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## Appeal Decision

Inquiry opened on 6 December 2022 and closed (in writing) on 6 April 2023  
Site visit made on 5 December 2022<sup>1</sup>

**by David M H Rose BA(Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5<sup>th</sup> May 2023**

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**Appeal Reference: APP/W0340/W/22/3292211**  
**Land at Lawrences Lane, Thatcham, RG18 3LF<sup>2</sup>**

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

1. The appeal is dismissed.

### Application for costs

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

### Preliminary Matters

#### (i) The Inquiry

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

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<sup>1</sup> I made further unaccompanied site visits on 31 January and 7 March 2023

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

<sup>3</sup> A Rule 6(6) Party

6. King's Counsel for the Appellant requested an adjournment to take instructions. On return, later in the morning session, a formal request was made for me to adjourn the Inquiry as other topics to be heard would be consequential on the revised drainage evidence that would be submitted.
7. The adjournment was not resisted by either the Council or the Town Council. The parties were asked to agree a timetable for the submission of further details; consultation as necessary; formal responses through Statements of Common Ground; and revised proofs of evidence in the event of failing overall agreement and withdrawal of the reason for refusal.
8. During the adjournment, a number of additional documents were submitted, including iterations of the Outline Sustainable Drainage Strategy, culminating in Issue 4<sup>4</sup>. A Statement of Common Ground followed, and the Council's Planning Proof of Evidence – Post Adjournment Update confirmed that the Council no longer intended to pursue drainage related matters set out in reasons for refusal 2 and 7. An updated co-ordinated site layout, Revision B<sup>5</sup>, includes the revised drainage arrangements, landscape strategy and arboricultural mitigation measures.
9. The Inquiry resumed on 1 February 2023, sitting for one day, to hear landscape evidence, in round table format, and the Council's case on need. The Inquiry was then adjourned, by prior arrangement, until 8 March when I heard planning evidence for the Council and the Appellant. On 9 March, four of the site residents and two interested persons gave testimonies.
10. Discussion on draft planning conditions and a draft unilateral undertaking, and closing submissions took place virtually on 14 March 2023. The Council's application for costs, and the Appellant's response, were tabled in writing supplemented by the Council's oral response on the same day.
11. I set a timetable for the amendment and completion of the unilateral undertaking (as further extended); and asked to be informed of the outcome of an Experimental Traffic Regulation Order, Lawrences Lane, following a meeting to be held on 16 March 2023.
12. The subsequent unilateral undertaking, which meets the relevant tests, is dated 14 April 2023<sup>6</sup>. Its principal purpose is to prevent the alienation, grant of any lease, or continuation/implementation of a previously approved equine use, in order to tie the appeal site with land in the same ownership for the purposes of landscaping and Biodiversity Net Gain.

**(ii) Planning background**

13. The development which is the subject of this appeal commenced on Friday 13 August 2021 when engineering operations, without the benefit of planning permission, were undertaken. The Council served a temporary stop notice and subsequently applied for, and was granted, an injunction<sup>7</sup> pursuant to section 187B of the Act<sup>8</sup> which, by consent, remains in place to prevent further breaches of planning control. In short, at the time of the Inquiry, the site had limited occupation (restricted by the injunction) and further works, or development, were precluded.

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<sup>4</sup> ID24 sets out the process leading to 'Issue 4' and related consultation

<sup>5</sup> ID25

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

<sup>7</sup> CD6.3

<sup>8</sup> Town and Country Planning Act 1990 (as amended)

**(iii) Reasons for Refusal**

14. The Council's decision notice records nine reasons for refusal under the following broad headings: (1) inaccurate drawings; (2) principle of development; (3) substandard road; (4) substandard pedestrian access; (5) landscape and visual amenity; (6) neighbouring amenity; (7) drainage; (8) green infrastructure; and (9) trees.
15. Following the lodging of the appeal, amended and additional details were submitted and were the subject of formal consultation<sup>9</sup>. I am satisfied that no party is prejudiced as a result and these documents (as subsequently updated during the course of the Inquiry) should inform my consideration of the appeal.
16. The Council's ensuing revised statement of case<sup>10</sup> confirmed that it was no longer pursuing the reasons relating to inaccurate drawings (1); substandard road (subject to incorporation of a passing place) (3); and trees (subject to conditions relating to the route and specification of pedestrian access) (9). With reference to Dr Ruston's second proof of evidence, it was confirmed that the decision had been taken to remove a proposed pedestrian access from the site on to Lawrences Lane.

**Main Issues**

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

**Reasons**

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

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

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<sup>9</sup> CD8.1 – CD8.9

<sup>10</sup> CD10.1

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

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<sup>11</sup> CD7.2 Policy CS 7 bullet 8

<sup>12</sup> CD7.3 Policy TS 3 bullets 3 and 13

<sup>13</sup> CD7.5 pages 177 - 179

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

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

43. In my opinion, having regard to the proposed mitigation measures, serious harm to the visual qualities and enjoyment of the landscape would remain.
44. I recognise that opportunities for Gypsy and Traveller sites in West Berkshire are limited, given the extensive area covered by the Area of Outstanding Natural Beauty and other constraints. Although it is said that the impact of this seven pitch scheme would be no greater, and potentially less, than any equivalent proposal, I have found the project before me to have significant underlying drawbacks.
45. In turn, with reference to the qualified acceptance of Gypsy and Traveller sites within the open countryside, and the starting point that such development would invariably involve some change in character and a resultant degree of harm, I consider that the proposal would have a very significant unacceptable adverse effect on the character and appearance of the area. As such there would be conflict with Policy CS 7 (bullet 8) and the related objectives of Policies TS 3, CS 19<sup>14</sup> and CS 14.
46. Moving on to Policy CS 18, Green Infrastructure, the explanatory text sets out that *'green infrastructure is the network of multi-functional green space ..... which supports the natural and ecological processes, and is integral to the health and quality of life of sustainable communities'*<sup>15</sup>. It is recognised that green infrastructure is important for many reasons including its contribution *'..... to the quality of life for residents, workers and visitors, in terms of both visual amenity and for sport and recreation purposes .....'*.
47. The Council and the Appellant made great endeavours to clarify the relevance, or otherwise, of the policy to the appeal proposal. For my part, it is important to note that although there is no public access to the site, the open rural character of the site would be lost; and members of the public would encounter adverse changes to views and their experience from Lawrences Lane and public rights of way. Each of these matters is reflected in my deliberations above and I therefore find the thrust of Policy CS 18 to be a subsidiary matter.

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

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

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<sup>14</sup> CD7.2 Policy CS 19 (Part 1) a), b); (Part 2) a)

<sup>15</sup> CD7.2 paragraphs 5.123 and 5.124 define types of green infrastructure

<sup>16</sup> CD7.3 Policy TS 3 bullets 13 and 14

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

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<sup>17</sup> ID5 paragraph 99

<sup>18</sup> The survey included the barn and adjoining land of which the appeal site forms part

<sup>19</sup> CD8.6 page 7



57. At this point I should record that an assessment of the appeal site and adjoining land was undertaken in 2017 in connection with a planning application to convert the barn<sup>20</sup> into residential use and to create residential gardens within the site. That report<sup>21</sup> indicated *'Habitats on the site are considered to be of some ecological value and the presence of protected species is probable. The boundary hedgerows with trees, grassland and scrub provide potential habitat and use by protected species such as bats, hedgehogs, reptiles and nesting birds ..... With targeted recommendations to enhance biodiversity, the development of the site is likely to increase its ecological value and provide net gains to biodiversity .....'*<sup>22</sup>.
58. However, the nature of the works and the intensity of use arising from conversion to a single dwelling would have been markedly different to the proposal before me. In any event, the 2021 report acknowledges *'..... due to the time elapsed an update survey is required'*<sup>23</sup>.
59. Reverting to the discussion at the Inquiry, firstly in relation to bats. It is common ground that boundary trees/woodland are likely to provide function for foraging and commuting bats. The evidence does not go beyond that in that there is no assessment of potential species, although it is agreed that the use of the site by greater horseshoe bats for foraging cannot be discounted; whether any species might be susceptible to artificial lighting; and whether occupation of the site would impact on the ability to forage.
60. In my opinion, the absence of bat detector surveys to determine the presence of bat activity, species composition and abundance is a very serious drawback to providing an appropriate level of understanding.
61. Although criticism is made of the Appellant's Ground Level Tree Roost Assessment<sup>24</sup>, which confirmed earlier findings that there were no obvious features that could be used by roosting bats on or adjacent to the site, the balance of the evidence suggests a nil/low probability for suitable roosting potential. On this basis, and as no trees are proposed to be removed, emergence surveys would have been disproportionate.
62. Overall, I am not convinced that the Appellant's assumptions that controls on lighting, and enhancement of habitat through additional planting, including the enhanced tree line to the southern boundary, would provide well-informed mitigation to secure the favourable conservation of bats.
63. Moving on to great crested newts, the Appellant's original work identified three ponds within 500 metres of the site and concluded *'although there is some residual risk, on the balance of probability great crested newts are likely to be absent from the site'*. However, during the course of the round table discussion, the Council identified a further pond some 217 metres from the appeal site. In effect, the site sat within the middle of these ponds.
64. To my mind, given the location of the site in relation to the nearest ponds<sup>25</sup>, the absence of presence/absence surveys, and the potential for the site to act as a commuting route, the balance of probability is far from negative. Indeed, the January 2021 appraisal expressed the view that *'the majority of the habitat on site is considered suitable for great crested newts'*.

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<sup>20</sup> On the larger area of land which includes the appeal site

<sup>21</sup> ID4

<sup>22</sup> Extended Phase 1 Habitat and Daytime Bat Survey June 2017 – Executive Summary

<sup>23</sup> Ecology Proof (Holden) Appendix A Ecology by Design Paragraph 2.1.1

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

<sup>25</sup> ID7 shown as 217.0m, 263.5m and 254.8m

65. Although the Appellant maintains that '*no mitigation measures would have been appropriate for the construction phase and none are proposed for operation*'<sup>26</sup>, I find that the Appellant has failed to consider the implications for the presence and adequate protection of great crested newts, notwithstanding its reliance on Natural England's Rapid Risk Assessment Tool.
66. Looking next at reptiles and the related Reptile Survey (July 2022), the key findings were: '*..... the surveys identified a peak count of two adult slow worms which were located in rough grassland on the southern boundary with reptiles located on two out of the five surveys ..... there is a risk that this species may have been impacted during the site clearance ..... however, the likelihood is relatively low .....*'<sup>27</sup>. It was also acknowledged in discussion, that the site might be capable of supporting grass snakes.
67. In terms of the survey methodology, five visits were made rather than the usual seven with no apparent justification, other than an unsupported presumption that two additional visits would have had little value. As to the size of the refugia, although practice varies, I am satisfied that they met the minimum appropriate dimensions.
68. Overall, in terms of reptiles, although there is an inevitable deficiency in the baseline information, the balance of probability points to limited diversity of species and low abundance. On this basis, 'common' methods of mitigation would provide continued opportunities for shelter and foraging.
69. As to dormice, the principal concern relates to breaks in, or the erosion of, woody hedgerow habitat and the possible impact from domestic pets. With the abandonment of the proposed footpath link to Lawrences Lane, the potential loss of habitat in this location dissipates. It was also said that keeping of cats by Gypsies and Travellers is not common and anthropogenic impacts from occupation of the site can be largely ruled out.
70. Drawing together these threads, the unauthorised nature of the development has inevitably circumvented the need for the pre-development assessment of protected species, appropriate avoidance of adverse impacts and informed measures for mitigation and enhancement of habitats. The presumption is that likely effects are assessed before planning permission is granted (and any works are undertaken) subject to proportionality and the consideration of exceptional circumstances.
71. In my assessment of this main issue, I have found serious deficiencies relating to the assessment of bats and great crested newts, in conflict with topic specific Policies CS 17 and TS 3<sup>28</sup> and also the related aims of Policies CS 14<sup>29</sup> and CS 18. There is also fundamental conflict with the guidance in Circular 06/2005 and Framework paragraph 174 d).
72. Related to this main issue is the calculation of Biodiversity Net Gain, and the changes, during the course of the Inquiry, with headline confirmation of a net gain in excess of 10%. Whilst elements remain disputed by the Council, Policy CS 17 does not set a standard and restricts itself to indicating that '*..... all new development should maximise opportunities to achieve net gains in biodiversity .....*'. Noting that the Environment Act 2021 specifies a gain of at least 10%, the relevant legislation has not yet taken effect.

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<sup>26</sup> Version 2 paragraph 5.29

<sup>27</sup> CD8.6 paragraphs 1.4 – 1.6

<sup>28</sup> Bullet 13

<sup>29</sup> Bullet 8

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

73. In short, the Outline Sustainable Drainage Strategy (Issue 4) makes provision within the site for a surface water drainage swale and detention pond. This would be supplemented by additional attenuation storage to be provided using a proprietary 'drainage crate system', installed along the western/north-western edge of each pitch on site<sup>30</sup>. In addition, to meet water quality objectives, hardstanding areas within the pitches would be constructed as permeable paving. The totality of the work would entail substantial ground works and removal of material to accord with existing ground levels.
74. Surface water discharge and foul drainage would be by means of new separate piped systems from the site, with connections to Thames Water infrastructure in Acorn Drive some 110 metres from the site<sup>31</sup>, undertaken at the Appellant's expense.
75. In light of the Drainage Statement of Common Ground between the Appellant and the Council<sup>32</sup>, and having regard to the extensive involvement on behalf of the Town Council, I am satisfied that it has been demonstrated that main issue 3 would be capable of being addressed by means of conditions attached to any grant of permission. On this basis, there would be no conflict with Policies CS 16 and TS 3 (bullet 7).

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

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

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

<sup>31</sup> ID24 Section 7

<sup>32</sup> ID33

81. The decision whether or not to confirm the Order was deferred on 16 March 2023 'so that officers can undertake further work to investigate ways in which the restriction could be implemented and enforced such that it safely meets the needs of both local residents and vulnerable road users'.
82. From my own observations, there is clearly potential for vehicles to meet one another in opposing directions, one of which would have to reverse, possibly for some distance and with restricted visibility. In addition, in the case of a vehicle encountering a pedestrian, or cyclist, the roadside verges generally offer little prospect for convenient safe refuge.
83. Irrespective of whether or not the Order is confirmed, and having regard to the former/extant use of the site<sup>33</sup>, the appeal proposal would introduce an added volume of vehicular movements, especially between the site entrance and Lawrences Way, arising from travel to and from work, secondary car journeys and delivery/service vehicles. In my opinion, additional conflict between vehicles, and with other users of the lane, cannot be discounted.
84. At the same time, the use of the appeal site as proposed, has the potential to generate additional pedestrian activity. This is likely to include, from time to time, some children walking to and from school, or out for recreation. Given the nature of the lane, described above, I consider that the combination of additional vehicular and pedestrian movements arising from the development would introduce added risk. That risk might deter some journeys on foot with a preference to use the private car.
85. I acknowledge that the level of risk could be reduced by the provision of a passing place, broadly mid-way along the north-western frontage of the site. This would allow two vehicles to pass and would also provide an element of added safety for pedestrians and cyclists. However, the formation of a passing place would have the serious disadvantage of further eroding the rural character of that part of Lawrences Lane and have potential added adverse implications for biodiversity.
86. I acknowledge that the proposed use of the site would run counter to the objective of reducing vehicular traffic on Lawrences Lane, in order to facilitate safer recreational usage. However, I am not convinced that the additional dangers arising from the proposal would be so severe to justify the harm caused by introducing a passing place; or to judging the proposal to be inherently unsound on highway safety or sustainability grounds.
87. In reaching this conclusion, I have in mind paragraph 13 h) of the PPTS and the lifestyle of Gypsies and Travellers, some of whom live and work from the same location, and many who travel for work with absence over varying periods. As the PPTS says, this omits many travel to work journeys and can contribute to sustainability. Nonetheless, the additional vehicular movements generated by up to seven households and the consequential safety implications remains a relevant consideration.

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

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

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

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

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

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

94. The Gypsy and Traveller Accommodation Assessment 2021 Update<sup>34</sup> is the latest available evidence to identify the accommodation needs across the District. It is of course a snapshot in time and takes no direct account of the needs of those who occupy, or intend to occupy, the appeal site. Nonetheless, the modelling of short term need in the Assessment makes an allowance for 9.7 households moving into West Berkshire based on past trends.
95. The Executive Summary of the Assessment ('Cultural' and 'PPTS need') states: *'In order to reconcile the requirements of national policies, the GTAA establishes an overall 'cultural' need for pitches which accords with the overall need for the Travelling community and takes into account the Human Rights Act 1998, the Equalities [sic] Act 2010 and the Housing and Planning Act 2016 section 124. A PPTS 'policy filter' is then applied to identify the level of need associated with those households meeting the definitions set out in the PPTS Annex 1. It is our understanding that the needs arising from the PPTS analysis establishes the level of need against which a 5-year land supply is assessed, but the council should be mindful of a wider obligation to consider overall 'cultural' need'*.

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<sup>34</sup> CD7.8 Table 6.1

96. The Council's witness, who was the author of the Assessment, acknowledged in cross-examination that the difference between cultural need and PPTS need was not explicit in the report itself. Nonetheless, he explained that he regarded the 2015 PPTS definition to be divisive, as the ability to travel was only one factor of cultural need. It was his view that the PPTS need should be as high as possible by adopting a flexible approach to personal circumstances and including those who were not expressly included in the PPTS definition.
97. On this basis, prior to the Lisa Smith judgement<sup>35</sup>, his practice had been to take a broad view that had fed into the Assessment and had been accepted by the Council. He was resolute that anyone impacted by the Court of Appeal judgement would already have been factored into his assessment and that the judgement did not affect the reliability of the identification of a five year supply of pitches.
98. It is to be noted that Table ES1<sup>36</sup> in the Assessment identifies separate figures for cultural need and PPTS need with the former, higher, figure embracing the latter. The relevant shortfall figures for the period 2021/22 to 2025/26 was 13 pitches (cultural need) and 9 pitches (PPTS need).
99. In terms of pitch provision to meet the need, planning permission has been granted for the change of use of 8 of the 16 transit pitches to permanent pitches at Paices Hill; one additional pitch is planned at Four Houses Corner; and an additional pitch has been allowed on appeal at Ermin Street. Whilst the PPTS need has been met, the residual cultural need is 3 pitches. On this basis, although the Council can demonstrate a five year supply of sites for the purposes of the PPTS, there remains a shortfall of at least 3 pitches to meet cultural need.
100. In any event, assessment of need is not an exact science and the identification of need is to be regarded as a minimum. At the present time, the site at Four Houses Corner, with residents decanted, awaits refurbishment and the 2021 Update confirms: '*The needs analysis does not take into account any emerging needs from these households. It is recommended that the needs analysis is updated to take account of the demographics of households moving on to Four Houses Corner once it reopens*<sup>37</sup>. This could be a further contributor to shortfall. Moreover, it was said that all of the former occupants wished to return to the site as soon as possible.
101. Also, regard must be had to a clear and urgent need for additional site provision in both England and Wales, and to the findings of the Equality and Human Rights Commission, in 2019, and their verdict that '*the need for pitches for Gypsies and Travellers as assessed by local planning authorities fell by up to 75% following the application of the PPTS 2015 definition*'.
102. Turning to the allegation of 'policy failure', flowing from the Inspector's findings in the Ermin Street appeal decision, history is clouded by the timescale and overlap and succession of responsibilities at county and regional level and 'top-down' figures.

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<sup>35</sup> CD9.2

<sup>36</sup> CD7.8 page 7

<sup>37</sup> CD7.8 Note to Table 6.3

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

**(ii) Personal circumstances**

106. The Gypsy and Traveller status of the site residents is not in dispute<sup>38</sup>. As ethnic Gypsies and Travellers, they are entitled to respect for their traditional way of life. Further, the vulnerable position of such groups as a minority requires some special consideration to their needs and their lifestyle. Indeed, paragraph 3 of the PPTS states that '*the government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community*'.
107. The occupants of pitch 1 comprise a family of six, with four children whose ages range from a few months to twelve years. One of the adults is attending Basingstoke Hospital to see a specialist; one child has been referred to a paediatric doctor; and a further child attends the dentist. One child is home tutored by parents; another attends Thatcham Park School; and the other attends Thatcham Park Nursery twice a week. Prior to arriving in Thatcham, the children had attended a total of eleven schools. The adults are related to three other occupants on the site. The family has nowhere else to live.
108. Mrs Sheen gave oral evidence to the Inquiry. It was established that her husband, prior to their marriage, had lived in bricks and mortar with his parents but she did not know for how long. She had no real knowledge of his business interests in letting property; or of the two planning applications he had made on the land (relating to the conversion of the barn); or why he was not the applicant/appellant in this case. She guessed that her husband knew that planning permission was required; funding of drainage works was a matter for him, but she anticipated that they could raise the necessary money. In effect, they had no choice as the alternative would be to be homeless.
109. Walking with the children to school was weather and time dependent; and shopping was delivered once a week. However, she liked running with her eldest son and walked into the village to meet others; a grassed area for children's play could be provided on the pitch and local parks were only a ten minutes' walk.

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<sup>38</sup> CD5.1 paragraphs 6.26 – 6.28

110. Pitch 2 was occupied by two adults and three children, aged between four and twelve, but had been vacated due to the medical needs of one of the children. Prior to that, one of the children was home tutored, having previously attended eight schools, and the other two attended Thatcham Park School, one of whom had attended six schools prior to Thatcham. One of the adults had also been having regular medical care. Prior to occupying the site, the family were mainly 'doubled up' on other people's pitches and would otherwise be homeless. The family is related to those living on pitch 3. They do not have access to other land or sites and do not have funds to purchase another pitch.
111. The third pitch is occupied by a mother and teenage daughter, previously staying between family members, and with nowhere else to go. Access to the surgery is important and the ability to enrol at college would be welcomed. There is a close family relationship with the intended occupants of pitch 2.
112. Mrs Coneley gave evidence at the Inquiry. She explained that proximity to her son, daughter-in-law and grandchildren on pitch 2 was important. They were currently doubled up with a family member elsewhere to meet one of the children's medical needs, but intend to come back to Thatcham if planning permission is granted. They had nowhere else to go. Mrs Coneley was not related to any other site residents but she had known the other residents over the years.
113. Mrs Coneley went on to confirm that she knew that the site did not have planning permission; she had heard of it through her son; and that arrival had been coordinated. She indicated that funds for the drainage works would be available from family and that would be balanced against the cost of living elsewhere and the benefit to personal well-being.
114. Pitch 4 is vacant with no identified prospective occupant.
115. The intended occupants of pitch 5, currently precluded by the injunction, comprise a family of four with two teenage daughters<sup>39</sup>. They have lived a life on the road, and have never lived in houses and would not want to do so. They currently occupy a site, temporarily vacated by the owner, in York. They have no other land available. Access to health care is important and the two daughters are missing out on being able to learn to drive, seek employment or go to college. Other residents on the site are friends of the family.
116. Mr Gaskin gave evidence at the Inquiry. The family had moved off the land as a result of the injunction and the fear of losing possessions and/or arrest. He knew that planning permission was required. Access to work in Europe was problematic; Covid had affected day to day life and doubling up had become difficult; and the implications of the Police Crime Sentencing Act 2022 was a further factor. The pitch in York was only a short term opportunity. He could find money to undertake the drainage works on site from family loans; he could sell one of his caravans; and materials could be bought at bulk and trade discount.

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



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

125. At this point I turn to the medical needs of several of the adults at the site. From the evidence before me, some are in the nature of 'routine' checks<sup>40</sup> and others rely on regular access to assessment and prescription medication. These considerations do not add anything of real substance to the overall weight I attach to the personal circumstances described above.

**(iii) The best interests of the children**

126. Flowing from the judgement of Hickinbottom J<sup>41</sup>, where the evidence in a case indicates that the decision could have an adverse impact on a child or children, rights under Article 8 will be engaged and the best interests of the children should be a primary consideration. In this case, there are both immediate educational and health needs, and the advantages of a settled existence, relating to children that are likely to influence current well-being and have lifelong repercussions.
127. The best interests of the children are therefore a primary consideration and no other issue is intrinsically more important. I have to consider whether any adverse impact arising from my decision on the interests of the children is justified and proportionate.
128. The importance or weight attributed to the best interests of the children will depend on the facts and circumstances. I have identified the children involved in my outline of personal circumstances set out above. In total there are ten children under the age of eighteen years.
129. Of those currently living on the site, one is attending the local school and another, in the same family, is attending the nursery twice a week. Two further children have attended Thatcham Park School, but are of necessity currently living elsewhere. Two children attend a school in Wiltshire, some 35 miles away. Two receive education at home and the remaining two, plus an older dependent, have aspirations to attend college. In my opinion, the reliance on the appeal site and the availability of the education resource in Thatcham is a factor of moderate weight.
130. Turning to access to health care, four of the children have been identified as receiving regular medical care and a further has been attending the dentist. Two of those children have significant ongoing care needs which merit corresponding weight. Without underestimating the personal importance of the other circumstances, these are of limited weight.

**(iv) Article 8 rights**

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

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<sup>40</sup> There is no documentary evidence of any conditions requiring medical intervention

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

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

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

**(v) Intentional unauthorised development**

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

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

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

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

137. The works undertaken were in excess of what was required to make a habitable environment pending the outcome of the planning application. Notably, the area intended to be occupied was largely covered in hard surfacing; substantial fencing was erected; and some vegetation was lost. The work caused considerable disturbance and distress to the local community<sup>43</sup>; and no regard was had to visual amenity or to the potential adverse implications for wildlife and biodiversity.

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

**(vi) Sustainability**

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

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

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

### **Planning balance**

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

149. In terms of site layout, with particular reference to the siting of the static caravans and the manner in which they would effectively provide a perimeter barrier to the site, and the lack of soft amenity space, I attach moderate negative weight to these shortcomings.
150. In terms of the benefits arising from the proposal, moderate weight is to be given to the general need for additional pitches which is subsumed by the significant positive weight that I give to the personal circumstances of the intended occupants.
151. Further, the best interests of the children is a primary consideration. In this regard, I have attached moderate weight to education needs, limited weight to the health needs of three children and significant positive weight to the health needs of two of the children, with the latter informing overall weight.
152. Whilst it is said that the outline drainage proposals will reduce the flood risk along Lawrences Lane, the scheme is intended to mitigate the consequences of the development itself and some residual 'passing on' of natural catchment will remain<sup>44</sup>. As such, any potential consequential benefit attracts minimal weight.
153. I have had regard to all of the claimed sustainability considerations but, as general expectations of policy and guidance, they are neutral in the planning balance.
154. Although the planning application generated a considerable number of representations, and two members of Thatcham Town Council spoke at the Inquiry about the issues faced when the site was being developed, there is nothing to suggest that there have been ongoing tensions.
155. Indeed, a local resident gave testimony to what he believed to have been false information, whilst the development was being undertaken, and the manner in which the occupants have since become integrated locally. This principal planning aim rests neutral in the planning balance.
156. The PPTS sets out *'The government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life while respecting the interests of the settled community'. It aims, amongst other things, 'to promote more private traveller site provision ..... to increase the number of traveller sites in appropriate locations with planning permission ..... to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure ..... for local planning authorities to have due regard to the protection of local amenity and local environment'*.
157. It goes on to say that *'Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise'*. In policy terms, the proposal would be in conflict with the development plan, and the Framework. In addition, having considered the proposal in the round, I find conflict with the policy set out in the PPTS.
158. From the foregoing, I conclude that the totality of the supporting material considerations do not outweigh the combination of policy conflict and the harms that I have described. This points to the dismissal of the appeal.

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<sup>44</sup> ID29

159. Such a decision would represent a very serious interference with Article 8 rights and with the best interests of the children. However, such an interference would be in accordance with the law and necessary in a democratic society in order to protect, amongst other things, the rights and freedoms of other people.
160. In my opinion, that interference would be proportionate in a democratic society to the wider public interest. The interference is also necessary in the circumstances of the harm that I have identified which clearly outweighs the benefits to the Appellant and the group on whose behalf she represents.
161. On balance, I am satisfied that the harm that would be caused by the development outweighs the other considerations to the extent that planning permission should not be granted. None of the conditions crafted during the course of the Inquiry, or the complementary unilateral undertaking, would overcome the harm to enable the grant of a permanent planning permission.
162. However, it is also necessary to consider whether a time-limited permission, notionally for a period of five years, would be appropriate with particular reference to paragraph 27 of the PPTS. This would have benefits for family life and the children in particular. Granting a time-limited permission would also give the Council a period in which to increase its supply of land for Gypsy and Traveller sites through the plan making process.
163. Whilst a temporary permission may have applicability where circumstances might change, the harm identified would nonetheless remain over a significant period of time which I regard to be unacceptable.
164. Moreover, in this case, to facilitate a temporary occupation of the site, extensive drainage infrastructure works, including connections to the public sewers and replacement permeable hard surfacing, would have to be undertaken at considerable cost<sup>45</sup>. At the end of the temporary period, if the site is not to be left with an extensive area of hardstanding, at odds with the character and appearance of the area, a scheme of restoration would be required. Again, this would be likely to involve significant work and expense.
165. Whilst the occupants of the site have indicated a willingness to incur these costs and to undertake some of the work themselves, set against the unpalatable alternative, I do not regard the extent and implications of the work to relate fairly and reasonably to the grant of a temporary permission. On this basis, the condition would not reflect the advice given in paragraph 014 of Planning Practice Guidance: Use of planning conditions.
166. In declining to grant planning permission for a time-limited period, I consider that the totality of the adverse consequences for the occupants, including the ability to live a traditional life, the impact on access to health and education facilities, race relations and the implicit family and personal considerations do not outweigh the planning harms.
167. Turning to consider the option of a personal condition, relating to the six identified family/individual occupants, such a condition would apply in perpetuity for those named persons and their resident dependents.

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<sup>45</sup> Even on the Appellant's case

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

*David MH Rose*

Inspector

## **ANNEX A: APPEARANCES**

### **For Ms C Gumble**

Marc Willers King's Counsel

Instructed by Ms C Gumble

### **He called**

David McMurtary  
BA (Hons) CIHT

Technical Director  
Motion

Giles Coe  
BSc (Hons) MCIEEM

Ecological Consultant

Ian Walton  
BSc (Hons) MSc DIC MICE CEng

Technical Director  
SLR Consulting Limited

Rhodri Crandon  
BA (Hons) Dip LA

Director  
Tirlun Design Associates Ltd

Dr Simon Ruston  
BSc (Hons) MA PhD MRTPI

Ruston Planning Limited

Fred Gaskin

Pitch 5 (intended occupant)

James Ridgeley

Pitch 6 (occupant)

Kathleen Sheen

Pitch 1 (occupant)

Kelly Coneley

Pitch 3 (occupant)

Steve Jones

Local resident

Maurice Black

Interested person

### **For West Berkshire Council**

Emmaline Lambert, Counsel

Instructed by Head of Legal Services  
West Berkshire Council

### **She called**

Paul Goddard  
BEng (Hons)

Highways Development Control Team Leader  
West Berkshire Council

Michael Cummings  
BSc (Hons) MSc MCIEEM

Director  
Darwin Ecology

Paul Bacchus  
MEng (Hons) GMICE

Senior Engineer (Land Drainage)  
West Berkshire Council



Mark Flatman  
CMLI Dip LA BA (Hons)

Director  
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Nikolaos Grigoropoulos  
BSc (Hons) MA MRTPI

Team Leader (Development Control Service)  
West Berkshire Council

**For Thatcham Town Council**

Councillor Simon Pike  
BA (Hons) CEng MIET

Thatcham Town Council

**He called**

Councillor Lee Dillon

Thatcham Town Council  
West Berkshire Council (ward member)

Councillor David Lister

Thatcham Town Council

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

Sharon Armour

Solicitor West Berkshire Council

## **ANNEX A: CORE DOCUMENTS<sup>46</sup>**

### **CD1 Planning application documents**

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

### **CD2 Additional/amended documents submitted after validation**

- 2.1. Intentionally left blank

### **CD3 Consultation responses**

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

### **CD4 Application correspondence**

- 4.1 Officer Feedback 15/10/2021 Email

### **CD5 Application decision**

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

### **CD6 Appeal submissions / correspondence**

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

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<sup>46</sup> As provided by West Berkshire Council

- 6.11 Lawrences Lane, Thatcham - Landscape Statement of Evidence (Mr. Rhodri Crandon)
- 6.12 220517\_407\_12923\_00001\_L\_Land at Lawrences Lane\_Ridgley\_Drainage Review
- 6.13 PB 02 N01 - Technical Note - bcthat - 2021-11-15
- 6.14 Document List

#### **CD7 Policy / guidance documents**

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

#### **CD8 Wheatcroft Amended Plans Documents**

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

#### **CD9 Court judgements and appeal decisions**

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

#### **CD10 Appeal statements / evidence**

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

#### **CD11 Miscellaneous documents**

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

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

## **ANNEX B: DOCUMENTS SUBMITTED AT THE INQUIRY<sup>47</sup>**

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

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<sup>47</sup> As provided by West Berkshire Council and updated by the Inspector

ID23 Utilities Search Report provided 17th January 2023  
ID24 Outline Sustainable Drainage Strategy Issue 4, received 20.01.2023  
ID25 (Rev B) Revised Site Layout, Landscape Strategy and Arb Mit Measures  
ID26 Appeal Decision - 3192162 - Brookside Stables, Cold Pool Lane, Badgeworth, Cheltenham  
ID27 Appeal Decision - 3199149 - The Caravan Site, Highfield Lane, Corley Ash, Warwickshire  
ID28 Inquiry Notification Letter - New PI Date  
ID29 Agreed Drainage SoCG  
ID30 Appellant – Lawrences Lane BNG – Headline Results  
ID31 Appellant – Lawrences Lane BNG – Post Intervention Habitats  
ID32 Appellant – Lawrences Lane BNG – Pre Intervention Habitats  
ID33 Appellant – Lawrences Lane BNG – Summary Information  
ID34 Appellant – Condition Sheets V1  
ID35 Appellant – Lawrences Lane Biodiversity Metric 3.1 V3  
ID36 Mr Walton’s response to Cllr Pike on OSDS Issue 4  
ID37 Natural England – Green Infrastructure, Planning and Design Guide  
ID38 Webpage Link to Natural England Green Infrastructure, Planning and Design Guide  
ID39 Appeal Decision - APPK0425W183212259 - Askett, Buckinghamshire  
ID40 Appeal Decision - APPL2820C193240989 - Loddington, Northamptonshire  
ID41 Quantitative Assessment Note by WBC Policy Team 07032023  
ID42 WBC Ecology witness Response to Appellant's BNG Updates 07032023  
ID43 Aerial Photo - McVeigh Parker Ltd, Bradfield Southend 19/03193/FUL  
ID44 West Berks 2015 GTAA  
ID45 Recommendation report on Lawrences Lane active travel bollards for consideration and decision on the 16/3/23  
ID46 Rule 6 - Drainage Scheme Materials Quantities  
ID47 Council Opening Statement  
ID48 Note on transit provision  
ID49 Closing Submissions on Behalf of the Council<sup>48</sup>  
ID50 Closing Submission for Thatcham Town Council  
ID51 The Appellant’s Closing Speech<sup>49</sup>  
ID52 The Council’s Application for Costs  
ID53 The Appellant’s Response to the Application for Costs  
ID54 Unilateral Undertaking

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<sup>48</sup> Pre-delivery script - excluding oral additions

<sup>49</sup> Pre-delivery script - excluding oral additions