticipates the provision of sites in rural areas and in the countryside, subject to the qualification that *'local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan'*.
24. By way of record, the unauthorised development, related operations and the making of the planning application the subject of this appeal, took place without any prior assessment of landscape character and visual impact as required by Policies TS 3 (bullet 13) and CS 19 (Part 2) a).
25. Although the Appellant provided a landscape statement of evidence and subsequent addendum, I established that the Landscape and Visual Impact Assessment undertaken by the Council was effectively unchallenged, albeit the Appellant and the Council came to different judgements on the ability of the site to accommodate the development in both landscape character and visual terms and also the likely effectiveness and timescale for mitigation.
26. The most relevant assessment of landscape character is provided in the West Berkshire Landscape Character Assessment. The appeal site lies within character area WH4: Cold Ash Woodland and Heathland Mosaic. Notable characteristics include: steep and gentle undulating slopes; small streams; complex pattern of land cover; varied field pattern with strong hedgerows; a minor road network; an accessible landscape; and a quiet, intimate and secluded character¹³.

¹¹ CD7.2 Policy CS 7 bullet 8

¹² CD7.3 Policy TS 3 bullets 3 and 13

¹³ CD7.5 pages 177 - 179

27. The appeal site and its immediate surroundings exhibit many of these characteristics. Prior to development, the gently sloping site formed part of the open countryside, bounded by native trees and hedgerows, within a wider undulating, sometimes well-wooded, landscape. Lawrences Lane is a single track minor road, lightly trafficked, providing opportunity for recreation and linking with public rights of way, to the east and north, that provide long distance views.
28. Despite the site's proximity to the settlement edge, the intimate and well defined character of Lawrences Lane, topography, wider open land use and the absence of any built development to the north of Floral Way (east of Lawrences Way) and east of Lawrences Lane emphasise the inherent and distinct rural character of the site. In landscape terms, the appeal site is firmly embedded within the countryside landscape and it has no intrinsic association with, or comes under the influence of, the settlement.
29. In terms of the most marked landscape effects, the proposal would result in the introduction of significant development comprising up to seven static caravans, seven touring caravans, seven day rooms, extensive hard surfacing, incidental vehicles, domestic activity and paraphernalia, and elements of artificial lighting within an otherwise dark setting. There would be a resultant permanent loss of open grassland, an anomalous outlier development to the settlement, loss of tranquillity, and the erosion of the perceptual rural character of Lawrences Lane.
30. In combination, despite representing a small part of the character area, the proposal would denote a fundamental and wholesale adverse effect on the character of the appeal site, its local context and its contribution to the wider character area.
31. Turning to visual effects, the appeal site, to varying degrees, stands above the level of Lawrences Lane and parts of it are visually prominent. The roadside trees, often spindly and multi-stemmed, and some dying or dead, and scrub on the fluctuating depth of verge-side bank, offer some limited filtering of views.
32. Although my visits were confined to 'winter' months, I have no reason to doubt, at other times of the year, that the undeveloped rural nature of the site in general, prior to development and the erection of a continuous boarded fence on top of the bank, would have been unmistakably evident to those using Lawrences Lane.
33. These views would run from the south-western corner of the site, where there is a notable gap arising from overhead transmission lines and an electricity 'H' pole; along the western boundary of the site; and, inevitably, within the vicinity of the vehicular access and roadway into the site. Thereafter along Lawrences Lane, to the north, I noted one short stretch (looking back) where some elements of the unauthorised development could be seen.
34. More distant public views towards the site are available from three broad locations. Firstly along the public right of way between the telecommunications base station and Lawrences Lane, intermittent and elevated vantage points provide views towards the site. Here, the existing unauthorised development appears distinct and stark by comparison with the manner in which the nearest houses to the site, in Southend, are enfolded in the landscape and the remainder of Thatcham has no apparent presence.

35. From the farm drive, on the opposite side of the lane, the houses in Southend are more apparent. However, due to the angle of view, and severance by trees, the appeal site has a striking degree of separation from the edge of the built up area. The impression gained is one of a site within the countryside with no perceptible association with the recognisable settlement.
36. Moving on to the public right of way that runs from the farm drive to Floral Way, the appeal site has a marked presence from the first part of the route due to falling landform. Moreover, despite the presence of trees along the northern boundary of the site, elements of the existing unauthorised development are visible below their canopies.
37. Continuing along the route, and crossing to the opposite side of the hedge, although open views towards the site are largely inhibited by vegetation there are, nonetheless, areas where the hedge is incomplete. From these locations, despite the fold of the land, other vegetation, and an immediate backdrop of trees, constituents of the use are incongruous and intrusive in the wider landscape.
38. It is evident that views of the site are limited and localised. Nonetheless, the static caravans, aligned parallel with the roadside boundary, would, once the unauthorised fence is removed, provide an imposing and dominating impact on users of Lawrences Lane, passing the site. This would result in an obvious loss of rural ambience and a diminished experience of walking out into the open countryside.
39. From the public rights of way referred to above, the proposal would be seen as a noticeable enclave of development, of uncharacteristic form in the wider locality, with no direct reference or logical association with the nearest built up area and pattern of settlement.
40. Turning therefore to the proposed mitigation measures, the final iteration of the site layout includes a landscape strategy and arboricultural mitigation measures for the appeal site and adjacent land. The scheme, in addition to the retention of existing trees, includes native tree planting, some of which would offset the adverse condition of those in the verge alongside Lawrences Lane; native hedgerow planting; native understorey planting; mixed native scrub planting; and wildflower margins – other neutral grassland.
41. The scheme aims, in particular, to supplement planting alongside Lawrences Lane, reinforce other boundaries and to introduce landscaping within the site itself. Although it can be said that this would be consistent with landscape character, this measure by itself would be incapable of overcoming the fundamental conflict arising from isolated and locally uncharacteristic development and the perceptual impacts on Landscape Character Area WH4.
42. Whilst it is claimed that the landscaping proposals would provide mitigation consistent with policy requirements within a period of two to three years, it is clear to me that, given the tapering nature of the margin parallel to Lawrences Lane, three of the seven plots would lack any form of new foreground tree planting. In acknowledging that planting within the site would soften an otherwise barren layout, it would offer little remedy for the adverse impact of the proposal on views from the public rights of way in the wider landscape.

43. In my opinion, having regard to the proposed mitigation measures, serious harm to the visual qualities and enjoyment of the landscape would remain.
44. I recognise that opportunities for Gypsy and Traveller sites in West Berkshire are limited, given the extensive area covered by the Area of Outstanding Natural Beauty and other constraints. Although it is said that the impact of this seven pitch scheme would be no greater, and potentially less, than any equivalent proposal, I have found the project before me to have significant underlying drawbacks.
45. In turn, with reference to the qualified acceptance of Gypsy and Traveller sites within the open countryside, and the starting point that such development would invariably involve some change in character and a resultant degree of harm, I consider that the proposal would have a very significant unacceptable adverse effect on the character and appearance of the area. As such there would be conflict with Policy CS 7 (bullet 8) and the related objectives of Policies TS 3, CS 19¹⁴ and CS 14.
46. Moving on to Policy CS 18, Green Infrastructure, the explanatory text sets out that *'green infrastructure is the network of multi-functional green space which supports the natural and ecological processes, and is integral to the health and quality of life of sustainable communities'*¹⁵. It is recognised that green infrastructure is important for many reasons including its contribution *'..... to the quality of life for residents, workers and visitors, in terms of both visual amenity and for sport and recreation purposes'*.
47. The Council and the Appellant made great endeavours to clarify the relevance, or otherwise, of the policy to the appeal proposal. For my part, it is important to note that although there is no public access to the site, the open rural character of the site would be lost; and members of the public would encounter adverse changes to views and their experience from Lawrences Lane and public rights of way. Each of these matters is reflected in my deliberations above and I therefore find the thrust of Policy CS 18 to be a subsidiary matter.

The second main issue: whether or not it has been shown that any adverse impacts on ecology, biodiversity and the natural environment would be adequately mitigated or compensated

48. Policy CS 17 sets out an underlying principle that *'biodiversity and geodiversity assets across West Berkshire will be conserved and enhanced'*. Policy CS 14 (bullet 8) and CS 18 have similar aims.
49. In turn, Policy TS 3 includes a requirement for proposals to *'Provide an extended phase 1 habitat survey together with further detailed surveys arising from that as necessary. Appropriate avoidance and mitigation measures will need to be implemented, to ensure any protected species are not adversely affected'*; and *'Provide appropriate mitigation to offset impact on key species and habitats through appropriate buffering, on-site mitigation and off-site compensation measures'*¹⁶. The retrospective planning application, and unauthorised works, failed to adhere to these requirements.

¹⁴ CD7.2 Policy CS 19 (Part 1) a), b); (Part 2) a)

¹⁵ CD7.2 paragraphs 5.123 and 5.124 define types of green infrastructure

¹⁶ CD7.3 Policy TS 3 bullets 13 and 14

50. Circular 06/2005, in relation to conservation of species protected by law requires: *'It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances However, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development. Where this is the case, the survey should be completed and any necessary measures to protect the species should be in place, through conditions and/or planning obligations, before the permission is granted'*¹⁷.
51. The starting point of concern to the Council was the likely impacts on bats and reptiles with the Council's internal consultee identifying: *'..... it is our opinion that the lack of bat transect and roost surveys and reptile surveys has not been justified and therefore at this point this application cannot be considered for approval'*
52. Following the refusal of permission, the Appellant's Preliminary Ecological Appraisal and Impact Assessment (January/February 2022) drew on a Preliminary Ecological Appraisal (January 2021) relating to a planning application *'for the conversion of the existing barn into a live/work unit'*¹⁸.
53. That report identified that *'the habitats within the site are likely to provide foraging and commuting opportunities for bats and they are likely to traverse the site there is suitable habitat for common species of reptile within the grassland which could be killed or injured during vegetation clearance there is suitable habitat for hedgehogs, brown hare and common toad within the site while badger may traverse the site while foraging within the local landscape. They could be killed or injured as a result of poor practices during the construction works on the site'* It was, however, acknowledged that all of those matters could be resolved by suitable mitigation measures.
54. The 2022 report set out its findings on potential impacts on protected species. It concluded, in short, that no impacts on bats could be reasonably expected to have occurred from the unauthorised works; no impacts on great crested newts is predicted to have occurred; and that a dedicated survey of reptiles was being carried out.
55. This later report indicated a restricted distribution and low numbers of reptiles during the surveys with *'..... only a low to residual risk that individuals would have been within the developable area at the time of construction and potentially disturbed. If present, then there would have been a risk of individual slow worms being killed or injured this would have resulted in a minor negative impact at site level which would be irreversible for the individual but reversible for the population'*¹⁹. Overall, it was considered that mitigation measures could be undertaken to enhance the site to increase suitability for reptiles.
56. Although the Appellant has questioned the veracity of the Council's Ecology Proof and subsequent Rebuttal Proof, following the withdrawal of the author and the adoption of the evidence by the 'stand-in' witness attending the Inquiry, I have placed greater weight on the open discussions during the round table session and the later update written exchanges between the respective expert witnesses.

¹⁷ ID5 paragraph 99

¹⁸ The survey included the barn and adjoining land of which the appeal site forms part

¹⁹ CD8.6 page 7

57. At this point I should record that an assessment of the appeal site and adjoining land was undertaken in 2017 in connection with a planning application to convert the barn²⁰ into residential use and to create residential gardens within the site. That report²¹ indicated *'Habitats on the site are considered to be of some ecological value and the presence of protected species is probable. The boundary hedgerows with trees, grassland and scrub provide potential habitat and use by protected species such as bats, hedgehogs, reptiles and nesting birds With targeted recommendations to enhance biodiversity, the development of the site is likely to increase its ecological value and provide net gains to biodiversity'*²².
58. However, the nature of the works and the intensity of use arising from conversion to a single dwelling would have been markedly different to the proposal before me. In any event, the 2021 report acknowledges *'..... due to the time elapsed an update survey is required'*²³.
59. Reverting to the discussion at the Inquiry, firstly in relation to bats. It is common ground that boundary trees/woodland are likely to provide function for foraging and commuting bats. The evidence does not go beyond that in that there is no assessment of potential species, although it is agreed that the use of the site by greater horseshoe bats for foraging cannot be discounted; whether any species might be susceptible to artificial lighting; and whether occupation of the site would impact on the ability to forage.
60. In my opinion, the absence of bat detector surveys to determine the presence of bat activity, species composition and abundance is a very serious drawback to providing an appropriate level of understanding.
61. Although criticism is made of the Appellant's Ground Level Tree Roost Assessment²⁴, which confirmed earlier findings that there were no obvious features that could be used by roosting bats on or adjacent to the site, the balance of the evidence suggests a nil/low probability for suitable roosting potential. On this basis, and as no trees are proposed to be removed, emergence surveys would have been disproportionate.
62. Overall, I am not convinced that the Appellant's assumptions that controls on lighting, and enhancement of habitat through additional planting, including the enhanced tree line to the southern boundary, would provide well-informed mitigation to secure the favourable conservation of bats.
63. Moving on to great crested newts, the Appellant's original work identified three ponds within 500 metres of the site and concluded *'although there is some residual risk, on the balance of probability great crested newts are likely to be absent from the site'*. However, during the course of the round table discussion, the Council identified a further pond some 217 metres from the appeal site. In effect, the site sat within the middle of these ponds.
64. To my mind, given the location of the site in relation to the nearest ponds²⁵, the absence of presence/absence surveys, and the potential for the site to act as a commuting route, the balance of probability is far from negative. Indeed, the January 2021 appraisal expressed the view that *'the majority of the habitat on site is considered suitable for great crested newts'*.

²⁰ On the larger area of land which includes the appeal site

²¹ ID4

²² Extended Phase 1 Habitat and Daytime Bat Survey June 2017 – Executive Summary

²³ Ecology Proof (Holden) Appendix A Ecology by Design Paragraph 2.1.1

²⁴ On the day preceding the opening of the Inquiry – set out in detail in Version 2 of the Preliminary Ecological Appraisal and Impact Assessment (January 2023)

²⁵ ID7 shown as 217.0m, 263.5m and 254.8m

65. Although the Appellant maintains that *'no mitigation measures would have been appropriate for the construction phase and none are proposed for operation'*²⁶, I find that the Appellant has failed to consider the implications for the presence and adequate protection of great crested newts, notwithstanding its reliance on Natural England's Rapid Risk Assessment Tool.
66. Looking next at reptiles and the related Reptile Survey (July 2022), the key findings were: *'..... the surveys identified a peak count of two adult slow worms which were located in rough grassland on the southern boundary with reptiles located on two out of the five surveys there is a risk that this species may have been impacted during the site clearance however, the likelihood is relatively low'*²⁷. It was also acknowledged in discussion, that the site might be capable of supporting grass snakes.
67. In terms of the survey methodology, five visits were made rather than the usual seven with no apparent justification, other than an unsupported presumption that two additional visits would have had little value. As to the size of the refugia, although practice varies, I am satisfied that they met the minimum appropriate dimensions.
68. Overall, in terms of reptiles, although there is an inevitable deficiency in the baseline information, the balance of probability points to limited diversity of species and low abundance. On this basis, 'common' methods of mitigation would provide continued opportunities for shelter and foraging.
69. As to dormice, the principal concern relates to breaks in, or the erosion of, woody hedgerow habitat and the possible impact from domestic pets. With the abandonment of the proposed footpath link to Lawrences Lane, the potential loss of habitat in this location dissipates. It was also said that keeping of cats by Gypsies and Travellers is not common and anthropogenic impacts from occupation of the site can be largely ruled out.
70. Drawing together these threads, the unauthorised nature of the development has inevitably circumvented the need for the pre-development assessment of protected species, appropriate avoidance of adverse impacts and informed measures for mitigation and enhancement of habitats. The presumption is that likely effects are assessed before planning permission is granted (and any works are undertaken) subject to proportionality and the consideration of exceptional circumstances.
71. In my assessment of this main issue, I have found serious deficiencies relating to the assessment of bats and great crested newts, in conflict with topic specific Policies CS 17 and TS 3²⁸ and also the related aims of Policies CS 14²⁹ and CS 18. There is also fundamental conflict with the guidance in Circular 06/2005 and Framework paragraph 174 d).
72. Related to this main issue is the calculation of Biodiversity Net Gain, and the changes, during the course of the Inquiry, with headline confirmation of a net gain in excess of 10%. Whilst elements remain disputed by the Council, Policy CS 17 does not set a standard and restricts itself to indicating that *'..... all new development should maximise opportunities to achieve net gains in biodiversity'*. Noting that the Environment Act 2021 specifies a gain of at least 10%, the relevant legislation has not yet taken effect.

²⁶ Version 2 paragraph 5.29

²⁷ CD8.6 paragraphs 1.4 – 1.6

²⁸ Bullet 13

²⁹ Bullet 8

The third main issue: would the proposed drainage strategy provide an effective means for the disposal of surface water from the site

73. In short, the Outline Sustainable Drainage Strategy (Issue 4) makes provision within the site for a surface water drainage swale and detention pond. This would be supplemented by additional attenuation storage to be provided using a proprietary 'drainage crate system', installed along the western/north-western edge of each pitch on site³⁰. In addition, to meet water quality objectives, hardstanding areas within the pitches would be constructed as permeable paving. The totality of the work would entail substantial ground works and removal of material to accord with existing ground levels.
74. Surface water discharge and foul drainage would be by means of new separate piped systems from the site, with connections to Thames Water infrastructure in Acorn Drive some 110 metres from the site³¹, undertaken at the Appellant's expense.
75. In light of the Drainage Statement of Common Ground between the Appellant and the Council³², and having regard to the extensive involvement on behalf of the Town Council, I am satisfied that it has been demonstrated that main issue 3 would be capable of being addressed by means of conditions attached to any grant of permission. On this basis, there would be no conflict with Policies CS 16 and TS 3 (bullet 7).

The fourth main issue: whether the proposal would facilitate safe and suitable access

76. Policy CS 7 (bullets 2 and 3) requires new sites to have '*safe and easy access to major roads and public transport services; and easy access to local services including a bus route, shops, schools, and health services*'. In turn, CS 13 contains a number of criteria including reducing the need to travel and to have good access to key services and facilities. CS 14 expects proposals to create safe environments and good access by all transport modes. Policy TS 3 contains similar aims.
77. There is no dispute that the site is well located in terms of access to services, facilities and sustainable transport modes. The key point is the nature of Lawrences Lane.
78. Lawrences Lane has the character of a country lane. It is a single track road with no formal passing places over a distance of some 1.2 kilometres; it lacks footways and street lighting; forward visibility is restricted in places; and although it is subject to the national speed limit the nature of the route limits the speed of vehicles.
79. The lane serves the rear of a dwelling on Southend; the appeal site; a farm group and adjoining bungalow; agricultural fields; and it links Thatcham to The Ridge. It is lightly trafficked and used recreationally. It is also said to be used by children walking to and from the school on The Ridge.
80. The lane was the subject of an Experimental Traffic Regulation Order that took effect in July 2022 for a period of six months. It entailed restricting through traffic by means of lockable bollards to the north of the appeal site entrance and to the south of the farm group.

³⁰ ID24 Section 5.9 '*each plot will be served by an area of drainage crate 15m long, 5m wide and 0.8m deep*'

³¹ ID24 Section 7

³² ID33

81. The decision whether or not to confirm the Order was deferred on 16 March 2023 *'so that officers can undertake further work to investigate ways in which the restriction could be implemented and enforced such that it safely meets the needs of both local residents and vulnerable road users'*.
82. From my own observations, there is clearly potential for vehicles to meet one another in opposing directions, one of which would have to reverse, possibly for some distance and with restricted visibility. In addition, in the case of a vehicle encountering a pedestrian, or cyclist, the roadside verges generally offer little prospect for convenient safe refuge.
83. Irrespective of whether or not the Order is confirmed, and having regard to the former/extant use of the site³³, the appeal proposal would introduce an added volume of vehicular movements, especially between the site entrance and Lawrences Way, arising from travel to and from work, secondary car journeys and delivery/service vehicles. In my opinion, additional conflict between vehicles, and with other users of the lane, cannot be discounted.
84. At the same time, the use of the appeal site as proposed, has the potential to generate additional pedestrian activity. This is likely to include, from time to time, some children walking to and from school, or out for recreation. Given the nature of the lane, described above, I consider that the combination of additional vehicular and pedestrian movements arising from the development would introduce added risk. That risk might deter some journeys on foot with a preference to use the private car.
85. I acknowledge that the level of risk could be reduced by the provision of a passing place, broadly mid-way along the north-western frontage of the site. This would allow two vehicles to pass and would also provide an element of added safety for pedestrians and cyclists. However, the formation of a passing place would have the serious disadvantage of further eroding the rural character of that part of Lawrences Lane and have potential added adverse implications for biodiversity.
86. I acknowledge that the proposed use of the site would run counter to the objective of reducing vehicular traffic on Lawrences Lane, in order to facilitate safer recreational usage. However, I am not convinced that the additional dangers arising from the proposal would be so severe to justify the harm caused by introducing a passing place; or to judging the proposal to be inherently unsound on highway safety or sustainability grounds.
87. In reaching this conclusion, I have in mind paragraph 13 h) of the PPTS and the lifestyle of Gypsies and Travellers, some of whom live and work from the same location, and many who travel for work with absence over varying periods. As the PPTS says, this omits many travel to work journeys and can contribute to sustainability. Nonetheless, the additional vehicular movements generated by up to seven households and the consequential safety implications remains a relevant consideration.

The fifth main issue: whether, or to what extent, the development complies with the development plan and national policy set out in Planning Policy for Traveller Sites (PPTS), and the National Planning Policy Framework (the Framework)

88. In my consideration of the preceding main issues I have identified a number of relevant policies. A few residual matters remain.

³³ The dispute as to whether or not the equine use has been abandoned is not for me to decide

89. The topic specific core policy is CS 7. Bullet 4 requires: *'provision for adequate on site facilities for parking, storage, play and residential amenity'*. Each of the pitches is shown to be hard (permeable) surfaced accommodating a static caravan, touring caravan and day room. There is no provision, and scant opportunity, for either general soft amenity space or play space for children. Despite being bordered by proposed hedgerows, the layout of the plots is stark and regimented.
90. On the same point, the proposal would be at odds with paragraph 26 c) of the PPTS which indicates that weight should be attached to *'promoting healthy lifestyles, such as ensuring adequate landscaping and play areas for children'*. To my mind, this is not realistically compensated for by the attraction of play facilities in Thatcham.
91. Further in terms of site layout, although site residents appear to have achieved integration into the local community, the regimented arrangement of static caravans, in linear form parallel with the roadside boundary, would, despite the proposed arboricultural buffer zone, give the impression of deliberate enclosure. This is the antithesis of paragraph 26 d) of the PPTS.
92. Inevitably, with development plan policies, and particularly those which are multi-criteria based, a proposal is likely to accord with some elements and conflict with others. In this case, following the main policies relevant to the main issues, I have identified fundamental conflict with ADPP1, CS 7, CS 14, CS 17, CS 18, CS 19 and TS 3 which, in the round, indicate that the proposal would be in conflict with the development plan. There would also be conflict with corresponding guidance in the Framework when read as a whole.
93. I have identified some areas of conflict with the PPTS, but consideration of the policy guidance therein is incomplete pending my consideration of the sixth main issue.

The sixth main issue: whether there are material considerations, including unmet need for sites, and/or the personal circumstances of intended occupants, which outweigh any conflicts with the development plan and national policy and any other identified harm resulting from the appeal proposal

(i) Need for and supply of Gypsy and Traveller sites

94. The Gypsy and Traveller Accommodation Assessment 2021 Update³⁴ is the latest available evidence to identify the accommodation needs across the District. It is of course a snapshot in time and takes no direct account of the needs of those who occupy, or intend to occupy, the appeal site. Nonetheless, the modelling of short term need in the Assessment makes an allowance for 9.7 households moving into West Berkshire based on past trends.
95. The Executive Summary of the Assessment ('Cultural' and 'PPTS need') states: *'In order to reconcile the requirements of national policies, the GTAA establishes an overall 'cultural' need for pitches which accords with the overall need for the Travelling community and takes into account the Human Rights Act 1998, the Equalities [sic] Act 2010 and the Housing and Planning Act 2016 section 124. A PPTS 'policy filter' is then applied to identify the level of need associated with those households meeting the definitions set out in the PPTS Annex 1. It is our understanding that the needs arising from the PPTS analysis establishes the level of need against which a 5-year land supply is assessed, but the council should be mindful of a wider obligation to consider overall 'cultural' need'*.

³⁴ CD7.8 Table 6.1

96. The Council's witness, who was the author of the Assessment, acknowledged in cross-examination that the difference between cultural need and PPTS need was not explicit in the report itself. Nonetheless, he explained that he regarded the 2015 PPTS definition to be divisive, as the ability to travel was only one factor of cultural need. It was his view that the PPTS need should be as high as possible by adopting a flexible approach to personal circumstances and including those who were not expressly included in the PPTS definition.
97. On this basis, prior to the Lisa Smith judgement³⁵, his practice had been to take a broad view that had fed into the Assessment and had been accepted by the Council. He was resolute that anyone impacted by the Court of Appeal judgement would already have been factored into his assessment and that the judgement did not affect the reliability of the identification of a five year supply of pitches.
98. It is to be noted that Table ES1³⁶ in the Assessment identifies separate figures for cultural need and PPTS need with the former, higher, figure embracing the latter. The relevant shortfall figures for the period 2021/22 to 2025/26 was 13 pitches (cultural need) and 9 pitches (PPTS need).
99. In terms of pitch provision to meet the need, planning permission has been granted for the change of use of 8 of the 16 transit pitches to permanent pitches at Paices Hill; one additional pitch is planned at Four Houses Corner; and an additional pitch has been allowed on appeal at Ermin Street. Whilst the PPTS need has been met, the residual cultural need is 3 pitches. On this basis, although the Council can demonstrate a five year supply of sites for the purposes of the PPTS, there remains a shortfall of at least 3 pitches to meet cultural need.
100. In any event, assessment of need is not an exact science and the identification of need is to be regarded as a minimum. At the present time, the site at Four Houses Corner, with residents decanted, awaits refurbishment and the 2021 Update confirms: *'The needs analysis does not take into account any emerging needs from these households. It is recommended that the needs analysis is updated to take account of the demographics of households moving on to Four Houses Corner once it reopens'*³⁷. This could be a further contributor to shortfall. Moreover, it was said that all of the former occupants wished to return to the site as soon as possible.
101. Also, regard must be had to a clear and urgent need for additional site provision in both England and Wales, and to the findings of the Equality and Human Rights Commission, in 2019, and their verdict that *'the need for pitches for Gypsies and Travellers as assessed by local planning authorities fell by up to 75% following the application of the PPTS 2015 definition'*.
102. Turning to the allegation of 'policy failure', flowing from the Inspector's findings in the Ermin Street appeal decision, history is clouded by the timescale and overlap and succession of responsibilities at county and regional level and 'top-down' figures.

³⁵ CD9.2

³⁶ CD7.8 page 7

³⁷ CD7.8 Note to Table 6.3

103. More specifically, although Policy CS 7 heralds the identification of sites through a Site Allocations and Delivery DPD, this is somewhat off with anticipated adoption, at best, in September 2027. Further, the refurbishment of Four Houses Corner has been long in the making, and is still awaited, with no prospect of completion before 2024/25. Whilst I acknowledge these commitments, and expressed sense of urgency, neither will come soon enough to provide sufficient comfort to the Gypsy and Traveller community.
104. However, from the evidence before me I cannot go as far as to say that '*..... there has been a persistent and woeful failure by the Council*' as identified in the Ermin Street appeal decision. Nonetheless, the circumstances set out feed into my overall conclusion.
105. In this regard, the scale of the assessed cultural shortfall is small and the Council is taking steps to address it. Overall assessment with changing circumstances, and with mobile individuals and groups, defies precision. To my mind, the balance of the evidence indicates that I should give moderate weight to the general cultural need for additional pitches.

(ii) Personal circumstances

106. The Gypsy and Traveller status of the site residents is not in dispute³⁸. As ethnic Gypsies and Travellers, they are entitled to respect for their traditional way of life. Further, the vulnerable position of such groups as a minority requires some special consideration to their needs and their lifestyle. Indeed, paragraph 3 of the PPTS states that '*the government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community*'.
107. The occupants of pitch 1 comprise a family of six, with four children whose ages range from a few months to twelve years. One of the adults is attending Basingstoke Hospital to see a specialist; one child has been referred to a paediatric doctor; and a further child attends the dentist. One child is home tutored by parents; another attends Thatcham Park School; and the other attends Thatcham Park Nursery twice a week. Prior to arriving in Thatcham, the children had attended a total of eleven schools. The adults are related to three other occupants on the site. The family has nowhere else to live.
108. Mrs Sheen gave oral evidence to the Inquiry. It was established that her husband, prior to their marriage, had lived in bricks and mortar with his parents but she did not know for how long. She had no real knowledge of his business interests in letting property; or of the two planning applications he had made on the land (relating to the conversion of the barn); or why he was not the applicant/appellant in this case. She guessed that her husband knew that planning permission was required; funding of drainage works was a matter for him, but she anticipated that they could raise the necessary money. In effect, they had no choice as the alternative would be to be homeless.
109. Walking with the children to school was weather and time dependent; and shopping was delivered once a week. However, she liked running with her eldest son and walked into the village to meet others; a grassed area for children's play could be provided on the pitch and local parks were only a ten minutes' walk.

³⁸ CD5.1 paragraphs 6.26 – 6.28

110. Pitch 2 was occupied by two adults and three children, aged between four and twelve, but had been vacated due to the medical needs of one of the children. Prior to that, one of the children was home tutored, having previously attended eight schools, and the other two attended Thatcham Park School, one of whom had attended six schools prior to Thatcham. One of the adults had also been having regular medical care. Prior to occupying the site, the family were mainly 'doubled up' on other people's pitches and would otherwise be homeless. The family is related to those living on pitch 3. They do not have access to other land or sites and do not have funds to purchase another pitch.
111. The third pitch is occupied by a mother and teenage daughter, previously staying between family members, and with nowhere else to go. Access to the surgery is important and the ability to enrol at college would be welcomed. There is a close family relationship with the intended occupants of pitch 2.
112. Mrs Coneley gave evidence at the Inquiry. She explained that proximity to her son, daughter-in-law and grandchildren on pitch 2 was important. They were currently doubled up with a family member elsewhere to meet one of the children's medical needs, but intend to come back to Thatcham if planning permission is granted. They had nowhere else to go. Mrs Coneley was not related to any other site residents but she had known the other residents over the years.
113. Mrs Coneley went on to confirm that she knew that the site did not have planning permission; she had heard of it through her son; and that arrival had been coordinated. She indicated that funds for the drainage works would be available from family and that would be balanced against the cost of living elsewhere and the benefit to personal well-being.
114. Pitch 4 is vacant with no identified prospective occupant.
115. The intended occupants of pitch 5, currently precluded by the injunction, comprise a family of four with two teenage daughters³⁹. They have lived a life on the road, and have never lived in houses and would not want to do so. They currently occupy a site, temporarily vacated by the owner, in York. They have no other land available. Access to health care is important and the two daughters are missing out on being able to learn to drive, seek employment or go to college. Other residents on the site are friends of the family.
116. Mr Gaskin gave evidence at the Inquiry. The family had moved off the land as a result of the injunction and the fear of losing possessions and/or arrest. He knew that planning permission was required. Access to work in Europe was problematic; Covid had affected day to day life and doubling up had become difficult; and the implications of the Police Crime Sentencing Act 2022 was a further factor. The pitch in York was only a short term opportunity. He could find money to undertake the drainage works on site from family loans; he could sell one of his caravans; and materials could be bought at bulk and trade discount.

³⁹ One of whom will be aged 20 prior to the date of this decision; the second will shortly attain the age of 18

117. Pitch 6 is occupied by a family of four with children aged four and seven both of whom attend school in Wiltshire. The family relies on local medical care and, although previously doubling up with family from time to time, has nowhere else to live. The family is related to those living on three other pitches.
118. Mr Ridgeley gave evidence at the Inquiry and spoke of the constraints and difficulties imposed by Covid. Pulling on to the land at Thatcham, albeit knowingly without planning permission, was like being "*between a rock and a hard place*". He needed a settled base, in particular, for one of his children's medical needs and family members on the site provided support. Thatcham was the centre point for family and friends in the wider area.
119. He went on to clarify that use of a Swindon phone number and address, at his father's home, was for business reasons. He had, however, lived with his parents in their house for "*one or two years*" while they were doing it up over a period of some four/five years. He had been looking for a pitch for several years; he was not on any waiting list due to lack of availability and preference for a private pitch; and wished to live as part of a family/community for security and support.
120. Other reference to his father's address and a surgery nearby was a consequence of the family having no fixed address. He explained that his children attended a school some 35 miles away as personal and undisclosed choice in the knowledge of trust and the experience of others.
121. Mr Ridgeley talked about how he liked to keep fit and he would walk or run into Thatcham; he regarded using Lawrences Lane to be as safe as anywhere, but better with the bollards precluding through access between Thatcham and The Ridge. He also outlined how the static caravans would be delivered; his experience in groundworks; and access to discounted materials.
122. In terms of funding the drainage works, he had some funds that could be supplemented by downgrading his car and borrowing from family members. The cost had to be offset against long-term rent and the chance of a safe and secure future with access to services and facilities.
123. The resident of Pitch 7 is a young male with relatives on two other pitches. He lived in bricks and mortar with his parents from the age of 7 but has moved around with various temporary stops having learnt to drive. He has nowhere else to live or access to funds and is hoping to settle down with his fiancé.
124. Drawing together these threads, each of the residents has a personal need for the site and it is evident that for them there are no known alternatives. The choice would be the roadside and related implications or doubling up, potentially in breach of planning control. A settled base would provide regular access to healthcare and education consistent with paragraphs 3, 4 j), 13 c) and 13 d), in particular, of the PPTS and also with family and mutual support. Collectively, the personal circumstances of those identified for pitches 1 - 3 and 5 - 7 merit significant weight.

125. At this point I turn to the medical needs of several of the adults at the site. From the evidence before me, some are in the nature of 'routine' checks⁴⁰ and others rely on regular access to assessment and prescription medication. These considerations do not add anything of real substance to the overall weight I attach to the personal circumstances described above.

(iii) The best interests of the children

126. Flowing from the judgement of Hickinbottom J⁴¹, where the evidence in a case indicates that the decision could have an adverse impact on a child or children, rights under Article 8 will be engaged and the best interests of the children should be a primary consideration. In this case, there are both immediate educational and health needs, and the advantages of a settled existence, relating to children that are likely to influence current well-being and have lifelong repercussions.
127. The best interests of the children are therefore a primary consideration and no other issue is intrinsically more important. I have to consider whether any adverse impact arising from my decision on the interests of the children is justified and proportionate.
128. The importance or weight attributed to the best interests of the children will depend on the facts and circumstances. I have identified the children involved in my outline of personal circumstances set out above. In total there are ten children under the age of eighteen years.
129. Of those currently living on the site, one is attending the local school and another, in the same family, is attending the nursery twice a week. Two further children have attended Thatcham Park School, but are of necessity currently living elsewhere. Two children attend a school in Wiltshire, some 35 miles away. Two receive education at home and the remaining two, plus an older dependent, have aspirations to attend college. In my opinion, the reliance on the appeal site and the availability of the education resource in Thatcham is a factor of moderate weight.
130. Turning to access to health care, four of the children have been identified as receiving regular medical care and a further has been attending the dentist. Two of those children have significant ongoing care needs which merit corresponding weight. Without underestimating the personal importance of the other circumstances, these are of limited weight.

(iv) Article 8 rights

131. Article 8 (1) of the Human Rights Act 1998 provides that everyone has the right to respect for their private and family life, their home and their correspondence. Refusal of planning permission here would realistically result in 'immediate'⁴² removal from the site given the outstanding injunction; the loss of the site residents' homes; their ability to live together; the duty to facilitate the Gypsy and Traveller way of life; and the best interests of the children. There would be corresponding implications affecting their health, education, convenient access to a range of other facilities, general well-being and living conditions.

⁴⁰ There is no documentary evidence of any conditions requiring medical intervention

⁴¹ Paragraph 69 of *Stevens v SCLG & Guildford BC* [2013] EWHC 792 (Admin) - endorsed by the Court of Appeal

⁴² CD6.3 paragraph 3 - '*Cease their residential use of the Land and remove their caravans and residential paraphernalia from the Land within 2 months of the final determination of the Appeal regarding the Planning Application.*'

132. I have already outlined the shortage in site provision; the absence of alternative sites; the timescale to identify new sites through plan making; and there is nothing to suggest the desire to, or acceptability of, living in bricks and mortar. There would thus be a significant interference with their Article 8 rights.

(v) Intentional unauthorised development

133. A Written Ministerial Statement confirms that 'intentional unauthorised development' is a material consideration in the determination of planning applications and appeals.

134. In this case, development took place in the knowledge that planning permission was required. A planning application was lodged late on a Friday afternoon and work to facilitate the occupation of the site took place over the Bank Holiday weekend.

135. One of the site occupants explained that he had known of other sites where intended occupants had gone on to the land before seeking planning permission. At the time, he did not realise the potential for the ensuing serious consequences.

136. The occupants arrived at the site from a variety of locations having previously moved around and doubled up. None appears to have vacated a pitch on which they had consent to live. The occupation was clearly premeditated, co-ordinated and well organised with occupants, machinery and construction materials arriving in a short space of time.

137. The works undertaken were in excess of what was required to make a habitable environment pending the outcome of the planning application. Notably, the area intended to be occupied was largely covered in hard surfacing; substantial fencing was erected; and some vegetation was lost. The work caused considerable disturbance and distress to the local community⁴³; and no regard was had to visual amenity or to the potential adverse implications for wildlife and biodiversity.

138. The appellant has sought to address the adverse impact of the development, in response to the Council's reasons for refusal through the appeal process. This has included a fundamental revision to the site layout; a comprehensive outline drainage scheme; and measures introduced by way of mitigation. Nonetheless, I have found that substantial harm remains in terms of landscape and visual impacts and that it has not been shown that any adverse impacts on ecology, biodiversity and the natural environment would be adequately mitigated or compensated.

(vi) Sustainability

139. Reviewing the overall sustainability of the proposal, the appeal site is well-located for convenient access, often on foot, to a range of services and facilities. There is also good accessibility to primary and other main roads and areas where site residents are likely to travel for work. The site would provide a safe and secure environment for its occupants and it would be self-provided and self-financed. It would also offer opportunity for integration and co-existence with the local community by its proximity to the built up area and the use of common services and facilities.

⁴³ Further details set out in the Town Council's proofs of evidence – see also CD3.7

140. Although all of these are important considerations, they are nonetheless general expectations of the development plan in Policy CS 7, in particular, and reflect the guiding intentions of paragraph 13 of the PPTS. As such, they are neutral factors in the overall planning balance.

Planning balance

141. By way of clarification, the weight that I attribute to the considerations in this appeal are in ascending order as follows: neutral; minimal; limited, moderate; significant; and substantial.
142. The starting point of the planning balance is to have due regard to the Public Sector Equality Duty set out under section 149 of the Equality Act 2010 and the three aims to eliminate discrimination, advance opportunity, or foster good relations. In making my decision it is incumbent on me to ensure that any decision giving rise to any negative impacts in relation to the three aims is informed and made with regard to any less harmful alternative outcome. It is also a duty to seek to achieve a positive outcome in respect of the three aims where possible.
143. As to the main issues, I have found that the proposal would, despite proposed landscaping, have an unacceptable adverse effect on the character and appearance of the area to which I attach substantial negative weight.
144. I have also found serious deficiencies relating to the assessment of bats and great crested newts and, despite intended mitigation and measures for Biodiversity Net Gain, the potential irreversible harm and further harm to wildlife interests carries significant negative weight.
145. In relation to highway matters, irrespective of whether or not the Experimental Traffic Regulation Order is confirmed, the proposal would generate additional vehicular and pedestrian movements to and from the site with added risks for all users of Lawrences Lane. In my opinion, the highway issues merit moderate negative weight.
146. With regard to intentional unauthorised development, I attach significant negative weight to the nature, extent and the intentions leading to the unauthorised development. Whilst initial work undertaken would inevitably have to be undone to reflect the revised site layout scheme, it is indisputable that the Appellant sought to gain a major advantage by moving on to the site in breach of planning control.
147. I have considered the suggestion that the weight should be tempered by the circumstances that the occupants found themselves in, and the alleged failure of the Council to make adequate provision. However, I have found that the Council's Gypsy and Traveller Accommodation Update 2021 identifies only a small cultural shortfall; and, as I have set out above, overall assessment with changing circumstances, and with mobile individuals and groups, defies precision.
148. Further, as set out in the PPTS, *'the government's overarching aim is to ensure fair and equal treatment for travellers to help achieve this local planning authorities should make their own assessment of need'* In my opinion, the 2021 Assessment can be considered to be up to date, and there is nothing to suggest that it is anything other than a fair and robust assessment.

149. In terms of site layout, with particular reference to the siting of the static caravans and the manner in which they would effectively provide a perimeter barrier to the site, and the lack of soft amenity space, I attach moderate negative weight to these shortcomings.
150. In terms of the benefits arising from the proposal, moderate weight is to be given to the general need for additional pitches which is subsumed by the significant positive weight that I give to the personal circumstances of the intended occupants.
151. Further, the best interests of the children is a primary consideration. In this regard, I have attached moderate weight to education needs, limited weight to the health needs of three children and significant positive weight to the health needs of two of the children, with the latter informing overall weight.
152. Whilst it is said that the outline drainage proposals will reduce the flood risk along Lawrences Lane, the scheme is intended to mitigate the consequences of the development itself and some residual 'passing on' of natural catchment will remain⁴⁴. As such, any potential consequential benefit attracts minimal weight.
153. I have had regard to all of the claimed sustainability considerations but, as general expectations of policy and guidance, they are neutral in the planning balance.
154. Although the planning application generated a considerable number of representations, and two members of Thatcham Town Council spoke at the Inquiry about the issues faced when the site was being developed, there is nothing to suggest that there have been ongoing tensions.
155. Indeed, a local resident gave testimony to what he believed to have been false information, whilst the development was being undertaken, and the manner in which the occupants have since become integrated locally. This principal planning aim rests neutral in the planning balance.
156. The PPTS sets out '*The government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life while respecting the interests of the settled community*'. It aims, amongst other things, '*to promote more private traveller site provision to increase the number of traveller sites in appropriate locations with planning permission to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure for local planning authorities to have due regard to the protection of local amenity and local environment*'.
157. It goes on to say that '*Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise*'. In policy terms, the proposal would be in conflict with the development plan, and the Framework. In addition, having considered the proposal in the round, I find conflict with the policy set out in the PPTS.
158. From the foregoing, I conclude that the totality of the supporting material considerations do not outweigh the combination of policy conflict and the harms that I have described. This points to the dismissal of the appeal.

⁴⁴ ID29

159. Such a decision would represent a very serious interference with Article 8 rights and with the best interests of the children. However, such an interference would be in accordance with the law and necessary in a democratic society in order to protect, amongst other things, the rights and freedoms of other people.
160. In my opinion, that interference would be proportionate in a democratic society to the wider public interest. The interference is also necessary in the circumstances of the harm that I have identified which clearly outweighs the benefits to the Appellant and the group on whose behalf she represents.
161. On balance, I am satisfied that the harm that would be caused by the development outweighs the other considerations to the extent that planning permission should not be granted. None of the conditions crafted during the course of the Inquiry, or the complementary unilateral undertaking, would overcome the harm to enable the grant of a permanent planning permission.
162. However, it is also necessary to consider whether a time-limited permission, notionally for a period of five years, would be appropriate with particular reference to paragraph 27 of the PPTS. This would have benefits for family life and the children in particular. Granting a time-limited permission would also give the Council a period in which to increase its supply of land for Gypsy and Traveller sites through the plan making process.
163. Whilst a temporary permission may have applicability where circumstances might change, the harm identified would nonetheless remain over a significant period of time which I regard to be unacceptable.
164. Moreover, in this case, to facilitate a temporary occupation of the site, extensive drainage infrastructure works, including connections to the public sewers and replacement permeable hard surfacing, would have to be undertaken at considerable cost⁴⁵. At the end of the temporary period, if the site is not to be left with an extensive area of hardstanding, at odds with the character and appearance of the area, a scheme of restoration would be required. Again, this would be likely to involve significant work and expense.
165. Whilst the occupants of the site have indicated a willingness to incur these costs and to undertake some of the work themselves, set against the unpalatable alternative, I do not regard the extent and implications of the work to relate fairly and reasonably to the grant of a temporary permission. On this basis, the condition would not reflect the advice given in paragraph 014 of Planning Practice Guidance: Use of planning conditions.
166. In declining to grant planning permission for a time-limited period, I consider that the totality of the adverse consequences for the occupants, including the ability to live a traditional life, the impact on access to health and education facilities, race relations and the implicit family and personal considerations do not outweigh the planning harms.
167. Turning to consider the option of a personal condition, relating to the six identified family/individual occupants, such a condition would apply in perpetuity for those named persons and their resident dependents.

⁴⁵ Even on the Appellant's case

168. Additionally, in the event of future vacancies, a succession of new occupants might be accepted in time on the basis of their personal needs. Either way, during the period of occupation, the harm identified and the physical and policy conflicts would remain. As before, despite having had due regard to all of the relevant circumstances, I do not reach a different overall conclusion.
169. Therefore, on the basis of the evidence before me, having reached conclusions on the main issues and guiding policy, set against the fundamental rights protected by Article 8 and the special needs of this community, including the best interests of the children, and having considered whether there are less onerous outcomes, I conclude that the dismissal of the appeal is a fair and proportionate balance having regard to the duty under section 6 of the Human Rights Act 1998.
170. Having considered all other matters, the appeal is dismissed.

David MH Rose

Inspector

ANNEX A: APPEARANCES

For Ms C Gumble

Marc Willers King's Counsel

Instructed by Ms C Gumble

He called

David McMurtary
BA (Hons) CIHT

Technical Director
Motion

Giles Coe
BSc (Hons) MCIEEM

Ecological Consultant

Ian Walton
BSc (Hons) MSc DIC MICE CEng

Technical Director
SLR Consulting Limited

Rhodri Crandon
BA (Hons) Dip LA

Director
Tirlun Design Associates Ltd

Dr Simon Ruston
BSc (Hons) MA PhD MRTPI

Ruston Planning Limited

Fred Gaskin

Pitch 5 (intended occupant)

James Ridgeley

Pitch 6 (occupant)

Kathleen Sheen

Pitch 1 (occupant)

Kelly Coneley

Pitch 3 (occupant)

Steve Jones

Local resident

Maurice Black

Interested person

For West Berkshire Council

Emmaline Lambert, Counsel

Instructed by Head of Legal Services
West Berkshire Council

She called

Paul Goddard
BEng (Hons)

Highways Development Control Team Leader
West Berkshire Council

Michael Cummings
BSc (Hons) MSc MCIEEM

Director
Darwin Ecology

Paul Bacchus
MEng (Hons) GMICE

Senior Engineer (Land Drainage)
West Berkshire Council

Mark Flatman
CMLI Dip LA BA (Hons)

Director
Liz Lake Associates

Dr Michael Bullock
BSc (Hons) PhD MMRS MCIH

Managing Director
arc4 Ltd

Nikolaos Grigoropoulos
BSc (Hons) MA MRTPI

Team Leader (Development Control Service)
West Berkshire Council

For Thatcham Town Council

Councillor Simon Pike
BA (Hons) CEng MIET

Thatcham Town Council

He called

Councillor Lee Dillon

Thatcham Town Council
West Berkshire Council (ward member)

Councillor David Lister

Thatcham Town Council

**ADDITIONAL CONTRIBUTORS TO THE ROUND TABLE SESSION ON
CONDITIONS AND OBLIGATIONS**

Sharon Armour

Solicitor West Berkshire Council

ANNEX A: CORE DOCUMENTS⁴⁶

CD1 Planning application documents

- 1.1 Covering Letter Friday, 13 August 21 Our Ref: JC21
- 1.2 Application form and certificates
- 1.3 Location Plan (001 09/08/2021)
- 1.4 Block plan (001 09/08/2021)
- 1.5 Site Layout (001 09/08/2021)
- 1.6 Proposed Day Rooms Plans and Elevations 001 09/08/2021
- 1.7 Site Plan Scale 1:2500 (001 09/08/2021)

CD2 Additional/amended documents submitted after validation

- 2.1. Intentionally left blank

CD3 Consultation responses

- 3.1 Thatcham Town Council Response 08/09/2021
- 3.2 Cold Ash Parish Council Response 15/09/2021
- 3.3 West Berkshire Highways Authority Response 24/09/2021
- 3.4 Tree Officer Response 05/10/2021
- 3.5 Ecology Officer response 13/10/2021
- 3.6 Lead Local Flood Authority Response 15/10/2021
- 3.7 Thames Valley Policy Response 27/10/2021
- 3.8 Ecology Response 08/11/2021
- 3.9 Joint Emergency Planning Response 09/11/2021
- 3.10 Archaeology Response 09/11/2021.
- 3.11 Planning Policy Response 09/11/2021

CD4 Application correspondence

- 4.1 Officer Feedback 15/10/2021 Email

CD5 Application decision

- 5.1 Planning officers' committee report
- 5.2 Committee update Sheet
- 5.3 Decision notice

CD6 Appeal submissions / correspondence

- 6.1 Appeal form
- 6.2 Full Statement of Case on behalf of Mr Gumble
- 6.3 SMR01 - Order of Mrs Justice Obi dated 08/12/21
- 6.4 SMR02 - Email dated 10th November 2021
- 6.5 SMR03 - West Berkshire GTAA 2021
- 6.6 SMR04 - Extract from Bracknell Forest GTAA 2017
- 6.7 SMR05 - Extract from Reading GTAA 2017
- 6.8 SMR06 - Extract from Windsor and Maidenhead GTAA 2018
- 6.9 SMR07 - Extract from Wokingham GTAA 2017
- 6.10 Draft SoCG

⁴⁶ As provided by West Berkshire Council

- 6.11 Lawrences Lane, Thatcham - Landscape Statement of Evidence (Mr. Rhodri Crandon)
- 6.12 220517_407_12923_00001_L_Land at Lawrences Lane_Ridgley_Drainage Review
- 6.13 PB 02 N01 - Technical Note - bcthat - 2021-11-15
- 6.14 Document List

CD7 Policy / guidance documents

- 7.1 National Planning Policy Framework (2019)
- 7.2 West Berkshire Core Strategy 2006-2026
- 7.3 Housing Site Allocations DPD 2006-2026
- 7.4 North Wessex Downs Area of Outstanding Natural Beauty Integrated Landscape Character Assessment (2002)
- 7.5 West Berkshire Landscape Character Assessment (2019)
- 7.6 Guidelines for Landscape and Visual Impact Assessment (2013) 3rd Ed.
- 7.7 Gypsy and Traveller and Travelling Showpeople Accommodation Assessment (GTAA) (2019)
- 7.8 Gypsy and Traveller and Travelling Showpeople Accommodation Assessment (GTAA) (2021)
- 7.9 Local Plan Review
- 7.10 Sustainable Drainage Systems (SuDS) SPD (2018)
- 7.11 North Wessex Downs AONB Position Statement
- 7.12 North Wessex Downs AONB Management Plan

CD8 Wheatcroft Amended Plans Documents

- 8.1 Wheatcroft Consultation Covering Letter from Council
- 8.2 Landscape character and visual impact assessment
- 8.3 Revised site layout TDA.2692.02.
- 8.4 SLR Drainage review 17th May 2022
- 8.5 Highways technical note Motion 15/11/2021
- 8.6 Reptile Survey Co-Ecology
- 8.7 Biodiversity Net gain – Assessment Summary Co-Ecology
- 8.8 Preliminary Ecological Appraisal & Impact assessment CoEcology
- 8.9 Biodiversity Metric 3.9 Auditing and accounting for Biodiversity Calculations

CD9 Court judgements and appeal decisions

- 9.1 APP/W0340/W/22/3292939: 21/02045/FUL - Land at Ermin Street, RG17 7TR
- 9.2 Lisa Smith CoA judgment submitted via email from Appellants 03/11/2022

CD10 Appeal statements / evidence

- 10.1 WBC Updated Statement of Case
- 10.2 WBC Statement of Case – Appendix 1 to 10
- 10.3 Rule 6 – Thatcham Town Council – Statement of Case Rev 2
- 10.4 Appellant’s Statement of Case
- 10.5 Appellant Statement of Case – Appendix SMR01 – SMR07
- 10.6 Appellant Outline Sustainable Drainage Strategy
- 10.7 Statement of Common Ground

CD11 Miscellaneous documents

- 11.1 West Berkshire Council Prohibition of Motor Vehicles (Experimental) Order applying to Lawrences Lane
- 11.2 Outline Sustainable Drainage Strategy November 2022 submitted 04/11/2022

- 11.3 Cold Ash PC updated comments on Drainage
- 11.4 Council to PINS re method of hearing evidence
- 11.5 Appellant to Council re Ecology- Open space and further areas of agreement
- 11.6 Appellant's response to Inspectors questions 30/11/2022
- 11.7 Draft list of conditions to Inspector 29/11/2022
- 11.8 Council to PINS - further suggested areas of agreement draft 2
- 11.9. Inspector's comments on draft conditions
- 11.10 Email from PINS with conditions and agendas
- 11.11 Email from PINS with new agenda
- 11.12 Appellant to PINS re outstanding matters
- 11.13 Cllr Pike re drainage plan concerns
- 11.14 Appellant's response to Cllr Bikes Drainage Concerns
- 11.15 Rule 6 Party conditions comments
- 11.16 Council response to outstanding matters raised by appellants
- 11.17 Council response to Inspector's questions

ANNEX B: DOCUMENTS SUBMITTED AT THE INQUIRY⁴⁷

- ID1 Department for Transport - Manual for Streets
- ID2 Appeal Decision – Land North of Irish Hill Road, Kintbury
- ID3 R. (on the application of William Corbett) v The Cornwall Council v Stephen Tavener
- ID4 Extended Phase 1 Habitat and Daytime Bat Survey
- ID5 Office of the Deputy Prime Minister – Government Circular Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System. Circular 06/2005 August 2005
- ID6 Greater Crested Newt Conservation Handbook
- ID7 Ecology Map
- ID8 Saved Policies RL1 Public Open Space Provision in Residential Development Schemes
- ID9 Proposed Submission LPR for full Council
- ID10 Tracking Diagrams
- ID11 Drainage Strategy Issue 2
- ID12 Council to PINS new case officer and new timetable of dates
- ID13 Council information re-emerging local plan
- ID14 Draft statement of common ground Drainage
- ID15 Thames Water Correspondence
- ID16 Appellants' BNG – Baseline Habs
- ID17 Appellants' BNG – Post Intervention Habs
- ID18 Appellants' Biodiversity Metric 3.1 V2
- ID19 Appellants' Thatcham PEA – Report V2.2
- ID20 Council Policy Team Note on Regulation 18 and Regulation 19 Local Plan Review
- ID21 West Berkshire Local Plan Review 2022-2039 Proposed Submission January 2023 (Reg 19)
- ID22 Outline Sustainable Drainage Strategy Issue 3 dated 16th January 2023

⁴⁷ As provided by West Berkshire Council and updated by the Inspector

ID23 Utilities Search Report provided 17th January 2023
ID24 Outline Sustainable Drainage Strategy Issue 4, received 20.01.2023
ID25 (Rev B) Revised Site Layout, Landscape Strategy and Arb Mit Measures
ID26 Appeal Decision - 3192162 - Brookside Stables, Cold Pool Lane, Badgeworth, Cheltenham
ID27 Appeal Decision - 3199149 - The Caravan Site, Highfield Lane, Corley Ash, Warwickshire
ID28 Inquiry Notification Letter - New PI Date
ID29 Agreed Drainage SoCG
ID30 Appellant – Lawrences Lane BNG – Headline Results
ID31 Appellant – Lawrences Lane BNG – Post Intervention Habitats
ID32 Appellant – Lawrences Lane BNG – Pre Intervention Habitats
ID33 Appellant – Lawrences Lane BNG – Summary Information
ID34 Appellant – Condition Sheets V1
ID35 Appellant – Lawrences Lane Biodiversity Metric 3.1 V3
ID36 Mr Walton’s response to Cllr Pike on OSDS Issue 4
ID37 Natural England – Green Infrastructure, Planning and Design Guide
ID38 Webpage Link to Natural England Green Infrastructure, Planning and Design Guide
ID39 Appeal Decision - APPK0425W183212259 - Askett, Buckinghamshire
ID40 Appeal Decision - APPL2820C193240989 - Loddington, Northamptonshire
ID41 Quantitative Assessment Note by WBC Policy Team 07032023
ID42 WBC Ecology witness Response to Appellant's BNG Updates 07032023
ID43 Aerial Photo - McVeigh Parker Ltd, Bradfield Southend 19/03193/FUL
ID44 West Berks 2015 GTAA
ID45 Recommendation report on Lawrences Lane active travel bollards for consideration and decision on the 16/3/23
ID46 Rule 6 - Drainage Scheme Materials Quantities
ID47 Council Opening Statement
ID48 Note on transit provision
ID49 Closing Submissions on Behalf of the Council⁴⁸
ID50 Closing Submission for Thatcham Town Council
ID51 The Appellant’s Closing Speech⁴⁹
ID52 The Council’s Application for Costs
ID53 The Appellant’s Response to the Application for Costs
ID54 Unilateral Undertaking

⁴⁸ Pre-delivery script - excluding oral additions

⁴⁹ Pre-delivery script - excluding oral additions

IN THE HIGH COURT OF JUSTICE

Claim No. KB-2023-004501

KING'S BENCH DIVISION

DATED [1st December 2023]

MR[S] JUSTICE []

IN THE MATTER

B E T W E E N : -

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

- (1) MR THOMAS STOKES**
- (2) PCS HOMEBUILD LTD**
- (3) MR PAUL CHRISTOPHER SMITH**
- (4) PERSONS UNKNOWN**

Defendants

INJUNCTION ORDER

PENAL NOTICE

IF YOU THE WITHIN NAMED: MR THOMAS STOKES, PCS HOMEBUILD LTC, MR PAUL CHRISTOPHER SMITH AND PERSONS UNKNOWN

DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND LIABLE TO IMPRISONMENT OR FINED OR YOUR ASSETS SEIZED. ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE DEFENDANTS TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

IMPORTANT

1. This Order prohibits you from doing the acts set out in this Order. You should read terms of the Order and the guidance notes very carefully. You are advised to consult a solicitor as soon as possible. You have a right to ask the Court to vary or discharge the Order.
2. If you disobey this order you may be found guilty of Contempt of Court and may be sent to prison or fined. In the case of a Corporate Defendant, it may be fined, its Directors may be sent to prison or fined or its assets may be seized.

On the [DATE] 2023 Mr[s] Justice [] considered the Application brought by West Berkshire District Council (“the Claimant”) for an injunction supported by the Witness Statements listed in Schedule A and accepted the undertakings listed in Schedule B at the end of this Order.

UPON hearing Counsel for the Claimant, upon reading the witness statements listed in Schedule A and upon accepting the undertakings listed in Schedule B

IT IS ORDERED THAT UNTIL [INSERT DATE] (the Return Date) OR FURTHER ORDER:

THE INJUNCTION

Prohibitions

1. In relation to the Land known as “Ermin Street Stables, Ermin Street, Lambourn Woodlands, Hungerford RG17 7BL” registered at HM Land Registry under Title Number BK143882 (“the Land”) as shown edged red on the attached plan, the Defendants, whether by themselves or by instructing, encouraging or permitting any other person, must not:
 - (i) Allow the use of the Land for human habitation or residential occupation in breach of planning control;
 - (ii) Bring onto the Land any caravans and/or mobile homes for the purpose of human habitation or residential occupation in breach of planning control;
 - (iii) Bring/erect/install any buildings or structures on the Land for the purposes of human habitation or residential occupation in breach of planning control;

- (iv) Bring onto the Land any portable structures including portable toilets for purposes associated with human habitation or residential occupation in breach of planning control;
- (v) Bring onto the Land any further waste materials and/or hardcore and/or like materials for any purpose, including the creation/laying of hardstandings or hard surfaces, in association with the use of Land for the stationing of caravans and/or mobile homes for the purpose of human habitation or residential occupation in breach of planning control;
- (vi) Carry out any further works in relation to the formation of paths, roadways or any works including the further provision of sewerage, water and electricity infrastructure associated with the use of caravans and/or mobile homes for the purpose of human habitation or residential occupation in breach of planning control;
- (vii) Carry out any works to the Land associated with or in preparation for its use for stationing caravans and/or mobile homes or for the erection of a building and/or any structure for human habitation or residential occupation in breach of planning control;
- (viii) Undertake any development on the Land as defined in section 55 of the Town and Country Planning Act 1990 without the express grant of planning permission.

IT IS FURTHER ORDERED THAT:

ALTERNATIVE SERVICE

- 2.
 - a. Service of this Order and related documentation may be effected by the securing or affixing of sealed copies of the said Order, the Application Notice, the Claim Form and evidence in support of the Application and any future documentation in a transparent waterproof envelope in a prominent position on the Land and such posting shall be deemed to be good and sufficient service on the Defendants of the said Order, the Application Notice, Claim Form and evidence in support of the Application and any future documentation on the date it was so affixed.
 - b. Service of this order on Mr Thomas Stokes and Mr Paul Christopher Smith at their last known address.

THE RETURN DATE

- 3. There shall be a hearing at 10.30am on [DATE] (the Return Date), with a time estimate of 2 hours, at the Royal Courts of Justice, unless the named parties consent in writing that no such hearing is necessary. On the Return Date, the Defendants can make, if so advised, representations in relation to the continuation, variation or discharge of the Order.

VARIATION OR DISCHARGE OF THIS ORDER

4. The Defendants may each of them (or anyone notified of this Order) apply to the Court on 48 hours written notice to the Claimant's legal representatives to vary or discharge this Order (or so much of it as affects that person). Except that the hours between 5pm on any Friday and 9am on any Monday cannot be counted as part of the 48 hours' notice period.

COSTS OF THE APPLICATION

5. Costs reserved.
6. Liberty to apply.

GUIDANCE NOTES

Effect of this Order – The Defendants

1. A Defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
2. A Defendant which is a corporation and which is ordered not to do something must not do it itself or by its Directors, officers, employees or agents or in any other way.

Effect of this Order - Parties other than the Claimant and Defendants

It is a Contempt of Court for any person notified of this Order knowingly to assist in or permit a breach of this Order. Any person doing so may be sent to prison, fined or have his assets seized.

Interpretation of this Order

1. In this Order, "Persons Unknown" means those with an interest in the Land or undertaking or intending to undertake works or entering onto the Land intending to occupy the Land in breach of planning control.

2. In this Order, where there is more than one Defendant (unless otherwise stated) references to “the Defendants” means each or all of them.
3. A requirement to serve on “the Defendants” means on each of them. However, the Order is effective against any Defendant on whom it is served.
4. An Order requiring “the Defendants” not to do anything applies to all Defendants.

Communications with the Court

All communications to the Court about this Order should be sent to Room WG08, Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6010). The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday except holidays.

SCHEDULE A

Evidence

The Judge read the following written evidence before making this Order:-

1. First Witness Statement of Neill Whittaker dated 28th November 2023

SCHEDULE B

Undertakings given to the Court by the Claimant:-

1. As soon as practicable the Claimant will serve on the named Defendants a sealed copy of this Order and evidence together with Counsel’s skeleton argument for the hearing in support pursuant to the Order for alternative service herein.
2. As soon as practicable the Claimant will serve on the named Defendants the sealed Claim Form in this action claiming the appropriate relief.
3. To use the Claimant’s best endeavours to effect personal service on the named Defendants.
4. The Claimant will provide a witness statement to the court setting out any previous history of interactions with or involving the First Defendant.

Name and Address of Claimant's Legal Representatives:-

Izindi Visagie
Ivy Legal Ltd
4th Floor, 33 Cannon Street
London
EC4M 5SB
020 3745 5896

Claim No.

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

DATED [DATE]

IN THE MATTER

B E T W E E N:-

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

-and-

- (1) MR THOMAS STOKES**
- (2) PCS HOMEBUILD LTD**
- (3) MR PAUL CHRISTOPHER SMITH**
- (4) PERSONS UNKNOWN**

Defendants

INJUNCTION ORDER

PENAL NOTICE

IF YOU THE WITHIN NAMED DEFENDANTS, MR THOMAS STOKES, PCS HOMEBUILD LTD, MR PAUL CHRISTOPHER SMITH, AND PERSONS UNKNOWN

DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND LIABLE TO IMPRISONMENT OR FINED OR YOUR ASSETS SEIZED

Ivy Legal Ltd
4th floor, 33 Cannon Street
London
EC4M 5SB

020 3745 5896

Application notice

For help in completing this form please read the notes for guidance form N244Notes.

Find out how HM Courts and Tribunals Service uses personal information you give them when you fill in a form: <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter>

Name of court	Claim no. KB-2023-004501
Fee account no. (if applicable)	Help with Fees – Ref. no. (if applicable)
	H W F - <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/>
Warrant no. (if applicable)	
Claimant's name (including ref.) West Berkshire Council	
Defendant's name (including ref.) (1) Thomas Stokes (2) PCS Homebuild Ltd (3) Paul Christopher Smith (4) Persons Unknown	
Date	28 November 2023

1. What is your name or, if you are a legal representative, the name of your firm?

Ivy Legal Limited

2. Are you a Claimant Defendant Legal Representative
 Other (please specify)

If you are a legal representative whom do you represent?

Claimant

3. What order are you asking the court to make and why?

An injunction under s187B of the Town and Country Planning Act 1990 (as amended) to prevent breaches of planning control for the reasons set out in the witness statement of Neill Whittaker dated 29 November 2023 and its exhibits. The Claimant seeks an Order for alternative service pursuant to CPR 6.14, 6.15, 6.2

4. Have you attached a draft of the order you are applying for? Yes No

5. How do you want to have this application dealt with? at a hearing without a hearing
 at a remote hearing

6. How long do you think the hearing will last? Hours Minutes
Is this time estimate agreed by all parties? Yes No

7. Give details of any fixed trial date or period

-

8. What level of Judge does your hearing need?

High Court

9. Who should be served with this application?

-

9a. Please give the service address, (other than details of the claimant or defendant) of any party named in question 9.

10. What information will you be relying on, in support of your application?

- the attached witness statement
- the statement of case
- the evidence set out in the box below

If necessary, please continue on a separate sheet.

1. Witness statement of Neill Whittaker dated 28 November 2023 and its exhibits.

11. Do you believe you, or a witness who will give evidence on your behalf, are vulnerable in any way which the court needs to consider?

Yes. Please explain in what way you or the witness are vulnerable and what steps, support or adjustments you wish the court and the judge to consider.

No

Statement of Truth

I understand that proceedings for contempt of court may be brought against a person 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 **believe** that the facts stated in section 10 (and any continuation sheets) are true.
- The applicant believes** that the facts stated in section 10 (and any continuation sheets) are true. **I am authorised** by the applicant to sign this statement.

Signature



- Applicant
- Litigation friend (where applicant is a child or a Protected Party)
- Applicant's legal representative (as defined by CPR 2.3(1))

Date

Day Month Year

28	11	2023
----	----	------

Full name

Izindi Visagie

Name of applicant's legal representative's firm

Ivy Legal Limited

If signing on behalf of firm or company give position or office held

Partner

Applicant's address to which documents should be sent.

Building and street

4th floor, 33 Cannon Street

Second line of address

Town or city

London

County (optional)

Postcode

E | C | 4 | M | 5 | S | B

If applicable

Phone number

0203 745 5896

Fax phone number

DX number

Your Ref.

West Berks/Ermin

Email

izindi@ivylegal.co.uk

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Claim No: KB-2023-004501

IN THE MATTER OF PROCEEDINGS

B E T W E E N:-

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

And

- (1) MR THOMAS STOKES**
(2) PCS HOMEBUILD LTD
(3) MR PAUL CHRISTOPHER SMITH
(4) PERSONS UNKNOWN

Defendants

**SKELETON ARGUMENT ON BEHALF OF THE CLAIMANT
IN SUPPORT OF AN APPLICATION FOR AN INTERIM
INJUNCTION**

*References are to Witness Statement paragraphs [WS/X] and Authorities Bundle pages
[AB/X]*

Essential Reading:

1. Application Notice
2. Draft Order
3. Witness Statement of Neill Whittaker

INTRODUCTION

1. West Berkshire District Council (“the Claimant”) seeks an interim injunction in relation to the land known as “Ermin Street Stables, Ermin Street, Lambourn Woodlands, Hungerford, RG17 7BL” registered under title number BK143882 and shown edged in red on the plan attached to the draft Order (“the Land”).
2. The Claimant is the Local Planning Authority within the meaning of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”) for an area including the Land.
3. The First Defendant has an interest in the Land. The Second Defendant is the registered owner of the Land and the Third Defendant is director of the Second Defendant.

Persons Unknown

4. The Fourth Defendant identified only as “Persons Unknown” refers to those persons who are not named Defendants to this Claim who have an interest in the land or in undertaking works to the Land or intending to undertake works to the Land or entering onto the Land intending to occupy the land in breach of planning control. The Claimant relies upon paragraph 2 of the Practice Direction Part 8A and s.187B (3) of the 1990 Act in support of seeking an Order against “Persons Unknown”.
5. With regard to “Persons Unknown”, guidance was given in *London Borough of Bromley v Persons Unknown* [2020] P.T.S.R.1043 [AB 93] (called “safeguards” in *London Borough of Barking and Dagenham v Persons Unknown* [2022] EWCA Civ 13 at [108]):

29. The law in relation to injunctions against persons unknown has been recently considered by this court in *Joseph Boyd and another v Ineos Upstream Ltd and 9 others* [2019] EWCA Civ 515 . That was a case involving protesters concerned about the fracking process. Having said at [32] that it was not easy to formulate the broad principles on which an injunction against unknown persons can properly be granted, Longmore LJ "tentatively" framed the requirements at [34] in the following way:

"1) there must be a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief;

2) it is impossible to name the persons who are likely to commit the tort unless restrained;

3) it is possible to give effective notice of the injunction and for the method of such notice to be set out in the order;

4) the terms of the injunction must correspond to the threatened tort and not be so wide that they prohibit lawful conduct;

5) the terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do; and

6) the injunction should have clear geographical and temporal limits."

30. Those requirements comprise an elegant synthesis of a number of earlier statements of principle, which makes it now unnecessary to refer to other authorities. I respectfully endorse them.

6. It is submitted by the Council that the requirements are met as follows:
- (i) there is more than a sufficiently real and imminent risk as evidence shows that works have already been undertaken and there is poor conduct by the First Defendant in relation to unregularized works on another site and occupants from another site must leave by the end of November;
 - (ii) it is impossible to name the persons as (a) it is not known those undertaking works and (b) it is not known who future potential occupants may be;
 - (iii) it is possible to give effective notice by virtue of the Alternative Service provision;

- (iv) the terms of the injunction correspond to breaches that have taken place and those that are feared will take place if not restrained;
 - (v) the terms of the injunction order are clear and precise – furthermore, the terms simply tell those potentially affected not to do that which they are not allowed to do without express planning permission;
 - (vi) the injunction has clear geographical limits as outlined on the plan attached to it and has temporal limits in terms of the Return Date.
7. The Claimant is of the view that whilst actual breaches of planning control have not taken place, there is a real risk and it apprehends further operational development and material change of uses taking place in breach of planning control.

Service

8. For the reasons set out at WS 51-52 this application is made without notice.

THE POWER TO GRANT AN INJUNCTION

9. Section 187B [**AB 2**] of the Town and Country Planning Act 1990 (as amended) ('the 1990 Act') provides as follows:

- “(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.*
- (2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.*
- (3) Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.*
- (4) In this section "the court" means the High Court or the county court.”*

10. The leading authority on the exercise of the Court's discretion to grant injunctions pursuant to section 187B of the 1990 Act is the decision of the House of Lords in the combined appeals known as *South Bucks District Council v. Porter* [2003] UKHL 558; [2003] 2 AC 558 [AB 8-51 [20]] approving the judgment of the Court of Appeal [2001] EWCA Civ 1549; [2002] 1 WLR 1359.
11. The decision of the House of Lords also confirms that the Court has an original jurisdiction in respect of its exercise of discretion to grant an injunction pursuant to section 187B of the 1990 Act [27].
12. In *Davis v Tonbridge & Malling Borough Council* [2004] EWCA Civ 194 [AB 52], the Court of Appeal summarised the conclusion of the House of Lords in *South Bucks District Council v Porter* as follows [34]:
 - 1) Section 187B confers on the courts an original and discretionary, not a supervisory, jurisdiction, so that a defendant seeking to resist injunctive relief is not restricted to judicial review grounds;
 - 2) it is questionable whether Article 8 adds anything to the existing equitable duty of a court in the exercise of its discretion under section 187B;
 - 3) the jurisdiction is to be exercised with due regard to the purpose for which was conferred, namely to restrain breaches of planning control, and flagrant and prolonged defiance by a defendant of the relevant planning controls and procedures may weigh heavily in favour of injunctive relief;
 - 4) however, it is inherent in the injunctive remedy that its grant depends on a court's judgment of all the circumstances of the case;

5) although a court would not examine matters of planning policy and judgment, since those lay within the exclusive purview of the responsible local planning authority, it will consider whether, and the extent to which, the local planning authority has taken account of the personal circumstances of the defendant and any hardship that injunctive relief might cause, and it is not obliged to grant relief simply because a planning authority considered it necessary or expedient to restrain a planning breach;

6) having had regard to all the circumstances of the case, the court will only grant an injunction where it is just and proportionate to do so, taking account, inter alia, of the rights of the person or persons against whom injunctive relief is sought, and of whether it is relief with which that person or persons can and reasonably ought to comply.

13. The well-known principles laid down by the House of Lords in *American Cyanamid Co. v. Ethicon Limited* [1975] AC 396 [AB 78] apply to the Court's exercise of discretion (see 406F, 407G, 408F).
14. It is to be noted that each of the appeals in *Porter* concerned cases where the Local Planning Authority were seeking mandatory injunction orders to remove persons who had taken up occupation of their land in breach of planning control. This application does not seek any mandatory steps. This application for an interim injunction seeks only to preserve the status quo at this point.

BREACHES OF PLANNING CONTROL

15. The evidence available to date clearly demonstrates that, short of breaches of planning control, there have been works undertaken including significant clearance of the Land which facilitates the bringing on to the Land of caravans for residential use [WS/29]. Furthermore, Mr Whittaker states that it is unlikely that planning permission would be granted if a planning application was made [WS/45].

THE NEED FOR AN INJUNCTION

16. At WS para 53, Mr Whittaker sets out why other enforcement options are not appropriate in this case. Firstly, an Enforcement Notice cannot attack an anticipated breach of planning control of which further breaches are expected. Secondly, the process is lengthy. Thirdly, the ultimate sanction for breaching an enforcement notice or a stop notice is criminal proceedings but the penalty is a fine. By the time the Council waits for further breaches to take place, even more harm will have been caused. Furthermore, if residential occupation is the goal of those doing the works, it can be taken up very quickly and once occupants are on site it is a very lengthy process to remove them.
17. Applying the approach in *American Cyanamid* the Claimant submits that:
- i. There is a compelling case that works which have taken place will lead to breaches of planning control and that previous conduct of the First Defendant demonstrates that it will not cease unless restrained by Court order. In other words, there is a serious question to be tried; and

- ii. The Local Planning Authority cannot adequately be compensated in damages for a breach of planning control.
18. In the premises, the balance of convenience lies in preserving the lawful use of the land and enforcing proper planning control in the public interest.

CONCLUSIONS

19. In the circumstances of the present case, the Claimant submits that an injunction in the terms sought will not involve an interference with the Defendants' Human Rights or, alternatively, any such interference is necessary and proportionate having regard to all the circumstances known to the Claimant at present and the public interest in protecting the environs.
20. In the premises, the Claimant submits that it is appropriate for an injunction to be granted in the terms of the draft Order.
21. The Claimant also seeks an Order for alternative service of any injunction order granted to ensure the earliest possible compliance with proper planning control. In the circumstances, the Court can be satisfied that service by way of the alternative method proposed will come to the attention of the Defendants and will assist in preserving the lawful use of the Land.
22. The Claimant is willing to give the undertakings listed in the draft Order. There is no undertaking as to damages. From *Kirkeles MBC v Wickes Building Supplies Ltd* [1993] A.C. 227 [**AB 175**] [D], the court may exercise its discretion not to require such an undertaking, taking into account the circumstances of the case and that the claimant is a local authority with the

function of enforcing the law in its district in the public interest. This has more recently been considered in the context of s.187B in the cases of *Basingstoke & Deane BC v Loveridge* [2018] EWHC 2228 (QB) [AB 186][16] and *South Downs National Park Authority v Daroubaix* [2018] EWHC 1903 (QB) [AB 190] [16].

EMMALINE LAMBERT
CORNERSTONE BARRISTERS
2-3 GRAY'S INN SQUARE
LONDON
28th November 2023

IN THE HIGH COURT OF JUSTICE

**CLAIM NUMBER
KB-2023-004501**

KING'S BENCH DIVISION

**IN THE MATTER OF SECTION 187B OF THE TOWN AND
COUNTRY PLANNING ACT 1990 (AS AMENDED)**

BETWEEN:

WEST BERKSHIRE COUNCIL

and

MR THOMAS STOKES (1)

PCS HOMEBUILD LTD (2)

MR PAUL CHRISTOPHER SMITH (3)

PERSONS UNKNOWN (4)

NOTE OF HEARING

30 NOVEMBER 2023

Mr Justice Henshaw

In attendance: Emmaline Lambert, Izindi Visagie

Hearing: 14:04 onwards

The matter was called on. It was confirmed that S9 of the Contempt of Court Act applies to the hearing, that it was conducted on MS Teams and was being recorded.

Judge: Ms Lambert, thank you for skeleton argument. I have read that carefully and looked at your draft order and witness statement of Neill Whittaker.

Lambert: I will try to deal with matters. This application is made on behalf of West Berkshire District Council under s187B of the Town and Country Planning Act 1990. The papers include a witness statement, draft order, and skeleton. I will deal with the 'without notice' point first. Please turn up Mr Whittaker's witness statement to set the scene and background. Par 6 of the witness statement sets out the lawful use which has in any event ceased 9 years ago. A planning application has been refused since then and pre-application advice from a Council planning officer says planning permission is unlikely to be granted. Works started in September to clear the site at which time the First Defendant expressed an intention to keep horses for his children on the site. At the time he also said there was a pending planning application on his other site, Mayfair for further pitches.

In Par 31 of the statement, Mr Whittaker's list of concerns are summarised. The statement also includes conduct of Mr Stokes which shows little regard for compliance with regulatory controls. He increased the number of pitches at Mayfair, and has been prosecuted for conduct there. Mr Stokes expressed his intention to use the present site as a gypsy site. At the same time tenants at Mayfair are due to leave imminently. As someone who acts first and deal with consequences later, indications are that Mr Stokes will simply move caravans onto the land and deal with the consequences later. Sufficient hardstanding and services already on site to facilitate use of the site for residential use of caravans. To give notice would simply defeat the purpose of the injunction to prevent.

Judge- I have also read par 49 which explains concerns about giving notice of hearing. I am satisfied it is appropriate to deal with the application without notice. Whether or not I make an order, it will be appropriate for a note to be produced of hearing so that it can be served alongside skeleton argument. Is your instructing solicitor on the call?

Lambert- Yes, a note will be produced.

The Injunction is sought because it is feared land use will be changed. Par 40 – 44 of Mr Whittaker's witness statement sets out the planning harms and sets out why the site is not appropriate for use as a gypsy/traveller site. Previously, in the pre-application advice, a planning officer expressed an opinion that the site is inappropriate. Mr Whittaker does so again. He is external to the Council and he comes to be same view. A pre-emptive injunction is necessary to prevent planning harm. If residential occupation is taken up, significant resources will be required to deal with enforcement. This application is therefore to hold the ring.

In terms of human rights implications, the owner has somewhere to live. The land is not needed as a home.

In respect of Persons Unknown- I had prepared my skeleton argument not knowing that the Supreme Court Judgment was coming out yesterday. In the circumstances I have not had very much time to read it in great detail but glean that the judgment notes that there must be compelling need for orders against Persons Unknown and that those should be widely advertised to allow those potentially affected to have an opportunity to make submissions. There has not been an opportunity to advertise. In my submission all the other safeguards are met and in terms of service, the claimant will ensure order is placed on site.

Judge- [look at decision]. Please could I be directed to part of judgment dealing with orders against Persons Unknown.

Lambert- par 167, p54 of judgment.

Judge- [reads through paragraphs]. Does the judgment relate to advertisement of application before it is made, or after interim order is made?

Lambert- good point, if one goes down the judgment par 175 suggests advertisement should be before. But then 176 says advertisement might well alert people if this is done in advance. Par 226.

Judge- Did this case address a situation where there is a threat to take occupation of land that isn't currently occupied?

Lambert- the judgment says it should be done in sufficient time before application to be heard.

Judge- is there anything to preclude judgment against Mr Stokes?

Lambert- no

Judge- on the face of it should I consider interim injunction against the named defendants but not against Persons Unknown.

Lambert- from first reading, I am struggling to see how we can fit into the requirements set by the Supreme Court as we have been unable to widely advertise.

Judge- might you be able to advertise in time for return date hearing if I make order against first 3 D's?

Lambert- Yes.

There is a serious question to be tried in that works have taken place and the background matrix are such that balance of convenience lies in favour of granting injunction to pre-empt on site that is in the Green Belt and in an Area of Outstanding Natural Beauty.

Judge- I have a few questions. In skeleton par 4 you mention par 2 of PD8A. I am not sure what I get from that? May be a mistaken reference. Do they appear in list of type of cases CPR8?

Judge- I am satisfied this issue doesn't arise today. My further question was that in Mr Whittaker's witness statement, it says the land register not always up to date. Is the registered owner the 2nd Defendant?

Lambert- 2nd, yes.

Judge- So it is correct that Mr Stokes told Mr Whittaker he was the owner of the land, but he's not identified as registered owner?

Lambert- yes, this is very common. It takes a long time for registrations to take place. Sometimes transactions take place offline.

Judge- The requested return date is 11 December. Time estimate 2 hours?

Lambert- yes, depends whether anyone appears

Judge- I will now make my ruling.

This is an application to make an interim order without notice pursuant to s187B TCPA 1990. The application is for an order against the registered owner of the land along with its director and also Mr Stokes who claims to be owner. As claimed, relief also sought against Persons Unknown. Counsel properly drew my attention to the Supreme Court of Appeal decision handed down

yesterday in *Wolverhampton CC v London Gypsy and Traveller* 2023 UKSC 47. Without in any way precluding different argument at a later date, counsel has come to the conclusion it is not appropriate to press today the application insofar as it concerns Persons Unknown. The reason being that question may arise as to question of advertising before relief granted against Persons Unknown. So far as remaining Defendants are concerned, I am satisfied it is appropriate to make an order. Had regard to the principles set out in the case law helpfully summarised in counsel argument including *South Bucks v Porter*[2003] UKHL 558; [2003] 2 AC 558 and *Davis v Tonbridge & Malling Borough Council* [2004] EWCA Civ 194.

I am satisfied that there is a serious question to be tried as to whether works are taking place or being threatened which are breaches- set out in witness statement. Also satisfied for reasons explained that other enforcement options not adequate due to threat that arises. Clear there is an imminent threat arising specifically from recent refusal of pp for another site occupied by Mr Stokes occupied by Mr Stokes at Mayfair, Beenham.

Mr Whittaker also explains the manner in which the Claimant local authority has had regard to the Defendants and hardship injunctive relief might cause. Mr Stokes does not on the evidence require land to provide a home for himself. The evidence also explains the steps the council has taken and is taking with regard to provision of sites for traveller population.

It is clear that damages would not be adequate remedy bearing in mind that if Mr Stokes were to move caravans onto site, much of the damage will have been done. It is much more difficult to effective enforcement and controls. As Mr Whittaker says in his statement, planning permission that would be required in order for the site to be occupied lawfully needs full consideration. The restraint is to prevent those from doing what they are not entitled to do, pending such consideration.

I am satisfied it is just and proportionate to make a limited order today which comprises interim relief pending the return date 11 December, i.e. little less than 2 weeks. Will hear counsel on detail of the order.

Ms Lambert, is there anything you want to draw to my attention? 1. Note of hearing should be reflected in undertakings of the order. 2. Relating to service- I assume your clients have addresses for the named defendants and since I'm not making an order against Persons Unknown, I am not sure there is a need for alternative service?

Lambert- May I suggest we have the order on site so others have notice.

Judge – yes, even if only to have the order come to attention of Mr Stokes. It should be posted at this site as well as attempting service on him at Mayfair. Presumably Mr Smith and PCS Homebuild you have addresses for? Do you have emails?

Lambert- From Companies house and land registration records only, no email addresses.

Judge- Posting would be good service on D2 and D3? Will need posting on site and last known addresses on D2 and D3.

Lambert – Perhaps remove 'postage shall be deemed good service'..

Judge – The order could provide steps in 2a and 2b and whatever it is you do regarding the company, shall together constitute good service on the defendants. Is there anything else you want to bring to my attention re the order?

Lambert- I will make amendments to your name, the date, provisions re Persons Unknown and the claim number. Can deal with the amendments and send to your clerk?

Judge- Yes, please, email address is [blacked out for privacy reasons]. Thank you. Anything else?

Lambert- nothing further

Hearing concluded at 14:39

Note prepared by Izindi Visagie on 30 November 2023

IN THE HIGH COURT OF JUSTICE

Claim No. KB-2023-004501

KING'S BENCH DIVISION

DATED 30TH November 2023

MR JUSTICE HENSHAW

IN THE MATTER

B E T W E E N : -

WEST BERKSHIRE DISTRICT COUNCIL

and

- (1) MR THOMAS STOKES
(2) PCS HOMEBUILD LTD
(3) MR PAUL CHRISTOPHER SMITH**

Defendants



KB-2023-004501

INJUNCTION ORDER

PENAL NOTICE

IF YOU THE WITHIN NAMED: MR THOMAS STOKES, PCS HOMEBUILD LTC, MR PAUL CHRISTOPHER SMITH DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND LIABLE TO IMPRISONMENT, A FINE OR HAVING YOUR ASSETS SEIZED. ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE DEFENDANTS TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

IMPORTANT

1. This Order prohibits you from doing the acts set out in this Order. You should read terms of the Order and the guidance notes very carefully. You are advised to consult a solicitor as soon as possible. You have a right to ask the Court to vary or discharge the Order.
2. If you disobey this order you may be found guilty of Contempt of Court and may be sent to prison or fined. In the case of a Corporate Defendant, it may be fined, its Directors may be sent to prison or fined or its assets may be seized.

On the 30th November 2023 Mr Justice Henshaw considered the Application brought by West Berkshire District Council (“the Claimant”) for an injunction supported by the Witness Statements listed in Schedule A and accepted the undertakings listed in Schedule B at the end of this Order.

UPON hearing Counsel for the Claimant, upon reading the witness statements listed in Schedule A and upon accepting the undertakings listed in Schedule B

IT IS ORDERED THAT UNTIL 11th December 2023 (the Return Date) OR FURTHER ORDER:

THE INJUNCTION

Prohibitions

1. In relation to the Land known as “Ermin Street Stables, Ermin Street, Lambourn Woodlands, Hungerford RG17 7BL” registered at HM Land Registry under Title Number BK143882 (“the Land”) as shown edged red on the attached plan, the Defendants, whether by themselves or by instructing, encouraging or permitting any other person, must not:
 - (i) Allow the use of the Land for human habitation or residential occupation in breach of planning control;
 - (ii) Bring onto the Land any caravans and/or mobile homes for the purpose of human habitation or residential occupation in breach of planning control;
 - (iii) Bring/erect/install any buildings or structures on the Land for the purposes of human habitation or residential occupation in breach of planning control;

- (iv) Bring onto the Land any portable structures including portable toilets for purposes associated with human habitation or residential occupation in breach of planning control;
- (v) Bring onto the Land any further waste materials and/or hardcore and/or like materials for any purpose, including the creation/laying of hardstandings or hard surfaces, in association with the use of Land for the stationing of caravans and/or mobile homes for the purpose of human habitation or residential occupation in breach of planning control;
- (vi) Carry out any further works in relation to the formation of paths, roadways or any works including the further provision of sewerage, water and electricity infrastructure associated with the use of caravans and/or mobile homes for the purpose of human habitation or residential occupation in breach of planning control;
- (vii) Carry out any works to the Land associated with or in preparation for its use for stationing caravans and/or mobile homes or for the erection of a building and/or any structure for human habitation or residential occupation in breach of planning control;
- (viii) Undertake any development on the Land as defined in section 55 of the Town and Country Planning Act 1990 without the express grant of planning permission.

IT IS FURTHER ORDERED THAT:

ALTERNATIVE SERVICE

2.
 - a. Service of this Order and related documentation may be effected by the securing or affixing of copies of the sealed Order, the sealed Application Notice, the sealed Claim Form and the evidence in support of the Application and any future documentation in a transparent waterproof envelope in a prominent position on the Land.
 - b. This Order, the Application Notice, Claim form and evidence in support must also be served on Mr Thomas Stokes and Mr Paul Christopher Smith at their last known addresses, and on PCS Homebuild Ltd at its registered office.
3. The steps in 2a. and 2b. shall together be deemed to be good and sufficient service on the Defendants of the said Order, the Application Notice, Claim form and evidence in support.

THE RETURN DATE

4. There shall be a hearing at 10.30am on 11th December 2023 (the Return Date), with a time estimate of 2 hours, at the Royal Courts of Justice, unless the named parties consent in writing that no such hearing is necessary. On the Return Date, the Defendants can make, if so advised, representations in relation to the continuation, variation or discharge of the Order.

VARIATION OR DISCHARGE OF THIS ORDER

5. The Defendants may each of them (or anyone notified of this Order) apply to the Court on 48 hours written notice to the Claimant's legal representatives to vary or discharge this Order (or so much of it as affects that person); except that the hours between 5pm on any Friday and 9am the following Monday cannot be counted as part of the 48 hours' notice period.

COSTS OF THE APPLICATION

6. Costs reserved.
7. Liberty to apply.

GUIDANCE NOTES

Effect of this Order – The Defendants

1. A Defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
2. A Defendant which is a corporation and which is ordered not to do something must not do it itself or by its Directors, officers, employees or agents or in any other way.

Effect of this Order - Parties other than the Claimant and Defendants

It is a Contempt of Court for any person notified of this Order knowingly to assist in or permit a breach of this Order. Any person doing so may be sent to prison, fined or have his assets seized.

Interpretation of this Order

1. In this Order, where there is more than one Defendant (unless otherwise stated) references to "the Defendants" means each or all of them.

2. A requirement to serve on “the Defendants” means on each of them. However, the Order is effective against any Defendant on whom it is served.
3. An Order requiring “the Defendants” not to do anything applies to all Defendants.

Communications with the Court

All communications to the Court about this Order should be sent to Room E03, Royal Courts of Justice, Strand, London, WC2A 2LL (020 3936 8957). The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday except holidays.

SCHEDULE A

Evidence

The Judge read the following written evidence before making this Order:-

1. First Witness Statement of Neill Whittaker dated 28th November 2023

SCHEDULE B

Undertakings given to the Court by the Claimant:-

1. As soon as practicable the Claimant will serve on the named Defendants a sealed copy of this Order and evidence together with Counsel’s skeleton argument for the hearing and a Note of the hearing in support pursuant to the Order for alternative service herein.
2. As soon as practicable the Claimant will serve on the named Defendants the sealed Claim Form in this action claiming the appropriate relief.
3. To use the Claimant’s best endeavours to effect personal service on the named Defendants.

Name and Address of Claimant's Legal Representatives:-

Izindi Visagie
Ivy Legal Ltd
4th Floor, 33 Cannon Street
London
EC4M 5SB
020 3745 5896

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

DATED 30 NOVEMBER 2023

IN THE MATTER

B E T W E E N:-

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

-and-

(1) MR THOMAS STOKES

(2) PCS HOMEBUILD LTD

(3) MR PAUL CHRISTOPHER SMITH

Defendants

INJUNCTION ORDER

PENAL NOTICE

IF YOU THE WITHIN NAMED DEFENDANTS, MR THOMAS STOKES, PCS HOMEBUILD LTD, MR PAUL CHRISTOPHER SMITH DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND LIABLE TO IMPRISONMENT, A FINE OR HAVING YOUR ASSETS SEIZED

Ivy Legal Ltd
4th floor, 33 Cannon Street
London
EC4M 5SB

020 3745 5896

H.M. LAND REGISTRY

TITLE NUMBER

BK 143882

ORDNANCE SURVEY
PLAN REFERENCE

SU 2877/2977

Scale
1/2500

COUNTY BERKSHIRE

DISTRICT NEWBURY

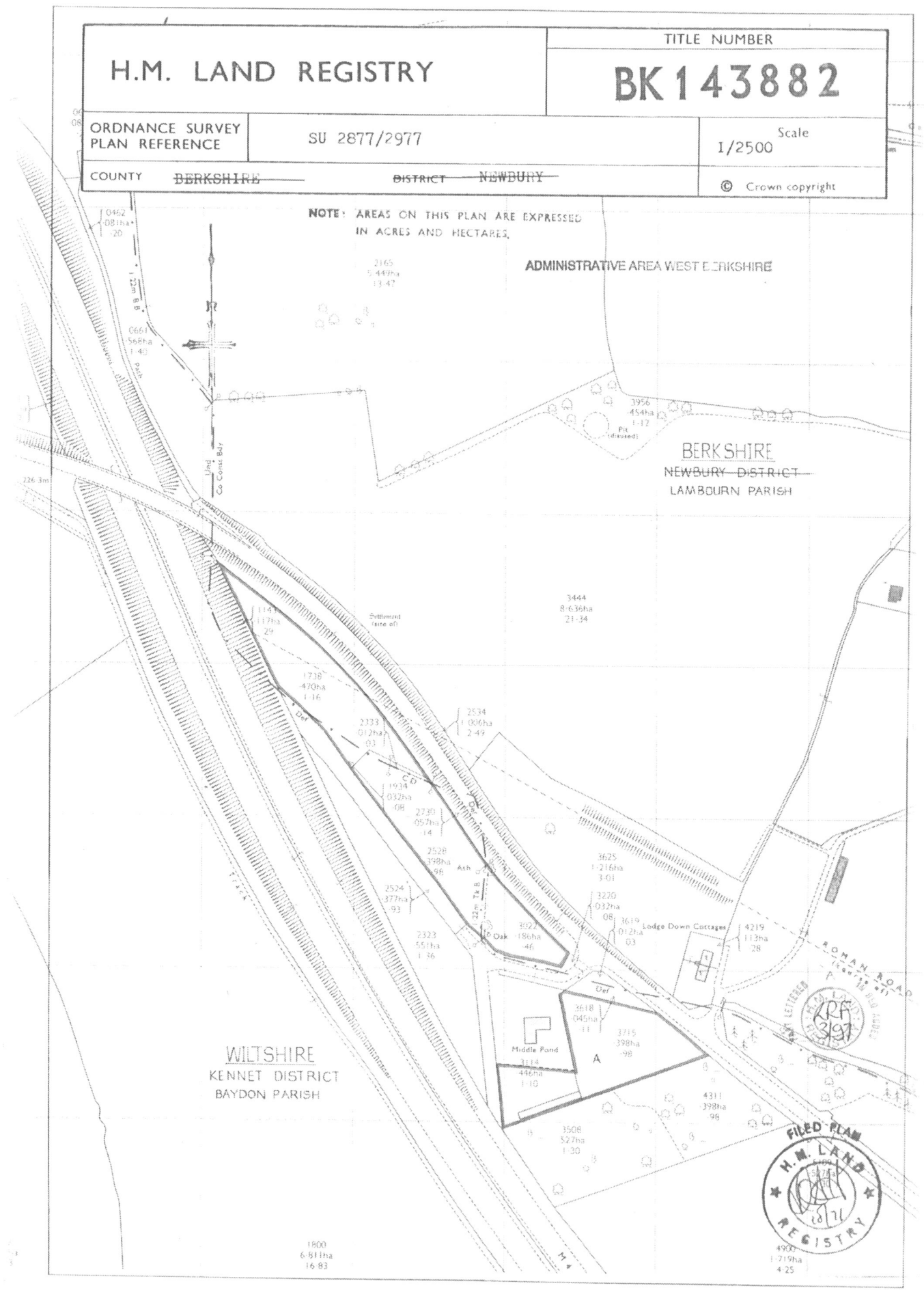
© Crown copyright

NOTE: AREAS ON THIS PLAN ARE EXPRESSED
IN ACRES AND HECTARES.

ADMINISTRATIVE AREA WEST BERKSHIRE

BERKSHIRE
NEWBURY DISTRICT
LAMBOURN PARISH

WILTSHIRE
KENNET DISTRICT
BAYDON PARISH



This is a print of the view of the title plan obtained from HM Land Registry showing the state of the title plan on 19 October 2023 at 21:18:24. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements scaled from the same points on the ground.

This title is dealt with by HM Land Registry, Gloucester Office.

© Crown Copyright. Produced by HM Land Registry. Reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number 100026316.

Certificate of service

Name of court In the High Court of Justice King's Bench Division	Claim No. KB-2023-004501
Name of Claimant West Berkshire District Council	
Name of Defendant 1) Mr Thomas Stokes 2) PCS Homebuild Ltd 3) Mr Paul Christopher Smith 4) Persons Unknown	

On what day did you serve? 0 4 / 1 2 / 2 0 2 3

The date of service is 0 7 / 1 2 / 2 0 2 3

What documents did you serve?

Please attach copies of the documents you have not already filed with the court.

N208- Claim Form, N208C- Notes for defendants, N210- Acknowledgement of Service, Draft final injunction order, Witness statements of Neill Whittaker with appendices

On whom did you serve?

(If appropriate include their position e.g. partner, director).

3rd Defendant Mr Paul Christopher Smith

How did you serve the documents?

(please tick the appropriate box)

by first class post or other service which provides for delivery on the next business day

by delivering to or leaving at a permitted place

by personally handing it to or leaving it with (_____ time left, where document is other than a claim form) *(please specify)*

by other means permitted by the court *(please specify)*

by Document Exchange

by fax machine (_____ time sent, where document is other than a claim form) *(you may want to enclose a copy of the transmission sheet)*

by other electronic means (_____ time sent, where document is other than a claim form) *(please specify)*

Give the address where service effected, include fax or DX number, e-mail address or other electronic identification

173 Station Road
Lower Stondon
Henlow, SG16 6JQ

Being the claimant's defendant's
 solicitor's litigation friend

usual residence

last known residence

place of business

principal place of business

last known place of business

last known principal place of business

principal office of the partnership

principal office of the corporation

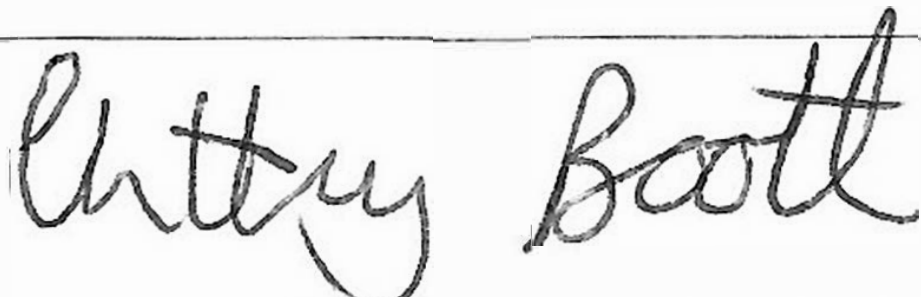
principal office of the company

place of business of the partnership/company/ corporation within the jurisdiction with a connection to claim

other *(please specify)*

I believe that the facts stated in this certificate are true.

Full name ANTHONY BOOTH

Signed 
(Claimant) (Defendant) ('s solicitor) ('s litigation friend)

Position or office held Process Server for Green Legal Agents Limited
(If signing on behalf of firm or company)

Date 0 6 / 1 2 / 2 0 2 3

Rules relating to the service of documents are contained in Part 6 of the Civil Procedure Rules (www.justice.gov.uk) and you should refer to the rules for information.

Calculation of deemed day of service of a claim

A claim form served within the UK in accordance with Part 6 of the Civil Procedure rules is deemed to be served on the second business day after the claimant has completed the steps required by CPR 7.5(1).

Calculation of the deemed day of service of documents other than the claim form (CPR 6.26)

Method of service	Deemed day of service
First class post or other service which provides for delivery on the next business day	The second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day
Document exchange	The second day after it was left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day
Delivering the document to or leaving it at a permitted address	If it is delivered to or left at the permitted address on a business day before 4.30pm, on that day; or in any other case, on the next business day after that day
Fax	If the transmission of the fax is completed on a business day before 4.30pm, on that day; or in any other case, on the next business day after the day on which it was transmitted
Other electronic method	If the email or other electronic transmission is sent on a business day before 4.30pm, on that day; or in any other case, on the next business day after the day on which it was sent
Personal service	If the document is served personally before 4.30pm on a business day, it is served on that day; or in any other case, on the next business day after that day

In this context 'business day' means any day except Saturday, Sunday or a bank holiday; (under the Banking and Financial Dealings Act 1971 in the part of the UK where service is to take place) includes Good Friday and Christmas Day.

Certificate of service

Name of court In the High Court of Justice King's Bench Division	Claim No. KB-2023-004501
Name of Claimant West Berkshire District Council	
Name of Defendant 1) Mr Thomas Stokes 2) PCS Homebuild Ltd 3) Mr Paul Christopher Smith 4) Persons Unknown	

On what day did you serve? 04 / 12 / 2023

The date of service is 07 / 12 / 2023

What documents did you serve?

Please attach copies of the documents you have not already filed with the court.

N208- Claim Form, N208C- Notes for defendants, N210- Acknowledgement of Service, Draft final injunction order, Witness statements of Neill Whittaker with appendices

On whom did you serve?

(If appropriate include their position e.g. partner, director).

2nd Defendant - PCS Homebuild Ltd

How did you serve the documents?

(please tick the appropriate box)

- by first class post or other service which provides for delivery on the next business day
- by delivering to or leaving at a permitted place
 - by personally handing it to or leaving it with (..... time left, where document is other than a claim form) *(please specify)*
- by other means permitted by the court *(please specify)*
- by Document Exchange
- by fax machine (..... time sent, where document is other than a claim form) *(you may want to enclose a copy of the transmission sheet)*
- by other electronic means (..... time sent, where document is other than a claim form) *(please specify)*

Give the address where service effected, include fax or DX number, e-mail address or other electronic identification

173 Station Road
Lower Stondon
Henlow, SG16 6JQ

Being the claimant's defendant's
 solicitor's litigation friend

- usual residence
- last known residence
- place of business
- principal place of business
- last known place of business
- last known principal place of business
- principal office of the partnership
- principal office of the corporation
- principal office of the company
- place of business of the partnership/company/ corporation within the jurisdiction with a connection to claim
- other *(please specify)*

Registered Office of the Company

I believe that the facts stated in this certificate are true.

Full name ANTHONY BOOTH

Signed  Position or office held Process Server for Green Legal Agents Limited

(Claimant) (Defendant) ('s solicitor) ('s litigation friend) (If signing on behalf of firm or company)

Date 06 / 12 / 2023

Rules relating to the service of documents are contained in Part 6 of the Civil Procedure Rules (www.justice.gov.uk) and you should refer to the rules for information.

Calculation of deemed day of service of a claim

A claim form served within the UK in accordance with Part 6 of the Civil Procedure rules is deemed to be served on the second business day after the claimant has completed the steps required by CPR 7.5(1).

Calculation of the deemed day of service of documents other than the claim form (CPR 6.26)

Method of service	Deemed day of service
First class post or other service which provides for delivery on the next business day	The second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day
Document exchange	The second day after it was left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day
Delivering the document to or leaving it at a permitted address	If it is delivered to or left at the permitted address on a business day before 4.30pm, on that day; or in any other case, on the next business day after that day
Fax	If the transmission of the fax is completed on a business day before 4.30pm, on that day; or in any other case, on the next business day after the day on which it was transmitted
Other electronic method	If the email or other electronic transmission is sent on a business day before 4.30pm, on that day; or in any other case, on the next business day after the day on which it was sent
Personal service	If the document is served personally before 4.30pm on a business day, it is served on that day; or in any other case, on the next business day after that day

In this context 'business day' means any day except Saturday, Sunday or a bank holiday; (under the Banking and Financial Dealings Act 1971 in the part of the UK where service is to take place) includes Good Friday and Christmas Day.

Certificate of service

Name of court In the High Court of Justice King's Bench Division	Claim No. KB-2023-004501
Name of Claimant West Berkshire District Council	
Name of Defendant 1) Mr Thomas Stokes 2) PCS Homebuild Ltd 3) Mr Paul Christopher Smith 4) Persons Unknown	

On what day did you serve? 04 / 12 / 2023

The date of service is 07 / 12 / 2023

What documents did you serve?
Please attach copies of the documents you have not already filed with the court.

N208- Claim Form, N208C- Notes for defendants, N210- Acknowledgement of Service, Draft final injunction order, Witness statements of Neill Whittaker with appendices

On whom did you serve?
(If appropriate include their position e.g. partner, director).

2nd Defendant - PCS Homebuild Ltd

How did you serve the documents?
(please tick the appropriate box)

Give the address where service effected, include fax or DX number, e-mail address or other electronic identification

- by first class post or other service which provides for delivery on the next business day
- by delivering to or leaving at a permitted place
- by personally handing it to or leaving it with (.....time left, where document is other than a claim form) (please specify)
- by other means permitted by the court (please specify)
- by Document Exchange
- by fax machine (.....time sent, where document is other than a claim form) (you may want to enclose a copy of the transmission sheet)
- by other electronic means (.....time sent, where document is other than a claim form) (please specify)

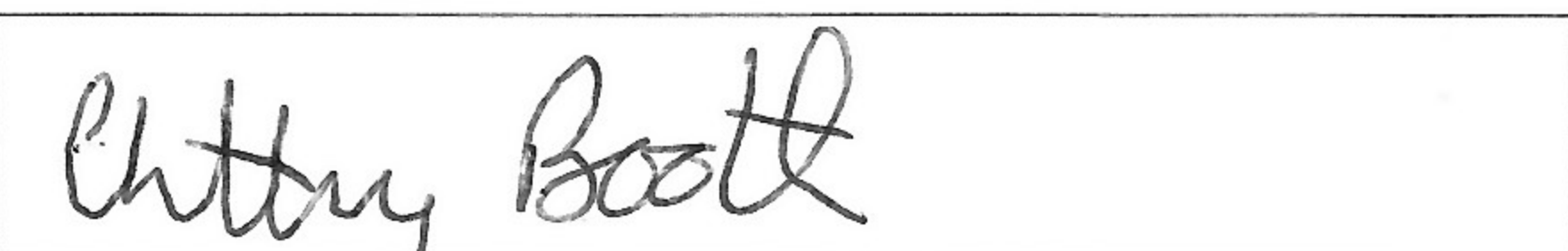
Manley Bungalow
Pirton Road
Hitchin, SG6 2ES

Being the claimant's defendant's
 solicitor's litigation friend

- usual residence
- last known residence
- place of business
- principal place of business
- last known place of business
- last known principal place of business
- principal office of the partnership
- principal office of the corporation
- principal office of the company
- place of business of the partnership/company/corporation within the jurisdiction with a connection to claim
- other (please specify)

I believe that the facts stated in this certificate are true.

Full name ANTHONY BOOTH

Signed 
(Claimant) (Defendant) ('s solicitor) ('s litigation friend)

Position or office held Process Server for Green Legal Agents Limited
(If signing on behalf of firm or company)

Date 06 / 12 / 2023

Rules relating to the service of documents are contained in Part 6 of the Civil Procedure Rules (www.justice.gov.uk) and you should refer to the rules for information.

Calculation of deemed day of service of a claim

A claim form served within the UK in accordance with Part 6 of the Civil Procedure rules is deemed to be served on the second business day after the claimant has completed the steps required by CPR 7.5(1).

Calculation of the deemed day of service of documents other than the claim form (CPR 6.26)

Method of service	Deemed day of service
First class post or other service which provides for delivery on the next business day	The second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day
Document exchange	The second day after it was left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day
Delivering the document to or leaving it at a permitted address	If it is delivered to or left at the permitted address on a business day before 4.30pm, on that day; or in any other case, on the next business day after that day
Fax	If the transmission of the fax is completed on a business day before 4.30pm, on that day; or in any other case, on the next business day after the day on which it was transmitted
Other electronic method	If the email or other electronic transmission is sent on a business day before 4.30pm, on that day; or in any other case, on the next business day after the day on which it was sent
Personal service	If the document is served personally before 4.30pm on a business day, it is served on that day; or in any other case, on the next business day after that day

In this context 'business day' means any day except Saturday, Sunday or a bank holiday; (under the Banking and Financial Dealings Act 1971 in the part of the UK where service is to take place) includes Good Friday and Christmas Day.

Certificate of service

Name of court High Court	Claim No. KB-2023-004501
Name of Claimant West Berkshire Council	
Name of Defendant Stokes & Others	

On what day did you serve? 0 1 / 1 2 / 2 0 2 3

The date of service is 0 4 / 1 2 / 2 0 2 3

What documents did you serve?

Please attach copies of the documents you have not already filed with the court.

Copy of Interim injunction and all supporting apperperwork

On whom did you serve?

(If appropriate include their position e.g. partner, director).

Mr Thomas Stokes

How did you serve the documents?

(please tick the appropriate box)

- by first class post or other service which provides for delivery on the next business day
- by delivering to or leaving at a permitted place
 - by personally handing it to or leaving it with
 - (..11.30.....time left, where document is other than a claim form) (please specify)
 - Thomas Stokes
- by other means permitted by the court (please specify)
- by Document Exchange
- by fax machine (.....time sent, where document is other than a claim form) (you may want to enclose a copy of the transmission sheet)
- by other electronic means (.....time sent, where document is other than a claim form) (please specify)

Give the address where service effected, include fax or DX number, e-mail address or other electronic identification

Ermin Street Stables, Ermin Street, Lambourn Woodlands, Hungerford, RG17 7BL.
Mayfair, Bath Road, Beenham, Reading, RG7 5QE.

- Being the**
- claimant's
 - defendant's
 - solicitor's
 - litigation friend

- usual residence
- last known residence
- place of business
- principal place of business
- last known place of business
- last known principal place of business
- principal office of the partnership
- principal office of the corporation
- principal office of the company
- place of business of the partnership/company/ corporation within the jurisdiction with a connection to claim
- other (please specify)

I believe that the facts stated in this certificate are true.

Full name Neill Whittaker

Signed Neill Whittaker Position or office held Senior Planning Associate

(Claimant) (Defendant) ('s solicitor) ('s litigation friend) (If signing on behalf of firm or company)

Date 0 4 / 1 2 / 2 0 2 3

Rules relating to the service of documents are contained in Part 6 of the Civil Procedure Rules (www.justice.gov.uk) and you should refer to the rules for information.

Calculation of deemed day of service of a claim

A claim form served within the UK in accordance with Part 6 of the Civil Procedure rules is deemed to be served on the second business day after the claimant has completed the steps required by CPR 7.5(1).

Calculation of the deemed day of service of documents other than the claim form (CPR 6.26)

Method of service	Deemed day of service
First class post or other service which provides for delivery on the next business day	The second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day
Document exchange	The second day after it was left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day
Delivering the document to or leaving it at a permitted address	If it is delivered to or left at the permitted address on a business day before 4.30pm, on that day; or in any other case, on the next business day after that day
Fax	If the transmission of the fax is completed on a business day before 4.30pm, on that day; or in any other case, on the next business day after the day on which it was transmitted
Other electronic method	If the email or other electronic transmission is sent on a business day before 4.30pm, on that day; or in any other case, on the next business day after the day on which it was sent
Personal service	If the document is served personally before 4.30pm on a business day, it is served on that day; or in any other case, on the next business day after that day

In this context 'business day' means any day except Saturday, Sunday or a bank holiday; (under the Banking and Financial Dealings Act 1971 in the part of the UK where service is to take place) includes Good Friday and Christmas Day.

Statement on behalf of the Claimant
Witness: Izindi Visagie
1st Statement
Dated: 7 December 2023

CLAIM NUMBER
KB-2023-004501

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

IN THE MATTER OF SECTION 187B OF THE TOWN AND COUNTRY
PLANNING ACT 1990 (AS AMENDED)

BETWEEN:

WEST BERKSHIRE COUNCIL

and

MR THOMAS STOKES (1)

~~PCS HOMEBUILD LTD (2)~~

~~MR PAUL CHRISTOPHER SMITH (3)~~

PERSONS UNKNOWN (4)

WITNESS STATEMENT

STATEMENT OF: Izindi Visagie

AGE: Over 21

OCCUPATION: Solicitor

ADDRESS: Ivy Legal, 4th Floor, 33 Cannon Street, London, EC4M 5SB

1. I make this witness statement in support of the Claimant's claim for an Injunction against the Defendants pursuant to Section 187B of the Town & Country Planning Act 1990 in relation to land at Ermin Street Stables, Ermin Street, Lambourn Woodlands, Hungerford, RG17 7BL ('the Site'). I am duly authorised by the Claimant to make this witness statement. I make it from my own information, knowledge and belief save where otherwise stated.
2. I attended a hearing of this court on 30 November 2023 when an interim order ("the Order") was made by Mr Justice Henshaw against the first 3 Defendants.
3. Pursuant to the making of the Order, the Order, the Application Notice, the Claim form and the evidence in support of the Application, including a note of the proceedings of the 30th November and a copy of counsel's skeleton argument (together the "Order documents") were served on Mr Thomas Stokes personally at his address at Mayfair, Bath Road, Beenham, Reading RG7 5QE. The Order documents were also served on Mr Thomas Stokes by securing copies in a transparent waterproof envelope in a prominent position on the Site. Mr Neill Whittaker attended to service both on Mr Stokes personally and on the Site and his Certificate of Service has been filed with the court.
4. On 1 December I sent a set of the Order documents to Mr Paul Smith, the 3rd defendant, by email. On 5 December Mr Smith's former solicitor supplied me with a copy of the TR1 and part of the sale agreement which purports to confirm sale of the land from PCS Homebuild Ltd to Stokes Housing Limited on 5 December 2022, exhibited at IV1.
5. Based on the information provided, the Claimant is satisfied, on balance, that the 2nd and 3rd Defendants have no control over the Site and the Claimant wishes to discontinue proceedings against the 2nd and 3rd Defendants.
6. From interrogating Companies House records, it appears that the 1st Defendant is the sole director of Stokes Housing Limited.
7. In the interim the Council published a copy of the Order on its website at the following link: [Ermin Street Stables Injunction - West Berkshire Council](#). I first tested this link on 5 December 2023. A screen shot of what is shown is attached as Exhibit IV2. On 7 December 2023 the Claimant issued a press release about the matter, a screenshot of which is included in Exhibit IV2.

Dated 7 December 2023



Signed

Izindi Visagie

IN THE HIGH COURT OF JUSTICE

Claim No. KB-2023-004501

KING'S BENCH DIVISION

IN THE MATTER

BETWEEN :-

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

(1) MR THOMAS STOKES
(2) ~~PCS HOMEBUILD LTD~~
(3) ~~MR PAUL CHRISTOPHER SMITH~~
(4) PERSONS UNKNOWN

Defendants

THIS IS THE EXHIBIT MARKED 'IV1' REFERRED TO IN THE
WITNESS STATEMENT OF IZINDI VISAGIE

CONTRACT

Incorporating the
Standard Commercial
Property Conditions
(Third Edition - 2018
Revision)

For conveyancer's use only

Buyer's conveyancer:

CHRISTY JACKSON

Seller's conveyancer:

FARUKH MAEEM

Law Society Formula: A/B/C / Personal exchange

The information above does not form part of the Contract

1635

Date : 5 December 2022

Seller : PCS Homebuild Ltd (Co. Regn. No. 10608163) of Manley Bungalow,
Pirton Road, Hitchin SG5 2ES

Buyer : Stokes Housing Limited (Co. Regn. No. 13973551)

Property (Freehold) : Land being Ermin Street Stables, Ermin Street, Lambourn Woodlands,
Hungerford RG17 7BL

Title number / root of title : BK143882

Specified incumbrances : All matters contained or referred to in the registers of the above
title(s) as shown on the official copy of the register of title issued at 08
November 2022 at 10:52:14

(Such matters to exclude financial charges (other than Rentcharges)
entered into by the Seller).

Title guarantee (full / limited) : Full Title Guarantee (Subject to the terms of this Contract)

Completion date : 5 December 2022

Contract rate : The Contract interest rate is 4% above Barclays Bank plc base rate from
time to time


Purchase price : £ 60,500 - 00

Deposit : £

Contents price (if separate) : £

Balance : £

The Seller will sell and the Buyer will buy the Property for the Purchase Price.

WARNING This is a formal document, designed to create legal rights and legal obligations. Take advice before using it.	Signed  Seller / <u>Buyer</u>
---	--

SPECIAL CONDITIONS

1. (a) This contract incorporates the Standard Commercial Property Conditions (Third Edition - 2018 Revision).
(b) The terms used in this contract have the same meaning when used in the Conditions.
2. Subject to the terms of this contract and to the Standard Commercial Property Conditions, the Seller is to sell the property with either full title guarantee or limited title guarantee, as specified on the front page.
3. (a) The sale includes those contents which are indicated on any attached list as included in the sale and the Buyer is to pay the contents price for them.
(b) The sale excludes those fixtures which are at the property and are indicated on any attached list as excluded from the sale.
4. Before the date of this Contract, the Seller gave the Buyer permission and the opportunity, which the Buyer agrees were sufficient for its purposes, to inspect, survey and investigate the condition of the Property. The Buyer is therefore treated as having formed its own view of the condition of the Property and of its suitability for the Buyer's purposes.
5. Neither damage to nor the destruction of the Property, nor any deterioration in its condition, entitles the Buyer to reduce the Price or to refuse to complete this Contract.
6. This Contract (and any documents annexed to or incorporated in it) is the entire Contract between the parties for the sale of the Property and supersedes any previous agreement between the parties about them.
7. The Buyer may rely on the Seller's Solicitors written statements made before the date of the Contract in reply to the Buyer's Solicitors' written enquiries. Subject to that, the Buyer has not entered into this Contract relying on any statement or representation made by or on behalf of the Seller before the date of this Contract and the Buyer has no remedy against the Seller in respect of any such matters. Nothing in this clause limits or excludes liability for fraud.
8. The Property is sold subject to any unregistered interests that were overriding under schedule 3 of the Land Registration Act 2002 before 13 October 2013. The Buyer shall complete even if someone registers a notice in respect of any such interests between the title being deduced and the actual Completion Date.
9. The Buyer buys with knowledge and notice of the matters referred to clause **Error! Reference source not found.** and in this clause and in Standard Condition 3.1.2 and it may not raise any requisitions on them except in respect of matters (other than under clause 8) arising from pre-completion searches in the period between the date of this Contract and the actual Completion Date
10. The Buyer shall make no objection to or representation about nor institute any proceedings whether by injunction or for damages or otherwise in relation to the works (if any carried out) to the Property
11. **Deposit**
 - a. The Deposit shall be paid to the Seller's Solicitors on the date of this agreement (time being of the essence).

- b. The Deposit shall each be paid by telegraphic transfer to the Seller's Solicitors' client bank account.
- c. The Deposit shall be held by the Seller's Solicitors as agent for the Seller.
- d. If the Deposit is not paid to the Seller's Solicitors by the due date the deposit shall bear interest at the Prescribed Rate calculated daily from the due date to the date of payment being received by the Seller's Solicitors.
- e. If the Deposit is less than 10% of the Purchase Price then subject to clause 10.f the difference between the Deposit and 10% of the Purchase Price shall be a debt due from the Buyer to the Seller payable on the Completion Date.
- f. If the Seller rescinds this agreement the Buyer shall (without prejudice to any other rights or remedies which the Seller may have against the Buyer) immediately pay the shortfall referred to in clause 10.e to the Seller.

12. Representations

Neither party can rely on any representation made by the other, unless made in writing by the other or his conveyancer, but this does not exclude liability for fraud or recklessness.

Notices may be sent to:

Seller's Conveyancer's name: Greystone Solicitors 275 Dunstable Road Luton LU4 8BS

Buyer's Conveyancer's name: Brogan Property Lawyers 64 High Street Frimley GU16 7JE

HM Land Registry
Transfer of whole of registered title(s)

TR1

Any parts of the form that are not typed should be completed in black ink and in block capitals.

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

For information on how HM Land Registry processes your personal information, see our [Personal Information Charter](#).

Leave blank if not yet registered.

Insert address including postcode (if any) or other description of the property, for example 'land adjoining 2 Acacia Avenue'.

Remember to date this deed with the day of completion, but not before it has been signed and witnessed.

Give full name(s) of **all** the persons transferring the property.

Complete as appropriate where the transferor is a company.

Give full name(s) of **all** the persons to be shown as registered proprietors.

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with HM Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

	<p>1 Title number(s) of the property:</p> <p>BK143882</p>
	<p>2 Property:</p> <p>Ermin Street Stables Ermin Street Lambourn Woodland Hungerford</p>
	<p>3 Date:</p> <p>5 December 2022</p>
	<p>4 Transferor:</p> <p>PCS Homebuild</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: 10608163</p> <p><u>For overseas companies</u> (a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>
	<p>5 Transferee for entry in the register:</p> <p>Stokes Housing Limited</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: 13973551</p> <p><u>For overseas companies</u> (a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 11.

Place 'X' in any box that applies.

Add any modifications.

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

The registrar will enter a Form A restriction in the register *unless*:

- an 'X' is placed:
 - in the first box, or
 - in the third box and the details of the trust or of the trust instrument show that the transferees are to hold the property on trust for themselves alone as joint tenants, *or*
- it is clear from completion of a form JO lodged with this application that the transferees are to hold the property on trust for themselves alone as joint tenants.

Please refer to [Joint property ownership](#) and [practice guide 24: private trusts of land](#) for further guidance. These are both available on the GOV.UK website.

Insert here any required or permitted statement, certificate or application and any agreed covenants, declarations and so on.

6	<p>Transferee's intended address(es) for service for entry in the register:</p> <p>Ermin Street Stables Ermin Street Lambourn Woodland Hungerford</p>
7	<p>The transferor transfers the property to the transferee</p>
8	<p>Consideration</p> <p><input checked="" type="checkbox"/> The transferor has received from the transferee for the property the following sum (in words and figures): fifty thousand pounds (£50,000.00)</p> <p><input type="checkbox"/> The transfer is not for money or anything that has a monetary value</p> <p><input type="checkbox"/> Insert other receipt as appropriate:</p>
9	<p>The transferor transfers with</p> <p><input checked="" type="checkbox"/> full title guarantee</p> <p><input type="checkbox"/> limited title guarantee</p>
10	<p>Declaration of trust. The transferee is more than one person and</p> <p><input type="checkbox"/> they are to hold the property on trust for themselves as joint tenants</p> <p><input type="checkbox"/> they are to hold the property on trust for themselves as tenants in common in equal shares</p> <p><input type="checkbox"/> they are to hold the property on trust:</p>
11	<p>Additional provisions</p> <p>The Transferee hereby covenants by way of indemnity only to observe and perform the covenants and conditions contained or referred to in the Charges Register of the title and to indemnify the Transferor against any future breaches thereof.</p>

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

If there is more than one transferee and panel 10 has been completed, each transferee must also execute this transfer to comply with the requirements in section 53(1)(b) of the Law of Property Act 1925 relating to the declaration of a trust of land. Please refer to [Joint property ownership](#) and [practice guide 24: private trusts of land](#) for further guidance.

Examples of the correct form of execution are set out in [practice guide 8: execution of deeds](#). Execution as a deed usually means that a witness must also sign, and add their name and address.

Remember to date this deed in panel 3.

12 Execution

Executed as a deed by affixing the common seal of Stokes Housing Limited in the presence of:

Signature of Director:.....

Signature of Secretary:.....

Executed as a deed by affixing the common seal of PCS Homebuild in the presence of: ^{a Director} F.d

Signature of Director:.....

PAUL SMITH

Signature of Secretary:.....

WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

© Crown copyright (ref: LR/SC59) 06/19

IN THE HIGH COURT OF JUSTICE

Claim No. KB-2023-004501

KING'S BENCH DIVISION

IN THE MATTER

BETWEEN :-

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

(1) MR THOMAS STOKES
(2) ~~PCS HOMEBUILD LTD~~
(3) ~~MR PAUL CHRISTOPHER SMITH~~
(4) PERSONS UNKNOWN

Defendants

THIS IS THE EXHIBIT MARKED 'IV2' REFERRED TO IN THE
WITNESS STATEMENT OF IZINDI VISAGIE

Ermin Street Stables Injunction

West Berkshire Council were successfully granted an interim injunction against landowners in Lambourn Woodlands at a site known as Ermin Street Stables on Thursday 30 November by the High Court of Justice.

We will be returning to the High Court on Monday 11 December 2023 to make further additions to the injunction order.

This page will be updated as required with further documentation. If you have any questions, please contact Planning Enforcement on 01635 519111 or email planningenforcement@westberks.gov.uk quoting ref 23/00562/15UNAU.

1. [Application Notice \[141KB\]](#)
2. [Claim Form with Plan \[732KB\]](#)
3. [Sealed Order 30 November 2023 Interim Injunction \[2MB\]](#)
4. [Witness Statement and Exhibits Combined 28.11.2023 \[20MB\]](#)
5. [Skeleton Argument on Behalf of the Claimant \[214KB\]](#)

Please give us feedback

Is this useful?

Ermin Street Stables Injunction

The Council has been granted an interim injunction against named landowners in Lambourn Woodlands

Posted by: Communications team on 07 December 2023

On 30 November 2023, West Berkshire Council was granted an interim injunction against named landowners in Lambourn Woodlands, at a site known as Ermin Street Stables by the High Court of Justice.



The Sealed Order prohibits the named defendants from creating hardstanding for caravans and mobile homes and installing the associated utilities with the intention of creating a residential site.

Councillor Tony Vickers, West Berkshire's Executive Member for Planning and Community Engagement says, "We are committed to taking early action to prevent potential planning contraventions and will be returning to the High Court on 11 December 2023 for another hearing to extend the injunction."

The Sealed Order and all documents pertaining to the injunction can be viewed here: <https://www.westberks.gov.uk/ermin-street-injunction>

Please direct any questions to Planning Enforcement (01635) 519111 or email planningenforcement@westberks.gov.uk quoting ref 23/00562/15UNAU.

Last modified: 07 December 2023

[← Prev](#)
[Your Town, Your Vision!](#)

Have Any
Questions?

Application notice

For help in completing this form please read the notes for guidance form N244Notes.

Find out how HM Courts and Tribunals Service uses personal information you give them when you fill in a form: <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter>

Name of court	Claim no.
Fee account no. (if applicable)	Help with Fees – Ref. no. (if applicable)
	H W F - <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/>
Warrant no. (if applicable)	
Claimant's name (including ref.)	
Defendant's name (including ref.)	
Date	

1. What is your name or, if you are a legal representative, the name of your firm?

2. Are you a Claimant Defendant Legal Representative
 Other (please specify)

If you are a legal representative whom do you represent?

3. What order are you asking the court to make and why?

4. Have you attached a draft of the order you are applying for? Yes No

5. How do you want to have this application dealt with? at a hearing without a hearing
 at a remote hearing

6. How long do you think the hearing will last? Hours Minutes
 Is this time estimate agreed by all parties? Yes No

7. Give details of any fixed trial date or period

8. What level of Judge does your hearing need?

9. Who should be served with this application?

9a. Please give the service address, (other than details of the claimant or defendant) of any party named in question 9.

10. What information will you be relying on, in support of your application?

- the attached witness statement
- the statement of case
- the evidence set out in the box below

If necessary, please continue on a separate sheet.

11. Do you believe you, or a witness who will give evidence on your behalf, are vulnerable in any way which the court needs to consider?

Yes. Please explain in what way you or the witness are vulnerable and what steps, support or adjustments you wish the court and the judge to consider.


No

Statement of Truth

I understand that proceedings for contempt of court may be brought against a person 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 believe** that the facts stated in section 10 (and any continuation sheets) are true.
- The applicant believes** that the facts stated in section 10 (and any continuation sheets) are true. **I am authorised** by the applicant to sign this statement.

Signature



- Applicant
- Litigation friend (where applicant is a child or a Protected Party)
- Applicant's legal representative (as defined by CPR 2.3(1))

Date

Day

Month

Year

Full name

Name of applicant's legal representative's firm

If signing on behalf of firm or company give position or office held

Applicant's address to which documents should be sent.

Building and street

Second line of address

Town or city

County (optional)

Postcode

--	--	--	--	--	--	--	--

If applicable

Phone number

Fax phone number

DX number

Your Ref.

Email

KING'S BENCH DIVISION

DATED 11th December 2023

MR[S] JUSTICE []

IN THE MATTER

B E T W E E N : -

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

and

**(1) MR THOMAS STOKES
(2) ~~PCS HOMEBUILD LTD~~
(3) ~~MR PAUL CHRISTOPHER SMITH~~
(4) PERSONS UNKNOWN**

Defendants

INJUNCTION ORDER

PENAL NOTICE

IF YOU THE WITHIN NAMED: MR THOMAS STOKES AND PERSONS UNKNOWN

DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND LIABLE TO IMPRISONMENT OR FINED OR YOUR ASSETS SEIZED. ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE DEFENDANTS TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

IMPORTANT

1. This Order prohibits you from doing the acts set out in this Order. You should read terms of the Order and the guidance notes very carefully. You are advised to consult a solicitor as soon as possible. You have a right to ask the Court to vary or discharge the Order.
2. If you disobey this order you may be found guilty of Contempt of Court and may be sent to prison or fined. In the case of a Corporate Defendant, it may be fined, its Directors may be sent to prison or fined or its assets may be seized.

On the 11th December 2023 Mr[s] Justice [] considered the Application brought by West Berkshire District Council (“the Claimant”) for the continuation of an injunction order granted by Mr Justice Henshaw on 30th November 2023 supported by the Witness Statements listed in Schedule A and accepted the undertakings listed in Schedule B at the end of this Order.

UPON hearing Counsel for the Claimant, upon reading the witness statements listed in Schedule A and upon accepting the undertakings listed in Schedule B

IT IS ORDERED THAT UNTIL TRIAL OR FURTHER ORDER BUT FOR NOT MORE THAN ONE YEAR FROM THE DATE OF THE ORDER:

THE INJUNCTION

Prohibitions

1. In relation to the Land known as “Ermin Street Stables, Ermin Street, Lambourn Woodlands, Hungerford RG17 7BL” registered at HM Land Registry under Title Number BK143882 (“the Land”) as shown edged red on the attached plan, the Defendants, whether by themselves or by instructing, encouraging or permitting any other person, must not:
 - (i) Allow the use of the Land for human habitation or residential occupation in breach of planning control;
 - (ii) Bring onto the Land any caravans and/or mobile homes for the purpose of human habitation or residential occupation in breach of planning control;
 - (iii) Bring/erect/install any buildings or structures on the Land for the purposes of human habitation or residential occupation in breach of planning control;

- (iv) Bring onto the Land any portable structures including portable toilets for purposes associated with human habitation or residential occupation in breach of planning control;
- (v) Bring onto the Land any further waste materials and/or hardcore and/or like materials for any purpose, including the creation/laying of hardstandings or hard surfaces, in association with the use of Land for the stationing of caravans and/or mobile homes for the purpose of human habitation or residential occupation in breach of planning control;
- (vi) Carry out any further works in relation to the formation of paths, roadways or any works including the further provision of sewerage, water and electricity infrastructure associated with the use of caravans and/or mobile homes for the purpose of human habitation or residential occupation in breach of planning control;
- (vii) Carry out any works to the Land associated with or in preparation for its use for stationing caravans and/or mobile homes or for the erection of a building and/or any structure for human habitation or residential occupation in breach of planning control;
- (viii) Undertake any development on the Land as defined in section 55 of the Town and Country Planning Act 1990 without the express grant of planning permission.

IT IS FURTHER ORDERED THAT:

ALTERNATIVE SERVICE

- 2.
 - a. Service of this Order and related documentation may be effected by the securing or affixing of sealed copies of the said Order, the Application Notice, the Claim Form and evidence in support of the Application and any future documentation in a transparent waterproof envelope in a prominent position on the Land and such posting shall be deemed to be good and sufficient service on the Defendants of the said Order, the Application Notice, Claim Form and evidence in support of the Application and any future documentation on the date it was so affixed.
 - b. Service of this order on Mr Thomas Stokes at his last known address.

VARIATION OR DISCHARGE OF THIS ORDER

- 3. The Defendants may each of them (or anyone notified of this Order) apply to the Court on 48 hours written notice to the Claimant's legal representatives to vary or discharge this Order (or so much of it as affects that person). Except that the hours between 5pm on any Friday and 9am on any Monday cannot be counted as part of the 48 hours' notice period.

COSTS OF THE APPLICATION

4. Costs reserved.
5. Liberty to apply.

GUIDANCE NOTES

Effect of this Order – The Defendants

1. A Defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
2. A Defendant which is a corporation and which is ordered not to do something must not do it itself or by its Directors, officers, employees or agents or in any other way.

Effect of this Order - Parties other than the Claimant and Defendants

It is a Contempt of Court for any person notified of this Order knowingly to assist in or permit a breach of this Order. Any person doing so may be sent to prison, fined or have his assets seized.

Interpretation of this Order

1. In this Order, “Persons Unknown” means those with an interest in the Land or undertaking or intending to undertake works or entering onto the Land intending to occupy the Land in breach of planning control.
2. In this Order, where there is more than one Defendant (unless otherwise stated) references to “the Defendants” means each or all of them.
3. A requirement to serve on “the Defendants” means on each of them. However, the Order is effective against any Defendant on whom it is served.
4. An Order requiring “the Defendants” not to do anything applies to all Defendants.

Communications with the Court

All communications to the Court about this Order should be sent to Room WG08, Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6010). The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday except holidays.

SCHEDULE A

Evidence

The Judge read the following written evidence before making this Order:-

1. First Witness Statement of Neill Whittaker dated 28th November 2023
2. First Witness Statement of Izindi Visagie dated 7th December 2023

SCHEDULE B

Undertakings given to the Court by the Claimant:-

1. As soon as practicable the Claimant will serve on the named Defendants a sealed copy of this Order and evidence together with Counsel's skeleton argument for the hearing in support pursuant to the Order for alternative service herein.
2. To use the Claimant's best endeavours to effect personal service on the named Defendants.

Name and Address of Claimant's Legal Representatives:-

Izindi Visagie
Ivy Legal Ltd
4th Floor, 33 Cannon Street
London
EC4M 5SB
020 3745 5896

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

DATED 11th December 2023

IN THE MATTER

B E T W E E N:-

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

-and-

(1) MR THOMAS STOKES

(2) ~~PCS HOMEBUILD LTD~~

(3) ~~MR PAUL CHRISTOPHER SMITH~~

(4) PERSONS UNKNOWN

Defendants

INJUNCTION ORDER

PENAL NOTICE

IF YOU THE WITHIN NAMED DEFENDANTS, MR THOMAS STOKES AND PERSONS UNKNOWN

DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND LIABLE TO IMPRISONMENT OR FINED OR YOUR ASSETS SEIZED

Ivy Legal Ltd
4th floor, 33 Cannon Street
London
EC4M 5SB

020 3745 5896

IN THE HIGH COURT OF JUSTICE **Claim No: KB-2023-004501**
KING'S BENCH DIVISION

IN THE MATTER OF PROCEEDINGS

B E T W E E N:-

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

And

(1) MR THOMAS STOKES
(2) ~~PCS HOMEBUILD LTD~~
(3) ~~MR PAUL CHRISTOPHER SMITH~~
(4) PERSONS UNKNOWN

Defendants

**SKELETON ARGUMENT ON BEHALF OF THE CLAIMANT
IN SUPPORT OF AN APPLICATION FOR AN INTERIM
INJUNCTION**

*References are to Witness Statement paragraphs [WS/X] and Authorities Bundle pages
[AB/X]*

Essential Reading:

1. Application Notice
2. Draft Order
3. Witness Statement of Neill Whittaker
4. Witness Statement of Izindi Visagie

INTRODUCTION

1. West Berkshire District Council (“the Claimant”) seeks the continuation of an interim injunction order dated 30th November 2023 by Mr Justice Henshaw in relation to the land known as “Ermin Street Stables, Ermin Street, Lambourn Woodlands, Hungerford, RG17 7BL” registered under title number BK143882 and shown edged in red on the plan attached to the draft Order (“the Land”) which was applied for on a without notice basis.
2. The Claimant is the Local Planning Authority within the meaning of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”) for an area including the Land.
3. The First Defendant has an interest in the Land (see WS Izindi Visagie §4). The Second Defendant is the registered owner of the Land and the Third Defendant is director of the Second Defendant. However, as set out in the WS of Izindi Visagie (§4), documents have been provided which satisfy the Claimant that the Second and Third Defendants do not have control over the Land and the Council does not seek an order against them.
4. As set out in the Certificate of Service filed with the Court, service has been effected as required by the interim order.

Persons Unknown

5. The Fourth Defendant identified only as “Persons Unknown” refers to those persons who are not named Defendants to this Claim who have an interest in the land or in undertaking works to the Land or intending to undertake works to the Land or entering onto the Land intending to

occupy the Land in breach of planning control. The Claimant relies upon paragraph 20.2 of the Practice Direction Part 8A and s.187B (3) of the 1990 Act in support of seeking an Order against “Persons Unknown”.

6. With regard to “Persons Unknown”, the Claimant did not seek the Without Notice order against the Fourth Defendant at the hearing as the judgment in *Wolverhampton City Council and Others v London Gypsies and Travellers and Others* [2023] UKSC47 had been handed down the day before.
7. The Claimant does now seek the order against Persons Unknown. The *Wolverhampton* judgment of the Supreme Court provides that the granting of injunctions against “newcomers” is not constitutionally improper [170] and, in relation to breaches of public law, including planning law, local authorities are empowered to seek injunctions by statutory provisions.
8. In section 5 of the judgment [187ff] the Supreme Court considered the practical application of the principles affecting an application for a newcomer injunction against Gypsies and Travellers and the safeguards and provided the guidance. It is submitted that the safeguards are met in this case:
 - i. Compelling justification for the remedy. This includes consideration of the obligation/duty to provide sites for Gypsies and Travellers [190], Needs assessments, planning policy, other statutory powers available and byelaws. As set out by Mr Whittaker, the Claimant has undertaken a recent assessment of the accommodation of Gypsies and Travellers (GTAA) (WS/34) which involved co-operation with the Gypsy and Traveller community and, in accordance with the PPTS, is providing

sufficient sites (WS/36) and is taking action to provide sites (WS/39) which will involve consultation, the development on the Land is contrary to planning policy (WS/45) and other statutory powers are not effective (WS/53);

- ii. Evidence of threat of abusive trespass or planning breach – it is submitted that there is more than a sufficiently real and imminent risk as evidence shows that works have already been undertaken and there is poor conduct by the First Defendant in relation to unregularized works on another site and occupants from another site must leave by the end of November (WS/30);
- iii. Identification or other definition of the intended respondents to the application - it is impossible to name the persons as (a) it is not known those undertaking works and (b) it is not known who future potential occupants may be but the Claimant has attempted to define them as precisely as possible;
- iv. The prohibited acts - the terms of the injunction correspond to breaches that are feared will take place if not restrained and it is submitted that the terms of the injunction order are clear and precise – furthermore, the terms simply tell those potentially affected not to do that which they are not allowed to do without express planning permission;
- v. Geographical and temporal limits - the injunction has clear geographical limits as outlined on the plan attached to it and has temporal limits in that it is not for more than one year;

- vi. Advertising the application in advance - the application has been advertised as set out in the WS of Izindi Visagie (§7);
 - vii. Effective notice of the order - it is possible to give effective notice by virtue of the Alternative Service provision;
 - viii. Liberty to apply has been included;
 - ix. Costs protection – there is no evidence that this is appropriate in this matter;
 - x. Cross-undertaking - there is no cross-undertaking and it is submitted this is not appropriate in this case;
9. The Claimant is of the view that whilst actual breaches of planning control have not taken place, there is a real risk and it apprehends further operational development and material change of uses taking place in breach of planning control. The order simply holds the ring.

THE POWER TO GRANT AN INJUNCTION

10. Section 187B [AB 2] of the Town and Country Planning Act 1990 (as amended) ('the 1990 Act') provides as follows:
- (1) *Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.*
 - (2) *On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.*
 - (3) *Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.*
 - (4) *In this section "the court" means the High Court or the county court."*

11. The leading authority on the exercise of the Court's discretion to grant injunctions pursuant to section 187B of the 1990 Act is the decision of the House of Lords in the combined appeals known as South Bucks District Council v. Porter [2003] UKHL 558; [2003] 2 AC 558 [AB 8-51 [20]] approving the judgment of the Court of Appeal [2001] EWCA Civ 1549; [2002] 1 WLR 1359.
12. The decision of the House of Lords also confirms that the Court has an original jurisdiction in respect of its exercise of discretion to grant an injunction pursuant to section 187B of the 1990 Act [27].
13. In Davis v Tonbridge & Malling Borough Council [2004] EWCA Civ 194 [AB 52], the Court of Appeal summarised the conclusion of the House of Lords in South Bucks District Council v Porter as follows [34]:
 - 1) Section 187B confers on the courts an original and discretionary, not a supervisory, jurisdiction, so that a defendant seeking to resist injunctive relief is not restricted to judicial review grounds;
 - 2) it is questionable whether Article 8 adds anything to the existing equitable duty of a court in the exercise of its discretion under section 187B;
 - 3) the jurisdiction is to be exercised with due regard to the purpose for which was conferred, namely to restrain breaches of planning control, and flagrant and prolonged defiance by a defendant of the relevant planning controls and procedures may weigh heavily in favour of injunctive relief;
 - 4) however, it is inherent in the injunctive remedy that its grant depends on a court's judgment of all the circumstances of the case;

5) although a court would not examine matters of planning policy and judgment, since those lay within the exclusive purview of the responsible local planning authority, it will consider whether, and the extent to which, the local planning authority has taken account of the personal circumstances of the defendant and any hardship that injunctive relief might cause, and it is not obliged to grant relief simply because a planning authority considered it necessary or expedient to restrain a planning breach;

6) having had regard to all the circumstances of the case, the court will only grant an injunction where it is just and proportionate to do so, taking account, inter alia, of the rights of the person or persons against whom injunctive relief is sought, and of whether it is relief with which that person or persons can and reasonably ought to comply.

14. The well-known principles laid down by the House of Lords in *American Cyanamid Co. v. Ethicon Limited* [1975] AC 396 [AB 78] apply to the Court's exercise of discretion (see 406F, 407G, 408F).
15. It is to be noted that each of the appeals in *Porter* concerned cases where the Local Planning Authority were seeking mandatory injunction orders to remove persons who had taken up occupation of their land in breach of planning control. This application does not seek any mandatory steps. This application for an interim injunction seeks only to preserve the status quo at this point.

BREACHES OF PLANNING CONTROL

16. The evidence available to date clearly demonstrates that, short of breaches of planning control, there have been works undertaken including significant clearance of the Land which facilitates the bringing on to the Land of caravans for residential use [WS/29]. Furthermore, Mr Whittaker

states that it is unlikely that planning permission would be granted if a planning application was made [WS/45].

THE NEED FOR AN INJUNCTION

17. At WS para 53, Mr Whittaker sets out why other enforcement options are not appropriate in this case. Firstly, an Enforcement Notice cannot attack an anticipated breach of planning control of which further breaches are expected. Secondly, the process is lengthy. Thirdly, the ultimate sanction for breaching an enforcement notice or a stop notice is criminal proceedings but the penalty is a fine. By the time the Council waits for further breaches to take place, even more harm will have been caused. Furthermore, if residential occupation is the goal of those doing the works, it can be taken up very quickly and once occupants are on site it is a very lengthy process to remove them.
18. Applying the approach in *American Cyanamid* the Claimant submits that:
 - i. There is a compelling case that works which have taken place will lead to breaches of planning control and that previous conduct of the First Defendant demonstrates that it will not cease unless restrained by Court order. In other words, there is a serious question to be tried; and
 - ii. The Local Planning Authority cannot adequately be compensated in damages for a breach of planning control.
19. In the premises, the balance of convenience lies in preserving the lawful use of the land and enforcing proper planning control in the public interest.

CONCLUSIONS

20. In the circumstances of the present case, the Claimant submits that an injunction in the terms sought will not involve an interference with the Defendants' Human Rights or, alternatively, any such interference is necessary and proportionate having regard to all the circumstances known to the Claimant at present and the public interest in protecting the environs.
21. In the premises, the Claimant submits that it is appropriate for an injunction to be granted in the terms of the draft Order.
22. The Claimant also seeks an Order for alternative service of any injunction order granted to ensure the earliest possible compliance with proper planning control. In the circumstances, the Court can be satisfied that service by way of the alternative method proposed will come to the attention of the Defendants and will assist in preserving the lawful use of the Land.
23. The Claimant is willing to give the undertakings listed in the draft Order. There is no undertaking as to damages. From *Kirklees MBC v Wickes Building Supplies Ltd* [1993] A.C. 227 [AB 175] [D], the court may exercise its discretion not to require such an undertaking, taking into account the circumstances of the case and that the claimant is a local authority with the function of enforcing the law in its district in the public interest. This has more recently been considered in the context of s.187B in the cases of *Basingstoke & Deane BC v Loveridge* [2018] EWHC 2228 (QB) [AB 186][16] and *South Downs National Park Authority v Daroubaix* [2018] EWHC 1903 (QB) [AB 190] [16].

EMMALINE LAMBERT
CORNERSTONE BARRISTERS
2-3 GRAY'S INN SQUARE
LONDON
7th December 2023