

# Appeal Statement of Case

## Local Planning Authority

### Town and Country Planning Act 1990 Section 174 appeal against the Enforcement Notice

**Appeal:** APP/W0340/C/25/3363100

**Site:** Land Adjoining Sandhill, Hampstead Norreys Road, Hermitage, Thatcham, RG18 9XU

**Breach of Planning Control:** Without planning permission, the material change of use of the Land from agriculture to use as a Gypsy and Traveller Site comprising five pitches with touring caravans, mobile welfare / storage units, skips, and dog kennels, together with the laying of hardstanding and the erection of fencing associated with the change of use of the site.

**Date:** May 2025

**Council Reference:** 23/00211/15UNAU

## Appeal Statement of Case

**West Berkshire Council**  
**Development and Housing**  
Market Street  
Newbury  
BerkshireRG14 5LD

**T:** 01635 519111

**E:** [appeals@westberks.gov.uk](mailto:appeals@westberks.gov.uk)  
[www.westberks.gov.uk/planning](http://www.westberks.gov.uk/planning)

## Contents

<b>1. INTRODUCTION .....</b>	<b>4</b>
GROUNDS OF APPEAL .....	4
SCOPE OF STATEMENT OF CASE .....	4
<b>2. APPEAL SITE AND PROPOSAL .....</b>	<b>5</b>
APPEAL SITE.....	5
PLANNING HISTORY .....	5
APPEAL PROPOSAL .....	7
<b>3. PLANNING POLICY .....</b>	<b>9</b>
EMERGING LOCAL PLAN .....	10
<b>4. MAIN ISSUES .....</b>	<b>11</b>
<b>5. RESPONSE TO GROUND (G) APPEAL .....</b>	<b>12</b>
<b>6. CONCLUSION .....</b>	<b>13</b>

## Appendices

A	A Copy of the Enforcement Notice served on 27 <sup>th</sup> February 2025.
B	Red Line Plan
C	West Berkshire existing and emerging development plan policies
D	Planning Proof of Evidence for Appeal Ref: APP/W0340/W/24/3356688

## 1. Introduction

- 1.1 This Statement of Case has been prepared in respect of an appeal lodged against the issue of an enforcement notice (Council reference 23/00211/15UNAU) for the material change of use of the Land from agriculture to use as a Gypsy and Traveller Site comprising five pitches with touring caravans, mobile welfare / storage units, skips, and dog kennels, together with the laying of hardstanding and the erection of fencing associated with the change of use of the site.
- 1.2 It is important to note that a separate appeal is ongoing against the refusal of planning permission for the same development. Application 23/00815/FUL was refused on 24/10/2024, and the appeal (APP/W0340/W/24/3356688) is being heard by way of a public inquiry opening on 20<sup>th</sup> May 2025.

### Grounds of Appeal

- 1.3 The enforcement notice has been appealed under Ground G; “that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed”.
- 1.4 The appellants submitted via their appeal statement that the stated time for compliance of 6 months is short of what they consider reasonable. The unauthorised works involve the residential use of the land, and the occupants of the land have no alternative site on which they could resort.

### Scope of Statement of Case

- 1.5 This Statement of Case has been prepared in accordance with the Planning Inspectorate’s *Procedural Guide (Planning Appeals – England)*. It supports the Council’s reasons for issuing the enforcement notice.

## 2. Appeal Site and Proposal

### Appeal Site

- 2.1 The site is located on the outskirts of Hermitage, in a field between a property known as 'Sandhill' and a property known as 'Torcove'. It is adjacent to Hampstead Norreys Road (the B4009) and is situated before the M4 motorway bridge.
- 2.2 The lawful use of the land is agricultural and is approximately 1.2 acres (0.485 hectares) in size, laid to grass with mature hedgerows and trees enclosing it. There has always been an entrance gate just before the village sign (Hermitage).
- 2.3 The site has the 'Forest Edge' housing development to the east, along with the Hermitage Village Hall and Playground which houses the pre-school. The hamlet of Oare lies to the west of the site and the road leading north takes you towards Hampstead Norreys and Compton. To the south is the village of Hermitage, which includes the primary school, church, post office and Co-op convenience store and the residential areas of Hermitage, Little Hungerford and Wellhouse.

### Planning History

- 2.4 The relevant planning history of the appeal site is set out in Table 2.1.

### Planning History

Application	Proposal	Decision
20/00006/TPW	T1 Oak - remove deadwood over path. T2, T3, T4 (all Oaks) - remove deadwood in crown. T5 Oak - Fell. T6 Goat Willow - remove deadwood in crown. T7 Oak - remove dead branch over path. T8 Ash - Fell. T9 Oak - remove dead branch over path. T10 Oak - remove deadwood in crown. T11 Oak - remove dead branch over path. T12 Hawthorn and Hazel - crown lift over path. T13 Oak - remove deadwood over path. T14 Hazel - remove deadwood over path. T15 Beech - crown lift to 3m over path. T16 Beech - remove deadwood.	Approved on 13.01.2020.
23/00815/FUL	Part retrospective. Change of use of land for the formation of 5 Gypsy/Traveller pitches comprising of 1 mobile home, 1 touring caravan, and 1 utility building per plot.	Refused on 24.10.2024*

\* Currently being appealed; reference: APP/W0340/W/24/3356688.

2.5 An injunction was granted against the landowner ( ) and the residents of the 5 pitches at the High Court on 21st April 2023. The injunction prohibited anyone named to do the following:

- i. Bring onto the Land any additional caravans and/or mobile homes for the purpose of human habitation or residential occupation in breach of planning control (above the number 6 touring caravans currently on the Land);
- ii. Take up permanent residential occupation without the express grant of planning permission on the Land save for, and without prejudice to the Claimant's position that there was no residential occupation when the injunction order of 31st March 2023 was granted and served, the following;
  - Plot 1 – residing in an Abbey caravan
  - Plot 2 – and 4 children including who is over 18) residing in a Bailey and an Abbey caravan
  - Plot 3 – and residing in a Bailey caravan
  - Plot 4 – and 4 children residing in a Lunar caravan
  - Plot 5 – and 4 children with week-end visits of a further 3 children residing in an Elddis caravan
- iii. Bring/erect/install any buildings or structures on the Land for the purposes of human habitation or residential occupation in breach of planning control;
- iv. Bring onto the Land any portable structures including portable toilets for purposes associated with human habitation or residential occupation in breach of planning control;
- v. Bring onto the Land any further waste materials and/or hardcore and/or like materials for any purpose (over and above that depicted in the 7

photographs attached to this Order taken on 4th April 2023), including the creation/laying of hardstandings or hard surfaces, in association with the use of Land for the stationing of caravans and/or mobile homes for the purpose of human habitation or residential occupation in breach of planning control;

- vi. Carry out any further works in relation to the formation of paths, roadways or any works including the provision of sewerage, water and electricity infrastructure associated with the use of caravans and/or mobile homes (over and above that depicted in the 7 photographs attached to this Order taken on 4th April 2023) for the purpose of human habitation or residential occupation in breach of planning control;
- vii. Carry out any further works to the Land associated with or in preparation for its use for stationing caravans and/or mobile homes or for the erection of a building and/or any structure for human habitation or residential occupation in breach of planning control (over and above that depicted in the 7 photographs attached to this Order taken on 4th April 2023);
- viii. Undertake any further development on the Land as defined in section 55 of the Town and Country Planning Act 1990 without the express grant of planning permission (over and above that depicted in the 7 photographs attached to this Order taken on 4th April 2023).

2.6 The injunction is still in place at this present time, and the proceedings adjourned pending the outcome of the planning process.

### **Appeal Proposal**

2.7 The agents acting for the appellants have suggested within their appeal statement that “a period of 12 months should provide time for further work to be done to the Local Plan process, albeit unlikely to give any formal reprieve to the appellants within the compliance period. It would however provide time for the appellant family to engage in the process and potentially secure an alternative through the Plan-led route”. The statement goes on to state that “it is submitted that it would be reasonable and proportionate to allow a period of 12 months for the use to cease as this would give

the occupiers and the appellants additional time to seek alternative solutions or arrangements”.



### 3. Planning Policy

- 3.1 Although the appeal is made solely on Ground (g)—that the compliance period is unreasonably short—the Council considers it important to briefly outline the relevant planning policy context to reinforce the seriousness of the breach.
- 3.2 The unauthorised development is contrary to several key policies in the currently adopted **West Berkshire Core Strategy (2006–2026)**, the **Housing Site Allocations Development Plan Document (HSADPD) 2017**, and the **Hermitage Neighbourhood Development Plan 2023**. These include:

#### **Core Strategy Policies:**

- **ADPP1:** Limits development in the countryside to appropriate uses.
- **CS7:** Sets criteria for Gypsy and Traveller sites, which the development fails to meet.
- **CS13:** Requires safe and sustainable access to development sites.
- **CS14:** Demands high-quality design that respects the character of the area.
- **CS16:** Requires sustainable drainage systems (SuDS) for surface water management.
- **CS19:** Protects the natural and historic environment, including the North Wessex Downs National Landscape.

**HSADPD Policy TS3:** Provides specific criteria for Gypsy and Traveller sites, including location, access, and environmental impact.

#### **Hermitage Neighbourhood Plan Policies:**

- **HER2:** Requires development to respect local design character.
- **HER3:** Protects countryside views between properties.
- **HER4:** Supports sustainable drainage and flood risk mitigation.

**National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS):** Emphasise sustainable, well-located development that does not harm the countryside or highway safety.

- 3.3 The Council maintains that the development is in clear conflict with these policies, particularly due to its location in open countryside, visual impact, lack of infrastructure, and highway safety concerns.

### **Emerging Local Plan**

- 3.4 The Local Plan Review (LPR) was submitted for independent examination on 31st March 2023. Hearing sessions on the LPR were held in May, June and October 2024. Consultations on the proposed Main Modifications to the LPR closed on 31st January 2025.
- 3.5 The LPR sets out the Council's vision, objectives and spatial planning strategy for West Berkshire up to 2039. It sets out strategic policies, non-strategic site allocations and development management policies.
- 3.6 The Main Modifications consultation was held from 6th December 2024 to 31st January 2025. The LP Inspector issued his report in April 2025, concluding that the emerging plan is sound subject to modifications. The LPR is on the agenda of the Council's Full Council Meeting on 10th June 2025 to consider its adoption. If approved on 10th June 2025, the LPR will become part of the statutory development plan, and the Core Strategy and Housing Site Allocations DPD will be cancelled.
- 3.7 The LPA have prepared a table which compares the existing and emerging policies relevant to this appeal. This table can be found in Appendix C.
- 3.8 The emerging plan is in an advanced stage of preparation, and this means the policies should be given greater weight in line with paragraph 49 of the NPPF.

## 4. Main Issues

- 4.1 The sole issue in this appeal is whether the six-month compliance period specified in the enforcement notice is reasonable, or whether it should be extended to twelve months as requested by the appellants.

## 5. Response to Ground (g) Appeal

- 5.1 The Council notes that the appellants have appealed the enforcement notice solely on ground (g) – that the six-month compliance period falls short of what should reasonably be allowed.
- 5.2 The appellants have argued that a twelve-month period would provide them with additional time to identify and secure an alternative site through the Local Plan process or through other means. The personal circumstances statement submitted by the appellants indicate that finding any alternative plots of land in the district or nearby would be difficult.
- 5.3 The Enforcement Notice gives a six month compliance period, which is considered generous in light of the ongoing harm being caused. Whilst not directly related to these grounds of appeal, the Council's Planning Proof of Evidence for Appeal ref: APP/W0340/W/24/3356688 is included in Appendix D to inform the Inspector of the degree of harm being caused.
- 5.4 The Council is sympathetic to the circumstances of the occupants outlined in their personal circumstances statements, and it is taking into account the appellants circumstances that the Council extend the compliance timescale from three to six months.
- 5.5 It is also important to recognise that the unauthorised development took place in April 2023. The planning application that was submitted concurrently with the unauthorised works, was deficient, and the Council allowed considerable leeway with the appellant to provide missing information and address concerns raised. As such, the public interest weighs in favour of ensuring compliance at the earliest reasonable opportunity.
- 5.6 In light of the harm being caused and the time that has already passed, the Council considers six months to be a reasonable compliance period. However, if the Inspector considers that the personal circumstances put forward by the appellants justify an extended period of time, the Council considers that twelve months would be the maximum that could be justified when balancing the harm against the personal circumstances.

## 6. Conclusion

- 6.1 The Council maintains that the breach of planning control is serious and that enforcement action is both necessary and proportionate. The unauthorised development is clearly contrary to national and local planning policies, and its continuation would result in ongoing harm to the character of the countryside, the North Wessex Downs National Landscape, and local amenity.
- 6.2 In light of the harm being caused and the time that has already passed, the Council considers six months to be a reasonable compliance period. However, if the Inspector considers that the personal circumstances put forward by the appellant justify an extended period of time, the Council considers that twelve months would be the maximum that could be justified when balancing the harm against the personal circumstances.
- 6.3 The Council respectfully requests that the appeal be dismissed. However, if the Inspector considers that a longer compliance period is justified, the Council asks that the period for compliance be extended by no more than twelve months in total.

# Appendix A



**IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**TOWN AND COUNTRY PLANNING ACT 1990  
(As amended by the Planning and Compensation Act 1991)**

---

## **ENFORCEMENT NOTICE**

---

**ISSUED BY: West Berkshire District Council ("the Council")**

**1. THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

### **2. THE LAND TO WHICH THE NOTICE RELATES**

Land at land adjoining 'Sandhill', Hampstead Norreys Road, Hermitage, Thatcham, RG18 9XU shown edged in red on the attached plan.

### **3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

Without planning permission, the material change of use of the Land from agriculture to use as a Gypsy and Traveller Site comprising five pitches with touring caravans, mobile welfare / storage units, skips, and dog kennels, together with the laying of hardstanding and the erection of fencing associated with the change of use of the site (the "Unauthorised Development").

### **4. REASONS FOR ISSUING THIS NOTICE**

1. The Unauthorised Development took place less than 10 years before the date of this notice.
2. The Unauthorised Development is located in open countryside, outside of any defined settlement boundary in the development plan. According to Policy ADPP1 of the West Berkshire Core Strategy 2006-2026, only appropriate limited development in the countryside will be allowed. Policy CS7 of the Core Strategy provides criteria for gypsy and traveller pitches which must be satisfied for sites outside settlement boundary. The proposed development is contrary to policy CS7, and other policies as detailed below.

3. The application site lies in the North Wessex Downs National Landscape. The proposal would result in a harmful urbanising encroachment into the countryside, significantly disrupting the gentle transition between the built-up area of Hermitage and the surrounding open countryside to the north of the M4. This would harm the NWDNL and so be contrary to policies CS14 and CS19 of the West Berkshire Core Strategy (2006-2026) and the advice in the NPPF. Additionally, from the road and the Public Right of Way to the east, the development would be highly visible in localised views. Mobile homes, amenity rooms, and touring caravans would stand out as jarring and intrusive features, even with the presence of vegetation. This is inconsistent with policies ADDP5, CS7, CS14, and CS19 of the WBCS (2006–2026), policy TS3 of the HSADPD 2017, Policies HER2 (Design) and HER3 (Countryside views between properties) from Hermitage Neighbourhood Plan, the NPPF, and the guidance in the PPTS.
4. Policy CS16 seeks that on all development sites surface water will be managed in a sustainable manner through the implementation of SuDs measures. The Lead Local Flood Authority advise that there is insufficient information on how surface water will be managed. The proposal is therefore contrary to the NPPF, Policy CS16 of the West Berkshire Core Strategy (2006-2026), policy HER4 of the Hermitage Neighbourhood Development Plan 2023. and the Sustainable Drainage Systems SPD (2018).
5. The current forward visibility splays in both directions [north and south] are inadequate for the identified traffic speeds along the highway. In addition, there is no footway/pedestrian link to the south of the application site linking the accommodation to the village of Hermitage and its facilities. This all leads to potential conditions of road danger and a threat to highways safety, contrary to policies CS7 and CS13 of the WBCS 2006 to 2026, policy TS3 of the HSADPD 2017, the NPPF, and the advice in the PPTS.
6. The purpose of this Notice is the remedy of the breach of planning control and the council does not believe that there are any steps short of those stated above which would achieve that purpose.

## **5. WHAT YOU ARE REQUIRED TO DO**

- A. Cease the residential use of the land.
- B. Remove from the Land all touring caravans, welfare and storage units, skips, dog kennels and all paraphernalia associated with the residential use.
- C. Take the following additional actions:
  - Disconnect any electrical supply and remove all electrical supply apparatus from the Land;
  - Remove from the Land all septic tanks, water tanks and associated pipework and taps;
  - Remove from the Land all fencing and gates that were not there originally;
  - Remove from the Land all hardcore and hardstanding.All of which facilitate the Unauthorised Development; and
- D. Remove from the Land all debris associated with the above steps.



## 6. TIME FOR COMPLIANCE

The requirements of this notice shall be completed within a period of 6 months after the effective date of this notice.

## 7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 27<sup>th</sup> March 2025, unless an appeal is made against it beforehand.

---

**Dated:** 27<sup>th</sup> February 2025

**Signed:**



Bob Dray, Development Manager

**On behalf of:** West Berkshire District Council, Council Offices, Market Street, Newbury, RG14 5LD

**Nominated Officer:** Mrs Fenella Woods

**Telephone Number:** 01635 519451

**Email:** fenella.woods1@westberks.gov.uk

**Reference:** 23/00211/15UNAU

---

# ANNEX

**WEST BERKSHIRE COUNCIL** has issued an Enforcement Notice relating to land adjoining 'Sandhill', Hampstead Norreys Road, Hermitage, Thatcham, RG18 9XU and you are served with a copy of that Notice as you have an interest in the Land. Copies of the Notice have also been served on the parties listed at the end of this Annex.

## **YOUR RIGHT OF APPEAL**

You can appeal against this enforcement notice, but any appeal must be **received**, or posted in time to be **received**, by the Planning Inspectorate acting on behalf of the Secretary of State before the date specified in paragraph 7 of the notice.

The enclosed information sheet published by the Planning Inspectorate gives details of how to make an appeal. A copy is also available at the following link:

<http://www.planningportal.gov.uk/uploads/pins/eninfosheet.pdf>

## **WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period[s] specified in paragraph 6 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

# EXPLANATORY NOTE

Any appeal must be received by the Planning Inspectorate (or be posted or electronically communicated at such time that, in the ordinary course of post or transmission, it would be delivered to the Planning Inspectorate) before 27<sup>th</sup> March 2025.

If you want to appeal against this enforcement notice you can do it:

- Online at the Appeals Casework Portal (<https://acp.planninginspectorate.gov.uk/> )
- By getting enforcement appeal forms from the Planning Inspectorate on 0303 444 5000 or by e-mailing the Planning Inspectorate at [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**You MUST make sure that the Planning Inspectorate RECEIVE your appeal BEFORE the effective date on the enforcement notice.**

Please also read the enclosed appeal guidance documents, also available at <https://www.gov.uk/appeal-enforcement-notice/how-to-appeal>.

Please note that a separate appeal form must be completed for each individual person or organisation.

In exceptional circumstances you may give written notice of appeal by letter or email. You should include the name and contact details of the appellant(s) and either attach a copy of the Enforcement notice that you wish to appeal or state the following:

- the name of the local planning authority;
- the site address; and
- the effective date of the enforcement notice.

The Planning Inspectorate MUST receive this BEFORE the effective date on the enforcement notice. This should immediately be followed by your completed appeal forms.

The Planning Inspectorate's address and contact details are as follows:

The Planning Inspectorate  
CST Room 3/13  
Temple Quay House  
2 The Square  
BRISTOL BS1 6PN  
Direct line: 0303 444 5000

## **GROUND OF APPEAL**

Under Section 174 of the Town and Country Planning Act 1990, as amended, you may appeal on one or more of the following grounds:-

- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (e) that copies of the notice were not served as required by Section 172;

- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
- (g) that any period specified in the notice in accordance with Section 173(9) falls short of what should reasonably be allowed.

Please note that not all of the above grounds may be relevant to you.

### **STATEMENT OF GROUNDS OF APPEAL**

If you decide to appeal, when you submit it, you should state in writing the ground(s) on which you are appealing against the enforcement notice and you should state briefly the facts on which you intend to rely in support of each of those grounds. If you do not do this when you make your appeal the Secretary of State will send you a notice requiring you to do so within 14 days.

### **PLANNING APPLICATION FEE**

If you appeal under Ground (a) of Section 174(2) of the Town and Country Planning Act 1990, as amended, this is the equivalent of applying for planning permission for the development alleged in the notice and you will have to pay a fee of £1,156.00 to West Berkshire District Council. If the fee is not paid then that ground of appeal will not be valid. Joint appellants need only pay one set of fees.

### **STATUTORY PROVISIONS**

A copy of the relevant statutory provisions in sections 171A, 171B and 172 to 177 of the Town and Country Planning Act 1990 is attached for your information. These provisions can also be viewed online at the following links:

<https://www.legislation.gov.uk/ukpga/1990/8/part/VII/crossheading/introductory>

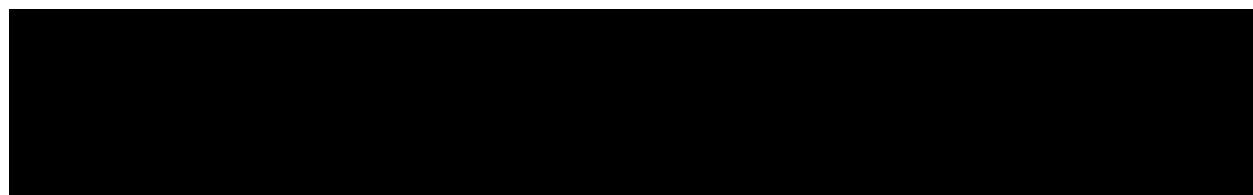
<https://www.legislation.gov.uk/ukpga/1990/8/part/VII/crossheading/enforcement-notice>

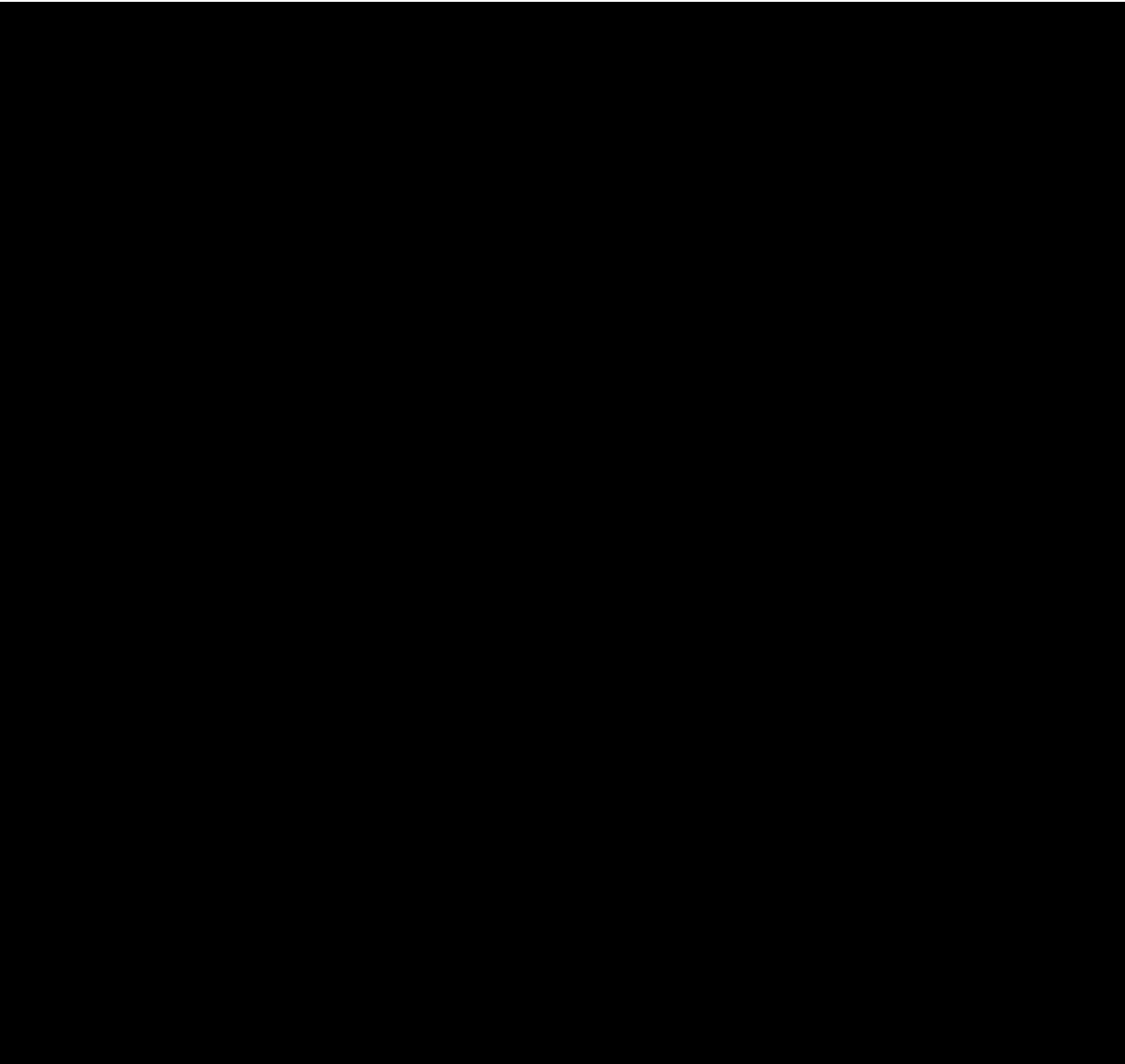
### **WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period[s] specified in paragraph 6 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

### **RECIPIENTS OF THE ENFORCEMENT NOTICE**

The names and addresses of all persons on whom the notice was served:





Service of the Notice for information only:

- A. WS Planning (Agent) via email.
- B. Solicitor via email.

### **STATUTORY PROVISIONS**

#### **S171A.— Expressions used in connection with enforcement.**

(1) For the purposes of this Act—

- (a) carrying out development without the required planning permission; or
  - (b) failing to comply with any condition or limitation subject to which planning permission has been granted,
- constitutes a breach of planning control.

(2) For the purposes of this Act—

- (a) the issue of an enforcement notice (defined in section 172); or
- (b) the service of a breach of condition notice (defined in section 187A),

Constitutes taking enforcement action.

(3) In this Part “planning permission” includes permission under Part III of the 1947 Act, of the 1962 Act or of the 1971 Act.

**S171B.— Time limits.**

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

[(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.”

**S172.— Issue of enforcement notice.**

(1) The local planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them—

(a) that there has been a breach of planning control; and

(b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.

(2) A copy of an enforcement notice shall be served—

(a) on the owner and on the occupier of the land to which it relates; and

(b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.

(3) The service of the notice shall take place—

(a) not more than twenty-eight days after its date of issue; and

(b) not less than twenty-eight days before the date specified in it as the date on which it is to take effect.

**S172A Assurance as regards prosecution for person served with notice**

(1) When, or at any time after, an enforcement notice is served on a person, the local planning authority may give the person a letter—

(a) explaining that, once the enforcement notice had been issued, the authority was required to serve the notice on the person,

(b) giving the person one of the following assurances—

(i) that, in the circumstances as they appear to the authority, the person is not at risk of being prosecuted under section 179 in connection with the enforcement notice, or

(ii) that, in the circumstances as they appear to the authority, the person is not at risk of being prosecuted under section 179 in connection with the matters relating to the enforcement notice that are specified in the letter,

(c) explaining, where the person is given the assurance under paragraph (b)(ii), the respects in which the person is at risk of being prosecuted under section 179 in connection with the enforcement notice, and

(d) stating that, if the authority subsequently wishes to withdraw the assurance in full or part, the authority will first give the person a letter specifying a future time for the withdrawal that will allow the person a reasonable opportunity to take any steps necessary to avoid any risk of prosecution that is to cease to be covered by the assurance.

(2) At any time after a person has under subsection (1) been given a letter containing an assurance, the local planning authority may give the person a letter withdrawing the assurance (so far as not previously withdrawn) in full or part from a time specified in the letter.

(3) The time specified in a letter given under subsection (2) to a person must be such as will give the person a reasonable opportunity to take any steps necessary to avoid any risk of prosecution that is to cease to be covered by the assurance.

(4) Withdrawal under subsection (2) of an assurance given under subsection (1) does not withdraw the assurance so far as relating to prosecution on account of there being a time before the withdrawal when steps had not been taken or an activity had not ceased.

(5) An assurance given under subsection (1) (so far as not withdrawn under subsection (2)) is binding on any person with power to prosecute an offence under section 179.

### **S173.— Contents and effect of notice.**

(1) An enforcement notice shall state—

(a) the matters which appear to the local planning authority to constitute the breach of planning control; and

(b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls.

(2) 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.

(3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.

(4) Those purposes are—

(a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or

(b) remedying any injury to amenity which has been caused by the breach.

(5) An enforcement notice may, for example, require—

(a) the alteration or removal of any buildings or works;

(b) the carrying out of any building or other operations;

(c) any activity on the land not to be carried on except to the extent specified in the notice; or

(d) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.

(6) Where an enforcement notice is issued in respect of a breach of planning control consisting of demolition of a building, the notice may require the construction of a building (in this section referred to as a “replacement building”) which, subject to subsection (7), is as similar as possible to the demolished building.

(7) A replacement building—

(a) must comply with any requirement imposed by any enactment applicable to the construction of buildings;

(b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control;

(c) must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b)).

(8) An enforcement notice shall specify the date on which it is to take effect and, subject to sections 175(4) and 289(4A), shall take effect on that date.

(9) An enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities; and, where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.

(10) An enforcement notice shall specify such additional matters as may be prescribed, and regulations may require every copy of an enforcement notice served under section 172 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 174.

(11) Where—

(a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and  
(b) all the requirements of the notice have been complied with,  
then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.

(12) Where—

(a) an enforcement notice requires the construction of a replacement building; and  
(b) all the requirements of the notice with respect to that construction have been complied with,  
planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of that construction.

### **S173A.— Variation and withdrawal of enforcement notices.**

(1) The local planning authority may—

(a) withdraw an enforcement notice issued by them; or  
(b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 173(9).

(2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.

(3) The local planning authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.

(4) The withdrawal of an enforcement notice does not affect the power of the local planning authority to issue a further enforcement notice.

### **S174.— Appeal against enforcement notice.**

(1) A person having an interest in the land to which an enforcement notice relates or a relevant occupier may appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.

[(2) An appeal may be brought on any of the following grounds—

(a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;

(b) that those matters have not occurred;

(c) that those matters (if they occurred) do not constitute a breach of planning control;

(d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;

(e) that copies of the enforcement notice were not served as required by section 172;

(f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;

(g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

[(2A) An appeal may not be brought on the ground specified in subsection (2)(a) if—

(a) the land to which the enforcement notice relates is in England, and

(b) the enforcement notice was issued at a time—

(i) after the making of a related application for planning permission, but



(ii) before the end of the period applicable under section 78(2) in the case of that application.  
(2B) An application for planning permission for the development of any land is, for the purposes of subsection (2A), related to an enforcement notice if granting planning permission for the development would involve granting planning permission in respect of the matters specified in the enforcement notice as constituting a breach of planning control.

[(2C) Where any breach of planning control constituted by the matters stated in the notice relates to relevant demolition (within the meaning of section 196D), an appeal may also be brought on the grounds that—

- (a) the relevant demolition was urgently necessary in the interests of safety or health;
- (b) it was not practicable to secure safety or health by works of repair or works for affording temporary support or shelter; and
- (c) the relevant demolition was the minimum measure necessary.

(3) An appeal under this section shall be made [...] 4

(a) by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect; or

(b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date  
[; or] 4

(c) by sending such notice to him using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to him before that date.

(4) A person who gives notice under subsection (3) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing—

- (a) specifying the grounds on which he is appealing against the enforcement notice; and
- (b) giving such further information as may be prescribed.

(5) If, where more than one ground is specified in that statement, the appellant does not give information required under subsection (4)(b) in relation to each of those grounds within the prescribed time, the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.

(6) In this section “relevant occupier” means a person who—

(a) on the date on which the enforcement notice is issued occupies the land to which the notice relates by virtue of a licence [...] 5

; and

(b) continues so to occupy the land when the appeal is brought

### **S175.— Appeals: supplementary provisions.**

(1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 174 and, in particular, but without prejudice to the generality of this subsection, may—

- (a) require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
- (b) specify the matters to be included in such a statement;
- (c) require the authority or the appellant to give such notice of such an appeal as may be prescribed;

(d) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.

(2) The notice to be prescribed under subsection (1)(c) shall be such notice as in the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the land to which the enforcement notice relates is situated.

(3) Subject to section 176(4), the Secretary of State shall, if either the appellant or the local planning authority so desire, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

[(3A) Subsection (3) does not apply to an appeal against an enforcement notice issued by a local planning authority in England.

[(3B) Subsection (3) does not apply to an appeal against an enforcement notice issued by a local planning authority in Wales.

(4) Where an appeal is brought under section 174 the enforcement notice shall [subject to any order under section 289(4A)] 3

be of no effect pending the final determination or the withdrawal of the appeal.

(5) Where any person has appealed to the Secretary of State against an enforcement notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

(6) Schedule 6 applies to appeals under section 174, including appeals under that section as applied by regulations under any other provisions of this Act.

#### **S176.— General provisions relating to determination of appeals.**

[(1) On an appeal under section 174 the Secretary of State may—

(a) correct any defect, error or misdescription in the enforcement notice; or

(b) vary the terms of the enforcement notice,

if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.

(2) Where the Secretary of State determines to allow the appeal, he may quash the notice.

(2A) The Secretary of State shall give any directions necessary to give effect to his determination on the appeal.

(3) The Secretary of State—

(a) may dismiss an appeal if the appellant fails to comply with section 174(4) within the prescribed time; and

(b) may allow an appeal and quash the enforcement notice if the local planning authority fail to comply with any requirement of regulations made by virtue of paragraph (a), (b), or (d) of section 175(1) within the prescribed period.

(4) If [section 175(3) would otherwise apply and] 2

the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) [of this section] 3

or to allow an appeal and quash the enforcement notice under paragraph (b) of that subsection, he need not comply with section 175(3).

(5) Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

#### **S177.— Grant or modification of planning permission on appeals against enforcement notices.**

(1) On the determination of an appeal under section 174, the Secretary of State may—

(a) grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates;

(b) discharge any condition or limitation subject to which planning permission was granted;

(c) determine whether, on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which planning permission was granted was lawful and, if so, issue a certificate under section 191.

[(1A) The provisions of sections 191 to 194 mentioned in subsection (1B) shall apply for the purposes of subsection (1)(c) as they apply for the purposes of section 191, but as if—

(a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made; and

(b) references to the local planning authority were references to the Secretary of State.

(1B) Those provisions are: sections 191(5) to (7), 193(4) (so far as it relates to the form of the certificate), (6) and (7) and 194.

[(1C) If the land to which the enforcement notice relates is in England, subsection (1)(a) applies only if the statement under section 174(4) specifies the ground mentioned in section 174(2)(a).

(2) In considering whether to grant planning permission under subsection (1), the Secretary of State shall have regard to the provisions of the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations.

[(3) The planning permission that may be granted under subsection (1) is any planning permission that might be granted on an application under Part III.

(4) Where under subsection (1) the Secretary of State discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.

[Where an appeal against an enforcement notice is brought under section 174 and—

(a) the land to which the enforcement notice relates is in Wales, or

(b) that land is in England and the statement under section 174(4) specifies the ground mentioned in section 174(2)(a),

the appellant shall be deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control.

[(5A) Where—

(a) the statement under subsection (4) of section 174 specifies the ground mentioned in subsection (2)(a) of that section;

(b) any fee is payable under regulations made by virtue of section 303 in respect of the application deemed to be made by virtue of the appeal; and

(c) the Secretary of State gives notice in writing to the appellant specifying the period within which the fee must be paid,

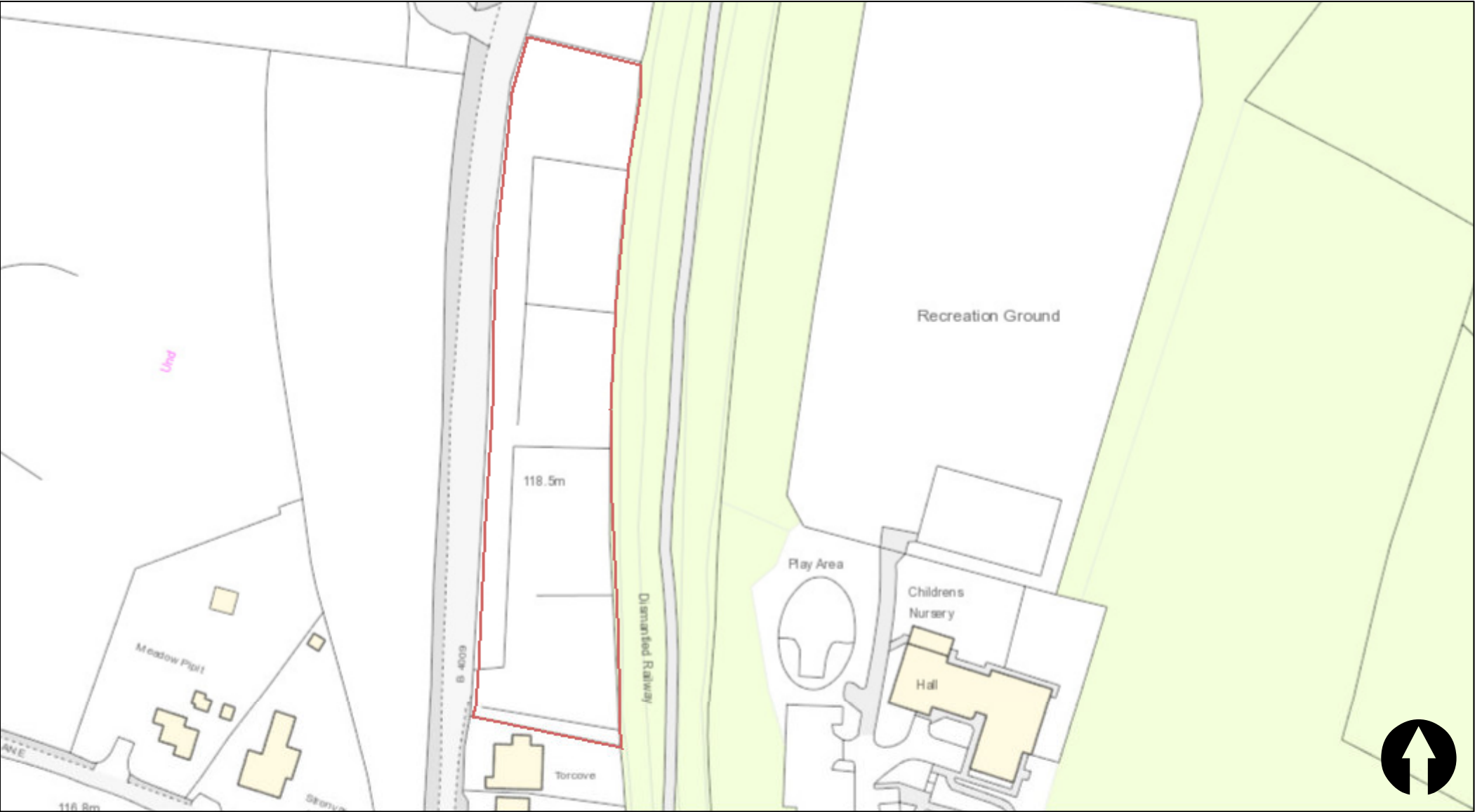
then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.

(6) Any planning permission granted under subsection (1) on an appeal shall be treated as granted on the application deemed to have been made by the appellant.

(7) In relation to a grant of planning permission or a determination under subsection (1) the Secretary of State's decision shall be final.

(8) For the purposes of section 69 the Secretary of State's decision shall be treated as having been given by him in dealing with an application for planning permission made to the local planning authority.

# Appendix B



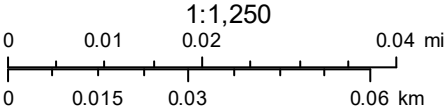
15/01/2025, 10:14:05

Areas

Override 1



DISTRICT BOUNDARY



© Natural England copyright. Contains Ordnance Survey data © Crown copyright and database right 2020 | © Environment Agency copyright and/or database right 2020 © NERC (CEH)  
© Natural England copyright. Contains Ordnance Survey data © Crown copyright and database right 2020 | © TVERC | © Historic England 2020.

# Appendix C

## West Berkshire existing and emerging development plan policies

It is anticipated that the Local Plan Review will be adopted following the Council meeting on 15<sup>th</sup> May. The following table outlines the schedule of policies to be superseded/deleted, and those policies which will replace them, insofar as they are relevant to the appeal. The relevant policies also need to be read alongside the 'Main Modifications Schedule'.

<b>Local Plan Review Examination 2025</b>	<b>Local Plan 1991-2006 (Saved Policies 2007)</b>	<b>Core Strategy 2012</b>	<b>Housing Site Allocations 2017</b>	<b>Comment/Relevance to appeal</b>
SP1 Spatial Strategy	N/A	ADPP1 Spatial Strategy ADPP5 AONB	N/A	Spatial Strategy has not changed in regard to the focus of development
SP2 North Wessex Downs AONB	N/A	ADPP5 AONB	N/A	Principle of the policy remains unchanged – 'conserve and enhance'.
SP3 Settlement hierarchy	N/A	ADPP1 Spatial Strategy	N/A	See detailed commentary below.
SP5 Responding to Climate Change	N/A	N/A	N/A	New policy, which requires proposals to be accompanied by a Sustainability Statement which demonstrates how the principles outlined in the policy have been embedded into the development. The policy applies to all development, and in doing so aids in contributing to West Berkshire becoming and staying carbon neutral by 2030.
SP6 Flood Risk	N/A	CS16 Flooding	N/A	Updated to include 'development within areas of flood risk from any source of flooding' in line with NPPF 2021.

SP7 Design Quality	N/A	CS14 Design principles	GS1 General site policy C3 Design of housing in the countryside	Principle of policy remains unchanged, is more detailed, and is brought up to date with reference to National Design Guide. Criteria seeks to achieve a well-designed place.
SP8 Landscape character	N/A	CS19 Historic environment and landscape character	N/A	Requires proposals to be accompanied by an appropriate landscape assessment carried out in accordance with the current guidance from the Landscape Institute and Institute of Environmental Management and Assessment. The level of information should be proportionate to the scale and nature of the proposed development.
SP9 Historic Environment	N/A	CS19 Historic environment and landscape character	N/A	<p>Principle of the policy remains unchanged. SP9 is more detailed in terms of the heritage assets referred to, and the requirement for a Statement of Heritage Significance for all proposals affecting a heritage asset, including the contribution the setting makes to its significance.</p> <p>The footpath to the east of the site was part of the Didcot, Newbury and Southampton Railway Line, closed in the 1960s and is listed on the Historic Environment Record, and is therefore a Heritage Asset.</p>



SP10 Green Infrastructure	RL5 Kennet and Avon Canal; RL5A The River Thames	CS18 Green Infrastructure	N/A	No significant change.
SP11 Biodiversity and geodiversity	N/A	CS17 Biodiversity and geodiversity	N/A	No significant change in relation to merits of appeal, though expands on CS17. References to BNG have been removed, as part of the Main Modifications, to avoid duplication of the provisions of the statutory framework. Policy seeks to ensure proposals are compatible with any Local Nature Recovery Strategies – one is underway across Berkshire authorities but not adopted at this time ( <a href="#">Berkshire's Local Nature Recovery Strategy   RBWM Together</a> ).
SP23 Transport	TRANS1a Road Schemes; TRANS1 Meeting the transport needs of new development; TRANS3 A34/M4 Junction 13 Chieveley	CS13 Transport	N/A	No significant change.
RSA24 New Stocks Farm, Paices Hill	N/A	N/A	TS1 New Stocks Farm, Paices Hill	No change, rolled over allocation.

DM1 Residential Development in the Countryside			C1 Location of new housing in the countryside	See detailed commentary below
DM3 Health and Wellbeing	N/A	N/A	N/A	<p>New policy, seeking for new development to promote, support and enhance positive mental and physical health and wellbeing.</p> <p>Health Impact Assessments required for major development, or other development likely to have a significant health impact in relation to either its use and/or location.</p> <p>The Council is not expecting a Health Impact Assessment to be provided.</p>
DM5 Environmental Nuisance and Pollution Control	OVS5 Environmental Nuisance and Pollution Control; OVS6 Noise Pollution OVS7/8 Hazardous substances	N/A	N/A	Principle remains unchanged, with DM5 outlining that appropriate site investigations/assessments will be required to guide development and submitted with planning applications.
DM7 Water Resources and Waste Water	N/A	N/A	N/A	New policy which needs to be considered, and impacts demonstrated. This is in relation to water efficiency, water supply, foul water treatment and disposal.

DM8 Air Quality	OVS5 Environmental Nuisance and Pollution Control	N/A	N/A	Principle remains unchanged.
DM14 Assets of Archaeological Importance	N/A	CS14 Historic Environment and Landscape Character	N/A	Relevant as the footpath to the east of the site was part of the Didcot, Newbury and Southampton Railway Line, closed in the 1060s. Listed on the Historic Environment Record. The development is unlikely to affect the setting of the heritage asset due to the presence of trees on the eastern boundary.
DM15 Trees, Woodland and Hedgerows	N/A	N/A	N/A	New policy, and sets out, among other issues, that development which conserves and enhances trees, woodland and hedgerows will be supported. Arboricultural method statement, as required by the policy, was submitted with the application.
DM20 Gypsies, Travellers and Travelling Showpeople		CS7 Gypsies, Travellers and Travelling Showpeople		See detailed comments below.
DM31 Residential amenity	N/A	CS14 Design Principles	N/A	Note, this also seeks to replace guidance in Quality Design Supplementary Planning Document Part 2: Residential Development in part in relation to garden sizes and distances for privacy.

				No significant changes. The policy should be considered in relation to distances to neighbouring dwellings and to amenity space for on-site residents.
DM42 Transport Infrastructure	TRANS1a Road Schemes; TRANS1 Meeting the transport needs of new development; TRANS3 A34/M4 Junction 13 Chieveley	N/A	P1 Residential parking in new development	No significant changes, other than the list of transport infrastructure being brought up to date.
DM44 Parking	TRANS1 Meeting the transport needs of new development	N/A	P1 Residential parking in new development	Brought up to date e.g. reference to electric vehicle charging points.

#### Detailed comments:

SP3, in part superseding Core Strategy ADPP1: Replaces sentence in ADPP1 in the open countryside – ‘only appropriate limited development in the countryside will be allowed, focused on addressing identified needs and maintaining a strong rural economy’ with ‘Development outside of these settlements, in other rural hamlets and in isolated groups of development will be restricted to that which is appropriate in a rural area as set out in Policy DM1’. DM1, with a Main Modification in MM73 to ensure proposals that would be assessed under Policy DM20, would be considered as an exception to residential development outside of adopted settlement boundaries. Thus, this applies to the appeal scheme.

DM1 (Residential Development in the Countryside) – the policy permits certain types of residential development outside of adopted settlement boundaries, provided they are appropriately designed and located. Sites for Gypsy and Travellers are listed as an exception. The policy also states that ‘planning permission will not be granted where a proposal harms or undermines the existing

relationship of a settlement within the open countryside, where it does not contribute to the character and distinctiveness of the rural area, including the special qualities and natural beauty of the landscape of the AONB or where development would have an adverse cumulative impact on the environment or highway safety’.

DM20: Incorporates Core Strategy Policy CS7 and HSA DPD Policy TS3. The policy introduces a locational hierarchy directing the siting of gypsy and traveller sites. In the case of the appeal site point c) is relevant, stating that such sites should be ‘located in, or well related to, existing settlements’. Point d) is also relevant, given the site’s location outside of a defined settlement boundary. ‘When in rural settings, ensuring the scale of the site(s) do not dominate the nearest settled community, whether singly or cumulatively with any other gypsy and traveller site. Isolated locations in the countryside should be avoided’. Development on previously developed land is encouraged in advance of greenfield land, wherever possible.

The criteria which proposals should satisfy are largely the same as in Core Strategy Policy CS7 and HSA DPD Policy TS3. DM20 seeks to ensure that site planning will be landscape led, and in cross referencing to Policies SP7 and SP8 will ensure design is considered and a landscape assessment is undertaken.

# Appendix D

# Planning

## Proof of Evidence

**Town and Country Planning Act 1990**  
**Section 78 appeal against the refusal of planning permission**

**Witness for the Council:** Alice Attwood BSc, MSc, MRTPI

**Subject of Evidence:** Planning Balance

**Appeal:** APP/W0340/W/24/3356688

**Site:** Land South Of Sandhill,  
Hampstead Norreys Road  
Hermitage  
Thatcham  
RG18 9XU

**Proposal:** Part retrospective. Change of use of land for the formation of 5 Gypsy/Traveller pitches comprising of 1 mobile home, 1 touring caravan, and 1 utility building per pitch

**Date:** April 2025

**Council Reference:** 23/00815/FUL

## **Proof of Evidence**

Alice Attwood BSc, MSc, MRTPI

April 2025

Council Reference: 23/00815/FUL

Revision: A

Issued: April 2025

**West Berkshire Council  
Development and Planning**

Market Street

Newbury

Berkshire

RG14 5LD

T: 01635 519111

E: [appeals@westberks.gov.uk](mailto:appeals@westberks.gov.uk)

[www.westberks.gov.uk/planning](http://www.westberks.gov.uk/planning)



# Contents

<b>1. SUMMARY .....</b>	<b>4</b>
<b>2. INTRODUCTION .....</b>	<b>5</b>
QUALIFICATIONS AND EXPERIENCE .....	5
PURPOSE AND SCOPE OF EVIDENCE .....	5
REASONS FOR REFUSAL .....	6
EMERGING LOCAL PLAN .....	7
NPPF AND PPTS DECEMBER 2024 .....	8
ENFORCEMENT APPEAL .....	8
<b>3. POLICY FRAMEWORK.....</b>	<b>9</b>
NATIONAL PLANNING POLICY ON TRAVELLER SITES (PPTS) .....	9
WEST BERKSHIRE CORE STRATEGY 2006-2026 .....	11
SITE LOCATION AND SUSTAINABILITY.....	11
ADPP1.....	11
ADPP5.....	12
Policy CS7 .....	13
Policy TS3 .....	14
<b>4. LPA EVIDENCE ON THE REASONS FOR REFUSAL.....</b>	<b>16</b>
LANDSCAPE CHARACTER, VISUAL AMENITY AND NATIONAL LANDSCAPE .....	16
DRAINAGE .....	17
HIGHWAYS.....	18
<b>5. OTHER CONSIDERATIONS IN THE PLANNING BALANCE .....</b>	<b>19</b>
LOCAL NEED AND SUPPLY .....	20
PERSONAL CIRCUMSTANCES.....	20
HUMAN RIGHTS.....	21
INTENTIONAL UNAUTHORISED DEVELOPMENT (IUD).....	22
NOISE AND CONTAMINATION.....	23
ECOLOGY .....	23
NEIGHBOURING AMENITY .....	24
COMMUNITY COHESION .....	24
FEAR OF CRIME .....	25
TEMPORARY PERMISSION .....	25
<b>6. PLANNING BALANCE.....</b>	<b>26</b>
BENEFITS AND DISBENEFITS OF THE PROPOSAL.....	26
PRESUMPTION IN FAVOUR OF SUSTAINABLE DEVELOPMENT .....	28
CONCLUSION .....	28

# 1. Summary

- 1.1 In section 2 of my proof of evidence I cover introductory matters. I summarise the background to the appeal, and my involvement. I also list the other expert witnesses giving evidence on behalf of the Council, and the reasons for refusal addressed by each one : harm to protected landscape, drainage, and highways.
- 1.2 I then introduce the emerging local plan, relevant changes in national policy, and the enforcement appeal relating to the same development.
- 1.3 In section 3, I provide a summary of my assessment of the proposal against the National Planning Policy on Traveller Sites (PPTS) and the relevant policies of the local plan.
- 1.4 In section 4, I address in more detail the evidence of the Council's witnesses relating to the reasons for refusal, and explain my view that the proposal does not accord with the development plan taken as a whole. In section 5 I address other material considerations including the personal circumstances of the appellants, and intentional unauthorised development. I also consider the effect of Human Rights and Equalities provisions.
- 1.5 1.5 In section 6 I address the planning balance. While the accommodation provided on the appeal site does carry weight in the planning balance, this is moderate, and insufficient to outweigh, in particular, the significant harm to landscape character which is fully set out in the proof of evidence of Liz Allen, and highway safety concerns.

## 2. Introduction

### Qualifications and Experience

- 2.1 My name is Alice Attwood. I have a BSc in Geography and MSc in Spatial Planning and Development. I am a chartered member of the Royal Town Planning Institute (RTPI). I have worked for West Berkshire Council for 6 years as a Senior Planning Officer. I have 9 years of experience working in the planning sector.
- 2.2 I came on board at the appeal stage and was not involved at the application stage. I undertook site visits on 27.02.2025 and 08.04.2025. I am familiar with the appeal site, the surrounding area, the appeal proposals, the relevant planning policies and material considerations.
- 2.3 I confirm that the evidence which I have prepared and provided for this appeal is true to the best of my knowledge and belief and it has been prepared and is given in accordance with the guidance of the RTPI, my professional institution. I confirm that the opinions expressed are my true and professional opinions.

### Purpose and Scope of Evidence

- 2.4 This proof of evidence has been prepared in relation to the Appeal (APP/W0340/W/24/3356688) against refusal of planning permission for : 'Part retrospective. Change of use of land for the formation of 5 Gypsy/Traveller pitches comprising of 1 mobile home, 1 touring caravan, and 1 utility building per pitch'.
- 2.5 My planning evidence refers to West Berkshire Council both as the "Council" and the "Local Planning Authority (LPA)". It should be read alongside the proofs of evidence presented by the other expert witnesses for West Berkshire Council.
- 2.6 The LPA statement of case outlines background to the site, site history, overview of relevant policies and outlines the LPA case in general. The LPA statement of case (CD4.1) should be read in conjunction with this Proof of Evidence.
- 2.7 This Proof of Evidence will cover the principle of development, personal circumstances intentional unauthorised development (IUD) and the planning balance. The Inspector's

Post Case Management Conference (CMC) (CD7.5) note identified 8 main issues. I will specifically address issues 4, 6, 7, and 8 within this Proof.

2.8 The table below outlines the other topic on which proof of evidence has been prepared by the LPA.

Matter	Proof of Evidence by	Post CMC Main Issues covered	Refusal Reasons
Landscape	Liz Allen	1	1
Highways	Chris Carr	2	3
Drainage	Paul Bacchus	3	2
Planning Policy, Need and Supply.	Cheryl Willett	5	-

Table 1: List of proof of evidence topics and how they relate to the main issues, refusal reasons and who has prepared them for the LPA.

2.9 The matters in Table 1 will not be covered in detail in this proof but I will address how these matters interact with the planning balance.

2.10 A Statement of Common Ground has been prepared and is with the appellant at the time of writing this proof. It is expected that the SoCG will be agreed by the start of the inquiry.

### Reasons for Refusal

2.11 The application was refused for the following reasons:

1. *The application site lies in the North Wessex Downs National Landscape. This is specially protected landscape as defined in the NPPF. The development of this site for gypsy and traveller accommodation [5 pitches] will harm the visual character of the area, particularly in relation to the soft transition between the built up area of Hermitage to the south and open countryside to the north. This is considered to be contrary to the advice in policies ADDP5, CS7 and CS19 in the WBCS of 2006 to 2026 and the*

*advice in para 176 of the NPPF of 2023. It is accordingly unacceptable. It is also contrary to the advice in policy TS3 in the HSADPD of 2017.*

2. *The development of this site for 5 gypsy and traveller site pitches has caused increased hardstanding and non permeable material to be placed across the application site, with associated works/ stationing of sanitary units. The local planning authority on behalf of the lead local flood authority is not satisfied with the details and quality of the suds information submitted with the application to date. Accordingly, in taking the precautionary approach, it is considered that the development/ change of use proposed is contrary to the advice in policy CS16 in the WBCS of 2006 to 2026 and the advice in bullet points 1 and 7 in policy TS3 in the HSADPD of 2017.*
  
- 3 *The development proposed presently has an unauthorised vehicle access onto the B4009. The current forward visibility splays in both directions [north and south] are inadequate for the identified traffic speeds along the highway. In addition there is no footway /pedestrian link to the south of the application site linking the accommodation to the village of Hermitage and its facilities. This all leads to potential conditions of road danger and a threat to highways safety, so being contrary to policy CS13 in the WBCS of 2006 to 2026 and the advice in para 110[b] of the NPPF of 2023 and the advice in the PPTS. It is accordingly not acceptable.*

## **Emerging Local Plan**

- 2.12 The Local Plan Review (LPR) was submitted for independent examination on 31st March 2023. Hearing sessions on the LPR were held in May, June and October 2024. Consultations on the proposed Main Modifications to the LPR closed on 31st January 2025.
  
- 2.13 The LPR sets out the Council's vision, objectives and spatial planning strategy for West Berkshire up to 2039. It sets out strategic policies, non-strategic site allocations and development management policies.
  
- 2.14 The Main Modifications consultation was held from 6th December 2024 to 31st January 2025. The LP Inspector has requested a copy of the representations, a summary of representations, and a response to the main issues by the end of February. This has been submitted, and the Inspector is preparing their final report at the time of writing this proof. If they recommend the Plan is sound, the Council can then proceed to adoption. This needs to be considered and agreed by Members and would need to go to a Full Council meeting, and this may potentially be on 15th May, the week before the inquiry is due to start.

- 2.15 The LPA have prepared a table which compares the existing and emerging policies relevant to this appeal. This Table can be found in Appendix (A) / (CD9.2)
- 2.16 The emerging plan is in an advanced stage of preparation, and this means the policies should be given greater weight in line with paragraph 49 a of the NPPF. As set out above, based on the outcomes of the hearing sessions and the additional work undertaken the request of the Inspector, the Council prepared a number of Proposed Main Modifications to the LPR. We consulted on the Proposed Main Modifications between Friday 6 December 2024 and 11.59pm on Friday 31 January 2025. The representations did not raise any issues which would prevent the Council from proceeding in accordance with the Proposed Main Modifications consulted on between 6 December 2024 to 31 January 2025.
- 2.17 The LPA consider there are no unresolved objections. Thus, in line with paragraph 49 b) of the NPPF greater weight can be given to the emerging policies. In section 5 and 6 of this report will explain how the emerging policies are consistent with the NPPF. LPA considers the emerging policies have a high degree of consistency with the NPPF. Thus, in line with paragraph 49 c) of the NPPF greater weight should be given to the emerging policies.

### **NPPF and PPTS December 2024**

- 2.18 The NPPF has been updated since the committee's decision. In refusal reason 1 para 176 of the NPPF is quoted; this is now 187 a) of the NPPF December 2024. Refusal reason 3 refers to para 110 b) of the NPPF of 2023, which is now para 116 of the NPPF December 2024. The PPTS was also updated in December 2024, introducing the 'tilted balance' if the Council cannot demonstrate a 5 year supply of sites. This is addressed further below.

### **Enforcement appeal**

- 2.19 There is an enforcement appeal number APP/W0340/C/25/3363100, proceeding under ground (g) only. That appeal is not linked to this current appeal and is going to be dealt with via written representations.

### 3. Policy framework

#### National Planning Policy on Traveller Sites (PPTS)

- 3.1 I will first address national policy on traveller sites, updated in December 2024 (CD8.2). The Government's aims are listed at paragraph 4. Of particular relevance to the appeal are the following aims :

*f) that plan-making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective;*

*i) to reduce tensions between settled and traveller communities in plan-making and planning decisions;*

*j) to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure; and*

*k) for local planning authorities to have due regard to the protection of local amenity and local environment."*

- 3.2 Paragraph 24 of the PPTS advises that the following issues should be addressed, with other relevant matters, when assessing applications. I give my view on each of the issues below :

- 3.3 **a) the existing level of local provision and need for sites;** As the Council's need and supply evidence demonstrates (Cheryl Willett's proof of evidence) (CD9.3) there is no pitch shortfall in the 5 years up to 2026 which means the LPA is meeting its current need. However, there is a residual need of 17 pitches over the period to 2038. Therefore, there is an identified need for the future pitches which attracts moderate positive weight in the planning balance.

**b) the availability (or lack) of alternative accommodation for the applicants;** as set out in more detail below, the appellant's evidence is that there is no alternative site they could go to. However there is no detailed evidence on what other areas the appellants have considered.

**c) other personal circumstances of the applicant :** the appellant's personal circumstances are acknowledged and given weight but for the reasons explained below I do not consider them to outweigh the disbenefits of the development.

**d) that the locally specific criteria;** in this proof of evidence I assess the application against the relevant policies of the local plan and emerging local plan.

**e) local connections not determinative;** I address this issue below.

3.4 Paragraph 26 of the PPTS states that:

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

3.5 The appeal site lies close to but outside the settlement boundary of Hermitage. It is open countryside in local policy terms (ADPP1). The site is not allocated in the local plan. I do not consider that the development dominates the nearest settled community, and it is unlikely that it would add undue pressure on local infrastructure.

3.6 PPTS paragraph 27 goes on to list matters to which the Council should attach weight when considering planning applications. Dealing with these in turn:

**a) effective use of previously developed (brownfield), untidy or derelict land;** The site has not previously been developed, nor was it untidy or derelict. The site was formerly greenfield. This carries weight **against** the proposal.

**b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness;** The Council's landscape evidence demonstrates that the site's landscaping does not positively enhance the environment or increase its openness, which carries weight **against** the proposal.

**c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children;** the site provides adequate amenity space but otherwise does not promote healthy lifestyles. The proposed pedestrian access to local services is considered unsafe, and it is likely that most journeys will be by private car. This carries weight **against** the proposal.

**d) not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community;** there is close board fencing around part of



the site which is visually harmful but does not create the impression of deliberate isolation. This carries **neutral** weight.

- 3.7 PPTS paragraph 28 states that *“If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, the provisions in paragraph 11(d) of the National Planning Policy Framework apply”*. The Council can demonstrate a 5 year supply, as set out in the evidence of Cheryl Willett (CD9.3). Therefore the ‘tilted balance’ does not apply in this appeal.

### **West Berkshire Core Strategy 2006-2026**

- 3.8 When considering the principle of development, the most important policies are ADPP1, ADPP5 and CS7 of the Core Strategy (CD8.4), and Policy TS3 of the Housing Site Allocations DPD (CD8.5).
- 3.9 The application site lies outside the settlement boundary for Hermitage, in the countryside, where there is a general restriction against new development unless the application comprises one of the exceptions in in the Local Plan. It is accepted that both policy CS7 and TS3 are permissive policies in that if the criteria are met in the policies then applications can be permitted in the rural areas, provided they accord with the development plan as a whole and all material considerations.
- 3.10 The PPTS along with Core Strategy Policy CS7 and TS3 do anticipate Gypsy and Traveller sites outside of settlement boundaries in the countryside. ADPP1 and ADPP 5 provide that development in the open countryside should be limited. Such development is subject to satisfying several criteria, albeit it should be strictly limited. The Emerging Plan is proposing the same approach.

### **Site location and sustainability**

#### **ADPP1**

- 3.11 The overarching policy in the Core Strategy is ADPP1 (spatial strategy). This states that in open countryside only “appropriate limited development” will be permitted, focussing on addressing identified needs and maintaining a strong rural economy.
- 3.12 It is accepted that the Council has a policy obligation to meet the needs of travellers via pitch allocations, and this is facilitated through Policy CS7. Gypsy and traveller

development is capable of complying with Policy ADPP1 where the proposal also complies with the Development Plan as a whole, particularly Policy CS7. In this instance, I consider the proposal conflicts with Policy CS7 and the Development Plan as a whole, and therefore the development is not “appropriate” in this location.

3.13 It is not advanced by the appellant that the pitch in question does anything to assist the local economy, and it is concluded that this part of ADPP1 is not met.

3.14 I consider that the proposal does not accord with ADPP1.

### **ADPP5**

3.15 ADPP5 is the spatial strategy for the area covered by the North Wessex Downs National Landscape (NWDNL), formally known as an Area Of Outstanding Natural Beauty (AONB). This policy indicates that development will conserve and enhance the local distinctiveness, sense of place and setting of the AONB whilst preserving the strong sense of remoteness, tranquillity and dark night skies. Development will respond positively to the local context, and respect identified landscape features and components of natural beauty.

3.16 The LPA proof of evidence on landscape matters (Liz Allen) demonstrates the proposal will cause significant and demonstrable harm to the character, appearance and landscape value of NWDNL. The development will not conserve and enhance and thus does not comply with policy ADPP5. The Council’s landscape expert demonstrates the proposed development will materially harm the physical and visual character of the local area and the NWDNL.

3.17 Furthermore, the Council’s landscape expert concludes the first Landscape and Visual Impact (LVIA) submitted by the appellant does not comply with Landscape Institute Guidelines for Landscape and Visual impact Assessment (GLVIA 3). The proposed landscape scheme was inadequate and would not mitigate the harm to the NWDNL. This means that the proposal does not comply with policy TS3 bullet points 3 (landscape proposal) and 13 (LVIA). The appellant has since submitted a further LVIA which was not accepted by the Inspector as it was late evidence.

3.18 I consider that the proposal does not accord with ADPP5.

## Policy CS7

3.19 Policy CS7 is the principal policy against which new gypsy and traveller site applications are assessed. Taking these in turn :

3.20 **Safe and easy access to major roads and public transport services.** As explained in the Council's Highways proof of evidence, there are difficulties with the creation of a safe access to the site. This could only be achieved by removing a stretch of hedgerow on the site boundary, which increases the visual and landscape harm from the development. It is not considered that this criterion is met.

3.21 **Easy access to local services including a bus route, shops, schools and health services.** It is accepted that the site offers easy access to local services by car, however pedestrian access is unsafe due to the narrow footway.

3.22 **Located outside areas of high flood risk.** This criterion is met. The appeal site lies in FZ1.

3.23 **Provision for adequate on site facilities for parking, play, storage and amenity.** This criterion is considered to be met.

3.24 **The possibility of an integrated co-existence with the appellant and the local community:** There is opposition from the local community. This is intentional unauthorised development. It is difficult to anticipate whether the site's proximity to local services would result in an integrated co-existence.

3.25 **Opportunities for an element of authorised mixed uses.** This is not being sought here.

3.26 **The compatibility of the use with the surrounding land uses, including potential disturbance from road movements and business activities.** There is the potential for disturbance from the site in terms of noise and artificial lighting at night. The site is also visible from the public realm, including the Eling Way (an active travel route to the east of the site) and creates a sense of suburbanisation and enclosure. This criterion is not considered to be met.

- 3.27 **Will not materially harm the physical and visual character of the area.** This criterion is not considered to be met and is covered by reason for refusal 1.
- 3.28 **Where applicable have regard for the character and policies affecting the North Wessex Downs AONB.** This criterion is not met and is covered by reason for refusal 1.
- 3.29 I conclude that the appeal proposal does not satisfy each of the relevant criteria in policy CS7 so is not acceptable in terms of this policy.

### Policy TS3

- 3.30 Policy TS3 in the Housing Site Allocations DPD sets out the Council's current adopted policy position on the detailed factors to be applied, in considering applications for new gypsy and traveller sites. These will be now taken in turn, with further detail provided below in section 4.
- a) **Provide an integrated water supply and drainage.** At the time of writing, the drainage information provided by the applicant is inadequate as explained in the evidence of Paul Bacchus. If further information is presented, the Council's position will be explained in a rebuttal proof or at the inquiry.
  - b) **Include appropriate vehicle access and turning area.** The Highways Authority is not presently satisfied that safe vehicle access is achievable. See further below.
  - c) **Include appropriate landscape proposals** retaining and incorporating key elements of local character. The Council's landscape evidence assesses this issue. The criterion is not satisfied.
  - d) **Be well designed and laid out** in appropriate materials with shelter and amenity buildings. The development and associated fencing is clearly visible from outside the site and results in the loss of a previous green field, causing real harm to landscape character.
  - e) **Mix of business uses; and flood risk assessment.** These are not relevant here.

- f) **SUDS to be satisfactory.** The LPA proof of evidence on drainage matters (Paul Bacchus) explains that they are not satisfied with the details and quality of the sustainable drainage strategy and Suds information submitted. The proposed development therefore fails to comply with Policy TS3 on bullet points 1 (drainage strategy in advance) and point 7 (Sustainable Drainage Methods). See further below in section 4.
- g) **Accessibility via modes other than the private car.** Pedestrian access to the site is not safe. The local school is accessible by school bus. This criterion is partially met.
- h) **Accessibility to the local PROW network.** An active travel route runs to the east of the site but there is no direct access from the site. There are also public footpaths in the wider area.
- i) **Mitigate impacts of the scheme on the local road network.** This is not required in this case .
- j) **Show how adopted standards for local green space can be met in accord with saved policy RL1.** The Council does not have any concerns in this regard.
- k) **Provide the necessary infrastructure to meet the needs that arise from the scheme.** The Council does not have any concerns in this regard, other than the inadequate information on drainage.
- l) **Provide a LVIA with the application.** The LVIA submitted was inadequate.
- m) **Provide an extended Phase 1 habitat survey.** A preliminary ecological assessment was submitted with the application. It is considered that the ecological impacts can be dealt with by condition.

3.31 I consider that key criteria above are not met, and the proposal therefore is not compliant with Policy TS3.

## 4. LPA evidence on the Reasons for Refusal

### **Landscape character, visual amenity and National Landscape**

- 4.1 Mrs Allen's proof of evidence (CD9.6) set out the impacts of the appeal proposal on landscape, character and visual amenity. This evidence concludes that appeal development will result in significant and demonstrable harm to the character, appearance and landscape value of the NWDNL. The appeal site would damage the rural settlement edge character of heritage and will subsequently not conserve or enhance the NWDNL but cause permanent harm. Therefore, the development is contrary to the following policies: -
- West Berkshire Core Strategy (2006-2026) July 2012, Policies: ADPP5, CS7, CS14 and CS19 (CD8.3)
  - Housing site allocations DPD (2006-2026) Adopted May 2017 Policy: TS3 (CD 8.5)
  - National Planning Policy Framework December 2024 (amended February 2025) - para 7, 8(c), 11, 135 (a, b & c) 187 (a) and 189 (CD8.1)
  - Planning Policy for Traveller Sites (PPTS) December 2024 Para 26 and 27 (CD 8.2)
- 4.2 Full weight should be given to the aforementioned policies. The proposal would result in significant and demonstrable harm to the character, appearance and landscape value of the NWDNL. This harm weights significantly in the planning balance.
- 4.3 Emerging policies SP2 North Wessex Downs AONB, SP7 Design Quality, SP8 Landscape Character, DM15 Trees, Woodland and Hedgerows and DM20 Gypsies, Travellers and Travelling Showpeople (CD8.9) are relevant and carried moderate weight in the planning balance. The proposed development would not accord with the aforementioned emerging policies. Conflict with emerging policies only carries moderate weight in the planning balance as the plan is in the late stage but is not yet adopted.

## Drainage

- 4.4 Mr Bacchus' proof of evidence (CD9.10) set out whether the proposal would provide an adequate surface water drainage scheme (issue 3 from Post CMC note) and covers refusal reason 2.
- 4.5 The LPA Drainage Evidence does not dispute that a drainage strategy broadly in accordance with the submitted plan is likely to be possible, the submitted information contains too many errors and fundamental issues to substantiate this. The consequences of permitting the development in its current state includes the potential to incorporate faulty or non-compliant drainage measures on site. Whilst the use of infiltrating permeable paving throughout the site is unlikely to increase flood risk to the surrounding area (including the B4009 which is a WBC highway), it may not be sufficient to drain the site to a satisfactory standard in accordance with S7-S19 of the non-statutory technical standards for sustainable drainage systems for SuDS (DEFRA, 2015) and does not conform with best practice as required by CS16 of WBC's Core Strategy.
- 4.6 These issues cannot be resolved by condition because the calculations unpinning the drainage strategy were insufficient and there is a risk substantial amendment may need to be made to the design of the scheme. There is a risk these could be fundamental and should be assessed before a decision is issued. The NPPG Paragraph: 006 Reference ID: 21a-006-20140306 indicates that conditions that unnecessarily affect the impact on the proper implementation of the planning permission should not be used.
- 4.7 There is currently insufficient information with regards to data on which the appellants drainage strategy is based. Therefore, the proposal is contrary to the following policies:
- West Berkshire Core Strategy (2006-2026) July 2012, Policies: Policy CS16 (CD8.3)
  - Housing site allocations DPD (2006-2026) Adopted May 2017 Policy TS3 on bullet points 1 (drainage strategy in advance) and point 7 (Sustainable Drainage Methods). (CD 8.5)
  - National Planning Policy Framework December 2024 (amended February 2025) - para 7, 8(c), 11, 164(a) and 182 (CD8.1).

- 4.8 Full weight should be given to the aforementioned policies. The conflict found with policies CS16 and TS3 should be given significant weight in the planning balance against the appeal proposal.

## Highways

- 4.9 Mr Carr's proof of evidence (CD9.11) sets out the LPA's case on refusal reason 3. His proof of evidence also addresses the effect of the proposed development on highway safety, with particular reference to visibility at the site access and pedestrian connectivity (issue 2 from Post CMC note).
- 4.10 This evidence demonstrates that the proposed access is unsafe. The lack of an adequate public footway means there will not be safe pedestrian access from the site to local services. Although not cited in reason for refusal 3, it is considered that policies CS7 and TS3 are engaged and should have been cited. The proposed development is not compliant with Policy CS7 bullet point 1 (safe and easy access) and Policy TS3 bullet points 2 (appropriate vehicle access), 9 (route to services) and 10 (impact on local road network).
- 4.11 The LPA Highways evidence is that a condition could be used to secure an updated plan which shows a 1.5m wide footway. This would make the footway comply with inclusive Mobility guidance. Thus, part of the refusal reason 3 relating to no footway /pedestrian link to the south of the application site linking the accommodation to the village of Hermitage and its facilities could be resolved by condition. However, it should be noted that such a condition would likely have an impact on the tree and hedges which line Hampstead Norreys Road which in turn would have an impact on the character, appearance and landscape value of the NWDNL.
- 4.12 The LPA Highways evidence is that there is a significant restriction to visibility to the north of the site access. The existing location of the speed gateway to the north of the site access results in the visibility splay not being achievable. The relocation of the speed gateway would need to be relocated to a location that would need to be agreed with the Local Highways Authority. It would need to be supported by a traffic regulation order to extend the 30 mph limit northwards to any agreed location of the gateway. This has not been agreed, and therefore the refusal reason 3 would still stand.



4.13 For the reasons set in paragraph 5.15 and the Highways proof is evidence the development would be contrary to the following policies: -

- West Berkshire Core Strategy (2006-2026) July 2012, Policies: Policies CS13 and CS7 bullet point 1 (safe and easy access) (CD8.3)
- Housing site allocations DPD (2006-2026) Adopted May 2017 Policy TS3 bullet points 2 (appropriate vehicle access), 9 (route to services) and 10 (impact on local road network) (CD 8.5)
- National Planning Policy Framework December 2024 (amended February 2025) - para 7, 8(b), 11, 116 (CD8.1).

4.14 Full weight should be given to the aforementioned policies. Existing location of the speed gateway to the north of the site access results in the visibility splay not being achievable and a traffic regulation order has not been sort or agreed. This means the proposed development cannot demonstrate it can achieve safe access. Therefore, the proposal is not compliant with CS7 bullet point 1 (safe and easy access) and CS13 or Policy TS3 bullet points 2 (appropriate vehicle access), 9 (route to services) and 10 (impact on local road network). This harm weights significantly in the planning balance.

4.15 Emerging policy SP23 Transport would replace CS13 Transport. Significant restriction to visibility to the north of the site access means the proposal does comply with SP23. Conflict with emerging policy SP23 is significantly harmful but only carries moderate weight in the planning balance as the plan is in the late stage but is not yet adopted.

4.16 Policy CS7 and TS3 would be replaced be DM20. The proposal would not comply with emerging policy DM20 Gypsies, Travellers and Travelling Showpeople point 3 (safe access) and 4 (adverse effect of character of road). Conflict with emerging policy DM20 is a material consideration but only carries moderate weight in the planning balance as the plan is in the late stage but is not yet adopted.

## 5. Other considerations in the planning balance

5.1 The following considerations are material.

## **Local Need and Supply**

- 5.2 Cheryl Willett's proof of evidence (CD9.3) assesses whether the Council can currently demonstrate a five-year supply of sites/pitches, whether there is an unmet need and any other relevant points flowing from the Planning Policy for Traveller Sites. (Issue 5 from post CMC note).
- 5.3 There is no shortfall in the 5 years up to 2026. Thus the LPA current have a 5 year supply. However, it is recognised there is a residual need for a further 17 pitches in the period up to 2038, taking into account existing and planned supply. There is no short term need, up to 2026. The Council accepts that the assessed need is a minimum need. A new GTAA will be undertaken following the repopulation of Four Houses Corner. The Council aims to meet its need, going forward, through a new Local Plan, and by way of assessing planning applications through a criteria-based policy in the Local Plan Review.
- 5.4 The supply of 5 pitches therefore carries moderate positive weight in the planning balance.

## **Personal circumstances**

- 5.5 It is a matter of common ground that the occupiers of the site are covered by the definition of Gypsies and Travellers as set out in planning policy for traveller sites December 2024 Annex 1 point 1.
- 5.6 The appellant has now submitted a formal statement with regards to personal circumstances (CD5.1), although this was not submitted with the appeal at the start.
- 5.7 I have reviewed this statement and found that none of the children on site currently attend local schools or nursey, but some are home school or attend school out of district. Some occupiers are registered at local health services, but many others are registered outside of district. It is accepted there is an intention to move to use local services if planning permission is granted but this carries little weight at this time. The health and educational needs set out in the statement do not demonstrate it is essential for the occupants to be on this site at this time and this carries more weight.
- 5.8 The statement outlines that the occupiers of the site do not know of any alternative site they could go to. If the appeal was dismissed, it is not disputed that the appellants may

live a roadside existence, at least temporarily if they remain in the area. One plot of occupiers suggests they could unlawfully double up on other plots. The statement indicates that finding any alternative plot of land in the district or nearby would be difficult.

5.9 I consider that an alternative site could be found but acknowledge it would be difficult for the occupiers to find one in the short term. It may be possible in the long term or in a different area. Therefore, I give this moderate positive weight in the planning balance.

5.10 In conclusion, the statement of personal circumstances does not indicate that it is imperative for the occupants to live on this particular site or in the area, but I acknowledge it would be difficult for the occupiers to find an alternative site in the area. Their personal circumstances carry moderate weight in the planning balance.

5.11 As such I consider that the personal circumstances do not carry sufficient weight to override policy conflict and to outweigh the significant harm caused by the proposal. Thus, the weight to be given to the current occupiers' personal circumstances is moderate and not overriding.

## **Human Rights**

5.12 This section addresses main issue 8 from the Inspector's post CMC Note. It is accepted that the site occupants are entitled to their traditional way of life, have protected characteristics for the purposes of the Public Sector Equality Duty, and their rights under Article 8 of the EHCA are also engaged.

5.13 Further, Article 3(1) of the United Nations Conventions on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.

5.14 The best interest of the children on the site are of primary importance but are not overriding. Providing a settled base for the children to access educational is important. Consideration is also given to the proposal would allow families to reside together and avoid a roadside existence. This weighs positively in the planning balance, and I give it significant weight. However, it does not outweigh the harm attributed to the conflict with development plan policies.

- 5.15 Article 8 of the European Convention on Human Rights, enshrined in UK law through the Human Rights Act 1998, provides that everyone has the right to respect for his private and family life, his home and correspondence. It is engaged in this appeal. In this regard there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary, amongst other things, for the protection of the rights and freedoms of others. However, this is a qualified right and interference may be justified in the public interest if it is for a legitimate purpose.
- 5.16 The proposed development would be contrary to the development plan and does not comply with national policy. On the other hand, the development would contribute positively to meeting the overall need for gypsy and traveller accommodation and the accommodation and other needs of the current occupants.
- 5.17 It is considered that the protection of the public interest cannot be achieved in this case by means other than the refusal of planning permission. This is proportionate and necessary in the circumstances.
- 5.18 As such, the known personal circumstances are not considered to carry sufficient weight to override the policy considerations of the proposal, together with the demonstrable harm that is caused by the development.

### **Intentional unauthorised development (IUD)**

- 5.19 The Written Ministerial Statement (WMS) (CD8.43) explains that IUD is a material consideration that is to be weighed in the determination of planning appeals. The relevant point is the lack of opportunity to appropriately limit or mitigate the harm that has been caused, where the development of land has been undertaken in advance of obtaining planning permission.
- 5.20 It is agreed in the statement of common ground that IUD had taken place. From the submitted objections the Council recognises that IUD has caused distress to the local residents, which has had an impact on community cohesion. The IUD has caused harm as set out in the remainder of this proof and is given weight, albeit limited weight, in the planning balance.

## Noise and contamination

- 5.21 It is understood that the Acoustic assessment (CD1.22) was undertaken, which concluded that the occupants of the site during nighttime hours will suffer noise levels above the recommended maximum thresholds due to the M4. A condition will be required to secure acoustic barriers expected to reduce noise local to the homes to below the upper guideline level given in BS8233:2014.
- 5.22 Details would need to be agreed via a condition but the assessment finds that specification of the acoustic barrier is that the height should be sufficient to obscure line-of-sight to traffic using the M4 from a standing position within any of the mobile homes (estimated to be approximately 2.3m assuming a 0.5m undercroft); the barrier should be imperforate with no gaps or breaks and be constructed of a material that is at least 10kg/m<sup>2</sup>.
- 5.23 The Environmental Health Officer raises further concerns that even with acoustic barriers the windows will need to be shut the majority of the time to ensure acceptable noise level and as a result additional ventilation would be required. Therefore, a condition requiring the units comply with BS3632:2015 would be required to make sure the occupiers were protected from noise pollution. It should be noted that this condition would likely mitigate the impact of noise pollution, and this is why it is not formed a reason for refusal. However, it needs to be noted the mitigation measure for noise would likely cause further harm to the landscape character of the site. This has been covered by Liz Allen's proof of evidence.
- 5.24 The development in this location will cause some harm to the occupiers of the site due to unacceptable noise levels from the M4. However, the mitigation secured by conditions will neutralise this harm with regards to noise affecting occupiers of the site. Therefore, noise impacts carry neutral weight in the planning balance.
- 5.25 The Environment Health Officer recommended a condition with regards to unforeseen land contamination. It is considered that this will address any potential issue of contamination and thus this matter is neutral in the planning balance.

## Ecology

- 5.26 A Preliminary Ecology Appraisal (PEA) (CD1.23) was submitted and reviewed by the LPA Ecologist. There were no protected species found on site during the survey, but the area

would be used by foraging bats. East of the site is Furze Hill Local Wildlife site. It is considered that conditions would be required mitigate the harm the development would cause to ecology assets. Thus, conditions with regards to ecology mitigation will be required so the proposal can be considered compliant with policy CS17 and point 14 of policy TS3. With these conditions in place the proposed development would have a neutral impact on ecology assets, and therefore neutral weight is given to this matter in the planning balance.

### **Neighbouring amenity**

- 5.27 The pitches are set at a reasonable distance apart to give occupiers a sufficient level of amenity.
- 5.28 The proposal is sufficient distance away from neighbouring properties so as not to give rise to amenity issues, such as overlooking, over shadowing or loss of natural light.
- 5.29 Therefore, it is considered the proposal will have a neutral impact on neighbouring amenity. It is considered that neutral weight is given to this matter in the planning balance.
- 5.30 It is noted that there have been objections with regards to loss of a private view and impact of property prices. These matters are private interests and therefore do not carry weight in the planning balance.

### **Community cohesion**

- 5.31 Policy CS7 provides that sites should facilitate an integrated co-existence between the site and the settled community.
- 5.32 A number of objections have been received with regards to proposed development at both application and appeal stages. It is clear that the IUD has caused issues with regards to community cohesion. However, I acknowledge that this tension may dissipate over time.
- 5.33 The PPTS advises that traveller sites in rural areas should respect the scale of, and should not dominate, the nearest settled community and that they should avoid placing undue pressure on local infrastructure.

- 5.34 The cumulative effect of gypsy development would not be such as to dominate the service village of Hermitage in terms of population size or placing undue pressure on services.
- 5.35 The proposal would not have an unduly harmful effect on the settled community of Hermitage and that it would in this respect accord with the policies in the PPTS. This matter would be neutral in the planning balance.

### **Fear of crime**

- 5.36 For fear of crime to be material consideration there will need to be some reasonable evidential basis for that fear. The precise weight to be afford to such fears will be dependent on the quality of the evidence, unless there is strong evidence linking the land with criminal activity and past behaviour of the occupiers (rather than unsupported evidence about characteristics of the occupiers), fear of crime would not be considered a determinative factor in this appeal.
- 5.37 The LPA has received objections which allude to the perception that the development would lead to an increase crime, but there is no evidence of criminal activity linked to the appeal site. Thus, fear of crime would not be considered a material consideration in this appeal.

### **Temporary Permission**

- 5.38 This section addresses main issue 7 from the post CMC Note. The appellant did not specifically request that a planning permission subject to a time limitation condition be granted. Within the enforcement appeal, the appellants have requested that the time period for compliance with the requirements of the enforcement notice be increased from six to twelve months. The LPA have said they would be amenable to extending the period for compliance with the enforcement notice.
- 5.39 However, I consider that a temporary permission would not be appropriate in this instance given the degree of harm identified with regards to the NWDNL and conflict with development plan policies. It is considered that 12 months is a reasonable timeframe, as it is important not to prolong the significant harm to the protected landscape.

## 6. Planning Balance

6.1 I have identified the benefits and dis-benefits in respect of the appeal proposal, which carry positive and negative weight respectively in the planning balance.

6.2 For clarity, the following hierarchy of terms is used in this Proof;

- Significant
- Moderate
- Limited
- None / Neutral

6.3 The benefits and disbenefits of the proposal and the weight given to each matter is summarised in the table below.

Matter	Benefit or disbenefit or neither	Weight Given
Principle	Disbenefit	Significant
Landscape	Disbenefit	Significant
Highways	Disbenefit	Significant
Drainage	Disbenefit	Significant at present (insufficient information)
Personal Circumstance	Benefit	Moderate
Best interests of the children	Benefit	Significant
Intentional unauthorised development	Disbenefit	Limited
Local Need and Supply	Benefit	Moderate
Noise and contamination	Neither	Neutral with mitigation
Ecology	Neither	Neutral with mitigation
Neighbouring amenity	Neither	Neutral with mitigation
Community cohesion	Neither	Neutral
Fear of crime	Neither	Neutral

6.4 Table 2 explains the benefit and disbenefit and the weight given to matter in the planning balance.

### Benefits and disbenefits of the proposal

6.5 The personal circumstances of the family and the best interests of the children weigh in favour of the proposal. Providing a settled base for the children to access education is important, as is the benefit of the family living together on a suitable site. It is



acknowledged that in the short term it could be difficult for the occupiers to find an alternative site and living a roadside existence until that time would not be ideal.

- 6.6 However, in the longer term the above objectives could be realised at a site in a different location that complies with planning policies, and the children could attend schools or health services from either alternative site.
- 6.7 The supply of 5 pitches would carry moderate positive weight in the planning balance.
- 6.8 Hence, although these matters carry moderate positive weight, the material considerations collectively do not indicate that a decision should be made other than in accordance with the development plan.
- 6.9 I have given full weight to the policies within the local development plan.
- 6.10 The appeal proposal is contrary to Policies ADPP1, ADPP5 and CS7 of the Core Strategy, and Policy TS3 of the Housing Site Allocations DPD and there is considered not to be sustainable in principle.
- 6.11 The proposed development would cause significant and demonstrable harm to the character, appearance and landscape value of the NWDNL. The appeal site would damage the rural settlement edge character of hermitage and will subsequently not conserve or enhance the NWDNL but cause permanent harm. The proposed development would conflict with development plan Policies ADPP1, ADPP5 and CS7, CS14, CS19 of the Core Strategy, and Policy TS3 of the Housing Site Allocations DPD. This harm and conflict would weight significantly in the planning balance.
- 6.12 Existing location of the speed gateway to the north of the site access results in the visibility splay not being achievable and a traffic regulation order has not been sought or agreed. This means the proposed development cannot demonstrate it can achieve safe access. Therefore, the proposal is not compliant with CS7 bullet point 1 (safe and easy access) and CS13 or Policy TS3 bullet points 2 (appropriate vehicle access), 9 (route to services) and 10 (impact on local road network). This harm weights significantly in the planning balance.

- 6.13 There is insufficient information with regards to drainage. The conflict found with policies CS16 and TS3 should be given significant weight in the planning balance against the appeal proposal.
- 6.14 IUD weighs against the proposal, and has caused harm, it is considered that this should only be given limited weight in the planning balance.
- 6.15 There is conflict with emerging policies SP5 (j) (Responding to Climate Change), SP6 (Flood Risk) and DM20 (Gypsies, Travellers and Travelling Showpeople) points 8 and 9. Conflict with emerging policies is a material consideration, but only carries moderate weight in the planning balance as the plan is in the late stage but is not yet adopted.

### **Presumption in favour of sustainable development**

- 6.16 When the application for planning permission was originally before committee, the LPA could not demonstrate five-year supply of sites. Since then, a permission was granted at land south Abbotswood which meant that LPA can now demonstrate a five-year supply. Therefore, the tilted balance found in Framework paragraph 11d) is not engaged, having regard to PPTS paragraph 28.

### **Conclusion**

- 6.17 In conclusion, the proposed development would not accord with development plan as a whole and is in conflict with the relevant parts of the NPPF, and the PPTS. There is significant harm to a protected landscape. The benefits of the proposal would not outweigh the disbenefits. In my view there are no material considerations outweighing non-accordance with the development plan, and the appeal should be dismissed.
- 6.18 If the LPR is adopted by the time of the Inspector's decision, my view will remain unchanged because the policy priorities and direction, especially with regard to protected landscapes, is essentially the same as in the current plan at the time of writing.