

APPEALS BY MR. J. SLATER

APPENDICES TO PROOF OF EVIDENCE OF BRIAN WOODS regarding appeals against:

(1) The Service of an Enforcement Notice,

(2) The refusal of Planning Permission,

**on Land Approximately 150 Metres South Of Brimpton Lane and
West Of, Blacknest Lane, Brimpton Common, Reading**

December 2024

Our Ref:	J005000 & J004724
LPA Ref:	23/00682/15UNAU & 23/02984/FUL
Rule 6 Ref	
PINS Ref:	APP/W0340/W/24/3346878 (Appeal A) & APP/W0340/C/24/3351139 (Appeal B)

WS Planning & Architecture

enquiries@wspa.co.uk | wspa.co.uk

Reg Office: 5 Pool House, Bancroft Road, Reigate Surrey, RH2 7RP
Company No. GB3763487 | WS Planning & Architecture is a trading name of Woods, Sanders & Co Ltd

Managing Director: Mr B Woods BA TP MRTPI

Planning Director: Mr S Copping BA (Hons) DipTP MRTPI

Architectural Director: Mr L Barker BA (Hons) BArch (Hons) RIBA

Surrey Office

5 Pool House
Bancroft Road
Reigate
Surrey RH2 7RP

+44 (0)1737 225 711

London Office

No. 1 Croydon
11th Floor
12-16 Addiscombe Rd
Croydon CR0 0XT

+44 (0)20 3828 1180

Kent Office

Brouard Architects
83 High Street
Farnborough Village
Kent BR6 7BB

+44 (0)1689 857 253



APPENDICES

Appendix 1	BK8916 Title Register	Page 2
Appendix 2	BK8916 TR1 Form	Page 5
Appendix 3	22/01899/FUL – Committee Report	Page 14
Appendix 4	3292939 – Ermin St Appeal Decision	Page 35
Appendix 5	3312261 - Land r/o the Hollies Nursing Home	Page 52
Appendix 6	3291001 - The Huts, Thorncote Road	Page 75
Appendix 7	3332664 – Lawn Hill Appeal Decision & Discharged GCN RAMS	Page 108
Appendix 8	23/00815/FUL – Committee Report	Page 141

APPENDIX 1

The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

Applications are pending in HM Land Registry, which have not been completed against this title.



Official copy of register of title

Title number BK8916

Edition date 14.04.2009

- This official copy shows the entries on the register of title on 20 OCT 2023 at 17:29:09.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 16 Dec 2024.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry, Gloucester Office.

A: Property Register

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

WEST BERKSHIRE

- 1 (26.01.1959) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being land on the south west side of the road leading from Newbury to Basingstoke, Brimpton.

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 (18.12.1980) PROPRIETOR: ELIZABETH PATERSON WALLIS of 10 Longmore Crescent, Woolston, Southampton.

End of register

APPENDIX 2

HM Land Registry

Transfer of part of registered title(s)

TP1

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.

When application for registration is made these title number(s) should be entered in panel 2 of Form AP1.

Insert address, including postcode (if any), or other description of the property transferred. Any physical exclusions, such as mines and minerals, should be defined.

Place 'X' in the appropriate box and complete the statement.

For example 'edged red'.

For example 'edged and numbered 1 in blue'.

Any plan lodged must be signed by the transferor.

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 of 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

	1 Title number(s) out of which the property is transferred: BK8916
	2 Other title number(s) against which matters contained in this transfer are to be registered or noted, if any:
	3 Property: Plot D Land on the south west side of the road leading from Newbury to Basingstoke, Brimpton The property is identified <input checked="" type="checkbox"/> on the attached plan and shown: Edged Red <input type="checkbox"/> on the title plan(s) of the above titles and shown:
	4 Date: 20 October 2023
	5 Transferor: Strat Farm Land Limited <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: 14437743 <u>For overseas companies</u> (a) Territory of incorporation: (b) Registered number in the United Kingdom including any prefix:
	6 Transferee for entry in the register: Randolf Teddy Black <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: <u>For overseas companies</u> (a) Territory of incorporation: (b) Registered number in the United Kingdom including any

evidence permitted by rule 183 of the Land Registration Rules 2003.

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 12.

Place 'X' in any box that applies.

Add any modifications.

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

	prefix:
7	Transferee's intended address(es) for service for entry in the register: Swallow Cottage, Rye Common, Odiham, Hook, Hampshire RG29 1HU
8	The transferor transfers the property to the transferee
9	Consideration <input checked="" type="checkbox"/> The transferor has received from the transferee for the property the following sum (in words and figures): (£55,000) Fifty Five Thousand Pounds <input type="checkbox"/> The transfer is not for money or anything that has a monetary value <input type="checkbox"/> Insert other receipt as appropriate:
10	The transferor transfers with <input type="checkbox"/> full title guarantee <input checked="" type="checkbox"/> limited title guarantee The covenants implied under the LPMPA 1994 are modified so that: (a) the covenant set out in section 2(1)(b) of the LPMPA 1994 shall not extend to costs arising from the Transferee's failure to: (i) make proper searches; or (ii) raise requisitions on title or on the results of the Transferee's searches; and (b) the covenant set out in section 3(3) of the LPMPA 1994 shall extend only to charges or incumbrances created by the Transferor
11	Declaration of trust. The transferee is more than one person and <input type="checkbox"/> they are to hold the property on trust for themselves as joint tenants <input type="checkbox"/> they are to hold the property on trust for themselves as tenants in common in equal shares <input type="checkbox"/> they are to hold the property on trust:

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.

Use this panel for:

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants
- agreements and declarations
- any required or permitted statements
- other agreed provisions.

The prescribed subheadings may be added to, amended, repositioned or omitted.

Any other land affected by rights granted or reserved or by restrictive covenants should be defined by reference to a plan.

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

12 Additional provisions

Definitions

12.1 Definitions

12.1.1 "the Plan" means the Plan annexed to this Transfer.

12.1.2 "The Property" means all and every part of the land hereby transferred as the context permit.

12.1.3 "Retained land" means the remainder of the land now or formerly included in the parent title comprised in the title above referred to

12.1.4 "the Access Way" means the roadway or path coloured black on the Plan

12.1.5 The Transferee includes the successors in title of the Transferee the owner or owners for the time being of the Property and each and every part of the Property.

12.1.6 The Transferor includes the successors in title of the Transferor the owner or owners for the time being of the Retained Land and each and every part of the Retained Land.

12.1.7 "Services" means water, gas, electricity, telecommunications, surface water drainage, foul drainage, fuel oil and other similar services.

12.1.8 "the Service Media" are the sewers, drains, watercourses, pipes, wires and cables and other conduits now present or installed in the future for the passage of Services

12.1.9 "Title Matters" means the agreements, covenants, restrictions, stipulations and other matters contained or referred to in the title registered under the title number BK8916

Rights granted for the benefit of the property

12.2 The Property is transferred together with the following Rights:

12.2.1 The Property is sold together with the rights (in common with all others entitled to the like right) referred to in the Property Register of the Transferor's title.

12.2.2 The right in common with the owners of the

Retained Land and those authorised by them to connect to and use the Service Media in, on under or over the Retained Land for the passage of the Services to and from the Property. The benefit of this right is subject to the owners of the Property paying to the owners of the Retained Land a fair and proper proportion of the costs of installing, repairing, maintaining, replacing, renewing and cleaning any of the Service Media used in common between the Property and the Retained Land and all such costs so incurred in relation to any Service Media which serve only the Property together with ancillary rights of entry for the purpose of inspection and maintenance and repair.

12.2.3 A right of way in common with the owners of the Retained Land and those authorised by them with or without vehicles over and along the Access Way for the purpose of gaining access to the Property.

12.2.4 The right for the owners of the Property and those authorised by them to enter and remain upon so much of the Retained Land as is necessary by prior written appointment (except in the case of an emergency) with or without workmen plant and equipment:

a) to repair, maintain, replace, renew, clean connect to and sever connections with any Service Media over which rights are reserved by this transfer; and

b) to repair, maintain, decorate, replace, renew and clean any buildings or fences on the Property and the Retained Land

12.2.5 The right of support for the Property and any buildings on it from the Retained Land and any buildings on it.

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

Rights reserved for the benefit of other land

12.3 The Property is transferred excepting and reserving to the Transferor and its successors in title for the benefit of the Retained Land and each and every part thereof the following:

12.3.1 The Property is sold subject to the exceptions and reservations covenants and conditions agreements and declarations set out or referred to in the Charges Register of the Transferor's title so far as the same are still subsisting and affect the Property and are capable of being enforced.

12.3.2 Full and free right and liberty to build any new buildings or other temporary or permanent structures on the Retained Land.

12.3.3 The right in common with the owners of the Property and those authorised by them to connect to and use the Service Media in, on under or over the Property for the passage of the Services to and from the Retained Land together with ancillary rights of entry for the purpose of inspection maintenance and repair.

12.3.4 A right of way in common with the owners of the Retained Land and those authorised by them with or without vehicles over and along the Access Way.

12.3.5 The right for the owners of the Retained Land and those authorised by them to enter and remain upon so much of the Property as is necessary by prior written appointment (except in the case of an emergency) with or without workmen plant and equipment:

a) to repair, maintain, replace, renew, clean connect to and sever connections with any Service Media over which rights are reserved by this transfer; and

b) to repair, maintain, decorate, replace, renew and clean any buildings, bridleways or fences on the Property and the Retained Land.

12.3.6 The right of support for the Retained Land and any buildings on it from the Property and any buildings on it.

Include words of covenant.

Restrictive covenants by the transferee

12.4 The Transferee covenants with the Transferor to observe and perform the following Restrictive Covenants with the intention that the burden of this covenant shall run with and bind each and every part of the Property and that the benefit of this covenant shall be annexed to and run with all parts of the Retained Land as from time to time remain unsold by the Transferor or has from time to time been sold by the Transferor with the express benefit of this covenant.

12.4.1 Not to do or permit to be done anything which may be a nuisance or annoyance to the Transferors or their successors on title of the Retained Land or to the owners or occupiers of any adjoining or neighbouring property.

12.4.2 The Transferee shall not object directly or indirectly, to any planning application or appeal made by the Transferor in relation to the Retained Land pursuant to the Town and Country Planning Act 1990, as amended, and the rules, regulations and orders made under it or continued by it, as they apply from time to time.

12.4.3 The Transferee shall pay and contribute a fair proportion of the cost of maintaining the Access Way and pathways and any service media on under or over the Retained Land to be determined by the Transferor from time to time.

12.4.4 The Transferee shall not block or obstruct the Access Way or any part of it.

12.4.5 The Transferee shall not permit any rubbish, litter, obstruction or any other article, object or thing to remain on that part of the Access Way which adjoins the Property (whether deposited by the Transferee or not).

12.4.6 The Transferee hereby covenants with the Transferors by way of indemnity only to observe and perform the covenants contained or referred to in the Charges Register of the title above referred to and to indemnify the Transferors and their estates and effect against any liability from their breach of non-observance.

Include words of covenant.

Restrictive covenants by the transferor

None

Insert here any required or permitted statements, certificates or applications and any agreed declarations and so on.

Other

12.5 The Property is transferred subject to the following Agreement and Declarations

12.5.1 Where appropriate any rights granted by or reserved out of this transfer are subject to the persons exercising them:

12.5.2 At reasonable times only and on giving reasonable notice (save in an emergency when no notice will be required) of the intention to exercise the said rights.

12.5.3 Causing as little damage and inconvenience as is reasonably possible and making good the damage caused to the land affected to the reasonable satisfaction of the owner or occupier thereof.

12.5.4 Paying reasonable compensation to the owner or occupier of the land affected for physical damage to such parts of the land affected thereby not capable of being made good as mentioned above.

12.5.5 Taking all reasonable care for the persons lawfully occupying or using those parts of the land entered in the exercise of the said rights.

12.5.6 The owners for the time being of the Property shall not be entitled to claim the benefit of any rights of light or air over the Retained Land. This constitutes a consent for the purposes of section 3 Prescription Act 1832.

12.5.7 All walls, fences, hedges and other boundary structures dividing the Property from the Retained Land are to be party structures and maintained accordingly.

12.5.8 The Transferee covenants (jointly and severally) with the Transferor that the Transferee and [its][their] successors in title to the Property will comply with the Title Matters so far as they are enforceable and affect the Property and will indemnify the Transferor against all actions, claims, demands and proceedings taken or made against the Transferor and all costs, damages, expenses, liabilities and losses incurred by the Transferor arising from their breach.

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 11 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.

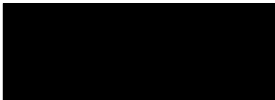
Examples of the correct form of execution are set out in [practice guide 8: execution of deeds](#). Execution as a deed usually means that a witness must also sign, and add their name and address.

Remember to date this deed in panel 4.

13 Execution

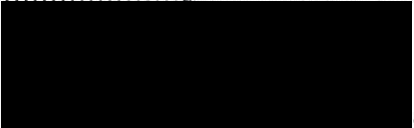
Executed as a deed by Strat Farm Land Limited

Acting by a director



Signature

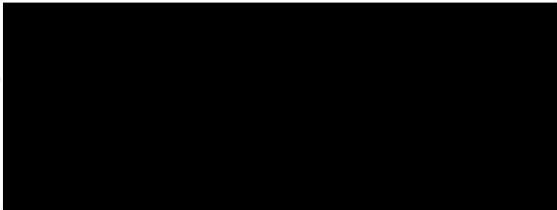
In the presence of:



Signature of witness.....

Name (IN BLOCK CAPITALS) SHEEVA ASHRAFI

Address



Signed as a deed by Randolph Teddy Black

Signature

In the presence of:

Signature of witness.....

Name (IN BLOCK CAPITALS)

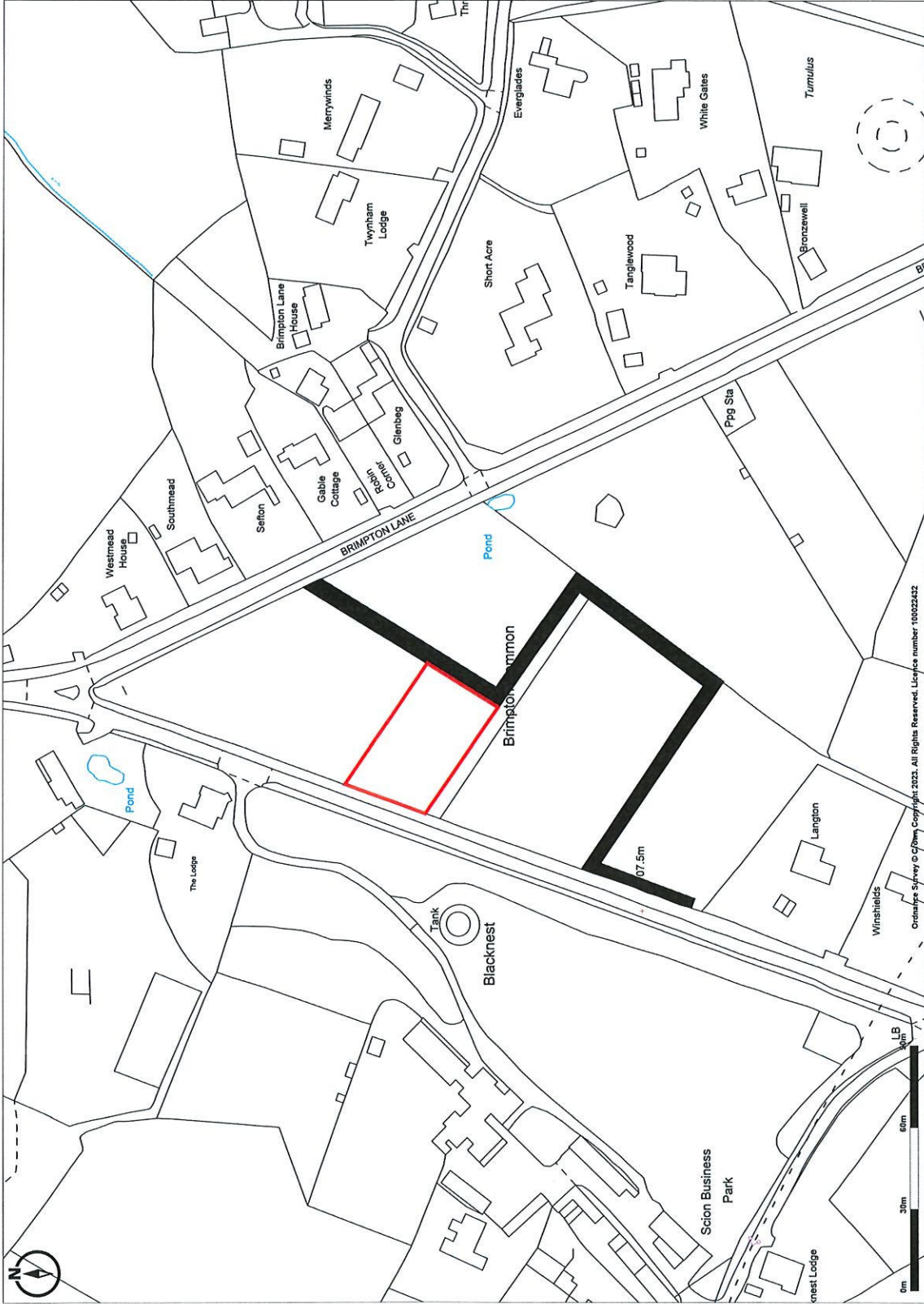
Address

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.



Ordnance Survey © Crown Copyright 2023. All Rights Reserved.
 Licence number 100022432
 Plotted Scale - 1:2250. Paper Size - A4

Promap
 LANDMARK INFORMATION

APPENDIX 3

Item No.	Application No. and Parish	Statutory Date	Target	Proposal, Location, Applicant
(2)	22/01899/FUL Mr Charles Doherty	3 rd October 2022 ¹		Change of use of land for 2 Gypsy/Traveller pitches comprising the siting of 1 mobile home, 1 touring caravan, and the proposed erection of 1 dayroom per pitch. Land West Of Pumping Station, Enborne Row, Wash Water Mr Charles Doherty

¹ Extension of time agreed with applicant until 21st June 2024

The application can be viewed on the Council's website at the following link:
<http://planning.westberks.gov.uk/rpp/index.asp?caseref=22/01899/FUL>

Recommendation Summary: To delegate to the Development Manager to GRANT PLANNING PERMISSION subject to the conditions listed below.

Ward Member(s): Councillor Dennis Benneyworth, Councillor Denise Gaines, Councillor Tony Vickers

Reason for Committee Determination: Over 10 objections received

Committee Site Visit: 17th June 2024

Contact Officer Details

Name: Cheyanne Kirby
Job Title: Senior Planning Officer
Tel No: 01635 519111
Email: Cheyanne.kirby@westberks.gov.uk

1. Introduction

- 1.1 This application seeks planning permission for change of use of land for 2 Gypsy/Traveller pitches comprising the siting of 1 mobile home, 1 touring caravan, and the proposed erection of 1 dayroom per pitch.
- 1.2 The application site is an agricultural field located to the northern bank of the River Enborne and the edge of the North Wessex Downs National Landscape, to the east is a pumping station and the northern boundary faces the main road Enbourne Row, Wash Water. The area is surrounded by scattered dwellings and agricultural fields.
- 1.3 The site has been previously approved 21/01519/FUL for construction of stabling and hard standing, change of use from agricultural to a mixed agricultural/equestrian use and soft landscaping scheme. This permission has been implemented with the stables constructed and landscaping carried out.
- 1.4 The unauthorised works currently on-site including hardstanding and installation of mobile homes and vehicles not in relation to the implemented permission 21/01519/FUL commenced on 2nd June 2022. A temporary stop notice was served on the site on the 6th June 2022 in relation to these works only.
- 1.5 The proposal seeks to provide an improved scheme to what is currently unauthorised development on the site. The proposal includes change of use of the land for 2 gypsy/traveller pitches each pitch consisting of the siting of 1 mobile home, 1 touring caravan, and erection of 1 dayroom per pitch
- 1.6 The application site is located in open countryside as defined by Core Strategy Policy ADPP1 (outside of any defined settlement boundary). The land falls outside of, but within the setting of the North Wessex Downs Area of Outstanding Natural Beauty (AONB). The existing lawful use of the site is as equestrian/agricultural.

Caravans legislation

- 1.7 Section 29(1) of the Caravan Sites and Control of Development Act 1960 (as amended) sets out that a caravan means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted. Section 13(1) of the Caravan Sites Act 1968 (as amended) defines a twin-unit caravan as a structure designed or adapted for human habitation which is, (a) composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and (b) when assembled it is physically capable of being moved by road from one place to another. Touring caravans, static caravan and various mobile homes constitute 'caravans' under the above legislation.
- 1.8 Caravans are not normally regarded as buildings or operational development under the Planning Acts. The application proposes the redevelopment of the site comprising a use which would enable the siting of caravans on plots. For this reason, it is not necessary to provide plans of individual caravans, and in assessing this application it must be recognised that different caravans may come and go over time.

2. Planning History

- 2.1 The table below outlines the relevant planning history of the application site.

Application	Proposal	Decision / Date
20/02039/FUL	Construction of stabling and hard standing. Change of use of agricultural to a mixed agricultural/equestrian use. Soft landscaping scheme.	Refused / 09.04.2021
21/01519/FUL	1. Construction of stabling and hard standing; 2. Change of use from agricultural to a mixed agricultural/equestrian use; 3. Soft landscaping scheme.	Approved / 30.12.2021

3. Legal and Procedural Matters

- 3.1 **Environmental Impact Assessments (EIA):** Consideration has been given to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The proposed development does not fall within any of the categories of development listed in Schedule 1, and is therefore not automatically EIA development in this respect. Development listed in Schedule 2 of the Regulations only requires screening if it meets/exceeds the relevant threshold or is located within a 'sensitive area' as defined by the Regulations. Paragraph 10(b) relates to 'urban development projects', and Paragraph 12(e) relates to "permanent camp sites and caravan sites". Under either paragraph, the relevant threshold for EIA screening is 1 hectare. The application site measures less than 1 hectare, and it is not located within a 'sensitive area'. As such, EIA screening is not required.
- 3.2 **Publicity:** Publicity has been undertaken in accordance with Article 15 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, and the Council's Statement of Community Involvement. A site notice was placed on the application site on 25th August 2022, with a deadline for representations of 16th September 2022.
- 3.3 **Local Financial Considerations:** Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Whether or not a 'local finance consideration' is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms. It would not be appropriate to make a decision based on the potential for the development to raise money for a local authority or other government body. The table below identified the relevant local financial considerations for this proposal.

Consideration	Applicable to proposal	Material to decision	Refer to paragraph(s)
Community Infrastructure Levy (CIL)	Yes	No	3.4
New Homes Bonus	No	No	
Affordable Housing	No	No	
Public Open Space or Play Areas (in terms of S106)	No	No	
Developer Contributions (S106)	No	No	

Job Creation	No	No	
Local Authority Project	No	No	

- 3.4 **Community Infrastructure Levy (CIL):** CIL is a levy charged on most new development within an authority area. The money is used to pay for new infrastructure supporting the development of an area by funding the provision, replacement, operation or maintenance of infrastructure. This can include roads and transport facilities, schools and education facilities, flood defences, medical facilities, open spaces, and sports and recreational areas. CIL will be charged on residential (C3 and C4) and retail (A1 - A5) development at a rate per square metre (based on Gross Internal Area) on new development of more than 100 square metres of net floorspace (including extensions) or when a new dwelling is created (even if it is less than 100 square metres). The day rooms are CIL chargeable but not the caravans.
- 3.5 **Public Sector Equality Duty (PSED):** In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The Council must have due regard to the need to achieve the following objectives:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 3.6 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 3.7 The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. Whilst there is no absolute requirement to fully remove any disadvantage, the duty is to have regard to and remove or minimise disadvantage. In considering the merits of this planning application, due regard has been given to these objectives.
- 3.8 As the proposal directly affects gypsies and travellers, a group with protected characteristics, particular regard is required to these objectives. The proposals will result in accommodation on the site, and as such it is considered that the proposal has a positive effect under the Equalities Act and is consistent with the aforementioned objectives.
- 3.9 **Human Rights Act:** The development has been assessed against the provisions of the Human Rights Act, including Article 1 of the First Protocol (Protection of property), Article

6 (Right to a fair trial) and Article 8 (Right to respect for private and family life and home) of the Act itself. The consideration of the application in accordance with the Council procedures will ensure that views of all those interested are taken into account. All comments from interested parties have been considered and reported in summary in this report, with full text available via the Council's website.

- 3.10 The proposals will result in accommodation on the site, and as such it is considered that the proposed development would not prejudice the Human Rights of the applicant or any third party (including future residents of the development or nearby residents).
- 3.11 **Listed building setting:** Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard must be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. Section 16(2) has the same requirement for proposals for listed building consent. No listed buildings are considered to be materially affected by the proposals.
- 3.12 **Conservation areas:** Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. No conservation areas are considered to be materially affected by the proposals.

4. Consultation

Statutory and non-statutory consultation

- 4.1 The table below summarises the consultation responses received during the consideration of the application. The full responses may be viewed with the application documents on the Council's website, using the link at the start of this report.

Enborne Parish Council:	Object – Retrospective aspect of application. Impact on landscape adjacent AONB, buildings not in character with existing settlements and remote homes and outside settlement boundary. Impact on biodiversity and nature conservation including disturbance to otters, mitigation measures such as buffer zone next to river, no light spillage, access to watercourse carefully controlled. Impact from pollution from onsite waste facilities. Groundwater Flooding and Surface Flooding, groundwater protection zone and impact tarmac has on surface run off and flood risk downstream. No provision is made in the planning application for an attenuation pond to mitigate the increase runoff from the estate homes, day rooms and tarmacked area. Overall, site not suitable for residential development.
Basingstoke and Dene District Council:	No Objection
East Woodhay Parish Council:	Object – AONB and the character of the proposed settlement, proposed development is immediately adjacent to the AONB and is inappropriate development for this designated area. Proposed buildings are not in character with the existing small settlements and remote homes in Enborne Parish. There are no estates of pre-fabricated park homes in the Parish of Enborne or East Woodhay. Planning was granted for this land to be changed into an equestrian centre – this is completely different to the original application and not acceptable in any form. Impact on wildlife

	fareway such as otters and mitigation measures are essential. River Nutrient Levels and Effluent Treatment impact on the River Enborne. Groundwater Flooding and Surface Flooding, groundwater protection zone and impact tarmac has on surface run off and flood risk downstream.
WBC Highways:	Conditional Approval
Policy:	No Objections
SUDS:	Conditional Approval
EA:	Conditional Approval
Thames Water:	No Objections
BBOWT:	No Response
Natural England:	No Response
Ecology:	Conditional Approval

Public representations

- 4.2 Representations have been received from 25 contributors, 2 of which support, and 23 of which object to the proposal.
- 4.3 The full responses may be viewed with the application documents on the Council's website, using the link at the start of this report. In summary, the following issues/points have been raised:
- Retrospective nature of development
 - Pollution
 - Potential for more plots on the site
 - Outside settlement boundary
 - Out of keep with local rural area
 - Breach of planning rules – set a precedent
 - Lack of horses on site
 - Flood risk/drainage/ground water protection
 - Ecology impacts
 - Against policy
 - Highways impacts
 - Previously derelict land now maintained and visually improved
 - Integrate into the local community

5. Planning Policy

- 5.1 Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The following policies of the statutory development plan are relevant to the consideration of this application.

- Policies ADPP1, ADPP2, ADPP5 (adjacent), CS4, CS5, CS7, CS13, CS14, CS16, CS17, CS18 and CS19 of the West Berkshire Core Strategy 2006-2026 (WBCS).
- Policies C1, P1 and TS3 of the Housing Site Allocations Development Plan Document 2006-2026 (HSA DPD).
- Policies OVS.5, OVS.6, TRANS.1 of the West Berkshire District Local Plan 1991-2006 (Saved Policies 2007).

5.2 The following material considerations are relevant to the consideration of this application:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- WBC Quality Design SPD (2006)
- Sustainable Drainage Systems SPD (2018)
- Planning Policy for Traveller Sites (PPTS)
- Planning Obligations SPD (2015)

5.3 The main issues for consideration in this application are:

- Whether the proposal complies or conflicts with the statutory development plan in principle.
- Whether the proposal complies or conflicts with national planning policy on gypsy and traveller sites.
- Local need and supply.
- Traveller site selection considerations.
- Highways and transport impacts.
- Landscape and visual impacts.
- Neighbouring amenity.
- Flood risk and sustainable drainage.
- Ecology

The West Berkshire Development Plan

5.4 Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF provides a presumption in favour of sustainable development (paragraph 11), which for decision taking this means approving development proposals that accord with an up-to-date development plan without delay. Conversely, paragraph 12 states that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted.

5.5 Paragraph 11d of the NPPF gives a 'tilted balance' in favour of granting permission where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date. The development plan includes relevant development plan policies which are consistent with the NPPF and up-to-date. The 'tilted balance' of paragraph 11d is therefore not engaged.

5.6 The most important policies for determining whether the principle of development is acceptable are Policies ADPP1, ADPP2 and CS7 of the Core Strategy, and Policy TS3 of the Housing Site Allocations DPD. The Core Strategy includes a Spatial Strategy (ADPP1 and ADPP2) that provides a broad indication of the overall scale of development in the district, applying the principles of sustainable development, and based on defined spatial areas and a settlement hierarchy. Policies CS7 and TS3 relate to gypsy and traveller sites.

- 5.7 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 focused 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.
- 5.8 Policy ADPP2 is the spatial strategy for Newbury. However, it is not considered to include any points which are directly relevant to this proposed development.
- 5.9 **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;*
- The Enborne Row is a local rural distributor road of good quality and capacity
- b) *Easy access to local services including a bus route, shops, schools and health services;*
- Whilst the application location is outside the settlement boundary, the nearby settlements of Enborne Row and Newbury have a very good range of facilities including shops, schools, churches.
- c) *Located outside areas of high flooding risk;*
- The application site is located in Flood Zone 1 and a high risk surface water area with parts of the site closest to the River Enborne within Flood zones 2 and 3.
- d) *Provision for adequate on site facilities for parking, storage, play and residential amenity;*
- The proposal includes adequate on site facilities, including parking, amenity areas and day rooms.
- 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;*
- The application site is some distance from the closest neighbours however the application is for a small site which allows for adequate privacy and residential amenity.
- f) *Opportunities for an element of authorised mixed uses;*
- No mixed use is proposed.

- g) *The compatibility of the use with the surrounding land use, including potential disturbance from vehicular movements, and on site business activities;*
- The site is well screened and there are no sensitive adjoining land uses which might be affected by the scheme.
 - 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.'*
- (h) and (i) are assessed below.

5.10 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, non-car 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.'*

5.11 All of the points above are examined under relevant section headings below.

5.12 The current development plan period runs up to 2026. The Council is in the process of reviewing its Local Plan to cover the period up to 2037. A Regulation 18 consultation on the emerging draft plan has taken place. The draft plan includes Policy DC19 (Gypsies, travellers and travelling showpeople), which would replace and consolidate Policies CS7 and TS3. Whilst emerging Policy DC19 attracts only limited weight at this stage, it should be noted that the general approach remains consistent with current policies and existing allocations in the HSA DPD are proposed to be carried forward.

5.13 Overall, the requirements of Policy TS3 are detailed to address all potential considerations that may relate to new and existing sites.

Emerging policies

5.14 According to paragraph 48 of the NPPF, local planning authorities may give weight to relevant policies in emerging plans according to: (a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given); (b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and (c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

5.15 The current development plan period runs up to 2026. The Council is in the process of reviewing its Local Plan to cover the period up to 2039. A Regulation 19 consultation

on the emerging draft plan has taken place, and the plan submitted for Examination in Public by the Planning Inspectorate. The draft plan includes Policy DM20 (Gypsies, Travellers and Travelling Showpeople), which would replace and consolidate Policies CS7 and TS3. Whilst emerging Policy DM20 attracts only limited weight at this stage, it should be noted that the general approach remains consistent with current policies and existing allocations in the HSA DPD are proposed to be carried forward. The policy also seeks to safeguard existing gypsy and traveller sites, and locate sites on previously developed land where possible. It states:

'Existing authorised sites for Gypsy, Traveller and Travelling Showpeople will be safeguarded for use by Gypsy and Travellers and Travelling Showpeople, unless acceptable replacement accommodation/pitches/plots can be provided. This is to ensure there remains a good supply of pitches and plots in the district.'

National planning policy

- 5.16 The **National Planning Policy Framework (NPPF)** at paragraph 63 states 'the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including travellers). A footnote in the NPPF then states *'Planning Policy for Traveller Sites sets out how travellers' housing needs should be assessed for those covered by the definition in Annex 1 of that document'*.
- 5.17 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.
- 5.18 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
- 5.19 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 an undue pressure on the local infrastructure.
- 5.20 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

5.21 All of the points above are examined under relevant section heading below, where relevant to the proposed development.

Local need and supply

5.22 According to the PPTS, the local planning authority should consider the existing level of local provision and need for sites. The Council has a legal duty to plan for adequate accommodation for the Gypsy and Traveller community.

5.23 The Council has a Gypsy and Traveller Accommodation Assessment (GTAA) carried out in 2014 in accordance with the GTAA practice guidance applicable at that time. This was used to inform the pitch target and policy in the HSA DPD. This GTAA has been updated, particularly as it predated the change to the definition of ‘traveller’ in the revised PPTS in August 2015.

5.24 The GTAA 2021 provides an update to the 2019 version, 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 who ceased travelling permanently. This was explained more fully in the Lawrence’s Lane, Thatcham appeal, and reflecting in the Planning Inspectorate’s decision notice. It is therefore still considered appropriate to assess the need using this PPTS filter.

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

5.25 The Council has 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 (Policy TSA24), and 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. 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 counted in the GTAA. It is planned to redevelop the site for 17 pitches and planning permission has been approved recently. 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, Lambourn (reference APP/W0340/W/22/3292939 21/02045/FUL) and one for 7 Gypsy and Traveller pitches

on land at Lawrence's Lane, Thatcham (reference APP/W0340/W/22/3292211 21/02012/FUL). The permitted site at Ermin Street, Lambourn further increases the supply by one additional pitch.

- 5.26 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. Taking into account the planned 8 permanent pitches at Paices Hill, Aldermaston, additional pitch at Four Houses Corner, and permitted pitch at Ermin Street, Lambourn, the need reduces to 20 pitches, or 10 pitches in applying the PPTS filter.
- 5.27 Demonstrating a 5 year supply is an important requirement for the Council, as set out in the PPTS. However, as a result of the Lisa Smith Court of Appeal decision Local Planning Authorities are encouraged to review all of its need. In this regard, the Council are 3 pitches short of meeting its overall requirement in the short term, when taking the supply of Paices Hill, Four Houses Corner and Ermin Street, Lambourn into account. The proposed pitches would therefore aid in meeting the short-term need.
- 5.28 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 Travellers Accommodation Development Plan Document. Moderate weight was given to the general cultural need for additional pitches. Since the appeal decision work has commenced on the Gypsy and Traveller Accommodation Assessment DPD, and a recent 'call for sites' did not yield a high response rate, with only one site being put forward for consideration. Options are currently being explored to meet the longer-term need. As outlined above the site would contribute to meeting the Council's identified need.

Traveller site selection

Traveller sites in open countryside

- 5.29 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 an undue pressure on the local infrastructure.
- 5.30 The application site is located outside of any defined settlement boundary, and is therefore regarded as "open countryside" in terms of Policy ADPP1. It is, however, close to the settlement boundary of Newbury, a top tier "urban area" in the district settlement hierarchy of Policy ADPP1.
- 5.31 In this respect, it is not considered to be "*development in the open countryside that is away from existing settlements*". Whilst it is not allocated in the development plan, Policy CS7 gives criteria against which to assess such sites. Owing to the size of the site in comparison to the size of Enborne Row and then Newbury, it is not considered that the site would be inconsistent with the scale of, or dominate, the existing settlement. The introduction of two households would not place undue pressure on local infrastructure. As such, the proposed development is considered to comply with paragraph 25 of the PTSS.

Effective use of previously developed, untidy or derelict land

5.32 According to paragraph 26 of the PPTS, when considering applications, local planning authorities should attach weight to the effective use of previously developed (brownfield), untidy or derelict land. This is consistent with the wider national and local policy. The NPPF glossary defines PDL as follows:

“Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.”

5.33 The site benefits from a previous permission 21/01519/FUL; the stable block has been built and landscaping has been carried out therefore this permission has been implemented.

5.34 Whilst the existing lawful use of the site is agricultural/equestrian use with stable building and associated works. Due to the nature of the site with little built development it is still considered to be greenfield land and therefore does not meet the NPPF definition of previously developed land as set out above. Therefore, the policy objective to make effective use of previously developed land is of little weight in this instance.

5.35 Previously the land has been overgrown and subject to illegal dumping of waste. Whilst this has now been removed which has resulted in visual improvement of the land, it is considered that very limited weight should be applied to this consideration.

Assessment of principle of development

5.36 The proposed development is considered to comply with the aforementioned policies of the West Berkshire Development Plan, the emerging policies in the Local Plan Review, and the relevant national policies. The creation of sites is specifically identified as necessary by the emerging policies, in recognition of the need and supply set out above.

5.37 The proposal is for the provision of 2 new pitches which would meet the Council's identified short-term need as set out in the section above.

Highways and transport

5.38 Policy CS13 in the Core Strategy is the principal policy against which the application needs to be addressed. The highways officer has carefully examined the proposal in the light of this policy and has concluded that conditional permission is appropriate based on the following:

- a) The internal layout is accepted as is the parking provision including 2 x parking spaces for each plot and 2 x parking spaces by the existing stable block.
- b) The access is surfaced 3m back from the carriageway – this is already existing.
- c) The traffic generation issue is not a matter with which the Local Highways Authority is concerned, given the existing and proposed use of the site.

5.39 Accordingly the proposed development is considered to comply with Policy CS13.

Landscape and visual impact

- 5.40 The application site lies in the *UV4 Enborne Upper Valley Floor* designation in the West Berkshire Landscape Character Assessment of 2019. The principal features of this area is that it has a far flatter topography, with the valley being narrow with no defined slopes. The land use is predominantly mixed agriculture with some large tracts of deciduous woodland. Settlement is sparse and where present lacks any consistent character. The area is intruded by multiple busy roads which degrade the local character of the area. As the area is quite flat and well-wooded there are limited views out of the landscape.
- 5.41 To the south of the site is an existing mature vegetation, to the east of the site is an existing pumping station building. Since the construction of the stable building post and rail fencing has been erected to secure the site; further soft landscaping has been added to the boundaries.
- 5.42 The site is very well screened from longer and shorter distance views by the mature vegetation. The introduction of further soft landscaping will permit a greater degree of intervisibility across the site which will improve the locality.
- 5.43 The height of the new buildings will be limited to single storey only, the day rooms being circa 4.2m to ridge and the caravans typically being no more than 3.5 m in height. This will help to reduce any localised visual impact. Having regard to policy CS19 in the Core Strategy, which encourages new development not to be harmful visually or indeed harm the local landscape itself, your officers consider that the level of impact will be minimal and so acceptable under Policy CS19. It is also important to note that no special landscape designation washes over the application site, such as a National Landscape (former AONB).

Design

- 5.44 According to Policy CS14, good design relates not only to the appearance of a development, but the way in which it functions. Consistent with the PPTS, Policy CS7 seeks the provision for adequate on-site facilities for parking, storage, play and residential amenity. Policy TS3 states that proposals will (amongst other considerations): (1) include appropriate landscaping proposals, retaining and incorporating key elements of landscape character into the site design; (2) be well designed and laid out with shelter and amenity buildings which are appropriately located and constructed of sympathetic materials suited for the purpose; and (3) Provide a design, layout and siting plan for the development.
- 5.45 The *Designing Gypsy and Traveller Sites Good Practice Guide* (DCLG, May 2008) is now cancelled, but sought to establish and summarise the key elements needed to design a successful site. Although the guidance was formally cancelled, in the absence of any updated guidance it continues to provide a useful reference.
- 5.46 In terms of design, it is considered that the layout and orientation of the proposed pitches is considered acceptable, offering a reasonable level of privacy and natural surveillance. The layout of the site allows for reasonable levels of privacy for individual plots and good natural surveillance given its small scale.
- 5.47 Each plot has a sufficient amount of useable amenity space which is private from the road by fencing and vegetation, the plots are also separated by low hedging to offer privacy for each plot.
- 5.48 The proposal is considered to represent a significant enhancement, in accordance with the aforementioned policies. Historically the application site has been overgrown and been subject to dumping of waste materials – the land has been improved in quality

since permission 21/01519/FUL was granted with clearance of dumped waste material and planting of soft landscaping visually improving the land.

Sustainable construction

- 5.49 The zero carbon requirements in Policy CS15 of the Core Strategy do not apply as the proposal is not a major development.

Neighbouring amenity

- 5.50 Securing a good standard of amenity for all existing and future occupants of land and buildings is one of the core planning principles of the National Planning Policy Framework.
- 5.51 West Berkshire Core Strategy Core Strategy Policy CS14 states that new development must make a positive contribution to the quality of life in West Berkshire.
- 5.52 Due to the location of the proposal and the distance from neighbouring dwelling at over 200m there is not any concern for impact on wider neighbouring amenity.
- 5.53 The two pitches are located next to each other with a boundary hedge separating the two plots; this will allow for adequate private amenity space for each plot.
- 5.54 Overall, there is not considered to be a signification impact on neighbouring amenity and the proposal complies with the NPPF and Policy CS14 of the Core Strategy.

Drainage

- 5.55 The site is within flood zone 1 but is adjacent to flood zones 2 and 3 and is within a surface water risk area and a Source protection Zone 1 area as well as being located just to the north of the River Enborne.
- 5.56 The Environment Agency were consulted and objected to the proposal due to the lack of a flood risk assessment (FRA).
- 5.57 A Flood Risk Assessment was submitted on 6th December 2022 however the council drainage team objected to this. The Environment Agency also maintained their objection due to insufficient information.
- 5.58 A drainage strategy was submitted on 24th May 2023 the council drainage team removed their objection subject to comments from the Environment Agency. The Environment Agency removed their objection subject to a planning condition be attached to any permission which requires the development to be carried out in accordance with the submitted Flood Risk Assessment, no changed in of ground levels and the securing of mitigation measures.
- 5.59 The Environment Agency provided advice for the applicant regarding groundwater protection and environmental permits for sewage effluent discharge and flood risk.
- 5.60 Overall, the proposal meets policy CS16 due to the objections from the council drainage team and the Environment Agency have been overcome subject to conditions.

Ecology

- 5.61 Core Strategy Policy CS17 states that biodiversity and geodiversity assets across West Berkshire will be conserved and enhanced. Habitats designated or proposed for designation as important for biodiversity or geodiversity at an international or national level or which support protected, rare or endangered species, will be protected and enhanced. The degree of protection given will be appropriate to the status of the site or species in terms of its international or national importance.
- 5.62 Development which may harm, either directly or indirectly,
- (a) locally designated sites (Local Wildlife Sites and Local Geological Sites), or
 - (b) habitats or species of principal importance for the purpose of conserving biodiversity, or
 - (c) the integrity or continuity of landscape features of major importance for wild flora and fauna
- 5.63 will only be permitted if there are no reasonable alternatives and there are clear demonstrable social or economic benefits of regional or national importance that outweigh the need to safeguard the site or species and that adequate compensation and mitigation measures are provided when damage to biodiversity/geodiversity interests are unavoidable.
- 5.64 The application has been supported by an Ecological Assessment (comprising an extended phase 1 habitat and protected species scoping survey and preliminary bat roost assessment) however further information was required by the council ecologist.
- 5.65 Further information was provided on 12th February 2024, and this was assessed by the council ecologist who removed their objection subject to a condition requiring the development is carried out in accordance with the information submitted.
- 5.66 Overall, it is concluded that the proposed development complies with Policy CS17 and the relevant legislation subject to the imposition of the recommended conditions.

6. Planning Balance and Conclusion

- 6.1 Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.
- 6.2 The application site makes a contribution to the overall supply of gypsy and traveller pitches within the district. The proposal helps to meet the Council's short term need for sites which carries a significant weight within the planning balance.
- 6.3 The design of the site is a significant improvement over that of the historic land which was used for fly tipping, however this is only given very limited weight as the fly tipping was a criminal activity which the Council can take legal action against. However weight can be attached to sites that are well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness. The design is considered acceptable by providing suitable amenity space with suitable use of soft landscaping as well as maximising natural surveillance across the site which helps to contribute to an enhanced sense of place and ownership. This weighs in favour of the proposal.

- 6.4 Concerns were raised with regards to ecology, flooding and drainage however further information has been provided and assessed by consultees and deemed acceptable subject to conditions. Therefore, this weighs in favour of the proposal.
- 6.5 Overall, having regard to the relevant development plan policies and material considerations it is concluded that the reasons for granting planning permission significantly and demonstrably outweigh any potential adverse impacts in planning terms. A collection of conditions is recommended that will ensure that the development is carried out in a way that is acceptable in planning terms.
- 6.6 The application is recommended for **conditional approval**.

7. Full Recommendation

- 7.1 To delegate to the Development Manager to **GRANT PLANNING PERMISSION** subject to the conditions listed below.

Conditions

1.	<p>Commencement of development The development hereby permitted shall be begun before the expiration of three years from the date of this permission.</p> <p>Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).</p>
2.	<p>Approved plans The development hereby permitted shall be carried out in accordance with the following approved plans/documents:</p> <p>Proposed Site Plan J004098-DD-03 Rev A received 8th August 2022; Proposed Day Room Plans J004098-DD-04 received 8th August 2022; Location Plan J004098-DD-01 Rev A received 8th August 2022; Proposed Section and Levels J004098-DD-05 received 8th August 2022; Supporting Statement received 8th August 2022; Landscape and Visual Impact Assessment received 7th February 2023; Flood Risk Assessment dated May 2023 received 24th May 2023; Surface Water Drainage Strategy received 31st May 2023; Biodiversity Metric received 12th February 2024; Ecological Impact Assessment dated February 2024 received 12th February 2024.</p> <p>Reason: For the avoidance of doubt and in the interest of proper planning.</p>
3.	<p>Materials The materials to be used in the development hereby permitted shall be as specified on the plans and/or the application forms. Where stated that materials shall match the existing, those materials shall match those on the existing development in colour, size and texture.</p> <p>Reason: To ensure that the external materials respect the character and appearance of the area. This condition is applied in accordance with the National Planning Policy Framework, Policies CS14 and CS19 of the West Berkshire Core Strategy (2006-2026), and Supplementary Planning Document Quality Design (June 2006).</p>
4.	<p>Parking</p>

	<p>No pitch shall be first occupied until vehicle parking spaces for that pitch have been completed in accordance with the approved plans (including any surfacing arrangements and marking out). Thereafter the parking shall be kept available for parking and manoeuvring (of private cars and/or private light goods vehicles) at all times.</p> <p>Reason: To ensure the development is provided with adequate parking facilities, in order to reduce the likelihood of roadside parking that would adversely affect road safety and the flow of traffic. This condition is applied in accordance with the National Planning Policy Framework, Policy CS13 of the West Berkshire Core Strategy 2006-2026, and Policy P1 of the Housing Site Allocations DPD 2006-2026.</p>
5.	<p>EA</p> <p>The development shall be carried out in accordance with the submitted flood risk assessment compiled by Flume Consulting Engineers, referenced 1292, revision 2 and dated May 2023 and the following mitigation measures it details:</p> <ul style="list-style-type: none"> • There shall be no development on site in Flood Zone 2 or Flood Zone 3 all in accordance with Figure 3 on page No 5. • There shall be no raising of existing ground levels on site in Flood Zone 2 or Floor Zone 3 all in accordance with paragraph 2 of page No 5. <p>These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.</p> <p>Reason: In line with the requirements of paragraph 167 of the NPPF, to reduce the risk of flooding to the proposed development and future occupants for the lifetime of the proposed development. To prevent an increase in flood risk elsewhere by ensuring that the flow of flood water is not impeded, and the proposed development does not cause a loss of flood plain storage. To prevent obstruction to the flow and storage of flood water, which would lead to an increase in flood risk elsewhere.</p>
6.	<p>Ecology</p> <p>The works shall be carried out strictly in accordance with the details submitted in the ecological impact assessment:</p> <ul style="list-style-type: none"> • Section 1.6 Surface water drainage strategy of the Ecological impact assessment (February 2024, DJOGS Limited). • Section 1.7 Landscape and Ecological enhancement scheme of the Ecological impact assessment (February 2024, DJOGS Limited). • Section 5.2 Mitigation measures and residual effects of the Ecological impact assessment (February 2024, DJOGS Limited). • Section 6.2 Recommendations; Essential of the Ecological impact assessment (February 2024, DJOGS Limited). • Section 6.2 Recommendations; Desirable, <u>where applicable</u>, of the Ecological impact assessment (February 2024, DJOGS Limited). <p>Reason: To avoid adverse impacts to legally protected species during site clearance and construction in accordance with the requirements of the NPPF to minimise impacts on biodiversity.</p>
7.	<p>External lighting</p> <p>No external lighting shall be installed at the site until a lighting strategy has been submitted to and approved in writing by the Local Planning Authority. The strategy shall include a plan to show the location of any lighting, isolux contour diagram(s), an operation strategy (e.g. details of timed operation), and specifications all lighting to ensure that levels are designed within the limitations of Environmental Lighting Zone</p>

	<p>1, as described by the Institute of Lighting Engineers. No external lighting shall be installed at the site except in accordance with the above strategy.</p> <p>Reason: To ensure the conservation and enhancement of the biodiversity assets of the site. This condition is applied in accordance with the National Planning Policy Framework, and Policies CS17 and CS19 of the West Berkshire Core Strategy 2006-2026.</p>
8.	<p>Maximum pitches At no time shall more than 2 pitches be provided on the application site.</p> <p>Reason: To prevent the overdevelopment of the site and maintain good amenity for occupants. This condition is imposed in accordance with the National Planning Policy Framework, Policy CS14 of the West Berkshire Core Strategy 2006-2026</p>
9.	<p>Occupation restriction The site hereby permitted shall not be occupied at any time other than by Gypsies and Travellers, as defined in the revised Planning Policy for Traveller Sites of December 2023.</p> <p>Reason: To comply with policy CS7 in the West Berkshire Core Strategy 2006-2026, and to maintain a supply of pitches.</p>
10.	<p>Day rooms The dayrooms hereby permitted shall only be used for purposes ancillary and/or incidental to the pitches upon which they are sited.</p> <p>Reason: To prevent the overdevelopment of the site and maintain good amenity for occupants. This condition is imposed in accordance with the National Planning Policy Framework, Policy CS14 of the West Berkshire Core Strategy 2006-2026.</p>

Informatives

1.	Proactive
2.	CIL
3.	<p>Thames Water Thames Water will aim to provide customers with a minimum pressure of 10m head (approx 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Waters pipes. The developer should take account of this minimum pressure in the design of the proposed development.</p>

APPENDIX 4



Appeal Decision

Inquiry held between 2 and 8 August 2022

Site visit made on 5 August 2022

by Louise Crosby MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th August 2022

Appeal Ref: APP/W0340/W/22/3292939

Land at Ermin Street, Lambourn Woodlands, RG17 7TR

- The appeal is made under section 73A of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr R Clark against the decision of West Berkshire District Council.
 - The application Ref 21/02045/FUL, dated 22 July 2021, was refused by notice dated 26 January 2022.
 - The development proposed is the change of use of land for the siting of 1 mobile home and 1 touring caravan.
-

Decision

1. The appeal is allowed and planning permission is granted for the proposed change of use of land for the siting of 1 static caravan and 1 touring caravan at land at Ermin Street, Lambourn Woodlands, RG17 7TR in accordance with the terms of the application, Ref 21/02045/FUL, dated 22 July 2021, subject to the conditions in the schedule attached to this decision:

Applications for costs

2. It was agreed at the Inquiry that applications for costs by both parties could be made in early September, in writing. These applications will be the subject of separate decisions.

Preliminary Matters

3. The appellant has submitted a signed Unilateral Undertaking (UU) which would secure a contribution of £10,963.00 towards the installation and management/maintenance of off-site ecological compensation measures. As a result, the Council are not defending their fourth reason for refusal which relates to the lack of an extended Phase 1 ecology habitat survey to determine the impact of protected species and any necessary avoidance or mitigation measures. This study was provided as part of the appeal process and led to the agreement of the UU.
4. This reason for refusal also refers to a lack of information to demonstrate that an integrated water supply and drainage strategy can be provided for the site. It is now agreed that this can be overcome by a planning condition. I am satisfied that the fourth reason for refusal can be resolved through the combination of a condition and the UU.

5. It is agreed by both main parties that the appellant's family unit meets the definition of 'Traveller' as set out in Annex 1 of Planning policy for traveller sites (PPTS) and I agree.
6. The change of use has already taken place and when I visited the site there was a static caravan and a touring caravan on the site. Additional development has also taken place at the appeal site that did not form part of the planning application which is the subject of this appeal. I shall deal with the appeal based on what was applied for by the appellant and considered by the Council when determining the planning application.
7. The main parties agree that the site constitutes previously developed land and based on the information before me I concur. I shall refer to the mobile home in my decision as a static caravan.

Main Issues

8. The main issues are:
 - i) whether the appeal site is a suitable location for the proposed development, having regard to local and national policies;
 - ii) the effect on the living conditions of the occupants of the site as a result of noise disturbance;
 - iii) the effect of the proposal on the character and appearance of the area and whether it would conserve and enhance the landscape and scenic beauty of the North Wessex Downs AONB;
 - iv) whether there are material considerations which exist that outweigh the conflicts with the Development Plan and any other identified harm resulting from the appeal proposal.

Reasons

Sustainable Location

9. The site is located alongside Ermin Street, approximately 2.1km from Baydon and around 3.7km from Lambourn. The site is not within walking distance of public transport stops. Ermin Street and the road network between the site and these 2 nearest settlements consists of country type roads with no public footpaths alongside them. Whilst cyclists will use these roads, they are not very wide and would not be safe for children to cycle on.
10. In many places the speed limit is 50mph, but traffic tends to drive slower because of the nature of the roads. Having driven on these roads I find that it is highly likely most trips from the site to access services are likely to be by private car albeit the distances to the nearest settlements are relatively short. However, there is a good public footpath network which is accessible from the site and could be used for recreational purposes.
11. Whilst paragraph 25 of PPTS advises that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements, it is quite usual for gypsy and traveller sites to be located away from settlements to some degree. Land within or next to settlements is rarely available or affordable to gypsies and travellers, especially

in high value areas such as West Berkshire. The ability to access public transport and get about on foot or by bicycle varies, but in my experience this site is similar to many gypsy and traveller sites in terms of its accessibility.

12. West Berkshire Core Strategy (2006-2026) (CS) policy CS7 sets out several criteria to be used in determining planning applications. Some of these are relevant to the consideration of this issue, in particular criterion 1 which seeks to ensure that sites have safe and easy access to major roads and public transport services and criterion 2 which requires easy access to local services including a bus route, shops, schools and health services.
13. The site does have safe and easy access to major roads, including the local road network and the M4 motorway, but as set out above it does not have access to public transport without first driving to a bus stop or train station. The site also has easy access to local services, but this would require a car journey to get there. The common issue here is the lack of access to public transport without first undertaking a car journey. As such the proposal only partially meets the relevant criteria of policy CS7.
14. Turning now to policy TS3 of the Housing Site Allocations DPD (2006-2026) (DPD) which in my view is applicable in relation to allocated sites and windfall sites, such as this one given the supporting text at paragraph 3.19. Also, the DPD was adopted in 2017 and so after the current version of PPTS, unlike the CS. The most relevant criterion of this policy seeks to ensure that measures are included to improve accessibility by, and encourage use of, non-car transport modes.
15. It also requires that these measures should be set out in a Travel Plan for the site and that internal walking routes are identified along with ways in which they can be linked to existing routes, including the Public Rights of Way network. In addition, there is a requirement to improve external routes to services and facilities. Because of the lack of public footpaths (other than across fields or along green lanes), and public transport within walking distance of the site the proposal fails to accord with policy TS3.
16. Overall, I find that the site is not in the most sustainable location such as on the edge of a settlement, but for the reasons set out above the likelihood of gypsy and traveller sites being in such a place is very slim. In terms of gypsy and traveller sites the location of this site is usual, although access to a bus service within walking distance of the site would be preferable. Whilst the children would need to be driven to anywhere they wished to go beyond the site this is not unusual for children living in rural areas in the settled community due to a lack of regular public transport services in such areas. I attach modest weight to the lack of access to sustainable modes of transport within walking distance of the site and the conflict with relevant CS and DPD policies.

The effect on the living conditions of the occupants of the site as a result of noise disturbance

17. It is the noise from the M4 motorway that concerns the Council. Dealing first with the outdoor amenity space, both acoustic experts agree that the best which can be achieved is 59dB LAeq 16hr without additional acoustic screening; at the side of the caravan away from the motorway, where the door into the

- caravan is located and the family has a table and chairs for sitting out. This is 4dB above the "upper guideline of 55dB in section 7.7.3.2 of BS8233:2015.
18. When I visited the appeal site it was a Friday morning. The motorway was extremely busy with normal daytime traffic as well as people driving to their summer holidays. I observed that external noise within the site and particularly beyond the acoustic shadow of the caravan was loud and would not be pleasant to spend long periods of time outside in. That said I probably heard it at its worst and there will be times when it is much quieter, particularly during the evenings and at night.
 19. Turning to consider the internal noise levels, the appellant's static caravan pre-dates 2015 and so is unlikely to have been constructed to a standard that would meet BS3632:2015. The appellant is in the process of purchasing a new BS3632 compliant static caravan, but no information was available about when this would be delivered. It was agreed that it would be very expensive and impractical to adapt the existing one to meet BS3632.
 20. When I visited the site, I went inside the existing 'non-compliant' static caravan and sat in the lounge area. There were no other sources of noise at the time inside the caravan such as a TV, music playing or activities taking place such as cooking. I could hear the motorway road noise with the windows closed. In my view the noise levels were not unduly harmful for a short period however it would become quite difficult to tolerate for long periods of time, especially if trying to carry out a quiet activity. This would reduce to a more acceptable level when the appellant has his new static caravan and particularly if there were internal noise of some sort.
 21. With the windows open the noise increase was very noticeable but still far less than when outside and this would become less noticeable when people are talking or a television is on, for example. This noise level could also be reduced by opening windows on the side of the caravan away from the motorway.
 22. The most difficult situation would be on a hot evening when trying to sleep with windows open, but at such a time it is highly likely that the traffic levels on the motorway would be significantly less than on a Friday morning in the height of summer and hence far less noisy. Indeed, I have observed many new housing developments being constructed as close or closer to motorways in recent years. Whilst they will have measures to reduce noise to acceptable levels in habitable rooms and provide some ventilation, many people choose to sleep with windows open, particularly during hot weather.
 23. It was agreed at the Inquiry that the noise could be reduced to provide a better acoustic environment for the static caravan and the amenity space with the introduction of a 2.4m high acoustic fence system which would be wrapped around the rear and part of 2 sides of the site, as shown in figure 1 of the Council's rebuttal proof on noise. This could achieve an acoustic attenuation of approximately 15 dB. The current non-acoustic fence is around 2m high. Because of the site's location in the AONB the suitability or otherwise of such a fence in visual amenity terms needs careful consideration. I shall deal with this under my relevant main issue.
 24. Noise levels inside the touring caravan would be far more harmful due to it being constructed of more lightweight materials. However, it was agreed that

a planning condition could be used to control the use of the touring caravan for sleeping purposes. I am satisfied that the new 3 bedroom caravan could accommodate all of the appellant's family for sleeping purposes.

25. Overall, I am satisfied that the new static caravan along with an acoustic fence would provide adequate noise attenuation in the static caravan with the windows open or closed as well as outside in the amenity space and that a condition would not be necessary or reasonable to require mechanical ventilation with both of these measures in place. That would not prevent the appellant buying such equipment if he felt it necessary, however that would be his personal choice.
26. The acoustic fence would in theory be contrary to PPTS paragraph 26 d) which discourages the use of high fences and walls to enclose a site, giving the impression that the site and its occupants are deliberately isolated from the rest of the community. However, a fence up to 2 metres high could and has been erected here in any event and trees and hedges could be grown up to any height. Indeed, the site is already well enclosed in some places by mature boundary trees and hedgerows.
27. So, with a new static caravan and a 2.4m high acoustic fence I am satisfied that the proposal would provide suitable living conditions for the appellant and his family and accord with CS policy CS7 in so far as it seeks to ensure provision is made for adequate levels of residential amenity. Without the acoustic fence, that would not be the case. I shall consider the acceptability of the fence in visual amenity terms next and in the overall planning balance.

The effect of the proposal on the character and appearance of the area and whether it would conserve and enhance the landscape and scenic beauty of the North Wessex Downs AONB

28. It is common ground between the main parties that the appeal site lies within the North Wessex AONB and within open countryside for planning policy purposes. It is also agreed that the AONB covers around 74% of the district.
29. Dealing first with the character of the area, the site is located around 160m from the M4 motorway which is set at a higher level than the appeal site. Not far from the site is a large concrete footbridge/bridleway over the motorway. Closer to the site is Zoe's Farm which is located on lower ground than the appeal site and comprises of a number of equestrian related buildings, including a large L-shaped stable building, a lunge ring and grass paddocks.
30. To the north of the appeal site, close by, is another large L-shaped stable building. In the wider area, there are numerous isolated dwellings with domestic curtilages, farms and substantial equestrian uses. On the opposite side of the motorway is Membury solar farm and slightly further afield is Membury motorway service area and Membury communications mast. So, the surrounding area does contain development of varying types and scales which define the character of the area.
31. Indeed, part of the Council's description of the condition under the category of appeal site character in their LVIA appendices is as "part of paddocks, horsey culture has been identified as degrading character of landscape within WBLCA 2019". The site lies within or on the edge of a number of national and local landscape character areas. The site is on the boundary of two landscape types

in the North Wessex Downs AONB Integrated Landscape Character Assessment 2002 which also describes the M4 as having a major visual and noise impact (para 9.41).

32. Within the West Berkshire Landscape Character Assessment, the site lies within LCA WD1 Shefford Wooded Downland where one of the main detractors is described as the noise and pollution created by the M4. So whilst the site and the surrounding area has many positive attributes described in the various landscape character assessments, the area along the M4 corridor, where the site is located is seen as being of lower value due to the presence of the motorway and other development such as the motorway services. The Council's evidence acknowledges that the AONB in this area is degraded by the M4 noise and equestrian culture.
33. In addition, the appeal site lies within 'LCA 4 – Ermin Street' in the Landscape Character Appraisal used to inform the Lambourn Neighbourhood Development Plan. This relatively small LCA is described in the appraisal as an area that 'can potentially contain and hold more development than other parts of the NDP as landscape impacts would be less sensitive than elsewhere'.
34. The main views into the site from public areas are glimpsed views from the M4 motorway, but these are limited by trees and are fleeting given the speed one is travelling at. Whilst the motorway is elevated above the appeal site the views of the site are across of distance of at least 160m.
35. From the motorway footbridge views are available at certain points through breaks in mature trees. However, having walked across the footbridge during my site visit and experienced the very loud noise there from the passing cars below I am sure very few people would be lingering to take in the views here. In any event despite the difference in land levels between the appeal site and the array of built development at Zoe's Farm, they are viewed in the same context from the footbridge. The appeal site is certainly not experienced as an isolated site in the open countryside.
36. The other main vantage point is where the entrance to the appeal site has been created by taking out a section of the hedgerow. These views are predominantly as you turn into the site or as one travels in a southerly direction along Baydon Road to meet the junction of Baydon Road and Ermin Street. In these views the caravans can be seen due to their light colour in contrast to the green trees and fields.
37. In terms of the introduction of a 2.4m high acoustic fence as set out above, this would be mainly visible in public views from the motorway and the footbridge over it. It would also be visible from neighbouring land, especially as some of this is at a lower level already. As set out above the site is already contained by a 2m high fence to afford the appellant and his family some privacy.
38. A 2m high fence does not require planning permission when sited away from a public highway, as is the case here. The difference in height between the existing fence and an effective acoustic fence would be 40cm and its design could be controlled unlike the existing one. Moreover, planning conditions could be imposed to require landscaping to act as a screen to the fence. Whilst this would take some time to mature and become fully effective, I am satisfied that until that were the case the fence would not appear unduly harmful given

the location of the site and the limited places where it would be mainly viewed from.

39. Clearly the change of use has changed the appearance of the site through the introduction of caravans and hardstanding as well as domestic paraphernalia such as a large trampoline and paddling pool. The caravans are visible in the landscape from several viewpoints. Many of these views are glimpsed views with the caravans seen in the context of other existing built development. As set out above, this part of the AONB is regarded in relevant Landscape Character Assessments to be degraded by the M4 and equestrian culture and more able to absorb development than some areas.
40. Nevertheless, the site is within the AONB and as such there is a requirement that development conserves and enhances the landscape and scenic beauty of the AONB. Indeed paragraph 176 of the Framework advises that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs. It also advises that the scale of development should be limited which I consider this proposal is.
41. The change of use fails to conserve and enhance the landscape and scenic beauty of the North Wessex Downs AONB and but causes only modest harm to the character and appearance of the area given the scale of development (a single pitch), its proximity to other development of greater scale and mass and its proximity to the M4 motorway which is elevated above and more visually prominent in the landscape than the appeal proposal. The addition of an acoustic fence with appropriate landscaping would not materially increase the harm given the presence of a fence already, the design of which cannot be controlled. Given the identified harm there is conflict with CS policies CS7, CS14, CS19 & ADP policy 5.

Other Material Considerations

Previously Developed Land

42. PPTS paragraph 26 a) advises that weight should be attached to effective use of previously developed (brownfield), untidy land or derelict land. As set out above the main parties agree that the site is previously developed. The site is for one family and although it is in the countryside it would not dominate the nearest settled community. I attach modest weight to the fact that the site is previously developed as the previous use was equestrian related and the site did not contain any built development.

Need for and supply of gypsy sites

43. The Council carried out a Gypsy and Traveller Accommodation Assessment (GTAA) in 2019 and then updated it in 2021 as part of its evidence base for its emerging local plan. The 2019 GTAA concluded that there was a cultural need for 51 pitches and a PPTS need for 48 pitches over the plan period 2018/19 to 2035/36. Taking into account how the need could be addressed the final conclusion was that 22 pitches would need to be found to meet the cultural need and 19 pitches to meet the GTAA need.
44. The report recommended that this be done through a future local plan and that the future plan should acknowledge this range of need. The survey work for the 2019 GTAA was undertaken when the only public site in the district, known as Four Houses Corner (FHC), had been partially cleared in advance of it being

- completely cleared for redevelopment. Only 7 pitches were occupied at the time.
45. By the time of the 2021 update the FHC site had been completely cleared and no assessment of need was made as a result of household formation on the previous 16 pitches at this site. This 2021 GTAA found that there was a residual cultural need after potential pitch development was considered of 22 pitches and a PPTS need of 12 pitches. It also identified a 5-year authorised pitch shortfall for cultural need of 13 pitches and for PPTS need, 9 pitches. Once the FHC site is reoccupied a full assessment of the future needs of these families will need to be undertaken and this need could then increase further.
46. On the basis of there being 16 pitches re-provided it was agreed between the parties that there was a shortfall of 1 PPTS need pitch. However, the Council during the course of this appeal increased the number of pitches to be provided on this site by 1 to a total of 17. There is a lack of certainty about when this site will be redeveloped and open again. I consider the Council's proposed timescale of March 2023 to be overly ambitious. In my view, it is likely to be available in the next 5 years. This would meet the current identified 5 requirement if the current assessment of need is accurate. This is difficult to know given the lack of up-to-date information regarding previous occupants of the FHC site. For the benefit of this appeal, I shall assume the Council have a 5-year supply of pitches.
47. There is an overall general unmet need however for PPTS and cultural gypsies even taking account of the planning applications currently before the Council. The only way this is likely to be met is through the emerging plan, but the Regulation 18 version of the plan does not seek to allocate any sites for gypsies and travellers. No suitable sites were identified through the call for sites process. The Council have recently written to the would-be developer of a site allocated in the emerging plan for 2,500 homes asking if they would be willing to accommodate between 12 and 21 gypsy and traveller pitches on the edge of their site. At the time of the Inquiry no response had been received.
48. My experience is that developers do not do this willingly. Even if they were to agree to this, the plan is not due to be submitted until Spring next year at the earliest. Adoption of the plan, following examination, is unlikely to be until 2024 at the earliest and then it would take time for the site to come forward. Moreover, it is a concern that the Council have waited until such a late stage in the plan preparation process to look at alternative ways of accommodating the unmet need following the lack of sites that came forward at the call for sites stage. Indeed, it seems the Council only wrote to the developer a few weeks prior to this Inquiry.
49. Moreover, there is a long-standing failure to allocate land to meet gypsy and traveller needs in the district. There has been a requirement to allocate land for gypsy and traveller sites since 1994 and since then no sites have been allocated in a development plan except for Paices Hill in the current adopted DPD. However, this permits the change from 8 transit pitches to 8 permanent pitches, it is not a new site allocation. Moreover, according to the appellant this is for a specific family rather than to meet general need. This was not disputed by the Council. This is despite CS policy CS7 saying that the Council will make appropriate provision for gypsies, travellers and travelling

showpeople pitches through the allocation of sites within the Site Allocations and Delivery DPD.

50. At present there are a number of unknown factors that will affect the Council's ability to meet the general need for both cultural and PPTS gypsies, but in my view it is highly likely that the need for both will be greater than that established in the 2 most recent GTAA's and at the same time there is great uncertainty about when the FHC site will reopen, as set out below, and whether there will in fact be any spare capacity on that site despite its increase in pitches by 1. There is also little comfort at present that the emerging plan will allocate any sites given the stage it has reached in the plan preparation process without any sites allocated for gypsies and travellers and the constraints of the district such as flood risk and the AONB.
51. To conclude, I consider that there has been a persistent and woeful failure by the Council to meet the needs of the gypsy and traveller community both historically and potentially going forward. I attach significant weight to this matter.

Alternative sites

52. The FHC site was a Council run gypsy and traveller site until 2021. Although it contained 16 pitches there is an historic planning permission for 20 pitches. From around 2019 it was gradually cleared and sealed with residents being moved into temporary accommodation. Many were moved to bricks and mortar accommodation in the absence of culturally suitable accommodation being available.
53. Some families who previously resided on the FHC site have now been in bricks and mortar accommodation for around 3 years. The appellant was brought up on this site and as an adult doubled up with his family on his mother's pitch for many years. He left the site prior to it being closed down due to the poor sanitation conditions and the problems with drugs and crime there. The Council themselves said at the Inquiry that the site had serious quality issues.
54. The site has been cleared and is surrounded by security fencing and is protected by security guards. The Council say that it is their intention to reopen the site by March 2023 and that the site will provide 17 pitches. Indeed, there is evidence of funds being available in the capital expenditure programme for the works. However, before the site can reopen there will need to be a tendering process for the design of the site and a contract awarded. Following that the site will need to be designed and a planning application prepared and submitted.
55. Assuming planning permission is granted, the approved works will then need to be put out to tender, and a contract awarded and finally the works will need to be completed and new homes provided etc. This process has not yet begun, and the Council could not say when this was going to happen. I cannot see that even with the best will in the world this site will be open to residents by March 2023.
56. Certainly, this site does not provide alternative accommodation at the present time for the appellant and his family, and it is unclear if there will be a pitch available for him when it does re-open as he did not have a tenancy agreement on the previous site. If everyone that moved off moves back on then in theory

there will be one pitch remaining, but the current need for both cultural and PPTS pitches is not at all clear and it could be that over time that need for PPTS pitches and cultural pitches has shifted as more of the previous residents cease to travel due to old age. So, it cannot be assumed that the appellant and his family would be successful in getting a pitch there. The Council were also unable to say how the crime and drugs problems on the site in the past will not be allowed to take place when the site is reopened. This is an understandable concern of the appellant, particularly given he has a number of children.

57. Policy TS1 of the adopted DPD allocates a site at Paices Hill for 8 permanent pitches to replace 8 existing transit pitches. The policy requires that the occupants of the site meet the PPTS annex 1 definition of gypsy and traveller. A planning application is currently with the Council, and it is expected to be determined in the Autumn. The appellant advised that these pitches will not be available for general use, but for a specific family group. The Council did not dispute this but said that the planning permission will not restrict the occupants.
58. The appellant explained at the Inquiry that he and his family had lived in bricks and mortar accommodation for a few years in the past, but he could not sleep upstairs so he would either sleep on the sofa downstairs or in a shed he built in the garden. The only alternative accommodation the Council are able to offer at present is bricks and mortar accommodation. Based on the information in the appellant's proof of evidence and what he told the Inquiry I find that this would not be suitable alternative accommodation for the appellant.
59. The lack of a suitable alternative site for the appellant and his family attracts significant weight.

Personal circumstances and accommodation needs

60. The appellant lives at the appeal site with his wife and 3 of their children who are minors. Their adult daughter lives there too with her baby son. The appellant's young son attends school locally. He is settled there and enjoys it. If he were move to somewhere else in the district or worse still forced into a roadside existence this would disrupt his education.
61. None of the site occupants have any specific health issues, but clearly having a settled base is beneficial in terms of being able to access routine healthcare and this is particularly important for the 4 children.
62. Case law establishes that the best interests of the children are a primary consideration. There are four children on the site ranging in age from a baby to 15 years old. A settled base is clearly in the best interests of the children, rather than the alternative of doubling up on other pitches and having to keep moving around. A settled base would allow for the appellant's younger child to continue attending Lambourn School and for all residents to access health care provision on a consistent basis. I give the best interests of the children substantial weight.

Intentional unauthorised development

63. It is Government planning policy that 'intentional unauthorised development' is a material consideration to be weighed in the determination of planning applications and appeals. The reason behind the policy is that the Government is concerned about the harm caused where the development is undertaken in

advance of obtaining planning permission, such that there is no opportunity to appropriately limit or mitigate harm that is caused.

64. The appellant knew that he did not have planning permission when he changed the use of the land and began living on it, but then sought to regularise it through the planning application that is the subject of this appeal. The appellant's reason for developing the land without waiting to obtain planning permission is that he and his family had nowhere else to live. I have found there are no suitable alternative sites.
65. Nevertheless, the appellant carried out works beyond what was needed to create a habitable environment and for which he is not seeking planning permission, including a large timber day room built on a concrete pad close to a mature oak tree and hedgerow.
66. Taking all the above into account I have attached moderate weight to this harm.

Other matters raised by the interested parties

67. I note that there is concern by local residents that not only have works been carried out without planning permission but that the planning application form was not filled in accurately. As part of the planning application process and then the appeal process, I am satisfied that all the evidence I have based my decision on is correct, despite these inaccuracies.
68. In terms of the concerns about the precedent that would be set if this appeal is allowed, each planning application or appeal is considered on its own merits having regard to the particular set of circumstances. In my experience it is rare that 2 sites are identical in terms of the relevant circumstances.

The overall planning balance

69. The change of use that has taken place and the works necessary to make the living conditions acceptable would fail to conserve and enhance the landscape and scenic beauty of the North Wessex Downs AONB and result in moderate harm to the character and appearance of the area. There is also the modest weight from the lack of access to public transport directly from the site and the intentional unauthorised development of the site attracts moderate weight. Consequently, there is conflict with the relevant development plan policies and the Framework.
70. Considerations weighing in favour of the appeal, are the general need for gypsy and traveller pitches in the district, the lack of suitable alternatives, the personal circumstances of the appellant and his family who have a pressing need for a settled base so the appellant's son can continue to regularly attend school, the long standing and ongoing failure of the Council policy to address the needs of the gypsy and traveller community and thus the unequal approach when compared to the settled community and the fact that the site is previously developed land. Given the weight I have attributed to each of these considerations in this particular case, the harm would be clearly outweighed by these considerations, including the harm in relation to my third main issue caused by the acoustic fence which would be necessary to provide satisfactory living conditions.

71. Since I have included in the overall planning balance the appellant's personal circumstances it is necessary for me to grant a personal planning permission. I have considered whether a time-limited permission could be granted, but I am not convinced that in 3 or even 5 years there will be a suitable alternative site for the appellant and his family.
72. In reaching this decision I have had regard to the rights of the appellant and his family under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. Article 8 affords the right to respect for private and family life and home, including the traditions and culture associated with the Romany Gypsy way of life and the best interests of the children. It is a qualified right, and interference may be justified where that is lawful and in the public interest. The concept of proportionality is crucial. Dismissing the appeal or granting a time-limited permission would interfere with the appellants' rights under Article 8, since the consequence might be that the family is rendered homeless at some point.
73. Given the circumstances overall, I find that a grant of personal permission would be proportionate and necessary to protect the best interests of the children. It would avoid a violation of the appellants' rights to a private and family life and home. The protection of the public interest cannot be achieved by means that are less interfering with their rights under Article 8. Since the appellants are Romany Gypsies, they share the protected characteristic of race for the purposes of the Public Sector Equality Duty (PSED) under s149 of the Equality Act 2010.
74. As such, it is necessary and proportionate to permit the development on a personal basis to eliminate discrimination against and advance equality of opportunity for the appellant. For these reasons, I conclude that the appeal should be allowed, and a personal planning permission granted subject to the other conditions discussed further below.

Conditions

75. I have imposed a number of planning conditions based on the suggested conditions submitted by both main parties which were discussed at a round table session. I have amended some of the conditions slightly, in line with those discussions.
76. Given the nature of the case and the weight attributed to the personal circumstances of the appellant and his family in the overall balance and a need for a pitch for the family the permission needs to be made personal. Accordingly, a restoration condition is needed to ensure the site is returned to its former condition once the use as a gypsy site ceases.
77. It is also necessary to control the number of caravans, ensure the site is developed in accordance with the submitted plan, restrict commercial vehicles and uses in the interests of visual amenity and to preserve the AONB.
78. Since the change of use has taken place retrospectively, I have imposed a condition to ensure various matters are dealt with in a timely manner that are important for a number of reasons including living conditions of the residents and to protect the character and appearance of the area, including the AONB. Whilst I appreciate that the PPG advises that conditions which remove permitted development rights may not pass the tests of reasonableness and

necessity, I consider it is imperative to do so in this case due to the location of the site in open countryside and the AONB. Finally, it was agreed by both main parties at the Inquiry that the noise levels inside the touring caravan could be harmful due to the noise from the M4 motorway. I have imposed a condition to prevent the touring caravan being used as overnight accommodation to protect the health and amenity of the residents of the site.

Conclusion

79. For the reasons given above I conclude that the appeal should be allowed.

Louise Crosby

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Mr T Jones, of Counsel

He called:

Mr R Clark	Appellant
Mr B Woods	WS Planning and Architecture
Mr R Billingsley	DJOGS Ltd
Mr Fernleigh	dBA Acoustics Limited

FOR THE LOCAL PLANNING AUTHORITY: Ms N Byrd, of Counsel

She called:

Mr J Brown	Principal Planning Officer, West Berkshire Council
Mr M Bullock	arc4 Ltd
Ms L Allen	Landscape Consultant
Mr Haddad	Environmental Health Solutions and Training Ltd
Mr G Ryman	Ecologist

INTERESTED PARTY:

Lady C McCoy – Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Council's opening submissions
2. Council's Capital expenditure spreadsheet
3. Minutes of Council Committee, held on 3 March 2022
4. Paices Hill Planning Application documents
5. Revised suggested planning conditions
6. Copies of High Court Judgements

Schedule of conditions

- 1) The occupation of the site hereby permitted shall be carried on only by the following: Mr Roy Clark and Ms Samantha Harper, Ms Chardonnay Clark and their resident dependants.
- 2) When the site ceases to be occupied by those named in condition 1 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land and/or works undertaken to it in connection with the use shall be removed and the land shall be restored to its condition before the development took place.
- 3) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 1 shall be a static caravans shall be stationed on the site at any time.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans, except where details are to be submitted under condition 5: J003925-DD-03.
- 5) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision the following schemes shall be submitted to and approved in writing by the local planning authority and the scheme must include a timetable for their implementation:
 - a scheme for the means of foul and surface water drainage of the site;
 - proposed and existing external lighting on the boundary of and within the site;
 - the internal layout of the site, including the siting of caravans, plots, hardstanding, access roads, parking and amenity areas;
 - hard landscaping and a 2.4m high acoustic fence;
 - tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities and the management and maintenance of that landscaping. Any trees, shrubs, plants or hedges planted in accordance with the approved scheme which are removed die, or become diseased or seriously damaged within 10 years of completion of the approved scheme shall be replaced within the next planting seasons by trees, shrubs or hedges of a similar size and species to that originally approved;
 - Evidence that the replacement caravan meets or exceeds the sound insulation requirements of BS3632:2015 and a timetable for its installation on the site;
 - the restoration of the site to its condition before the development took place, at the end of the period for which the site is occupied by those permitted to do so, (hereafter referred to as the site development scheme) shall have been submitted

- for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.
 - v) Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained, maintained and remain in use for the duration of the planning permission.
 - vi) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 6) Any future static caravan placed on the site shall meet or exceed the sound insulation requirements of BS 3632:2015 Residential Park Homes.
 - 7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
 - 8) No commercial activities shall take place on the land, including the storage of materials.
 - 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any other order revoking and re-enacting that order with or without modifications), no sheds or amenity/utility buildings, or other buildings or structures, walls, fences or other means of enclosure other than those approved under condition 5 above.
 - 10) No external lighting other than that approved under condition 5 shall be provided without prior written planning permission of the Local Planning Authority.
 - 11) The touring caravan shall not be used as overnight accommodation at any time whilst located on the site.

APPENDIX 5



Appeal Decision

Inquiry Held on 17 – 19 September, 24 – 26 September and 30 September 2024

Site visit made on 19 September 2024

by Rory Cridland LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 18th November 2024

Appeal Ref: APP/W0340/W/22/3312261

Land to the rear of the Hollies Nursing Home, Reading Road, Burghfield Common RG7 3LZ

- 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 T A Fisher and Sons Ltd against the decision of West Berkshire District Council.
 - The application Ref 22/00244/FULEXT, dated 31 January 2022, was refused by notice dated 1 June 2022.
 - The development proposed is the erection of 32 dwellings including affordable housing, parking and landscaping, with access via Regis Manor Road.
 - This decision supersedes that issued on 8 August 2023. That decision on the appeal was quashed by order of the High Court.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 32 dwellings including affordable housing, parking and landscaping, with access via Regis Manor Road at Land to the rear of The Hollies Nursing Home, Reading Road, Burghfield Common, RG7 3LZ in accordance with the terms of the application Ref: 22/00244/FULEXT, dated 31 January 2022, subject to the conditions set out in the attached Schedule.

Application for Costs

2. An application for costs was made during the Inquiry by the Council against appellant. The appellant responded in writing following the close of the Inquiry. That application is the subject of a separate decision.

Preliminary Matters

3. An Inquiry into this appeal was held in June 2023 and a decision issued shortly thereafter. However, that decision was subsequently quashed by the High Court on the grounds that the reasons for disagreeing with the Office for Nuclear Regulation (ONR) (as statutory consultee) in relation to the off-site emergency plan were not legally adequate. Accordingly, the matter was referred back to the Planning Inspectorate to be redetermined. I have had regard to that decision and the reasons for it being quashed in determining this appeal.
4. The Ministry of Defence/AWE (MoD/AWE) and the ONR appeared at the Inquiry as Rule 6 parties.

5. The Council, in its decision notice, identified three reasons for refusal. Reason for refusal (RFR) 1 relates to affordable housing. The appellant has submitted an executed Unilateral Undertaking to secure 40% (13) on-site affordable housing units, 70% (9) of which are for social rent. This affordable provision would accord with CS Policy CS6 and the West Berkshire Planning Obligations Supplementary Planning Document. The Council confirmed in its written evidence this addresses its concerns in respect of the first reason for refusal. I consider the UU's compliance with the Community Infrastructure Levy Regulations 2010 (CIL Regulations) and the National Planning Policy Framework (the Framework) later in this decision.

Main Issues

6. The main issues are the effect of the proposed development on:
- (i) the safety and wellbeing of future residents of the proposed development, and the wider public, with regard to the proximity of the Atomic Weapons Establishment site at Burghfield (AWE B); and
 - (ii) the future capability and capacity of AWE B to operate effectively.

Reasons

Planning Policy Context

The appeal site, settlement, population and emergency planning context

7. The appeal site comprises part of the 'Land to the rear of The Hollies Nursing Home', a site allocated for new housing under Policy HSA16 of the Housing Site Allocations Development Plan Document (2006-2026) which was adopted in 2017. It makes up the remaining undeveloped, south-western part of this housing allocation and adjoins various residential developments along Reading Road. These include the recently constructed and occupied 28 dwellings on Regis Manor Road, which form the other part of the HSA16 housing site allocation.
8. It is located approximately 2km from AWE B, within Burghfield Common's settlement boundary - a Rural Service Centre with a range of services and reasonable public transport provision, including bus services to and from Reading. Burghfield Common and the nearby small village of Burghfield together have an estimated population of around 1,500 – 1,700 people, the majority of whom live in Burghfield Common.
9. AWE B is one of the nuclear licenced sites in West Berkshire. Under the requirements of the Radiation (Emergency Preparedness and Public Information) Regulations 2019 (REPP19), West Berkshire District Council determined the detailed emergency planning zone (DEPZ) for AWE B. The DEPZ is the zone around AWE B for which the local authority prepares an off-site emergency plan (OSEP). The OSEP sets out protective actions to be implemented in the event of a radiological emergency at AWE B. The appeal site and Burghfield Common are located within the DEPZ for AWE B. This is within the context of a population in the whole of the DEPZ of around 22,000 – increasing to around 24,000, were other housing developments with planning permission in the DEPZ to be constructed and occupied.

Spatial Strategy

10. Policy ADPP1 of the West Berkshire Core Strategy (2006-2026)¹ (CS) sets out the Council's spatial strategy for West Berkshire – directing development towards the areas existing settlements. As a Rural Service Centre with a range of services and reasonable public transport provision, CS Policy ADDP6 makes clear that Burghfield Common, along with Mortimer, will be the focus of development in the East Kenney Valley Area with some growth planned to help meet the needs of the village communities and to assist with the viability of village shops and services.
11. It also makes clear that the Council will monitor housing completions and population levels in conjunction with the ONR and that residential development within the inner land use planning zone is likely to be refused in accordance with CS Policy CS8.

Public Safety

12. CS Policy CS8 seeks to protect public safety by restricting development in close proximity to the AWE sites. In doing so, it controls development by reference to the ONR's land use planning consultation zones, which, at the time the Policy CS8 was adopted included the inner consultation zone, the middle consultation zone and outer consultation zone. In relation to AWE B, these zones are set at distances of 0 - 1.5km, 1.5 – 3km and 3-5 km respectively². This accords with Paragraph 101 of the NPPF which advises that planning policies and decisions should promote public safety and take into account wider security and defence requirements by, amongst other things, ensuring that operational sites are not affected adversely by the impact of other development proposed in the area.
13. Policy CS8 also makes clear that in the inner consultation zone of AWE B, residential development that the ONR advises against is 'likely' to be refused. All other development in the consultation zones will be considered in consultation with the ONR, having regard to the scale of development proposed, its location, population distribution of the area and the impact on public safety, including its impact on blue light services and the emergency off site plan, as well as other planning criteria.
14. It is common ground that the site, in distance terms, falls within the middle consultation zone. However, the Council and the Rule 6 parties argue that due to changes to the size of the DEPZ³, the appeal site should be treated as falling within the inner consultation zone. They argue that, as a result, there should be a presumption against development within this newly enlarged zone, pointing to the first sentence of Policy CS8 in support of their position.
15. I do not agree. The purpose of Policy CS8 is to protect public safety and more specifically to deal with the risk to public safety posed by the AWE sites. It aims to achieve a balance between that risk and the limited development envisaged in the areas surrounding the AWE sites. It does not create a moratorium on development but instead seeks to provide a clear indication to developers of the approach the Council is likely to take to proposals around these high-risk installations. As the CS Inspector's report makes clear, the policy was subject to a number of modifications

¹ Adopted July 2012.

² In respect of the ICZ, this was the area for which detailed emergency planning was required under the Radiation (Emergency Preparedness and Public Information) Regulations 2001 (REPPiR01).

³ brought about by the introduction of REPPiR19.

- intended to provide reasonable certainty for all interested parties as to the type and scale of development likely to be acceptable in different locations⁴.
16. Even though Policy CS8 gives centre stage to the ONR's advice, it does not prescribe a particular outcome for development proposals in any of the consultations zones. While the first sentence reflects the Council's intention to normally follow the ONR's advice in the inner zone⁵, it is clear that proposals in the other zones are to be considered on a case-by-case basis. It seems to me that applying the policy as written and treating the appeal site as falling within the middle consultation zone, would not disapply the consequences of ONR's consultation advice from a substantial part of the geographic area to which the policy is intended to apply. Indeed, the ONR's advice will form an important part of the consideration of development proposals within any of the consultation zones.
 17. I accept that the changes brought about by REPP19 may require a change to the Council's approach to consultation with the ONR. However, I do not consider this requires a change to the way in which Policy CS8 is applied. Nor do I agree that it would require a finding that detailed emergency planning should only be required in the ICZ. In my view, Policy CS8 is sufficiently flexible to take account of the advice of the ONR on development proposals within any of the consultation zones. Furthermore, the question of whether to consult the ONR in a particular case is a matter for the Council and I see no reason that the Council could not alter its consultation arrangements with the ONR so that they align with the updated zones without affecting the application of Policy CS8. Doing so would enhance the ONR's consultation role and would not undermine public safety or the regulatory rationale on which the consultation zones are based. In the present case, the fact remains that ONR's advice on the proposed development has been sought and will form part of the considerations when applying Policy CS8.
 18. My attention has been drawn to Footnote 60 of the policy and paragraph 5.41 of the explanatory text both of which recognise that the consultations zones are as defined by the ONR and as shown on the proposals map. However, in my view this adds little to the understanding of the policy other than to indicate how the consultation zones have been determined. It does not indicate that Policy CS8 should be applied flexibly in the manner suggested by the Council and the Rule 6 parties. To do so would result in considerable uncertainty in the application of the policy, contrary to one of its key aims.
 19. Policy CS8, when read as a whole and in its proper context, is sufficiently flexible to accommodate the changes brought in by REPP19 without expanding the ICZ so that it aligns with the enlarged DEPZ. Indeed, as the second sentence makes clear, development proposals will be considered in consultation with the ONR having regard to the scale of development proposed, its location, population distribution of the area and the impact on public safety. This includes how the development would impact on blue light services and the emergency off site plan in the event of an emergency as well as other planning criteria. Many of these criteria will also be considered by the ONR when responding to all consultations for planning applications in the DEPZ⁶.

⁴ CD13.35 paragraph 84.

⁵ and thus establishes the mechanism by which the ONR is given influence over land use planning decisions around the AWE sites.

⁶ CS Policy CS8, explanatory text paragraph 5.43.

20. While I note that Policy SP4 of the emerging West Berkshire Local Plan Review (LPR) proposes a more restrictive approach to development within the DEPZ, the examination of the LPR is ongoing and still some way from being finalised and adopted. Furthermore, I understand there are a number of outstanding objections to that policy. As such, while I am mindful that the proposal would be in conflict with the current version of that policy, I attach it limited weight.
21. Overall, while I acknowledge the strong views advanced by the Council and the Rule 6 Parties as to the application of Policy CS8, I consider the suggested substitution of the DEPZ for the ICZ would alter the wording of that development plan policy to such an extent that it would fundamentally change its meaning and intent. It would greatly expand the area within which development proposals are likely to be refused and would result in a far more restrictive development plan policy than that which was intended at the time of adoption. It would also result in considerable uncertainty as to the approach the Council is likely to take to development within the DEPZ.
22. Accordingly, I conclude that the Proposed Development should be considered under the second sentence of Policy CS8.

Resident's safety and wellbeing (in relation to AWE B)

23. The scale of the proposed development is relatively modest. While it falls within the Framework definition of major development, at 32 dwellings it is at the lower end of the scale. Its location on an allocated site in Burghfield Common, a rural service centre located on the outer edge of the DEPZ - an area within which growth is envisaged and one of the more populous parts of the DEPZ - indicates it is in a suitable location from a land use planning perspective. Furthermore, I note the Council accepts that it complies with the spatial strategy set out in CS Policy ADPP1⁷. As such, I consider that the scale and location of the development is acceptable in planning terms.
24. It is not disputed that the risk of a nuclear emergency is low. This is a given in the context of nuclear radiation and emergency planning. Furthermore, even if one did occur, the likely radiation doses that individuals at the appeal site or elsewhere in the DEPZ would experience would also be low. The REPP19 regime, and the requirements it imposes, is precautionary and seeks to mitigate the remote risk of a nuclear incident and its potential to result in harm to the surrounding population.
25. Likewise, I accept that considerations of individual risk at the appeal site are unlikely to be determinative factors in this appeal. Individual risk will be low across the whole of the DEPZ in view of the very low risk of an event occurring. While I acknowledge that the possibility of exposure of the proposed development's future residents to inhalation and external radiation from a plutonium plume from AWE B cannot be ruled out, the individual risks posed to future residents would be tolerable. In many respects, it would be similar to that of many others living within Burghfield Common - with the risk being considerably below the threshold identified by the HSE for refusing planning permission on safety grounds.
26. Furthermore, the changes brought about by REPP19 have not altered the risk to those future residents or anyone else within the DEPZ. It is essentially the same as it was during the time the site was allocated. It is the appetite for risk that has

⁷ Council Closing Para 38.

changed and how the Council should go about planning and preparing for a response to a nuclear emergency. As such, I am satisfied that future residents of the proposed development would not be placed at an unacceptable level of risk or subjected to any materially different risk to other residents in Burghfield Common or the wider DEPZ.

27. Turning then to its impact on the OSEP, the appellant has suggested that the OSEP is not sensitive to population density. I do not agree. While there may be elements that are not, the NPPG makes clear that when considering public safety in planning decisions, account should be taken of the total number of people that are present in the consultation zones and the implications of any increase as a result of a planning decision or policy. Furthermore, it recognises that cumulative development, by whatever means, leads to a rise in population within the consultation zone and a proportionate increase in the consequences should a major accident occur.
28. As such, I agree with the Council and the Rule 6 parties that the addition of up to a further 77 residents to the DEPZ will place an increased burden on emergency responders. Those residents are likely to include vulnerable individuals and others who may require access to a rest or reception centre⁸ and will require the deployment of further resources. It would also increase the burden during the recovery period, including in terms of the potential number of properties to be decontaminated as well as the need for radiation monitoring and alternative accommodation. However, I accept that the quantifiable effect on those resources would be limited and, in itself, is unlikely to materially impact on the effectiveness of the OSEP.
29. Nevertheless, I accept the ONR is best placed to understand the pressures faced by the OSEP and the likely impact of population growth within the DEPZ. Furthermore, I acknowledge its concerns that the additional impact of permitted, but as yet unbuilt, development has placed further strain on an OSEP already under significant pressure. Indeed, it is clear from the results of the ALDEX-23 statutory test that many of the pressures faced by the OSEP following the expansion of the DEPZ have not gone away⁹ and improvements may be required to meet the needs of the existing population and those resulting from consented, but as yet unbuilt, development. As the UK's independent nuclear regulator, the ONR's advice is an important matter to be weighed in the planning balance.
30. However, even taking a precautionary approach, the evidence before me indicates that sufficient resources are available to provide a suitable response to the permanent population of around 22,000, the transient population as well as a potential crowd of 24,000 at the nearby stadium - a figure that I heard could increase substantially in the future. Even though I give significant weight to the expert advice of the ONR, I do not consider that the addition of up to a further 77 permanent residents to the DEPZ would, in itself, have a material impact on the overall emergency response. Similarly, while I accept that the OSEP is under significant pressure, I have seen no robust evidence that the addition of a further 77 residents to the DEPZ would materially affect its adequacy.

⁸ Council's Closing Submissions.

⁹ CD24.7.

31. I do, however, accept that the OSEP is not infinitely scalable and that incremental, unplanned development could, over time, erode the effective management of the land use planning consultation zones and be detrimental to public safety. In that sense, I agree with the Inspectors in the Shyshack Lane appeal¹⁰ the Benham's Farm appeal¹¹ and the 132 Recreation Road appeal¹². However, such concerns do not arise in the present case due to the fact that the appeal site is the only remaining allocated site within the DEPZ. As such, the circumstances of this appeal are unlikely to be repeated elsewhere in the DEPZ.
32. Consequently, while I acknowledge the participation of the Rule 6 parties arises out of genuine concern with regard to the impact of further development on the adequacy of the OSEP, I do not consider the proposed development would place the OSEP at any material risk of failure. Indeed, on the evidence before me it appears that the OSEP is sufficiently flexible to accommodate the relatively minor increase in the population of the DEPZ that would result from the proposed development.
33. Accordingly, having regard to the scale of development proposed, its location, the population distribution of the area and the impact on public safety (including its impact on blue light services and the OSEP) as well as other planning criteria, I do not consider the proposed development would adversely impact on public safety within the DEPZ. As such, I find no conflict with Policy CS8.

Operational capacity and capability of AWE B

34. AWE B is the only site in the UK which can undertake its combination of activities associated with the assembly, disassembly, handling and storage of nuclear warheads. These activities are essential to support the UK's Continuous At Sea Deterrent (CASD).
35. Notwithstanding my findings above, in the unlikely event that the OSEP was found to be inadequate, for example as a result of excessive strain on emergency services arising from increased population, there is a risk that AWE would be unable to continue to carry out work with ionising radiation or have limits placed on how and when it could carry out such activities.
36. While I accept this risk is remote, if it were to arise, it is likely to impact on AWE B's ability to meet the MoD's requirements in support of the CASD. I am also mindful of the potential effect that an increased population in the DEPZ might have on AWE B's future operational flexibility and expansion plans.
37. However, while I cannot rule out the possibility that the population increases in the DEPZ might increase the potential for future constraints on AWE B's future operational flexibility and capacity¹³, it is very unlikely that the addition of a further 77 people located around 2 km away would result such curtailment. Furthermore, there is no evidence to suggest that AWE B is itself considering curtailing its activities or is under pressure from the regulator to do so.

¹⁰ APP/H1705/W/23/3326959.

¹¹ APP/W0340/W/24/3342596.

¹² APP/W0340/W/24/3344580.

¹³ with the associated adverse implications for the UK's Continuous At Sea Deterrent capacity and national security.

38. Taking into account the very serious adverse national security consequences of potential constraint of AWE B's operations, but the very limited likelihood of the relatively modest scale of the proposed development causing such constraint, I concur with the previous Inspector that the proposed development would result in very limited harm to the operational capability and capacity of AWE B.
39. Nevertheless, even this very limited harm would result in conflict with paragraphs 97 and 193 of the Framework which seek, among other things, to ensure that the operation of defence and security sites is not adversely affected by other development in the area and that existing businesses and facilities do not have unreasonable restrictions placed on them as a result of development permitted after they were established. I address the weight to be given to this conflict in the overall balance below.

Other Matters

40. RFR 3 relates to the loss of protected trees and the adverse impact this would have on the character and appearance of the surrounding area. The Council and the appellant have confirmed that they accept the findings of the previous Inspector that the proposed development would result in localised harm to the character and appearance of the surrounding area.
41. No oral evidence on loss of trees or its impact on the character of the surrounding area was presented at the Inquiry. I am therefore content to adopt the findings of the previous Inspector that the proposed development would conflict with Policies ADPP1, CS14, CS18 and CS19 of the CS which together seek to ensure that development respects local character, while making efficient use of land. Nevertheless, it remains the case that the main parties do not agree on the weight to be attributed to this conflict. I consider this matter further in the planning balance.
42. The appellant has suggested that the Council is unable to demonstrate a supply of specific deliverable sites sufficient to provide a minimum of 5 years' worth of housing as required by the Framework. However, it was agreed during the Inquiry that the Council is only required to demonstrate a 4-year supply of deliverable housing sites in accordance with paragraph 226 of the Framework. While I note the government is currently considering consultation comments on its proposed changes to the Framework and has indicated its intention to amend paragraph 226, it is unclear at this time what the final form of those changes will take. I am therefore content that the Council can currently demonstrate the requisite supply of deliverable housing sites and that paragraph 11(d) of the Framework is not engaged.
43. I have had regard to the concerns expressed by local residents and others. While I note the concerns regarding the additional traffic along Regis Manor Road, there is no substantive evidence which would indicate it could not satisfactorily withstand traffic to and from the appeal site either during or after construction. Furthermore, I note that no concerns have been expressed by the Local Highway Authority and a Construction Method Statement will be secured by planning condition to help safeguard highway safety and neighbours' living conditions during the development's construction phase.
44. For similar reasons to those of the previous Inspector, I consider the separation distances between proposed and neighbouring houses, existing boundary

treatments and proposed arrangements for bin storage are sufficient to ensure the proposed development would not harm neighbours' amenity, including outlook and privacy.

45. Likewise, I agree that the relatively straight and clear sight lines between motorists and pedestrians along this stretch of Reading Road assist highway safety. Overall, taking into account the existing and proposed access arrangements, I am satisfied that pedestrian access to and from the proposed development would be acceptable.
46. Additional residents of the proposed development would provide additional clientele for local health facilities, potentially helping to justify and sustain future provision, and there is no substantive evidence from health service providers that the appeal proposal's additional residents would undermine local provision. Also, a suite of planning conditions covering lighting, construction and environmental management plans, landscaping and biodiversity measures would suitably provide for biodiversity.
47. Overall, while I have had regard to all of the other concerns raised by local residents and other interested parties, they do not provide sufficient reason to refuse to grant permission in the present case.

Planning Obligation

48. I have considered the UU submitted by the applicant, which provides for 40% of the dwellings to be affordable in accordance with CS Policy CS6. I agree with the Council that the obligations set out in the UU are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind. As such, they meet the tests within CIL Regulation 122 and those set out in paragraph 57 of the Framework and I am satisfied that the submitted UU is acceptable.

Overall Planning Balance

49. I have found above that there is a risk that the proposed development would result in very limited harm to the operational capability and capacity of AWE B. As I have made clear, even this very limited harm would result in conflict with paragraphs 97 and 193 of the Framework which seeks, among other things, to ensure that the operation of defence and security sites are not adversely affected by other development in the area. However, taking into account the remoteness of this risk, I afford it moderate negative weight.
50. Furthermore, I have found that the loss of protected trees would result in some localised harm to the character and appearance of the surrounding area. As such, it would be in conflict with Policies ADPP1, CS14, CS18 and CS19 of the CS. However, in view of the localised nature of that harm, I afford it only moderate negative weight.
51. However, I have also found that the proposal would generally accord with the spatial strategy as well as the land use allocation in Policy HSA16. Furthermore, it would result in the addition of 19 open market dwellings which, while relatively modest, would nevertheless make a meaningful contribution to market housing in the district. I afford this significant positive weight.

52. Similarly, 40% of the proposed dwellings would be affordable. While I note the appeal decisions referred to me by the Council in support of its position that affordable housing should only be afforded moderate weight¹⁴, both of these decisions were in different locations and there is no evidence which would suggest that their circumstances are sufficiently similar for them to act as any sort of precedent. Increasing the supply of affordable homes is a government priority and I consider the provision of 13 affordable homes in a district with a recognised and pressing need should be afforded significant positive weight.
53. In addition, the proposal would result in a number of other socio-economic benefits both during construction and following completion and would help support local facilities, services and businesses in this Rural Service Centre. However, even taken together, the contribution would be relatively modest and, as such, I afford this only a small amount of positive weight.
54. While I acknowledge that, in adding to the existing population, the proposal would result in an additional burden on emergency responders in the event of a radiological emergency, for the reasons given above, I do not consider this would adversely impact on public safety within the DEPZ.
55. It is established government policy that the planning system should be genuinely plan led and I agree with the previous Inspector that, for this to mean something, an applicant must be able to rely on specific site allocations in an adopted development plan unless there are compelling reasons to indicate that they should be set aside.
56. While I afford significant weight to the views of the ONR, overall, I consider the potential benefits of the proposed development, together with the fact that the proposal is for development on a specific site allocated for housing in the adopted development plan, outweigh the very real but small risks attached.
57. Consequently, while I acknowledge there would be some small conflict with Policies ADPP1, CS14, CS18 and CS19 of the CS and paragraphs 97 and 193 of the Framework, in view of its general accordance with the spatial strategy, its allocation as part of Policy HSA16 and its likely impact on public safety, I consider there are material considerations which indicate permission should be granted.

Planning Conditions

58. The necessary planning conditions are set out in the attached schedule and were discussed in detail at the Inquiry.
59. In addition to the standard commencement condition, I consider a condition requiring the development to be carried out in accordance with the approved plans is necessary in order to provide certainty.
60. Conditions regarding tree protection, materials, boundary treatments, spoil and landscaping are necessary in order to protect the character and appearance of the surrounding area. Conditions regarding car parking and carports are required in the interests of highway safety.
61. I consider conditions requiring the provision of cycle parking and storage, electric vehicle charging and drainage are necessary in the interests of environmental

¹⁴ APP/M2270/W/20/3247977 and APP/B1930/W/20/3260479

sustainability while conditions covering construction management, working hours, bin storage, gradients and floor levels are required to safeguard the living conditions of neighbouring occupiers.

62. Furthermore, I consider conditions covering lighting, environmental management, bird nesting and biodiversity enhancement measures are necessary to safeguard biodiversity.
63. In addition, conditions to address possible contamination, emergency notification systems and a development-specific emergency plan are required to safeguard residents' and employees' safety.
64. As the PPG makes clear, conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. While I consider it is necessary to restrict physical alterations to car ports in order to ensure they remain available for their intended purpose, I do not consider it is necessary or reasonable in this case to restrict permitted development rights in respect of gates, fences, walls or other means of enclosure as no detailed justification has been provided.
65. Conditions 3 – 9 need to be discharged before work commences on site as they relate to matters which need to be resolved on a fully coordinated basis.

Conclusion

66. For the reasons set out above, and having had regard to all other matters raised, I conclude the appeal should be allowed.

Rory Cridland

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings:

2021/P0162 LP Rev B Site Location Plan
2021/P0162 01 Rev B Colour Site Layout
2021/P0162 02 Rev B Site Information Plan
2021/P0162 03 Rev A Proposed Plots 1 - 5
2021/P0162 04 Rev A Proposed Plots 6 - 8
2021/P0162 05 Rev A Proposed Plots 9 - 11
2021/P0162 06 Proposed Plots 12 & 13
2021/P0162 07 Proposed Plot 14
2021/P0162 08 Proposed Plot 15
2021/P0162 09 Proposed Plot 16
2021/P0162 10 Proposed Plots 17 & 18
2021/P0162 11 Proposed Plots 19 & 20
2021/P0162 12 Proposed Plot 21
2021/P0162 13 Proposed Plots 22 & 23
2021/P0162 14 Rev A Proposed Plots 24 & 25
2021/P0162 15 Proposed Plots 26 & 27
2021/P0162 16 Proposed Plot 28
2021/P0162 17 Proposed Plot 29
2021/P0162 18 Proposed Plot 30
2021/P0162 19 Proposed Plot 31
2021/P0162 20 Proposed Plot 32
2021/P0162 21 Proposed Garages/Carports Plots 15 & 16
2021/P0162 22 Rev B Proposed Bin and Cycle Store (Plots 1 - 5)
2021/P0162 23 Proposed Street Elevations

- 3) No development shall take place until a detailed schedule of tree works has been submitted to and approved in writing by the local planning authority. This shall include:
 - (a) the timing and phasing of operations; and
 - (b) confirmation of appointment of a project arboriculturist who shall supervise and verify implementation of tree protection and tree works.

The development shall be carried out in accordance with the approved details.

- 4) No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. Thereafter the demolition and construction works shall incorporate and be undertaken in accordance with the approved CMS. The CMS shall include measures for:

- (a) a site set-up plan during the works;
 - (b) parking of vehicles of site operatives and visitors;
 - (c) loading and unloading of plant and materials;
 - (d) storage of plant and materials used in constructing the development;
 - (e) erection and maintenance of security hoarding including any decorative displays and/or facilities for public viewing;
 - (f) temporary access arrangements to the site, and any temporary hard-standing;
 - (g) wheel washing facilities;
 - (h) measures to control dust, dirt, noise, vibrations, odours, surface water run-off, and pests/vermin during construction;
 - (i) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
 - (j) hours of deliveries and preferred haulage routes.
- 5) No development shall take place (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include the following:
- (a) risk assessment of potentially damaging construction activities;
 - (b) identification of biodiversity protection zones;
 - (c) practical measures, both physical measures and sensitive working practices, to avoid or reduce impacts during construction (these may be provided as a set of method statements);
 - (d) the location and timing of sensitive works to avoid harm to biodiversity features;
 - (e) the times during construction when specialist ecologists need to be present on site to oversee works;
 - (f) responsible persons and lines of communication;
 - (g) the role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
 - (h) use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period, strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

- 6) No development shall take place until details of how all spoil arising from the development will be used and/or disposed have been submitted to and approved in writing by the local planning authority. These details shall:
- (a) show where any spoil to remain on the site will be deposited;
 - (b) show the resultant ground levels for spoil deposited on the site, compared to existing ground levels;
 - (c) include measures to remove all spoil from the site (that is not to be deposited);
 - (d) include timescales for the depositing/removal of spoil.

All spoil arising from the development shall be used and/or disposed of in accordance with the approved details.

- 7) No development shall take place until details of sustainable drainage measures to manage surface water within the site have been submitted to and approved in writing by the local planning authority. These details shall:
- (a) incorporate the implementation of Sustainable Drainage methods (SuDS) in accordance with the Non-Statutory Technical Standards for SuDS (March 2015), the SuDS Manual C753 (2015) and West Berkshire Council local standards, particularly the WBC SuDS Supplementary Planning Document December 2018;
 - (b) include and be informed by a ground investigation survey which establishes the soil characteristics, infiltration rate and groundwater levels. Any soakage testing should be undertaken in accordance with BRE365 methodology;
 - (c) include attenuation measures to retain rainfall run-off within the site and allow discharge from the site to an existing watercourse at no greater than 1 in 1 year Greenfield run-off rates;
 - (d) include construction drawings, cross-sections and specifications of all proposed SuDS measures within the site;
 - (e) include run-off calculations, discharge rates, infiltration and storage capacity calculations for the proposed SuDS measures based on a 1 in 100 year storm +40% for climate change and an additional 10% increase of paved areas over the lifetime of the development (Urban Creep);
 - (f) include pre-treatment methods to prevent any pollution or silt entering SuDS features or causing any contamination to the soil or groundwater;
 - (g) ensure any permeable paved areas are designed and constructed in accordance with manufacturers guidelines;
 - (h) include details of how the SuDS measures will be maintained and managed after completion. These details shall be provided as part of a handover pack for subsequent purchasers and owners of the property/premises;
 - (i) apply for an Ordinary Watercourse Consent in case of surface water discharge into and other works on or adjacent to a watercourse (i.e stream, ditch etc);
 - (j) show that attenuation storage measures have a 300mm freeboard above maximum design freeboard above maximum design water level;
 - (k) provide details of how surface water will be managed and contained within the site during any construction works to prevent silt migration and pollution of watercourses, highway drainage and land either on or adjacent to the site;
 - (l) provide a verification report carried out by a qualified drainage engineer demonstrating that the drainage system has been constructed as per the approved scheme (or detail any minor variations thereof), to be submitted to and approved by the Local Planning Authority on completion of construction. This shall include: plans and details of any key drainage elements (surface water drainage network, attenuation devices/areas, flow restriction devices and outfalls) and details of any management company managing the SuDS measures thereafter.

Thereafter the development shall be carried out in accordance with the approved details.

- 8) No development shall take place until a soft and hard landscaping scheme for the site has been submitted to and approved in writing by the local planning authority. The landscaping scheme shall include:

- (a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas and written specifications (including cultivation and other operations associated with plant and grass establishment i.e. depth of topsoil, mulch etc);
- (b) seed mixes;
- (c) details of existing trees and hedgerows to be retained as well as any to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation; and
- (d) details of hard landscaping, including hard surfaced areas including pavements, pedestrian areas and steps.

The approved landscaping scheme shall be implemented no later than the end of the first planting season following completion of the development. The scheme shall be maintained for a period of 5 years from the completion of the development.

Any trees and/or shrubs which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority agrees any variation in writing.

- 9) No development shall take place until a comprehensive Emergency Plan (EP) has been submitted to and approved in writing by the local planning authority in relation to the construction phase of the development. The EP shall provide policies and procedures for the preparedness and response to an incident at AWE Burghfield. The plan shall include but not be limited to the following aspects:
 - (a) details about the site;
 - (b) preparations in advance of any incident;
 - (c) how the site will be notified of an AWE incident;
 - (d) actions to take on notification (set out on a flow chart and/or check list);
 - (e) actions to do to shelter for up to 48 hour period;
 - (f) actions to have in place in relation to preparing for evacuation;
 - (g) recovery.

The Development shall be carried out in accordance with the approved EP.

- 10) If any previously unidentified contaminated land is found during demolition and/or construction activities, it shall be reported immediately in writing to the local planning authority (LPA). Appropriate investigation and risk assessment shall be undertaken, and any necessary remediation measures shall be submitted and approved in writing by the LPA. These submissions shall be prepared by a competent person (a person with a recognised relevant qualification, sufficient experience in dealing with the type(s) of pollution or land instability, and membership of a relevant professional organisation), and conducted in accordance with current best practice. The remediation scheme shall ensure that, after remediation, as a minimum, the land shall not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990. Thereafter, any remediation measures shall be carried out in accordance with the approved details. Unless otherwise agreed in writing by the LPA, the development

shall not be occupied until any approved remediation measures have been completed and a verification report to demonstrate the effectiveness of the remediation has been submitted to and approved in writing by the LPA.

- 11) No dwelling shall be first occupied until a Lighting Strategy (LS) has first been submitted to and approved in writing by the local planning authority. The LS shall: (a) identify any areas on the site that are particularly sensitive to bats; (b) show how and where external lighting will be installed to avoid light spill into existing areas of woodland, and so that it can be clearly demonstrated that illuminated areas will not disturb or prevent use of the site by bats; (c) include an isolux diagram of the proposed lighting.

All external lighting shall be installed in accordance with the specifications and locations set out in the approved LS, and maintained thereafter.

- 12) No dwelling shall be first occupied until a storage area for refuse and recycling receptacles, and collection areas if necessary, has been provided for that dwelling in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 13) No development on any dwelling shall take place until details of the finished floor levels of that dwelling in relation to existing and proposed ground levels of adjoining dwellings have been submitted to and approved in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved levels.
- 14) No development above damp-proof course level of any dwelling shall take place until a scheme for the installation of a notification system within each dwelling has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the system to receive a 'Shelter In Place' alert in the event of a radiation emergency at AWE Burghfield. The system should be installed in accordance with the approved details, and thereafter maintained.
- 15) No development above ground level shall take place until a schedule of the materials to be used in the construction of the external surfaces of the development hereby permitted there has been submitted to and approved in writing by the local planning authority. Samples of materials shall be made available to the local planning authority on request. The development shall be carried out in accordance with the approved details.
- 16) No dwelling shall be first occupied until the approved vehicle parking and turning spaces for the dwelling have been completed in accordance with the approved plans, including any surfacing arrangements and marking out. Thereafter the parking and turning spaces shall be kept available for parking and manoeuvring of the private cars at all times.

- 17) No dwelling shall be first occupied until cycle parking/storage facilities for that dwelling have been provided in accordance with the approved drawings. Thereafter the facilities shall be maintained and kept available for that purpose at all times.
- 18) No dwelling shall be first occupied until an electric vehicle charging point for that dwelling has been provided in accordance with details which have been submitted and approved in writing by the local planning authority. Thereafter, the charging points shall be maintained, and kept available and operational for electric vehicles at all times.
- 19) No dwelling shall be first occupied until a Landscape and Ecological Management Plan (LEMP) (also referred to as a Habitat or Biodiversity Management Plan) has been submitted to and be approved in writing by the local planning authority. The content of the LEMP shall include the following:
- (a) description and evaluation of features to be managed;
 - (b) ecological trends and constraints on site that might influence management;
 - (c) aims and objectives of management;
 - (d) appropriate management options for achieving aims and objectives;
 - (e) prescriptions for management actions;
 - (f) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
 - (g) details of the body or organisation responsible for implementation of the plan;
 - (h) ongoing monitoring and remedial measures.
- The LEMP will be implemented in accordance with the approved details.
- 20) The development shall be carried out in accordance with the biodiversity enhancement measures set out at Paragraph 5.13 of the Pro Vision Ecological Assessment dated November 2021. No dwelling shall be occupied until the measures related to that dwelling have been installed/constructed in accordance with the approved details.
- 21) No demolition or construction works shall take place outside the following hours, unless otherwise agreed in writing by the local planning authority: 7:30am to 6:00pm Mondays to Fridays; 8:30am to 1:00pm Saturdays; no work shall be carried out at any time on Sundays or Bank Holidays.
- 22) Protective fencing shall be implemented and retained intact throughout the construction phase of the development in accordance with the tree and landscape protection scheme identified on approved drawing 1730-KC-XX-YTREE-TPP01 Rev A Tree Protection Plan (TPP). Within the fenced areas shown on the TPP, there shall be no excavation, storage of materials or machinery, parking of vehicles or fires.
- 23) The car port(s) hereby permitted shall be kept available for parking of the private cars at all times. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, re-enacting or modifying that Order with or without modification), no physical

alterations shall be made to the car port(s), including enclosing the sides/installed doors) unless permission has been granted by the local planning authority as a result of an application being submitted for that purpose.

- 24) The gradient of private drives shall not exceed 1 in 12.
- 25) No demolition, or site/vegetation clearance shall take place during the bird breeding season (March to August inclusive) unless carried out under the supervision of an experienced ecologist, who will check the habitat to be affected for the presence/absence of any birds' nests. If any active nests are found then works with the potential to impact on the nest must temporarily stop, and an appropriate buffer zone shall be established until the young birds have fledged and the nest is no longer in use.

END OF SCHEDULE

APPEARANCES

FOR THE APPELLANT

Andrew Tabachnik KC called:

Miss Katherine Miles BA (Hons) MSc MRTPI	Director, Pro Vision
Dr Keith Pearce BSc BA MBA MSc PhD FEPS	Katmal Limited
Dr Michael Thorne BSc PhD FInstP FSRP CradP	Mike Thorne and Associates Limited

FOR THE LOCAL PLANNING AUTHORITY (WBDC)

Naoemi Byrd of Counsel called:

Carolyn Richardson BSc (Hons) CIEH	Emergency Planning Service Manager, WBDC et al
Matthew Shepherd BSc H(Hons) Msc	Senior Planning Officer, WBDC
Paul McColgan	Director, Icen Projects

FOR THE FIRST RULE 6 PARTY (AWE PLC AND THE MINISTRY OF DEFENCE)

Rose Grogan of Counsel called:

Person AW	AWE
Tom Bennington	MoD
Sean Bashforth MRTPI	Senior Director, Quod

FOR THE SECOND RULE 6 PARTY (OFFICE FOR NUCLEAR REGULATION)

Michael Fry of Counsel called:

Eamonn Guilfoyle	Emergency Planning and Response Workstream Lead, ONR
Grant Ingham	Policy and International Workstream Lead

DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY

Unilateral Undertaking

Confirmation from Council that UU is agreed.

END



Costs Decision

Inquiry Held on 17 – 19 September, 24 – 26 September and 30 September 2024

Site visit made on 19 September 2024

by Rory Cridland LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 18th November 2024

Costs application in relation to Appeal Ref: APP/W0340/W/22/3312261

Land to the rear of the Hollies Nursing Home, Reading Road, Burghfield Common RG7 3LZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by West Berkshire District Council for a partial award of costs against T A Fisher and Sons.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the erection of 32 dwellings including affordable housing, parking and landscaping, with access via Regis Manor Road.
-

Decision

1. The application for a partial award of costs is refused.

The submissions for West Berkshire District Council

2. The application for costs was made in writing prior to the close of the Inquiry and it is not therefore necessary to repeat it in any detail. In summary, the Council argues that the appellant has acted unreasonably in raising an issue late in the appeal process and that its approach to 5-year housing land supply was fundamentally flawed and, as such, had no realistic prospect of success. As a result, the Council considers it has incurred wasted expense in the appeal process.

The response by the appellant

3. The Appellant's response was made in writing after the close of the Inquiry. In summary, the Appellant contends that it was not possible for it to raise its concerns regarding housing land supply at an earlier stage as its submissions relied on matters that it only became aware of late in the appeal process.
4. Furthermore, the appellant considers that planning decisions should be based on the best available evidence and that its argument that a different assessment period should be used to calculate the Council's housing land supply position is not in itself unreasonable. Furthermore, it argues that the differences of opinion between itself and the Council on the government's proposed changes to the Framework and their implications for determining the appeal are not reflective of unreasonable conduct.

Reasons

5. The Planning Practice Guidance ("the PPG") advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur

- unnecessary or wasted expense in the appeal process. Furthermore, it indicates that Appellants will be at risk of an award of costs being made against them if they, amongst other things, introduce fresh and substantial evidence at a late stage or where a ground of appeal had no real prospect of succeeding.
6. The Council raises both procedural and substantive grounds in respect of its application; namely that the Appellant raised the matter very late in the appeal process despite opportunities to raise it sooner and, in any event, its arguments on this matter were fundamentally flawed.
 7. Dealing first with the procedural grounds, the appellant first raised its concerns in relation to the Council's housing land supply position on 9 August 2024, just over a month before the Inquiry was due to open. Although this is late in the process, I accept that the appellant may not have been aware of the Local Plan Inspector's report until shortly before, and while it introduced a new issue late in the proceedings, its reasons for doing so were explained at the time.
 8. While I acknowledge that one of the aims of the costs regime is to encourage the submission of full and detailed evidence in a timely matter, where material information only becomes available late in the process, it is not unreasonable for an appellant to respond to it accordingly. I do not therefore consider a procedural award of costs is justified in the present circumstances.
 9. Turning then to the substantive grounds, the Council argues that in providing what it considers is a fundamentally flawed argument in regard to housing land supply, the appellant has acted unreasonably and put the Council to unnecessary expense in having to respond. In summary, it contends that the appellants suggested use of a base period of 2024/2029 to calculate the Council's housing land supply is fundamentally unsound and relies on incomplete information. However, while I accept that here are good reasons for relying on the Council's base period of 2023/2028, it is open to appellants to put forward alternatives where there is evidence that the Council's trajectory is out of date.
 10. Furthermore, while I agree with the Council that had the appellant made it clear earlier that it was not seeking to argue that paragraph 11(d) of the Framework was engaged, the matter might have been dealt with more efficiently and without the need to hear oral evidence, I note that the appellant did not actively pursue a case that paragraph 11(d) of the Framework was engaged. Indeed, this matter was clarified early in the round table discussion.
 11. Likewise, while my decision makes clear that the proposed changes to the Framework did not have a material bearing on the outcome of the appeal, it is not unreasonable for appellants to advance such arguments, particularly where reforms are announced and consulted upon during the appeal process. In the present case, while I do not agree with the appellant's arguments, they were nevertheless cogent and not entirely without merit.
 12. Furthermore, I accept that the Council will have undertaken much of the preparatory work in response to concerns raised by the Local Plan Inspector and any additional expense incurred is unlikely to be significant. Indeed, the Inquiry time spent dealing with housing land supply was a very small part of a much longer Inquiry.

13. Accordingly, I do not consider that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. Therefore, I consider an award of costs is not justified.

Rory Cridland

INSPECTOR

APPENDIX 6



Appeal Decisions

Hearing held on 7 November 2024

Site visit made on 8 November 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11TH NOVEMBER 2024

Appeal A Ref: APP/P0240/W/22/3291001

The Huts, Thorncote Road, Hatch, SG19 1PU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Joseph Robb against the decision of Central Bedfordshire Council.
- The application Ref is CB/21/01019/FULL.
- The development proposed is part retrospective change of use of land for the creation of a two pitch Traveller site, comprising the siting of 2 mobile homes, 2 touring caravans, erection of 2 dayrooms, erection of CCTV camera with post, and associated works.

Appeal B - APP/P0240/C/24/3346787

The Huts, Thorncote Road, Hatch, Sandy, SG19 1PU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Joseph Robb against an enforcement notice issued by Central Bedfordshire Council.
- The notice was issued on 11 June 2024.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of Land from mixed use of agriculture and the storage and maintenance of one commercial vehicle for hobby purposes to a residential Gypsy and Traveller site with the siting of 2 static caravans and 3 touring caravans.
- The requirements of the notice are to (1) cease the use of the Land as a residential Gypsy and Traveller site, (2) to remove the static and touring caravans from the Land, associated with the use of the Land, and (3) return the land to its previous authorised use.
- The period for compliance with the requirements is 12 calendar months.
The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Appeal C - APP/P0240/C/24/3346788

The Huts, Thorncote Road, Hatch, Sandy, SG19 1PU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Joseph Robb against an enforcement notice issued by Central Bedfordshire Council.
- The notice was issued on 11 June 2024.
- The breach of planning control as alleged in the notice is without planning permission, operational development including the laying of hardstanding and installation of foul water/sewage drainage. The erection of pole mounted CCTV system and the development associated with the material change of use of the Land to the residential Gypsy and Traveller site.
- The requirements of the notice are to (1) remove foul water/sewage drainage installation, (2) remove the CCTV system, (3) remove hardstanding area outlined in blue on the attached map and re-instate grassed areas, (4) remove any debris created by steps (1)-(2), and (5) restore the Land to its previous condition.

- The period for compliance with the requirements is six calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Decisions

Appeal A Ref: APP/P0240/W/22/3291001

1. The appeal is dismissed.

Appeal B - APP/P0240/C/24/3346787

It is directed that the enforcement notice is varied by the deletion of the words in section 5(3). Subject to the variation, the appeal is allowed insofar as it relates to land hatched black on the plan appended to this decision. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended), for a residential Gypsy and Traveller site with the siting of two static caravans and three touring caravans at land shown hatched black on the plan appended to this decision, and subject to the conditions in schedule A to this Decision. The appeal is dismissed, and the enforcement notice is upheld as varied insofar as it relates to a residential Gypsy and Traveller site with the siting of two static caravans and three touring caravans shown on land edged black on the plan appended to this decision, where permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Appeal C - APP/P0240/C/24/3346788

2. It is directed that the enforcement notice be varied by (i) deleting the words in section 5(3) and substituting them for '*remove the hardstanding area outlined in blue on the attached map and reinstate grassed areas by grading and levelling the soil and by the sowing of an MG5 grass mix to that area*', and (ii) deleting the words in section 5(5). Subject to these variations, the appeal is dismissed, and the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for Costs

3. In respect of Appeal A, an application for costs was made by Mr Joseph Robb against Central Bedfordshire Council. This application is the subject of a separate Decision.

Preliminary Matters

4. The description of the development (Appeal A) in the banner heading above differs from that in planning application form. In particular, it includes the erection of a CCTV camera on a post and one on a gate. This was agreed between the main parties prior to the planning application being determined. This description of development reflects what was considered by the Council when it refused planning permission. I have therefore determined the appeal based on the description of development on the banner heading above.

5. As part of the appeal, the appellant submitted drawing No. J003824-DD-03 Revision B (as proposed site plan). The Council states that this was not considered by it when it refused planning permission. It states that the relevant 'as proposed site plan' that was considered by it when it refused planning permission was drawing No. J003824-DD-03 Revision A. Notwithstanding the Council's view about this matter, the evidence is that the appellant did submit drawing No. J003824-DD-03 Revision B to the Council prior to it deciding to refuse planning permission. This drawing includes additional landscaping. It was agreed at the hearing that no injustice would be caused to any interested party by accepting drawing No. J003824-DD-03 Revision B for decision making purposes. I have therefore determined this appeal accordingly.

The Notices

6. The appellant has referred to section 171B(4)(b) of the Act. This is a matter that has been raised by the appellant in his accompanying letter dated 20 June 2024. I am aware that similar enforcement notices were withdrawn prior to the subject enforcement notices being issued. For the avoidance of doubt, section 171B(4) does not refer to so-called 'second bite'. Section 171B(4)(b) does not impose a limit on the number of times that a local planning authority (LPA) can issue a notice against the same breach. Indeed, section 171B(4) does not prevent the LPA 'taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach'. I acknowledge that the operational development notice under appeal C also includes CCTV. In this regard, the Council is not relying on section 171B(4) of the Act. The breach of planning control differs from that contained within a previously withdrawn notice.
7. The appellant acknowledged at the hearing that he was not suggesting that the notices were invalid or null. He confirmed that he was simply making a technical point. In this case, he accepted that the technical point did not make a difference to the outcome of the appeals because no claim was being made about any development being immune from enforcement action, i.e., no ground (d) appeal has been pursued in respect of either Appeal B or Appeal C.

The Notice – appeal B

8. The appellant claims that the notice is invalid as paragraph 5(3) states 'return the land to its previous authorised use'. There is no power to restore or reinstate a use in sections 173(3) and 173(4) of the Act. To this extent, the notice is flawed and hence invalid. However, I shall vary the requirements of the notice by deleting requirement 5(3) and, in doing so, am satisfied that no injustice would be caused to the main parties. This variation was agreed by the main parties at the hearing and does not make the requirements of the notice more onerous.

The Notice – appeal C

9. The appellant considers that the notice is imprecise as it does not distinguish between areas of authorised and unauthorised hardstanding on the site. However, the appellant does not dispute that an area of unauthorised hardstanding has been formed on the 'land' (i.e., within the land falling within

the red edged line on the plan attached to the notice). It is notable that there are no appeals pleaded on grounds (b) or (d) of section 174(2) of the Act. The notice requires hardstanding, as depicted within the blue edged land of the site as shown on the plan attached to the notice, to be removed. In response to the appellant's concern about requirement 5(5) leading to confusing and conflicting requirements, the Council considers that this requirement could be deleted. I shall vary the requirements of the notice by deleting requirement 5(5) of the notice and, in doing so, find that injustice would not be caused to the main parties.

10. Requirement 5(3) of the notice states '*remove hardstanding area outlined in blue on the attached map and reinstate grassed areas*'. In the interests of precision, and without injustice being caused to the main parties, I shall vary requirement 5(3) of the notice so that it reads '*remove the hardstanding area outlined in blue on the attached map and reinstate grassed areas by grading and levelling the soil and by the sowing of an MG5 grass mix to that area*'. This variation was agreed by the main parties at the hearing.

Ground (a) appeals and s.78 appeal

Main Issues

11. While the development which is the subject of appeals A, B and C are not identical, they are nonetheless interrelated and relate to the same site. The main issues for appeals A, B and C are therefore (i) the effect of the developments on the character and appearance of the area including landscape character and trees, (ii) whether the developments amount to intentional unauthorised development, (iii) the effect of the developments on biodiversity including the extent to which biodiversity net gain can be delivered, (iv) whether the site is sustainably located for a Gypsy and Traveller residential caravan site use, and (v) if any planning harm is identified, whether that harm is outweighed by other material considerations.

Preliminary Matters

12. The appeal site falls within an area of designated countryside and is located to the west of the settlement of Hatch. To the east is open pastureland, to the west is 'Westwinds' which is a detached dwellinghouse, and on the opposite side of Thorncote Road there are some semi-detached dwellinghouses. Much of the site is surrounded by mature trees and vegetation. There is, however, a vegetation gap along part of the eastern boundary and hence part of the existing development on the land, including mobile homes, can be seen from views from Hatch Common.
13. The planning application is made on a partly retrospective basis in so far that an area of hardstanding has been formed, and as the site it is being used by two families who are living in two mobile homes. There is no dispute between the main parties that the two families meet the definition of Gypsies/Travellers as outlined in Annex 1 of the Government's Planning Policy for Traveller Sites, as updated in December 2023 (PPTS). I have no reason to disagree with the position of the main parties about this matter.
14. For the avoidance of doubt, I am determining the planning application based on the submitted plans and not based on current site conditions. Indeed, the site

is not currently laid out as per the submitted plans. It includes solid boundary fencing and substantial frontage gates/fencing. The submitted plans show two mobile homes, two touring caravans, four car parking spaces, an area of hardstanding, a CCTV camera mounted on a pole, a CCTV camera mounted on a gate (no details of gate(s) are submitted) and some internal grassed/planting areas. A storm drainage strategy plan accompanies the planning application.

15. Prior to the unauthorised material change of use of the land taking place, the evidence is that it comprised a mixed agricultural and storage/maintenance of one commercial vehicle for hobby use on that part of the appeal site between the rear of the workshop building and the road, as confirmed by means of a lawful development certificate¹. The evidence is that the site included a building prior to the site being used for unauthorised residential purposes. I was able to see that building on my site visit. The evidence is that vegetation was removed on the eastern boundary of the site and along its frontage with Thorncote Road to facilitate unauthorised residential use, the construction of hardstanding, and to create a widened vehicular access.

Character and appearance including landscape character and effect on trees

16. The wider area is characterised by small rural dispersed settlements connected by roads which are generally without lights and pavements. This part of the countryside includes a scattering of agricultural and residential development. However, and overall, this part of the countryside includes a limited amount of built development and is rural in character. The nearest hamlet to the site is Thorncote Green which is not defined by a settlement envelope.
17. The site was, at least in part, previously developed and is closely related to surrounding buildings. In that sense, it could not reasonably be said that it is experienced as being very remote or isolated from other development.
18. In respect of Policy C of the PPTS, I acknowledge that there is an existing Gypsy/Traveller site to the east of the small hamlet of Thatch. I understand that it has about seven pitches. This Gypsy/Traveller site is spatially separated from the appeal site. Furthermore, the appeal proposal is for only two pitches. In this case, I do not find that the scale of the site and the number of pitches proposed would dominate the nearest settled community, even accounting for the existing Gypsy/Traveller site to the east of the hamlet of Hatch. Moreover, there is no reasonable or objective evidence before me to indicate that the proposal would put undue pressure on local infrastructure when considered alone, or in combination with the other nearby pitches.
19. The site falls within the Lower Ivel Clay Valley Landscape Character area in the Central Bedfordshire Landscape Character Assessment (LCA). This explains that the disused nurseries and the A1 are locally dominant, but the wooded slopes and the Greensand Ridge to the north provide containment and a rural backdrop. The landscape strategy for the area is to renew elements that have become degraded or lost and to create new features to enhance and strengthen landscape character.

¹ CB/13/00320/LDCE and associated appeal ref APP/P0240/X/14/2215181

20. The evidence is that prior to the unauthorised development taking place on the site, it included a building and part of it was previously developed land. Nonetheless, photographic evidence demonstrates that the site previously had a more rural character and appearance and did not include the extent of hardstanding which is the subject of the appeals. Notwithstanding the site's baseline position prior to unauthorised development taking place, much of the land nonetheless continues to be largely screened from longer distance views owing to the existence of mature boundary trees and planting and intervening surrounding development. I find that the effect of the proposed development on the landscape character of the area is a more localised one. Indeed, the mobile homes and touring caravans can be seen from parts of the nearby Hatch Common to the east. Moreover, when the unauthorised frontage gates are open, the development on the site is now more conspicuous owing to the loss of some frontage vegetation.
21. While the unauthorised fencing and gates on the site do not form part of the planning application which is the subject of this appeal, I agree with the Council's Landscape Officer that this form of development has had an unacceptably urbanising effect on this part of the countryside when experienced from Thorncote Road and from surrounding dwellinghouses. The appellant agreed at the hearing that he would be content to replace the gates/fencing and that it would be possible to erect smaller and more in-keeping frontage gates/boundary treatment combined with enhanced frontage planting along Thorncote Road. He also commented that he would plant additional trees and hedges on the site. I am satisfied that this could be controlled by means of the imposition of a planning condition in respect of the Appeal A and Appeal B developments.
22. In addition to the above, the appellant confirmed at the hearing that additional tree and hedgerow planting would be undertaken along the eastern boundary of the site in respect of appeals A and B. This vegetation gap affords views of the site from Hatch Common. The caravans are clearly visible and prominent from this area as well as from the adjacent menage. Owing to their colour, height, and position, I find that the absence of boundary screening along this boundary means that the development does not assimilate well into the surrounding landscape.
23. I agree with the Council that the proposed planting along the eastern boundary would not amount to an immediate screening of the buildings/caravans on the site. I find that it would likely take several years for the gap in the boundary landscaping to reach maturity and, in the meantime, some of the buildings, caravans and chattels on the site would continue to be seen from public views. Moreover, and, in any event, it cannot be guaranteed that the new planting would endure forever. In this regard, I find that some limited harm has been/would be caused to the landscape character of the area. For this reason, the appeal developments would detrimentally affect the character and appearance of the wider landscape at odds with the requirements of policy H7 of the adopted 2021 Central Bedfordshire Local Plan 2015-2035 (LP).
24. I am mindful of concern raised about the effect of the position of the existing unauthorised hardstanding on the boundary trees. In respect of Appeal C, the hardstanding is positioned within the root protection areas as shown to be provided in respect of the development proposed under Appeal A. The

- unauthorised hardstanding has indeed had the effect of undermining the appellant's own Tree Protection Strategy. On the evidence that is before me, I find that there is a possibility that the unauthorised hardstanding may have caused harm to the health and longevity of existing boundary trees/landscaping. In this regard, it remains possible that such trees/landscaping may die. Their loss would exacerbate my concern in respect of the identified harm caused to the landscape character of the area should even more of the site become exposed to public views from Hatch Common.
25. In the absence of any persuasive and objective evidence from the appellant that the existing boundary trees/landscaping on the perimeter of the land has not been materially harmed, I cannot conclude that it would continue to offer the same level of screening of the appeal developments in the future. Moreover, given this finding, I cannot conclude with any certainty that the appellant's Tree Protection Strategy that accompanies Appeal A would be sufficient to ensure that such trees/landscaping remain. In other words, an unauthorised hardstanding has been formed and it is not clear from the evidence whether existing boundary trees/landscaping would endure even if the unauthorised hardstanding were to be removed and a new hardstanding formed as per the plans submitted as part of Appeal A. The boundary trees/landscaping add positively and distinctively to the character and appearance of the area and hence this is an important consideration.
26. While I acknowledge the need for some hardstanding on the land in connection with the siting of caravans and vehicles, the amount that exists on the land (Appeal C), and is proposed as part of Appeal A, is very significant in the context of the landscape character of the area. The frontage gates do not form part of the ground (a) or section 78 appeals. The appellant confirmed at the hearing that the frontage gates/fencing would be replaced by condition with smaller entrance gates/fencing. Nonetheless, there would be times when gates would be open. Passers-by would be able to see into the site when any such gates were open. I appreciate that these would be intermittent occurrences and that views into the site would likely be fleeting. Nonetheless, the extent of the existing and proposed hardstanding is very significant in the context of this rural location, and it is not the case that the hardstanding would never be seen by passers-by.
27. In my judgement, and, when considered as a whole, neither the existing nor proposed hardstanding can be reasonably said to represent a sensitive and in-keeping form of development in this location. In respect of Appeal A, the appellant has missed an opportunity to soften the harsh impact of the proposed hardstanding (coupled with caravans, day rooms and parked cars) by breaking it up with a greater amount of soft landscaping. Moreover, the hardstanding which is the subject of Appeal C extends to the outer limits of the appeal site. I find that either hardstanding is unacceptably extensive and intrusive in the context of the landscape character of the area. In terms of this matter, I also find that the evidence is that the unauthorised hardstanding may have caused harm to the longevity and health of existing boundary landscaping.
28. In reaching the above conclusions about the hardstanding areas, I am mindful that the notice which is the subject of Appeal C requires only the removal of the hardstanding within the blue edged land on the appended plan and its reinstatement to grass. The notice does not attack the hardstanding on the

northern part of the site and therefore the effect of section 173(11) of the Act is that deemed planning permission would be approved for it if the notice was to be upheld. This is a point raised by the appellant which I also address as part of the associated ground (f) appeal. This is a fallback material consideration of considerable weight to weigh in the overall planning balance.

29. However, the notice fallback position does not alter or outweigh my finding in respect of the harmful cumulative impact of the existing and proposed hardstanding as whole on the character and appearance of the area. The land within the blue edge of the plan appended to the notice for Appeal C represents a significant enlargement and incursion into what the evidence indicates was otherwise an undeveloped and essentially landscaped part of the land. There would be cumulative harm caused to the character and appearance of the area arising from the laying of hardstanding (existing or proposed) to the south of the site in conjunction with the hardstanding to the north of the site.
30. In respect of Appeal C, I find that the above level of harm to the character and appearance of this countryside location is exacerbated owing to the erection of an existing pole mounted CCTV system. This is prominent and intrusive when experienced by passers-by on Thorncote Road and has an industrial appearance which is incongruous in this rural setting.
31. The appellant asserts that in respect of the ground (a) appeal under Appeal B, I could consider an alternative layout which effectively confines the two Gypsy and Traveller pitches to the area of hardstanding which would have deemed planning permission if the notice under Appeal C were upheld and complied with. Given this deemed planning permission fallback position, I shall consider whether under the ground (a) appeal for Appeal B, there would be justification in planning terms to grant planning permission for a residential Gypsy and Traveller site on only the hardstanding which constitutes the deemed planning permission fallback position. It is necessary that I consider this option as part of the ground (a) appeal for Appeal B, given section 174(2) (a) of the Act. Indeed, the development arising from an alternative scheme would form part of the matters alleged in the breach of planning control.
32. As detailed below, I find that there is justification to approve an alternative scheme relating to the provision of two pitches on a smaller site and which would relate solely to the hardstanding which would constitute the fallback deemed planning permission.
33. Prior to the unauthorised development occurring, the evidence is that the above land (i.e., the northern part of the site) included a building and was, at least in part, PDL. Confining the caravans, vehicles and associated domestic paraphernalia to the northern part of the land would not lead to the same level of harm to the landscape character and appearance of the area. In this context, the caravans would not be overly conspicuous in view from Hatch Common as they would be positioned away from the vegetation gap which is to the south of the land and along its eastern boundary.
34. In order to soften the impacts of the development on the character and appearance of the area, the grant of planning permission for two pitches on a reduced site area basis would provide scope to impose conditions relating to additional landscaping within the site and the submission of a scheme of boundary treatment/landscaping including that area fronting Thorncote Road. A

layout for the reduced site could be secured and controlled by planning condition. Given the uncertainty about the position of the hardstanding and its effect on boundary trees, it would be necessary to impose a condition requiring the replacement of existing boundary trees/vegetation (e.g., if they die, are damaged or become diseased) within a thirty-year period rather than the normal five-year period. This was agreed at the hearing between the main parties and would go hand in hand with the suggested BNG condition which would include a thirty-year maintenance programme. Such a condition would offer more certainty in terms of ensuring that boundary landscaping continued to soften/screen the caravans and vehicles from surrounding views for many years to come.

35. I find that the siting of caravans and vehicles on the hardstanding area would not in itself give rise to any adverse impacts from a biodiversity or existing boundary trees point of view. These are matters that arise because of the hardstanding that has been formed on the land. However, the LPA has decided that the hardstanding outside of the blue edged land, but within the red edged land on the plan appended to the notice, which is the subject of Appeal C, can ultimately be retained. This is a material planning consideration of significant weight when considering the alternative scheme.
36. For the reasons outlined above, I cannot conclude that when the existing and proposed developments (Appeal A and C) are considered as a whole, they accord with the landscape character, distinctiveness, appearance, design, and landscaping requirements of policies H7(2), HQ1, EE4 and EE5 of the adopted LP, policies NP6 and NP10 of the Northill Parish Neighbourhood Plan 2019-2031 (NP), the Central Bedfordshire Landscape Character Assessment, the PPTS and or chapters 12 or 15 of the National Planning Policy Framework 2023 (the Framework).
37. Notwithstanding the above, I have considered the deemed planning permission fallback position under section 173(11) of the Act in respect of the hardstanding area to the north of the site. This is a matter to which I afford considerable weight in the planning balance. In this context, and, subject to the imposition of planning conditions, I find that an alternative scheme, which confines the two Gypsy and Traveller pitches under the ground (a) appeal for Appeal B to only part of the site, would not have a detrimental impact on the character and appearance of the area, or to landscape character. In this regard, I conclude that there would not be conflict with the landscape character, distinctiveness, appearance, design, and landscaping requirements of the above policies.

Whether intentional unauthorised development

38. The Department for Communities and Local Government policy statement 2015 introduced planning policy to make intentional unauthorised development (IUD) a material consideration that would be weighed in the determination of planning applications and appeals from 31 August 2015.
39. In respect of IUD, planning permission should not be refused simply on the basis that the development was carried out without planning permission or is unlawful. A finding of IUD must be supported by evidence of something more than this, i.e., that the appellant intended the development to be unauthorised or actively sought to harmfully flout the rules.

40. In this case, the evidence is that the appellant submitted a planning application to use the site for residential purposes on 5 March 2021. The next day, the evidence indicates that work commenced to facilitate use of the site for residential purposes. It is noteworthy that the submitted plans are dated February 2021 and hence it is reasonable that I conclude that the professionally represented appellant was aware of the need to submit a planning application for the use/operational development on the land well in advance of submitting that planning application.
41. It is noteworthy that the two families on the appeal site had previously been leading a roadside existence. While I can appreciate the desire to have a settled base for the families, including for the children, the appellant has carried out unauthorised development. On the evidence that is before me, I find that such action was intentional. There is common ground between the main parties in this regard. The IUD clearly prevented the proper application of planning policies, including a more informed position about the baseline position of the site from a biodiversity point of view, and the evidence is that such action caused some friction with the local community.
42. Notwithstanding the above, I do not doubt the desire to have a settled base in March 2021, particularly from the point of view of the young children. Furthermore, I do not doubt that the alternative of continuing to live a roadside existence at this time would have been problematic owing to Covid-19 pandemic lockdowns and restrictions. Moreover, I am mindful that neither the appellant nor the Council have been able to refer me to the availability of any alternative available Gypsy/Traveller pitches in the area or elsewhere when the families moved onto the site. I am also told that the families have an aversion to bricks and mortar accommodation. These matters temper the adverse weight that I afford to IUD.
43. For the reasons outlined above, I conclude that IUD carries limited adverse weight in decision making terms.

Biodiversity

44. Unauthorised development is exempt from the statutory 10% biodiversity net gain (BNG) requirement. In this regard, there is no requirement under appeals B and C, to achieve a statutory minimum 10% BNG. As the planning application which is the subject of appeal A was made on 5 March 2021, it is also exempt from the statutory 10% BNG requirement which relates to planning applications made on or after 12 February 2024.
45. The Council has prepared Biodiversity Net Gain Guidance in Support of Policy EE2 of the LP (March 2022) (BNG Guidance). Paragraph 2.1.4 of the BNG Guidance states '*whilst the Local Plan does not specify a target for BNG, the Council are taking a positive and proactive approach and are encouraging new developments to achieve a net gain for biodiversity of at least 10%*'. Policy EE2 of the LP does not specify a target for BNG and while the BNG Guidance seems to encourage 10% BNG, I do not find that it is necessary for the appeal developments to achieve a minimum 10% BNG. The main parties were of the same view about this matter when questioned at the hearing.
46. There is, however, a requirement for the developments to achieve biodiversity gain as policy EE2 of the LP states '*development proposals will be permitted*

where they provide a net gain in biodiversity through the conservation, restoration and creation of ecological networks of habitats, species and sites (both statutory and non-statutory) or international, national and local importance’.

47. Furthermore, the appeal site falls within the Greensand Ridge Nature Improvement Area (GRNIA) and the B-Line area of priority pollinators. The GRNIA has been designated because of the opportunity it provides to support a better, stronger, and more robust natural environment at a landscape scale, and to make significant improvements to the existing ecological network in terms of enlarging and enhancing existing wildlife assets and increasing ecological connectivity between them. Policy EE8(1) of the LP states that development proposals within the GRNIA will be permitted where they *‘demonstrate how a net gain in biodiversity will be delivered, including how gains in the quality and connectivity of ecological networks within and linking to the development will be delivered’.*
48. It is also notable that paragraph 180(d) of the Framework requires that decisions should contribute to and enhance the natural and local environment by *‘minimising impacts on and providing net gains for biodiversity’.*
49. While a Preliminary Ecological Appraisal (PEA) was submitted by the appellant alongside the planning application, I agree with the Council that the evidence indicates that the PEA was carried out at post unauthorised development stage. The evidence is that the baseline biodiversity position was based on the unauthorised development that had taken place on the site. At this stage, the evidence is that vegetation had been removed from the site and hardstanding had been laid.
50. The site baseline should have been its original condition, prior to vegetation clearance. The evidence in the form of digital images shows that prior to the unauthorised development taking place, a large part of the site was predominantly grassland with boundary hedging and that it was semi-natural with some biodiversity value. Therefore, some harm had already occurred to biodiversity because of the unauthorised development. Moreover, while there is dispute between the appellant, Council and third parties about what type of vegetation was removed from the site, there is common ground that some form of vegetation was removed from the south-eastern boundary of the site, and from the frontage with Thorncote Road, prior to unauthorised development taking place.
51. It is also noted that the site would effectively become garden space in association with use as a Gypsy and Traveller residential caravan site. Even if one were to consider the proposed space as habitat and not garden space, the evidence is that a net gain in habitat units would not be possible on this site given the extent of the unauthorised hardstanding. Even applying the mix of habitats shown on the appellant’s proposed plan and using the category *‘vegetated garden’*, the evidence is that it would lead to losses of approximately 34% of habitat units and 50% hedge units.
52. I agree with the Council’s evidence in its updated Ecology Statement of Case, dated September 2024, that the conifers on the eastern boundary should not be given a score of *‘good’* given the guidance in the Statutory Biodiversity Metric User Guide. Moreover, for appeal A, it is proposed to plant trees within

the grassland which would be small. I do not consider that the claimed 'good' condition would be achieved as that requires the trees to be mature and have opportunities for vertebrates and invertebrates such as cavities or deadwood, which is unlikely.

53. In the absence of correctly establishing the biodiversity baseline position, and hence being able to properly consider the proposed development against the pre-unauthorised development baseline position, and in accordance with the requirements of the Council's Biodiversity Net Gain Guidance 2022, I cannot conclude that the existing or proposed developments would accord with the biodiversity requirements of policies EE2 and EE8 of the LP, or paragraph 180(d) of the Framework. In addition, for the reasons outlined above, I do not find that trading rules have been met for either habitats or hedges in the appellant's submitted biodiversity metric. Overall, the appellant has not suitably demonstrated that the appeal developments would lead to biodiversity net gain. In respect of appeals A and C, this is a matter to which I afford very significant adverse weight in decision making terms.
54. Notwithstanding the above, I afford significant weight to the hardstanding fallback position in respect of the notice under Appeal C. A proportion of the hardstanding is not required to be removed if that notice was to be upheld. No conditions relating to biodiversity are capable of being imposed in respect of a deemed planning permission, under section 173(11) of the Act, for part of the hardstanding on the land. In this context, I find that the ground (a) appeal development which is the subject of Appeal B (i.e., material change of use development) would be acceptable in BNG terms if I decide that the Appeal C notice should be upheld and subject to the Gypsy and Traveller site use being confined solely to the said hardstanding area as shown on the appellant's alternative/indicative layout drawing No. J00491-CD01, dated September 2024.
55. In the context of the above, the material change of use of the land would not in itself have an impact on biodiversity and, moreover, it is noted that new native hedge and tree planting is shown on indicative drawing No. J00491-CD01 along the south-eastern boundary and along the road frontage with Thorncote Road. In this regard, I find that that subject to restricting the area of land for Gypsy and Traveller site use in accordance with the area shown on drawing No. J00491-CD01 dated September 2024, and the imposition of a landscaping condition, there is justification for overriding the harm caused to biodiversity, and hence conflict with policy EE8 of the LP, arising from the laying of the identified hardstanding area.
56. The above conclusion is reached on the basis that the notice under Appeal C is upheld and hence that the area of hardstanding to the south of the site (i.e., annotated in a blue colour on the plan attached to the notice) is removed and that a grassed area is reinstated. This decision is also reached in the context of the comment made at the hearing by the Council's ecologist that based on the alternative scheme, coupled with upholding the enforcement notice for appeal C and hence the retention of hardstanding outside of the blue edge of the plan appended to such a notice, he could not reasonably say that it would not be possible to achieve biodiversity net gain on the site.
57. Indeed, there was broad agreement between the main parties that it would be possible to provide new planting on the frontage of the site with Thorncote

Road (arising from a reduction in the size of the gates/associated fencing) and the provision of additional trees and hedges on the part of the land outside of the blue edged land on the plan appended to the notice which is the subject of appeal C. It was agreed that such replacement and new planting would be capable of being dealt with by condition and including a thirty-year maintenance, retention, and replacement programme.

58. There was some discussion about whether BNG needed to be provided on a like for like area basis, or whether it could be provided on a linear basis. While there are specific requirements in terms of achieving BNG in statutory terms, that does not apply in this case as the achievement of statutory BNG is not applicable to any of the appeals. It is necessary for BNG to be considered against policies EE2 and EE8 of the LP which is silent on whether BNG is delivered on an area or linear basis. On the evidence that is before me, I find that it would, as acknowledged by the Council's ecologist, be therefore possible to achieve BNG in conjunction with the alternative scheme. I acknowledge that the appellant has not provided me with a full or accurate BNG assessment in this regard, but on the basis of the appellant's alternative scheme, my decision in respect of Appeal C, and the comments made by the Council's ecologist at the hearing, I am satisfied that BNG could be dealt with by condition.

Whether sustainably located

59. The Council claims that the site is not sustainably located in so far that it is located outside of a defined settlement envelope. However, policy H7 of the LP, which specifically relates to the provision of Gypsy and Traveller sites, does not prohibit Gypsy and Traveller sites in the countryside. This is also the case in respect of the PPTS and policy SP7 of the LP. The latter policy lists the types of development that will be permitted outside settlements but uses the word '*includes*'. It is therefore not a closed list. In other words, it could include Gypsy and Traveller sites in the context of policy H7 of the LP.
60. Policy SP7 of the LP states that outside settlement envelopes '*the Council will recognise the intrinsic character and beauty of the countryside*'. I have found that subject to the imposition of conditions, part of the Appeal B development (i.e., the alternative scheme) would not cause harm to the intrinsic character and appearance of the countryside. I do not therefore find that this development would conflict with policy SP7 of the LP.
61. The Council also comments that there are limited facilities and services in close proximity to the site and that even where they do exist, such as in the nearby villages of Northill and Ickwell (e.g., village halls, a pre-school, lower school, outdoor recreation facilities and a pub serving food), it would be likely that occupiers of the site would use the private motor vehicle for most day-to-day journeys given the absence of pavements and street lights from the site at Thorncote Road and to these areas, coupled with the frequency and extent of public transport provision in the locality.
62. In respect of supermarket provision and middle and upper schools, the evidence is that there is a Tesco supermarket in Sandy which is about 2.2 miles away from the site, and there are schools a few miles from the site.
63. The Council makes the claim that owing to the above, the site is not sustainably located. However, neither Policy H7 of the LP, nor the PPTS, require

Gypsy and Traveller sites to have good public transport connectivity to day-to-day facilities and services. Policy H7(5) of the LP states proposals for Gypsies and Travellers will be permitted where *'adequate schools, shops, healthcare, and other community facilities are within reasonable travelling distance'*. While most day-to-day journeys would likely be undertaken in private motor vehicles for shopping, education and recreational purposes, most services and facilities would be within one to five miles and hence would be capable of being reached by private motor vehicle in up to about ten minutes. I find that the evidence is that there are adequate facilities within reasonable travel distances and hence the requirements of policy H7(5) are met. Moreover, the appellant confirmed at the hearing that the children travelled to school using a school bus and with a collection point at Thorncote Green.

64. In reaching the above conclusion, I am also mindful of the flexible approach to addressing sustainable transport and accessibility matters as outlined in paragraph 109 of the Framework which states that *'opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making'* and *'significant development should be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering a choice of transport modes'*. The appeal developments relate to two Gypsy and Traveller pitches and so are not *'significant'* developments. While not policy, it is also noteworthy that the reasoned justification to policy H7 of the LP states, at paragraph 11.7, that what constitutes a reasonable travel distance will vary in relation to location of the site and services and the local pattern of development.

65. For the reasons outlined above, I do not find that the site that is the subject of the appeals is unsustainably located from the point of view of use as two Gypsy and Traveller pitches. In this regard, I conclude that there is no conflict with policy H7 of the LP, the PPTS or the Framework. This is a matter that carries neutral weight in the planning balance.

Other Considerations

Traveller Status

66. The Council does not dispute that the occupiers of the site meet the definition of a Gypsy and Traveller as contained within annex 1 of the PPTS (as updated in December 2023). I have no reason to disagree with this common ground position.

Need for Traveller Sites

67. There is dispute between the main parties that the LPA can demonstrate a deliverable five-year supply of Gypsy and Traveller sites.

68. The need for pitches up to 2035 was based on a 2016 Gypsy and Traveller Accommodation Assessment for Central Bedfordshire (GTAA). It has been used to inform the strategy for the provision of Traveller pitches in the LP. The GTAA identifies that within Central Bedfordshire, for the plan period 2015 to 2035, there is a need for 29 pitches to meet Gypsy and Traveller need (23 for *'Travelling'* Gypsies and Travellers and 6 for unknown Gypsies and Travellers).

69. Paragraph 10.3.3 of the LP states that the '*Council's monitoring data shows it has already exceeded this figure and that a five-year supply can be maintained over the plan period*'. Policy SP8 of the LP states '*the Council has already approved a sufficient number of pitches to meet the Gypsy and Traveller accommodation need in Central Bedfordshire over the period 2015-2035*'. Given the above, the LP does not allocate sites for Gypsy and Traveller pitches and instead includes policy H7 which is a criteria-based policy for windfall Gypsy and Traveller pitches.
70. The Council therefore claims that it has permitted more Gypsy and Traveller pitches than the need identified in the GTAA and that since then it has approved additional pitches pursuant to policy H7 of the LP. In reaching this conclusion, the Council has submitted a statement prepared by Opinion Research Services (ORS). The evidence from ORS is that 72 Traveller pitches have been approved by the Council between 2015-2024. At the hearing, the Council updated the above to include evidence of an additional 12 Traveller pitches being approved on 16 October 2024 for a site in Arlesey², and one Traveller pitch being approved for a site in Leighton Buzzard³.
71. ORS has considered the GTAA and its findings in terms of applying need from the definition of a Traveller in Annex 1 of the 2023 PPTS, as distinct from the definition that existed in the 2015 PPTS. Since the GTAA was published, the definition of a Gypsy and Traveller has been amended in the PPTS to include those who have ceased to travel permanently on the grounds of their own or family's or dependents' educational or health needs or old age. Based on the re-assessment, ORS state that this necessitates an adjustment in need of five additional Gypsy and Traveller pitches. It is stated that since the GTAA was published, and considering the revised need target for 34 pitches, the LPA has permitted enough pitches between 2015-2024 to meet required need. In this regard, the Council claim that a five-year supply of deliverable Gypsy and Traveller sites can still be demonstrated.
72. Notwithstanding the above, I find that there are several matters which cast doubt about whether the GTAA can now be relied upon in terms of considering the extent of need for Gypsy and Traveller pitches in the area. At the hearing, ORS acknowledged that in respect of the GTAA, the household interview return rate at 35% was '*very low*'. When questioned, the representative of ORS said that based on his experience a good household interview return rate was '*about 70%*'. While the household interview rate and GTAA methodology was considered acceptable for the local plan examination, it is nonetheless noteworthy that the GTAA is now over eight years old. It is no longer up to date. At the hearing, the representative from ONS confirmed that a reviewed GTAA was underway and '*was about 60% complete*'. However, he could not provide any sort of update in terms of the extent of Gypsy and Traveller pitch need in the area.
73. The focus of the GTAA was on the 2015 PPTS definition of a Gypsy and Traveller, although it did also seek to assess non-definition Gypsy and Traveller need and '*unknowns*'. At the hearing, there was no dispute between the main parties that there were a very high number of '*unknowns*' in the GTAA. In my judgement, this casts some doubt about the extent of Gypsy and Traveller

² Planning permission CB/23/04089/FULL

³ Planning permission CB/23/02748/FULL

- pitch need in the area now when considered again other matters. Indeed, it is possible that a high number of the 'unknowns' did in fact relate to those that met the definition of a Gypsy and Traveller in the December 2023 PPTS.
74. Moreover, the evidence is that a very significant number of Gypsy and Traveller pitches have been approved by the Council. The number of pitches that have been approved far exceeds that which was envisaged as being needed in terms of the GTAA. In my judgement, this also casts some doubt about whether the GTAA can still be relied upon from a five-year supply point of view.
75. The question of need was considered recently by an Inspector in August 2024 for a site at Home Farm, Dunstable Road, Tilsworth⁴. The Inspector concluded that *'taking into account the age of the GTAA and the large percentage of households who were either unknown or did not meet the 2015 definition, I consider that there is sufficient uncertainty to cast doubt on whether the Council has a five-year supply of specific deliverable sites'*.
76. The Inspector also referred to high caravan counts in the area in her decision. Specifically, she commented that *'it is clear that there has been an expansion of need in the area, with the caravan count having risen from 490 in 2016 to 610 in July 2023'*. While I note that caravan counts should be treated with some caution, as outlined by the representative from ORS at the hearing, it nevertheless provides at least some further indication of likely increased demand/need for Gypsy and Traveller pitches in the area.
77. At the hearing, it was agreed that the evidence submitted by ORS for the above Dunstable Road, Tilsworth appeal was essentially the same that had been submitted to me as part of the consideration of appeals A and B. I am mindful of the need for consistent decision making and, on the evidence that is before me, and, for the reasons outlined above, I do not find that there is a good reason for me to depart from the views expressed by the Inspector in August 2024.
78. The above finding is compounded owing to comments made recently by the LPA as part of the determination of the Arlesey planning application for a Gypsy and Traveller site. In the officer report, considered by Planning Committee, the LPA commented, at paragraph 1.16, *'the Inspectors in these appeal decisions raised concerns that the level of demand was greater than that shown in the GTAA. In the appeal decision for Plot 6 in Great Billington, the Inspector stated that they had "no doubt that there is demand for greater pitches in the area"'*.
79. Based on the above, it is reasonable that I conclude that the LPA is not currently disputing the recent position reached by other Inspectors about the current uncertainty surrounding the actual need for Gypsy and Traveller pitches in the area. If that were not the case, then I would have expected such a position to have been outlined in the above officer report. At the hearing, I asked Mr Hughes if he could provide a comment on this matter. He commented that he was not able to do so as he was *'acting as a consultant on behalf of the Council and no relevant officers were in attendance'*.
80. On the evidence that is before me, and for the collective reasons outlined above, there is uncertainty about whether the GTAA can now be relied on in

⁴ Appeal A Ref: APP/P0240/C/23/3331075

terms of the extent of Gypsy and Traveller pitch need. Therefore, I cannot conclude that the Council can demonstrate a five-year supply of Gypsy and Traveller sites. The certainty will be provided when the GTAA review has been completed and a new Local Plan is in place. My conclusion in this matter weighs in favour of granting planning permission for a Gypsy and Traveller site on the land.

Availability of Alternative Traveller Sites

81. There is a dispute between the main parties about the availability of alternative Gypsy and Traveller pitches to accommodate the needs of the occupiers of the site. The Council claims that it is aware of at least 13 vacant pitches on sites in the area and these include:

- Plot 1, Jockey Farm, Caddington (2 vacant pitches on a site with no personal restrictions);
- Preachers Place, Houghton Conquest (2 recently permitted pitches;
- Plot 9, The Stable, Gypsy Lane, Billington (1 vacant pitch, the site is subject to personal conditions, however the Council are not enforcing such conditions and would consider applications to remove such conditions)
- Common Road, Potton - Council run site (1 vacant pitch)
- Riveroaks (1 vacant pitch)
- Old Cartwheel Nurseries (6 vacant pitches)

82. Notwithstanding the above, the Council confirmed at the hearing that its up-to-date position was, in fact, that there were available pitches in respect of the Preachers Place site above (x2), the Jockey Farm site above (x2), and at the recently approved Gypsy and Traveller site at Woodview Lodge, Hitchin Road, Arlesey (x12). In respect of the latter planning permission, it includes conditions which are required to be discharged prior to first occupation of the site. The Council was not able to confirm at the hearing that such conditions had been discharged. In this regard, I do not find that the pitches are currently/lawfully available. Moreover, and, in any event, I do not know whether any of the pitches would be suitable, available, or affordable for the extended family on the appeal site. The Council were not able to provide clarity in terms of such matters at the hearing.

83. In addition to the above, I do not know if the above pitches would be made available to occupiers of the appeal site on a purely rental basis, or whether they would be offered for sale. The appellant made it clear at the hearing that he did not want to rent pitches, but instead wanted a site that was under his ownership and control, and where he could offer a stable and secure base for him and the other occupiers of the site, including the children.

84. On the evidence that is before me, I do not find that there is certainty that the above pitches are suitable, available, or affordable for occupiers of the appeal site. It is nonetheless important that I emphasise that even if there are currently no available alternative pitches for the family on the site, policy H7 of the LP is a criteria-based policy for the consideration of planning applications

for Gypsy and Traveller pitches in Central Bedfordshire. In this context, the appeal site was not necessarily the only option available to the families from the point of view of seeking planning permission for Gypsy and Traveller pitch purposes.

85. There is no objective evidence before me to lead me to conclude that it would not be possible to obtain planning permission on an alternative site elsewhere, ensuring full compliance with the requirements of policy H7 of the LP within the 12-month compliance period in the notice which is the subject of Appeal B. The appellant states that life savings have been invested in purchasing the appeal site and hence it would be difficult to purchase another site. I have no objective evidence before me to substantiate this claim, and, in any event, it remains possible that the appeal site could be sold.
86. Notwithstanding the above, and, importantly, I have granted deemed planning permission for part use of the subject land as a Gypsy and Traveller site. This is subject to compliance with conditions, but nonetheless the compliance period in the Appeal B notice is generous and hence there would be convenient and alternative pitch provision for the families on part of the land arising from this deemed planning permission. In this regard, the availability of suitable and affordable alternative sites is not a determinative matter.

Family circumstances including the best interests of the children

87. Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998 (HRA) states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.
88. Furthermore, in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.
89. It is clear that a settled base for the families has aided the children from an education point of view. There are currently six children on the site and two babies are expected to be born very soon. Four of the children are of school age and attend local schools, one is at pre-school, and one is home schooled. The two pitches on the site offer a stable base in educational and social well-being terms for the children on the site.
90. The evidence is that all family members are enrolled with a General Practitioner. Moreover, it is understood that one child is currently attending hospital visits owing to an eye condition. I afford the provision of a settled base some positive weight from a health point of view. That said, it may be possible for the families to ensure such health stability from securing planning permission for a site elsewhere in accordance with all the criteria in policy H7 of the LP.

Economic contribution

91. The evidence is that the appellant and his brother carry out building work (e.g., paving, driveways, and landscaping) and that they travel away from the area for economic purposes. There is little evidence that building work is routinely carried out in the local area, although it is understood that this may happen from time to time. The two families would provide some economic assistance and support to local services and facilities in the area. Overall, and given the scale of the development that is the subject of the appeals, I afford the economic contribution to the local area some positive, albeit limited, weight in decision making terms.

Previously developed land

92. Following an appeal in 2014, it was confirmed as part of the aforementioned LDC application that a mixed agricultural and hobby use for the storage of one commercial vehicle had occurred on the land. I have not been provided with any evidence to indicate a change in the use of the land since this time and prior to the existing unauthorised development taking place on the site. As part of the Council's statement of case, it seeks to make a claim that the LDC use may have been abandoned. This is a strange claim given the description of the breach of planning control in respect of Appeal B, but, in any event, this claim lacks any credible or objective reasoning or justification.

93. The LDC was approved in 2014 and there is nothing before me to indicate that there had been any intervening use(s) of the land or that the building had remained unused for a considerable time, such that a reasonable person might conclude that the previous use had been abandoned. I accept that the ownership of the land has changed since 2014, but nonetheless there is no indication that the appellant intended to suspend the use, or to cease it prior to the unauthorised development taking place on the land. I do not therefore agree with the Council that the LDC use was 'abandoned' prior to the unauthorised development taking place on the land.

94. Moreover, there is no dispute that there was a building on the land prior to the unauthorised development occurring. Indeed, it is stated that there was a '*single storey workshop building with an electricity supply*'. I was able to see that building on my site visit. The definition of previously developed land (PDL) is contained within annex 2 of the Framework which states, '*land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure*'.

95. It is clear from reading the Planning Inspector's LDC appeal decision that the commercial storage and maintenance of one vehicle was confined to the land between the rear of the workshop building and the main road, and that the rest of land that is the subject of this appeal was in use for horse grazing purposes.

96. I do not doubt that the workshop building on the land had some form of curtilage. However, the site has significantly changed because of the unauthorised material change of use of the land (including formation of the hardstanding). It is not therefore possible for me to reach a very certain conclusion about this matter. However, I do find that the evidence is that much of the land on the appeal site was used for horse grazing.

97. Despite the above, the Council accepted at the hearing that part of the appeal site included hardstanding prior to the notices being issued. Mr Hughes commented that it was the Council's position that it could not be certain about the extent of hardstanding that existed to the northern part of the site, but that it did consider that there was some hardstanding based on the image on page 29 of its updated statement of case. The appellant commented at the hearing that there was hardstanding on this part of the site historically, albeit that some of it had become overgrown with grass. Mr Harrison raised doubt at the hearing about this claim referring to the Neighbourhood Plan which refers to the site as being 'permanent grassland' and that the above image perhaps just showed 'a muddy area'.
98. In my judgement, and based on the evidence that is before me, including historic aerial photographs, I find that only a small proportion of the appeal site constitutes PDL. I do not find that it could on any reasonable or objective basis be said that the whole of the site was part and parcel of use of the former workshop building on the land. In my judgement, and, as a matter of fact and degree, I do find that part of the northern part of the site did historically include some hardstanding. It also included a building and that is still on the site now. I find that the northern part of the site is therefore PDL.
99. The evidence therefore supports a view that the land partly includes PDL. In this regard, the Appeal A development would make 'effective use of previously developed land' in accordance with paragraph 26(a) of the PPTS. This is a matter to which I afford some positive weight in favour of granting planning permission. However, this is tempered in so far that the evidence indicates that a large proportion of the appeal site did not include a building or hardstanding prior to the unauthorised development occurring. Therefore, the evidence is that some of the development has occurred on land which is not PDL. In respect of this matter, I afford more weight to the existence of PDL in respect of the alternative scheme (Appeal B) as the two pitches would essentially be confined to an area of land within the curtilage of the workshop building on the land.

Other Matters

100. The main parties have respectively referred me to other appeal decisions. While I have considered the other appeal decisions, they are not directly analogous to the site-specific circumstances that prevail in respect of the appeals. I have determined the appeals on their individual planning merits and considering the identified other considerations.

Planning Balance and Conclusion

101. When the developments which are the subject of appeals A and C are considered as a whole, I have been unable to conclude that they would not or have not caused harm to the character and appearance of the area, including to landscape character. For the reasons outlined, I do not find that the harm could be suitably mitigated by means of the imposition of conditions. This harm is a matter to which I afford moderate adverse weight in the planning balance.
102. Moreover, the appellant has not properly assessed BNG based on an accurate baseline position, and, in any event, guidance has not been suitably applied. Consequently, I have been unable to conclude that when the

developments are considered as a whole (in particular the developments under Appeals A and C), they would deliver BNG in accordance with the requirement of policies EE2 and EE8 of the LP, and the Framework. In respect of the biodiversity issue, there would also be conflict with policy H7 of the LP as this policy states that there should be compliance with '*other relevant policies*' within the LP. This is a matter to which I afford very significant adverse weight in the planning balance. Furthermore, I find that IUD has taken place and limited adverse weight is attributed to this matter.

103. I find that the site is sustainably located as a Gypsy and Traveller site for two pitches. This is a matter which carries neutral weight in decision making terms.
104. Weighed against the above harms, are the other considerations outlined above. These weigh in favour of allowing the appeals. However, the positive weight that I collectively afford these matters is not sufficient to justify granting permanent planning permission for a Gypsy and Traveller site, or for a hardstanding area on the whole of the land.
105. I have considered whether a temporary planning permission would be justified. I acknowledge that the collective harm that I have identified would be diminished if temporary planning permission were to be approved in respect of either the ground (a) deemed planning applications, or in respect of the development proposed as part of the appeal made under section 78 of the Act. However, such collective harm from development within the red edged site areas would still be significant even if the development were to continue for a temporary period.
106. Notwithstanding the above, I afford significant weight to the deemed planning permission fallback position for the hardstanding to the north of the site. In this regard, if the notice under Appeal C were upheld and complied with, a proportion of the hardstanding would be permitted to be retained on the land. This would be permitted without any conditions being imposed, including those relating to BNG. In this context, I have considered the appellant's alternative layout for a Gypsy and Traveller site on this part of the site in respect of the ground (a) appeal made under Appeal B.
107. The evidence is that a large part of the land which forms part of the fallback deemed planning permission hardstanding is PDL. This weighs in favour of allowing a Gypsy and Traveller site on this part of the land. Subject to the imposition of conditions, I do not find that the siting of caravans and vehicles on this part of the land (i.e., material change of use of the land to a Gypsy and Traveller residential caravan site) would have a detrimental impact on the character and appearance of the area (including landscape character).
108. Moreover, I am satisfied that the indicative alternative layout suitably demonstrates that it would not lead to cramped living conditions for the two families. While I acknowledge that caravans and associated development would not be totally screened from public views, replacement and new planting would be capable of softening the impact of the position of caravans and associated development on the reduced site area. In addition, the evidence is that BNG would be capable of being achieved on the alternative site in relative terms and factoring in deemed planning permission for hardstanding on the northern part

of the site. New planting and any required replacement planting would be suitably controlled over a thirty-year period.

109. On balance, and when considered alongside the positive other considerations outlined above, I find that there is therefore justification for granting permanent planning permission for a smaller Gypsy and Traveller site on the land which is the subject of the notice under Appeal B. Subject to the imposition of conditions, and, in the context of the deemed planning permission fallback position for the hardstanding on the land, I find that this material change of use development would be capable of according with the criteria in policy H7 of the LP. In reaching this decision, the personal circumstances of the family (including the best interests of the children) have not therefore been a decisive issue and so a personal condition is not needed.
110. In respect of the alternative scheme and policy H7 of the LP, I find that the scale of the Gypsy and Traveller site and number of pitches would not dominate the nearest settled community; the character and appearance of the wider landscape would not be detrimentally affected subject to the imposition of conditions; there would be a good standard of amenity for occupiers of the smaller site; the site would be of sufficient size to accommodate the identified caravans, mobile homes, parking and storage requirements; amenities and services are within reasonable travelling distances; foul and surface water drainage could be addressed by planning condition, and a mixed residential and business use has not occurred. Moreover, I find that the alternative scheme would largely be confined to a part of the site that is PDL.
111. I therefore find that there is justification for granting permanent planning permission in respect of the 'alternative scheme'. My finding in respect of IUD does not hold sufficient weight to outweigh this finding, particularly when some of the positive other considerations are weighed in the balance.
112. For the reasons outlined, I nonetheless conclude that the appeal developments which are the subject of Appeals A and C do not accord with the development plan for the area taken as a whole and there are no material considerations which indicate the decision should be made other than in accordance with the development plan. Neither permanent nor temporary planning permission is justified in these cases.
113. I conclude that appeal A should be dismissed and that the ground (a) appeal under appeal C fails. However, the ground (a) appeal under appeal B succeeds subject to the imposition of conditions.
114. In reaching my conclusion to grant planning permission under ground (a) for Appeal B and for part of the land to be used as a Gypsy and Traveller site, I have considered the third-party representations made in respect of such an appeal. Comments made about the CCTV on the land and the invasion of privacy are not relevant to Appeal B. They are relevant to appeal C and such a notice is to be upheld. A condition shall be imposed relating to CCTV on the land. Matters relating to the treatment of sewage and surface water drainage shall be addressed by means of the imposition of planning conditions. I accept the point raised by Mr Harrison at the hearing about light being apparent from use of the caravans at night. However, I do not find that the extent of light from the caravans would cause material harm to the area at night and,

moreover, any external lights on the site would be controlled by way of a planning condition.

115. Other third-party matters raised have been considered elsewhere in this appeal decision. None of the other matters raised by third parties alter or outweigh my overall conclusion in respect of Appeal B.

Ground (a) appeal conditions – Appeal B

116. The conditions set out in the accompanying schedule were agreed by the main parties at the hearing. Where necessary, I have made minor word changes to the agreed conditions in the interests of precision and enforceability. I have included the reason for imposing each condition within the accompanying schedule of conditions.
117. In this case, there is clear justification for removing Class A (gates, fences, walls etc) of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) permitted development rights. Without this level of control, harm could be caused to existing or proposed planting, to biodiversity, or to the character and appearance of the area. Moreover, it is necessary that the sufficient space is maintained on the approved Gypsy and Traveller site (i.e., the alternative scheme) for living conditions purposes.

Appeal B and Appeal C - ground (f) appeals

118. The appeals made under ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.
119. In respect of Appeal B, the claim made by the appellant is that the notice is invalid in that requirement 5(3) states '*return the land to its previous authorised use*'. There is no power in section 173(3) and (4) of the act to require a use to be restored or reinstated. This is a matter that I have already considered in 'The Notice' part of this decision. The notice has been varied and so requirement 5(3) is no longer part of it. Consequently, the notice is neither invalid and nor are the varied requirements of the notice excessive or unnecessary. The purpose of the notice is to remedy the breach of planning control. The requirements of the notice remedy the breach of planning control and so are not excessive.
120. In respect of Appeal C, the appellant claims that the notice is not clear in so far that it does not include a plan which precisely identifies the area of hard standing that is unauthorised. This is an invalidity argument rather than a matter that is relevant to a ground (f) appeal. I do not find that the notice is invalid in this regard. The notice includes a plan which includes a red edge which defines the land to which the breach of planning control relates. The appellant has not appealed on grounds (b) or (d) of section 174(2) of the Act and the evidence is that he accepts that a new hardstanding has been formed on the land. The onus is on the appellant to make his case on legal grounds and no objective evidence is before me to indicate that a new hardstanding had not been formed.

121. The notice includes a plan with an area of land edged blue which identifies the area of hardstanding to be removed. Again, the appellant does not make a claim that any part of this hardstanding has not occurred, or that it was immune from enforcement action owing to the passage of time. I find that the notice is clear in terms of what part of the hardstanding is required to be removed.
122. In effect, the appellant's argument is that requirement 5(3) of the notice would result in a deemed planning permission for hardstanding on part of the site (i.e., the northern part of the site) given section 173(11) of the Act. This is not an invalidity or nullity argument and instead is a separate matter that relates to the Council's decision to underenforce. It is a matter that I consider in respect of the ground (a) appeals. I find that the notice is clear and unambiguous: it was not necessary to include a plan which specifically identified the area of unauthorised hardstanding on the land. The notice tells the recipient fairly what they have done wrong and what they must do to remedy it.
123. The appellant claims that requirement 5(5) is conflicted and imprecise. I have already considered this matter in 'The Notice' part of this decision and it has been deleted without injustice being caused to the main parties.
124. For the reasons outlined above, I conclude that the varied steps in the two notices are not excessive. Therefore, the ground (f) appeals fail.

Appeal B and Appeal C - ground (g) appeals

125. The appeals made under ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.
126. The appellant has confirmed that he accepts the period of twelve months to comply with the requirements of the notice for Appeal B. In this regard, there is no actual claim that the compliance period in the notice for Appeal B falls short of what should reasonably be allowed. The appellant's claim is that in respect of Appeal C, which requires the removal of operational development, a compliance period of eighteen months rather than thirteen months would be more reasonable as it would facilitate a full twelve-month residential use of the land for the families and then enable the necessary works to be undertaken after that use has ceased.
127. I agree with the appellant that one month after the residential use has ceased to comply with the requirements of the notice under Appeal C would be too short. However, the appellant does not justify why a period of six months after the residential use has ceased would be needed to comply with the requirements of such a notice. In my judgement, a period of three months is proportionate and justified. I have granted planning permission for part use of the land as a Gypsy and Traveller residential caravan site under Appeal B. The families would not be made homeless as result of compliance with the requirements of Appeal B and a period of thirteen months to remove the specified hardstanding area is reasonable and proportionate in this context.
128. For the above reasons, I find that the compliance period in the notice for Appeal C is reasonable. Consequently, the ground (g) appeals fail.

Conclusions

Appeal A Ref: APP/P0240/W/22/3291001

129. For the reasons given above, I conclude that the appeal should be dismissed.

Appeal B - APP/P0240/C/24/3346787

130. For the reasons given above, I conclude that the appeal should succeed in part only, and I will grant planning permission for a specified part of the land, but otherwise I will uphold the notice with a variation and refuse to grant planning permission in respect of the other specified part of the land. The requirements of the notice will cease to have effect so far as these are inconsistent with the planning permission which I will grant by virtue of section 180 of the 1990 Act (as amended).

Appeal C - APP/P0240/C/24/3346787

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

D Hartley

INSPECTOR

SCHEDULE OF CONDITIONS – APP/P0240/C/24/3346787 (APPEAL B)

1)The approved site shall not be occupied by any persons other than Gypsies and Travellers as defined in Annex 1: Planning Policy for Traveller Sites 2015 (as updated in December 2023) (or any subsequent definition that supersedes that document).

Reason: to limit the occupation of the site to persons that meet the definition of Gypsies and Travellers having regard to the circumstances that justified approving development on part of the site.

2)Notwithstanding the deemed planning permission description of development, no more than four caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Site Act 1968 as amended, shall be stationed on the site at any one time, and no more than two of the caravans shall be static caravans.

Reason: to limit the number and type of caravans on the smaller site and to ensure all caravans would meet the legal definition and in the interest of visual amenity.

3)The use hereby permitted shall cease and all caravans, structures, equipment, and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

(i) Notwithstanding the details submitted, within 4 months of the date of this decision a site development scheme with details for:

(a) the internal layout of the site including the extent of the residential pitches, the location of the caravans (reflective of actual scale), vehicle parking, vehicle turning areas, vehicle charging points/cabling, utility connections, siting of CCTV, and the siting of any proposed buildings, in the area cross hatched on plan reference CBC/HUTS/10;

(b) a site access scheme including: a scaled plan detailing an access measuring 4.8 metres wide and surfaced with a bound material for at least 5 metre back from the highway. The plan shall detail arrangements to be made for surface water from the site to be intercepted and disposed of separately so that it does not discharge into the highway; a scaled plan detailing the provision of visibility splays measuring 2.4m measured along the centre line of the proposed access from its junction with the channel of the public highway and 43m measured from the centre line of the proposed access along the line of the centre channel of the public highway. The scaled plan shall detail any works required for the provision of visibility splays including the clearance of any vegetation and relocation of street furniture such as telegraph poles; replacement gates and fencing along the site frontage with Thorncote Road together with a timetable for removal of the existing gates and fence and implementation; and the provision of a refuse collection point located at the site frontage and outside the public highway and visibility splays.

(c) a detailed surface water drainage scheme, to manage surface water for up to and including the 1 in 100 year event (+40%CC), the scheme shall be based on the final agreed Tech note (Ref: AcI604-21024, Adama, 28/0/21) and DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2018);

include a simple investigation evidencing flood risk will not be increased for existing properties and the safety of the proposed development; include volume for volume mitigation for flood water as a minimum, for all above ground construction; not include the culverting of existing watercourses; include a full set of calculations, providing evidence of all surface water retained on site for the 1 in 100 (+40%CC). Any exceedance should be shown with pathways with maximum depths and velocity and; include full detailed drainage drawing showing all connections, control features, storage, inverts etc; and include full detailed design of Land Drainage Consent under the Land Drainage Act 1991 for the discharge of surface water to an existing watercourse/ditch.

(d) a detailed foul drainage assessment and scheme which shall; include a full detailed foul drainage drawing showing all connections, controls and storage, as well as details of any collection or discharge/ release arrangements; include a connection to the public foul sewer unless it is demonstrated to the satisfaction of the Local Planning Authority that it is not reasonable to connect to the public sewer; where a connection to the public foul sewer is not reasonable the scheme shall include a statement considering the following hierarchy of non-mains alternative solutions: package sewage treatment plants (which may be offered to the sewerage undertaker for adoption); septic tanks; and cesspool(s); include a completed FDA1 form, or equivalent information; if considered necessary by the Local Planning Authority details shall be submitted to demonstrate how the requirement of Building Regulations Approved Document H will be met; and details of the management and maintenance arrangements for the foul drainage system.

(e) a biodiversity enhancement and landscaping scheme to include all hard and soft landscaping and a scheme for landscape maintenance for a period of 30 years, the scheme shall include: the removal of existing hardstanding including astro turf; scaled plans detailing the location of replacement hardstanding and details of the materials with construction specification for all hardstanding (which shall be in full accordance with the surface water drainage scheme for the site); the removal of existing fencing, gates and brick plinths; details of all replacement boundary treatments and all other means of enclosure, which shall be more sympathetic in design for the location (any gates shall be sited 5 metres beyond the public highway and shall open away from the highway); the retention of existing trees and hedgerows; a comprehensive planting scheme with screen planting including details of species, plant sizes and proposed numbers and densities (plant species shall visually screen the site, respect the landscape context of the site and contribute towards ecological enhancements); and a comprehensive biodiversity enhancement scheme, which shall detail the location and design of species specific enhancement measures, purpose and conservation objectives for any measures and a scheme for the maintenance and monitoring of the measures for a period of 30 years identifying persons responsible for implementing, monitoring and maintaining the scheme.

(hereafter referred to as the "development scheme") shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

(ii) if within 11 months of the date of this decision the local planning authority refuse to approve the development scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by the Secretary of State.

(iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted development scheme shall have been approved by the Secretary of State.

(iv) the approved site development scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition that scheme shall thereafter be retained. The provided visibility splays at the site access shall be maintained free of obstruction in perpetuity.

In the event of a legal challenge to this decision, or a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Reason: to safeguard the character and appearance of the area and highway safety, to ensure suitable living conditions and arrangements for utilities, vehicle charging, surface water drainage, and foul drainage, to ensure the development would not result in unacceptable on or off site flood risk, to prevent pollution, and to secure a net gain for biodiversity, in accordance with Policies H7, T2, T3, T5, EE2, EE4, EE5, CC3, CC4, CC5, CC6, CC7, CC8, and HQ1 of the Central Bedfordshire Local Plan, Policies NP8 and NP12 of the Northill Neighbourhood Plan and the Framework.

4) At the same time as the site development scheme required by condition 3 above is submitted to the Local Planning Authority there shall be submitted a schedule of maintenance for a period of 30 years of the existing and proposed planting beginning on date of the completion of the final phase of implementation as required by that condition. The schedule of maintenance shall make provision for the replacement, in the same position, of any ecological enhancement feature, tree, hedge or shrub that is removed, uprooted, or destroyed or dies, or in the opinion of the Local Planning Authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

Reason: to ensure the establishment, retention, and replacement of planting and ecological enhancements, in the interest of biodiversity and the character and appearance of the area, in accordance with Policies EE2, EE3, EE4, EE5 and HQ1 of the Central Bedfordshire Local Plan, and the Framework.

5) At the same time as the site development scheme required by condition 3 above is submitted to the Local Planning Authority there shall be submitted a maintenance and management scheme for the entire surface water drainage system, inclusive of adoption arrangements and/or private ownership/responsibilities. The maintenance and management scheme shall include maintenance of any watercourses within or adjacent to the site, even if there is no discharge to them. The entire surface water drainage system inclusion of the adjacent watercourses shall be maintained and managed in accordance with the approved maintenance and management scheme in perpetuity.

Reason: To ensure that the implementation and long-term operation of a sustainable drainage system.

6)At the same time as the site development scheme required by condition 3 above is submitted to the Local Planning Authority there shall be submitted a maintenance and management scheme for the entire foul drainage system, inclusive of adoption arrangements and/or private ownership/responsibilities. The entire foul drainage system shall be maintained and managed in accordance with the approved maintenance and management scheme in perpetuity.

Reason: To ensure there would be no detrimental impact on the environment in accordance with Policies CC6, CC7 and CC8 of the Central Bedfordshire Local Plan, and the Framework.

7)No commercial, industrial, or business activities shall take place on any part of the site, including the storage of materials and goods.

Reason: to safeguard the amenity of neighbouring occupiers and the character and appearance of the area, in accordance with Policies HQ1, CC8 and EE5 of the Central Bedfordshire Local Plan and the Framework.

8)No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

Reason: to safeguard the amenity of neighbouring occupiers and the character and appearance of the area, in accordance with Policies HQ1, CC8 and EE5 of the Central Bedfordshire Local Plan and the Framework.

9)Notwithstanding the provisions of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates, walls or other means of enclosure shall be erected within the site without the grant of further specific planning permission from the Local Planning Authority, or those approved under Condition 3 of this permission.

Reason: To control the development in the interests of the rural amenity of the area.

10)No external lighting shall be installed or erected at the site, unless details are first submitted to and approved in writing by the Local Planning Authority.

Reason: to safeguard the character and appearance of the area, the natural environment, and the amenity of neighbouring occupiers, in accordance with Policies EE2, EE3, EE4, EE5 and HQ1 of the Central Bedfordshire Local Plan, and the Framework.

11)No equipment, machinery or materials shall be brought on to the site for the purposes of development as agreed under Condition 3 until the protective fencing for the protection of any retained tree(s), has been erected in the positions shown on Drawing "Tree Protection Plan - Date: 25/06/2021". The approved fencing shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition.

Reason: To protect the trees so enclosed in accordance with Section 8 of BS 5837 of 2012 or as may be subsequently amended.

12)All existing onsite buildings shall be demolished and all resultant detritus completely removed from the site prior to the commencement of works as approved under Condition 3.

Reason: In the interests of the visual amenities of the area.

13)The development permitted under condition 3 and 12 shall be undertaken in full accordance with a 'Construction Code of Practice for Developers and Contractors' which shall first have been submitted to and agreed in writing by the local planning authority

Reason: In order to minimise the impact of construction work on the amenities of nearby residential properties and to accord with chapter 12 of the Framework.



Plan referred to in the decision for APP/P0240/C/24/3346787 (Appeal B)

This is the plan referred to in my decision dated: **11TH NOVEMBER 2024**

by **D Hartley BA (Hons) MTP MBA MRTPI**

Land at: The Huts, Thorncote Road, Hatch, Sandy, SG19 1PU

Appeal reference: APP/P0240/C/24/3346787

Scale: Do not scale



APPEARANCES

FOR THE APPELLANTS:

Alan Masters, Counsel for the appellant
Brian Woods, WS Planning & Architecture
Craig Williams, Arb Tech
Joseph Robb
John Robb

FOR THE LOCAL PLANNING AUTHORITY:

Phillip Hughes, Planning Consultant
Steve Jarman, ORS
Neil Harvey, Place Services

OTHER INTERESTED PARTIES:

Stephen Harrison, resident
Zoe Tofield, resident
Frank Firth, resident
Paul Daniels, ward Councillor

DOCUMENTS SUBMITTED AT THE HEARING

- 1) Signed statement of common ground
- 2) Planning permission decision notice CB/23/04089/FULL and the associated officer report
- 3) Planning permission decision notice CB/23/02748/FULL and the associated officer report
- 4) Council's additional suggested condition relating to a biodiversity enhancement strategy

APPENDIX 7



Appeal Decision

Hearing held on 24 January 2024

Site visit made on 25 January 2024

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th February 2024

Appeal Ref: APP/J0405/W/23/3332664

Land adjacent to Lawn Hill, Edgcott, Buckinghamshire HP18 OTT

- 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 the Ward, Nolan and Casey families against the decision of Buckinghamshire Council.
 - The application Ref 22/03098/APP, dated 15 September 2022, was refused by notice dated 15 September 2023.
 - The development proposed is for the change of use of land for the creation of 4no Gypsy/Traveller Pitches for residential use, including the siting of 4no mobile homes, 4no touring caravans, and the erection of dayrooms.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of land for the creation of 4no Gypsy/Traveller Pitches for residential use, including the siting of 4no mobile homes, 4no touring caravans, and the erection of dayrooms at land adjacent to Lawn Hill, Edgcott, Buckinghamshire HP18 OTT in accordance with the terms of the application, Ref 22/03098/APP, dated 15 September 2022, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. **I have removed the word 'retrospective' from the description of development** as this is not an act of development. However, works have taken place on site. Those works are not in accordance with the plans and details before me, and I have based my assessment on the evidence submitted, not what was on site.
3. The National Planning Policy Framework (the Framework) was revised in December 2023. The Planning Policy for Traveller Sites (PPTS) was also updated on 19 December 2023. This update related to Annex 1: The definition of Gypsies and Travellers. The changes revert to the definition in the 2012 version. Both parties were given the opportunity to provide comments before and during the Hearing, and I have taken account of these.
4. An amended site plan was submitted at the Hearing by the appellants. This reduced the 'red edge' of the site to less than 1 hectare, meaning that a site-specific flood risk assessment was no longer necessary¹. The Council had no objections to the amended plan. The plan reduces the size of the site, and I am satisfied that no parties would be prejudiced by its submission.

¹ Framework footnote 59.

Main Issues

5. These are:
 - a) The effect of the development on the character and appearance of the area,
 - b) Whether the location of the site would provide the occupants with reasonable access to services and facilities,
 - c) Whether the means of surface and foul water drainage of the site would be sufficient,
 - d) The effect of the development on protected species, with specific reference to Great Crested Newts; and,
 - e) Whether the proposal would provide a biodiversity net gain.

Reasons

Policy

6. The Vale of Aylesbury Local Plan (September 2021) (VALP) is the development plan for the area. The proposal is for a Gypsy and Traveller Site, and it is agreed with the Council that the site occupants meet the definition of Gypsies and Travellers in the PPTS.
7. Policy D11 of the VALP is a permissive Gypsy and Traveller policy, which sets criteria for these proposals, providing it can be demonstrated that there is an identified need. Whilst the Council maintain there is no general unmet need in the area, it acknowledged at the Hearing that there was a personal need which could be accommodated on this site.
8. The Council also accepted that the policy could relate to general or personal need, and for the purposes of this appeal, the personal need means that the first part of Policy D11 is met. The proposal should then be assessed against the criteria, and the site would be suitable or not, having regard to this. It was agreed that parts b, c, e, h and i of the policy were met. I will address the outstanding issues below.

Character and appearance

9. The site is on the northern side of Lawn Hill, just outside of Edgcott, a moderately sized village to the north west of Aylesbury. It is surrounded by a well-established belt of hedgerows and trees and contains hardstanding and caravans.
10. Lawn Hill is a country lane characterised by fields, hedges and grass verges, with sporadic dwellings, commercial premises and farmsteads. That said, directly opposite the site is a commercial logging business, with HMP Grendon Springhill beyond this, a large prison complex. There is a conspicuous landfill site to the north, which contains venting chimneys and has a large, elevated landform. There is also a vast energy from waste site to the west which is visible from the Lawn Hill and many vantage points in the area. A public right of way (PRoW) runs to the west boundary of the site, towards the land fill.
11. The site is designated as being within the Calvert Clay Pits (Wooded Rolling Lowlands) Landscape Character Area (LCA). This LCA is identified as having a relatively low sensitivity due to the highly altered nature of the landform, because of the clay pits and landfill site. Owing to these landscape features and

- surrounding uses, the site is not a highly rural location, as asserted by the Council.
12. The proposal is for the change of use of the land and the creation of 4 pitches for Gypsies and Travellers. Each pitch would accommodate one static caravan, one touring caravan and one dayroom. An access road and turning area is also proposed.
 13. The proposal would urbanise an element of previously undeveloped land, yet it would be a well planned layout with pitches sited in a regular pattern, parallel with the southern edge of the site and separated by hedgerows. Additionally, a second hedgerow would be planted to the rear of the existing hedgerow along Lawn Hill. This could positively enhance the environment when established.
 14. With the indicative landscaping proposed, the visual effect of the proposal would be minimal. The tops of caravans and day rooms are likely to be seen when directly outside the site or on the adjoining PRow. However, even traversing the PRow in winter, only glimpses of the site were clear on one side of the path, noting that the landfill site was completely in view when walking north. There would be wider views of the site from the north, yet these are in the context of the other urbanising developments in the area.
 15. Furthermore, the PPTS is clear that proposals for Gypsy and Traveller sites should not enclose 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. The proposed landscaping would ensure that glimpses of the site were visible, but in the context of the surrounding area, the low sensitivity of the landscape, and its location just outside Edgcott, it would not have a significantly adverse impact on the countryside landscapes. Indeed, it would respect and complement the local distinctiveness and vernacular character of the locality. This is even considering the size of the dayrooms and domestic paraphernalia that would be associated with the use.
 16. Thus, the effect on the character and appearance of the area would be acceptable. This would be compliant with Policies D11, S1, S3, BE2, and NE4 of the VALP. These seek to ensure that proposals for Gypsy and Traveller sites would not have a significantly adverse impact on environmental assets such as the countryside landscapes, are sustainably developed, respect and complement the local character and distinctiveness.
 17. There would also be compliance with the Framework, National Design Guide, and the PPTS. Together these seek to ensure sites are well planned or soft landscaped in such a way as to positively enhance the environment, achieve well designed and beautiful places that are integrated into its wider surroundings, physically, socially and visually.

Location of the site

18. Edgcott is a moderately sized village **and is identified in the VALP as an 'other settlement'**. This means that there will be very restricted development in Edgcott because it has very limited facilities. Therefore, it is not regarded as a sustainable location for strategic growth.
19. The site is just outside the village envelope, being less than a 5 minute walk to the nearest housing. Whilst there is no footpath or street lighting, this is a very

- short distance before reaching the village edge. Once in the village, there is a footpath that runs from Edgcott south to Grendon Underwood, where the nearest local primary schools are located. Whilst this would be a relatively long walk, some occupants may choose to undertake this depending upon their propensity to walk, although I recognise that many will not.
20. There are bus services that operate through the village, linking to Bicester and Aylesbury, being around a 10 minute walk from the site. The services are irregular and do not offer journeys on Sundays. That said, having a 6 day service that runs between 2 large settlements during the day would, to my mind, be relatively good access for a rural bus service.
 21. There is a village shop in Calvert, to the north, although there is no footpath from Edgcott to Calvert and most journeys are likely to be taken by car. **The nearest doctor's surgery is in Steeple Claydon, a short drive from the site.**
 22. Larger settlements such as Bicester or Aylesbury are likely to be used in the main when accessing shops and services. However, the site is around a 5 minute drive from the A41, having relatively good access to classified roads. The journey would be around 20 minutes to Bicester and around 30 minutes to Aylesbury by private car.
 23. Overall, the site occupants are likely to be largely reliant upon private vehicles to access most services and facilities. However, these services and facilities are not long journeys. Indeed, the local primary school and the shop in Calvert are around a 5 minute drive from the site.
 24. The Framework is clear that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Moreover, the Gypsy and Traveller way of life means that they travel for economic and other purposes, generally towing their caravan. This unavoidably involves the use of a private vehicle irrespective of location.
 25. Additionally, the PPTS recognises that a settled base can reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability. For other family members who have ceased to travel, either temporarily or permanently, they would need to access services within a reasonable travelling distance. However, as identified above, many of the essential services are a short drive away, which to my mind offers a reasonable access, considering the Gypsy and Traveller way of life.
 26. This is particularly the case considering that any edge of settlement sites, or sites within settlements are likely to be either allocated, or suitable for housing for the settled community. This means that they would be unavailable to accommodate Gypsy and Traveller sites, which is why many sites are often found in countryside locations. The benefit of this location is that it is not away from an existing settlement, its location is not isolated and this would encourage shorter car journeys.
 27. Additionally, a settled base can reduce unauthorised encampments, reduce the need for continuous travel and facilitate consistent access to schools and medical services. This would have wider sustainability benefits.
 28. Therefore, given the specific use of the site, the occupants would have reasonable access to existing local services and facilities. This would be

compliant with Policies D11, S1, S2, S3, S6 and T1 of the VALP. These seek to ensure that the site has reasonable access to existing local services and facilities, encouraging a modal shift towards greater use of sustainable forms of transport and development to be concentrated in sustainable locations. There would also be compliance with the Framework and the PPTS, which seek to promote sustainable transport, and ensure that traveller sites are sustainable.

Surface and foul water drainage

29. The details presented by the appellant for the surface and foul water drainage are minimal. However, the reason for this is that often these matters are subject to a planning condition. This can reduce the need for expensive studies being carried out when it is unknown if planning permission would be granted. In the case of Gypsies and Travellers, this is a genuine concern given the costs that can arise.
30. In this instance, the Council is of the opinion that these details cannot be secured by condition. It considers that the site is not capable of technically being able to drain the surface water or safely treat the foul water.
31. Whilst the ground conditions may be more impermeable than other areas in the district, over half the site would not be developed. Furthermore, the hardstanding could comprise permeable materials, and only the day rooms would be permanent fixtures. Therefore, I fail to understand how a technical solution to drain the site could not be achieved by condition. Given that the occupants are on site, the condition would require these details to be submitted within a set time frame. If they were not submitted, or the details were unacceptable and a solution could not be found, the wording of the condition results in the planning permission ceasing. Therefore, the Council is protected in all regards.
32. In terms of the foul drainage, whilst the application form indicates a cess pit, the appellant indicated that a modern method would be employed, such as a package sewage treatment plant. Again, this matter could be subject to the same condition, and there is plenty of space on site to fit this underground feature. I see no reason why this could not be detailed in a condition.
33. Therefore, with the imposition of a condition, the means of surface and foul water drainage of the site would be sufficient. This would be compliant with Policies D11, I4 and I5 of the VALP, which seek to ensure the site is capable of being adequately serviced by sewerage disposal facilities, and would not result in increased flooding, or contamination of water elsewhere.
34. There would also be compliance with the Framework and the Planning Practice Guidance on water supply, wastewater and water quality. These seek to plan positively for water supply and quality by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of water pollution.

Protected species

35. The area is identified as a '**red**' impact risk area for Great Crested Newts (GCN). This means there is high habitat suitability for newts on site and/or in the surrounding landscape.

36. There are 2 ponds in the field to the north of the site, and there is a pond to the east. The Great Crested Newt eDNA Survey (July 2022) outlines that the ponds to the east and north tested negative for GCN, but the pond on the boundary was inaccessible due to overgrown vegetation. Of the remaining 6 ponds to the south of the site, 3 tested negative for GCN and 3 tested positive. The 3 ponds which tested positive are approximately 250m from the site to the south and south-east, on the other side of a road. Although GCN have been known to cross over roads to access other areas, the road would inevitably reduce connectivity to the site, particularly given the ponds tested to the north of the road did not have a GCN presence.
37. Significant works have already taken place on site in the form of hardstanding. The proposed works would create a new access, but in the main would not create greater areas of hardstanding. Therefore, much of the work has already occurred without any previous assessment for GCN or other protected species. The eDNA report details that owing to site clearance, no further impacts are anticipated and the likelihood that GCN were impacted during the site works was low.
38. At the Hearing, the Council recognised that works had taken place. It would be impossible to ascertain the site conditions pre-development. However, the Council maintained that there could have been GCN on site. There is no evidence to determine this either way, and a precautionary approach should be adopted.
39. The Council advised at the Hearing that a precautionary method statement to include mitigation would be necessary. This would ensure GCN were protected from the development going forward and mitigation would be put in place to offset any harms. The appellants have no objection to this.
40. Therefore, given the future works are unlikely to lead to any further impact, and with the imposition of a condition, the proposal would have an acceptable effect upon protected species. This would be compliant with Policies D11 and NE1 of the VALP, which seek to ensure that Gypsy and Traveller development does not have a significantly adverse impact on biodiversity.

Biodiversity Net Gain

41. Policy NE1 of the VALP requires a biodiversity net gain (BNG). This will be sought by protecting, managing, enhancing and extending existing biodiversity resources, and by creating new biodiversity resources.
42. It was detailed at the Hearing that the gain could be anything, provided it was positive. However, the Council were concerned that BNG could not be provided the site, and off site measures would be necessary, which would necessitate a legal obligation. The appellants strongly refute this, given that over half the site would remain undeveloped and significant hedgerow planting would be proposed.
43. The site appears to have sufficient space in which planting, hedgerows and other methods could be employed to secure BNG. This could be subject to a condition that requires the submission of a BNG Report and associated Biodiversity Metric demonstrating that BNG can be achieved on site.
44. Furthermore, like my findings in relation to drainage, if the appellants fail to demonstrate this, then the wording of condition 2 is such that the permission

would cease. With the imposition and satisfaction of this condition, the proposal would achieve BNG and this would be compliant with Policies D11 and NE1 of the VALP.

Other Matters

45. The need for pitches for Gypsies and Travellers, the personal circumstances of the occupiers, including the best interests of the children, the Human Rights Act and the Public Sector Equality Duty were all discussed during the Hearing. However, given my findings above, it would not be necessary to consider these matters any further as there would be policy compliance.
46. Local residents complain of noise from generators, however, no noise nuisance has been reported to the Council. Furthermore, the use of generators is expected to cease if permission is granted because the appellants are likely to secure a mains electric connection. I do not consider that a condition to control noise from this source would be necessary given the nearest receptor would be footpath users, and this would be for a very short and transient period.
47. Other appeal decisions were presented by both parties. I have had regard to them so far as necessary, whilst also noting that the facts and matters in each of these appeals turn on things which are materially different, such as location.

Conditions

48. The plans are listed for certainty [condition 1]. A site development scheme is necessary, which will require details of hard and soft landscaping, surface and foul drainage, external lighting, arboricultural method statement and tree protection, BNG and slab levels for the dayrooms [condition 2]. The time for the submission of these details was suggested as 3 months. However, there is a requirement for GCN mitigation. Additional surveys could be necessary, and the timings for these is dependent upon certain periods of year. Therefore, increasing the time requirement to 6 months for condition 2 is reasonable to ensure there is sufficient time for the GCN mitigation to be carried out and all other conditional requirements to be met. The details required in condition 2 are necessary to ensure that the proposal has an acceptable visual effect, mitigates flooding and contamination risk, and is policy compliant.
49. A scheme for GCN mitigation and working methods would be necessary for the reasons set out above [condition 3]. Implementation of the new access and closure of the existing access is necessary to ensure the scheme has a safe and suitable access point [condition 4]. Details of the materials for the dayrooms is necessary to ensure the external appearance is suitable [condition 5]. Maintenance of the approved landscaping would be necessary to ensure that it becomes well-established [condition 6].
50. A condition restricting the pitch numbers, type and number of caravans should be imposed to limit the visual impact [condition 7]. Likewise, conditions relating to external lighting [condition 8], the parking of larger commercial vehicles [condition 9] and no commercial use or storage [condition 10] would be necessary to safeguard the character of the area.
51. **Despite the appellant's objection, a** restriction on boundary treatments is necessary, given the size of the site and harm that various domestic boundary treatments could have upon the character of the area [condition 11]. A policy

restricting the site to the occupation of Gypsies and Travellers is necessary given this is what the proposal is for [condition 12].

52. A condition for a Construction Environment Management Plan and Habitat Management Plan was suggested by the Council. However, given the requirements in conditions 2 and 3 for both BNG and GCN mitigation, this condition would not be necessary or reasonable.
53. The Council requested that the surface water drainage condition included specified ground investigations so that there is evidence of suitable soakaways. However, condition 2 requires details of the method employed to delay and control the surface water discharged from the site and it is for the Council to assess the scheme submitted. Therefore, I do not consider it necessary to apply a separate condition for ground investigations.

Conclusion

54. For the reason set out above, the appeal is allowed.

Katie McDonald

INSPECTOR

Appearances

For the Local Planning Authority:	
Bibi Motuel	Planning Officer, Development Management
Laura Pearson	Team Leader, Development Management
Laura Lee Briggs	Planning Solicitor Buckinghamshire Council
Louise Anderson	Principal Planner, Planning Policy
Helen Harding	Principal Planner, Planning Policy
Alex Totty	Sustainable Drainage Officer, Lead Local Flood Authority
Emma Foster	Ecology Officer
Chloe Roberts	District Licensing Officer (Great Crested Newts)
Olivia Stapleford	Planning Enforcement and Monitoring Team Leader
For the appellants:	
Alan Masters	Counsel for the appellant
Tony White	Agent
Patrick Ward	Appellant representative
John James Ward	Appellant
Rose Gentle	Appellant's family member
Kaley Guest	Appellant's family member

Hearing Documents

HD1	Amended site plan – drawing No 001
HD2	Indicative site plan
HD3	Bus timetables

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - **Site plan 001 (25 January 2024)**
 - **Site Layout Plans, reference: RA1584/01**
 - **As proposed dayroom, reference: J003766-DD-04**
 - **As Proposed Visibility Splays, reference: J003766-DD-05.**

- 2) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 6 months of the date of this decision a scheme for:
 - a) hard and soft landscaping of the site. This shall include details of boundary treatments, hard surfacing, tree, hedge and shrub planting, including species, plant sizes, numbers and densities;
 - b) the means of surface water drainage of the site, based on sustainable drainage principles to include information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - c) the means of foul water drainage;
 - d) proposed and existing external lighting on the boundary of and within the site;
 - e) Arboricultural Method Statement and Tree Protection Plan, adhering to British Standard 5837;
 - f) Biodiversity Net Gain Report and associated Biodiversity Metric demonstrating that Biodiversity Net Gain can be achieved on site; and,
 - g) Slab levels for the dayrooms;shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation and a management and maintenance plan for the lifetime of the development for b) and c).
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) Before any further works take place on site, including hardstanding or development, a precautionary great crested newt method statement,

including mitigation, shall be submitted to and approved in writing by the local planning authority. The measures shall be implemented in accordance with the approved details.

- 4) Within 3 months of the final condition being approved, the means of access shall have been sited and laid out in accordance with approved **drawings 'As Proposed Visibility Splays, reference: J003766-DD-05, dated August 2022' and 'Site Layout Plans, reference: RA1584/01, dated September 2022'**. The access shall be retained and the minimum vehicular visibility splays of 2.4m by 79m shall be provided in either direction of the proposed access onto Lawn Hill, kept clear from any obstruction between 0.6m and 2m above ground level. Upon first use of the approved access, the existing access shall be stopped up and landscaped in accordance with the approved scheme.
- 5) Prior to commencement of the day rooms above slab level, a full schedule of all materials, finishes and samples to be used in the external walls and roofs of the day rooms shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) Any seeding or turfing which fails to establish or any trees or plants which, within five years from the approved landscaping being completed, die or become so seriously damaged or diseased that their long term amenity value has been adversely affected, shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape scheme.
- 7) No more than 4 pitches, as laid out in accordance with the approved site layout, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, as amended shall be stationed on the site at any time, and of which no more than 2 caravans per pitch, one of which shall be a static caravan/mobile home.
- 8) Notwithstanding the requirements of condition 2, no additional external lighting shall be installed on the site unless details of the position, height and type of lights have been submitted to and approved in writing by the local planning authority.
- 9) No vehicle over 3.5 tonnes, shall be stationed, parked or stored on this site.
- 10) No commercial activities shall take place on the land, including the storage of materials.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no walls, fences or other means of enclosure other than those shown on the approved plans shall be erected on the site.
- 12) The site shall not be occupied by any persons other than Gypsies and Travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites 2023 (or its equivalent in replacement national policy).

END OF CONDITIONS



Great Crested Newt Mitigation Plan

Land Adjacent to Lawn Hill, Edgecott, Aylesbury, Buckinghamshire, HP18 0TT

Peter Brownjohn

Status	Issue	Name	Date
Final	1	Nicole Gullan BSc (Hons) MRSB TechArborA, Senior Ecological and Arboricultural Consultant	03/03/2024

Arbtech Consultant's Contact Details:

Nicole Gullan BSc (Hons) MRSB TechArborA
Senior Consultant

Email: nicolegullan@arbtech.co.uk

<https://arbtech.co.uk>

Limitations and Copyright

Arbtech Consulting Limited has prepared this report for the sole use of the above-named client or their agents in accordance with our General Terms and Conditions, under which our services are performed. It is expressly stated that no other warranty, expressed or implied, is made as to the professional advice included in this report or any other services provided by us. This report may not be relied upon by any other party without the prior and express written agreement of Arbtech Consulting Limited. The conclusions and recommendations contained in this report are based upon information provided by third parties. Information obtained from third parties has not been independently verified by Arbtech Consulting Limited.

© This report is the copyright of Arbtech Consulting Limited. Any unauthorised reproduction or usage by any person other than the addressee is strictly prohibited.

Industry Guidelines and Standards

This report has been written with due consideration to:

- Chartered Institute of Ecology and Environmental Management (2017). Guidelines for Preliminary Ecological Appraisal. 2nd edition. Chartered Institute of Ecology and Environmental Management, Winchester.
- Chartered Institute of Ecology and Environmental Management (2018). Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine. Version 1.1. Chartered Institute of Ecology and Environmental Management, Winchester.
- Chartered Institute of Ecology and Environmental Management (2017). Guidelines on Ecological Report Writing. Chartered Institute of Ecology and Environmental Management, Winchester.
- Chartered Institute of Ecology and Environmental Management (2020). Guidelines for Accessing, Using and Sharing Biodiversity Data in the UK. 2nd Edition. Chartered Institute of Ecology and Environmental Management, Winchester.
- British Standard 42020 (2013). Biodiversity – Code of Practice for Planning and Development.
- British Standard 8683:2021 (2021). Process for Designing and Implementing Biodiversity Net Gain.

Proportionality

The work involved in preparing and implementing all ecological surveys, impact assessments and measures for avoidance, mitigation, compensation and enhancement should be proportionate to the predicted degree of risk to biodiversity and to the nature and scale of the proposed development. Consequently, the decision-maker should only request supporting information and conservation measures that are relevant, necessary and material to the application in question. Similarly, the decision-maker and their consultees should ensure that any comments and advice made over an application are also proportionate.

This approach is enshrined in Government planning guidance, for example, paragraph 174 of the National Planning Policy Framework for England.

The desk studies and field surveys undertaken to provide a Preliminary Ecological Appraisal (PEA) might in some cases be all that is necessary.

(BS 42020, 2013)

Contents

1.0 Introduction and Context 5

 1.1 Background 5

 1.2 Site Context 5

 1.3 Survey Information 5

2.0 Ecological Mitigation, Management and Enhancement Measures 7

 2.1 Informative..... 7

 2.2 Mitigation Measures 7

 2.2 Enhancement and Management Measures 9

5.0 Bibliography 10

 Appendix 1: Proposed Development Plan 12

 Appendix 2: Site Location Plan 13

 Appendix 3: Habitat Survey Plan 14

 Appendix 4: eDNA Survey Plan..... 15

 Appendix 5: GCN Mitigation Plan..... 16

 Appendix 6: Legislation and Planning Policy 17

1.0 Introduction and Context

1.1 Background

Arbtech Consulting Limited was instructed by Peter Brownjohn to produce a Great Crested Newt (GCN) Mitigation Plan for Land Adjacent to Lawn Hill, Edgecott, Aylesbury, Buckinghamshire, HP18 0TT (hereafter referred to as “the site”). A proposed development plan is p

The Plan was required to discharge a planning condition of an application to Buckinghamshire Council for “change of use of land for the creation of 4no Gypsy/Traveller Pitches for residential use, including the siting of 4no mobile home, 4no touring caravan and the erection of a dayroom (Retrospective)”, which was granted permission at appeal in January 2024. The condition reads as follows:

3. Before any further works take place on site, including hardstanding or development, a precautionary great crested newt method statement, including mitigation, shall be submitted to and approved in writing by the local planning authority. The measures shall be implemented in accordance with the approved details.

This plan has been informed by previous ecology work at the site:

- Preliminary Ecological Appraisal (“PEA”; Arbtech Consulting Ltd, March 2022)
- Great Crested Newt eDNA Survey (“GCN eDNA Survey”; Arbtech, July 2022)

1.2 Site Context

The site is located at National Grid Reference SP 68668 22691 and has an area of approximately 1.2 ha comprising dense continuous scrub, hedgerows, wetland and grassland, with two adjacent ponds to the north. It is surrounded by rural agricultural lanes with HS2 development works to the east and HMP Grendell Springhill prison to the south.

A site location plan is provided in Appendix 2 and a habitat plan in Appendix 3.

1.3 Survey Information

Clearance works on site had already taken place at the time of the PEA (Arbtech, March 2022). The site comprised scrub, marshy grassland and hard standing at the time of the PEA, with one pond on site, and species-poor hedgerows with trees bordering the southern and western sides of the site. It was concluded from stored deadwood on site, local knowledge and a review of historical aerial imagery that the site most likely comprised continuous scrub before the clearance works.

The PEA (Artech, March 2022) identified nine ponds within 500m of the site, including one within the site itself. A map of the ponds is provided in Appendix 4. Three ponds were tested for GCN using eDNA (Arbtech, July 2022):

- Pond A, onsite, tested negative for GCN
- Pond C, 500m north of the site, tested negative for GCN
- Pond D, 250m south of the site, tested positive for GCN. There is a road and an agricultural yard between the site and this pond.

A fourth pond (Pond B, just north of the site margins) was targeted for GCN eDNA testing but was not surveyable on the day due to overgrown vegetation preventing access. Two other ponds are known to contain GCN within 500; both are located ~250m from the site to the south and south-east, with a road and an agricultural yard between the site and these ponds.

The eDNA report concluded that no further impacts on GCN are anticipated, as clearance works have already been undertaken.

2.0 Ecological Mitigation, Management and Enhancement Measures

2.1 Informative

Due to the presence of confirmed GCN breeding ponds within 500m of the site, and the known large population of GCN in the local area, the following mitigation measures are outlined to ensure that no harm come to GCN during the proposed works. Further, site specific enhancements are recommended to improve the site for GCN post-development.

2.2 Mitigation Measures

Table 1 details the ecological mitigation measures to be implemented at the site.

Table 1 – Mitigation Measures

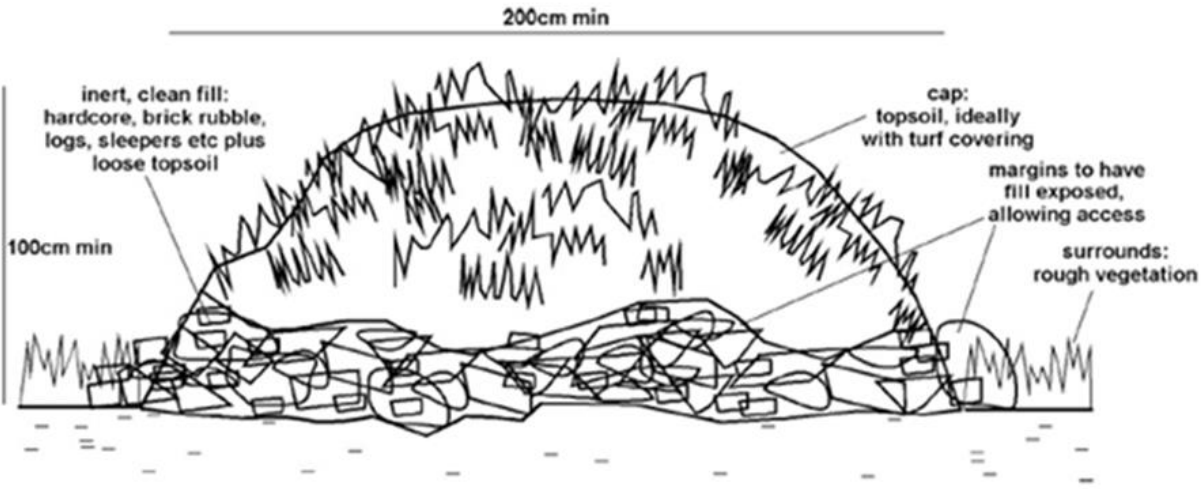
Works	Specification
Amphibian mitigation	<p>If any works to the pond on site are undertaken, these will need to be informed by another eDNA test. This will be undertaken by a suitably qualified ecologist between 15th April and 30th June inclusive. If the eDNA test confirms that GCN are still absent from the pond on site, then the works to the pond can be undertaken without ecological supervision. If the eDNA test returns a positive result, a European Protected Species Mitigation Licence will be sought from Natural England, or the site will be entered into the District Level Licensing Scheme.</p> <p>Clearance works have already been undertaken. Any further vegetation removal on site will be kept to an absolute minimum and will be undertaken using hand tools during the GCN active season (April to September inclusive), under ecological supervision, in temperatures above 5°C, to minimise the risk of disturbing hibernating GCN.</p> <p>Any common amphibians will be carefully captured by hand and relocated to suitable habitat in the western part of the site. If a GCN, or evidence of a GCN is found, all works will stop, and a European Protected Species Mitigation Licence will be sought from Natural England, or the site will be entered into the District Level Licensing Scheme.</p> <p>Before any clearance works start, the ecologist will undertake a fingertip search of the area that is to be removed.</p> <p>Hedgerows should first be cut to just above ground level leaving the root balls intact. Root balls should then be removed using hand tools where possible. If root balls cannot be removed by hand, they must be removed slowly, being lifted using a staged approach. The staged removal of</p>

	<p>root balls will include a phased pulling technique, which will pull the root ball no more than 300mm at a time, allowing the SQE to inspect the root ball after each pulling phase for the presence of GCN. Clearance will be undertaken from an initial cut in the centre of the hedgerow, and then moved outwards; this will ensure that creating 'islands' that animals could be trapped in will be avoided, and that any newts present will be able to move east or west into suitable habitat surrounding the site, which will be unaffected by the works.</p> <p>Grassland/scrub should first be cut to just above ground level from the inside out; this will ensure that creating 'islands' that animals could be trapped in will be avoided, and that any newts present will be able to move into other suitable habitat surrounding the site, all of which will be unaffected by the works.</p> <p>Once the vegetation removal described above is complete, the construction zone will be kept clear of rubble piles and stored items to discourage amphibians from moving into the area. Any materials will be stored on pallets or removed from site to prevent unintentional creation of refuge areas for amphibians. If rubble piles are created during construction and remain on site for more than 24 hours, then a re-inspection by an ecologist will be required before it can be removed. Vegetation will be maintained at ground level within the working area.</p>
New Hedgerow Planting	<p>New hedgerow planting will be undertaken around the boundaries of the site. New native hedgerow species will be planted to enhance the site for biodiversity, including for GCN. Given the likelihood that GCN may be present on site, new hedgerow installation will be supervised by a suitably qualified ecologist.</p>

2.2 Enhancement and Management Measures

Table 2 details the ecological enhancement and management measures for the site. These are illustrated in Appendix 5.

Table 2 – Enhancement and Management Measures

Works	Specification
Amphibian habitat enhancements	Details of new planting will be specified in the landscaping plans for the site. Diverse habitats including hedgerow, scrub and grassland will ensure that the developed site continues to provide habitat value for amphibians, including GCN.
Amphibian refugia	<p>Four refugia will be created using materials such as log piles, brush, rock etc (see Figure 1 below). The refugia will be placed below new areas of hedgerow planting to increase the habitat suitability of this new habitat for terrestrial-phase amphibians, including GCN.</p>  <p>Figure 1: Permanent refugia.</p>

5.0 Bibliography

- Arbtech Consulting Ltd (2021). File Note – Environmental DNA Survey for Great Crested Newts.
- Biggs, J., Ewald, N., Valentini, A., Gaboriaud, C., Dejean, T., Griffiths, R., Foster, J., Wilkinson, J., Arnell, A., Brotherton, P., Williams, P. and Dunn, F. (2014). Using eDNA to Develop a National Citizen Science-based Monitoring Programme for the Great Crested Newt (*Triturus cristatus*). Biological Conservation. 183. 10.1016/j.biocon.2014.11.029.
- British Standard 42020 (2013). Biodiversity – Code of Practice for Planning and Development.
- British Standard 8683:2021 (2021). Process for Designing and Implementing Biodiversity Net Gain.
- Chartered Institute of Ecology and Environmental Management (2017). Guidelines for Preliminary Ecological Appraisal. 2nd edition. Chartered Institute of Ecology and Environmental Management, Winchester.
- Chartered Institute of Ecology and Environmental Management (2017). Guidelines on Ecological Report Writing. Chartered Institute of Ecology and Environmental Management, Winchester.
- Chartered Institute of Ecology and Environmental Management (2018). Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine. Version 1.1. Chartered Institute of Ecology and Environmental Management, Winchester.
- Chartered Institute of Ecology and Environmental Management (2020). Guidelines for Accessing, Using and Sharing Biodiversity Data in the UK. 2nd Edition. Chartered Institute of Ecology and Environmental Management, Winchester.
- Edgar, P., Foster, J. and Baker, J (2010). Reptile Habitat Management Handbook. Amphibian and Reptile Conservation, Bournemouth
<http://downloads.gigl.org.uk/website/Reptile%20Habitat%20Management%20Handbook.pdf>
- Gent, T. and Gibson, S. (2003). Herpetofauna Workers' Manual. JNCC, Peterborough.
- Google Earth (2022). Accessed on 19/02/2022.
- HMSO: Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 <https://www.legislation.gov.uk/ukxi/2019/579/contents/made>
- HMSO: Countryside & Rights of Way Act (2000) <http://jncc.defra.gov.uk/page-1378>
- HMSO: Natural Environmental and Rural Communities Act (2006) <http://www.legislation.gov.uk/ukpga/2006/16/contents>
- HMSO: Wildlife and Countryside Act 1981 (as amended 01.04.1996) <http://jncc.defra.gov.uk/page-1377>
- Icen Ecology Ltd (2021). Preliminary Ecological Appraisal.
- Joint Nature Conservation Committee (2010). Handbook for Phase 1 habitat survey a technique for environmental audit.
http://jncc.defra.gov.uk/PDF/pub10_handbookforphase1habitatsurvey.pdf

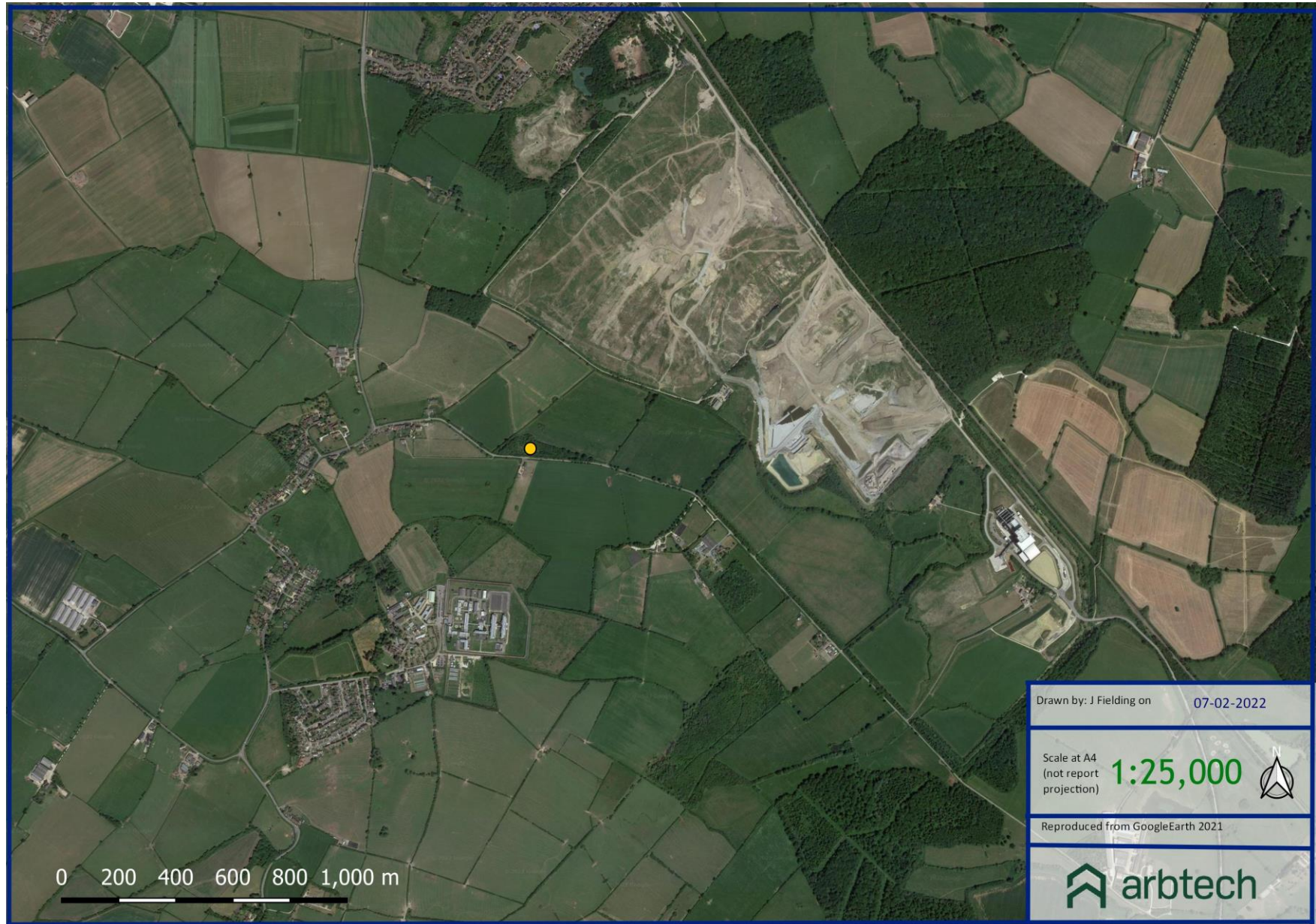
- Langton, T., Beckett, C. and Foster, J (2001). Great Crested Newt Conservation Handbook. Froglife. Suffolk. http://www.froglife.org/wp-content/uploads/2013/06/GCN-Conservation-Handbook_compressed.pdf
- Oldham R.S., Keeble J., Swan M.J.S. and Jeffcote M. (2000). Evaluating the Suitability of Habitat for the Great Crested Newt (*Triturus cristatus*). Herpetological Journal 10(4), 143-155. <https://www.thebhs.org/publications/the-herpetological-journal/volume-10-number-4-october-2000/1617-03-evaluating-the-suitability-of-habitat-for-the-great-crested-newt-triturus-cristatus/file>
- Planning Practice Guidance (2021) <https://www.gov.uk/government/collections/planning-practice-guidance>

Appendix 1: Proposed Development Plan

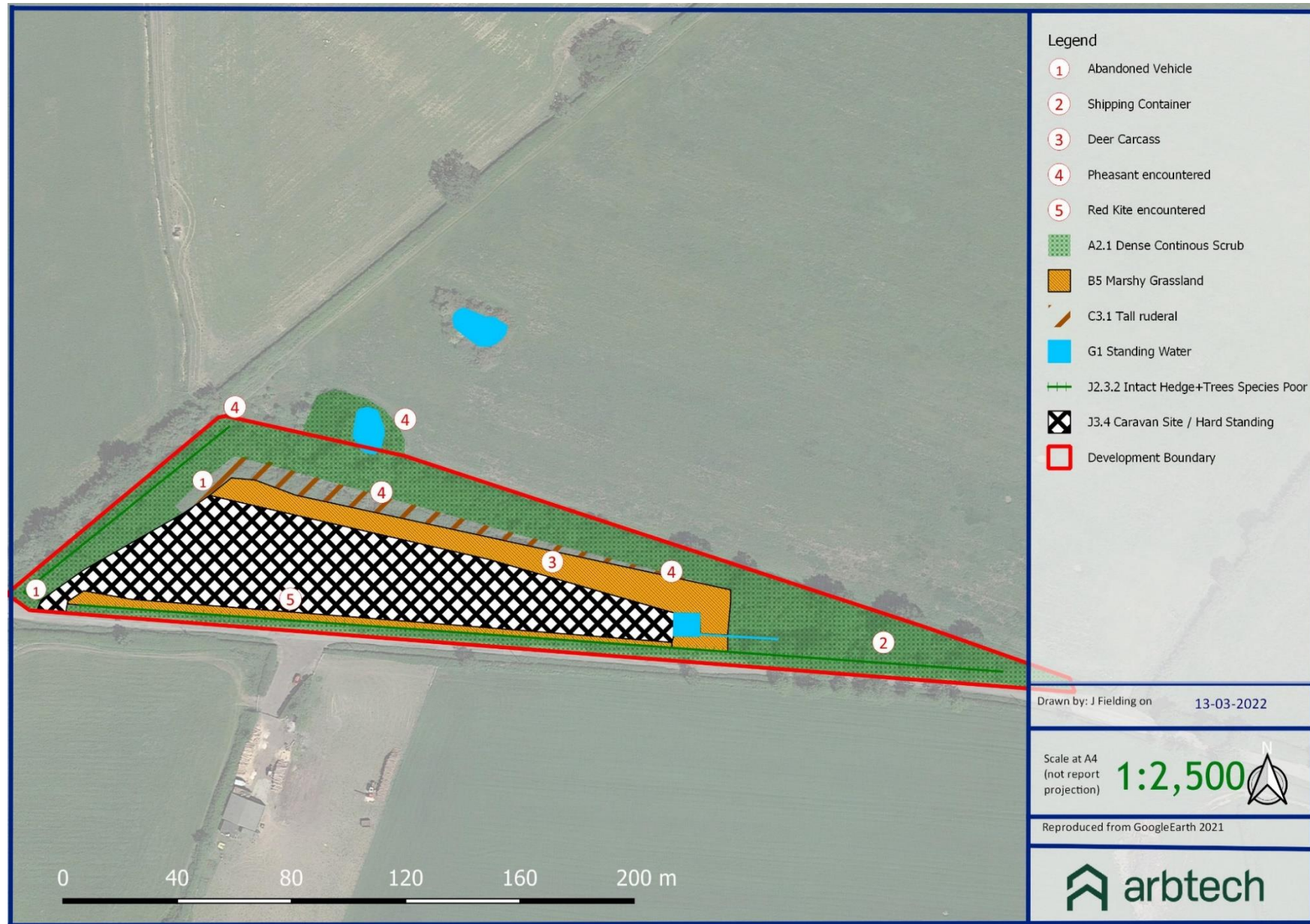


Site Plan As Proposed 1:500

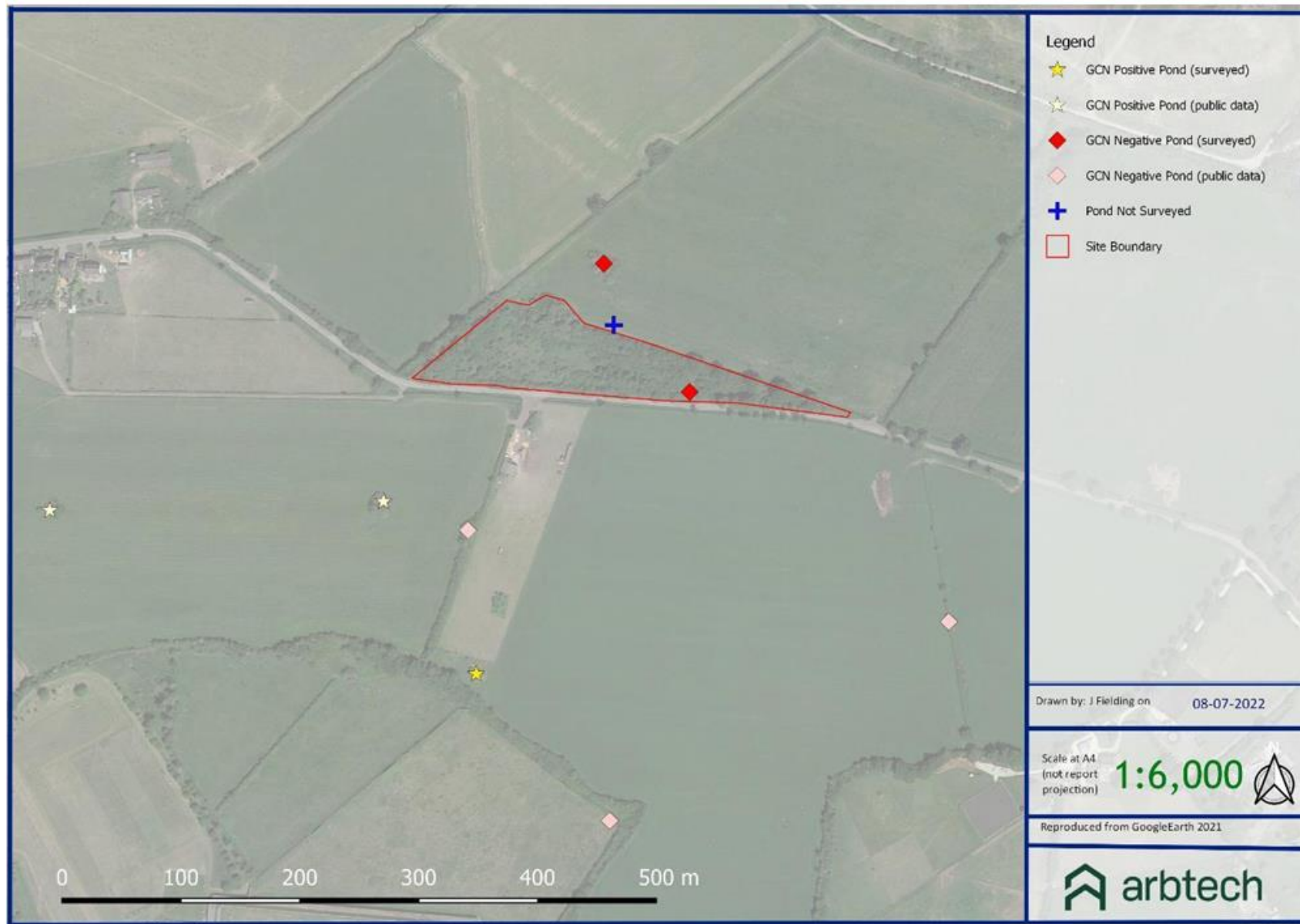
Appendix 2: Site Location Plan



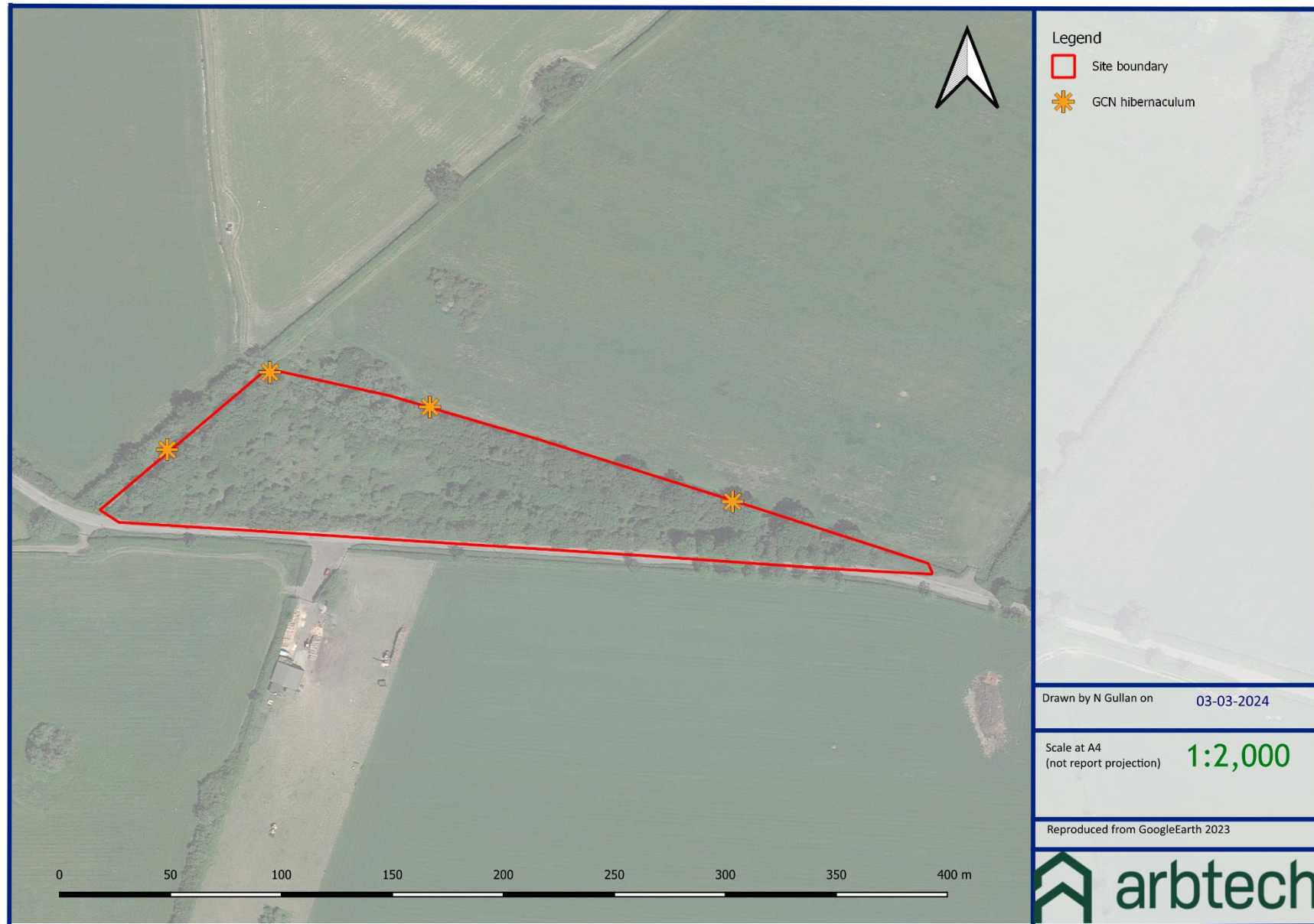
Appendix 3: Habitat Survey Plan



Appendix 4: eDNA Survey Plan



Appendix 5: GCN Mitigation Plan



Appendix 6: Legislation and Planning Policy

LEGAL PROTECTION

National and European Legislation Afforded to Habitats

International Statutory Designations

Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) are sites of European importance and are designated under the EC Habitats Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora (the Habitats Directive) and the EC Birds Directive 2009/147/EC on the conservation of wild birds (the Wild Birds Directive) respectively. Both form part of the wider Natura 2000 network across Europe.

Under the Habitats Directive Article 3 requires the establishment of a network of important conservation sites (SACs) across Europe. Over 1000 animal and plant species, as well as 200 habitat types, listed in the directive's annexes are protected in various ways:

Annex II species (about 900): core areas of their habitat are designated as Sites of Community importance (SCIs) and included in the Natura 2000 network. These sites must be managed in accordance with the ecological needs of the species.

Annex IV species (over 400, including many Annex II species): a strict protection regime must be applied across their entire natural range, both within and outside Natura 2000 sites.

Annex V species (over 90): their exploitation and taking in the wild is compatible with maintaining them in a favourable conservation status.

SPAs are classified under Article 2 of the Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds both for rare bird species (as listed on Annex I) and for important migratory species.

The Conservation of Habitats and Species Regulations 2017 (as amended) form the legal basis for the implementation of the Habitats and Birds Directives in terrestrial areas and territorial waters out to 12 nautical miles in England and Wales (including the inshore marine area) and to a limited extent in Scotland and Northern Ireland.

Ramsar sites are designated under the Convention on Wetlands of International Importance, agreed in Ramsar, Iran, in 1971. The Convention covers all aspects of wetland conservation and recognises the importance of wetland ecosystems in relation to global biodiversity conservation. The Convention refers to wetlands as “*areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres*”. However, they may also include riparian and coastal zones. Ramsar sites are statutorily protected under the Wildlife & Countryside Act 1981 (as amended 01.04.1996) with further protection provided by the Countryside and Rights of Way (CRoW) Act 2000. Policy statements have been issued by the Government in England and Wales highlighting the special status of Ramsar sites. The Government in England and Wales has issued policy statements which ensure that Ramsar sites are afforded the same protection as areas designated under the EC Birds and Habitats Directives as part of the Natura 2000 network (e.g. SACs & SPAs). Further provisions for the protection and management of SSSIs have been introduced by the Nature Conservation (Scotland) Act 2004.

National Statutory Designations

Sites of Special Scientific Interest (SSSI) are designated by nature conservation agencies in order to conserve key flora, fauna, geological or physio-geographical features within the UK. The original designations were under the National Parks and Access to the Countryside Act 1949 but SSSIs were then re-designated under the Wildlife & Countryside Act 1981 (as amended). As well as reinforcing other national designations (including National Nature Reserves), the system also provides statutory protection for terrestrial and coastal sites which are important within the European Natura 2000 network and globally.

Local Statutory Designations

Local authorities in consultation with the relevant nature conservation agency can declare Local Nature Reserves (LNRs) under the National Parks and Access to the Countryside Act 1949. LNRs are designated for flora, fauna or geological interest and are managed locally to retain these features and provide research, education and recreational opportunities.

Non- Statutory Designations

All non-statutorily designated sites are referred to as Local Wildlife Sites (LWS) and can be designated by the local authority for supporting local conservation interest. Combined with statutory designation, these sites are considered within Local Development Frameworks under the Town and Country Planning system and are a material consideration during the determination of planning applications. The protection afforded to these sites varies depending on the local authority involved.

Regionally Important Geological Sites (RIGs) are the most important geological and geomorphological areas outside of statutory designations. These sites are also a material consideration during the determination of planning applications.

The Hedgerow Regulations 1997

The Hedgerow Regulations 1997 are designed to protect 'important' countryside hedgerows. Importance is defined by whether the hedgerow (a) has existed for 30 years or more; or (b) satisfies at least one of the criteria listed in Part II of Schedule 1 of the Regulations.

Under the Regulations, it is against the law to remove or destroy hedgerows on or adjacent to common land, village greens, SSSIs (including all terrestrial SACs, NNRs and SPAs), LNRs, land used for agriculture or forestry and land used for the keeping or breeding of horses, ponies or donkeys without the permission of the local authority. Hedgerows 'within or marking the boundary of the curtilage of a dwelling-house' are excluded.

National and European Legislation Afforded to Species

The Conservation of Habitats and Species Regulations 2017 (as amended)

The Conservation of Habitats and Species Regulations 2017 (as amended) aims to promote the maintenance of biodiversity by requiring the Secretary of State to take measures to maintain or restore wild species listed within the Regulations at a favourable conservation status.

The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities. Licenses may be granted for a number of purposes (such as science and education, conservation, preserving public health and safety), but only after the appropriate authority is satisfied that there are no satisfactory alternatives and that such actions will have no detrimental effect on wild population of the species concerned.

The Wildlife and Countryside Act (WCA) 1981 (as amended)

The Wildlife and Countryside Act (WCA) 1981 (as amended) implements the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention 1979, implemented 1982) and implements the species protection requirements of EC Birds Directive 2009/147/EC on the conservation of wild birds in Great Britain (the birds Directive). The WCA 1981 has been subject to a number of amendments, the most important of which are through the Countryside and Rights of Way (CRoW) Act (2000).

Amphibians and Reptiles

The sand lizard *Lacerta agilis*, smooth snake *Coronella austriaca*, natterjack toad *Epidalea calamita*, pool frog *Pelophylax lessonae* and great crested newt *Triturus cristatus* receive full protection under Habitats Regulations through their inclusion on Schedule 2. Regulation 41 prohibits:

- Deliberate killing, injuring or capturing of Schedule 2 species
- Deliberate disturbance of species in such a way as:
 - To impair their ability to survive, breed, or reproduce, or to rear or nurture young;
 - To impair their ability to hibernate or migrate
 - To affect significantly the local distribution or abundance of the species
- Damage or destruction of a breeding site or resting place

With the exception of the pool frog, these species are also listed on Schedule 5 of the WCA and they are additionally protected from:

- Intentional or reckless disturbance (at any level)
- Intentional or reckless obstruction of access to any place of shelter or protection
- Selling, offering or exposing for sale, possession or transporting for purpose of sale.

Other native species of reptiles are protected solely under Schedule 5, Section 9(1) & (5) of the WCA, i.e. the adder *Vipera berus*, grass snake *Natrix natrix*, common lizard *Zootoca vivipara* and slow-worm *Anguis fragilis*. It is prohibited to:

- Intentionally or recklessly kill or injure these species.

Effects on development works:

A European Protected Species Licence (EPSL) issued by the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) will be required for works likely to affect the breeding sites or resting places amphibian and reptile species protected under Habitats Regulations. A licence will also be required for operations liable to result in a level of disturbance which might impair their ability to undertake those activities mentioned above (e.g. survive, breed, rear young and hibernate). The licences are to allow derogation from the relevant legislation, but also to enable appropriate mitigation measures to be put in place and their efficacy to be monitored.

Although not licensable, appropriate mitigation measures may also be required to prevent the intentional killing or injury of adder, grass snake, common lizard and slow worm, thus avoiding contravention of the WCA.

NATIONAL PLANNING POLICY (ENGLAND)

Environment Act 2021

The Environment Act 2021 (EA 2021) received Royal Assent on 9 November 2021 and is expected to become fully mandated within the next couple of years. The Act principally creates a post Brexit framework to protect and enhance the natural environment. Through amendments to the Town and Country Planning Act 1990, the Act will require all planning permissions in England (subject to exemptions which is likely to include householder applications) to be granted subject to a new general pre-commencement condition that requires approval of a biodiversity net gain plan. This will ensure the delivery of a minimum of 10% measurable biodiversity net gain. The principal tool to calculate this will be the Defra Biodiversity 3.0 Metric. Works to enhance habitats can be carried out either onsite or offsite or through the purchase of 'biodiversity credits' from the Secretary of State. However, this flexibility may be removed (subject to regulations) if the onsite habitat is 'irreplaceable'. Both onsite and offsite enhancements must be maintained for at least 30 years after completion of a development (which period may be amended).

National Planning Policy Framework 2021

The National Planning Policy Framework promotes sustainable development. The Framework specifies the need for protection of designated sites and priority habitats and species. An emphasis is also made on the need for ecological infrastructure through protection, restoration and re-creation. The protection and recovery of priority species (considered likely to be those listed as species of principal importance under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006) is also listed as a requirement of planning policy.

In determining a planning application, planning authorities should aim to conserve and enhance biodiversity by ensuring that: designated sites are protected from harm; there is appropriate mitigation or compensation where significant harm cannot be avoided; measurable gains in biodiversity in and around developments are incorporated; and planning permission is refused for development resulting in the loss or deterioration of irreplaceable habitats including aged or veteran trees and also ancient woodland.

The Natural Environment and Rural Communities Act 2006 and the Biodiversity Duty

Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006, requires all public bodies to have regard to biodiversity conservation when carrying out their functions. This is commonly referred to as the 'biodiversity duty'.

Section 41 of the Act requires the Secretary of State to publish a list of habitats and species which are of 'principal importance for the conservation of biodiversity'. This list is intended to assist decision makers such as public bodies in implementing their duty under Section 40 of the Act. Under the Act these habitats and species are regarded as a material consideration in determining planning applications. A developer must show that their protection has been adequately addressed within a development proposal.

EUROPEAN PROTECTED SPECIES POLICIES

In December 2016 Natural England officially introduced the four licensing policies throughout England. The four policies seek to achieve better outcomes for European Protected Species (EPS) and reduce unnecessary costs, delays and uncertainty that can be inherent in the current standard EPS licensing system. The policies are summarised as follows:

- Policy 1; provides greater flexibility in exclusion and relocation activities, where there is investment in habitat provision;
- Policy 2; provides greater flexibility in the location of compensatory habitat;
- Policy 3; provides greater flexibility on exclusion measures where this will allow EPS to use temporary habitat; and,
- Policy 4; provides a reduced survey effort in circumstances where the impacts of development can be confidently predicted.

The four policies have been designed to have a net benefit for EPS by improving populations overall and not just protecting individuals within development sites. Most notably Natural England now recognises that the Habitats Regulations legal framework now applies to 'local populations' of EPS and not individuals/site populations.

APPENDIX 8

Item No.	Application No. and Parish	Statutory Target Date	Proposal, Location, Applicant
(1)	23/00815/FUL Hermitage	1 st June 2023 ¹	Part retrospective. Change of use of land for the formation of 5 Gypsy/Traveller pitches comprising of 1 mobile home, 1 touring caravan, and 1 utility building per pitch Land south of Sandhill, Hampstead Norreys Road, Hermitage Mr R Black

¹ Extension of time agreed with applicant until 31st October 2024

The application can be viewed on the Council's website at the following link:

<https://publicaccess.westberks.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

Recommendation Summary: Delegated to the Development Manager to grant planning permission subject to conditions.

Ward Member(s): Councillors Paul Dick and Heather Codling.

Reason for Committee Determination: More than 10 letters of objection received.

Committee Site Visit: 21st October 2024

Contact Officer Details

Name: Michael Butler
Job Title: Principal Planning Officer
Tel No: 01635 519111
Email: Michael.Butler@westberks.gov.uk

1. Introduction

- 1.1 The purpose of this report is for the Committee to consider the proposed development against the policies of the development plan and the relevant material considerations, and to make a decision as to whether to approve or refuse the application.
- 1.2 This application seeks planning permission for the retrospective change of use of land from a paddock (agricultural classification) to use as five gypsy and traveller pitches to include a mobile van, 1 mobile home and 1 utility building attached. In addition, a new vehicular access onto the Hampstead Norreys Road would be formed, with fencing on site to separate the pitches. Hardstanding would be laid out on site to accommodate the pitches. The whole site would be landscaped as proposed in the submitted amended plans.
- 1.3 The application site is rectangular in shape and lies immediately to the east of the Hampstead Norreys Road, to the south of Sandhills a detached dwelling adjacent the M4 to the north, to the west of the old rail line now a public right of way, and to the north of a detached bungalow. The site lies outside the defined settlement boundary of Hermitage and lies in the North Wessex Downs National Landscape (NWDNL), formerly the AONB.
- 1.4 The application site is just under 0.5ha. The application is part retrospective as the change of use has already occurred via the siting and occupation of caravans on the site, the laying of hard materials, and the erection of fencing.

Caravans legislation

- 1.5 Section 29(1) of the Caravan Sites and Control of Development Act 1960 (as amended) sets out that a caravan means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted. Section 13(1) of the Caravan Sites Act 1968 (as amended) defines a twin-unit caravan as a structure designed or adapted for human habitation which is, (a) composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and (b) when assembled it is physically capable of being moved by road from one place to another. Touring caravans, static caravan and various mobile homes constitute 'caravans' under the above legislation.
- 1.6 Caravans are not normally regarded as buildings or operational development under the Planning Acts. The application proposes a use which would enable the siting of caravans on plots. For this reason, it is not necessary to provide plans of individual caravans, and in assessing this application it must be recognised that different caravans will come and go on the site over time, if planning permission is granted. The number of pitches however will be controlled by the application description and the proposed conditions as will the nature of the occupants.

2. Planning History

- 2.1 There is no relevant planning application history.
- 2.2 The planning application is retrospective as initial operational development, and the material change of use occurred without planning permission. The land and development are subject to an injunction from the High Court to prevent further development until such a time as planning permission may be granted. The injunction permits certain named individuals to reside on site in the meantime.

3. Legal and Procedural Matters

- 3.1 **Environmental Impact Assessments (EIA):** The application has been screened under the EIA Regulations, having regard to the development types described in Paragraph 10b (urban development project) and 12e (permanent caravan sites) of Schedule 2, and given the sites location within the National Landscape, a sensitive area under the EIA Regulations. A negative screening opinion has been issued confirming the proposal is not EIA development.
- 3.2 **Publicity:** Publicity has been undertaken in accordance with Article 15 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, and the Council's Statement of Community Involvement. Site notices were displayed on the 3rd of May 2023 with a deadline for representations of the 25th May 2023. In addition, another site notice was erected on the 17th July with an expiry date of the 31st July 2024. This related to additional information being made available on the website along with amended plans. Further consultation has been undertaken on the drainage information submitted and in relation to a footpath link plan as well.
- 3.3 **Local Financial Considerations:** Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Whether or not a 'local finance consideration' is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms. It would not be appropriate to make a decision based on the potential for the development to raise money for a local authority or other government body. It is considered by officers that there are no material financial implications to be taken into account in the determination of this application.
- 3.4 **Public Sector Equality Duty (PSED):** In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The Council must have due regard to the need to achieve the following objectives:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 3.5 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 3.6 The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion

or belief. Whilst there is no absolute requirement to fully remove any disadvantage, the duty is to have regard to and remove or minimise disadvantage. In considering the merits of this planning application, due regard has been given to these objectives.

- 3.7 As the proposal directly affects gypsies and travellers, a group with protected characteristics, particular regard is required to these objectives. The proposals will result in accommodation on the site, and as such it is considered that the proposal has a positive effect under the Equalities Act and is consistent with the aforementioned objectives.
- 3.8 **Human Rights Act:** The development has been assessed against the provisions of the Human Rights Act, including Article 1 of the First Protocol (Protection of property), Article 6 (Right to a fair trial) and Article 8 (Right to respect for private and family life and home) of the Act itself. The consideration of the application in accordance with the Council procedures will ensure that views of all those interested are taken into account. All comments from interested parties have been considered and reported in summary in this report, with full text available via the Council’s website.
- 3.9 It is acknowledged that the Council as a public body is required to take into account the human rights of the applicants as members of the travelling/gypsy community and the needs of the child in relation to such matters as education and health care. In this regard the Council has received confidential information on the personal circumstances of the occupants of the site, which in the view of the officers supports to the overall recommendation of a balanced approval in this case.

4. Consultation

Statutory and non-statutory consultation

- 4.1 The table below summarises the consultation responses received during the consideration of the application. The full responses may be viewed with the application documents on the Council’s website, using the link at the start of this report.

<p>Hermitage Parish Council:</p>	<p>Strong objections to the application on numerous grounds. In summary: Contrary to policy, impact on community as a whole, impact on the National Landscape, drainage and sewerage concerns, noise from the M4, the site may be contaminated, impact on neighbours, poor / dangerous access dangerous, impact on local services, ecologically important area, the fact that unauthorised development has occurred. Outside settlement boundary and the site was greenfield. Application should not be permitted.</p> <p>An additional comment was sent in August this year still objecting to the application on visual impact grounds, the poor highways access , the PEA and LVIA are both poor and of little value and remind the Committee that the site is in the NWD NDL and outside the settlement boundary of the village.</p>
<p>Hampstead Norreys Parish</p>	<p>Object to the application on similar grounds to the above.</p>

Council (adjacent):	
Highways Officer:	Originally objected to the application on the basis that insufficient information received. Additional plans submitted. Now recommending conditional permission on the understanding that an amended block plan has been submitted indicating the footway to the south being shown and so conditioned.
Ecologist:	Conditional permission is recommended. The submitted PEA is accepted.
Tree Officer:	Updated site plan showing additional landscaping and updated arboricultural statement submitted. Now recommending conditional permission on the application.
Environmental Health Officer:	Originally concerned with the proximity of the site to the M4 and noise impact plus possible land contamination on site. Additional information submitted. Now recommending conditional approval.
Planning Policy Officer:	Provided details of supply and demand and relevant planning policies, as set out in the body of the report.
Drainage Officer:	Additional information requested. This has been submitted. The drainage officer is generally satisfied with the additional material but has requested additional filtration data and analysis of the submitted drainage calculations.
Thames Water:	No response received.

Public representations

5. Representations have been received from 62 contributors, all of whom object to the scheme. The full responses may be viewed with the application documents on the Council's website, using the link at the start of this report. In summary, the following issues/points have been raised:
- The fact that the site is unauthorised and retrospective so this should be taken into account.
 - Impact on amenity - site is becoming a biohazard , visual impact , additional noise from generators on site.
 - Impact on the character of the area and National Landscape.
 - Contrary to policy.
 - The site is greenfield and is outside the defined settlement boundary of Hermitage
 - Impact on local ecology and trees.
 - Poor/unsafe highways access.
 - Site to the north of the M4 has just been refused so this one should be as well.
 - The Council has taken too long in taking action against the site users.
 - The site is messy and unsightly.
 - Impact on users of the right of way to the east of the site.
 - Impact on local infrastructure and services.
 - No opportunity for local community cohesion as advised in Government policy.

- Poor drainage on the site and concerns about sewerage.
- Damaging precedent set if it were to be approved.
- Fear of crime will increase.
- Impact on local property values. [not a material planning consideration]
- Applicants are playing the planning system to their advantage.
- Insufficient information submitted with the application to properly assess it.
- Local air quality not good due to proximity of the M4
- No pre application advice undertaken.
- Impact on trees and local wildlife.
- In addition a letter has been sent to Councillors of the Committee urging them to refuse the application on a range of reasons including non-compliance with planning policy, site lies in the National Landscape, LVIA submitted is very poor, and now with the approval of two additional pitches at Enborne the need for further pitches is now no longer so pressing. In addition they cite the recent council refusals of two gypsy and traveller at Brimpton Common. This was sent by a group of locally concerned residents of the Parish. However this letter was anonymous so it is not known how many local residents this letter represents.

6. Planning Policy

6.1 Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The following policies of the statutory development plan are relevant to the consideration of this application.

- Policies ADPP1, ADPP5, CS7, CS13, CS14, CS16, CS17, CS18, CS19 of the West Berkshire Core Strategy 2006-2026 (WBCS).
- Policies TS3 and P1 of the Housing Site Allocations Development Plan Document 2006-2026 (HSA DPD).
- Policy OVS.6 of the West Berkshire District Local Plan 1991-2006 (Saved Policies 2007).

6.2 The following material considerations are relevant to the consideration of this application:

- National Planning Policy Framework (NPPF)
- Planning Policy for Traveller Sites (PPTS)
- Planning Practice Guidance (PPG)
- North Wessex Downs AONB Management Plan 2019-24
- WBC Quality Design SPD (2006)
- WBC Planning Obligations SPD (2015)
- WBC Sustainable Drainage SPD (2018)
- West Berkshire District Gypsy and Traveller Accommodation Assessment 2019 and 2021 update
- Chief Planning Officer letter dated 31st August 2015 re intentional unauthorised development and associated Ministerial Statement. 17 December 2015.

7. Appraisal

The West Berkshire Development Plan

- 7.1 The most important policies for determining whether the principle of development is acceptable are Policies ADPP1, ADPP5 and CS7 of the Core Strategy, and Policy TS3 of the Housing Site Allocations DPD. The Core Strategy includes a Spatial Strategy (ADPP1 and ADPP5) that provides a broad indication of the overall scale of development in the district, applying the principles of sustainable development, and based on defined spatial areas and a settlement hierarchy. Policies CS7 and TS3 relate to gypsy and traveller sites.
- 7.2 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 focused 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.
- 7.3 In this case whilst the application site is not immediately adjacent the settlement boundary of Hermitage, but it is close at about 20 metres distance. Intervening built form of two dwellings comprise the separation. Secondly as will be highlighted later in the report the proposal is addressed an identified need for additional gypsy and traveller pitches within the district. Accordingly, it is considered that the proposal is capable of being a limited form of development that is acceptable in this location.
- 7.4 **Policy ADPP5** is the spatial strategy for the AONB, now National Landscape. However, it is not considered to include any points which are directly relevant to this proposed development. In the environment section of this policy, bullet point 1 notes (inter alia) that development will conserve and enhance the local distinctiveness, sense of place and dark skies and setting of the National Landscape, whilst preserving the strong sense of remoteness, tranquillity and dark night skies, particularly on the open downland. Development should in addition respond positively to its local context.
- 7.5 The impact on landscape character and visual amenity will be examined below, but overall it is considered that the site is visually well-contained such that the impacts of the development are localised.
- 7.6 **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;*
- 7.7 The application site does not currently have such an access but by appropriate conditions it is considered that a safe access can be constructed onto the B4009 once

the appropriate plan is conditioned as submitted. The works to be undertaken within a specific period post the decision date.

b) Easy access to local services including a bus route, shops, schools and health services;

7.8 It is noted that location of the application site is very good in this regard since the local school is nearby and health facilities are in the vicinity i.e. the Downland Practice. In addition, the Downs Secondary School lies only about 3 miles to the north of the site on a school bus route. There are a number of shops in Hermitage as well.

c) Located outside areas of high flooding risk;

7.9 The application site lies in Flood Zone 1 which indicates the lowest risk of river flooding. There are no other on-site constraints regarding flood risk.

d) Provision for adequate on site facilities for parking, storage, play and residential amenity;

7.10 The density of the application site is low in that given there are 5 pitches, each one is approximately 0.1 of a hectare. This is ample space for the siting of a utility building a mobile home and caravan. By condition no commercial use will be permitted on the site as this would not be taken to be acceptable in this residential location.

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;

7.11 It is conceivable that the unauthorised way in which this development took place will undermine the possibility of integrated co-existence. However, the good access to local facilities, including local schools, would typically be key routes in which positive integration and co-existence could be facilitated.

f) Opportunities for an element of authorised mixed uses;

7.12 No mixed/commercial uses are proposed, which is considered appropriate in this location.

g) The compatibility of the use with the surrounding land use, including potential disturbance from vehicular movements, and on site business activities;

7.13 Commercial uses will not be permitted in this location. In terms of compatibility with the sites surrounds it is acknowledged that there will be a degree of visual impact on the adjoining occupiers to the north and south as the development is clearly visible, but this is considered to be acceptable given the generous spacing of plots.

h) Will not materially harm the physical and visual character of the area;

7.14 The application site is well self-contained with no opportunity in the future for any physical expansion of the site in any direction. It is also currently well-screened and the proposed landscaping buffer screen will additionally assist in mitigating any future potential visual impact. Account will need to be taken of the 2.3 metre acoustic screens for the mobile units however which will have a degree of visual impact in addition.

i) Where applicable have regard for the character and policies affecting the North Wessex Downs AONB.'

- 7.15 This is considered in more detail below, but officers consider that this criterion is met.
- 7.16 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).*
- 7.17 Thames Water have been consulted on the application but at the time of writing this report no response has been received. It is noted that to the south of the site lies a mains foul drainage outlet serving the existing dwellings to the south. If the application is approved the applicants would be in a position to connect into this drainage at their own cost.
- b) *Incorporate appropriate vehicle access and turning space.*
- 7.18 Acceptable access and turning space is provided for in the proposed plans.
- c) *Include appropriate landscaping proposals, retaining and incorporating key elements of landscape character into the site design.*
- 7.19 The site is already contained by natural screening. In particular the boundary vegetation to the east is very strong. The Council's tree officer is content with the outline of the proposed landscaping scheme in terms of the site and tree screening.
- 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.*
- 7.20 The submitted block plan shows a layout which is considered to be acceptable by officers. Sufficient space is laid out on site to accommodate the pitches and utility building noted plus the five mobile homes.
- e) *Provide a mix of residential and business use where appropriate.*
- 7.21 No businesses uses are proposed, and this will be conditioned to ensure protection of local amenity.
- 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).*
- 7.22 As the site is in Flood Zone 1 and less than 1ha in area, a Flood Risk Assessment has not been submitted, as it is not required by Policy CS16.

- h) Include measures to improve accessibility by, and encourage use of, non-car transport modes. These measures should be set out in a Travel Plan for the site.*
- 7.23 Given the location of the application site, adjacent the built up area of Hermitage, the proposal is considered to be in a sustainable location. The scale of development does not necessitate a travel plan.
- 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.*
- 7.24 There are none on-site but a footpath runs nearby to the east which could easily be used by the occupants of the site. Amended plans show a new footpath link from the existing vehicle access to the existing pavement to the south.
- 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.*
- 7.25 The highways officer has confirmed that there are no highways /transport objections to the application.
- 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).*
- 7.26 The proposed development does is not of a scale which triggers the need for additional provision of open space under Policy RL.1. However, it is noted that to the east of the site there is a children's play area.
- 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.*
- 7.27 No site-specific infrastructure has been identified as necessary due to the scale of development. However, CIL may be chargeable on the utility buildings.
- 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. This will inform the development design and layout of the site and requirements for green infrastructure.*
- 7.28 This has been provided and is examined below.
- n) 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.*
- o) Provide appropriate mitigation to offset impact on key species and habitats through appropriate buffering, on-site mitigation and off-site compensation measures.*
- 7.29 The preliminary ecological appraisal has been undertaken. The Ecologist has no objections on this basis. He is accordingly recommending conditional approval.
- p) Provide a design, layout and siting plan for the development.'*

7.30 This criterion has been met.

National planning policy

- 7.31 The National Planning Policy Framework (NPPF) at paragraph 63 states ‘the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including travellers). A footnote in the NPPF then states ‘Planning Policy for Traveller Sites sets out how travellers’ housing needs should be assessed for those covered by the definition in Annex 1 of that document’.
- 7.32 The DCLG publication Planning policy for traveller sites (PPTS) (December 2023) 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.
- 7.33 In the decision making section planning authorities are asked to take into account the following issues: the existing level of provision, the availability (or lack of) alternative accommodation, and other personal circumstances of the applicant. In addition applications from non-local travellers should also be considered as is the case here.
- 7.34 Weight should be attached to whether the land is brownfield or not, whether the site well planned, promoting opportunities for healthy lifestyles and not enclosing the site to such a degree that this isolates the site from the local area.
- 7.35 In this case it is appreciated that the site was greenfield prior to the development, so this weighs against the scheme. However, it is considered that in terms of density and layout the site is well planned, with the opportunity for some child’s play areas and the fact that the site can be “naturally” enclosed by existing vegetation as opposed to, for example, high fencing. This weighs in favour of the scheme.
- 7.36 In addition, it is noted in paragraph 27 that if local planning authorities cannot show an up to date 5 year pitch supply, this will be a significant material consideration, and whether the LPA should or should not grant a temporary permission. The exception to this is where the site lies in a National Landscape (formerly AONB). Clearly this application site does so the Committee will need to take this into account in balancing their decision.
- 7.37 Finally it is noted in the PPTS that sites should not dominate the local community. Hermitage is a Service Village, identified as having a more limited, yet valued, range of services. The addition of five pitches would represent a limited addition to the village. Undue pressure on local infrastructure should similarly not arise, given the very modest increase in population to the village.
- 7.38 It is considered, on balance, that notwithstanding the fact that the site was greenfield and in the National Landscape, the other positive merits of the scheme outweigh these demerits, in relation to the PPTS policy.

Emerging policies

- 7.39 According to paragraph 48 of the NPPF, local planning authorities may give weight to relevant policies in emerging plans according to: (a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given); (b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and (c) the degree of consistency of the relevant policies in the emerging plan to this

Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

7.40 The current development plan period runs up to 2026. The Council is in the process of reviewing its Local Plan to cover the period up to 2041. The Examination in Public hearings have now been completed. The draft plan includes Policy DM20 (Gypsies, Travellers and Travelling Showpeople), which would replace and consolidate Policies CS7 and TS3. Whilst emerging Policy DM20 attracts only limited weight at this stage, it should be noted that the general approach remains consistent with current policies and existing allocations in the HSA DPD are proposed to be carried forward. It further states that “permanent gypsy and traveller sites will be developed on sites located in or well-related to existing settlements.”

Local need and supply

7.41 According to the PPTS, the local planning authority should consider the existing level of local provision and need for sites. The Council has a legal duty to plan for adequate accommodation for the Gypsy and Traveller community.

7.42 The Council has a Gypsy and Traveller Accommodation Assessment (GTAA) carried out in 2019 and updated in 2021. The definition of “gypsy and traveller” has been updated in the meantime, however the assessment already assessed the overall need as is now required under the new definition. As part of the Local Plan examination the Inspector asked the Council to delete references to ‘cultural’ and ‘PPTS’ need, as was previously set out in the GTAA and in proposed Policy DM20, as the ‘PPTS’ need was calculated under a previous definition of Gypsies and Travellers.

7.43 The table below presents the overall residual need across the period 2021 to 2038, after the supply at the time of the 2021 GTAA was taken into account. The sites listed are planned or have gained permission since the GTAA was written, leaving a need of 18 pitches.

Additional permanent pitches required 1 April 2021 to 31 March 2038	30
Additional permanent pitches provided 1 April 2021 to 31 March 2023	
• New Stocks Farm, Paices Hill, Aldermaston	8
• Four Houses Corner, Padworth	1
• Ermin Street, Lambourn Woodlands	1
• Washwater Stables, Enborne Row, Wash Water	2
Total pitches provided 2021-2023	12
Permanent pitches required 1 April 2023 to 31 March 2038	18

Note that the one pitch at Four Houses Corner is in addition to the 16 pitches already accounted for in the supply of Gypsy and Traveller sites.

7.44 The table above does not identify the 5 year period (2021-2026) or the period between 2026 and 2038. Under the previous definition of the PPTS the Council could show they had a 5 year supply of pitches. This was supported in the Inspector’s decision for the planning appeals for Four Acres, Ermin Street, Lambourn Woodlands and for Lawrences Lane, Thatcham. However, the change to the PPTS definition means that the Council needs to meet all of its need (previously labelled as ‘cultural’ need), and

the implication is that the Council have a shortfall of sites to meet the 5 year need. Due to the permitted and planned supply of pitches (the list of sites identified in the table above) the shortfall is 1 pitch.

- 7.45 Taking into account the need for 1 pitch in the short term, the outstanding requirement is 17 pitches up to 2038. There are no new sites identified in the Local Plan Review, aside from the site at Paices Hill, Aldermaston which has been carried forward from the Housing Sites Allocation Development Plan Document. In seeking to meet this need a Gypsy and Traveller Accommodation Development Plan Document is proposed. A call for sites has not yielded a high response rate, as only 1 site was promoted (1 pitch).
- 7.46 The addition of five pitches would be of benefit in meeting the local identified need.
- 7.47 Consistent with the PPTS, the contribution this site may make to meeting the local identified need for gypsy and traveller pitches within the district is a significant factor weighing in favour of the proposal, particularly where there is a small (one pitch) shortfall in the five year supply.

Landscape character, visual amenity and National Landscape

- 7.48 The NPPF in paragraph 176 notes that great weight should be attached to the conservation of the natural quality and beauty of National Landscapes. In addition, policy CS19 in the Core Strategy notes that (inter alia) new development in terms of assessing them against future landscape impact, should note the sensitivity of the area to change and the scheme should be appropriate in terms of location, scale and design, in the context of the existing settlement form.
- 7.49 In this location, the area the sensitivity of the area to change in landscape terms is lessened by the influence of the M4 to the north, and the site's proximity to the built up area of Hermitage. The area to the south of the application site is largely built up and one dwelling lies to the north. Whilst open countryside lies to the east and west of the site, views in and out of the application site are relatively restricted by virtue of the good natural screening and the existing built form. Accordingly, it is the view of the officers that whilst inevitably some visual harm will arise, this will be localised to the site itself and the immediate vicinity, and any wider impact on the National Landscape is minimal.
- 7.50 The Council appointed an independent report on the validity of the conclusions of the applicant's submitted LVIA. The full report is available for inspection with the application document, but in summary she concluded that the process of the LVIA is flawed in that it took the baseline position as being the existing situation with caravans on the site, as opposed to the existing greenfield nature of the paddock. She goes on to note that the paddock positively contributed to the natural transition between the built-up area of Hermitage, and the inclusion of the new gypsy site harms that transition, to the detriment of the National Landscape, and there is conflict with policies ADPP5 and CS19.
- 7.51 She also notes that there will be harm to the users of the B4009 to the west of the site and harm to the users of the Eling Way to the east of the application site. There will also be harm to the natural screening around the application site which being largely deciduous, will mean that the level of visual harm will arise during winter months. She also makes the point that should the application be approved and the present injunction removed on the site, the level of built form will inevitably rise on the site including hardcore, fencing day rooms, lighting and so on. This in turn will create addition visual harm.

7.52 Taking into account the independent Landscape Consultant's advice, it is considered that the development will result in landscape and visual harm to the site and its immediate surroundings. In this respect it fails to conserve and enhance the landscape and scenic beauty of the National Landscape. However, it is considered by officers that the proposal causes only modest harm to the character and appearance of the area given the scale of the development in comparison to surrounding development, its proximity of the M4 motorway to the north, and the localised extent of this harm to only the site and its immediate surroundings.

Highway matters

7.53 Policy CS13 in the Core Strategy states that any development which causes a transport impact should improve opportunities for safe travel and improve travel choices. They should also show good access to key services and facilities. In this case the highways officer has accepted that the site will not generate unacceptable traffic levels onto the local network.

7.54 A tracking plan has been submitted which indicates acceptable turning areas on site for larger vehicles is possible. There is adequate parking space on site (two spaces per pitch) to ensure no additional parking will occur on the adjacent highway.

7.55 The necessary forward visibility splays available are acceptable in relation to the surveyed traffic speeds along the B4009 in both directions. The location of the application site means that there is good access to key local facilities, and it is accepted the application site lies in sustainable location.

7.56 In order to facilitate safe and suitable local footway access a plan has been submitted to ensure a link from the southern access point of the new entrance to the site to link into the existing footway on the east side of the B4009. This will accordingly be conditioned, if the application is approved.

7.57 The application is considered to comply with Policy CS13.

Drainage

7.58 The application site is located in Flood Zone 1, which has the lowest risk of river flooding, and there are no other significant flooding constraints affecting the site. Given that the site area is less than 1 hectare, and there are no flood constraints, Policy CS6 does not require a Flood Risk Assessment (FRA). There are no fundamental issues in terms of flood risk.

7.59 Nonetheless, all developments sites are expected to manage drainage in a sustainable manner.

7.60 At the time of writing this report the Council has recently received additional on-site drainage information from the applicant, in order to ensure that if the application is approved it will comply with the advice in policy CS16, to ensure that no undue drainage problems occurs off site onto the adjacent highway, nor indeed any flooding problems arise on the application site. The Council's drainage officer has examined the additional information and has requested additional details regarding infiltration and the nature of the substrata, but he does note that if this detail is supplied and is satisfactory there is no in principle objection to the site being adequately drained.

7.61 It is expected that on the update sheet this additional information will be supplied, and an appropriate drainage condition applied. If for any reason the additional information is not supplied in time the update sheet will reflect an amended recommendation to

delegate to officers to grant planning permission subject to the resolution of this issue before determination.

Noise and contamination

- 7.62 The site is close to the elevated section of the M4 to the north with one intervening house (Sandhills). The Environmental Health Officer accordingly initially raised concerns about the potential ongoing noise impact caused by the M4 on the occupants of the site, particularly as caravans have little physical opportunity to lessen noise via sound insulation. The distance of the northern boundary of the application site to the M4 is approximately 120 metres.
- 7.63 An Acoustic Assessment was accordingly requested from the applicant and this has been submitted. This indicated that the occupants on site during nighttime hours will suffer noise levels above the recommended maximum thresholds, due to the M4. It is accordingly recommended that conditions be applied to construct acoustic barriers to the north of each mobile home pitch to lessen this impact. Details of these barriers will be sought by condition to ensure their visual appropriateness. The EH Officer raises concerns that even with the acoustic barriers in place the windows will need to be closed for the majority of the time to ensure acceptable noise levels, and as a result additional ventilation will be required. However, they note that ventilation is covered by BS3632:2015. Accordingly, they recommend that a condition is attached to ensure that the units are BS3632:2015 compliant.
- 7.64 The EH Officer has also recommended some conditions about contaminated land on the site, should it be found, and this in addition can be conditioned. On balance, it is considered that with the appropriate conditions the scheme will be acceptable with the acoustic mitigation put in place and that in relation to contaminated land.

Ecology

- 7.65 Core Strategy Policy CS17 states that biodiversity and geodiversity assets across West Berkshire will be conserved and enhanced. Habitats designated or proposed for designation as important for biodiversity or geodiversity at an international or national level or which support protected, rare or endangered species, will be protected and enhanced. The degree of protection given will be appropriate to the status of the site or species in terms of its international or national importance.
- 7.66 Development which may harm, either directly or indirectly,
- a) locally designated sites (Local Wildlife Sites and Local Geological Sites), or
 - b) habitats or species of principal importance for the purpose of conserving biodiversity, or
 - c) the integrity or continuity of landscape features of major importance for wild flora and fauna

will only be permitted if there are no reasonable alternatives and there are clear demonstrable social or economic benefits of regional or national importance that outweigh the need to safeguard the site or species and that adequate compensation and mitigation measures are provided when damage to biodiversity/geodiversity interests are unavoidable.

- 7.67 The application has been accompanied by a Preliminary Ecological Appraisal (PEA), which the Council's Ecologist has examined. It is noted that immediately to the east of the application site lies mixed deciduous woodland which forms part of Furze Hill local

wildlife site. Whilst not ancient woodland it is important that the use of the site does not have a detrimental impact on this woodland nor the related ecology. No protected species were found on the application site, but the area would be used for foraging bats.

- 7.68 The Council's Ecologist is accordingly recommending conditional approval to the application. The conditions will include control of lighting, and the ecological improvements identified in the PEA being implemented within a certain timescale. The proposal is therefore considered to comply with Policy CS17 subject to conditions.
- 7.69 In addition, the Council's Tree Officer has not objected to the proposal on the basis of the updated arboricultural assessment and landscaping plan now submitted. He is accordingly recommending conditional approval.

Neighbouring amenity

- 7.70 The application site adjoins two existing residential properties – Torcove to the south and Sandhills to the north – and the development would be visible from these neighbouring properties. The loss of a private view and the impact on property prices are not material planning consideration, and so these factors cannot be taken into account.
- 7.71 There will be a degree of impact in terms of some loss of outlook and disturbance from additional activity on the land, but this is not considered to be at a level which would justify refusing planning permission. In addition the Environmental Health Officer has raised no objections to the proposal on the basis that unacceptable noise would arise from the application site use, upon adjoining occupiers, in light of the high prevailing background noise levels caused by the M4 as noted above.
- 7.72 It is also considered that, due to the spacing of pitches, there would not be any harmful degree of overlooking that would be out of character of development elsewhere on the edge of Hermitage.

Community cohesion and fear of crime

- 7.73 Chapter 8 of the NPPF states that planning decisions should aim to achieve healthy, inclusive and safe places which:
- a) promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages;
 - b) are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of attractive, well-designed, clear and legible pedestrian and cycle routes, and high quality public space, which encourage the active and continual use of public areas; and
 - c) enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.

- 7.74 According to Policy CS14, development proposals will be expected to (amongst others) create safe environments, addressing crime prevention and community safety; and consider opportunities for a mix of uses.
- 7.75 A specific consideration for traveller sites in Policy CS7 is “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”. Paragraph 26 of the PPTS also states that local planning authorities should attach weight to 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.
- 7.76 Objections have been received from 62 contributors, and the comments made includes concerns about the future ability and likelihood of the current occupiers of the site effectively forming part of the Hermitage community. It is recognised that accessibility to local services, and particularly schools, are key means by which families may integrate into the wider community. The location of the site does mean easy accessibility to several local facilities such as the parish hall and school nearby. In addition, the site will not be enclosed by high fencing or other boundary treatments as to automatically encourage physical isolation. Accordingly the location of the site and the design of the proposal are considered to respond positively to these policies.
- 7.77 Some respondents are concerned about the fear and perception of increased crime arising from the application site.
- 7.78 The fear of crime is capable of being a material consideration, as was established by the courts in *West Midlands Probation Committee v SSE And Walsall MBC (1997) JPL 323*, which related to a bail hostel. The key legal authority for when fear of crime may be material to a planning decision is *Smith v SoS 2005*, which related to a gypsy caravan site and therefore provides direct guidance for this application.
- 7.79 Smith established that, to be a material planning consideration:
- a) The fear and concern must be real, by which it must have some reasonable basis, though falling short of requiring the feared outcome to be proved as inevitable or highly likely; and
 - b) The object of that fear and concern must be the use, in planning terms of the land.
- 7.80 In *Smith*, the court considered a gypsy caravan site with a history of crime, including some “quite alarming events, one including over 100 officers, of whom 18 were armed, backed up by 3 dog handlers and a helicopter.” In considering whether fear of crime was a material planning consideration in this case the judge said the following:
- “But a caravan site is not like a polluting factory or bail hostel, likely of its very nature to produce difficulties for its neighbours. Granted that the evidence of recently passed events attributable to the site was sparse, or on a strict view non-existent, the fear must be that the concern as to future events was or may have been based in part on the fact that the site was to be a gypsy site. It cannot be right to view land use for that purpose as inherently creating the real concern that attaches to an institution such as a bail hostel.”**
- 7.81 Having regard to the above legal authorities, it is considered that fear of crime is not a material planning consideration in this instance.

Intentional unauthorised development

- 7.82 Whilst the fact that an application is retrospective is not normally a material planning consideration, in 2015 the then Secretary of State set out a Written Statement indicating why intentional unauthorised development should become a material planning consideration in determining planning applications for unauthorised gypsy and traveller development in order to create a level playing field and not to undermine public confidence in the planning system.
- 7.83 This development is currently unauthorised and was undertaken in a manner in which it is considered that this Government policy on intentional unauthorised development applies. These actions have clearly caused distress to local residents, as is evidenced by the high level of objections received. This may in turn also affect the opportunities for effective community cohesion. However, aside from this, it is not considered that the retrospective nature of this application has resulted in any additional planning harm. The site and proposal are otherwise considered acceptable on their merits, and neither the consideration of a planning application or any enforcement action should be undertaken in a way to penalise such unauthorised development. It is considered that the way in which this development occurs weighs against the proposal, but as it has resulted in minimal planning harm, it is considered that this should only be given limited weight.

Other matters

- 7.84 Some objectors have raised the issue of precedent. Whilst this can be a planning matter it is a well-established principle that each application should be assessed upon its own individual planning merits. It is also the case that should this application be approved, since the site is so well physically contained on all boundaries there can be no opportunity for expansion in the future.
- 7.85 Some respondents have expressed concern about the devaluation of property but this is not a material planning consideration.
- 7.86 It is accepted this has taken some time to determine this application, but the Council has had to make requests of the applicant for additional information on the scheme on numerous occasions, which has taken time to be submitted. The Council now has sufficient information to proceed with a recommendation on the application.
- 7.87 Finally, some consider that local air quality is poor due to the proximity of the M4. The Council's Environmental Health Officer has not objected to the application on this basis.

8. Planning Balance and Conclusion

- 8.1 As set out above, the adopted development plan policies take a permissive approach to development to gypsy and traveller sites outside of settlement boundaries. Unlike general residential development, there is not a presumption against gypsy and traveller development. National policy accepts that such sites are normally rural, but discourages sites which are isolated and remote from settlements. In these respects, a site adjacent to a settlement boundary with nearby facilities and amenities is generally favoured.
- 8.2 On the one hand it is recognised that this application is highly contentious in the local community with no support for the scheme in the representations received. It is also noted that the application is partially retrospective, and the site is presently in an unfinished and untidy condition. This is effectively controlled by the injunction served

and the planning process. It is also noted that the site was initially greenfield and lies outside a defined settlement boundary. The site is close to two neighbouring properties, but the impact on these is not considered harmful in planning terms.

- 8.3 There would be a degree of harm to landscape character and visual amenity, as identified by the Council's Landscape Consultant. However, given the context of the site adjacent to existing built form, and the localised impact, it is considered that this harm only attracts moderate weight in the planning balance. It is not considered that the special characteristics of the wider National Landscape are unduly affected.
- 8.4 The application site is generally well screened, has an acceptable access point and lies in a sustainable location. In addition it complies with a significant range of policies in the development plan and national policy. In addition, if permitted it would make a meaningful contribution to meeting locally identified needs, and the existing 1 pitch shortfall in the five year supply is a significant material consideration.
- 8.5 Overall, it is considered that the proposal's compliance with planning policy and its associated benefits outweigh the harms identified. As such the application is recommended for conditional approval.

9. Full Recommendation

- i) To delegate to the Development Manager to GRANT PLANNING PERMISSION subject to the conditions listed below.

Conditions

1. **Remedial work timescale**

Within 3 months of the date of this decision, works shall be completed to bring the development in accordance with the approved plans.

Reason: The existing development on site does not accord with the approved plans, and therefore remedial works are required.

2. **Approved plans**

The development hereby permitted shall be carried out in accordance with the following approved plans and documents listed below:

Job number J004472-DD-01, 03,04,05A and 06
LVIA plan 877/01

Reason: For the avoidance of doubt and in the interest of proper planning.

3. **Maximum pitches**

No more than five pitches shall be provided on site at any one time. Each pitch shall contain no more than one touring caravan, one mobile home/static caravan, and one utility/day room.

Reason. To clarify the permission and to ensure no future overdevelopment of the site in accordance with policy CS7 in the WBCS of 2006 to 2026.

4. **Occupation restriction**

The site hereby permitted shall not be occupied at any time other than by Gypsies and Travellers, as defined in the Planning Policy for Traveller Sites of December 2023.

Reason: To comply with policy CS7 in the West Berkshire Core Strategy 2006-2026, and to maintain a supply of pitches.

5. **Land contamination**

If any previously unidentified contaminated land is found during remainder of the development operations, it shall be reported immediately in writing to the Local Planning Authority (LPA). Appropriate investigation and risk assessment shall be undertaken, and any necessary remediation measures shall be submitted and approved in writing by the LPA. These submissions shall be prepared by a competent person (a person with a recognised relevant qualification, sufficient experience in dealing with the type(s) of pollution or land instability, and membership of a relevant professional organisation), and conducted in accordance with current best practice. The remediation scheme shall ensure that, after remediation, as a minimum, the land shall not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990. Thereafter, any remediation measures shall be carried out in accordance with the approved details. Unless otherwise agreed in writing by the LPA, the development shall not be occupied until any approved remediation measures have been completed and a verification report to demonstrate the effectiveness of the remediation has been submitted to and approved in writing by the LPA.

Reason: To ensure that any unexpected contamination encountered during the development is suitably assessed and dealt with, such that it does not pose an unacceptable risk to human health or the environment. This condition is applied in accordance with paragraphs 170, 178, 179 and 180 the National Planning Policy Framework, and Policy OVS.5 of the West Berkshire District Local Plan 1991-2006 (Saved Policies 2007).

6. **Ecology**

All ecological measures and/or works shall be carried out in accordance with the details contained in Preliminary Ecological Appraisal (August 2023, Arbtech).

Reason: Reason: To ensure the adequate safeguarding of protected species in accordance with the National Planning Policy Framework, and Policy CS17 of the West Berkshire Core Strategy 2006-2026.

7. **Lighting**

Within 3 months of the date of this decision a “lighting design strategy for biodiversity” for mobile homes, touring caravans, utility buildings and access routes shall be submitted in writing by the local planning authority. The strategy shall:

- a) identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
- b) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

Once approved by the LPA, all the external lighting shall be installed in accordance with the specifications and locations set out in the strategy, within the appropriate timescales, and these shall be maintained thereafter in accordance with the strategy. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

Reason: Bats are sensitive to light pollution. The introduction of artificial light might mean such species are disturbed and/or discouraged from using their breeding and resting places, established flyways or foraging areas. Such disturbance can constitute an offence under relevant wildlife legislation. This condition is applied in accordance with the National Planning Policy Framework, and Policy CS17 of the West Berkshire Core Strategy 2006-2026.

8. **Biodiversity improvements**

Within 6 months of the date of this decision, the following biodiversity improvements shall be provided/completed in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority:

- a) Retained trees, woodland, and hedgerows should be protected.
- b) The installation of dormouse boxes at the site. These should be approximately 1.5m from the ground in appropriate habitat within the site boundaries.
- c) The installation of two bat boxes at the site will provide additional roosting habitat for bats. The bat boxes will be installed on new buildings or retained trees in the site boundary.

Reason: To ensure biodiversity enhancements are incorporated into the development. This condition is applied in accordance with the National Planning Policy Framework, and Policy CS17 of the West Berkshire Core Strategy 2006-2026.

9. **Noise mitigation**

Within 6 months of the date of this decision, a scheme for protecting the development from noise from the M4 Motorway shall be completed in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The scheme shall be in accordance with the recommendations of Noise Impact Assessment report 1510.NIA.00.

Reason: To protect occupiers of the proposed development from noise. In accordance with policy OVS6 in the WBDLP of 1991 to 2006.

10. **Noise mitigation (caravan standards)**

Within 6 months of the date of this decision, and in perpetuity thereafter, all mobile homes being used for occupation on the site shall be BS3632:2015 compliant

Reason: To protect occupiers of the proposed development from noise. In accordance with the advice in policy OVS6 in the WBDLP of 1991 to 2006.

11. **No commercial use on site**

At no time shall any form of business/commercial use operate on the site.

Reason. To protect local amenity in accordance with the advice in policy OVS6 in the WBDLP of 1991 to 2006 and policy CS14 in the WBCS of 2006 to 2026.

12. **Parking**

Within 3 months of the date of this decision, the parking and turning shall be provided for the site and all pitches in accordance with the approved details. Thereafter these parking and turning spaces shall be kept available for parking and manoeuvring at all time.

Reason. To ensure that no additional parking occurs on the adjacent B4009 in accordance with policy CS13 in the WBCS of 2006 to 2026.

13. Landscaping

Within 3 months from the date of this decision, a soft landscaping scheme shall be submitted to the Local Planning Authority for approval. This scheme shall provide details of buffer strips of no less than 5 metres to the southern and northern boundaries of the site. The soft landscaping scheme shall include detailed plans, planting and retention schedule, programme of works, and any other supporting information. All soft landscaping works shall be completed in accordance with the approved soft landscaping scheme within the first planting season following approval of these details. Any trees, shrubs, plants or hedges planted in accordance with the approved scheme which are removed, die, or become diseased or become seriously damaged within five years of completion of this completion of the approved soft landscaping scheme shall be replaced within the next planting season by trees, shrubs or hedges of a similar size and species to that originally approved.

Reason: To ensure the site is well screened in accordance with policies ADPP5, CS14 and CS19 of the WBCS of 2006 to 2026.

14. Footway

Within 3 months of the date of the permission details of a 1.5 metre wide footway to be constructed southwards, between the site and the dwelling known as Torcove must be submitted to the Local Planning Authority. Once approved the scheme shall be constructed to the satisfaction of the LPA within 3 months of that approval date. Any statutory undertaker's equipment or street furniture located in the position of the footway/cycleway must be re-sited to provide an unobstructed footway/cycleway.

Reason: In the interest of road safety and to ensure adequate and unobstructed provision for pedestrians and/or cyclists. This condition is imposed in accordance with the National Planning Policy Framework and Policy CS13 of the West Berkshire Core Strategy (2006-2026).

15. Gates

Any gates to be provided at the access where vehicles will enter or leave the site, shall open away from the adjoining highway and be set back a distance of at least 15.0 metres from the edge of the highway.

Reason: In the interest of road safety and to ensure that vehicles can be driven off the highway before the gates are opened. This condition is imposed in accordance with the National Planning Policy Framework and Policy CS13 of the West Berkshire Core Strategy (2006-2026).

16 Surfacing of access

Within 3 months of the date of this permission, details of the surfacing arrangements for the vehicular access to the highway must be submitted to the Local Planning Authority. Such details shall ensure that bonded material is used across the entire width of the access for a distance of 15.0 metres measured back from the carriageway edge. The access shall be constructed in accordance with the approved details, within 3 months of the approval date.

Reason: To avoid migration of loose material onto the highway in the interest of road safety. This condition is imposed in accordance with the National Planning Policy Framework and Policy CS13 of the West Berkshire Core Strategy (2006-2026).

17 Visibility splays

Within 3 months of the date of this permission, the visibility splays at the access must be provided in accordance with drawing number 2305055-01 dated October

31st 2024. The land within these visibility splays shall thereafter be kept free of all obstructions to visibility over a height of 0.6 metres above the carriageway level.

Reason: In the interests of road safety. This condition is imposed in accordance with the National Planning Policy Framework and Policy CS13 of the West Berkshire Core Strategy (2006-2026).

18 Parking

Within 3 months of the date of this permission, details of the vehicle parking and turning space/areas must be submitted to and approved in writing by the Local Planning Authority. Within 3 months of the approval of the noted plan the vehicle parking and turning spaces/areas must be provided in accordance with the approved details. The parking and/or turning space shall thereafter be kept available for parking (of private motor cars and/or light goods vehicles) at all times.

Reason: To ensure the development is provided with adequate parking facilities in order to reduce the likelihood of roadside parking which would adversely affect road safety and the flow of traffic. This condition is imposed in accordance with the National Planning Policy Framework, Policy CS13 of the West Berkshire Core Strategy (2006-2026) and Policy TRANS1 of the West Berkshire District Local Plan 1991-2006 (Saved Policies 2007).

APPENDIX 9

Felix Smithson

From: Appeals <Appeals@westberks.gov.uk>
Sent: 03 December 2024 09:55
To: Bell, Alison; teame3@planninginspectorate.gov.uk
Cc: Michael Butler; Appeals; Noemi.Byrd@6pumpcourt.co.uk; Felix Smithson; Aaron Smith
Subject: FW: APP/W0340/C/24/3351139 and APP/W0340/W/24/3346878 - 23/00682/15UNAU and 23/02984/FUL - Land south of Brimpton Lane and west of Blacknest Lane, RG7 4RS - J004728

FAO Amy Booth and Alison Bell

Good morning,

Please see the comments below from the Planning Case Officer.

The Council submitted the need and supply statement to the other parties on the 13/11/24/. There has been ample time to review this. Granted we sent through the policy changes at the end of last week, but the need and supply has been with the appellant for nearly 3 weeks.

The Inspector wanted us to agree the figures (to quote:

'I wish to clearly understand the position on this and whether there is any difference of opinion. Even if you disagree on certain matters, I would at the least like you to factually agree each other's figures, but please note any reasons why you disagree. Please ensure the inquiry is focussed and agree as much as you possibly can. It is in everyone's interests to ensure that Inquiry time is used effectively').

The Council do NOT agree to put in any unauthorised sites in the District as clearly they cannot be taken into account unless authorised in the future either by the LPA or at appeal. Without prejudice.

Regards , Michael Butler.

Kind regards,

Suzi Crawford

Technical Officer – Appeals, Trees and Enforcement

Development and Housing, West Berkshire Council, Market Street, Newbury, RG14 5LD
(01635 519860) | Ext 9860
appeals@westberks.gov.uk

www.westberks.gov.uk

(please direct any response to appeals@westberks.gov.uk as this mailbox is regularly monitored)

From: Felix Smithson <felix.smithson@wspa.co.uk>
Sent: 02 December 2024 16:20
To: Appeals <Appeals@westberks.gov.uk>; ALISON.BELL@planninginspectorate.gov.uk; TeamE3@planninginspectorate.gov.uk
Cc: Aaron Smith <a.smith@masterlp.co.uk>; Michael Butler <Michael.Butler@westberks.gov.uk>; ws-project@emailworkflowmax.com; Peter Brownjohn <peter.brownjohn@wspa.co.uk>; Brian Woods <brian.woods@wspa.co.uk>
Subject: RE: APP/W0340/C/24/3351139 and APP/W0340/W/24/3346878 - 23/00682/15UNAU and 23/02984/FUL - Land south of Brimpton Lane and west of Blacknest Lane, RG7 4RS - J004728

This is an EXTERNAL EMAIL. STOP. THINK before you CLICK links or OPEN attachments.

Good afternoon,

Further to the email below which you can see is signed by the LPA and R6 but not the appellant.

The appellant first had site of the Need/Supply SOCG on 3pm at Friday and at the time Mr. Woods was attending a Public Inquiry. The appellant has therefore not had the opportunity to fully review said document but will endeavour to review and respond in full as to aid the process.

However, upon brief review, it appears that some matters stated within are more suited to submissions / evidence rather than points of agreement. The appellant also considers that the LPA should add a list of any unauthorised sites including outstanding planning applications and appeals, enforcement notices / appeals, and tolerated sites.

I hope this is clear, and a full response can be provided shortly.

Thanks.

Kind Regards

Felix Smithson
Planner



Surrey Office: 5 Pool House | Bancroft Road | Reigate | Surrey | RH2 7RP | t: 01737 225711

London Office: One Croydon | 11th Floor | 12-16 Addiscombe Road | Croydon | CR0 0XT | t: 020 3828 1180

Kent Office: Brouard Architects | 1 Bromley Lane | Chislehurst | Kent | BR7 6LH | t: 01689 857253

www.wspa.co.uk | felix.smithson@wspa.co.uk | dd: 01737 949886

You can follow us on: [LinkedIN](#) [Twitter](#) [Facebook](#) [Pinterest](#) [Instagram](#) [YouTube](#)

Please consider the environment. Please don't print this e-mail unless you really need to.

Attention:

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify WS Planning & Architecture on 01737 225711. The contents are not to be disclosed to anyone other than the addressee. Unauthorised recipients are required to preserve this confidentiality and to advise the sender of any errors in transmission. Thank you for your compliance.

We believe this e-mail and any attachment to be free of virus or other defect which might affect your system but it is your responsibility to ensure this is so. We accept no liability for any loss or damage caused in any way by its receipt or use.

From: Appeals <Appeals@westberks.gov.uk>

Sent: 02 December 2024 14:32

To: ALISON.BELL@planninginspectorate.gov.uk; TeamE3@planninginspectorate.gov.uk

Cc: Aaron Smith <a.smith@masterlp.co.uk>; Felix Smithson <felix.smithson@wspa.co.uk>; Michael Butler <Michael.Butler@westberks.gov.uk>; Appeals <Appeals@westberks.gov.uk>

Subject: APP/W0340/C/24/3351139 and APP/W0340/W/24/3346878 - 23/00682/15UNAU and 23/02984/FUL - Land south of Brimpton Lane and west of Blacknest Lane, RG7 4RS

FAO Amy Booth and Alison Bell

Good afternoon,

Please find attached the Statement of Common Ground in relation to need, supply and alternatives for Gypsies and Travellers for the above appeal.

Kind regards,

Suzi Crawford

Technical Officer – Appeals, Trees and Enforcement

Development and Housing, West Berkshire Council, Market Street, Newbury, RG14 5LD

(01635 519860) | Ext 9860

appeals@westberks.gov.uk

www.westberks.gov.uk

(please direct any response to [**appeals@westberks.gov.uk**](mailto:appeals@westberks.gov.uk) as this mailbox is regularly monitored)

This email and any attachments to it may be confidential and are intended solely for the use of the individual to whom it is addressed. Any views or opinions expressed may not necessarily represent those of West Berkshire Council. If you are not the intended recipient of this email, you must neither take any action based upon its contents, nor copy or show it to anyone. Please contact the sender if you believe you have received this e-mail in error. All communication sent to or from West Berkshire Council may be subject to recording and or monitoring in accordance with UK legislation, are subject to the requirements of the Freedom of Information Act 2000 and may therefore be disclosed to a third party on request.