APPEAL REFS: APP/W0340/W/24/3346878 (Appeal A) and APP/W0340/C/24/3351139 (Appeal B)

Land to the south of Brimpton Lane, Brimpton Common RG7 4RS (Appeal A)

Land south of Brimpton Lane and west of Blacknest Lane, Brimpton Common, Reading (Appeal B)

CLOSING SUBMISSIONS ON BEHALF OF THE LOCAL PLANNING AUTHORITY

INTRODUCTION

1. In accordance with the LPA's Statements of Case[1] and written evidence submitted in support thereof, the primary purpose of these closing submissions is to substantiate the LPA's reasons for refusing permission.

2. The examination of the evidence in the present appeals has demonstrated the soundness of the LPA's decision to refuse planning permission and the lack of merit in the appellant's evidential case.

3. In the present case, the proposed development can properly be characterised as opportunistic. There is no dispute that the appeal site was acquired at auction by a property developer who has previously secured planning permission on appeal for new traveller site development to secure in turn more lucrative planning permission for housing. The appellant's acquisition of the appeal site can properly be characterised as a windfall, and he conceded in evidence[2] that the site was a acquired for the purpose for establishing a residential traveller site for his family with no consideration whatsoever of the requirements of development plan policy.

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1 CD4.5-4.9
2 JS:XX

OUTLINE

4. These Closing Submissions which should be read together with the LPA's Opening Statement are structured as follows:

   (a) Proper approach

   (b) Preliminary matters

   (c) Main issues

   (d) Human Rights and Equalities

   (e) Overall planning balance

   (f) Appeal B

   (g) Conclusion

PROPER APPROACH

5. The proper approach to the determination of these appeals is not in dispute.

6. By section 70(2) of the Town and Country Planning Act 1990 ("the 1990 Act"), when determining each appeal, the Inspector must "have regard to ... the provisions of the development plan, so far as material to the application" and "other material considerations", and pursuant to the duty under section 38(6) of the Planning and Compulsory Purchase Act 2004, determine each appeal "in accordance with the plan unless material considerations indicate otherwise".

7. There is no serious dispute between the parties that the most important Development Plan policies relevant to the determination of the appeal are not out-of-date. Consequently, all parties agree that the so-called 'tilted balance' within paragraph 11 d) of the Framework is only engaged as a consequence of paragraph 28 of the PPTS and the fact that there is a shortfall of 1 traveller pitch up to 2026.

8. It is trite but nevertheless important to observe that the appeal must be determined on whole of the evidence before the decision-maker, taking account

of all material planning considerations. In that latter regard, there is no dispute as to the materiality of any consideration addressed in the evidence before the Inspector, or any material dispute on the relevant legal framework applicable to the determination of the appeal.

9. It necessarily follows that that the resolution of the main issues in dispute in this appeal essentially involve matters of planning judgement for the decision-maker, including the weight to be accorded to any material consideration. Likewise, the weight to be attached to the evidence submitted, or any part thereof, is ultimately a matter for Inspector.

PRELIMINARY MATTERS

Statements of Common Ground

10. The general SoCG [3] and the topic specific SoCG Addendums relating to 'Need, supply and alternatives for Gypsies and Travellers',[4] 'Policy changes',[5] and 'Heritage'[6] confirm the considerable areas of agreement that assist the Inspector to focus upon the relatively limited matters that remain in dispute.

11. As necessary and appropriate, additional agreed matters identified in the course of the inquiry are addressed elsewhere in these submissions.

12. By signing the general SoCG on 24 October 2024, the parties agreed that the areas of disagreement were limited to those recorded in the SoCG.[7] In accordance with the relevant Inquiries Procedure Rules, PINS' Procedural Guidance, and the Inspector's case management directions, the Council's submitted evidence has focused upon the main issues and those area of disagreement.

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3 CD5.2
4 CD5.3
5 CD5.6
6 CD5.7
7 CD5.2, pp 2-4

13. During the examination of the evidence, the appellant's advocate and agent have sought to rely upon various other issues and arguments in support of the appeal that were not identified as areas of disagreement in the SoCG and have not been

Evidence

14. As stated above, the appeal must be determined having regard to the totality of evidence before the inquiry. It should go without saying that the evidence before the inquiry is limited to the submitted written evidence and the oral evidence given by witnesses under formal examination or during the roundtable sessions. Contributions from advocates, including leading questions during examination-in-chief and re-examination should not be regarded as evidence.

15. The weight to be attached to any aspect of the evidence is a matter for the Inspector, having regard to relevant matters including whether the witness is suitably qualified to give opinion evidence as an expert witness, and the extent to which a witness engages with the questions put during formal examination.

Emerging Local Plan Review 2022 to 2038

16. The Council has submitted the emerging local plan for independent examination. It is now at an advanced stage in the examination process having completed the examination hearing stage and is currently in the main modifications process. Adoption is expected in the first half of 2025. LPR Policy DM20 is the main policy relating to gypsy and traveller accommodation. This is essentially a combination of policies CS7 and TS3 for ease of reference, but it does still emphasise the need to avoid isolated rural locations and to avoid greenfield site as a first principle. The Council accepts that the emerging local plan policies should only be given limited weight in the determination of the appeal.

MAIN ISSUES – APPEAL A

17. This section of the LPA's closing submissions addresses the main issues in the section 78 appeal identified by the Inspector and agreed by the parties at the CMC, as recorded in the inspector's Inquiry Case Management Note.[8] Each main issue is considered briefly in turn.

Main Issue 1 — Whether the appeal site is a suitable location for the proposed Development, including whether occupants would have adequate access to facilities and services, having regard to local and national policies

18. Following the examination of the evidence there is no dispute that the residents of the appeal site are and would be reliant upon the private motor car for making all necessary trips to access essential services.

19. In accordance with Inspector's case management direction, the main parties to the appeal produced and submitted an agreed facilities plan for the inquiry.[9] Overlaid on that plan is the appeal site location with an 800m radius applied around it, which is the accepted maximum distance recommended for walking from a site to facilities (i.e., 10 minutes walking). It should be noted that there are no facilities within that radius apart from the Pineapple Public House to the south of the appeal site.

20. Local Plan Policy CS 7 (bullets 2 and 3) requires new sites to have 'safe and easy access to major roads and public transport services; and easy access to local services including a bus route, shops, schools, and health services'. Moreover, Local Plan Policy CS 13 contains a number of criteria including reducing the need to travel and to have good access to key services and facilities. Furthermore, Local Plan Policy TS 3 [10] contains similar aims and requires proposals for traveller site development to include measures to improve accessibility by, and encourage use of, non-car transport modes.

8 CD5.1, para 15
9 CD1.20
10 CD3.4, pp 79-80

21. As Mr Butler explains in his evidence,[11] Policy CS 13 sets out the vision for the Council in applying transport and general sustainability principles across the District. Applying those principles to the proposed development, allowing the appeal would simply encourage additional trips by the private car for essential and other family services. It is known that children will be/are living on the site with associated health and educational needs.

22. The Council's evidence confirms that healthy and safe travel by modes other than the private car are difficult at this location, given the nature of the local road network -At peak times traffic flows are high on the B3051 leading to and from Tadley and the AWE, making walking and cycling very problematic. Similarly, both roads leading to Brimpton in the north and Ashford Hill in the south have steep gradients to navigate. Allowing the appeal would improve travel choice for the occupants but simply restrict it on the grounds of convenience and personal safety.

23. Consequently, the Council does not consider that there to be good access to local service and facilities. For these reasons and those set out in the Council's written evidence, the Council maintains its objection to the appeal on sustainability grounds.

24. As Mr Butler further explained in his evidence, other sites do come forward in the District which are in a suitable location. For example, application number 23/00815/FUL for 5 gypsy pitches at Hermitage for approval, and one of the principal grounds for doing so was the easy access to local facilities at that site.

25. In respect of sustainability, para 25 of the PPTS notes that local planning authorities should very strictly limit new traveller sites in open countryside, away from existing settlements. Whilst not specifically stated in the PPTS, the Council considers that this to ensure sustainability issues are considered where future occupants require access to facilities and services such as health care.

26. Whilst it is acknowledged that a number of existing and permitted gypsy sites in the District are already in rural locations, (e.g. Four Houses Corner), the existence

[11] CD7.1, paras 2.38-2.45

of such sites does not mean that the Council should continue to encourage such sites in the rural areas, so reducing sustainability. It is therefore considered that the sustainability reason for refusal is well founded, and the Inspector is asked to take this matter into full account in arriving at his decision.

27. For all these reasons and those set out in its written evidence, the Council submits that the proposal is contrary to current national policy in NPPF, paras XX and PPTS, paras 25, and Local Plan Policies CS 7, CS 13 and TS 3.

Main Issue 2 — Effect of the proposal on the character and appearance of the area

28. It is common ground that the appeal development results in harm to the character and appearance of the area, however the level of harm is disputed. Contrary to the requirements of Local Plan Policies CS 7 and TS 3, the planning application the subject of this appeal was not accompanied by a LVIA or any other adequate landscape appraisal of the impact the development might have on the landscape and local views. The appellant chose not to remedy that shortcoming only.

29. Accordingly, the only expert evidence before the inquiry relating to this main issue is that submitted by Ms Allen, on behalf of the Council, and Ms Bryant, on behalf of BCRG.

30. The expert evidence before the inquiry demonstrates that development on the appeal site will result in significant and demonstrable harm to the character, appearance and landscape value of this area of open countryside. In that regard, the Council invites the Inspector to reject the appellant's plainly self-serving assertions to the contrary.

31. As Ms Allen explains in her written evidence and clarified during the landscape roundtable session, the proposed development will result in a highly visible development, suburban in character which will not conserve or enhance this area of the open countryside but will cause permanent harm. Moreover, that harm cannot be adequately ameliorated by the imposition of planning conditions

32. The proposals are therefore contrary to the NPPF paras, 7, 8(c), 135 (a, b & c), 187 (b), Local Plan Landscape Policies: CS7, CS18, and CS19; and Housing Site Allocations DPD (2006-2026) 2017 Policies C1 and TS3.

Main Issue 3 — Whether the proposal would ensure public safety, having regard to AWE Aldermaston

33. The Radiation (Emergency Preparedness and Public Information) Regulations 2019 ("REPPIR 19") imposes legal requirements to have a Detailed Emergency Planning Zone ("DEPZ") around nuclear sites such as the AWE sites. There is also a legal requirement to have an Off-Site Emergency Plan ("OSEP") which needs to be adequate. These legal requirements post-date the adoption of the Core Strategy in 2012 and the Housing Site Allocations DPD ("HSADPD") in 2017.

34. As the representative from AWE plc ("AWE") / MOD, Mr Ian Rogers, explained to the inquiry, AWE Aldermaston ("AWE A") should not have unreasonable restrictions placed on it as a consequence of additional residential and other development in the DEPZ and this is possible if additional pressure is placed on the OSEP. The continuing operation of AWE A is of the upmost importance for national security and defence commitments.

35. The Council's Emergency Planning witness, Mrs Carolyn Richardson, is the only suitably qualified expert to give opinion evidence on the designation of the DEPZ and the OSEP. As she explained in her written and oral evidence, the appeal site is a vulnerable site in emergency planning terms. It is located in the DEPZ for AWE A. It is in a relatively isolated location and does not contain any substantial buildings which could be used in the event of an emergency at the AWE site and the need to seek emergency shelter.

36. Consequently, the appeal site is deemed to be a vulnerable site and as a result would rely on additional responding resources being diverted to it at the time of a radiation emergency, therefore diverting limited resources from other activities in an already pressured environment.

37. Mrs Richardson also explained that AWE Aldermaston site has a very small window, 13 minutes, for anyone in the DEPZ to be warned and go into adequate

shelter. Therefore, placing a vulnerable site within the DEPZ where the shelter would be deemed to be inadequate is not appropriate and would potentially place the health, safety and welfare of those on site at risk and others in the DEPZ should resources have to be diverted.

38. Moreover, any emergency plan and response have many layers of complexity, in particular when the plan must support people in the community in what is likely to be a very stressful situation. This stress and fear that people experience during a non-radiation emergency can be extreme, but when radiation is the main risk (which unlike a fire or flood is intangible) there is a real danger of panic, making the job of responders more difficult than in a 'normal' emergency.

39. Development Plan Policy CS8 seeks to protect public safety by restricting development in close proximity to the AWE sites. In doing so, it controls development by reference to the ONR's land use planning consultation zones, which, at the time the Policy CS8 was adopted included the inner consultation zone, the middle consultation zone and outer consultation zone.

40. As another planning inspector recently found,[12] Policy CS8 accords with Paragraph 101 of the NPPF (now paragraph 102) which advises that planning policies and decisions should promote public safety and take into account wider security and defence requirements by, amongst other things, ensuring that operational sites are not affected adversely by the impact of other development proposed in the area.

41. The proper approach to the consideration of this issue was addressed by the planning inspectors appointed to determining the appeals cited in Section 7 of Mrs Richardson's evidence.[13] Taken together, those appeal decisions demonstrate a consistent approach by decision-makers by limiting new development in the DPEZ for the AWE sites, especially where the proposal would involve increasing the number of vulnerable people and priority sites residing in the DEPZ.

42. The significance of the very recent appeal decision relating to 'The Hollies' is noted by all parties, including the Appellant, who properly acknowledged that decision

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12 CD5.9: *Land to the rear of the Hollies Nursing Home, Reading Road, Burghfield Common RG7 3LZ* (APP/W0340/W/22/3312261), at para 12

13 CD7.9, section 7

related to a site that was allocated for new development in the Housing Site Allocations DPD and involved conventional housing.

43. In his decision letter for that appeal, the inspector expressly accepted[14] that:

> *"the OSEP is not infinitely scalable and that incremental, unplanned development could, over time, erode the effective management of the land use planning consultation zones and be detrimental to public safety. In that sense, I agree with the Inspectors in the Shyshack Lane appeal … the Benham's Farm appeal and the 132 Recreation Road appeal. However, such concerns do not arise in the present case due to the fact that the appeal site is the only remaining allocated site within the DEPZ. As such, the circumstances of this appeal are unlikely to be repeated elsewhere in the DEPZ." (emphasis added by underlining)*

44. When giving evidence, the appellant's agent properly conceded[15] that he was not an expert in emergency planning and that he had not considered development plan Policy CS8 in relation to the application or the appeal. The appellant's case on this critically important main issue amounts to little more than the bare assertion that the Council and AWE/MOD are overstating the known risks associated with the DEPZ / OSEP and that a planning condition can satisfactorily secure an adequate shelter in the form of a dayroom. For the reasons explained by Mrs Richardson when giving evidence,[16] the proposed dayroom shown on the application drawings[17] could not accommodate the necessary facilities to ensure the residents of the appeal site could shelter in place for a 48-hour period during an emergency.

45. The Council accepts that there is a dispute on the evidence as to whether the appeal site is located within the inner or middle consultation zones under Policy CS8. In that regard, although the application was assessed by the LPA on the basis that the appeal site lies within the middle consultation zone, the LPA acknowledges the unchallenged evidence submitted by the BCRG[18] showing the

14 CD5.9, DL31
15 BW:XX
16 CR:XC/IX
17 CD1.20
18 ID10

location of the appeal site in the inner zone. In the circumstances, the Council is content for the Inspector to resolve that issue and apply Policy CS8 accordingly.

46. For these reasons and those set out in the Council's evidential case, the appeal proposals are therefore contrary to the NPPF paragraph 102, Local Plan Policies: CS8 and emerging policy SP4 and the detriment to public safety should be accorded full weight.

Main Issue 4 — The proposal's effect on ecology, including biodiversity net gain

47. The Appellant relies upon the Preliminary Ecological Assessment ("PEA") dated 11 October 2024 submitted in support of the appeal. No ecological information was submitted with the planning application and permission was refused due to insufficient information being submitted to assess the ecological impact of the proposed development works to the site.

48. Following the works to change the use of the site in April 2024 and a review of the data available (including aerial imagery and biological records), the Council's Senior Ecologist, Mr Greenslade, sought further information regarding the potential for ecological impacts to arise from the proposed development. In accordance recognised good practice and the requirements of development plan Policy TS3, information was requested for three specific species to be surveyed within the preliminary ecological survey, namely, great crested newts, reptiles and bats.

49. In respect of the PEA submitted on behalf of the Appellant, the Council makes the following observations:

(a) Having regard to the evidence available, it is unlikely that the appeal site was actively grazed prior to the unauthorised change of use;

(b) The Appellant admits that the limited keeping of horses on the site included the provision of supplementary feed imported to the site;

(c) Having regard to the photographic evidence included in the PEA,[19] it is more likely that the baseline habitat on the appeal site was semi-improved grassland and the works the subject of the appeals would have reduced the grassland on site to its current species-poor state of modified grassland;

(d) The risk to Great Crested Newts (GCN) was not adequately assessed. The PEA records the existence of nearby ponds, none of which were not visited during the survey, and no assessment of their suitability for great crested newts was made;[20]

(h) The PEA acknowledges that state the site is highly suitable habitat and the most important area for GCN lying within the NatureSpace GCN District Licence Red Zone;[21]

(i) A risk assessment was conducted retrospectively by the author of the PEA using Natural England GCN methods statement for the two ponds within 100 metres, which gave the result of 'Offence Likely';

(j) The Council's Senior Ecologist agrees with that appraisal that the intentional unauthorised development amounts to an offence under the 1981 Wildlife and Countryside Act (as amended);

(k) A key element that has not been explored in the PEA is the culverting of a drainage ditch to provide the site access. This has not been identified in the PEA and, depending on the construction, may block species commuting through the ditch;

(l) The provision of the site access has also the created a large break in the hedgerow that is classified as 'important' under Regulation 3 of the Management of Hedgerows (England) Regulations 2024;

(m) The Council's Senior Ecologist does not believe the removal of the existing hedgerow meets any of the exceptions under that regulation. In addition,

19 CD4.3, page 14
20 *Ibid*, para 4.12
21 *Ibid*, para 4.13

all hedgerows consisting predominantly (i.e. 80% or more cover) of at least one woody UK native species are a 'priority habitat';

(n) The impact on reptiles was assessed in the PEA which found that the which found that suitable habitat existed on the site area and adjacent. However, the Councill's Senior Ecologist does not agree with the statement that the suitability was reduced prior to development due to grazing;

(o) The recommendations regarding bats, landscape and ecological are agreed by the Council and addressed by way of proposed conditions.

50. Accordingly, for the reasons explained in his written and oral evidence, Mr Greenslade, who is the only suitably qualified expert to give opinion evidence on this main issue, the appeal development is detrimental to protected species that are using the appeal site for commuting, foraging and as habitat.

51. The ecological appraisal submitted by the appellant did not present the further information requested by Mr Greenslade in April 2024, regarding surveys for great crested newts, reptiles, and bats.

52. As he explained further in evidence, without that further information it is impossible to know if appropriate mitigation and enhancement measures for the loss of suitable habitat on-site and surrounding the site have been proposed. As a matter of fact, the planning application the subject of this appeal has not proposed any enhancements in respect of these species.

53. For these reasons, the appeal proposal is contrary to NPPF paragraph 187, and Local Plan Policies CS17 and TS3. The harm to biodiversity and ecology caused by the proposal should be accorded full weight.

Main Issue 5 — The proposal's effect on green infrastructure

54. The council maintains that the proposed development will result in the loss of Green Infrastructure as defined by Local Plan Policy CS 18.

55. Policy CS18 [22] states that *"The District's green infrastructure will be protected and enhanced"* and that *"... developments resulting in the loss of green infrastructure or harm to its use or enjoyment by the public will not be permitted*." As stated within WBCS para 5.124, Green Infrastructure is defined as *"Natural and semi-natural green spaces – including ... grasslands ..."* and *"Green corridors including ...rights of way ..."*.

56. Whist not a registered common in its own right, Brimpton Common is valued by the local community for its open nature and character, providing a soft visual setting to the surrounding low density scattered housing. It is accordingly GI in the sense and purpose of policy CS 18.

57. The Council contends that the value of the Green Infrastructure is enhanced by the proximity of the public footpath number BRIM 20/1 which runs to the east of the appeal site. Accordingly, any users of this PROW now have the full rear view of the structures, fencing and mobile home on the site with hedging, when walking along in both directions. This will not enhance the experience of being in the rural area and so be contrary to the intention of policy CS18 which, as stated above, also includes green corridors in its definition. These include footpaths.

58. Effectively, the harm and loss of Green Infrastructure has already occurred at the appeal site through the intentional unauthorised development having been completed already. It is very difficult now to mitigate this loss, other than by the appeal being dismissed and the land being returned so far as possible to its former undeveloped state.

59. For these reasons and those set out in the Council's written evidence, the proposals will result in significant loss of Green Infrastructure and are therefore contrary to Local Plan Policy CS18.

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22 CD3.3, pp 83-84

Main Issue 6 — The proposal's effect on Grade II listed building at Lane End Cottage and the Scheduled Monument of Bell Barrow

60. The Council's position on this main issue is addressed in the SoCG Addendum on Heritage.[23]

Main Issue 7 — Other material considerations

61. The Council's evidence addresses the other material considerations identified by the Inspector at the CMC, which are now considered in turn.

a) need and supply[24]

62. Notwithstanding the appellant's failure to agree the 'SoCG Addendum in relation to need, supply and alternatives for Gypsies and Travellers' ("SoCGA"),[25] the Council invites the Inspector to record that the SoCGA[26] provides the most up-to-date evidence of need and supply for additional Gypsy and Traveller pitches in the District. The appellant does not produce any evidence to question the veracity of the Council's evidence underpinning the SoCGA.

63. Referring to Table 1 in the SoCGA,[27] of the 30 pitches needed to 2038, 13 are required in the short term up to 31 March 2026. Following the examination of the evidence, there is no dispute that 12 pitches have been planned for in the period 1 April 2021 and 31 March 2023.

64. Thus, applying the new definition of *"gypsies and travellers"* within PPTS 2024, there is a shortfall of 1 pitch in the 'short term' up to 2026. The Council accepts that the outstanding short-term need of 1 pitch is a minimum. For the reasons explained it is written and oral evidence, the Council submits that its approach to the provision of additional Gypsy and Traveller pitches in the District has been proactive to date. On the evidence, there can be little doubt that additional

23 CD5.7
24 CD3.2, Annex 1: Glossary, para 1
25 CD5.3
26 *Ibid*, at paras 1.4 to 1.12
27 CD5.3, pp 2-3

provision will be made on windfall sites within the next 18 months to meet that shortfall.

65. In response to the Appellant's case and the various criticisms raised during the examination of the evidence, not all of which were supported by evidence, the Council makes the following submissions:

(a) The GTAA is not out of date. The GTAA 2021 Update[28] is the latest available evidence to identify the accommodation needs across the District;

(b) The Council contends that current evidence base, which informed the preparation and independent examination of the Local Plan Review ("LPR") robust, proportionate and up to date. Having reached the Main Modifications stage of examination process, it is notable that the appointed local plan Inspector has not questioned the soundness of the submitted LPR in that regard;

(c) Although it is entitled an 'Update', the 2021 version of the GTAA reassessed need in the District, having regard to the prevailing circumstances at the time — it is of course a snapshot in time;

(d) The 2021 GTAA has already accounted for all need (cultural need), and therefore in applying the definition in the 2024 PPTS the Council have considered all need and can plan accordingly. This includes 'all other persons with a cultural tradition of nomadism or of living in a caravan', as the GTAA would include those who culturally associate as a Gypsy and Traveller. Contrary to the appellant's Statement of Case,[29] there is no undercounting of need;

(e) There is no dispute that the authors of the 2019 GTAA and 2021 GTAA Update, arc[4], are highly regarded experts in this highly specialised field;

28 CD3.6
29 CD4.1, para 5.29

(f) The 2021 GTAA was subjected to evidential scrutiny in the Lawrences Lane appeal and was endorsed by the appeal Inspector; [30]

(g) In respect of future updating, the author of the 2021 GTAA recommended[31] that the evidence base be refreshed once households move onto Four Houses Corner on a 5 yearly basis. Demonstrably, as the GTAA was published in June 2021, we are well within that 5 year period;

(h) As FHC will be repopulated within the coming months, the Council is able to commission the GTAA this year, well in advance of the expiration of the current 5-year period;

(i) There is no evidence before the inquiry to gainsay the Council's evidence that FHC will be repopulated in the coming months;

(j) Contrary to the appellant's mistaken assertion,[32] the GTAA is not being delayed. Miss Willett was clear in her evidence[33] that the delay related to the preparation of the proposed Gypsy and Traveller DPD, not the GTAA;

(k) In respect of Paices Hill, the 8 permanent pitches which the GTAA recommends be converted from 8 transit pitches (and have now secured planning permission) can be counted in meeting the need. The 2021 GTAA expressly addresses need on Paices Hill and there is no evidence before the inquiry to demonstrate that need on that site has been undercounted. In planning terms, the pitches now contribute to meeting the permanent need, as transit aren't counted. The site allocation and the planning application do not restrict the occupation other than for gypsies and travellers only;

(l) The Council accepts that it cannot demonstrate a 5 year supply, and the 1 pitch shortfall is a minimum because of the need to assess the household formation of new families on FHC. The need to account for unknown households at FHC was accepted by appeal inspectors in the Ermin

30 CD5.5, DL94-100
31 CD3.8, para 7.9
32 BW:XC
33 CW:XC

Street[34] and Lawrences Lane[35] decisions, who still agreed the Council's figures on need;

(m) Contrary to the appellant's bare and unsubstantiated assertion, as the inspector in the Lawrences Lane appeal found,[36] there has not been a past failure of policy in the District.

66. Whilst the Council recognises that there continues to be an ongoing need to provide gypsy and traveller pitches across the District, and if this appeal were allowed the Council would be able to demonstrate a 5 year supply. In accordance with paragraph 27 of the PPTS, this is a significant material consideration.

67. In the light of the limited extent of the present shortfall of 1 traveller pitch in the short-term, which is likely to be remedied in the near future by way of grant(s) of planning permission on windfall sites, having regard to the intentional unauthorised development, and the likelihood of creating a precedent for other sites in the vicinity if this appeal is granted, the Council contends that this very limited shortfall should be given moderate weight.

b) alternatives

68. As the SoCGA records,[37] there are limited sites within the District, and registers are not kept to detail availability for each pitch on each site. The Four Houses Corner site in Padworth, which is the only Council run site, is not operational at this time, although work is well underway to enable the opening of the site March 2025. FHC will open with 17 pitches, of which 1 is additional supply.

69. To date, the appellant has not considered the potential availability of FHC as an alternative within the District and has not put his name down on the waiting list for that or any other site. The appellant confirmed in evidence that although he had some reservations about the families that had previously occupied the FHC

34 CD7.12, Appendix 4
35 CD5.5
36 *Ibid*., DL104
37 CD5.3, para 1.13

site, he would be willing to consider an offer made by the Council for a pitch on that site.

70. In that regard, having regard to the evidence relating to the likely repopulation of the FHC site, including the current state of the waiting list,[38] there remains a realistic possibility of an offer for a pitch on that site being made to the appellant in the very near future, especially if his appeals are unsuccessful.

c) personal circumstances

71. The Gypsy and Traveller status of the appellant and his family is not in dispute. As ethnic Gypsies and Travellers, they are entitled to respect for their traditional way of life. Further, the vulnerable position of such groups as a minority requires some special consideration to their needs and their lifestyle. In that regard, the PPTS states that "the government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community".[39]

72. The Council accepts that the appellant and his family have a personal need a permanent site and, save as the addressed above, the appellant contends that there are no known alternatives. On the appellant's case, the choice would be the roadside and related implications or doubling up, potentially in breach of planning control. The Council does not dispute that a settled base would provide regular access to healthcare and education consistent with the Government's aims in respect of traveller sites and sustainability criteria in PPTS.[40]

73. Having regard to the risks associated with introducing vulnerable development into the DEPZ for AWE Aldermaston, the Council does not accept that a settled base on the appeal site would further the aims and objectives of national planning policy in the NPPF and PPTS.

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38 ID12
39 CD3.2, para 13
40 *Ibid*, paras 3, 4j), 13 c) and d)

74. As stated above, the proposals constitute opportunistic development that has been established on the appeal site as a consequence of the gift of the land by Mr Randolph Black, a member of the appellant's family and property developer. No prior or proper consideration was given to the appropriateness of this location for traveller site development.

75. The personal circumstances of the appellant and his family are unremarkable, and the Council submits that their personal needs could be met more effectively in another more sustainable location.

76. For these reasons, the Council invites the inspector to accord less than significant weight to the family's personal circumstances in the present case.

d) Intentional unauthorised development

77. It is common ground that these appeals concern intentional unauthorised development.

78. The Written Ministerial Statement ("WMS") dated 17 December 2015[41] is a material consideration in the determination of the appeal.

> *"The Government is concerned about the harm that is caused where the development of land has been undertaken in advance of obtaining planning permission. In such cases, there is no opportunity to appropriately limit or mitigate the harm that has already taken place. Such cases can involve local planning authorities having to take expensive and time consuming enforcement action*
>
> *For these reasons, we introduced a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals. This policy applies to all new planning applications and appeals received since 31 August 2015."*

79. This principle clearly applies to the appeal. The appellant conceded in evidence that he was personally responsible for carrying out the unauthorised development which was intentional. Moreover, he confirmed that at all material times he understood that he required planning permission for the development he

41 CD3.23

intentionally caused to be carried out on the land. Furthermore, other than the unsubstantiated assertion that he and his family had no alternative accommodation, the appellant offered no justification for carrying out the unauthorised development in April 2024 or occupying the site for residential purposes before the planning permission was granted.

80. As Mr Butler confirms in evidence, it is correct that to date the application and now appeal has consumed a significant level of public resources at substantial public cost. Obviously, this is ongoing, and the substantial costs associated with hosting the public local inquiry and defending the appeal will never be recouped from the appellant. In additional, the intentional unauthorised development has caused distress to the local residents and now of course additional private expenditure via participation in this appeal as a Rule 6 party (BCRG).

81. As the Council's expert ecology evidence demonstrates, there is a likely level of biodiversity harm which cannot now be avoided or mitigated, due to the physical works which have already been implemented on site e.g. the new access, the clearing of grassland and laying of hardstanding, the fencing and the laurel planting.

82. Accordingly, the Inspector is asked to take this matter into account in determining the appeal, giving it the appropriate weight in his decision making as advised in the Written Ministerial Statement of December 2015.

e) precedent

83. While all planning applications fall to be determined on their own merits, the precedent effect of granting planning permission may be is a material planning consideration. In ***Rumsey v SSETR*** (2001) 81 P & C R 32,[42] the High Court held that the nature of what material is required to reach a view on a precedent issue, beyond a mere fear or generalised concern, will vary from case. Moreover, the

[42] CD6.1

Court held that a planning judgment as to harm by precedent could be made in circumstances where the facts speak for themselves.

84. The principle of precedent as a material planning consideration in the context of Gypsy and Traveller site provision was established in ***R (Holland) v SSCLG*** [2009] EWHC 2161 (Admin).[43] In that case, involving a statutory challenge brought by aggrieved gypsy applicants, the inspector dismissed appeals brought by the applicants on the basis, *inter alia*, that allowing any one of them would make it very difficult to resist further applications and that the precedent effect, in relation to the remaining appeals and also in relation to the remaining plots, was so strong as to outweigh the factors in favour of allowing any one of the appeals. Having revied the relevant authorities on precedent, including ***Rumsey***, the High Court held that the inspector's approach to the issue of precedent had been unimpeachable.

85. Applying the proper approach identified in Rumsey and Holland to the circumstances of the present case, there can be no doubt that allowing this appeal would make it very difficult to resist further applications to develop the remaining plots sold at auction in 2023. There is ample evidence before the inquiry upon which the Inspector can properly conclude that the precedent effect of allowing this appeal is a significant factor weighing against allowing the appeal.

86. In support of that contention, the Council relies upon the following matters addressed in the evidence of Mr Butler:[44]

    (a) The Common was in single ownership until 2022 when it was sold off in 11 lots at auction;[45]

    (b) It is known that many of these plots were sold to the Gypsy and Traveller Community, presumably with an intention at some point to develop each plot should the opportunity occur;

43 CD6.2
44 CD7.1, paras 3.13–3.17
45 *Ibid*, Appendix 2

(c) The first "action" was taken by the current appellant Mr Slater, in carrying out the intentional unauthorised development on his plot upon the refusal of planning permission;

(d) This appeal can properly be characterised as a "test" case on how the LPA and indeed the Inspectorate will determine such proposals;

(e) This is evidenced by the fact that immediately to the south of the appeal site an application (Ref 24/00594/FUL) for the siting of 2 mobile homes, 2 dayrooms and the stationing of 2 touring vans with new access and change of use of the land was refused by the Council in May 2024;[46]

(f) Although that decision has not been and cannot now be appealed, there is no reason to believe that, if this appeal is allowed, a second application would be submitted relying upon a material changing circumstances relevant to the determination of that application;

(g) In addition, across from the appeal site to the east lies plot F where an application for a small timber dwelling was submitted with associated access and domestic curtilage (Ref 24/01549/FUL). This was refused on the 16 September 2024 and may yet be appealed.

87. In the circumstances, the Council submits that, should this appeal be allowed, a highly damaging precedent would be set, applying greater pressure on the LPA to permit such schemes, or indeed to be allowed at appeal. This is self-evident from the nature of the landownership and the physical similarities between the plots on the Common. This in turn would have a very harmful cumulative impact on the Common itself and the surrounding area to its overall detriment. Not least the consequential visual impacts of many pitches being developed, creating an unattractive suburban appearance, totally at odds with the rural nature of the area.

88. For the reasons stated, the Council invites the Inspector to accord very significant weight to the issue of precedent in the determination of this appeal.

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46 *Ibid*, Appendix 3

HUMAN RIGHTS AND EQUALITIES

89. The Human Rights Act 1998 ("the 1998 Act") gives effect to the European Convention on Human Rights and Fundamental Freedoms ("the ECHR") in domestic law. Article 8 of the ECHR protects an individual's right to respect for private and family life, which in the context of the instant case, includes what is recognised in both UK equalities law and human rights law to be the right of gypsies and travellers to pursue their traditional nomadic lifestyle.

90. The Convention rights protected by Article 8 are qualified and must be balanced against the rights and freedoms of others and the orderly development of the District in the interests of the wider community. When determining these appeals, pursuant to section 6(1) of the 1998 Act, the decision-maker must ensure that any interference with a person's Convention rights is lawful.

91. The Council accepts that Article 8 is engaged also because the decision concerns children and that means decision-makers is required to carry out a children's rights analysis that meant properly exploring and assessing the children's best interests involved and then ask whether there were countervailing interests of sufficient strength to outweigh them.

92. The Council also accepts that the appellant and his family have a protected characteristic under the Equality Act 2010 and that, pursuant to the Public Sector Equality Duty, special consideration and appropriate weight must also be given by the decision-maker to facilitating the Gypsy way of life.

93. Article 3(1) of the United Nations Convention on the Rights of the Child 1989 ("UNCRC") states that:

> *"(1) In all actions concerning children, whether undertaken by public bodies or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration"*

94. As the Supreme Court explained in ***Zoumbas v Secretary of State for the Home Department*** [2013] 1 WLR 3690, the best interests of a child are an integral part of the proportionality assessment under Article 8 the Convention. A concise

summary of the relevant the relevant legal principles was provided by Lord Hodge in ***Zoumbas***).[47]

95. In the planning context, the best interests of children affected must be treated as a primary consideration (albeit not the primary or the paramount consideration) when a decision maker considers whether the refusal of planning permission would amount to a disproportionate interference with their Article 8 rights.[48] In the present case, whatever else may be said about the best interests of the appellant's children, living in vulnerable development within the DEPZ for AWE Aldermaston cannot sensibly be characterised as being in their best interests.

96. There is no dispute that, in principle, enforcement action amounts to an interference with the Convention rights of those currently occupying the appeal site. As such, there is a clear obligation upon the decision-maker to ensure that the any decision made accords with the obligations under section 6 of the 1998 Act and Article 8 of the ECHR.

97. Incorporated into that obligation are the obligations set out under UNCRC, and in this case specifically Article 3. As the Article 8 Rights of the residents occupying the Premises are clearly engaged, any decision to take enforcement action must be proportionate.

98. The decision-maker must also take account of the best interests of any children living on the Land and the impact of seeking an injunction as a primary consideration at all stages of its decision making, and to safeguard and promote the welfare and wellbeing of children (Children Act 2004, section 11(1)). As the Article 8 Rights of the persons occupying the Land are engaged, any decision to take enforcement action must be necessary and proportionate having regard to the particular facts and circumstances of the case.

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47 ID1, Appendix 3, at [10]

48 *Stevens v SSCLG* [2013] EWHC 792 (Admin), per Hickinbottom, J, at [47]–[69].

OVERALL PLANNING BALANCE

99. For the reasons set out above, the Council contends that the appeal proposal does not accord with relevant policies of the development plan cited in the five retained reasons for refusal, and the development plan as a whole. Those policies are consistent with current national policy and should be given full weight.

100. Whilst the Council recognises that there continues to be an ongoing need to provide gypsy and traveller pitches across the District, and (at the time of writing) if this appeal were allowed the Council would be able to demonstrate a 5 year supply. In accordance with paragraph 27 of the PPTS, this is a significant material consideration.

101. In the light of the limited extent of the present shortfall of 1 traveller pitch, which may be remedied in the near future, as previously stated, the Council contends that this shortfall should be given moderate weight. When applying the tilted balance in NPPF, paragraph 11 d) ii., the scale of the shortfall is a material planning consideration to be weighed in the balance by the decision-maker.

102. Taking account of the very considerable harm that would be caused by a grant of permission, whether permanent or temporary, and the significant failure to accord with current national policy and the development plan as a whole, the Council submits that the factors weighing in favour of granting permission are significantly and demonstrable outweighed by that very considerable harm.

103. In respect of temporary planning permission, the Council contends that it would be unreasonable in the circumstances to expect the appellant to incur the necessarily substantial expense associated with complying with the proposed conditions agreed to be necessary should planning permission be granted on a permanent basis. In that regard, the Council invites the Inspector to find that proposed conditions would not satisfy the legal and policy test for imposing conditions were planning permission to be granted on a temporary basis. As such the very considerable harm public safety, landscape character, and ecological interests would not be avoided or ameliorated if temporary planning permission were granted.

104. In any event, temporary permission should only be granted where it is expected that the planning circumstances will change in a particular way at the end of the temporary period. On the evidence, no such change in circumstances can be expected and the very considerable harm to interests of acknowledged planning precedent effect of granting planning permission for the intentional unauthorised development weighs heavily in favour of refusing temporary planning permission.

APPEAL B

Validity / Correction of the Enforcement Notice

105. The views of the main parties on the proposed corrections to the Enforcement Notice were canvassed in pre-inquiry correspondence and discussed at the inquiry. The Council relies upon its written and oral submission on this issue which are not repeated here.

106. Prior to the opening of the inquiry, the appellant had not asserted in correspondence that the proposed corrections would cause prejudice but now alleges that the inclusion of the field shelter / adapted dayroom in the breach alleged in and the requirements of the enforcement notice would cause the appellant prejudice because he is statute barred from relying on ground (a) of section 174(2).

107. That contention is fanciful. At all material times the appellant has been professionally represented by experienced planning agent. If the appellant had genuinely wished to have the planning merits of retaining the field shelter / adapted dayroom considered on appeal, it was open to him to make a Wheatcroft application for a minor amendment to the Appeal A scheme.

108. But that is not the appellant's case. When giving evidence the appellant made clear that he would accept any form of permission that would allow his family to remain on the land. Moreover, it was conceded by the appellant that the adapted dayroom would be inadequate for the purposes of providing shelter during a radiological emergency at AWE Aldermaston.

109. For the reasons the Council submits that the proposed corrections to the enforcement notice are necessary to the protect the public interest and will not cause prejudice to any party, least of all the appellant.

Grounds of Appeal

110. Pursuant to section 174(2) of the 1990 Act, the grounds for consideration in the enforcement appeal are grounds (b) and (g).

Ground (b)

111. In relation to ground (b) the Council maintains its position as set out in its enforcement Statement of Case at paragraphs 17-18.[49] The Appellant's assertion that the failure to include the existing dayroom (i.e., the field shelter converted to a building) somehow 'under enforces' is wrong in fact and wholly misconceived as a basis for pursuing a ground (b) appeal. That is the case whether or not the enforcement notice is corrected.

112. The Appellant's ground (b) appeal has no merit and should be dismissed.

Ground (g)

113. In relation to ground (g), the appellant has not provided evidence to demonstrate that a 3 month compliance period is unreasonable. The Council maintains that this is sufficient time to comply because the Council is actively seeking agreement that should the appeal be dismissed then the occupants of the site can be transferred to a pitch at Four Houses Corner which is nearby in Padworth . The Council as leaseholder has control over the tenancies of this site. Should this agreement come to fruition, then the 3 month period is clearly adequate.

114. In addition, if the mobile home were to remain on the site for an additional 9 months, then the continuing visual and ecological harm caused by the development would persist for a longer period with no sound, evidenced basis.

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[49] CD4.9. paras 17-18

115. The Council also relies upon the oral submissions made during the Ground (g) roundtable session which are not repeated here.

CONCLUSION

116. The Council maintains its objection to the appeal proposal relying upon the five retained reasons for refusal each of which has been justified by detailed expert evidence. The proposed development fails to accord with the adopted development plan policies recorded in the Council's decision notice dated 28 March 2024. The Council further contends that other material considerations do not indicate that planning permission should be granted.

117. For the reasons explained in the Council's written and oral evidence, the appeal development is unacceptable in planning terms, and the adverse effects of granting permission would significantly and demonstrably outweigh any benefits secured by the scheme, when assessed against the Policies in the NPPF, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

118. Accordingly, the Council respectfully invites the Inspector to dismiss both appeals.

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MARK BEARD

7 February 2025