TOWN AND COUNTRY PLANNING ACT 1990

APPEAL (1) BY MR BILLY JOE SAUNDERS AGAINST AN ENFORCEMENT NOTICE ISSUED BY BROXBOURNE BOROUGH COUNCIL ALLEGING WITHOUT PLANNING PERMISSION THE CHANGE OF USE OF THE LAND TO A RESIDENTIAL CARAVAN SITE BY THE STATIONING CARAVANS AND MOBILE HOMES ON THE LAND ALONG WITH ASSOCIATED OPERATIONAL DEVELOPMENT

APPEL (2) BY MR BILLY JOE SAUNDERS AGAINST A REFUSAL BY BROXBOURNE BOROUGH COUNCIL OF AN APPLICATION FOR THE CHANGE OF USE OF LAND FOR RESIDENTIAL, FOR MEMBERS OF THE GYPSY TRAVELLER COMMUNITY FOR 7NO STATIC CARAVANS, 6NO TOURING CARAVANS, PARKING FOR 12 CARS PURPOSES, HARDSTANDING AND ASSOCIATED DEVELOPMENT

PINS REF: APP/W1905/C/23/3334117 & APP/W1905/W/23/3327012

GPS Ref: 23_1287

LPA REF: ENF/23/0033 & 07/23/0119/F

WOODLAND STABLES, COCK LANE, HODDESDEN, HERTFORDSHIRE, EN11 8LS

PROOF OF EVIDENCE OF MATTHEW GREEN
ON BEHALF OF THE APPELLANT

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1. I am a Director in Green Planning Studio Ltd with responsibility for planning issues.

2. Between 2002 and 2005 I was a Shadow Housing and Planning Minister. I was the only frontbencher to complete all 18 months passage of the 2004 Planning and Compulsory Purchase Act. I also served as a front-bench lead on the 2004 Housing Act as well as other acts and many Statutory Instruments.

3. In 2005 I began appearing as a professional witness in planning appeals. I set up Green Planning Solutions in early 2006, which became a partnership in April 2007. The partnership then became a limited company in 2013 known as Green Planning Studio Ltd.

4. The practice is a planning led, planning and architecture practice dealing in development proposals across the spectrum. The vast majority of its development proposals are in areas of development restraint. It seems likely that the practice is the leading practice in England and Wales in terms of numbers of applications for caravan sites.

5. To date I have appeared as a witness in over 350 planning Inquiries and hearings. I have also appeared as a witness in the High Court and lectured at the RICS as part of their CPD process. The practice has advised a local authority on the location and provision of new caravan sites.

6. When appearing as a witness in the High Court in a planning injunction case. ***Brentwood Borough Council*** *v Ball and Others* [2009] EWHC 2433 (08.10.09) Stadlen J made the following observations on my experience and judgment.

> 119. In my judgment the decisions and some of the reasons for them in the Clementines Farm appeal support the conclusion that there is a real prospect that the Defendants' appeal may succeed. That is a conclusion which I would have reached even without sight of those decisions. I found Mr Green to be a very experienced, well informed and balanced witness and his views on the relative weight likely to be attached by an inspector to the personal circumstances of the defendants, and the lack of alternative accommodation on the one hand and the harm to the environment and the inappropriateness of residential development in the Green Belt on the other broadly persuasive.

The Appeals

7. Appeal (1) is a s.174 appeal against an Enforcement Notice issued on 31st October 2023 by the Borough of Broxbourne ("**the Council**") reference ENF/23/0033 ("**the EN**") alleging *'without planning permission the change of use of the Land to residential caravan site by the stationing caravans and mobile homes on the Land along with associated operational development.*' (appendix A1).

8. Appeal (2) is a s.78 appeal against the refusal by the Council of application 07/23/0119/F ("**the Planning Application**") for '*Retrospective planning permission for change of use of land to residential, for members of the Gypsy Traveller community for 7no. static caravans 6no. touring caravans, parking for 12 cars, hardstanding, and associated development*.' (appendix A2). The Planning Application was submitted on 9th February 2023. The refusal was issued on 25th May 2023 ("**the Decision Notice**") (Appendix A4).

9. At the time of determining the Planning Application 07/23/0119/F, the Council had the following to rely on:

    a. Design and Access Statement (revised version dated March 2023)

    b. 'Flood Map' – an EA surface water flooding map

    c. 'Flood Risk Assessment' – actually an EA fluvial/pluvial flooding map

    d. Block Plan BP-01-2023

    e. Location Plan - LP-01- 2023

    f. Block Plan LP-02-2023

    g. Static caravan drawings

    h. Touring caravans drawings

Preliminary Issues

10. The description of development in the planning application needs amendment. It is clear that neither the agent submitting the application, nor the officers involved in the determination of the application understood what they were doing.

11. The description on the application form was '*Permission is sort for change of use of land to residential, for members of the Gypsy Traveller community. The proposed development to contain 7 static caravans, 6 touring caravans, parking for 12 cars, hardstanding, and associated development. This application is part retrospective'*.

12. The Council turned this into '*Retrospective planning permission for change of use of land to residential, for members of the Gypsy Traveller community for 7no. static caravans 6no. touring caravans, parking for 12 cars, hardstanding, and associated development*.'

13. The words '*Retrospective planning permission'* are meaningless in a description of development and need to be removed. There is no such thing as a '*residential*' use of land. There is no need to include the words '*members of Gypsy Traveller community'* or the number of caravans, definitely not the number of cars, and the words '*associated development'* are unclear what they are referring to as the plans only show caravans and hardstanding.

14. It is noted that the plans submitted with the application were '*Block Plan BP-01-2023'*, '*Location Plan - LP-01- 2023'*, and the '*Design and Access Statement'*.

15. It is noted that subsequently a revised Design and Access Statement (which included reference to flood risk, a block plan showing a larger area '*LP-02-2023'*, two EA maps (one for surface water flooding and one for fluvial/pluvial flooding), and bizarrely plans of static and touring caravans were submitted, presumably at the instruction of the Council during validation. In that context it is surprising that the Council didn't ask for plans of the cars!

16. Plans of static and touring caravans should not have been submitted with the application and those plans should not form part of the determination of the appeal.

17. From studying the plans, it can be deduced that what was being sought was '*a material change of use of land to the stationing of caravans for residential purposes, and the laying of hardstanding ancillary to that use.*' That is what the Council should have amended the description to if they had the necessary knowledge and experience. The Inspector is invited to change the description of development to this.

18. The quantum of development sought is 7 pitches and some additional hardstanding (not all of the hardstanding within the red line requiring consent as it is already lawful).

19. Two enforcement notices were issues prior to the one that is the subject of this Appeal.

20. ENF/23/0033 alleging 'without planning permission the change of use of the Land to residential by stationing caravans and mobile homes along with associated operational development' was served on 21st June 2023 (appendix A5) and subsequently withdrawn by the Council on 5th July 2023 (appendix A6).

21. On 5th July 2023 a second enforcement notice was served to replace the one withdrawn the same day alleging 'without planning permission the change of use of the land to residential by stationing caravans and mobile homes along with associated operational development' (appendix A7). This second EN was withdrawn on 9th October 2023 by the Council (appendix A8).

22. A report of EN authorisation was signed off on 5th June 2023 (appendix A9) to which GPS responded by emailing the Council requesting clarification of the statements made within that report on 11th August 2023. The Council responded with their answers the same day (appendix A10).

23. The EN currently the subject of this appeal ENF/23/0033 was served on 31st October 2023 (appendix A1).

24. The breach alleged in the enforcement notice "*without planning permission the change of use of the Land to residential caravan site by the stationing caravans and mobile homes on the Land along with associated operational development*."

25. The requirements of the notice are:

(i) Permanently cease the use of the Land as a residential caravan site

(ii) Permanently remove all caravans and mobile homes from the Land

(iii) Permanently remove all buildings and structures from the Land except the one that is diagonally hatched black on the attached plan

(iv) Permanently remove all the tarmac from the Land from the Land, including the area shown shaded with a black pattern on the attached plan

(v) Remove any resultant debris from the Land

(vi) Restore the land shown shaded by a black pattern by seeding the land using native grass seed

26. It should be noted that the reasons for issuing the enforcement notice rely entirely on the refusal reasons for the Planning Application even though they cover different development and different areas.

27. There is inconsistency between the breach and the requirements, for instance, there is no explanation why the Council considers the stables fall within the alleged breach. There has been no consideration of the impact of the buildings, indeed the officers report for the Planning Application makes it explicitly clear that the buildings should be considered separately and did not fall within the considerations of the Planning Application. There is no mention of buildings in the Authorisation document for the Enforcement Notice. It seems clear the Enforcement Officers did not understand what they were being told by the planning officer.

28. There has to be grave doubts as to whether the Council have the necessary experience or expertise to issue enforcement notices.

Nullity

29. The notice requires the removal of all buildings and structures from the Land.

30. The structures and buildings have not been identified on the plan attached to the notice. A clear failure of the notice to comply with s173(1) of the Act.

31. Section 173(2) of the Act states that 'A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are'. As the notice fails to identify the structures, buildings, with reference to a plan, the notice is considered to be a nullity.

32. Given enforcement notices have an ongoing effect and the re-erection of a building that had been enforced against and removed would be caught by that ongoing effect it is imperative that it is possible to understand from the notice which buildings are caught by the notice. This is not possible with this notice.

33. This makes the notice uncertain, which renders it null. There is body of case law and appeal decisions supporting this. *Kaur v SSE & Greenwich LBC* [1989] EGCS 142; [1990] JPL 814; *Payne v NAW & Caerphilly CBC* [2006] EWHC 597 (Admin); and *Oates v SoCLG and Canterbury* [2017] EWHC 2716, which all draw on the principals in *Miller-Mead v MHL* [1963] 2 WLR 225. On this basis it is submitted that the Enforcement Notice should be found to be a nullity.

The Site

34. The site lies in adjacent to Cock Lane and is accessed from there with an existing access track. The track is existing and is lawful and while it is included in the redline area of the planning application that is only because the redline for the use has to go to the nearest highway.

35. The site is bounded to the immediate east and west by agricultural land. To the West of the appellant's land is a landfill site. To the north are two landholdings that appears to have residential uses taking place.

36. Further to the south of the site is a golf course, further to the east is the A10 which is the dominant feature of this locality.

Approach

37. For clarity where weight is referred to in the statement below it is using the following scale:

Substantial
Considerable
Significant
Moderate
Modest
Limited
Negligible

Relevant Planning History

Reference	Notes	Decision Date	Decision
ENF/23/0033	Breach of planning control	ENF served on 21/06/2023	
07/23/0119/F	Retrospective planning permission for change of use of land to residential, for members of the Gypsy Traveller community for 7no. static caravans 6no. touring caravans, parking for 12 cars, hardstanding, and associated development	25/05/2023	Refused
07/17/0350/F	Conversion of existing barn to residential (one bedroom) dwelling and extension of barn to form a cattery	20/04/2018	Approved with conditions
07/16/1034/F	Replace existing residential mobile home with a single storey log cabin on existing footprint	10/11/2016	Refused
07/14/0674/F	Continuation of temporary planning permission for existing use of mobile home as a residential dwelling in conjunction with horse livery and cattery/rescue centre for a period of 3 years	12/09/2014	Approved with conditions
07/13/0465/F	Temporary planning permission for existing use of mobile home as a residential dwelling in conjunction with horse livery and cattery/rescue centre	29/07/2013	Approved with conditions

07/11/0981/LDC	Certificate of lawfulness for an existing use of mobile home as a residential dwelling	10/02/2012	Refused Appeal dismissed on 13/05/2013
7/0596/08/F/HOD	Change of use of stables to livery yard	06/10/2008	Approved with conditions
7/645/1983	Agricultural workers dwelling	1983	Refused

38. ENF/23/0033 alleging 'without planning permission the change of use of the Land to residential by stationing caravans and mobile homes along with associated operational development' was served on 21st June 2023 (appendix A5) and subsequently withdrawn by the Council on 5th July 2023 (appendix A6).

39. On 5th July 2023 a second enforcement notice was served to replace the one withdrawn the same day alleging 'without planning permission the change of use of the land to residential by stationing caravans and mobile homes along with associated operational development' (appendix A7). This second EN was withdrawn on 9th October 2023 by the Council (appendix A8).

40. An Enforcement Notice was issued on 31st October 2023 by the Borough of Broxbourne reference ENF/23/0033 alleging *'without planning permission the change of use of the Land to residential caravan site by the stationing caravans and mobile homes on the Land along with associated operational development.*' (appendix A1) and now forms appeal 1 of this appeal.

41. An application (reference 07/23/0119/F) for '*the use of Land for the stationing of Caravans for residential purposes, together with the formation of hardstanding and utility/day room ancillary to that use and the use of Land for the keeping of horses and the erection of a stable*.' Was submitted 9th February 2023 and refused on 25th May 2023 (appendix A4). This is subject to this appeal. The Officer's Report for that Application is at Appendix A3.

Appeals 1 and 2 - Principal Issues

42. The principal issues in this case appear to be:

- **Appeal 1 Ground (e)**
- **Appeal 1 Ground (b)**
- **Appeal 1 Ground (c)**
- **Appeal 1 Ground (d)**
- **Appeal 1 Ground (a) and Appeal 2** – whether planning permission should be granted:
- Planning Policy
- Potential adverse impacts (harm) of the development:
  Green Belt Harm
  i. Whether the developments are Inappropriate development in the Green Belt
  ii. Impact on openness of the Green Belt
  iii. Conflict with the purposes of including land in the Green Belt
  Other harm
  iv. Pedestrian Access/Sustainability
- Conclusion on harm
- Material Considerations (benefits) of the development:
  i. The need for additional gypsy and traveller pitches in the district
  ii. Lack of alternative gypsy and traveller pitches for any gypsy / traveller.
  iii. Failure of policy
  iv. Lack of five-year land supply of gypsy and traveller pitches
  v. Likely location of gypsy sites in the district
  vi. Fallback position (Appeal 1 only)
  vii. Extant planning permission – Livery (stables only)
  viii. Animal Welfare
  ix. If necessary, the Personal Circumstances of the proposed site occupants (gypsy status, personal need and health)
- Temporary Consent
- Planning Balance/Green Belt Balance (Very special circumstances)
- Human rights considerations
- Suggested conditions
- **Appeal 1 Ground (f)** – whether the requirements of the EN are excessive
- **Appeal 1 Ground (g)** – whether the time given to comply with the EN is too short.

43. This statement will set out to address each of these in turn.

Appeal 1 - Ground (e)

44. The EN on page 3 sets out those whom the Council served with the EN:

a. *BJS Sport Limited (Co. Reg. No. 09902740) of Building 2, 30 Friern Park, London N12 9DA*

b. *BJS Sport Limited (Co. Reg. No. 09902740) of 5 Duke Street, Southport, PR8 1SE*

c. *Mr Billy Joe Saunders of Woodland Stables Mobile Home Cock Lane South Heath Hertfordshire HP16 9QQ*

d. *T.H.G & C.C Limited (Co. Reg. No. 02848746) of 43 Bell Lane, Broxbourne, Hertfordshire, EN10 7HD*

e. *T.H.G & C.C Limited (Co. Reg. No. 02292236) of Broxbournebury Mansion, White Stubbs Lane, Broxbourne, Hertfordshire, EN10 7PY*

f. *Ingrebourne Valley Limited (Co. Reg. No. 02848746) of Cecil House, Foster Street, Harlow Common, Harlow, Essex, CM17 9HY*

g. *Julie Froom of Woodland Stables, Cock Lane, Hoddesdon, Hertfordshire, EN11*

h. *The father of Mr Billy Joe Saunders of Woodland Stables, Cock Lane, Hoddesdon, Hertfordshire, EN11*

i. *The Occupier(s) of Woodland Stables, Cock Lane, Hoddesdon, Hertfordshire, EN11*

j. *Mr T. Smith Snr of Woodland Stables, Cock Lane, Hoddesdon, Hertfordshire, EN11*

k. *Tommy Saunders of Woodland Stables, Cock Lane, Hoddesdon, Hertfordshire, EN11*

45. It is clear from the witness statement of the Appellant that the occupiers of the site at the time, were not served with a copy of the notice. The Appellant states that:

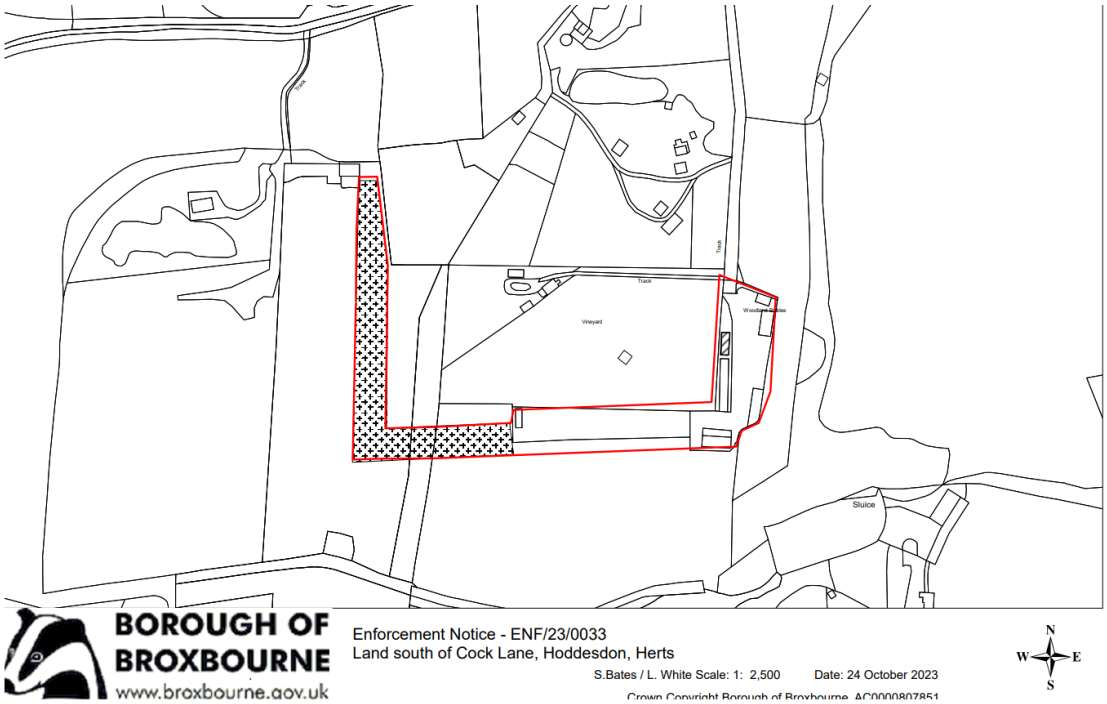
"When we got the enforcement notice from the Council, it was just stuck on our front entrance off Cock Lane. There wasn't any notices in our letter boxes and there wasn't any notices stuck on our front doors. Nobody on the site knew about the notice until we saw in on the front entrance and no council officers came onto the site to tell us it was there or anything like that".

Appeal 1 Ground (b)

46. The EN alleges the following breach of planning control:

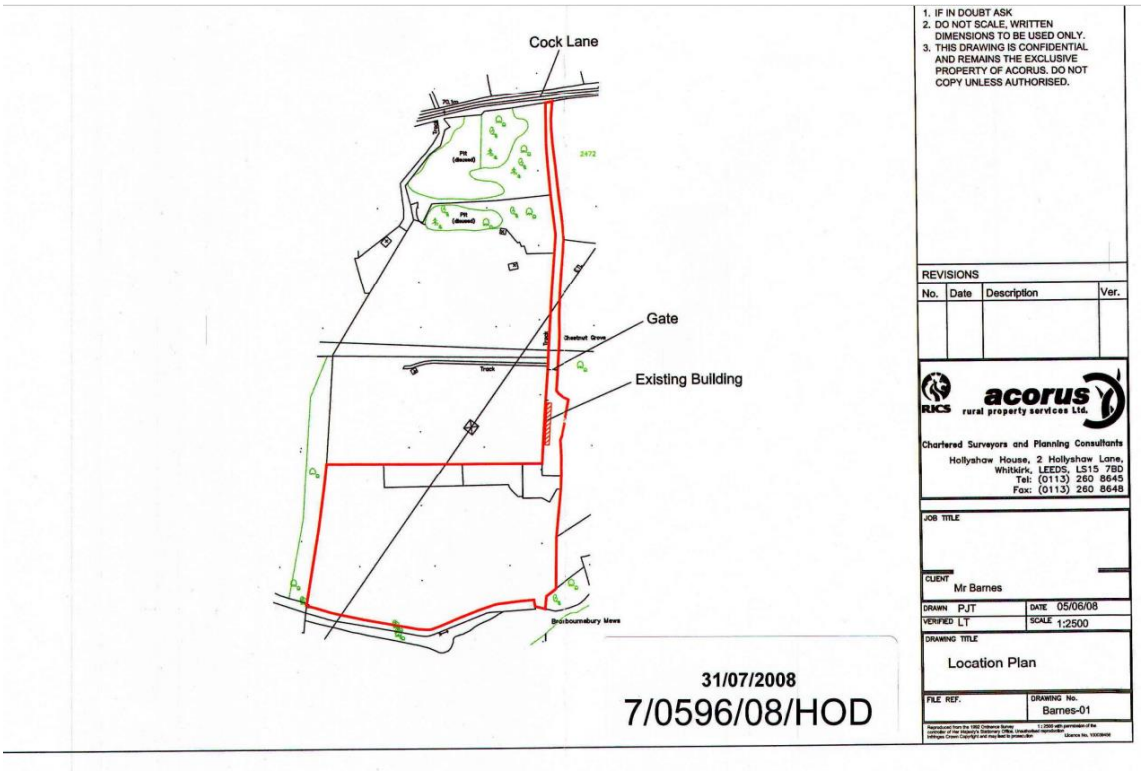
> *'without planning permission the change of use of the Land to residential caravan site by the stationing caravans and mobile homes on the Land along with associated operational development.*'

47. The EN therefore alleges a single use taking place across the area covered by the EN set out below:



48. This is incorrect and fails to take into account of an existing permitted use within that area.

49. On the 6th October 2008 an application (7/0596/08/F/HOD) for the *'change of use of stables to livery yard'* was approved. The '*livery yard'* is a use of land which is best described as '*the keeping of horses'*, which is development as it is not an agricultural use. There are replacement stables that are currently on the site and in use for the keeping of horses. The plan below shows the location of this permission as clearly being within the land covered by the EN.



50. The plans and documents for this permission can be found at appendix A17.

51. The use taking place across the area covered by the EN is therefore a *'mixed used for the stationing of caravans for residential purposes and the keeping of horses'.*

52. The Appellant would not be prejudiced should the Inspector consider a change to the alleged breach of planning control to include the keeping of horses.

Appeal 1 Ground (c)

53. The lawful use prior to the issue of the notice was a mixed use of land for the stationing of a mobile home for residential purposes, horse livery and cattery.

54. The appellant places reliance on s.57(4) of the Act, and this mixed use of land for the stationing of a mobile home for residential purposes, horse livery and cattery, is the fallback position.

55. Some of the hardstanding on the appeal site was placed down in connection with express grant of planning permissions 07/14/0674/F, 07/13/0465/F and 7/0596/08/F/HOD.

56. The stationing of a mobile home for residential purposes on the site is lawful as per 07/14/0674/F. There may be a breach of condition(s) taking place, but the permission is still extant, and the breach of condition has not been enforced.

57. Many casual observers think that when the period of time allowed in a temporary condition is exceeded the planning permission ceases to exist but that is plainly not the case.

58. Lord Scarman in the House of Lords in ***Pioneer Aggregates*** *UK v SSE* [1985] 1 AC 132 (Appendix B6) set out the ways in which a planning permission, once implemented, can be lost. None of those mechanisms involved a temporary condition. It follows that a planning permission for a material change of use that is granted subject to a time limiting condition does not and cannot “expire” at the end of that period. There is no mechanism in law for it to do so. It remains extant, but any continuing use would be in breach of condition and the remedy for that breach is an application to vary or remove the time limiting condition, or alternatively, an enforcement notice alleging a breach of condition.

59. There is no other application or approach that can be adopted, the material change of use having already taken place and consequently there being no act of development that could be granted planning permission that would allow the exiting development to continue. The 2013 permission was lawfully implemented, at which point the change of use took place. In 2014 there was effectively a s.73 permission varying the length of the condition that

imposed temporary period. The development remained in place up and until the material change of use which the Council is enforcing against, this is confirmed in the witness statement of Billy Joe Saunders (appendix A20).

60. The courts have considered this issue in a specific context in the case of ***Avon Estates Ltd*** *v Welsh Ministers and Ceredigion County Council* [2010] EWHC 1759 (Admin) in the Administrative Court, and ***Avon Estates Ltd*** *v Welsh Ministers and Ceredigion County Council* [2011] EWCA Civ 553 in the Court of Appeal (appendices B9 and B14)

61. In ***Avon Estates*** the Courts were considering whether a seasonal occupancy condition could endure beyond the period for which the related use was permitted, that use being subject to a time limiting condition. The Administrative Court and the Court of Appeal took slightly differing approaches, Beatson J in the Administrative Court considered, firstly, whether the permission could "expire", and the Court of Appeal did not concern itself with findings on that specific point, adopting the approach of Beatson J that it does not expire and thus considered specifically whether a seasonal use condition on such an extant permission could continue to apply after the expiry of the temporary period imposed by condition [34], as a matter of objective construction. The Court of Appeal made no finding on whether the permission itself endures, unlike Beatson J. The Court of Appeal held at [34]:

> *"…In my judgment, the seasonal use conditions in these permissions applied during the period for which development was authorised by those permissions. The seasonal use conditions were, as a matter of objective construction, intended to be coterminous with the authorised development, with the result that the seasonal use restriction applied during that period for which these holiday bungalows were permitted…"*

62. The Court of Appeal upheld the challenge to the decision of Beatson J in the Administrative Court, but on the narrow point of the continuing effect of conditions. **There was no finding**

by the Court of Appeal that a temporary permission "expires" at the end of the temporary period. There was no challenge to the approach of Beatson J to the construction of a planning permission in the context of whether it "expires" at the end of a temporary period imposed by condition. The Administrative Court held that such a permission does not and could not "expire", there being no such provision within the 1990 Act. The Court of Appeal proceeded on that basis but held as above [34] in respect of the continuing effect of condition

63. The analysis of Beatson J in the Administrative Court in respect of the status of a temporary planning permission, which relied primarily upon the principles set down by Lord Scarman in the House of Lords in ***Pioneer Aggregates***, remains good law. His approach was not disturbed by the Court of Appeal; indeed, it was adopted as a baseline principle. At [17] Beatson J sets out the issues at hand, setting out at [17a] the issue relevant in this matter:

> *"…17. The application gives rise to four issues, although in the event only one was contentious. The four issues are: ……. (a) Did the permissions lapse in their entirety with the consequence that no occupancy conditions remained attached to them? Or did they survive the time- limiting conditions, which have been breached but can no longer be enforced, so that they are still subject to the seasonal occupancy conditions, which have not been breached?..."*

64. The principal submissions of the parties are set out at [18] – [20]:

> *"…18. As to sub-issue (a), on behalf of the applicant, Mr Young submitted that after the specified dates the planning permissions expired…….he submitted that because after the specified date there were no planning permissions to which the conditions could attach, they ceased to exist…*
>
> *On behalf of the Welsh Ministers, Mr Moffat submitted that the planning permission did not cease to exist at the specified dates…*

Mr Stinchcombe, on behalf of the Council, adopted Mr Moffat's submission that the planning permission did not expire after the specified period, adding that what expired was the time within which the use was to cease and restoration should have occurred…"

65. Beatson J then went on the address the issue of the status of a temporary planning permission at [28] – [40], the relevant paragraphs providing as follows:

"…28. I turn to the issues. First, the status of the permissions after the specified dates. Did they lapse in their entirety and with them the seasonal occupation conditions?...

34. I turn to the statute itself, the 1990 Act. The starting point is to consider the effect of planning permission. That is dealt with in section 75. Section 75(1) provides:

> *"Without prejudice to the provisions of this Part as to the duration, revocation or modification of planning permission, any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested in it."*

35. The circumstances in which a planning permission could be extinguished were considered in Pioneer Aggregates UK v Secretary of State for the Environment [1985] 1 AC 132. In his speech, Lord Scarman held that the "clear implication" of the statutory provision equivalent to section 75(1) then in force was that "only the statute or the terms of the planning permission itself can stop the permission enuring for the benefit of the land and of all persons for the time being interested therein (see 141H)."

38. What is the impact of the reference in section 72(2) to "planning permission granted for a limited period"? The provision provides a statutory description of

a category of permission which is defined in section 72(1)(b). Section 72(1)(b) does not only relate to planning permission, the terms of which state they "expire". Indeed, as Mr Moffat observed, the word "expire" is not used in the 1990 Act

39. Section 72(1)(b) concerns a planning permission requiring, inter alia, the discontinuation of any use "at the end of a specified period". To give section 72(2) the effect for which Mr Young contends would be to contemplate all planning permissions within section 72(1)(b) having no effect whatsoever, no juridical existence for any purpose at the expiry of the period. Section 72 does not in itself provide that any particular consequences flow from a planning permission falling within section 72(1)(b) and thus described in the Act as "for a limited period".

40. Mr Young has not been able to point me to anything in the 1990 Act which positively supports (whether, to which I have referred, by the use of the word "expire" or in another way) the position for which he contends. The reference to planning permission for a limited period in sections 73A(2)(b) and 73A(3)(b), 91(4)(c) and 102(2) do not support the submission that at the end of the period the planning permission is to be treated as of absolutely no effect whatsoever. There is no exception in section 75 in respect of a planning permission for a limited period, and the common law exceptions to the principle stated in Pioneer Aggregates, that is mutually inconsistent planning permissions where one but not the other has been implemented and the effect on a planning permission after a material change of use has been implemented, do not suggest that there is a broader common law exception…"

66. Finally, at [42] Beatson J arrives at his unimpeached conclusions in respect of the general status of a time limited permission:

"…42. I accept the submission contained in the proposition set out in paragraph 43 of Mr Moffat's written submissions, which are substantially similar to those of Mr Stinchcombe in paragraph 19 of his skeleton argument…..As Mr Stinchcombe submitted, the planning permission does not cease to exist. What has expired is the time within which the use should have ceased and the restoration should have occurred…." [emphasis added]

67. I emphasise that this element of the judgment of Beatson J was not disturbed by the Court of Appeal, indeed the Court of Appeal makes no reference whatsoever to the principles established by the House of Lords in ***Pioneer Aggregates***, those being the principles upon which Beatson J founded his conclusions as to the in ability for a permission, once implemented, to "expire". It did not need to as the Court of Appeal was not re-examining the principle that a permission cannot "expire".

68. It is also worth reading the conclusion of the Inspector John Murray, in a recent appeal ***Patrick Gavin*** *v North Northamptonshire Council* APP/L2820/C/20/3262337 and APP/L2820/W/20/3262332 (Appendix B27) regarding land at Plot 24B Greenfields, Braybrooke Road, Braybrooke, LE16 8LX. Appeal B in that case involved an application to vary / remove a condition had been submitted after the expiry of a temporary condition. The Council sought that the application could not be determined. Inspector Murray dealt with this at paragraphs 81 to 85, including referencing his disagreement with the Inspector's manual.

Appeal 1 Ground (d) - Hardstanding

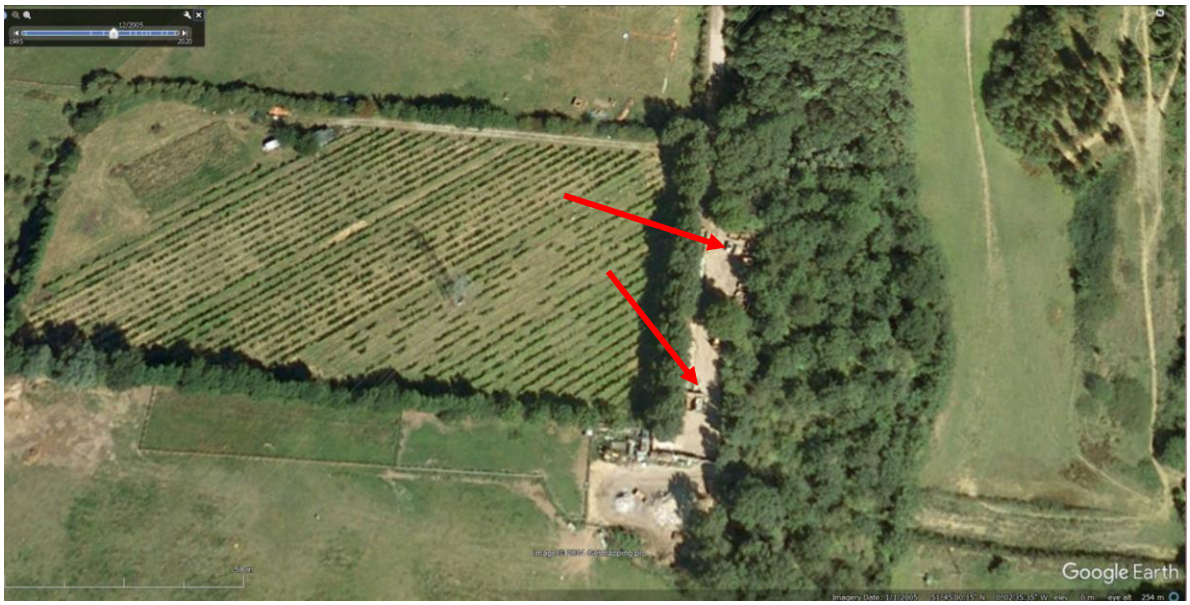
69. There is extensive hard surfacing located on the Land that has been in existence in excess of 4 years prior to the issue of the notice. This hardstanding has been put down in connection with lawful uses.

70. The area of hardstanding outlined in red on the below image has been evident on the site since 2000.

71. Following review of the Google Earth images the hardstanding in this area of the site has been evident since December 2000 as can be seen in the image below.

72. There is evidently hardstanding of some nature where the red arrow is in the above image. The rest of the area is covered by trees so it is unclear if the hardstanding extends further.

73. The Google Earth image below dated December 2005 shows the hardstanding clearly on the left-hand side of the track.

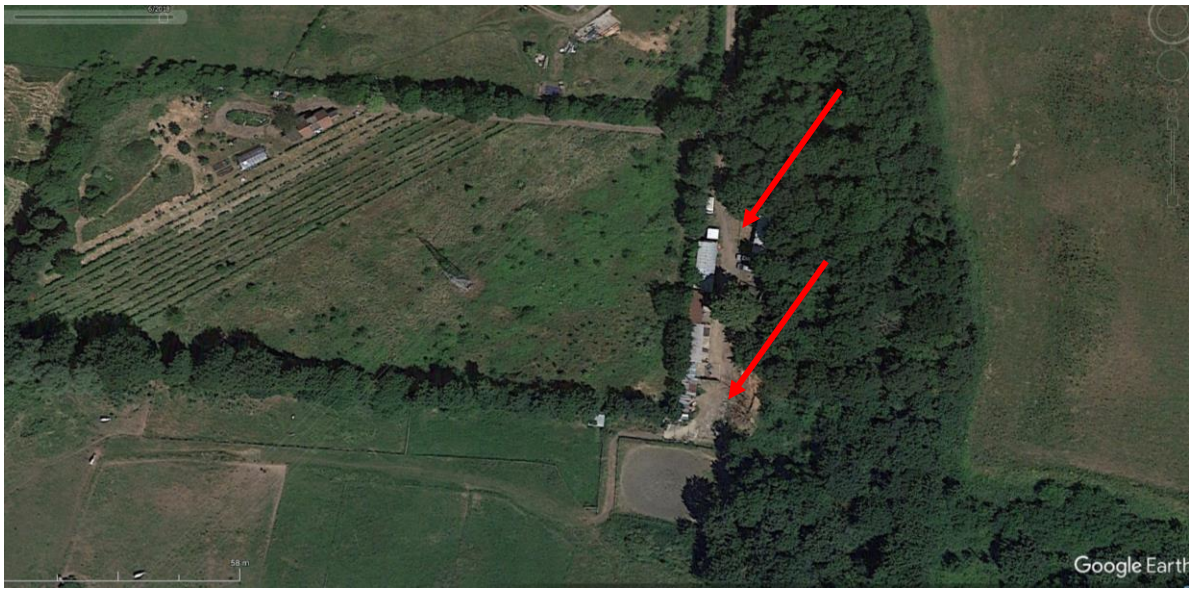


74. The same area of hardstanding is highlighted on the above Google Earth image from September 2006.

75. The below aerial image shows the extent of the hardstanding on the site as of 24th April 2010.

76. This can be seen again I the aerial image dated 4th April 2013 below.

77. This is further shown in the Google Earth image below from June 2018.



78. The image below is dated April 2020 and shows the extent of the hardstanding as it is at present day on the site. This is as far as the Google Earth images go.

79. This is clear from the aerial image dated 8th April 2020 below.

80. The aerial images below are dated 17th April 2021 and 5th August 2022 respectively and both clearly show the hardstanding on the site.


GRID REF. 535217,207519
IMAGE REF. 200877-1_RGB
SURVEY DATE: 05-08-2022

Appeal 1 (s174) Ground (a) and Appeal 2 (s78)

Planning Policies

National Policy

81. **Planning Policy for Traveller Sites (PPTS)** is the current National Policy in relation to provision for gypsy caravan sites. It was published on Monday 26th March 2012 and came into effect on Tuesday 27th March with the publication of the National Planning Policy Framework. The PPTS was amended in August 2015 and then the definition of Gypsy and Traveller for the purposes of the PPTS was amended in December 2023, in practice reverting to the definition in the 2012 version.

82. The PPTS replaced Circular 01/06 although its intentions are almost identical to the intentions of Circular 01/06. Its policies are essentially similar.

83. Elements of the amended policy with significant relevance to this appeal are:

- The clear intention of paragraph 4 to increase the number of gypsy sites with planning permission.
- In Policy A at paragraph 7I the need for a 'robust evidence base to establish accommodation needs'.
- In Policy B at paragraph 10(a) the need to maintain a five-year supply of sites.
- Policy C which deals with traveller sites in rural areas and the countryside.
- Policy H which deals with determining applications (and therefore appeals). In particular paragraph 23 which refers to the presumption in favour of sustainable development and paragraph 24 which sets down some of the material considerations to be considered by the decision maker.

84. In addition, SSCLG has withdrawn **Designing Gypsy and Traveller Sites – Good Practice Guide (2008).** However, in the absence of any replacement guide, there is no

indication that the government believes that standards lower than previously applied to gypsy and traveller sites should not be applied.

The National Planning Policy Framework

85. The revised **National Planning Policy Framework (NPPF)** was published on 18th December 2023, coming into effect immediately. The NPPF 2023 replaces the previous NPPF published in 2021.

86. Key elements of the NPPF relevant to this appeal are:

- Paragraph 8 which sets out the three dimensions to sustainable development.
- Paragraph 11 which sets down the presumption in favour of sustainable development.
- Paragraph 31-33 set out how Local Plans should be prepared and reviewed.
- Paragraph 38 relates to decision-making of Local Planning Authorities and all other levels. It states that decision-takers at every level should seek to approve applications for sustainable development where possible.
- Paragraph 47 and 48 which set out how weight should be attributed to Development Plan policies.
- Paragraph 56 states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other aspects.
- Paragraph 60 which seeks to ensure sufficient land is developed to boost the supply of homes including '*that the needs of groups with specific housing requirements are addressed.*' The 2023 NPPF expanded this paragraph and states '*The overall aim should be to meet as much of an area's identified housing need as possible, including with an appropriate mix of housing types for the local community*.'

- Paragraph 61 which requires that the needs of travellers must be addressed, both those that meet the definition in the PPTS and those that don't.
- Paragraph 63 sets out how "*context, size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to…**travellers**…)"*
- Paragraph 115 states that "*development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe*".
- Paragraph 135c of the NPPF stipulates that "*planning policies and decisions should ensure that developments are sympathetic to local character*".
- Paragraph 152 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
- Paragraph 153 details when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
- Paragraphs 224-229 which set out how weight should be attributed to Development Plan policies going forward.

87. The NPPF makes it clear that development plan policies have to be considered in the light of the publication of the NPPF.

Local Policy

88. The NPPF at paragraph 225 states due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in this plan to the policies in the framework, the greater the weight that may be given).

89. It must also be considered that the policies are to be examined as a whole policy, and therefore if parts of a local planning authority's policy are consistent with the NPPF, but other parts of it are not consistent, then the policy as a whole is incompatible with the NPPF, and if this cannot be shown then as per paragraph 11 (d) of the NPPF the policy is rendered out of date.

90. The guidance of paragraph 225 has been applied throughout this assessment, along with the consideration of compliance to mean that a policy must reflect the NPPF as a whole, and not in part, to be deemed consistent with national policy. Upon this basis, the Appellant has considered each local policy raised within the relevant documents as listed below.

Broxbourne Local Plan 2018-2033

91. The Broxbourne Local Plan was adopted 23 June 2020 and forms part of the Council's Development Plan.

92. The Broxbourne Local Plan and the Minerals and Waste Local Plans (produced by Hertfordshire County Council) together comprise the statutory Development Plan for the Borough.

93. The policies of the Development Plan need to be compared with the NPPF for consistency.

94. In considering an application for a gypsy and traveller site, the Council's adopted Gypsy and Traveller policy would normally clearly be one of the most important policies in the basket of policies. As set down by Dove J at paragraph 58 of ***Wavendon*** *Properties Ltd v*

SoSoHCLG & Milton Keynes Council [2019] EWHC 1424 (Admin) (Appendix B20) the basket of most important policies should be considered in the round':

'58. *I am satisfied that Mr Honey's interpretation of the Framework in this connection is correct. It needs to be remembered, in accordance with the principles of interpretation set out above, that this is a policy designed to shape and direct the exercise of planning judgment. It is neither a rule nor a tick box instruction. The language does not warrant the conclusion that it requires every one of the most important policies to be up-of-date before the tilted balance is not to be engaged. In my view the plain words of the policy clearly require that having established which are the policies most important for determining the application, and having examined each of them in relation to the question of whether or not they are out of date applying the current Framework and the approach set out in the Bloor case, an overall judgment must be formed as to whether or not taken as a whole these policies are to regarded as out-of-date for the purpose of the decision. This approach is also consistent with the Framework's emphasis (consonant with the statutory framework) that the decision-taking process should be plan-led, and the question of consistency with the development plan is to be determined against the policies of the development plan taken as a whole. A similar holistic approach to the consideration of whether the most important policies in relation to the decision are out-of-date is consistent with the purpose of the policy to put up-to-date plans and plan-led decision-taking at the heart of the development control process. The application of the tilted balance in cases where only one policy of several of those most important for the decision was out-of-date and, several others were up-to-date and did not support the grant of consent, would be inconsistent with that purpose.'*

95. It would seem to be logical that the most important policies will be those that govern the principle (rather than the detail) of a particular type of development proposed (in this case a Gypsy and Traveller site) and those governing development in the particular area of the

Council (in this case the countryside). General policies that might apply to more than one form of development potentially anywhere in the Council's area, or are polices relating to design detail rather than principle of development would logically usually not be the most important policies.

96. If the basket of most important policies is judged to be, on balance out of date, then the weighted balance of paragraph 11(d) is normally engaged.

97. However, the combination of NPPF paragraph 11d) i and footnote 8 means that in areas of Green Belt where the development is accepted to be inappropriate development in the Green Belt, as in this case, the weighted balance of NPPF Paragraph 11d) is not the relevant balance to apply, instead the balance to be applied is the very special circumstances balance found at NPPF paragraph 153.

98. The policies referred to in the Decision Notice (the Enforcement Notice merely relies on the wording of the Decision Notice) are:

    i. Policy GB1 - Green Belt

    ii. Policy TM2 – Transport and New Developments

99. The policies referred to in the Officers report are:

    i. Policy GT1 – Gypsy and Traveller Sites

    ii. Policy DSC1 – General Design Principles

    iii. Policy NEB1 – General Strategy for Biodiversity

    iv. Policy NEB2 – Wildlife Sites

    v. Policy NEB5 – Ancient Woodland, Protected Trees and Hedgerows

    vi. Policy EQ1 – Residential and Environmental Quality

    vii. Policy EQ3 – Lighting

    viii. Policy TM3 – Access and Servicing

ix. Policy TM4 – Electric Vehicle Charging Points

x. Policy TM5 – Parking Guidelines

100. Copies of the policies are at Appendix A13.

101. It is considered that the following policies are the most important for determining this appeal:

i. Policy GB1 – Green Belt

ii. Policy TM2 – Transport and New Developments

iii. Policy GT1 – Gypsy and Traveller Sites

102. **Policy GB1 – Green Belt**:

> **Policy GB1: Green Belt**
>
> Within the Green Belt, as defined on the Policies Map planning applications will be considered in line with the provisions of the National Planning Policy Framework.

103. This policy directs the Council to consider applications within the Green Belt in line with the NPPF.

104. This policy is consistent with the NPPF.

105. **Policy TM2 – Transport and New Developments**

Policy TM2: Transport and New Developments

I. Development will not be permitted where there would be a severe impact on the transport network. Development proposals must ensure that the safety of all movement corridor users is not compromised.

II. To demonstrate the likely impact of a development proposal on movement patterns and flows in an area, a Transport Assessment or a Transport Statement will be required.

III. Travel Plans must be submitted where the development involves major residential development, employment and other commercial development, and non-residential institutions such as schools and colleges. The Travel Plan will need to demonstrate that mitigation of the transport impacts of the proposal is achievable, and include provisions for monitoring.

IV. The Council will encourage the use of appropriate design and traffic calming measures to meet the needs of various movement corridors users.

106. Policy TM2 is broadly consistent with the NPPF.

107. **GT1 – Gypsy and Traveller Sites**

Policy GT1: Gypsy and Traveller Sites

The Council will work with the travelling communities to allocate sites as follows as shown on the Policies Map:

1. Expansion of Hertford Road where additional appropriate needs cannot be accommodated within the existing site boundaries;

2. Accommodation of new pitches within the existing St James' Road site;

3. Authorised site at Wharf Road to accommodate the appropriate needs of the Wharf Road Community.

These sites are allocated for the specific needs of the resident travelling communities to which they relate and the future expansion of those communities through new household formation within those communities. They are not to meet the needs of extended family members not currently resident within the Borough of Broxbourne. The means for ensuring that these sites meet the immediate needs of those communities in perpetuity will be set out within planning permissions.

If demonstrated to be necessary in accordance with policy BR4, the Halfhide Lane Gypsy site will be relocated within Brookfield Garden Village to accommodate the appropriate needs of the Halfhide Lane gypsy community.

108. This policy is inconsistent with the NPPF and the PPTS.

109. As will be explained within the accompanying Need Statement the Council are not meeting the need in the district and the allocations contained within policy GT1 would fail to provide a supply of specific deliverable sites sufficient to provide 5 years' worth of sites as required by National Policy.

110. It is considered that the following policies are potentially relevant to the determination of the appeal but are not the most important:

i. Policy NEB1 - General Strategy for Biodiversity

ii. Policy TM3 – Access and Servicing

111. **Policy NEB1 - General Strategy for Biodiversity**

Policy NEB1: General Strategy for Biodiversity

I. Development proposals will be expected to apply the mitigation hierarchy of avoidance, mitigation and compensation.

II. Development proposals should result in net gains to biodiversity wherever possible.

III. The Council will seek the creation of new networks of biodiversity, as well as the extension, enhancement and active management of existing sites.

IV. Opportunities to connect habitat fragments through the creation of stepping stones, using built form, vegetation or green areas will be assessed as part of all relevant applications.

V. When granting permission for any proposals that include measures to improve biodiversity, the Council will impose conditions or seek planning obligations that secure appropriate management regimes to deliver biodiversity gain in perpetuity.

112. Policy NEB1 is consistent with the NPPF

113. **Policy TM3 – Access and Servicing**

Policy TM3: Access and Servicing

I. New development proposals must provide for adequate, safe and convenient servicing arrangements, access points and drop-off areas.

II. Adequate provision must be made for the movement and turning of emergency vehicles and refuse vehicles in all developments.

114. Policy TM3 is consistent with the NPPF.

115. The following policies are not of relevance to the determination of the appeal

i. **Policy DSC1** addresses the impact of new development on design and visual amenity. The officers report confirms the Council is satisfied in terms of design subject to a condition intended to control hard boundary treatments. Given this policy has been satisfied subject to conditions it is not of relevance to determination of the appeal.

ii. **Policy NEB2** is concerned with the protection of Internationally and Nationally Designated Wildlife Sites. The proposed site results in no unacceptable impact on either designation and no objections have been raised on this matter. This policy has been satisfied it is not of relevance to determination of the appeal.

iii. **Policy NEB5** addresses the impact of development on Ancient Woodland, protected trees and hedges. There is no impact by either development on Ancient Woodland, protected trees and hedges and the Council's arboriculturist raises no objection and therefore it is considered this policy has been satisfied and is not of relevance to the determination of the appeal.

a. **Policy EQ1** ensures development is sympathetic to residential and environmental amenity. The officers report the Council is satisfied with regard to residential amenity and that provision for the storage of refuse and recycling facilities can be secured via condition. Given this policy has been satisfied subject to conditions it is not of relevance to determination of the appeal.

b. **Policy EQ3** is relevant to development including new lighting, or new lighting proposals. No lighting is shown on the proposed plans. Notwithstanding this if the Council consider it necessary external lighting can be controlled via planning condition. This Policy is not of relevance to determination of the appeal.

c. **Policy TM4** is concerned with the provision of electric vehicle charging points for new housing developments or for new retail and commercial development. The proposals are not for development specified within TM4 and therefore this Policy is not of relevance to determination of the appeal.

d. **Policy TM5** Formal parking spaces are not necessary at the site given the amount of hardstanding, additionally the parking standards referred to in Appendix B of the Local Plan do not give standards for Gypsy and Traveller sites. This policy is not of relevance to determination of the appeal.

Emerging Policy

116. The Local Development Scheme dated December 2023 (appendix A14) sets out the timeframes for the adoption of the new Local Plan.

117. According to the table below the Council should have completed Regulation 18 and should be ready to commence publication in June/July 2024.

118. This LDS anticipates an adoption date of January 2025.

Stage	Timeline
Preparation/Consultation (Regulation 18)	January/February 2024
Publication (Regulation 19)	June/July 2024
Submission (Regulation 22)	September 2024
Examination hearing start (Regulation 24)	October 2024
Receipt of Inspectors Report (Regulation 25)	November 2024
Adoption (Regulation 26)	January 2025

Potential adverse impacts (harm) of the development:

119. The Council refused the Planning Application for two reasons (which the Enforcement Notice also replicates). These are:

> *1. 'The development does not safeguard the Green Belt countryside from encroachment. The very special circumstances do not outweigh the harm to the Green Belt in this case. Therefore, the development is contrary to Policy GB1 of the Broxbourne Local Plan (2018 – 2033), Policy E (paragraph 16) of Planning Policy for Traveller Sites (August 2015) and the aims and objectives of the National Planning Policy Framework (July 2021).*
>
> *2. There are no footways leading to the site, and the highway is subject to 60mph restricted speed limit with no street lighting and limited grass verge to walk on. Therefore, pedestrians would have to route on the carriageway, which represents a highway safety concern. The development fails to ensure that the safety of all movement corridor users is not compromised, therefore is contrary to Policy TM2 of the Broxbourne Local Plan (2018 – 2033) and the aims and objectives of the National Planning Policy Framework (July 2021).*

120. The harms identified in the reasons to justify the issue of the EN can be summarised as harm to the Green Belt and the site having poor connectively to services via foot. Although the second reason for refusal is expressed in highway safety terms, it is in practice a sustainability reason for refusal.

Whether the developments are inappropriate development in the Green Belt

121. It is accepted that as a matter of principle gypsy sites are normally inappropriate development in the Green Belt and therefore other considerations sufficient to outweigh the harm by virtue of inappropriateness and any other harm so that very special circumstances exist are needed. It is accepted that in this instance the development the subject of the planning application, and element of the mixed use enforced against by the enforcement notice is inappropriate development in the Green Belt. The keeping of horses already has planning permission.

122. It is acknowledged, as per paragraph 152 of the NPPF, that there is harm by virtue of inappropriateness.

123. The stables however are different. These are probably accidently caught by the requirements of the EN as a result of a lack of understanding by the Enforcement Officer. They are not mentioned in the breach and clearly are not 'associated operational development'. There is a lawful use for livery on the site (either by virtue planning permission 07/14/0674/F or if the Inspector decides that permission is not extant, then planning permission 7/0596/08/F/HOD.

124. Additionally the provision of stables is not inappropriate development as they fit with the exception in NPPF paragraph 154(b) which is for *"**the provision of appropriate facilities** (**in connection with the existing use of land** or a change of use) for **outdoor sport, outdoor recreation**, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it*" (**my emphasis**).

125. The preservation of the openness and purposes of the Green Belt by a new building for outdoor sport/recreation purposes is dealt with the relevant caselaw of ***Fordent Holdings*** *Ltd v Secretary of State for Communities and Local Gover*nment [2013] EWHC 2844 (Admin) (appendix B13) and ***Europa Oil and Gas*** *Limited v Secretary of State for*

Communities and Local Government and Others [2014] EWCA Civ 825, [2014] JPL 1259 (Appendix B12). The relatively small-scale nature of the stables replacing an earlier similarly sized set of stables, in the context of an expressly permitted use, fall within the paragraph 154(b) exception and are not inappropriate development in the Green Belt.

126. The judgement in Fordent Holdings states at paragraph 33:

> *"Thus in each case it will be for the decision maker to apply this approach in order to decide whether a particular building which is, or buildings which are, claimed to be appropriate facilities for outdoor sport or recreation to decide whether what is proposed preserves openness and does not conflict with the purposes of including land within the Green Belt applying these principles. If it does then what is proposed will come within the potential exception created by the second bullet point in the list in Paragraph 89. If it does not then it will fall within the scope of the first sentence of that paragraph and can be permitted only if very special circumstances are made out."*

Harm to openness of the Green Belt

127. The most important attribute of Green Belts is their openness. Impact on openness is directly related to the quantum of development and not to the visibility of the site. Therefore, as a starting point, openness is best described as the absence of development.

128. All land situated in the Green Belt is afforded identical levels of protection and value under the relevant NPPF policies, and no segment of Green Belt should be considered as a higher priority unless further protections from policy is applied. Acknowledging this, the location of the site cannot be deemed to be 'particularly sensitive' or 'particularly valuable' in comparison to other locations situated within the Green Belt.

129. The Supreme Court gave judgment on how 'openness' should be considered in ***Samuel Smith Old Brewery*** *and others v North Yorkshire County Council [2020] UKSC*

3 (Appendix B5). Holding that 'openness' is commonly equated with the absence of built development, as well confirming that there can be a visual dimension to openness but that it is a matter of planning judgment.

130. From a spatial point of view, the Court of Appeal in ***Turner*** *v SSCLG & East Dorset Council* (Appendix B11) determined that it was not irrational for an inspector to determine that the impact on openness of a moveable development such as caravans and mobile homes is less than the impact of the equivalent permanent structure.

131. The appeal development consists of in the s.78 appeal 7 gypsy pitches, and for the s.174(a) appeal 7 or 8 (depending on the outcome of the ground c appeal) gypsy pitches and 3 buildings (assuming the stables are excluded), both appeals include a similar amount of hardstanding assuming the pre-development hardstanding is excluded from the enforcement notice as a result of ground (d) being successful in that regard.

132. However these developments are all but invisible from public view and the mobile homes are moveable, which taking ***Samuel Smith Old Brewery*** and ***Turner*** into account reduces the impact on openness of both developments.

133. It is concluded that the impact on openness from the s.78 development is modest and the impact on openness of the s.194(a) which includes 3 buildings which are ancillary to the residential use is moderate.

<u>Conflict with the purposes of including land in the Green Belt</u>

134. It is accepted that the developments will encroach into the countryside to some extent, with development taking place in some places where there was none before. but given the modest scale nature of the site the impact is moderate. It will not materially impact on the other purposes of including land in the Green Belt.

Weight to be attached to harm to the Green Belt

135. The developments cause harm by virtue of its inappropriateness, they harm openness to either a modest or a moderate extent, and they encroach to a modest extent into the countryside. Consistent with the NPPF and Secretary of State's decisions, substantial weight to be attributed to the harm to the Green Belt in relation to both developments.

Pedestrian access / Sustainability

136. The Decision Notice (Appendix A4) states:

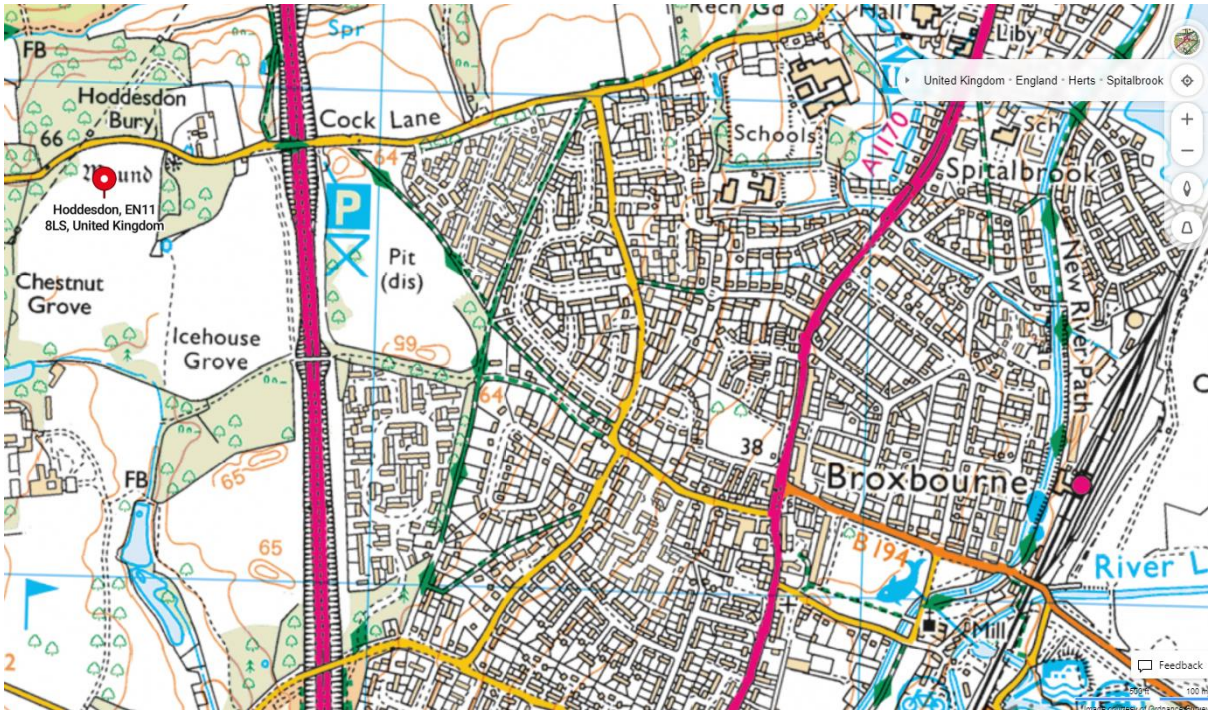
"There are no footways leading to the site, and the highway is subject to 60mph restricted speed limit with no street lighting and limited grass verge to walk on. Therefore, pedestrians would have to route on the carriageway which represents a highway safety concern. The development fails to ensure that the safety of all movement corridor users is not compromised."

137. This refusal reason clearly cannot relate to the stables.

138. It is agreed that there is no direct footway leading to the site which will prevent the site being accessible, on foot, for some (but not all) pedestrians, for example the elderly or infirm, or those with pushchairs. However, the site will be accessible on foot for the majority of pedestrians.

139. It should also be noted that the area to which the Council refer is limited in length. Pavements are provided from point at which Cock Lane and the A10 intersect as shown below.

140. Further, as demonstrated below, public footpaths are available from that point on, avoiding, the need for pedestrians to walk along Cock Lane if required.



141. The fact that the site may not be accessible on foot by a small group of individuals does not in and of itself justify a refusal of a grant for planning permission in any event. Indeed, a great number of sites would not necessarily be accessible by this group of individuals.

142. It is clear, that the site, when considered in the round is clearly sustainable and the absence of a direct footway should not prevent either a finding of sustainability or the grant of planning permission.

143. The Inspector in ***Jimmy Cash v Three Rivers District Council*** (Appendix B28) provided:

"Paragraph 7 of the NPPF states that there are three dimensions to sustainable development: economic, social and environmental. This paragraph then goes on to expand the aspects of each dimension. It is evident therefore then when considering development it is not just a matter of building a strong and competitive economy or supplying housing to meet required needs or protecting the environment but a balance

between each of these roles. Hence when considering sustainability it needs to be looked at in the round and not just on the basis of distance to services and facilities. However, this is one factor that should be assessed in terms of environmental impact"

144. The Inspector then goes on at paragraphs 36 – 51 to provide a rounded analysis of the site's sustainability taking into account factors, beyond simply distance to services and giving particular regard to the eight considerations for local authorities in terms of their policies (a-h) as set down in the PPTS at paragraph 13.

Planning policy for Travellers sites: Sustainability Considerations

145. The PPTS at paragraph 13 sets down eight considerations for local authorities in terms of their policies (a-h).

146. Although there is no specific sentence as there was in Circular 01/06 setting down that sustainability should be considered in the round and not just in terms of transport mode and distances to services, the list set out in paragraph 13 of the PPTS clearly continues this approach and it is clearly the logical approach where gypsy sites are concerned.

147. Specifically, although now replaced by the NPPF, PPG13 set down the distances that are considered acceptable for walking and cycling.

148. It defined 2km as an acceptable walking distance, and 5km as an acceptable cycle distance. These are long established distances in terms of what is acceptable, and they have been widely accepted for years. It is therefore reasonable to continue to use these distances.

149. It has also been widely accepted that the distances set down in PPG13 can be combined in a multi-mode journey. Therefore, bus services can be combined with walking or a bike ride.

150. These wider considerations include the benefits that a base has over a transient existence and have to be taken into account when considering the sustainability of a site.

Location

151. There are a number of settlements within close proximity of the Appeal Site. For example:

a. The centre of Spitalbrook is approximately 1.9km from the Appeal Site.

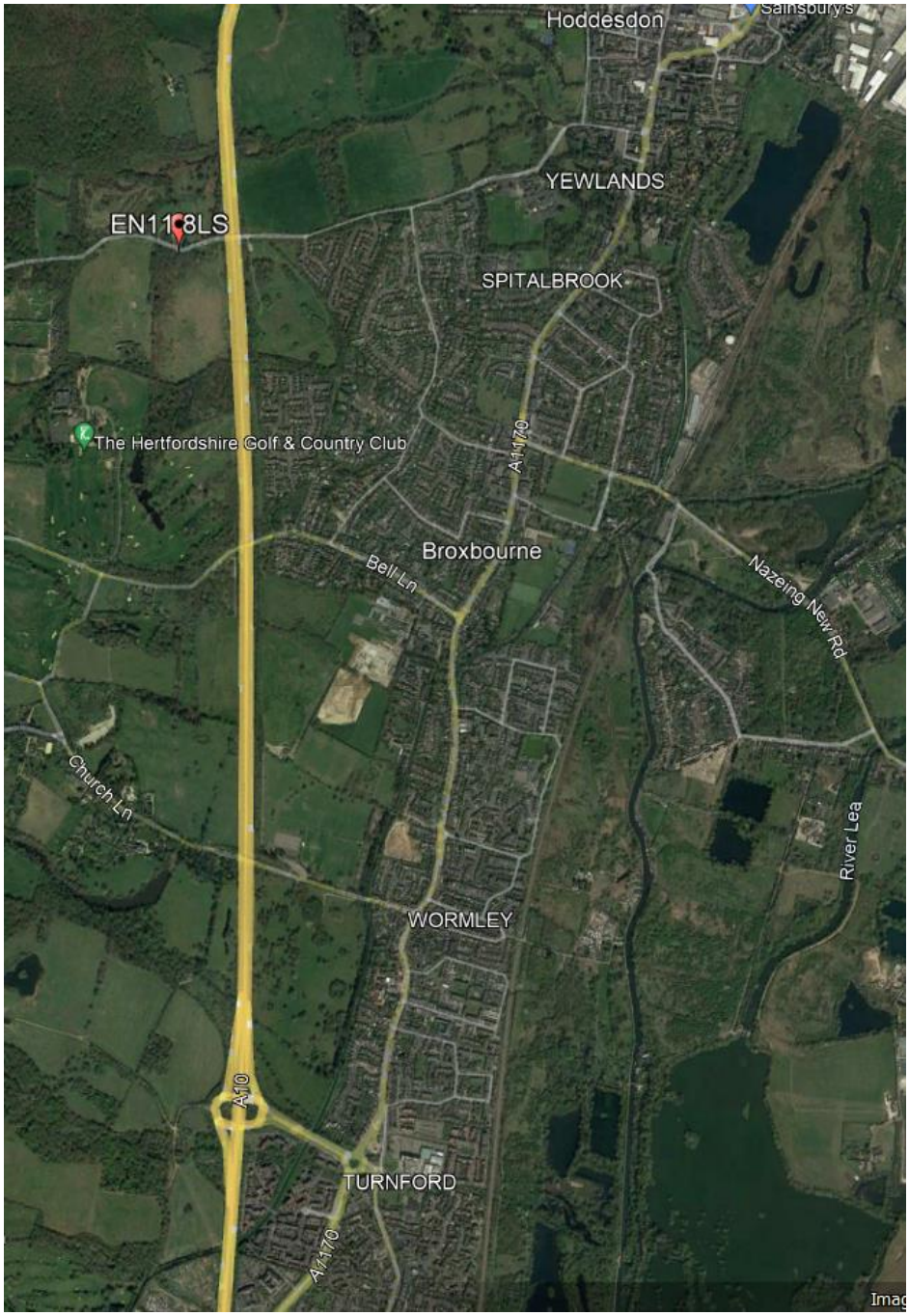
b. The centre of Broxbourne is approximately 2.5km from the Appeal Site.

c. The centre of Hoddeson is approximately 2.5km from the Appeal Site.

d. The centre of Wormley is approximately 4.4km from the Appeal Site.

152. All of these settlements and the services within them can be accessed either through walking, cycling or multi modal journeys.

153. As demonstrated below, the nearby settlements of Hoddeson, Spitalbrook, Broxbourne, Wormley and Turnford, running north to south on the below image have few distinctive boundaries on the ground and provide the site occupants to a wide range of facilities such as schools, shops, post offices, restaurants, churches, recreational facilities and further transport links including bus stops and rail network links.



Local Services

154. Hoddesdon (approximately 2.5km from the Appeal Site.) provides access to a number of convenience stores including Londis, Hoddesdon Express, Poundstretcher, Sainsburys, Aldi and Morrisons. Other local services include, a post office, recreational facilities including a bowls club, café's, restaurants and public houses.

155. Convenience stores are located in Broxbourne, including a Sainsbury's Local, approximately 2.5km from the Appeal Site. Other local services include public houses, restaurants, dry cleaners, funeral directors, estate agents and takeaways etc.

156. The below image shows a parade of services at Broxbourne High Street, approximately 2.5km from the Appeal Site on foot or 2.8km by car.

157. Similar services are located in Wormley, including a post office, restaurants, hairdressers and convenience stores.

158. The nearest doctor's surgery is Park Lane Surgery, in Broxbourne, approximately 2.5km to the Appeal Site. A further doctor's surgery, Amwell Surgery is located in Hoddesdon, approximately 2.8km to the north east of the Appeal Site.

159. The nearest dentist is Broxbourne Dental Smile Clinic, 2.5km from the Appeal Site on foot or 2.8km by car.

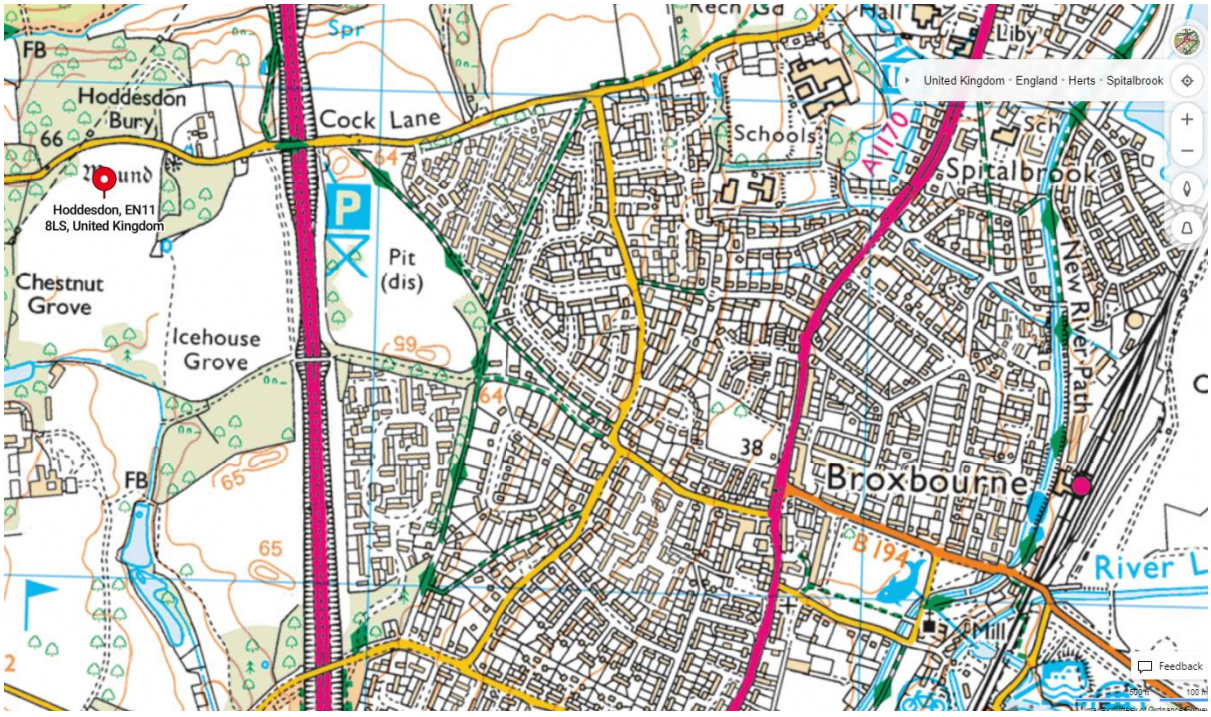
160. There is a pharmacy located on High Road, approximately 2.5km from the Appeal Site. Further pharmacies are located in Hoddesdon approximately 2.8km from the Appeal Site.

161. The closest Primary School to the appeal site is Sheredes Primary School and Nursery located 2km north east of the appeal site. Primary schools are also located in Hoddesdon and Wormley.

162. Robert Barclay academy, is the closest secondary school to the Appeal Site, located on Cock Lane located 2km north east of the appeal site. Further secondary schools (The John Warner School and Hailey Hall School) are located in Hoddesdon to the north east.

163. The nearby settlements also provide access to public transport for travel to further settlements as required.

164. The nearest bus stop in Broxbourne, is approximately 2.4km from the Site on High Road and can be accessed via public footpaths close to the site along with public roads as indicated below.



165. . The following services access this bus stop, 25, 310,341, 641, 907 and C392 providing onward services to Waltham Cross Hoddeson, Hertford, Corey's Mill, Harlow, and Cheshunt.

166. Further bus stops are located along High Road, including on the edge of Hoddesdon, approximately 2.4km from the Apppeal Site. The following services access this bus stop, 25,25B, 310, 341, 641, 907 and C392 providing onward services to Waltham Cross, Broxbourne, Harlow, and Cheshunt. Example bus timetables are provided at Appendix A21.

167. The closest train station is located in Broxbourne, approximately 3km walk from the Appeal Site providing access to Cambridge North, London, Bishops Stortford, Stratford, Hertford etc.

168. The bus and train services provide extensive opportunities to access the services in the surrounding towns and villages. It is therefore reasonable that the intended site occupants would not be reliant on private transport.

169. It would clearly be feasible for residents of the site to access local services and facilities and public transport without reliance on private motor vehicles by means of cycling.

PPTS considerations in relation to sustainability (A-H) 24

170. Paragraph 13 of the PPTS sets down eight considerations (a-h) in relation to sustainability.

171. These are considered in turn.

a) Peaceful and integrated co-existence

172. It is the reality with any site that unless there are particular social problems, sites become acceptable and integrated with the community over time. This is clearly an advantage over the community tensions created by unauthorised encampments. Authorised sites assist the promotion of peaceful and integrated co-existence between the site and the local community.

173. The Inspector commented in the case of ***Brooks v Shropshire Council*** (Appendix B29) that;

> *'Integration happens gradually through communication between the site occupants and the settles population this takes place through contact at schools,* shops, post offices, pubs and so on' (paragraph 24).

174. The Inspector commented in the ***J Dolan v Durham County Council*** (Appendix B30) that;

> *'It is not unusual for occupiers of an area to object to new residential uses; it does not follow that integration cannot occur.'*

a. Health

175. The NPPF makes it clear that access to appropriate health services is a key consideration in relation to sustainability. The application site will provide to its occupant's achievable access to medical facilities. The accessibility of medical facilities which this site provides is clearly a very positive advantage with regards to sustainability, particularly when compared to the alternative of a roadside existence. This weighs in favour of a decision that the site is sustainable.

c) Education

176. The PPTS at paragraph 13 (c) makes it clear that children attending school and receiving education on a regular basis is a consideration regarding sustainability. The provision of a base compared to the alternative of a roadside or transient existence makes it substantially more likely that gypsy children will receive an education; the application should be assessed in these terms.

177. A base ensures that any children are able to attend school on a regular basis. It is widely recognised that gypsies and travellers are believed to experience the worst

education status of any disadvantaged group in England, linked with the lack of good quality sites for gypsies and travellers. A grant of permission makes a positive contribution toward considerations of sustainability. This weighs in favour of a decision that the site is sustainable.

d) Reducing the need for long-distance travelling

178. The PPTS at paragraph 13 (d) refers to the provision of a base that reduces the need for long-distance travelling and possible environmental damage caused by an unauthorised encampment. A grant of permission would clearly give a positive contribution to this paragraph and to the consideration of sustainability. This weighs in favour of a decision that the site is sustainable.

e) Local environmental quality

179. Paragraph 13 (e) of the PPTS sets out that proper consideration of the effect of local environmental quality (such as noise and air) on the health and well-being of any travellers that may locate there or on others as a result of new development. This is a benefit compared to the alternative of a roadside or transient existence, as unauthorised sites may be located within areas with poor environmental quality. This weighs in favour of a decision that the site is sustainable.

f) Undue pressure on local infrastructure and services

180. There is no evidence that the site occupants would place undue pressure on local infrastructure and services. This weighs in favour of a decision that the site is sustainable.

g) Flooding

181. PPTS states at paragraph 13 (g) that local planning authorities should ensure their policies do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans. The application site raises no concerns over

flooding. This is a benefit compared to the alternative of a roadside or transient existence as unauthorised stopping places could be at risk of flooding. This weighs in favour of a decision that the site is sustainable.

h) Traditional lifestyles

182. Paragraph 13 h) of PPTS states that local planning authorities should ensure that their policies 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. The site provides the occupants with access to the road networks to allow them to travel for their work. This is a benefit compared to them being in an area, particularly within a town, that would increase their travel time to the major road networks around the country. This weighs in favour of a decision that the site is sustainable.

Conclusion on gypsy and traveller site sustainability

183. If sustainability were to be considered in the 'conventional' sense, involving transport modes and distances to services, the site would be considered sustainable. However, there are more factors to be taken into account with gypsy sites.

184. It is clear that the governments intentions are to promote thriving rural communities due to the aging populations experienced across the country in rural communities. The government is no longer just placing the emphasis upon maintaining local services, they are looking to achieve thriving rural communities as a whole.

185. Thriving communities are comprised of families with children, who will of course utilise local services, helping therefore to maintain their presence. This can include bus services and schools.

186. In this case the considerations identified in the PPTS are all benefits to be considered in the round when considering issues of sustainability.

187. The PPTS has continued to relax the ‘normal’ sustainability requirements by considering the benefits that a base can bring as part of the overall assessment of sustainability. Indeed, given that the PPTS does not prevent gypsy sites from being located in the countryside, to do otherwise would be contradictory.

188. It is clear that this site is in a sustainable location for this gypsy site with regard to the PPTS.

189. For the reasons as set out within this section, it is considered that as the appeal site is sustainable.

190. The site presents a sustainable location for a gypsy and traveller site, in accordance with the NPPF and PPTS.

Conclusion on Harm

191. The provision of stables is not inappropriate development as they fit with the exception in NPPF paragraph 154(b). The relatively small-scale nature of the stables replacing an earlier similarly sized set of stables, in the context of an expressly permitted use, fall within the paragraph 154(b) exception and are not inappropriate development in the Green Belt and in accordance with the development plan.

192. The remaining development causes harm by virtue of its inappropriateness, they harm openness to either a modest or a moderate extent, and they encroaches to a modest extent into the countryside. Consistent with the NPPF and Secretary of State's decisions, substantial weight to be attributed to the harm to the Green Belt in relation to both developments.

193. It is concluded that the site is sustainably located for a gypsy and traveller site and therefore no harm is identified in relation to refusal reason 2.

194. It is therefore concluded that the harm in this case is the harm to the Green Belt and substantial weight should be attached to this harm. There is no other harm.

Material Considerations (benefits) of the Development:

195. There are a number of material considerations in this case which in combination are sufficient to clearly outweigh any harm to the Green Belt and any other harm, and therefore, establish that very special circumstances exist.

196. These material considerations are:

- The need for additional gypsy and traveller pitches in the district.
- Lack of available, suitable, acceptable, affordable alternative sites
- Failure of policy
- Lack of a five-year supply of land for gypsy and traveller pitches.
- Likely location of gypsy sites in the district
- Fallback position (Appeal 1 only)
- Extant planning permission - Livery
- Animal Welfare
- If necessary, the Personal Circumstances of the proposed site occupants (gypsy status, personal need and health)

197. The Inspector's decision in ***Mr. J McDonagh*** *v South Gloucestershire Council* (Appendix B25), dated 10th February 2016 held that each material consideration is weighted in its own right. The Inspector stated at paragraph 26 that:

> *"The Council questioned whether it was correct to aggregate unmet need, a lack of a five-year supply and failure of policy, arguing that they amounted to the same thing. Certainly, there are casual links, and one might be said to lead from another, but the unmet need is a current failing, the lack of a five-year supply is indicative of failings to meet the need in the future as well, and the failure of policy that has led to the present situation can be traced back at least to 2006.* ***It would be possible for one or two of these factors to exist without a third and so in the balance, each should be accorded weight where they all occur,*** *as here."* ***[GPS emphasis added]***

198. It is therefore very clearly the case that the aggregation of unmet need, lack of a five-year supply and failure of policy is correct, and each should be afforded its own separate weighting in favour of the appeal.

The need for additional Gypsy and Traveller Pitches in the District

199. The need for gypsy and traveller sites in the Borough is primarily dealt with in the ANGTP submitted alongside this Proof of Evidence.

200. The most recent GTAA is dated April 2017; by the time of this inquiry, it will be seven years old. The evidence base is considerably out of date and as such the Council cannot demonstrate a five-year supply of gypsy and traveller pitches.

201. The GTAA is also based on the now outdated 2015 PPTS definition and contended that only the need for those meeting that definition plus 10% of “unknown households” ought to be met.

202. Following the change in the PPTS definition, it is anticipated to be common ground that the need for all Travellers will need to be met by the Council. On ORS’ figures this is a total need of 37 pitches between 2017 and 2033. However, it is clear upon review of the GTAA that there are various errors therein that will have resulted in an underestimation of the need in the Borough and the lack of and need for gypsy and traveller pitches is worse than the Council figures portray.

203. It is clear that the GTAA has failed to accurately identify the number of households and pitches in existence as at the base date, and failed to establish an accurate number of households in bricks and mortar wishing to move to sites. These will have resulted in the recorded base date figures being too low.

204. The GTAA cannot be considered a robust evidence base to inform the Local Plan as there are a number of errors identified in the methodology of the GTAA which will have resulted in a significant underestimation in the level of need in the county.

205. As the Appeals will be heard in 2024, the appropriate five-year supply period is 2024 – 2029. The number of pitches required by 2029 would be 81. Taking into account the 35 pitches identified as supply to date, this would result in a need of 46 additional pitches for the Council to demonstrate a five-year supply.

206. It is clear from the ANGTP that the LPA is working to too low a figure, it is Green Planning Studio's opinion that they will fail to meet the actual need for sites in the district.

207. Green Planning Studio does however air caution that these figures are the minimum level of need in the district and have been arrived at on the information available. Green Planning Studio is of the opinion that these figures are likely to still be an underestimation of the actual level of need in the area.

208. The proposal would make a small but meaningful contribution to Gypsy and Traveller pitches at a time when the Council's housing land supply shortfall is substantial and unlikely to improve for a number of years.

209. This weighs in favour of the proposed development regarding the social limb of sustainability.

210. This substantial clear immediate unmet need in the Borough adds **substantial weight** in favour of the appeal.

Provision of available alternative, acceptable and affordable alternative sites

211. In assessing the possible alternatives, the decision maker should assess not just availability but also affordability, acceptability and suitability. This is the approach followed by the Inspector in the ***Angela Smith*** *v Doncaster MBC* case (Appendix B15) at paragraph 40.

212. The Inspector's decision however is clearly based on the ruling set out in the ***Chapman*** ECHR Judgement *in 2001* (Appendix B1, paragraphs 103 and 104). This formulation of words was subsequently upheld in the High Court.

213. It is established case law *(**South Cambs** v SSCLG & Brown)* that there is no burden on an Appellant to prove that there are no alternatives available.

214. There are no available suitable and acceptable gypsy and traveller sites in the Borough. As such, there is no alternative for the site occupants but the roadside.

215. The Officer's Report (Appendix A3) relies on the provisions of Policy GT1 in relation to the provision of additional pitches. However, as set out above the ANGTP identified the need for additional pitches in the Borough.

216. Further, Policy GT1 restricts any expansion of those sites to the occupants thereof and the future household growth providing:

"Authorised site at Wharf Road to accommodate the appropriate needs of the Wharf Road ….Community….

These sites are allocated for the specific needs of the resident travelling communities to which they relate and the future expansion of those communities through new household formation within those communities"

217. As such any such expansion, of which there is no evidence, would not be available to the occupants of the Appeal Site.

218. The Council's statement of case confirms that there are currently no sits suitable for gypsies and travellers aside from those identified in the Local Plan.

219. It would seem clear then, that from all the available information that there are no alternative available sites to move to and there seems little likelihood that there will be in the immediately foreseeable future.

220. In the ***Angela Smith** v Doncaster MBC* decision (Appendix B15), this was sufficient with need, and lack of progress in identifying sites, to clearly outweigh the combined harm so that very special circumstances existed for permanent permission to be awarded in the green belt.

221. In the ***Yvette Jones*** *v South Gloucestershire DC* decision (Appendix B24), need, lack of alternatives and lack of progress in identifying sites sufficiently outweighed the harm to the Green Belt in general that a permanent permission was granted without a personal condition.

222. The Court of Appeal judgement in the case of ***Butler*** *v Wychavon* (Appendix B8) which reversed a High Court decision to quash a grant of temporary consent is also significant. The Court upheld the Inspector's judgement that the very substantial weight he attached to the lack of an alternative site could outweigh the combined harm in a green belt case to the extent that a temporary consent could be granted.

223. It would seem from the available information that there are no alternative available sites for the site occupants to move to and there seems little likelihood that there will be in the immediately foreseeable future.

224. The Secretary of State in the appeal decision, ***Amer & ORS*** *v Mole Valley* DC (Appendix B21) gives significant weight after finding that there are *'no identified alternative sites in the Borough for travellers in general'.*

225. In this case the lack of alternative sites is a material consideration of **significant weight**.

Failure of Policy

226. The importance of failure of policy is ascertaining the likelihood of the Council successfully addressing need in the future; it is not seeking to punish the Council.

227. The best indicator of future performance has to be past performance. Council officers will always say things will be better in the future; they rarely turn out to be so.

228. GPS have identified a number of failings in policy by the Council each of which should be treated as its own separate consideration in accordance with the approach taken in ***Mr. J McDonagh*** *v South Gloucestershire Council.*

229. These failures of policy include:

a. The Council do not have an up-to-date GTAA. The most recent GTAA is dated April 2017; by the time of this inquiry, it will be seven years old. Given that the Council should be re-assessing their position every 5-year period as a minimum, the evidence base and thus any policy or provision based upon it is considerably out of date. Notably, in the Council's statement of case this appears to be conceded *"It is quite likely that the needs position has changed since 2017".* Despite this the Council have confirmed therein that there is no intention to update the GTAA. This is a clear failure of policy which looks set to be ongoing given the stance set down therein.

b. The GTAA underestimates the level of need in the Borough, and therefore the Council will fail to meet the actual level of need in the Borough. This is a clear failure of policy.

c. The Council is not complying with the PPTS requirement to maintain a five-year supply of sites.

d. The Council, in seeking only to make provision for households meeting the 2015 PPTS definition of Gypsy and Traveller, are adopting an unsound approach to provision.

e. As a result of the above there is no up to date allocations policy for Gypsy and Traveller sites.

f. There is no allocations policy applying to the gypsy and traveller community occupying sites other than the three identified in Policy GT1. The Council's statement of case confirms that there is no intention to provide a supply for additional pitches other than those arising from new household formation at the existing communities identified in Policy GT1. This is wholly unreasonable and fails to take into account any gypsy and traveller population living elsewhere.

This flagrant failure of policy looks set to endure in light of the Council's approach. Unless and until the Council address this systemic failure and makes provision for those other communities there will remain a need for pitches.

230. There is currently no evidence that could lead to anyone conclude that the Council will provide the required level of new pitches in the Borough.

231. In ***Crawt*** *v Guildford Borough Council* case (Appendix B21) the Secretary of State sets out at paragraph 21 that *'this failure to progress the delivery of the necessary sites is a matter of considerable weight in favour of the appeal'.*

232. In ***Stanley*** *v St Alban's City and District* case (Appendix B22) the Secretary of State at paragraph 17 states that '*the failure of the development plan to meet the need weigh significantly in favour of the appeal'.*

233. In ***Amer & ORS*** *v Mole Valley* (Appendix B21) the Secretary of State at DL13 identifies that a failure to progress with the identification of sites through the LDF process and slippage in programs means that there has been a material failure of policy and he gave it significant weight.

234. The LPA's policy approach thus far towards gypsy and traveller sites is nothing short of a systemic failure in the Borough. This failure of policy is a material consideration of **significant weight** in favour of the appeal.

Lack of a five-year land supply

235. Local Authorities are also required to demonstrate a five-year supply in relation to their Gypsy, Travellers and Travelling show people pitches.

236. Paragraph 77 of the NPPF sets out the requirement on Council's to:

"….identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing …."

237. Footnote 41 makes it clear that the requirement also applies to gypsy and traveller pitches.

"For the avoidance of doubt, a five year supply of deliverable sites for travellers – as defined in Annex 1 to Planning Policy for Traveller Sites – should be assessed separately, in line with the policy in that document"

238. Planning Policy for Traveller Sites August 2015 paragraph 10 provides:

i. *"Local planning authorities should, in producing their Local Plana) identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets"*

239. The Council are not complying with their duty either in respect of the NPPF or the PPTS.

240. The Council are unable to show a five-year land supply of deliverable land for gypsy and traveller sites which the government required them to do.

241. The lack of a five-year supply is a matter that should attract significant weight in favour of a grant of planning permission, either on a temporary or a permanent basis. The point that it applies to consideration of both temporary and permanent has been made clear by the Secretary of State in ***Amer & ORS*** *v Mole Valley* decision (Appendix B21) at DL20.

242. The Secretary of State gives this lack of a 5-year land supply significant weight in addition to the significant weight afforded to the material failure of policy he finds (DL13), or the separate issues of need and lack of alternative sites, to which he afforded separate weight.

243. As the Appeals will be heard in 2024, the appropriate five-year supply period is 2024 – 2029. The number of pitches required by 2029 would be 81. Taking into account the 35 pitches identified as supply to date, this would result in a need of 46 additional pitches for the Council to demonstrate a five-year supply.

244. The Council currently have no mechanism in place to provide these additional pitches.

245. The lack of a five-year land supply is a material consideration of **significant weight** in favour of the appeal. This also weighs in favour of the proposed development on the social limb of sustainability.

Likely location of gypsy sites in the district

246. Approximately 55% of land with in Broxbourne lies within the Green Belt.

247. Given land prices within development boundaries, developable land is too expensive for gypsy sites in general. It is quite clear given the preponderance of Green Belt in the district, that there is a significant probability that the majority of new gypsy sites will be located in the Green Belt. It is noteworthy that all of the LPA's proposed allocations in policy GT1 were located in the Green Belt and have subsequently been removed.

248. The Inspector in the ***Yvette Jones*** *v South Gloucestershire* case (Appendix B24) appeal decision at paragraph 20 set out that "*There is not the reliable prospect of meeting need on sites outside the Green Belt*". It is worth noting the weight given to the similar position in *James Sykes v Brentwood BC* (Appendix B26).

249. The Secretary of State in the ***Crawt*** *v Guildford Borough Council* (Appendix B23) agreed that most of the alternative sites in the Borough will be within the Green Belt.

250. In the event the proposed occupants are unable to occupy the appeal site it is quite clear given the predominance of the green belt in the district that there is a significant probability that they would need to occupy another site within the Green Belt.

251. This consideration adds **significant weight** to the Appellant's case.

Fallback position (Appeal 1 only)

252. As Appeal 1 is a s174 appeal, the appellant has the right to exercise S57(4) of The Town and Country Planning Act 1990 ("**the 1990 Act**").

253. The 1990 Act lays out the fallback position at S57(4):

'Where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out.'

254. This means the Appellant can rely on the previous lawful use of the site.

255. Pursuant to reference 07/14/0674/F temporary planning permission was granted for *"use of mobile home as a residential dwelling in conjunction with horse livery and cattery/rescue centre"*.

256. As set out above, notwithstanding any breach of the condition, relating to the temporary nature of the permission, of planning reference 07/14/0674/F the permission was extant at the time of the issue of the Enforcement Notice.

257. The Appellant is therefore entitled to rely on the fallback position as laid out at S57(4) of The Town and Country Planning Act 1990.

258. This is a material consideration of substantial weight in favour of the appeal.

Extant planning permission – Livery (stables only)

259. If the Inspector, does not accept the position in respect of the mixed use and fallback position as cited above of which a livery formed part, reliance will be placed on the extant permission 7/0596/08/F/HOD in respect of the livery.

260. It should be noted that, either through the fallback position cited above, or through reliance on permission 7/0596/08/F/HOD, permission will exist for the livery.

261. This extant permission is of relevance when assessing any impact of the development and is a material consideration of substantial weight in favour of the appeal.

Animal welfare

262. Either through the fallback position cited above, or through reliance on permission 7/0596/08/F/HOD, permission will exist for the livery at the appeal site.

263. The stable building is required to enable the horses as part of the livery to be looked after appropriately.

264. Further, a grant of planning permission would enable residential occupation of the site which would greatly enhance the care that the occupants are able to provide to the horses and reduces accidents, illnesses and deaths.

265. This is a factor that adds modest weight in favour of the appeal being allowed.

Personal circumstances

266. Personal circumstances only need to be considered if the Inspector determines a departure from policy and/or other harm and then finds that the other material considerations are insufficient to clearly outweigh the identified harm. If necessary, personal circumstances can then be included to clearly outweigh any harm. These will be set down with appropriate weight indicated. In any event, the proposed site residents easily fulfil the definition of gypsy and travellers as per Annex 1 of the PPTS.

267. The proposed sites' occupants' details are set out within the witness statement at Appendix A20.

268. It is of course a matter for the Council to ensure that before they enforce that they establish and take into account the personal circumstances of the site occupants and are therefore able to take account of the Best Interests of the Children involved. It is noted the Council have failed to do this.

Gypsy Status of the Site Occupants

269. The site occupants easily fit the definition of Gypsies and Travellers in Annex 1 of PPTS.

270. The gypsy status of the site occupants is only relevant if the Inspector concludes that it is necessary to include personal circumstances in the balancing exercise.

Personal Need

271. There is a clear personal need for the permanent base for the site occupants. The shortcomings of the Council to provide the required number of pitches has resulted in a very real shortfall on the ground.

272. The alternative options are non-existent and if the appeal is dismissed it is likely that they will be forced to travel continually on the roadside or be forced to double-up with others.

273. The site occupants do not currently have any suitable sites with the benefit of planning permission and as such are in personal need of the pitch. The lack of alternative sites is conceded by the Council in the Officer's Report (Appendix A3)

274. In line with other decisions, including those of the Secretary of State in ***Crawt** v Guildford* (Appendix B23), **considerable weight** should be given to the families' need for a base.

Health

275. Easy access to GPs and hospitals which the site proves, as outlined in the witness statements (Appendix A20), is clearly a positive advantage, particularly when compared to the realistic alternatives of roadside existence or doubling up.

276. In ***Crawt** v Guildford* (Appendix B23) the Secretary of State at paragraph 23 it is recognised that weight be attached even when the people involved were in good health.

277. Moderate weight should be given to the health needs of the proposed site occupants in good health.

278. Considerable weight should be given to the health needs of the proposed site occupants with minor – moderate health conditions.

279. Significant weight should be given to the health needs of the proposed site occupants in poor health or with complex conditions.

Education

280. There are thirteen children living at the appeal site with another due shortly. In addition, six children attend the site to visit with their non-resident parent.

281. A stable base allowing for a stable and consistent education will clearly be of benefit to the children who are residing at the site.

282. The government clearly wishes children from the gypsy and travelling community to gain the benefits of a settled education.

283. The possibility that the children may not be able to attend school for some considerable time at all if the families are on the roadsides has to be considered. It is well documented that mobile pupils are often unable to find places in local schools especially if they are short stay pupils.

284. The advantage that a settled base provides for gypsy and traveller children receiving an education is a material consideration of **significant weight** in favour of the appeal.

Best Interests of the Child

285. The best interests of the children on the site are of paramount consideration and no consideration should be given greater weight than the best interests of the child when considering whether the material considerations outweigh any harm. In the assessment of proportionality there is an explicit requirement to treat the needs of the children on the site as a primary consideration (**UNCRC Article 3,** fully set out at para 80-82 of AZ).

286. Where the best interests of the child clearly favour a certain course, in this case a grant of planning permission, that course should be followed unless countervailing reasons of considerable force displace those interests. There are no countervailing reasons of considerable force that have been relied upon to outweigh the need for the children to have a settled permanent base, which will enable amongst other things, access to education and to healthcare when needed.

287. In the case of ***Dear*** *v SSCLG [2015] EWHC 29 (Admin)* (Appendix B17) paragraph 44 is of note in relation to the Secretary of State's acceptance of the weight to be attached to the best interests of the child:

> *"Mr Whale accepted that inherently the best interests of the children must carry no less weight than other factors and that because this is a Green Belt case, the best interests of the children must start as "substantial". He submitted that if they started as significant that would also be sufficient based on the decision of Lewis J in Connor and Others v Secretary of State for Communities and Local Government [2014] EWHC 2358 (Admin)."*

288. Best interests of the children on the site are of paramount consideration and no consideration should be given greater weight than best interest of the child when considering whether the material considerations outweigh any harm. In the assessment of proportionality there is an explicit requirement to treat the needs of the children on the site as a primary consideration (UNCRC Article 3, fully set out at para 80-82 of AZ) and, in

respect of a decision by the LPA to safeguard and promote the welfare and well-being of the children (Children's Act 2004 s.11(1)).

289. As such the best interests of the children in this case must carry substantial weight as a starting position.

290. In the assessment of proportionality there is an explicit requirement to treat the needs of the children on the site as a primary consideration (UNCRC Article 3, fully set out at para 80-82 of AZ) and, in respect of a decision by the LPA to safeguard and promote the welfare and well-being of the children (Children's Act 2004 s.11(1)).

291. There are thirteen children living at the appeal site with another due shortly. In addition, six children attend the site to visit with their non-resident parent. The welfare and wellbeing of the children can only be safeguarded by the grant of a permanent planning permission, or in the alternative a temporary permission for a period that should give **certainty** of alternative suitable and lawful accommodation being secured by the LPA through the plan process.

Temporary consent

292. If the Inspector concludes that the material considerations outlined above do not clearly outweigh the harm sufficient to justify a permanent consent then clearly a temporary consent falls to be considered consistent with paragraph 15 (reference ID: 21a-015020140306) of the NPPG.

293. It is common sense as well as case law ***McCarthy v SSCLG & South Cambridgeshire DC [2016] EWHC 3287*** that a temporary consent means the harm is reduced. Indeed, in the case of ***Moore v SSCLG and London Borough of Bromley [2013] EWCA Civ 1194*** (Appendix B7) the Court of Appeal considered the lawfulness of the planning balance carried out by an Inspector when assessing temporary planning permission. Included in that assessment was an implicit acceptance of the observations of Cox J in the Administrative Court (para 13 of the CoA judgement) that:

> *"However, the substantial weight previously attaching to the harm arising from inappropriate development on the Green Belt fell to be reduced, because it would be limited in time..."*

294. In line with paragraph 15 *(reference ID: 21a-015-20140306)* of the PPG temporary consent should be long enough for where it is expected planning circumstances will change in a particular way at the end of that period. This would be when alternative sites become available following a Site Allocations DPD or a new Local Plan.

295. The Local Plan is due for adoption in January 2025 however this looks implausibly optimistic for a timetable. It is suggested that allowing another year (early 2026) would be more realistic

296. It is widely accepted that once adoption has taken place a period of 12-18 months should be allowed for, to allow applications to be submitted, approved, condition submitted and approved and development to take place.

297. As a result, it is clear that any temporary consent would have to be for a minimum period of three and a half years to give the best possible opportunity for sites to be made available.

298. Clearly an issue can arise if it is considered that circumstances are unlikely to change or unlikely to change sufficiently within a reasonable timeframe. However, in these circumstances rather than a permanent consent being refused, logic suggests that greater weight should be attached to the issue of failure of policy as what will have been determined is that the LPA do not have policies in place to meet need in their area.

299. This is the course followed by the Inspectors at paragraph 45 of ***Angela Smith*** *v Doncaster MBC* (Appendix B15), at paragraph 20 in ***Yvette Jones*** *v South Gloucestershire DC* (Appendix B24). The first of these decisions was subsequently held in the High Court.

300. Green Planning Studio are aware of a few Inspectors and on one occasion the Secretary of State have followed a different route when considering this issue and have instead concluded that as circumstances are not going to change within, say, 3-5 years a refusal should follow. Loath as we are to be critical of Inspectors, this disturbing logic as it 'rewards' an LPA who have not carried out their duties diligently. This would appear to be a clear abuse of power and is almost certainly merit a sustained challenge. In any event this scenario does not take into account that the Secretary of State can step in where LPAs are unduly tardy.

301. It is therefore clear that a realistic likelihood of pitch provision does exist if three and a half years is allowed.

Planning Balance/Green Belt Balance (Very Special Circumstances)

302. The provision of stables is not inappropriate development as they fit with the exception in NPPF paragraph 154(b). The relatively small-scale nature of the stables replacing an earlier similarly sized set of stables, in the context of an expressly permitted use, fall within the paragraph 154(b) exception and are not inappropriate development in the Green Belt.

303. The stables are in line with the development and should be granted permission without delay. If the Inspector identifies any harm, it is the Appellant's case that this is outweighed by the material considerations advanced above, including the extant permission relating to the livery yard such that permission should be granted.

304. In relation to remainder, the general material considerations set out above in favour of the appeal in relation to the gypsy and traveller pitches are the need for additional gypsy and traveller pitches in the district; the lack of available, suitable, acceptable, affordable alternative sites; the lack of a five-year land supply of gypsy and traveller pitches; failure of policy; and likely location of new sites. These material considerations that would apply to any gypsy family occupying this site in combination clearly outweigh the substantial weight given to the harm to the Green Belt such that very special circumstances exist and a permanent consent should be granted. This is the Appellant's **first position.**

305. Personal circumstances only need be considered if the inspector finds that the other material considerations are insufficient to clearly outweigh the identified harm. The Appellant considers this unlikely to be necessary. However, if the Inspector reaches this stage, then the personal circumstances, (taking into account the best interests of the child), are very weighty considerations and if this is what the Inspector considers tips the balance then a personal condition would be necessary.

306. The material considerations within this Proof of Evidence, including the personal circumstances of the site occupants, clearly and significantly outweigh the harm to the

Green Belt and any other harm, such that very special circumstances exist. This is the Appellant's **second position.**

307. Finally, in the event that the Inspector considers that a permanent consent cannot be granted, a temporary consent should be considered. This would need to be for three and a half years. When considering the temporary consent, the weight given to any adverse impacts of the development is reduced, making consent more likely. This is the Appellant's **third position.**

Human Rights

308. This is a clear obligation upon the Inspector to ensure that any decision made by a state body accord with the obligations under Article 8 ECHR. Incorporated into that obligation are the obligations set out under the United Nations Convention of the Rights of the Child, and in this case specifically Article 3. This obligation was crystallised upon in the publication of ***AZ v SSCLG and South Gloucestershire District Council [2012] EWHC 3660 (Admin)*** (Appendix B16) but has existed for a number of years.

309. This has more recently been confirmed in the Court of Appeal judgment ***Collins** v **SSCLG & Fylde Borough Council [2013] EWCA Civ 1193*** (Appendix B10) and ***Moore v SSCLG and London Borough of Bromley [2013] EWCA Civ 1194*** (Appendix B7).

310. The duty upon the LPA and the decision maker is not engaged when Children's Services are contacted or when signed witness statements are made available, but immediately upon the LPA or the decision maker becoming aware that a decision they will or have made will impact or is impacting upon the rights of a child. This is an ongoing duty and one which must be kept under constant review.

311. The Article 8 rights of the site residents are clearly engaged, the appeal decision will impact upon the ability of those individuals to use land as their home in circumstances where there is no alternative lawful accommodation. Any decision to refuse planning permission must be proportionate, an assessment that is to be carried out after the assessment of the planning balance (para 130 AZ), not as part of the planning balance. However, matters relating to the Children's Act and the Convention, particularly the duty to safeguard welfare and wellbeing of children are not precluded from informing the weight to be given to such matters as personal circumstances and lack of alternative accommodation.

312. In the assessment of proportionality there is an explicit requirement to treat the needs of the children who live on the site as a primary consideration (UNCRC Article 3, fully set out in para 80-82 of ***AZ***) and to consider as a primary consideration those needs which amount to a requirement to safeguard and promote the welfare and well-being of children (Children's Act 2004, s.11 (1)).

313. There may be circumstances where the harm caused by a development is not outweighed by the material considerations relied upon such that the planning balance does not fall in favour of a grant of planning permission but in the particular circumstances pertaining to the welfare of children affected by the decision, it would be disproportionate to refuse either a permanent or temporary planning permission. That assessment is **additional** to a balancing of the planning merits.

314. The Article 8 ECHR rights of all of the site occupants are clearly engaged in this case and would be clearly infringed by the appeal being dismissed.

315. There are children living at the appeal site. It is clearly in the best interests of a child to have a settled base and home life where they are living together with family. It is also in the best interests if a child to have regular and consistent access to education and healthcare. It cannot be in the best interests of a child to deny them of this, which will be a natural consequence of dismissing the appeal.

316. In ***AZ*** at para 80 and 82 the judgment sets out the current statutory position in relation to the rights of children. Baroness Hale's judgment in ***ZH(Tanzania)*** *v SoS [2011] UKSC 4,* SC (Appendix B4) is referenced but what is not referenced is the judgment of Lord Kerr at para 46 which states;

> *46. It is a universal theme of the various international and domestic instruments to which Lady Hale has referred that, in reaching decisions that will affect a child, a primacy of importance must be accorded to his or her best interests.*

This is not, it is agreed, a factor of limitless importance in the sense that it will prevail over all considerations. ***It is a factor, however, that must rank higher than any other. It is not merely one consideration that weighs in the balance alongside other completing factors. Where the best interest of the child clearly favours a certain course, that course should be followed unless countervailing reasons of considerable force displace them.*** *[emphasis added] It is not necessary to express this in terms of a presumption but the primacy of this consideration needs to be made clear in emphatic terms.* ***What is determined to be in a child's best interests should customarily dictate the outcome of cases such as the present, therefore, it will require considerations of substantial moment to permit a different result.*** *[emphasis added]*

317. In ***Zoumbas v SSHD [2013] 1 WLR 3690*** (Appendix B3) Lord Hodge in the Supreme Court set out seven relevant principles at paragraph 10:

"…In their written case counsel for Mr Zoumbas set out legal principles which were relevant in this case and which they derived from three decisions of this court, namely ZH (Tanzania) (above), H v Lord Advocate 2012 SC (UKSC) 308 and H (H) v Deputy Prosecutor of the Italian Republic [2013] 1 AC 338. Those principles are not in doubt and Ms Drummond on behalf of the Secretary of State did not challenge them. We paraphrase them as follows:

(1) The best interests of a child are an integral part of the proportionality assessment under article 8 ECHR;

(2) In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;

(3) *Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;*

(4) *While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interest of a child might be undervalued when other important considerations were in play;*

(5) *It is important to have a clear idea of a child's circumstances and of what is in the child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations;*

(6) *To that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an article 8 assessment; and*

(7) *A child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent…"*

318. Further to this, Baroness Hale in ***Makhlouf v SSHD [2016] UKSC 59*** (Appendix B2) at paragraph 46 and 47 held that the rights of children must be considered separately from those of their parents and the public interest; children must be recognized as rights-holders in their own right and not as adjuncts to other people's rights.

319. The welfare and wellbeing of the children can only be safeguarded by a grant of planning permission.

Suggested Conditions

320. Paragraphs 55 and 56 NPPF 2023 set out:

> *'Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.*
>
> *Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification."*

321. Clearly given the nature of the appeal a condition limiting the occupation of the caravans to gypsy and travellers is appropriate.

322. A condition restricting the number of pitches and caravans is appropriate.

323. A personal condition can only be appropriate if it is necessary to include personal circumstances as material considerations in order to allow the development to proceed.

324. The issue of a temporary condition is dealt with above, if applied it should be for three and a half years to give the LPA the longest possible period to allocate land for alternative pitches.

Ground (f)

325. Requirement ii requires to '*Permanently remove all caravans and mobile homes from the Land'*. This would catch all caravans on the site for whatever purpose. Caravans can be lawfully on the land for a number of purposes. In particular, it would require the removal of the mobile home permitted under 07/14/0674/F which is part of the lawful mixed use fallback permission. This requirement is therefore excessive. The requirement should either be removed or amended to only require the removal of caravans that facilitate the alleged breach of planning control.

326. One of the buildings on the site that would be caught by requirement iii is a stables building used for the keeping of horses. The building does not facilitate the alleged breach of planning control and the removal of the building is not necessary to remedy the breach. Therefore, requirement iii as worded is excessive and needs amendment to exclude the stables building.

327. Requirement iv requires '*Permanently remove all the tarmac from the Land from the Land, including the area shown shaded with a black pattern on the attached plan'*. This would include all tarmac regardless of the purpose for which it had been put down. The requirement to remove areas of hardstanding that are clearly lawful through the passage of time and are connected with the lawful fall-back mixed use, clearly goes beyond what is necessary to remedy the breach and would be contrary to statutory revisionary rights. The hardstanding that is lawful through the passage of time and facilitates the statutory revisionary rights should be excluded from the area to be removed.

328. Requirement vi requires '*Restore the land shown shaded by a black pattern by seeding the land using native grass seed*'. This is excessive as the condition of a significant part of the land prior to the breach was not grassland. This requirement needs to be remedied to '*restore the land to its condition prior to the breach*.'

Ground (g)

329. The time for compliance in relation to the stationing of caravans for residential purposes is 3 months.

330. A compliance period of at least 2 years is required for all requirements of the notice, to enable the occupiers living on the site to find alternative accommodation.

331. This will be demonstrated with reference to the scale of need for additional pitches in the district, the lack of a five-year supply of gypsy and traveller pitches, the lack of suitable, affordable, available, and acceptable alternative sites and the Council's ongoing failure of policy.

Summary and conclusion

332. Appeal (1) is a s.174 appeal against an Enforcement Notice issued on 31st October 2023 by the Council reference ENF/23/0033 alleging *'without planning permission the change of use of the Land to residential caravan site by the stationing caravans and mobile homes on the Land along with associated operational development.*'

333. Appeal (2) is a s.78 appeal against the refusal by the Council of application 07/23/0119/F for '*Retrospective planning permission for change of use of land to residential, for members of the Gypsy Traveller community for 7no. static caravans 6no. touring caravans, parking for 12 cars, hardstanding, and associated development*.'

Preliminary Issues

334. The description of development in the planning application needs amendment. From studying the plans, it can be deduced that what was being sought was '*a material change of use of land to the stationing of caravans for residential purposes, and the laying of hardstanding ancillary to that use.*' That is what the Council should have amended the description to. The Inspector is invited to change the description of development to this.

335. The structures and buildings have not been identified on the plan attached to the EN which is a clear failure of the notice to comply with s173(1) of the Act. Given enforcement notices have an ongoing effect and the re-erection of a building that had been enforced against and removed would be caught by that ongoing effect it is imperative that it is possible to understand from the notice which buildings are caught by the notice. This is not possible with this notice. This makes the notice uncertain, which renders it null.

Appeal 1 - Ground (e)

336. The EN on page 3 sets out those whom the Council served with the EN. It is clear from the witness statement of the Appellant that the occupiers of the site at the time, were not served with a copy of the notice. The Ground E appeal should succeed.

Appeal 1 - Ground (b)

337. The EN alleges a single use taking place across the area covered by the EN. This is incorrect and fails to take into account of an existing permitted use within that area, more specifically application (7/0596/08/F/HOD) for the *'change of use of stables to livery yard'.* The use taking place across the area covered by the EN is therefore a *'mixed used for the stationing of caravans for residential purposes and the keeping of horses'.* The Appellant would not be prejudiced should the Inspector consider a change to the alleged breach of planning control to include the keeping of horses.

Appeal 1 - Ground (c)

338. The lawful use prior to the issue of the notice was a mixed use of land for the stationing of a mobile home for residential purposes, horse livery and cattery.

339. The appellant places reliance on s.57(4) of the Act, and this mixed use of land for the stationing of a mobile home for residential purposes, horse livery and cattery, is the fallback position.

340. Some of the hardstanding on the appeal site was placed down in connection with express grant of planning permissions 07/14/0674/F, 07/13/0465/F and 7/0596/08/F/HOD.

341. The stationing of a mobile home for residential purposes on the site is lawful as per 07/14/0674/F. There may be a breach of condition(s) taking place, but the permission is still extant, and the breach of condition has not been enforced.

342. Reliance is place on the principles established by the House of Lords in ***Pioneer Aggregates*** and ***Avon Estates*** i.e. that of the inability for a permission, once

implemented, to “expire”. There was thus no finding by the Court of Appeal that a temporary permission “expires” at the end of the temporary period.

343. It is also worth reading the conclusion of the Inspector John Murray, in a recent appeal ***Patrick Gavin*** *v North Northamptonshire Council* APP/L2820/C/20/3262337 and APP/L2820/W/20/3262332 regarding land at Plot 24B Greenfields, Braybrooke Road, Braybrooke, LE16 8LX. Appeal B in that case involved an application to vary / remove a condition had been submitted after the expiry of a temporary condition. The Council sought that the application could not be determined. Inspector Murray dealt with this at paragraphs 81 to 85, including referencing his disagreement with the Inspector’s manual.

Appeal 1 - Ground (d)

344. There is extensive hard surfacing located on the Land that has been in existence in excess of 4 years prior to the issue of the notice. This hardstanding has been put down in connection with lawful uses. The area of hardstanding outlined in red on the images in the main body of the proof have been evident on the site since 2000.

Appeal 1 - Ground (a) and Appeal 2

345. The combination of NPPF paragraph 11d) i and footnote 8 means that in areas of Green Belt where the development is accepted to be inappropriate development in the Green Belt, as in this case, the weighted balance of NPPF Paragraph 11d) is not the relevant balance to apply, instead the balance to be applied is the very special circumstances balance found at NPPF paragraph 153.

346. The harms identified in the reasons to justify the issue of the EN can be summarised as harm to the Green Belt and the site having poor connectively to services via foot. Although the second reason for refusal is expressed in highway safety terms, it is in practice a sustainability reason for refusal.

347. The provision of stables is not inappropriate development as they fit with the exception in NPPF paragraph 154(b). The relatively small-scale nature of the stables replacing an

earlier similarly sized set of stables, in the context of an expressly permitted use, fall within the paragraph 154(b) exception and are not inappropriate development in the Green Belt and in accordance with the development plan.

348. The remaining development causes harm by virtue of its inappropriateness, they harm openness to either a modest or a moderate extent, and they encroach to a modest extent into the countryside. Consistent with the NPPF and Secretary of State's decisions, substantial weight to be attributed to the harm to the Green Belt in relation to both developments.

349. It is concluded that the site is sustainably located for a gypsy and traveller site and therefore no harm is identified in relation to refusal reason 2.

350. It is therefore concluded that the harm in this case is the harm to the Green Belt and substantial weight should be attached to this harm. There is no other harm.

351. There are a number of material considerations in this case which in combination are sufficient to clearly outweigh any harm to the Green Belt and any other harm, and therefore, establish that very special circumstances exist.

352. These material considerations are:

- The need for additional gypsy and traveller pitches in the district.
- Lack of available, suitable, acceptable, affordable alternative sites
- Failure of policy
- Lack of a five-year supply of land for gypsy and traveller pitches.
- Likely location of gypsy sites in the district
- Fallback position (Appeal 1 only)
- Extant planning permission - Livery
- Animal Welfare
- If necessary, the Personal Circumstances of the proposed site occupants (gypsy status, personal need and health)

The need for additional Gypsy and Traveller Pitches in the District

353. The most recent GTAA is dated April 2017; and based on the now outdated 2015 PPTS definition. As such it is not an up to date evidence base.

354. It is clear that the GTAA has failed to accurately identify the number of households and pitches in existence as at the base date, and failed to establish an accurate number of households in bricks and mortar wishing to move to sites. These will have resulted in the recorded base date figures being too low.

355. As the Appeals will be heard in 2024, the appropriate five-year supply period is 2024 – 2029. The number of pitches required by 2029 would be 81. Taking into account the 35 pitches identified as supply to date, this would result in a need of 46 additional pitches for the Council to demonstrate a five-year supply.

356. The proposal would make a small but meaningful contribution to Gypsy and Traveller pitches at a time when the Council's housing land supply shortfall is substantial and unlikely to improve for a number of years.

357. This weighs in favour of the proposed development regarding the social limb of sustainability.

358. This substantial clear immediate unmet need in the Borough adds **substantial weight** in favour of the appeal.

Provision of available alternative, acceptable and affordable alternative sites

359. There are no available suitable and acceptable gypsy and traveller sites in the Borough as conceded by the Council. In this case the lack of alternative sites is a material consideration of **significant weight**.

Failure of Policy

360. GPS have identified a number of failings in policy by the Council including:

a. The Council do not have an up-to-date GTAA. The most recent GTAA is dated April 2017; by the time of this inquiry, it will be seven years old. Given that the Council should be re-assessing their position every 5-year period as a minimum, the evidence base and thus any policy or provision based upon it is considerably out of date. Notably, in the Council's statement of case this appears to be conceded *"It is quite likely that the needs position has changed since 2017".* Despite this the Council have confirmed therein that there is no intention to update the GTAA. This is a clear failure of policy which looks set to be ongoing given the stance set down therein.

b. The GTAA underestimates the level of need in the Borough, and therefore the Council will fail to meet the actual level of need in the Borough. This is a clear failure of policy.

c. The Council is not complying with the PPTS requirement to maintain a five-year supply of sites.

d. The Council, in seeking only to make provision for households meeting the 2015 PPTS definition of Gypsy and Traveller, are adopting an unsound approach to provision.

e. As a result of the above there is no up to date allocations policy for Gypsy and Traveller sites.

f. There is no allocations policy applying to the gypsy and traveller community occupying sites other than the three identified in Policy GT1. The Council's statement of case confirms that there is no intention to provide a supply for additional pitches other than those arising from new household formation at the existing communities identified in Policy GT1. This is wholly unreasonable and fails to take into account any gypsy and traveller population living elsewhere. This flagrant failure of policy looks set to endure in light of the Council's

approach. Unless and until the Council address this systemic failure and makes provision for those other communities there will remain a need for pitches.

361. Failure of policy is a material consideration of **significant weight** in favour of the appeal.

Lack of a five-year land supply

362. The Council are unable to show a five-year land supply of deliverable land for gypsy and traveller sites which the government required them to do.

363. The lack of a five-year land supply is a material consideration of **significant weight** in favour of the appeal. This also weighs in favour of the proposed development on the social limb of sustainability.

Likely location of gypsy sites in the district

364. Approximately 55% of land with in Broxbourne lies within the Green Belt.

365. Given land prices within development boundaries, developable land is too expensive for gypsy sites in general. It is quite clear given the preponderance of Green Belt in the district, that there is a significant probability that the majority of new gypsy sites will be located in the Green Belt. It is noteworthy that all of the LPA's proposed allocations in policy GT1 were located in the Green Belt and have subsequently been removed.

366. In the event the proposed occupants are unable to occupy the appeal site it is quite clear given the predominance of the green belt in the district that there is a significant probability that they would need to occupy another site within the Green Belt.

367. This consideration adds **significant weight** to the Appellant's case.

Fallback position (Appeal 1 only)

368. As Appeal 1 is a s174 appeal, the appellant has the right to exercise S57(4) of The Town and Country Planning Act 1990 ("**the 1990 Act**").

369. The 1990 Act lays out the fallback position at S57(4):

'Where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out.'

370. This means the Appellant can rely on the previous lawful use of the site.

371. Pursuant to reference 07/14/0674/F temporary planning permission was granted for *"use of mobile home as a residential dwelling in conjunction with horse livery and cattery/rescue centre"*.

372. As set out above, notwithstanding any breach of the condition, relating to the temporary nature of the permission, of planning reference 07/14/0674/F the permission was extant at the time of the issue of the Enforcement Notice.

373. The Appellant is therefore entitled to rely on the fallback position as laid out at S57(4) of The Town and Country Planning Act 1990.

374. This is a material consideration of **substantial** weight in favour of the appeal.

Extant planning permission – Livery (stables only)

375. If the Inspector, does not accept the position in respect of the mixed use and fallback position as cited above of which a livery formed part, reliance will be placed on the extant permission 7/0596/08/F/HOD in respect of the livery.

376. It should be noted that, either through the fallback position cited above, or through reliance on permission 7/0596/08/F/HOD, permission will exist for the livery.

377. This extant permission is of relevance when assessing any impact of the development and is a material consideration of substantial weight in favour of the appeal.

Animal welfare

378. Either through the fallback position cited above, or through reliance on permission 7/0596/08/F/HOD, permission will exist for the livery at the appeal site.

379. The stable building is required to enable the horses as part of the livery to be looked after appropriately.

380. Further, a grant of planning permission would enable residential occupation of the site which would greatly enhance the care that the occupants are able to provide to the horses and reduces accidents, illnesses and deaths.

381. This is a factor that adds modest weight in favour of the appeal being allowed.

Personal circumstances

382. Personal circumstances only need to be considered if the Inspector determines a departure from policy and/or other harm and then finds that the other material considerations are insufficient to clearly outweigh the identified harm. If necessary, personal circumstances can then be included to clearly outweigh any harm. These will be set down with appropriate weight indicated. In any event, the proposed site residents easily fulfil the definition of gypsy and travellers as per Annex 1 of the PPTS.

383. The proposed sites' occupants' details are set out within the witness statement at Appendix A20.

384. **Considerable weight** should be given to the two families' need for a base.

385. **Considerable weight** should be given to the health needs of the proposed site occupants with minor – moderate health conditions.

386. **Significant weight** should be given to the health needs of the proposed site occupants in poor health or with complex conditions.

387. The advantage that a settled base provides for gypsy and traveller children receiving an education is a material consideration of **significant weight** in favour of the appeal.

Best Interests of the Child

388. The best interests of the children on the site are of paramount consideration and no consideration should be given greater weight than the best interests of the child when considering whether the material considerations outweigh any harm. In the assessment of proportionality there is an explicit requirement to treat the needs of the children on the site as a primary consideration (**UNCRC Article 3,** fully set out at para 80-82 of AZ).

389. As such the best interests of the children in this case must carry substantial weight as a starting position.

390. In the assessment of proportionality there is an explicit requirement to treat the needs of the children on the site as a primary consideration (UNCRC Article 3, fully set out at para 80-82 of AZ) and, in respect of a decision by the LPA to safeguard and promote the welfare and well-being of the children (Children's Act 2004 s.11(1)).

391. There are thirteen children living at the appeal site with another due shortly. In addition, six children attend the site to visit with their non-resident parent. The welfare and wellbeing of the children can only be safeguarded by the grant of a permanent planning permission, or in the alternative a temporary permission for a period that should give **certainty** of alternative suitable and lawful accommodation being secured by the LPA through the plan process.

Temporary consent

392. If the Inspector concludes that the material considerations outlined above do not clearly outweigh the harm sufficient to justify a permanent consent then clearly a temporary consent falls to be considered consistent with paragraph 15 (reference ID: 21a-015020140306) of the NPPG.

393. The Local Plan is due for adoption in January 2025 however this looks implausibly optimistic for a timetable. It is suggested that allowing another year (early 2026) would be more realistic

394. It is widely accepted that once adoption has taken place a period of 12-18 months should be allowed for, to allow applications to be submitted, approved, condition submitted and approved and development to take place.

395. As a result, it is clear that any temporary consent would have to be for a minimum period of three and a half years to give the best possible opportunity for sites to be made available.

Planning Balance/Green Belt Balance (Very Special Circumstances)

396. The provision of stables is not inappropriate development as they fit with the exception in NPPF paragraph 154(b). The relatively small-scale nature of the stables replacing an earlier similarly sized set of stables, in the context of an expressly permitted use, fall within the paragraph 154(b) exception and are not inappropriate development in the Green Belt.

397. The stables are in line with the development and should be granted permission without delay. If the Inspector identifies any harm, it is the Appellant's case that this is outweighed by the material considerations advanced above, including the extant permission relating to the livery yard such that permission should be granted.

398. In relation to remainder, the general material considerations set out above in favour of the appeal in relation to the gypsy and traveller pitches are the need for additional gypsy and traveller pitches in the district; the lack of available, suitable, acceptable, affordable alternative sites; the lack of a five-year land supply of gypsy and traveller pitches; failure of policy; and likely location of new sites. These material considerations that would apply to any gypsy family occupying this site in combination clearly outweigh the substantial

weight given to the harm to the Green Belt such that very special circumstances exist and a permanent consent should be granted. This is the Appellant's **first position.**

399. Personal circumstances only need be considered if the inspector finds that the other material considerations are insufficient to clearly outweigh the identified harm. The Appellant considers this unlikely to be necessary. However, if the Inspector reaches this stage, then the personal circumstances, (taking into account the best interests of the child), are very weighty considerations and if this is what the Inspector considers tips the balance then a personal condition would be necessary.

400. The material considerations within this Proof of Evidence, including the personal circumstances of the site occupants, clearly and significantly outweigh the harm to the Green Belt and any other harm, such that very special circumstances exist. This is the Appellant's **second position.**

401. Finally, in the event that the Inspector considers that a permanent consent cannot be granted, a temporary consent should be considered. This would need to be for three and a half years. When considering the temporary consent, the weight given to any adverse impacts of the development is reduced, making consent more likely. This is the Appellant's **third position.**

402. This is a clear obligation upon the Inspector to ensure that any decision made by a state body accord with the obligations under Article 8 ECHR.

403. The Article 8 rights of the site residents are clearly engaged, the appeal decision will impact upon the ability of those individuals to use land as their home in circumstances where there is no alternative lawful accommodation. Any decision to refuse planning permission must be proportionate, an assessment that is to be carried out after the assessment of the planning balance (para 130 AZ), not as part of the planning balance.

404. The welfare and wellbeing of the children living and visiting the site can only be safeguarded by a grant of planning permission.

Ground (f)

405. Requirement ii requires to '*Permanently remove all caravans and mobile homes from the Land'*. This would catch all caravans on the site for whatever purpose. Caravans can be lawfully on the land for a number of purposes. In particular, it would require the removal of the mobile home permitted under 07/14/0674/F which is part of the lawful mixed use fallback permission. This requirement is therefore excessive. The requirement should either be removed or amended to only require the removal of caravans that facilitate the alleged breach of planning control.

406. One of the buildings on the site that would be caught by requirement iii is a stables building used for the keeping of horses. The building does not facilitate the alleged breach of planning control and the removal of the building is not necessary to remedy the breach. Therefore, requirement iii as worded is excessive and needs amendment to exclude the stables building.

407. Requirement iv requires '*Permanently remove all the tarmac from the Land from the Land, including the area shown shaded with a black pattern on the attached plan'*. This would include all tarmac regardless of the purpose for which it had been put down. The requirement to remove areas of hardstanding that are clearly lawful through the passage of time and are connected with the lawful fall-back mixed use, clearly goes beyond what is necessary to remedy the breach and would be contrary to statutory revisionary rights. The hardstanding that is lawful through the passage of time and facilitates the statutory revisionary rights should be excluded from the area to be removed.

408. Requirement vi requires '*Restore the land shown shaded by a black pattern by seeding the land using native grass seed*'. This is excessive as the condition of a significant part of

the land prior to the breach was not grassland. This requirement needs to be remedied to '*restore the land to its condition prior to the breach*.'

Ground (g)

409. The time for compliance in relation to the stationing of caravans for residential purposes is 3 months.

410. A compliance period of at least 2 years is required for all requirements of the notice, to enable the occupiers living on the site to find alternative accommodation.

411. This will be demonstrated with reference to the scale of need for additional pitches in the district, the lack of a five-year supply of gypsy and traveller pitches, the lack of suitable, affordable, available, and acceptable alternative sites and the Council's ongoing failure of policy.

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March 2024

Appendices A

1. Enforcement Notice (including its plan) issued on 31st October 2023 reference ENF/23/0033
2. Application Form, Design and Access Statement (revised version dated March 2023) and plans for planning application 07/23/0119/F, The plans being:
    - 'Flood Map' – an EA surface water flooding map
    - 'Flood Risk Assessment' – actually an EA fluvial/pluvial flooding map
    - Block Plan BP-01-2023
    - Location Plan - LP-01- 2023
    - Block Plan LP-02-2023
    - Static caravan drawings
    - Touring caravans drawings
3. Officer's report for Planning Application 07/23/0119/F
4. Decision Notice (Refusal) for Planning Application 07/23/0119/F
5. Enforcement Notice reference ENF/23/0033 served on 21st June 2023
6. Withdrawal of Enforcement Notice reference ENF/23/0033 dated 5th July 2023
7. Enforcement Notice reference ENF/23/0033 served on 5th July 2023
8. Withdrawal of Enforcement Notice reference ENF/23/0033 dated 9th October 2023
9. A report of authorisation to issue an Enforcement Notice signed off on 5th June 2023
10. Email exchange regarding the July version of the Enforcement Notice between GPS and the Council dated 11th August 2023
11. Appeal Form APP/C3430/C/20/3262819 (s.174 Appeal) dated 29th November 2023
12. Appeal Form APP/C3430/W/20/3262816 (s78 Appeal) dated 31st July 2023.
13. Broxbourne Local Plan Policies:
    - Policy GB1 - Green Belt
    - Policy TM2 – Transport and New Developments
    - Policy GT1 – Gypsy and Traveller Sites

- Policy DSC1 – General Design Principles
- Policy NEB1 – General Strategy for Biodiversity
- Policy NEB2 – Wildlife Sites
- Policy NEB5 – Ancient Woodland, Protected Trees and Hedgerows
- Policy EQ1 – Residential and Environmental Quality
- Policy EQ3 – Lighting
- Policy TM3 – Access and Servicing
- Policy TM4 – Electric Vehicle Charging Points
- Policy TM5 – Parking Guidelines

14. Broxbourne Local Development Scheme, dated December 2023
15. Decision notice and plans for planning permission **07/14/0674/F** for the Continuation of temporary planning permission for existing use of mobile home as a residential dwelling in conjunction with horse livery and cattery/rescue centre for a period of 3 years approved 12/09/2014
16. Decision notice and plans for planning permission **07/13/0465/F** for Temporary planning permission for existing use of mobile home as a residential dwelling in conjunction with horse livery and cattery/rescue centre approved 29/07/2013
17. Decision notice and plans for planning permission **7/0596/08/F/HOD** for Change of use of stables to livery yard approved 06/10/2008
18. Dated Aerial Photos from AirImages
19. Aerial photos from Google Earth
20. Draft Witness Statements:
    - Billy Joe Saunders
    - Thomas Saunders
    - Maurice Smith
    - Charlie Boswell
    - Nicola Hutchins

- Josephine Connors
- Taylor Smith

21. Example Bus timetables

Appendices B

1. ECHR Judgment: ***Chapman*** *v the United Kingdom,* January 18th 2001.
2. Supreme Court Judgment: ***Makhlouf*** *v Secretary of State for the Home Department* [2016] UKSC 59.
3. Supreme Court Judgment: ***Zoumbas*** *v Secretary of State for the Home Department* (Respondent) [2013] UKSC 74.
4. Supreme Court Judgment: ***ZH(Tanzania)*** *v Secretary of State for the Home Department* [2011] UKSC 4.
5. Supreme Court Judgment: ***Samuel Smith Old Brewery and others*** *v North Yorkshire County Council* [2020] UKSC 3.
6. House of Lords Judgment: [1985] 1AC 132, [1984] 2 A11 ER 358 ***Pioneer Aggregates Ltd*** *v SoSE*, dated 24th May 1985.
7. Court of Appeal Judgment: ***Moore*** *v SSCLG & London Borough of Bromley* [2013] EWCA Civ 1194.
8. Court of Appeal Judgment: ***Wychavon District Council*** *v SSCLG and Butler* [2008] EWCA Civ 692, dated 23rd June 2008.
9. Court of Appeal Judgement: ***Avon Estates Ltd*** *v Welsh Ministers* [2011] EWCA Civ 553, dated 16th May 2011
10. Court of Appeal Judgement: ***Collins*** *v SSCLG & Fylde Borough Council* [2013] EWCA Civ 1193.
11. Court of Appeal Judgment: ***Turner*** *v SSCLG & East Dorset Council* [2016] EWCA Civ 466.
12. Court of Appeal Judgment: ***Europa Oil and Gas*** *Limited v Secretary of State for Communities and Local Government and Others* [2014] EWCA Civ 825, [2014] JPL 1259
13. High Court Judgment: ***Fordent Holdings*** *Ltd v Secretary of State for Communities and Local Gover*nment [2013] EWHC 2844
14. High Court Judgement: ***Avon Estates Ltd*** *v The Welsh Ministers and Ceredigion County Council* [2010] EWHC 1759 (Admin), dated 17th June 2010.
15. High Court Judgment: *Doncaster MBC v SoS &* ***Angela Smith****,* February 2007 and Appeal Decision APP/F4410/A/05/1184850, *Angela Smith v Doncaster MBC,* dated March 6th 2006.
16. High Court Judgement: ***AZ*** *v SoSCLG and South Gloucestershire District Council* [2012] EWHC 366- (Admin), dated 20th December 2012.

17. High Court Judgment: ***Dear*** *v SoSCLG and Doncaster Metropolitan Borough Council* [2015] EWHC 29 (Admin), dated 19th January 2015.
18. High Court Judgment: ***Monkhill Limited*** *v Secretary of State for Housing, Communities and Local Government and Waverley Borough Council* [2019] EWHC 1993.
19. High Court Judgement: ***Sefton Metropolitan Borough Council*** *v SoSHCLG* [2021] EWHC 1082 (Admin), dated 7th May 2021.
20. High Court Judgement: ***Wavendon Properties Ltd*** *v SoSHCLG and Milton Keynes Council* [2019] EWHC 1524 (Admin), dated 14th June 2019.
21. Secretary of State Decision: APP/C3620/A/12/2169062 ***Mr Roy Amer*** *& Others v Mole Valley District Council,* dated 10th April 2013.
22. Secretary of State Decision: APP/B1930/A/11/2153741/NWF ***Mr Ned Stanley*** *v St Albans City & District Council,* dated 15th December 2011.
23. Secretary of State Decision: APP/Y3615/A/10/2131590 ***Mr G Crawt*** *v Guildford Borough Council,* dated 24th February 2011.
24. Appeal Decision: APP/P0119/C/07/2037529 ***Mrs Yvette Jones*** *v South Gloucestershire DC,* dated 16th August 2007.
25. Appeal Decision: APP/P0119/W/15/3065767, ***Mr J McDonagh*** *v South Gloucestershire DC* dated 10th February 2016.
26. Appeal Decision: APP/H1515/C/08/2066552, ***Mr. J. Sykes*** *v Brentwood Borough Council*, dated 3rd June 2009.
27. Appeal Decision: APP/L2820/C/20/3262337 and APP/L2820/W/20/3262332, ***Patrick Gavin*** *v North Northamptonshire Council*
28. Appeal Decision APP/P1940/C/11/2164949 ***Jimmy Cash*** *v Three Rivers District Council*, dated 9th July 2012
29. Appeal Decision: APP/L3245/A/13/2196615 ***Paul Brooks*** *v Shropshire Council*, dated 8th March 2013
30. Appeal Decision: APP/X1355/C/14/2222375 *J* ***Dolan*** *v Durham County Council,* dated 4th August 2015