IN APPEALS UNDER SECTIONS 78 & 174 OF THE TOWN AND COUNTRY PLANNING ACT 1990

Site: Land approximately 150 metres south of Brimpton and west of Blacknest Lane, Brimpton Common, Reading

Appellant: Mr J Slater

CLOSING SUBMISSIONS ON BEHALF OF THE BRIMPTON COMMON RESIDENTS' ASSOCIATION ("BCRG")

References below to XIC, XX and Re-X are to evidence given in Examination in Chief, Cross Examination and Re-Examination respectively.

A. INTRODUCTION

1. The BCRG is, as its name suggests, a residents' group. It is opposed to the development of agricultural land in or adjacent to Brimpton Common. It represents a significant number of local residents who have been directly affected by the unlawful development that has already intentionally taken place ("**the Existing Development**") at the appeal site ("**the Site**") and who stand to be affected further still if the development for which planning permission is sought ("**the Proposed Development**") is allowed to proceed.

2. Residents have given time and resources to this inquiry and three have given evidence. Their involvement attests to the strength of feeling in the community against the Proposed Development and the intentional, unlawful way in which it has been carried out.

3. Unless otherwise stated, the BCRG fully supports the Council's case in opposition to this appeal.

B. THE APPELLANT'S CREDIBILITY

4. It is regrettably necessary in opening these submissions to comment on the credibility of the Appellant and Mr Woods. Their evidence is key to the Appellant's case and yet it has been shown to be unreliable.

5. In the first instance, Mr Woods has accepted that the Appellant misled him about the true ownership of the Site. The legal title to the Site was not transferred to the Appellant until

3 September 2024.[1] Despite this, the application forms for the planning permission (dated December 2023)[2] and the Appellant's appeal form (dated June 2024)[3] all certified that the Appellant owned the Site. In addition, in an email dated 9 January 2024, Mr Felix Smithson (from Mr Woods' planning agency) stated:[4]

> *With regard to the Certificate matters. We have received confirmation from our client that he has purchased the site, but it is yet to transfer on Land Registry due to a long backlog. We have requested he provides the TR1 which will display this on-going transfer, and hopefully I will be able to provide that shortly.*

6. This statement was untrue in two respects. First, there was no ongoing transfer of the Site on that date; that did not happen until eight months later. Second, the Appellant did not purchase the Site; it was apparently gifted to him by Randolph Black, his brother-in-law, who had initially purchased it on 20 October 2023. Mr Woods assured the inquiry that Mr Smithson would not have sought to mislead on such an important matter (going to the validity of the application itself) and so could only conclude that he had been misled by the Appellant.[5] If the Appellant is willing to mislead his own planning agent, then he is clearly capable of misleading this inquiry and his evidence cannot be relied upon.

7. This is not the only example of the Appellant providing misleading evidence. The Appellant's proof of evidence was also misleading in asserting that he had purchased the site at auction, when he had not. The Appellant's social media accounts also appear to paint a different picture of his lifestyle than that asserted in his proof of evidence.[6]

8. The evidence also suggests that the Appellant has not been truthful about when he first started living on the Site. Ms Gordon's evidence is that the Appellant and his family did not live on the Site at all until November 2024, despite the Existing Development having been in place since March 2024.[7] Ms Gordon's evidence also states that the Appellant has only stayed there periodically since.[8] As Ms Gordon explained in examination in chief,

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[1] CD8.4, App.7.
[2] CD1.3; CD1.11.
[3] CD2.1.
[4] CD4.11, App.2-5.
[5] Wood XX.
[6] CD8.3, §4.
[7] CD7.24, §§4-16.
[8] CD7.24, §§13-16.

she spoke to numerous residents in preparing her evidence and her proof represents the collective view of residents about what has been happening on the Site.[9]

9. By contrast, the Appellant (despite having had every opportunity to do so) has not presented a shred of evidence to corroborate his account that he has been living at the Site since March 2024. Such evidence would have been easy to come by had it existed. Mr Slater's only explanation for the position taken by local residents is that they are *all* lying and that he is the only one telling the truth.[10] This is not credible, particularly since we know that the Appellant was prepared to mislead his own planning agent as to ownership of the Site.

10. This also reflects poorly on Mr Woods. In his proof of evidence, Mr Woods sought to suggest that the BCRG had not raised any issue about the Site's ownership or requested information from the land registry.[11] This was clearly incorrect as Mr Smithson's email of 9 January 2024 shows. Indeed the BCRG made repeated requests for this information throughout the course of this appeal.[12] Even in his proof, Mr Woods refused to admit that the Appellant had not owned the Site when the planning application was made and suggested that he was under no obligation to prove the matter. It is noteworthy that Mr Black transferred the site to the Appellant, for no consideration, with their signatures being witnessed by the same solicitor on the same day, a matter of a few weeks after the BCRG raised the issue of land ownership in its Statement of Case. In evidence Mr Woods and Mr Slater both asserted that they could not remember how the transfer came about.

11. Beyond this, Mr Woods has also sought to provide the inquiry with evidence beyond his expertise, on matters relating to emergency planning, ecology and landscape. As such, it is submitted that no weight can be placed on opinion evidence in these areas. It is contended that Mr Woods' willingness to give evidence on areas outside his expertise undermines his credibility as an expert.

12. The Appellant's case to this inquiry must be seen through this lens and weighed accordingly.

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[9] Gordon XIC.
[10] Slater XX.
[11] CD7.11, §3.
[12] CD4.10, §2.13; CD5.1, 24.

C. APPEAL B

13. Appeal B was brought on Grounds A, B and G:

a. The Ground A appeal has rightly been deemed to be statute barred and cannot be pursued. The Appellant has not challenged the Inspector's decision on this matter.

b. The Ground B appeal includes an allegation of under-enforcement which has nothing to do with ground B and seems to relate to the further unlawful development of "dayrooms" on the Site by converting a field shelter. This issue (which is entirely of the Appellant's own making) can be addressed by amending the Notice as described in the Inspector's note of 04.12.24.[13] Such amendment can be effected without causing injustice to the Appellants because

i. Contrary to the Appellant's argument it does not deprive him of the right to have the merits of the Existing Development (and particularly the dayroom) determined. The Appellant has taken the unusual step of pursuing Proposed Development which is different from the Existing Development. This was a matter for him and he has been professionally advised throughout. It would have been open to him at any time to proposed a *Wheatcroft* amendment to the appeal scheme to bring the two into line.

ii. In any event, the Appellant's planning agent accepts that the existing dayroom is inappropriate in the DEPZ. His evidence states that the existing dayroom is *"irrelevant"* because his client intends to construct a brick built structure which could provide a safe refuge in case of emergency.[14]

iii. The dayroom was created by converting an unlawful field shelter after the Existing Development had been carried out. The field shelter was listed on the original Notice and so the Appellant has always known that it is an unlawful structure that needs to be removed. A change

[13] CD5.8.
[14] CD7.11, §6.36.

from this to "*dayroom*" is a mere change of label and, in ***Hammersmith LBC v Secretary of State for the Environment*** (1975) 30 P&CR 19, the court confirmed that an Inspector is entitled to choose whatever label he feels most suitable on an notice.

iv. There is nothing wrong or unusual with an enforcement notice which is directed against an unlawful use of land directing that associated operational development be removed, pursuant to the "Murfitt principle": see ***Caldwell v SSLUHC*** [2024] EWCA Civ 467.

c. The Ground G appeal asserts that the Appellants should have 12 rather than three months to comply with the requirements of the Notice. This request is manifestly excessive and insufficiently evidenced. Among other things, the ongoing public safety concerns caused by the presence of the Existing Development in the DEPZ represent a compelling reason to ensure expeditious compliance. There is ongoing harm in terms of the visual impact and ecological harm. Further, it is relevant when considering the time allowed to comply with the Notice, that the Appellant was able to prepare the site and move onto it within a period of less than 24 hours[15] and, if the BCRG's evidence is accepted, only been staying there intermittently since November 2024.

D. APPEAL A - THE MAIN ISSUES

Issue 1: Whether the Site is in a suitable location

14. The Site is in open countryside outside of the settlement boundary where the PPTS says that such development should only be allowed exceptionally.[16] The Appellant accepts that the Site is not "*ideally located*" for the Proposed Development.[17] This is another way of saying that the Site is not suitably located, which it is not.

15. The Site is a significant distance from all key services.[18] The evidence of Aaron Smith and Nick Paus shows that, due to this, the absence of public rights of way and poor road conditions,[19] it is clear that the Site does not provide safe or "*easy*" access to local services.

[15] CD7.23, §§1.07-1.09.
[16] CD3.2, §26.
[17] CD7.11, §7.21.
[18] CD1.20.
[19] CD7.21; CD7.14, §7.

In turn, the development does not encourage use of non-car transport modes. Indeed, the Appellant's planning agent accepts that local services and facilities are *"likely to require the use of a private car"*.[20] The Appellant accepted that he drove his children to school by car and that the family had never used the local bus routes.[21] This, the BCRG submits, says it all.

16. Finally, the BCRG has raised concerns that the Appellant has not demonstrated that the Proposed Development incorporates appropriate vehicle access and turning space for the reasons expressed in its position statement on this issue.[22] The Appellant has not addressed these concerns at all and has neither called nor produced any further technical highways evidence. It follows that, in the BCRG's submission, the Appellant has also failed to demonstrate that the Proposed Development incorporates appropriate vehicle access and turning space, contrary to Policy CS7.

17. For these reasons, overall the Proposed Development is contrary to Policy ADDP1, TS3, CS7, CS13 and emerging Policies DM1 and DM20. Significant negative weight should be given to this planning harm.[23]

Issue 2: The effect of the Proposed Development on the character and appearance of the area

18. The Appellant has not provided an LVIA contrary to the express requirement of Policy TS3. In any event, the Appellant's analysis of the effect of the Proposed Development on the character and appearance of the area is manifestly inadequate. Despite its inadequacy, that evidence rightly acknowledges that the Proposed Development will have an adverse visual impact.[24] However it does not deal with landscape character at all and Mr Woods is not a landscape expert. The landscape experts who have provided evidence to the inquiry (including Ms Bryant for the BCRG) agree that the Proposed Development will cause substantial harm to the character and appearance of Brimpton Common, a valuable community asset.[25] This harm is readily apparent from the Existing Development: a valuable, open and undeveloped parcel of land (which had previously existed in that state

[20] CD7.11, §6.3(2); Slater XX.
[21] Slater XX.
[22] CD4.12.
[23] CD7.14, §12.3.
[24] CD7.11, §§6.30-6.32
[25] CD7.5; CD7.17.

for 300 years) is now visibly developed. This harm cannot be mitigated. The Inspector will have a note of the roundtable discussion in which both landscape experts confirmed their evidence that the development causes substantial and unacceptable harm to this piece of landscape, its character, openness and visual amenity, and that the appeal site is of high landscape sensitivity.

19. During the course of the roundtable, the Appellant sought to advance an argument that, if these appeals are dismissed, the Site can still be used as a horse paddock and that this should be considered to be part of the baseline or some kind of fallback use. There are obvious problems with this argument:

    a. The Appellants have produced no evidence of the baseline to the site – i.e. its pre-development state. Ms Bryant and Ms Allen both agreed that the best evidence of this was auctioneer's drone picture attached to Ms Bryant's proof.[26] It is obvious that the auctioneer would show the state of the land prior to the sale which immediately preceded the Existing Development.

    b. Mr Hawker (a long-time resident of Brimpton Common) gave evidence that the whole common had only been used for occasional grazing for 1-2 months a year but not for about a decade. The land is unsuitable for grazing because it is often waterlogged.[27]

    c. A pony was briefly placed upon the Site by the Appellant in late 2023/early 2024. However, this was done using the access, which was unlawfully created in November 2023[28] and which will have to be removed if these Appeals are dismissed – this being one of the requirements of the enforcement notice. This use will not be possible without access to Site the from the road, and Mr Slater's suggestion that he would just walk a pony through the hedge was not credible.[29] Mr Woods' tentative suggestion that there had previously been an access in this location was unsupported by any evidence and roundly rejected by local residents with knowledge of the Site.[30]

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[26] CD7.17, Photo A
[27] CD7.18, §4; Hawker XIC.
[28] CD7.23, §1.02
[29] Slater XX.
[30] Hawker XIC.

d. The suggestion that the close-boarded fencing (currently on Site but required to be removed by the enforcement notice) would be replaced if the Site were just to be used for grazing was equally unrealistic.[31] Indeed, no close-boarded fencing was erected until the caravan was placed on the Site and the grazing stopped.[32]

e. Furthermore, on Mr Woods' own evidence, the previous use of the Site to graze horses would have be unlawful if feed was brought onto the Site.[33] Mr Slater accepts that supplementary feed was brought onto the Site[34] and indeed this is readily apparent from photographic evidence.[35] It will therefore not be possible for the Appellants to revert to this unlawful use.

20. Accordingly grazing (at least grazing as it was practised by the Appellant) cannot be said to be part of the baseline to the Site and nor can it be said to be a fallback – there being no realistic prospect of it reoccurring.

21. The Proposed Development is thus contrary to Policies CS7, CS14, CS18 and CS19 of the Core Strategy and Policy TS3 of the DPD, as well as the NPPF and PPTS. This harm attracts substantial negative weight.

Issue 3: Whether the Proposed Development would ensure public safety, having regard to AWE Aldermaston and Burghfield

22. The Appellant's approach to this issue is nothing short of astonishing. Mr Woods accepted that, given that this issue relates to public safety, it is an issue of great importance.[36] As a result, it is a great surprise that his statement in support of the original planning permission made no reference to the DEPZ or the relevant development plan policies. These policies are also not referred to at all in the Appellant's Statement of Case or Mr Woods' proof of evidence. Both the Existing and the Proposed Development have proceeded on the basis of a complete lack of understanding or analysis of this crucial issue.

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[31] Woods (Round Table), Slater XX
[32] CD4.11, App.4-2.
[33] CD7.11, §6.48
[34] Slater XX
[35] E.g. CD4.11, App.2-4.
[36] Woods XX.

23. Things did not improve during the Inquiry. In his evidence, Mr Woods sought to suggest that this was essentially a non-issue because: (i) the DEPZ did not reflect the actual risk; (ii) a suitably conditioned dayroom and emergency plan could provide mitigation; and (iii) permission had been granted for large-scale residential development in the DEPZ by way of the Hollies decision.[37] These arguments have no merit.

24. Mr Woods accepted that he is not an expert in emergency planning.[38] It is therefore inappropriate for him to opine on the correct size and location of the DEPZ. Indeed, nor is it (respectfully) a matter for this inquiry. The Council has the responsibility for setting the DEPZ as the designated emergency planning authority. Ms Richardson gave evidence that the DEPZ was carefully configured to take into account a range of factors.[39] She described it as being a *"complex"* matter. A High Court challenge to the DEPZ was rejected.[40] Thus the size and location of the DEPZ is beyond argument as is the level of the risk.

25. Mr Woods' suggestion that the provision of a dayroom and emergency plan could mitigate any risk was similarly misguided. Under cross-examination, Mr Woods accepted that:

    a. The Council has an obligation to prepare an Offsite Emergency Plan ("**OSEP**") for the DEPZ. The purpose of the OSEP is to secure public safety in the event of an incident at AWE Aldermaston.

    b. A consequence of a failure of the OSEP could be loss of life. A consequence of the OSEP being deemed by the Office of Nuclear Regulation ("**ONR**") not to be robust could be the cessation of operations at AWE.[41] (Mr Woods refused to accept that the cessation of operations at AWE would be harmful to national security. However, as Mr Rogers explained, it could compromise the UK's strategic nuclear deterrent and so Mr Woods is plainly wrong on this. In addition, Mr Wood's suggestion that the AWE be moved was frankly bizarre).

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[37] CD5.9.
[38] Woods XX.
[39] Richardson XIC
[40] CD4.11, App.6-3
[41] CD9.1; see also Mr Rogers' evidence to the Inquiry.

c. The ONR has advised AWE that it considers that the OSEP is already under strain as a result of development in the DEPZ.[42]

d. The Proposed Development will add to the amount of development in the DEPZ. In the event of a radiation emergency this will place some additional pressure on emergency services – it is one more family that may have to be evacuated.[43]

e. The occupants of caravans (such as in the Proposed Development) would fall to be treated as vulnerable pursuant to the REPPIR Code of Practice.[44] This further increases pressure on emergency services. This is the case regardless of whether there is a suitable dayroom or emergency plan.

26. The correctness of the above propositions is underlined by a score of recent appeal decisions in which applications for new residential development in the DEPZ have been refused.[45] A good example is the Shyshack Lane appeal.[46] This was an application for three dwellings (an increase of seven residents) in the DEPZ. The Inspector found:

> *11. Although relatively small-scale, the proposal would increase demand on the resources available to implement the OSEP in the event of a radiation emergency. This demand would be above the needs of existing people requiring assistance in the event of an evacuation and would put increased pressure on rest centres. Furthermore, increased demand would increase the requirement for any long-term accommodation required for evacuated members of the public. Therefore, placing people in an area where there is a known risk would contribute to the complicated response required from emergency services. Increased demand on services, at such a time, could jeopardise the effectiveness of the plan as a whole in contradiction of the objective of policy SS7.*
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> *12. The suggestion that individual development could be justified on the basis that it alone would be small in scale and have a negligible, if any, effect on the preparation and delivery of the OSEP is an argument that could be easily repeated. This approach would result in incremental development that would over time significantly erode the effective management of the land use planning consultation zones surrounding the AWE to the disbenefit of public safety. The proposed development would place a greater burden on the OSEP, which is already under pressure based on the comments of the ONR.*

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[42] C9.1.
[43] See Ms Richardson's evidence in XIC and XX about evacuation procedures.
[44] CD7.9, §5.15.
[45] See CD9.1 for a full list provided by AWE/MOD.
[46] CD7.15, PDF29.

27. It is worth recalling that this appeal was for bricks and mortar dwellings; and so the Appellant is in an even weaker positions. The arguments that Mr Woods is now making were comprehensively and persuasively rejected by the Inspector in Shyshack Lane. Clutching at straws, Mr Woods has fallen back on the Hollies appeal. However, in doing so, he has ignored a key finding of inspector in that appeal:[47]

> *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 appeal the Benham's Farm appeal and the 132 Recreation Road appeal. 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.*

28. The Hollies was an exceptional case. This case is not. No assistance can therefore be obtained from this decision, save that it strongly supports the arguments of the Council and the BCRG.

29. Finally, Mr Woods sought to rely on the grants of planning permission for caravan-related development at Four Houses Corner and Paices Hill, both in the DEPZ. However, as Ms Richardson explained,[48] both sites were already *existing* sites within the DEPZ and accounted for in the OSEP. The permissions did not add to *planned* development there. This is in sharp contrast to the Proposed Development.

30. Accordingly, the Proposed Development would not ensure public safety by reason of its location in the DEPZ. No mitigation is possible because you cannot mitigate against the increase in the number of vulnerable people who may need evacuation according to the OSEP. The significant concern expressed by the Council (as emergency planning authority) and AWE/MOD cannot be lightly dismissed. The Proposed Development is therefore contrary to Policy CS8 and emerging Policy SP4. It is also contrary to §§102 and 198 of the NPPF. Mr Smith rightly gave substantial negative weight to the adverse impacts of the Proposed Development on the OSEP and public safety and national security.

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[47] CD5.9, §31
[48] Richardson XX

Issue 4: The Proposed Development's effect on ecology

31. The Site is clearly of broad ecological interest as set out in the evidence of Mr Hawker[49] and Mr Greenslade.[50] This is confirmed by the Appellant's own preliminary ecological appraisal ("**PEA**"), which Mr Woods said *"should not be resisted"*.[51] The Site's ecological features include potential habitat for Great Crested Newts ("**GCN**") and bats – both of which are protected by the Conservation of Species and Habitats Regulations 2017 ("**the Habitats Regulations**"). However they are not limited to these: Mr Hawker described the use of the Site by reptiles and moths and explained its importance as a wildlife corridor.[52]

32. It is clear that the Appellant has never properly grappled with the Site's ecological significance. The application for the Proposed Development was submitted without any PEA, contrary to the express requirement of Policy TS3. Indeed, the Existing Development took place without any apparent regard to its ecological consequences, with the result that even the Appellant's own PEA has concluded that an offence is likely to have been committed under the Habitats Regulations. Even after the PEA was submitted, the Council made clear that it was inadequate, particularly in relation to consideration of GCN and the effects of culverting the ditch along the boundary to the Site.[53] No further detail was provided – again contrary to the express requirements of Policy TS3.[54] There was also a dispute about the Site's ecological baseline for the purposes of assessment. It is not possible to know what this was for certain because of the Appellant's intentional unauthorised development. The Appellant should bear the consequences of this: Mr Woods suggested that the baseline was as a horse paddock; however, for the reasons given above in relation to landscape, this is incorrect.

33. This matters in particular because the Appellant invites this inquiry to accept that any ecological harm caused by the Proposed Development can be mitigated and enhancements provided by way of condition. However in order to accept this invitation, the inspector would need to know (i) that such a condition is necessary (otherwise it does not meet the test in §57 of the NPPF) and (ii) that the mitigation and enhancement will be

[49] CD7.18
[50] CD7.4.
[51] CD4.1, §7.51.
[52] CD7.18.
[53] CD7.3, §§4.1-4.8.
[54] Woods XX; CD3.4.

adequate and appropriate to address the harm. The Inspector cannot answer either of these questions with confidence because he does not have the information necessary for him to do so. Again, this situation is entirely of the Appellant's own making. It means, as Mr Greenslade explained, that the Inspector cannot be satisfied that the Proposed Development would comply with Policy CS17 of the Core Strategy of Policy TS3 of the DPD.[55]

34. Leaving aside the questions of appropriateness and adequacy of mitigation and enhancement, there is also a question over whether the proposed measures are even feasible or viable. This was vividly demonstrated in cross examination of Mr Woods. The Appellant has suggested (largely via his counsel through cross-examination) that he can provide the following mitigation and enhancement if required: a newt refugia, a pond, a wildflower meadow, and new hedgerows. Notwithstanding the fact that the provision of hedgerow cannot mitigate for the loss of the continuous hedgerow on the boundary to the Site in any event,[56] Mr Woods accepted that he did not know how big these features would need to be or where they would need to be located. The Proposed Development will (due to proposed condition 4)[57] have to comply with the approved plans, including the site layout plan.[58] There is no guarantee that the aforementioned features can be accommodated within this plan and any amendment to the plan could only be effected by a further application for planning permission under s.73 of the Town and Country Planning Act 1990.

35. Faced with this obstacle, Mr Woods attempted to fall back on the Lawn Hill appeal decision,[59] where an inspector accepted that conditions could deal with the effects of that development on protected species. However, it is trite to say that each case must be treated on its own facts and a key difference in Lawn Hill was that the inspector had specific survey evidence and eDNA testing which helped her to reach an informed view about likely location of GCN.[60] No such evidence exists in this appeal and Mr Woods' suggestion should therefore be dismissed.

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[55] CED7.3, §4.16.
[56] Hawker XIC.
[57] List of suggested conditions dated 28.01.24
[58] CD1.15
[59] CD7.12, p.108.
[60] See §36 of the inspector's decision.

Issue 5: The effect of the Proposed Development on Green Infrastructure

36. As explained by Ms Bryant, the Proposed Development will have an effect on the experience of Brimpton Common by users of the PROW and as such will cause harm to the use and enjoyment of Green Infrastructure, contrary to Policy CS18 of the Core Strategy.[61]

Issue 6: The effect of the Proposed Development on the Grade II listed building at Lane End Cottage and the Scheduled Monument at Bell Barrow

37. The Inspector has a duty under statute and policy to ensure that any harm to the significance of a heritage asset is given considerable importance and weight.[62] The BCRG has not called heritage evidence, but the Inspector's attention is drawn to the Heritage Statement of Common Ground.[63] The BCRG notes that the Council's archaeologist has identified the Site as having reasonably high archaeological potential. Contrary to §207 of the NPPF and the PPG[64] the Appellant has not provided any desk-based assessment or evaluation of the Site's archaeological interests. It is therefore not possible to determine whether the Existing Development caused harm to any such interests or whether the Proposed Development would cause harm. In his examination in chief, Mr Woods suggested that any items of archaeological significance can be identified during development and sent to a museum. However, this does not address the possibility that such interests may be harmed by development *before* they are discovered and, without a proper appraisal, this possibility cannot be ruled out. Similarly, there has been no assessment of the significance of Lane End Cottage.

Issue 7: Whether there are any material considerations which exist which outweigh conflict with the development plan or other harm arising from the Proposed Development

38. The following material considerations are relevant to Appeal A.

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[61] CD7.17. §§2.29, 3.3.
[62] See s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and NPPF, §212 [CD3.1].
[63] CD5.7.
[64] Paragraph: 041 Reference ID:18a-041-20190723

Need and Supply

39. It is accepted that the Council cannot demonstrate a five year supply of pitches and that, by virtue §28 of the PPTS (as recently amended), §11(d) of the NPPF is engaged. However, there appears to be a dispute about the extent of the shortfall. It is important that this dispute is resolved by reference to *the evidence* and not by reference to bald assertions or hypothesis.

40. The Statement of Common Ground Addendum agreed between the Council and the BCRG sets out the correct position in terms of need and supply.[65] It says that there is shortfall of one pitch. This conclusion is rooted in evidence. Specifically, it is rooted in the 2021 GTAA. This is both appropriate and consistent with the PPTS which calculates supply in relation to relation to *"locally set targets"* (see §§9-10).[66] These are the targets identified in the GTAA.

41. Mr Woods did not dispute that, when the supply is assessed against the need identified in the GTAA, then the shortfall in terms of five year supply is one pitch.[67] However, the Appellant has sought to question the robustness of the GTAA and Mr Woods has referred, in particular to the Ermin Street appeal,[68] which noted (§§44-46) that the GTAA did not include an assessment of new household formation from previous occupants of the Four Houses Corner site. The Appellant has also sought to suggest that the 2021 GTAA is out of date. Neither of these arguments has any merit.

    a. Following the Ermin Street appeal the robustness of the 2021 GTAA was reasserted by an inspector in the Lawrences Lane appeal.[69] That inspector had the benefit of hearing evidence from the author of the GTAA. He also considered the Ermin Street decision. The inspector concluded (§148) *"In my opinion, the 2021 Assessment can be considered to be up to date, and there is nothing to suggest that it is anything other than a fair and robust assessment"*. The inspector also noted that the 2021 GTAA accounted for the broader definition of Gypsy and Traveller in its assessment of cultural need. In addition, the GTAA has been relied upon in the course of the recent examination of the draft local plan.

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[65] CD5.3.
[66] CD1.2.
[67] Woods XX
[68] CD7.12, pp.42-51
[69] CD5.5

Although the plan has not been finalised, it is at a very late stage of its development and the inspector has not raised any issues about the GTAA's robustness.

b. This also suggests that the GTAA is not out of date and in any event this argument comes completely unstuck when one considers the actual wording of the 2021 GTAA itself. Under the heading "*Future updating*" the 2021 GTAA states "*It is recommended that this evidence base is refreshed once households move onto the refurbished Four Houses Corner. More generally, the GTAA should be updated on a 5-yearly basis to ensure that the level of pitch and pitch provision remains appropriate for the Gypsy, Traveller and Travelling Showpeople population across West Berkshire.*"[70] Neither of these events have occurred.

42. The Appellant has also sought to bring the inquiry's attention to the number of unauthorised encampments in the district. However, whilst this could be indicative of higher need, it is not proven and any attempt to identify an alternative shortfall figure would be an exercise in pure speculation – for example Mr Butler explained that some of these families may find accommodation outside of the district.[71]

43. Mr Woods has also argued that there has been a failure of policy on the part of the Council. He relies again on the Ermin Street appeal, but as Ms Willet explained, this argument was revisited and dismissed by the Inspector in the Lawrences Lane appeal. There is no merit in it.[72]

44. Finally, any suggestion that a sub-regional need for pitches should be an additional material consideration of any real substance should be rejected, particularly where the proven shortfall in this district is so small. No evidence is before the inquiry concerning need in other districts.

45. Overall, Mr Smith was correct to conclude that only moderate weight should be given to the need for additional pitches.[73]

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[70] CD3.8, §7.9
[71] Butler XX.
[72] CD5.5, §§102-104.
[73] CD7.14, §12.10.

Alternatives

46. The suggestion that alternative sites are likely to be in the countryside carries no weight since the provision of gypsy and traveller pitches outside of settlements is anticipated by development plan policy, specifically Policy CS7 and Emerging Policy DM20.

47. The potential availability of alternative sites to the Appellant is, however, a material consideration. In the Appellant's statement of case, he undertook to provide evidence that there were no alternative sites available in neighbouring authorities.[74] The fact that no such evidence has been provided is telling.

48. Ms Willet gave evidence about the Council-owned site at Four Houses Corner which is expected to reopen imminently.[75] Mr Butler was confident that, although there is a waiting list for the pitches, it would be possible to make an offer to the Appellant.[76]

49. It is also telling that the Appellant's written evidence made absolutely no reference whatsoever to the Headley appeal.[77] In his oral evidence, Mr Slater accepted that he had given evidence to that appeal against a refusal to permit four pitches at a nearby site. The inspector's decision (§§36-39) records this evidence, which is remarkably similar to that which has been given in this case. The appeal was allowed and the permission granted. Although a subsequent permission for housing has been granted on this site, it has not been implemented. The site continues to display a sign stating, "*coming soon...4 gypsy pitches caravan site*".[78] The site is owned by Randolph Black, who is the Appellant's brother-in-law and who "*gifted*" the Appellant the Brimpton Common Site. These facts, combined with the Appellant's conspicuous failure to mention this site until raised by the BCRG, indicate that this site should be considered to be an alternative.

50. This is just one example of the Appellant's lack of candour in relation to his living situation. As noted above, the evidence also suggests that the Appellant has not been truthful about his occupation of the Site. This is significant because it (i) undermines his suggestion that, if these Appeals are not allowed, he will be forced to endure an intolerable roadside existence, and (ii) suggests that he has somewhere else to go. No

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[74] CD4.1, §7.82.
[75] Willet XIC.
[76] Butler XIC.
[77] CD7.15, App. H
[78] CD7.15, App. I

attempt was made to rebut or challenge Ms Gordon's evidence that there were no photographs on publicly available social media to show the family had a *"roadside"* existence, or that their social media painted a different picture from that portrayed in the Appellant's proof. It is telling that the Appellant claimed that he looked into staying at Paices Hill over Christmas 2023 as *"a temporary reprieve"*, when he was able to enjoy a holiday with his family in Dubai as well as a trip to the upmarket Lapland resort in Ascot.[79] Likewise, the Appellant was forced to correct his description within his proof that his children's party consisted of *"a small bouncy castle and a few balloons"* when faced with photographic evidence.

51. Whilst it is noted that (at the very last minute and halfway into the inquiry) the Appellant presented a hand-written table which purported to chart his roadside existence up to March 2023, the lateness of the material, combined with the total absence of any corroboration, mean that it should not be given any weight.

52. Overall, these factors demonstrate that there is insufficient evidence about a lack of alternative sites available to the Appellant to give this consideration anything other than neutral weight.[80]

Personal circumstances

53. The Appellant finally provided evidence relating to his and his family's status in his December proof of evidence, despite such evidence having been requested by the BCRG long before. Following consideration of this, the BCRG has confirmed that it does not contest the Appellant's PPTS status.[81] However, the remaining evidence about the Appellant's personal circumstances should not be given any weight for the reasons given above.

54. It is accepted that Appellant's children are currently attending the local school. It is also accepted that it is in the children's best interests to have a settled base and that, as a matter of law, those interests must be a primary consideration.[82] It does not follow, though, that they will be determinative. Indeed, Mr Slater confirmed that the children do not have

[79] CD8.3, §5.
[80] CD7.14, §12.12.
[81] CD8.3, §§2-3.
[82] Smith XIC.

special educational needs.[83] As a result, their needs could in theory be met at any school, in any location. The children could also attend the same school from another location if necessary: the Headley site, for example, is just a short distance away.[84] Overall there is no specific personal reason why the Appellant or his family need to live at *this Site*. Indeed, the evidence suggests that the Appellant has not stayed at the Site other than for a brief period.

Intentional Unauthorised Development ("IUD")

55. Reference is made to the WMS dated 17.12.15 which makes clear that IUD will be a material consideration. The justification for the WMS was stated to be as follows: "*The Government is concerned about the harm that is caused where the development of land has been undertaken in advance of obtaining planning permission. In such cases, there is no opportunity to appropriately limit or mitigate the harm that has already taken place. Such cases can involve local planning authorities having to take expensive and time consuming enforcement action*".[85]

56. This justification applies to Appeal A: it has caused irreparable ecological harm and harm to public safety (among other things) and led the Council (and local residents) to incur significant costs. It has also caused distress to the local community, which feels that the integrity of the planning system has been undermined, and have been worried by the manner in which the IUD was carried out and feel that they were deceived as to the Appellant's and Mr Black's true intentions.[86] Mr Slater has accepted that he carried out the Existing Development intentionally, in the full knowledge that it was unlawful.[87] He also accepted that the Police were lied to when they were told that planning permission had been granted. Mr Slater's evidence that he had no knowledge of how the large concrete blocks that had been placed by the LPA to prevent further development is simply not credible, particularly as he asserts that it was intended that he should own the site.[88] He should gain no advantage from having undertaken the IUD, which is also a direct challenge to the precautionary approach towards locating development in the DEPZ.

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[83] Slater XX.
[84] Slater XX.
[85] CD3.23.
[86] CD7.23.
[87] Slater XX.
[88] Slater XX

Precedent

57. The potential for a development to create a precedent for other development having a cumulative effect is a material consideration so long as the inspector has some material upon which to base this view. The view must go beyond a mere fear or generalised concern.[89] Such evidence plainly exists in this case because:[90]

    a. The whole common was purchased by Strat Farm Land Limited. Little is known about this company, save that it is wholly owned by Strategic Land Holdings, which lists its activities online as investing in land with the intention of achieving an enhancement in value by obtaining planning permission.

    b. The Site was then parcelled up into small plots. At least one of the plots (the appeal Site) was purchased by Randolph Black, although there is some evidence that he owns much of the rest of the Common, directly or indirectly.[91] Randolph Black is himself a property developer.

    c. The conveyances of several plots include covenants by the owners not to oppose applications for planning permission.[92]

    d. An application to develop the Site was submitted and then the Site was developed.

    e. There has also been interest in developing three other plots: one for two pitches, one for a self-build house and one for equestrian use. The Council's objections to these proposals were broadly the same as its objections in this Appeal.

    f. At the very least, if this Appeal is allowed, it will make it easier to overcome these objections in the other cases. Mr Woods (who acted in two of the other applications) was keen to stress that they had not been appealed. This is unsurprising given that an appeal would have served to underline the BCRG's concern about precedent. Mr Woods' contention that, if asked, he would not

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[89] CD7.14, §9.31; CD6.1; CD6.2.
[90] CD8.3
[91] CD7.24, §18; CD7.23, §1.13.
[92] Gordon XIC; CD8.4, PDF22.

advise his other clients that development of their plot would be more likely to be permitted in these circumstance was wholly incredible.

58. In fact, the BCRG submits that the Proposed Development is a "Trojan horse". The methodology being employed here is strikingly similar to that deployed by Randolph Black at Headley. Mr Black relies upon Mr Slater's personal circumstances to try to obtain a permission, which he then leverages to get permission for more lucrative housing development. A list of other developments known to be carried out by Mr Black can be found at paragraph 20 of Ms Gordon's statement,[93] and this includes development at Church Brook, approximately 3-4 miles away, where planning permission was initially obtained for 3 mobile homes before he successfully applied for planning permission for 3 properties.

59. The cumulative landscape and public safety implications of further development on Brimpton Common could be very significant and, overall, Mr Smith is correct to say that precedent is a material consideration that carries significant negative weight against the Proposed Development.[94]

Human Rights

60. The human rights of the Appellant and his family under Article 8 ECHR are engaged and must be considered. However, the extent to which these rights are engaged is limited. As the European Court of Human Rights accepted in ***Chapman v UK*** (2001) 33 EHRR 18,[95] there is no positive obligation on local planning authorities under Article 8 to make available an adequate number of suitably equipped sites to gypsies and travellers. Moreover, in circumstances where an individual has established a home unlawfully the position of that individual objecting to a requirement to move is less strong.

61. Article 8 is a qualified right and interference with it is permitted if that interference is in accordance with the law and necessary in a democratic society in pursuit of a legitimate aim. Legitimate aims include the protection of national security, public safety, the rights and wellbeing of others the economic well-being of the country. These legitimate aims

[93] CD7.24.
[94] Smith XIC.
[95] CD6.3.

are all engaged by the Proposed Development, which could threaten both public safety and national security, as well as causing significant other environmental harm.

62. Overall, a decision to dismiss these Appeals would be a proportionate and lawful interference with the Appellant's Article 8 rights.

E. PLANNING BALANCE

63. For all the reasons given above, the Proposed Development is not in accordance with the development plan. Mr Woods belatedly attempted to suggest that Policy CS7 and TS3 were inconsistent with national policy and so should be given less weight. This submission fell flat as soon as he was invited to identify which national policies he was talking about. The best he could come up with was an argument that the development plan policies were more specific. However, this is not evidence of inconsistency; it is wholly unsurprising and in fact entirely in line with §§11 and 25 of the PPTS which talk about the need for policies to set locally specific criteria to guide the assessment of applications.

64. In these circumstances, the Appellant must rely on material considerations. Whilst some provide limited support for the Proposed Development, many more tend against it.

65. Paragraph 4(h) of the PPTS seeks to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of level. Paragraph 11(d) of the NPPF is a material consideration and this requires that permission be granted unless the harms of doing so demonstrably and significantly outweigh the benefits. However, the weight to be given to this consideration is tempered by the limited nature of the shortfall (just one pitch) and, overall, it is clear that the myriad harms of permitting the Proposed Development do significantly and demonstrably outweigh the limited benefits. This is not an appropriate location envisaged by the PPTS.

66. This conclusion also stands in the event that the Inspector considers a temporary permission for the reasons given by Mr Smith.[96]

[96] CD7.14, §§10.1-10.2.

F. CONCLUSION

67. Accordingly, for the reasons given above, the BCRG respectfully requests that both appeals be dismissed.

BEN FULLBROOK
LANDMARK CHAMBERS
7 February 2025