

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL 1: APPEAL BY MR DREW PRICE AND MR JAMES BALL AGAINST A REFUSAL BY SOUTH CAMBRIDGESHIRE COUNCIL TO ISSUE A CERTIFICATE OF LAWFULNESS UNDER SECTION 192 OF THE TOWN & COUNTRY PLANNING ACT 1990 FOR THE USE OF LAND FOR THE STATIONING OF 2 MOBILE HOMES FOR RESIDENTIAL PURPOSES

PINS REF: APP/W0530/X/22/3308443

GPS REFERENCE: 21_1161A

LPA APPEAL REFERENCE: 22/01574/CL2PD

APPEAL 2: APPEAL BY MR DREW PRICE AND MR JAMES BALL AGAINST A REFUSAL BY SOUTH CAMBRIDGESHIRE COUNCIL OF AN APPLICATION FOR A MATERIAL CHANGE OF USE OF LAND THROUGH INTENSIFICATION TO THE STATIONING OF CARAVANS FOR RESIDENTIAL PURPOSES, NINE DAYROOMS AND THE FORMATION OF HARDSTANDING ANCILLARY TO THAT USE

PINS REF: APP/W0530/W/22/3308444

GPS REFERENCE: 21_1161B

LPA APPEAL REFERENCE: 22/01703/FUL

APPEAL 3: APPEAL BY JAMES BALL AGAINST AN ENFORCEMENT NOTICE ISSUED BY SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL ON 18 JULY 2024, ALLEGING 'WITHOUT PLANNING PERMISSION, THE MATERIAL CHANGE IN USE OF THE LAND FOR THE STATIONING OF CARAVANS FOR RESIDENTIAL OCCUPATION.'

PINS REF: APP/W0530/C/24/3349303

GPS REFERENCE: 21_1161C

LPA APPEAL REFERENCE: EN/00309/22A

LAND AT CHEAR FEN BOAT CLUB, TWENTYPENCE ROAD, COTTENHAM, CAMBRIDGESHIRE,
CB6 8PX

**PROOF OF EVIDENCE OF MR MATTHEW GREEN
ON BEHALF OF THE APPELLANT**

1. I am a Director in Green Planning Studio Ltd (“GPS”) with responsibility for planning issues.
 2. Between 2002 and 2005 I was a Shadow Housing and Planning Minister. I was the only frontbencher to complete all 18 months passage of the 2004 Planning and Compulsory Purchase Act. I also served as a front-bench lead on the 2004 Housing Act as well as other acts and many Statutory Instruments.
 3. In 2005 I began appearing as a professional witness in planning appeals. I set up Green Planning Solutions in early 2006, which became a partnership in April 2007. The partnership then became a limited company in 2013 known as Green Planning Studio Ltd.
 4. The practice is a planning led, planning and architecture practice dealing in development proposals across the spectrum. The vast majority of its development proposals are in areas of development restraint. It seems likely that the practice is the leading practice in England and Wales in terms of numbers of applications for caravan sites.
 5. To date I have appeared as a witness in over 400 planning Inquiries and hearings. I have also appeared as a witness in the High Court and lectured for the RICS as part of their CPD process.
 6. When appearing as a witness in the High Court in a planning injunction case, *Brentwood Borough Council v Ball and Others* [2009] EWHC 2433 (08.10.09), Stadlen J made the following observations on my experience and judgment.
119. In my judgment the decisions and some of the reasons for them in the Clementines Farm appeal support the conclusion that there is a real prospect that the Defendants’ appeal may succeed. That is a conclusion which I would have reached even without sight of those decisions. I found Mr Green to be a very experienced, well informed and balanced witness and his views on the relative weight likely to be attached by an inspector to the personal circumstances of the defendants, and the lack of alternative accommodation on the one hand and the harm to the environment and the inappropriateness of residential development in the Green Belt on the other broadly persuasive.
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7. I understand my duty to the Inquiry and have complied, and will continue to comply, with that duty. I declare that the evidence which I have prepared and provided for this appeal is true. I confirm that the opinions expressed are my true and professional opinions.

The Appeals

8. Appeal 1 (Appeal reference 3308443) (Appendix A1) is a s.195 appeal is against the refusal by South Cambridgeshire Council ("**the Council**") of an application ("**the CLOPD application**") (reference 22/01574/CLPD) (Appendix A2) for a certificate of lawfulness pursuant to Section 192 of the Town and Country Planning Act for the use of land for the stationing of two mobile homes for residential purposes.
9. The CLOPD application was submitted with the following documents
 - Supporting Statement
 - Location Plan 21_1161A_001
10. Appeal 2 (Appeal reference 3308444) (Appendix A3) is a s.78 appeal against the refusal by the Council of an application for the material change of use of land through intensification to the stationing of caravans for residential purposes, nine dayrooms and the formation of hardstanding ancillary to that use (reference 22/01703/FUL) ("**the planning application**") (Appendix A4).
11. The planning application was submitted with the following documents:
 - Planning Statement
 - Location Plan 21_1161B_001
 - Existing Site Plan 21_1161_002
 - Proposed Block Plan 21_1161B_003 Rev 03
 - Flood Risk Assessment by Geoff Beel Consultancy May and July 2022
12. Appeal 3 (Appeal reference 3349303) (Appendix A5) is a s.174 appeal against an Enforcement Notice issued by the Council on 18th July 2024 ("**the 2024 EN**") (Appendix 6) alleging:

“without panning permission, the material change in use of the land for the stationing of caravans for residential occupation”

13. The 2024 EN was appealed on 1st August 2024 on grounds (b),(c),(d),(f) and (g).

The Appeal Site

14. The Appeal Site for each appeal is as follows:
 - Appeal 1 – as indicated on Location Plan 21_1161A_001
 - Appeal 2 - as indicated on Location Plan 21_1161B_001
 - Appeal 3 - as indicated on the 2024 EN Plan.
15. The Inspector is requested to note that permission will be sought under Appeal 2 for the red line area to be reduced to mirror that of Appeal 1 as indicated on Location Plan 21_1161A_001.
16. Broadly speaking the appeals relate to the same area of land and for ease, reference to the Appeal Site is to be taken as reference to any of the areas indicated on the above plans.
17. The Appeal Site is bounded to the north and west by defined and established mature hedgerows and tree.
18. The Appeal Site is bounded to the west and south by established bunds.
19. To the north of the Appeal Site is the River Great Ouse, Twenty Pence Marina and some residential properties.
20. To the west of the Appeal Site is the B1049 from which the Appeal Site is accessed. To the east is agricultural fields, beyond which lies Cambridge Gun Club.
21. To the South of the Appeal Site is an agricultural field intersected by Long Drove beyond which is Mitchell Hill quarry and further residential properties.
22. The Appeal Site is located approximately 4km north-east of Cottenham.

Personal Knowledge of the appeal site in 2021 and 2022

- 23.
24. The involvement of GPS and myself with the appeal site began on 15th February 2021 when we were contacted by Joseph Tidd – his enquiry was noted by the GPS staff member taking the call as follows: *'Land they are living are has been passed for 1 mobile home. Council are saying there is an issue with where the MH is. Client says that where the council state the MH should be, there is a barn. However, the barn has recently blown over in the wind. They received a letter in October to this effect saying that they needed to put in for planning. Council visited around November time and said that issue with where MH is. The council were meant to be visiting the site the other day to serve an injunction but they never came. They also have 2 tourers on the land. The client's brother has also moved onto the land and has 1 mobile home and tourer so would like to put in planning permission for this. Client says there has been no temporary stop notice or enforcement notice.'*
25. Joseph Tidd sought a phone advice from myself which was provided on the 2nd March 2021. He informed me that his father had bought the land in stages, completing the overall purchase in early 2016. His father had bought the land so that family members would have somewhere to live. His father had submitted an existing lawful use application which had been granted but the Council had reduced the red line area to around a barn type structure on the site, the mobile home on site was always in a different place. The land was now being transferred to Joseph and his brother Shane. Joseph had brought a new mobile home onto the land in the Autumn of 2020.
26. On 3rd March 2021, Joseph Tidd sent to GPS an email he had received from the Council's enforcement officer on 3rd November 2020. (Appendix A54).
27. On 9th March 2021 I rang the Council's Enforcement officer, Alistair Funge and had a conversation with him. His concerns were two-fold. Firstly, there were now two mobile

homes on the land and secondly, neither of them were in the place 'permitted by the LDC'. I explained about planning units and therefore it would be lawful wherever a mobile home was located within that planning unit. I also explained that mere intensification was not a material change of use. The Council officer did not suggest that the use accepted as lawful in 2016 had been abandoned.

28. There was no complaint from the enforcement officer of the bunds, the access or the access track, the breach he was considering was merely the caravans.
29. On 10th March 2021 I emailed Alastair Funge (appendix A55) attaching a copy of *Reed v Bracknell* in the Court of Appeal.
30. Despite the conversation the Council issued an Enforcement Notice on 26th June 2021 (Appendix A15). It was clear they had ignored the contents of the conversation. Presumably Amrit Virdee, who was presumably senior to Alastair Funge, thought they must know better than me as they were employed by the Council. GPS were instructed by Joseph Tidd to appeal the notice which we did, and the appeal form is appended (Appendix A56).
31. On 13th August 2021 I made a visit to the site, the access, access track and the bunds had clearly been in place for some considerable time. I walked around the site and walked the nearby footpaths. The photos I took on that visit are appended to this proof (Appendix A53).
32. On 28th September 2021 I made a second site visit, this was at the joint request of the Tidds, and Drew Price and James Ball who were discussing purchasing the site. I met the Tidds and the current occupants on site. The current occupants were buying the site to live on. There was an agreement about the enforcement notice appeal continuing in the name of Joseph Tidd, but with the purchasers taking over paying for the appeal.

33. The Council withdrew the Enforcement Notice on 24th November 2021 (Appendix A16).

34. I made a third site visit on 19th January 2022, at the request of Drew Price and James Ball, who were now the owners of the site. I met them and other people who are now occupants of the site, and I advised on a course of action regarding applications. We subsequently received instruction to firstly submit a s.192 application, to be followed by a planning application.

35. I made a further site visit at the request of Drew Price and James Ball on 27th October 2022.

Approach

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

Substantial
Considerable
Significant
Moderate
Modest
Limited
Negligible

Relevant Planning History

38. The relevant planning history of the Appeal Site is as follows:

Reference	Notes	Date	Outcome
EN/00309/22A	Enforcement Notice (Appendix A6) issued alleging: <i>"Without planning permission, the material change in use of the Land for the stationing of caravans for residential occupation"</i>	18 Jul 2024	Subject of Appeal 3
EN/00309/22	Enforcement Notice (Appendix A7) issued alleging: <i>"Without planning permission, the material change in use of the Land for the stationing of caravans for residential occupation"</i>	10 Jul 2024 (incorrectly dated 10 Jul 2023)	Enforcement Notice withdrawn 18 Jul 2024 (Appendix A8)
N/A	Enforcement Notice (Appendix A9) issued alleging: <i>"Without planning permission, the material change in use of the Land for the stationing of caravans for residential occupation"</i>	23 Dec 2022	Enforcement Notice withdrawn 10 Jul 2024 following Judicial Review (Appendix A10)
N/A	Planning Contravention Notices (Appendix A11) issued alleging <i>"Material change of use of the land to residential use for caravan pitches"</i> .	10 Nov 2022	Responses provided 22 Dec 2022 (Appendix A12)
N/A	Enforcement Notice (Appendix A13) issued alleging: <i>"Material change of use of the land to residential use as 9 caravan pitches"</i> .	9 Sept 2022	Enforcement Notice withdrawn 20 Oct 2022 (Appendix A14)
22/01703/FUL	Application for the material change of use of land through intensification to the stationing of caravans for residential purposes, nine dayrooms and the formation of hardstanding ancillary to that use	5 Sept 2022	Refused (Subject of Appeal 2)
22/01574/CLPD	Application for a Certificate of Lawfulness of Proposed Use or Development under Section	5 Sept 2022	Refused

	192 of the Town and Country Planning Act 1990, for the use of land for the stationing of 2 mobile homes for residential purposes at land to the South of Chear Fen Boat Club Twentypence Road Cottenham Cambridgeshire		(Subject of Appeal 1)
EN/01535/20	Enforcement Notice (Appendix A15) issued alleging: <i>“Without planning permission, the material change of use of land to a caravan site for residential use involving the siting of two sectional caravans and three touring caravans and the unauthorised development of concrete bases”</i> (“the 2021 EN”)	21 June 2021	Enforcement Notice withdrawn 24 Oct 2021 (Appendix A16)
S/1346/16/LD	Certificate of lawful development for the standing of a mobile home	Tue 11 Oct 2016	Granted
S/0564/99/F	Variation of Conditions 1 & 2 of Planning Permission S/0759/96/F to Allow Permanent Use of Land as Clay shooting Ground on Fridays Saturdays and Sundays	Fri 04 Jun 1999	Granted
S/1274/82/	Mooring of boats extension of period consent s/0228/81	Mon 15 Nov 1982	Refused
S/0403/75/F	Siting of a mobile home	Thu 15 May 1975	Refused
S/1129/75/F	Mooring of boats	Thu 11 Sep 1975	Granted

39. The Inspector will note that the Council have in the past four years issued five Enforcement Notices relating to the Appeal Site, four of which have been withdrawn, including a withdrawal following judicial review proceedings, due to errors within the notices and issues with effective service. The fifth enforcement notice is the 2024 EN which forms the subject of Appeal 3.

40. An expediency report was issued in 2022 (Appendix A17). It is understood that this expediency report provides the justification for all enforcement notices issued thereafter including that which is the subject to Appeal 3.

41. In addition to the above enforcement notices, the most pertinent planning history to which consideration ought to be given is as follows:

- A Certificate of lawful development for the standing of a mobile home, reference S/1346/16/LD, granted on 11 October 2016 (Appendix A19) (“**the 2016 CLEUD**”).
- The CLOPD application (reference 22/01574/CLPD) (Appendix A2) for a certificate of lawfulness pursuant to Section 192 of the Town and Country Planning Act for the use of land for the stationing of two mobile homes for residential purposes which forms the subject of Appeal 1. The officer’s report and decision notices are at appendices A20 and A21 respectively.
- The planning application for the material change of use of land through intensification to the stationing of caravans for residential purposes, nine dayrooms and the formation of hardstanding ancillary to that use (reference 22/01703/FUL) which forms the subject of Appeal 2. The officer’s report and decision notices are at appendices A22 and A23 respectively.

Principal issues

42. The principal issues in the respective appeals appear to be as follows:

Preliminary Issues

- Fallback position

Appeal 1: S.195 Appeal

- Planning Policy and Guidance
- Whether the stationing of an additional of a mobile home would amount to “development” pursuant to S55 TCPA 1990.
 - Existing permissions and planning units
 - Abandonment of the 2016 CLEUD
 - Intensification

Appeal 2: S78 Appeal

- National and Local Policy
- Potential adverse impacts (harms) of the development
 - Principle of Development
 - Sustainability
 - Character and Appearance
 - Highways
 - Noise
 - Dust
 - Biodiversity
 - Minerals Safeguarding
 - Intentional Unauthorised development
- Third party comments
- Conclusion on harm
- Material considerations (benefits) in favour of the development (where relevant):
 - Local, regional and national need
 - The provision of alternative, suitable, acceptable and affordable alternatives
 - Failure of Policy
 - Lack of a five-year land supply
 - Fallback position
 - Personal Circumstances
 - Gypsy status
 - Personal need
 - Health
 - Best Interests of the Child
 - Temporary Planning Permission
 - Planning Balance
 - Human Rights
 - Suggested Conditions

Appeal 3: S.174 Appeal

- Ground B – Whether the alleged breach of planning control has occurred as a matter of fact:
- Ground C – That there has not been a breach of planning control
- Ground D – The time for enforcement has passed
- Ground F – The steps required to comply with the requirements of the notice are excessive and lesser steps would overcome the objections.
- Ground G – The time given to comply with the notice is too short

43. This Proof of Evidence will address each of these in turn.

Preliminary Issue: Fallback position

44. Section 57(4) states:

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

45. The relevant fallback position is of relevance for all three appeals.

- Appeal 1 assists in establishing the relevant fallback position in considering the appropriate planning units, whether the 2016 CLEUD has been abandoned and whether an increase in the number of mobile homes from that permitted in 2016 CLEUD to two, is lawful.
- The application of Section 57(4) of the TCPA 1990 is relevant to the S78 appeal (Appeal 2) as it will form the baseline against which the Site's impact ought to be assessed as well as constituting a material consideration in favour of the appeal.
- The fallback position is also relevant to Appellant's ground (b), (c), (d) and (f) appeals under Appeal 3.

46. As such the Appellant's fallback position is set out at the forefront to assist the Inspector's review of the remainder of the proof of evidence.

Mixed Use – Agriculture, residential, and storage of vehicles, boats and materials

47. I consider that the likely that the fallback position for the land is a '*mixed use for the stationing of mobile homes for residential purposes, agriculture and storage of vehicles, boats and materials*'. The number of caravans that can lawfully be stationed on the land for residential purposes being two, in line with the appellant's s.195 Appeal below, as the second mobile home would not constitute a material change of use.

48. I understand that the Council's position in respect of any possible fallback position would that of a mixed use for the stationing of a mobile home for residential purposes and agriculture.
49. It is probably not material to the outcome of the appeals which of these two mixed uses would be correct. Save for, if the appeals are dismissed, one of these positions forms the use that can be reverted to, pursuant to section 57(4) of the Act.
50. The expediency report (Appendix A52) for the 2021 EN states as follows:
- "The planning records associated with the LDC suggest that between 26 May 1978 – Jan 2016 the land was in **mixed use, including for use of the land (as defined by the LDC) for the siting of a mobile home for residential use and use of the wider land for an agricultural feed stock business (focussed on the sale of carrots for horse feed) by a Mr and Mrs Laphorn.**" (GPS emphasis added)*
51. As will be shown within this Proof, the area which formed the subject of the 2016 CLEUD was significantly and incorrectly reduced by the Council in issuing the CLEUD when it is clear from the above extract of the 2021 expediency report that the mixed use referred to was taking place across the wider site.
52. The element of the mixed use in dispute between the parties is the storage of vehicles, boats and materials, which will now be considered.
53. It is clear from Google Earth imagery that the mixed use of the site was not confined to agriculture and the stationing of caravans for residential purposes, with vehicles (including boats) and materials being stored on the land for a period in excess of 10 years.
54. The 2016 CLUED application was supported by the following photos (Appendix A18) evidencing the storage of a boat on the site from 1978 remaining on site at the point of making the application:



BOAT ARRIVING AT SITE IN 1978



BOAT STILL ON SITE 2016

55. The Google Earth aerial images set out below clearly evidence vehicles being stored on the land from at least 1999.

56. The Google image which accompanied the 2016 CLUED application, replicated below, clearly shows vehicles stored on the land:



57. Google earth image dated 2015:



58. Google Earth image dated 15th September 2012:



59. Google Earth image dated 17th October 2008:



60. Google Earth image dated 11th May 2007



61. Google Earth image dated 1st January 2005:



62. Google Earth Image dated 1st January 2003:



63. Google Earth image dated 14th April 2003:



64. Google Earth Image dated 14th March 2003:



65. Google Earth image dated 1st January 1999:



66. The photographs submitted with the 2016 CLUED application and the Google Earth imagery clearly demonstrate that the mixed use was not confined to agriculture and the stationing of caravans for residential purposes, with the lawful fallback position therefore being the mixed use of the land for the '*stationing of mobile homes for residential purposes, agriculture and storage of vehicles, boats and materials*'.

Stationing of mobile homes for residential purposes

67. If the Inspector is not in agreement with the mixed use as set out above being the fallback position, then in the alternative, the fallback position would be that of the stationing of caravan(s) for residential purposes and agriculture.
68. The 2016 CLUED (Appendix A19) refers to the '*siting of a mobile home for residential use*'.
69. It will be shown within Appeal 1, the s.195 Appeal, that use of the land for the stationing of two mobile homes within the planning unit would not amount to a material change of use and is therefore the lawful fallback position.

Appeal 1: S.195 Appeal

70. Appeal 1 (Appendix A1) is a s.195 appeal is against the Council an application for a certificate of lawfulness pursuant to Section 192 of the Town and Country Planning Act for the use of land for the stationing of two mobile homes for residential purposes.

Planning Policy and Guidance

71. As this is an application for a certificate of lawful use under s.192, the Development Plan and National Policy (NPPF) are not relevant.
72. The National Planning Practice Guidance (NPPG) was first published on the 6th March 2014 and runs alongside the NPPF in order to make the planning process more accessible.
73. Paragraph 003 (Reference ID: 17c-003-20140306) sets down that:

*“In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, **for which planning permission is not required.**” [GPS emphasis]*

74. Paragraph: 009 (Reference ID: 17c-009-20140306) states:

“A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.”

*In determining an application for a prospective development under section 192 a local planning authority needs to ask “**if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?**”*

Whether the stationing of an additional mobile home would amount to “development” pursuant to S55 TCPA 1990.

75. The CLOPD Application is predicated on the existence of the 2016 CLEUD and sought confirmation that the siting of two residential mobile homes within the red line area of the application site as identified on the Location Plan (Ref: 21_1161A_001), as an increase in the number of caravans from the one permitted pursuant to the 2016 CLUED, would not constitute ‘development’ pursuant to S.55 TCPA 1990 and thus would be lawful.
76. The Decision Notice for the **CLOPD** Application provides the following explanation for the Council’s refusal:

“The previous lawful development certificate S/1346/16/LD (2016 Certificate) did not identify a wider planning unit operating only as a caravan site. The wider use of the land was likely to have been in mixed use as part of an agricultural feed business and not solely a caravan site. The scope and effect of the 2016 Certificate was therefore limited to its terms and geographical remit. With the boundaries of the 2016 Certificate drawn as they are, the change of use of the land from being partly used for a single mobile home to the entire land being used for 2 mobile homes would constitute a material change of use of the land at the very least because the planning unit is different and because the Council is aware that the previous lawful use of the land was in all likelihood a mixed use. That notwithstanding, the lawful use as defined in the 2016 Certificate was subsequently, and in all likelihood, abandoned based on the information available to the Council; the mobile home being first abandoned and then dilapidated and derelict.

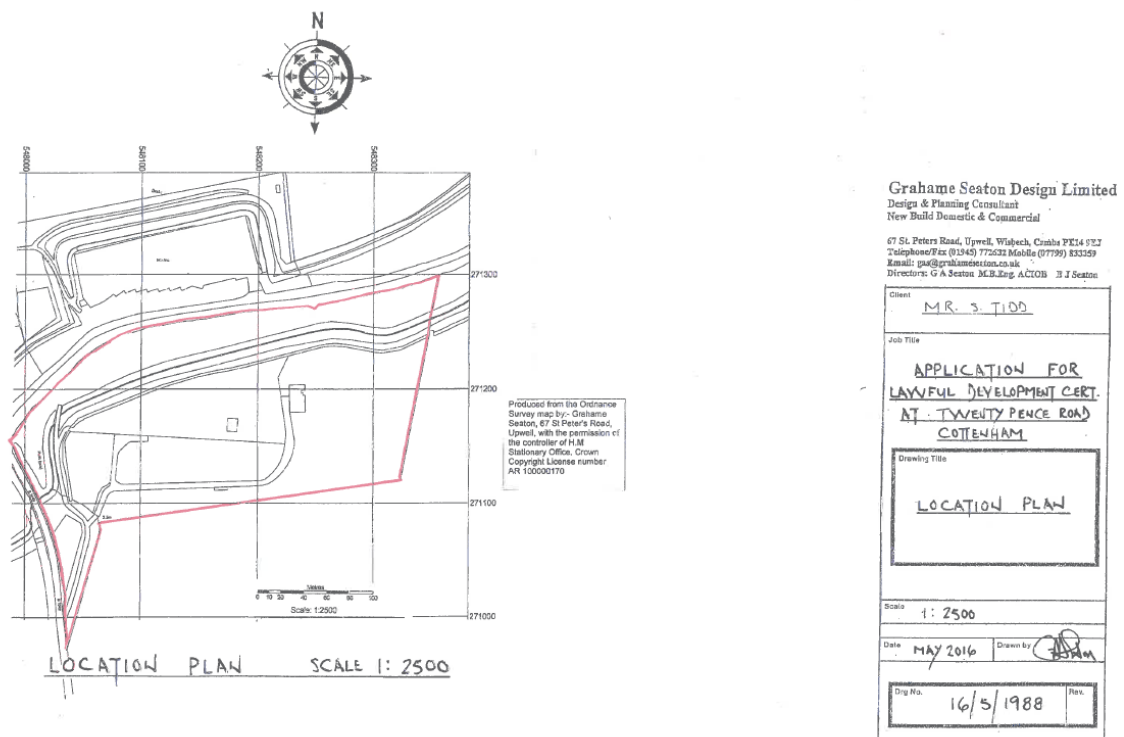
Even if the applicant is correct that the 2016 Certificate pertained to the entire portion of land the subject of the current application and the residential use had not been abandoned, the proposed use would still not be lawful because it would amount to intensification of the use as a matter of fact and degree and taking account of the planning impacts of the more intensive use.”

77. Similar comments are made within the Council's Final Comments and their case can be summarised as follows:

- The 2016 CLEUD was restricted to a finite area as identified on the accompanying plan and did not apply to the wider planning unit indicated on 21_1161A_001;
- The 2016 CLEUD has been abandoned.
- In the alternative, there would be an intensification constituting a material change of use.

2016 CLEUD area

78. The Location Plan submitted with the 2016 CLEUD is replicated below.



79. The Council, sought to restrict the 2016 CLEUD, to the specific area where the mobile home was understood to be sited and in doing so identified such as a separate planning unit to the remainder of the Appeal Site.

80. The Council, in restricting the 2016 CLEUD in this manner were incorrect; the lawful use was taking place over a wider planning unit than indicated on the plan and the mobile home did not comprises a separate planning unit.

81. The use that was taking place as at the time of the issue of the 2016 CLEUD was most likely the *'mixed use for the stationing of mobile homes for residential purposes, agriculture and storage of vehicles, boats and materials'* and this was taking place across the entirety of the Appeal Site.

82. This was conceded by the Council within the expediency report (Appendix A52) for the 2021 EN wherein it was stated:

*"The planning records associated with the LDC suggest that between 26 May 1978 – Jan 2016 the land was in **mixed use, including for use of the land (as defined by the LDC) for the siting of a mobile home for residential use and use of the wider land for an agricultural feed stock business (focussed on the sale of carrots for horse feed) by a Mr and Mrs Laphorn.**" (GPS emphasis added)*

83. This can also be seen with consideration of the identification of planning units as set out in the judgment of ***Burdle v Secretary of State for the Environment and another*** [1972] 3 All ER 240 (Appendix B13) where Bridge JJ set out the following categories:

1) *"Whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered"*

2) *"It may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land.*

3) *“It may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit”*

84. The Council have adduced no evidence to demonstrate that the Appeal Site was in different ownership as at the time of the issue of the 2016 CLEUD. The Council within the planning application Officer’s Report confirms the Appeal Site was owned by a single named family.
85. The below Google Earth images from 2015 and 2018 (either side of the decision date) show the Appeal Site. There was no physical separation or demarcation indicating separate planning units of the uses.





86. These images make it clear that the Site, had one access and was well defined by obvious boundaries at the time the Council were determining the 2016 CLEUD application.
87. This is also shown by a Google image which accompanied the 2016 CLUED application, replicated below.

Google Maps Cottenham



Imagery ©2016 DigitalGlobe, Getmapping plc, Infoterra Ltd & Blusky, The GeoInformation Group, Map data ©2016 100 ft Google

Cottenham
Cambridge CB24 8PS
UK

88. The 2016 CLEUD photographs (Appendix A18) also do not indicate any functional or physical distinction between the uses taking place on the Appeal Site, with no evidence of separate or fenced areas.

89. It is therefore clear that the Council were incorrect to significantly reduce the red line area of the 2016 CLEUD and that as per the 2021 expediency report there was a wider planning unit on the site

“....in mixed use, including for use of the land (as defined by the LDC) for the siting of a mobile home for residential use and use of the wider land for an agricultural feed stock business (focussed on the sale of carrots for horse feed) by a Mr and Mrs Laphorn.” (GPS emphasis added)

90. Indeed, the Enforcement Notice dated 21st June 2021 (Ref: S/1346/16/LD) (Appendix A15) served by the Council and every other Enforcement Notice served by the Council in relation to the Appeal Site has identified the same area as the location plan submitted as

part of the 2016 CLEUD indicating an acceptance by the Council that the whole area was and remains a single planning unit.

91. The Council erred in amending the plan in respect of the 2016 CLEUD and the appropriate area over which the lawful use forming the subject of the 2016 CLUED existed was as indicated on the 2016 Location Plan, which includes the area sought pursuant to the CLOPD application.

Abandonment

92. The Council's secondary position in relation to Appeal 1 is that the 2016 CLEUD has been abandoned as per their Final Comments:

"....the lawful use as defined in the 2016 Certificate was subsequently, and in all likelihood, abandoned based on the information available to the Council; the mobile home being first abandoned and then dilapidated and derelict."

93. Further, the Council's statement of case for Appeal 3 details, in relation to the issue of the 2021 EN:

"The Council considers that, at the time the development subject to this notice was carried out, the use of the land for the stationing of a single mobile home had effectively been abandoned. The original owner had allowed their mobile home to become dilapidated prior to it being removed from the site."

94. The 2016 CLEUD was granted on 11th October 2016. Thus, it appears to be the Council's primary case on abandonment, that such occurred between 11th October 2016 and 21st June 2021 (the date of the issue of the first enforcement notice).

95. Interestingly, there is no suggestion in the Council's officer's report for the 2021 Enforcement Notice that the use found lawful in 2016 had been abandoned (appendix A52). This position is one the Council chose to adopt at a later stage.

96. The Council's secondary position on abandonment as per their statement of case for Appeal 3, is that the 2016 CLEUD was abandoned following the withdrawal of the 2021 EN when the then Owners, (hereafter "**the previous owners**") mobile home was removed from the land.

97. Notably, in reaching these conclusions, no reference has been made to relevant statutory provisions or case law applied to how the Council reached this conclusion.

98. Section 191 (6) of the Town and Country Planning Act 1990 states:

'The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.'

99. However, it should be noted despite the wording of s191 (6), in the case of *M&M (Land) v Secretary of State of Communities and Local Government [2007] EWHC 489 (Admin)* (Appendix B20) it was held that the use for a which a certificate is issued can be abandoned, it therefore is necessary to demonstrate the use has not been abandoned.

100. The case *Hughes v Secretary of State for the Environment, Transport and the Regions and South Holland District Council [2000]* (Appendix B11) indicates the following four criteria should be considered when assessing abandonment.

- The condition of the building (in this case caravan)
- The period of non-use
- The intention of the owner
- Intervening uses

101. Each of these criteria is assessed below in relation to the Appeal Site;

The condition of the caravan

102. The Council's Officer's Report for the application details that prior to the issue of the 2016 CLEUD, the caravan was lived in by the then owners ("the **original owners**"), until the sale of the Appeal Site in 2016.

103. The Officer's Report then goes on to say that:

"it appears that the mobile home lay empty on the land as it was considered unfit for human habitation by the new owner and Environmental Health.

...On 2 November 2020, a planning enforcement officer visited the land and observed that a large 2 section caravan had been sited on a new concrete base and a touring caravan was parked in proximity. The siting of the new base and caravans is not in accordance with the plan which forms part of certificate application S/1346/16/LD.f

.....

Site visited 12th March 2021.... It was noted that the abandoned / scrap caravan had been removed from the site."

104. There is no evidence in support of the Council's position that the caravan on site had become "*dilapidated and derelict*." Indeed, in the 2016 CLEUD application dated 11 May 2016 (Appendix A19) the following photographs were provided.



MOBILE HOMES ON SITE



105. There is no evidence within these photographs that the mobile home was inhabitable or derelict.

106. Further the Council has offered no evidence to demonstrate that the caravan was derelict and inhabitable from the grant of the 2016 CLEUD onwards in support of their first position of abandonment.

107. There is also no suggestion by the Council that any replacement or subsequent mobile homes brought onto the Site were inhabitable.

The period of non-use

108. There is no suggestion that a mobile home did not remain on the Appeal Site during the periods being considered, indeed the Council's Officer's Report (Appendix A52) confirms that the mobile home identified in the 2016 CLEUD was not removed until March 2021, by which time a replacement mobile home had been brought onto the Site (referenced as being on site by November 2020). Whilst it was not sited in the same location as the original mobile home, as above, it is the Appellant's position that a wider redline area is rightly applicable to the 2016 CLEUD within which the replacement mobile home was stationed.

109. Based on the above, the Council's alleged period of non-use, in relation to their primary position, appears to be post October 2016 (grant of the 2016 CLUED) – November 2020. However, the Council has provided no evidence in support of this position save for comments as to the alleged status of the caravan which are unsupported by the 2016 CLEUD photographs.

110. GPS Ltd were first contacted by the previous owners in February 2021. The information provided by the previous owners included that:

- They were living on the Site
- Their father had purchased the site so that family members could live there, and that is why he had submitted the 2016 lawful use application.
- The Council issued a letter to them in October 2020.

- The Council visited in November 2020 advising there was a problem with the location of the mobile home.

111. It is therefore clear that residential use was ongoing by at least October 2020.

112. As demonstrated above, it is not disputed that a mobile home was always stationed on the Appeal Site.

113. The Council's second position is that the abandonment of the use occurred following the withdrawal of the 2021 EN in 2022, with the Council's Statement of Case providing:

"An enforcement investigation was carried out, which culminated with the service of an enforcement notice in 2021. The enforcement notice was appealed, and in 2022, the notice was withdrawn, and the mobile homes were removed from the site and the enforcement file closed.

4.3 Later in 2022, the site was purchased by Mr Price & Mr Ball. A Certificate of lawfulness under S192 for the stationing of 2 mobile homes for residential purposes was submitted. The application was validated 29th March 2022 and refused 5th September 2022, with the appeal held in abeyance. 22/01574/CL2PD | Certificate of lawfulness under S192 for the stationing of 2 mobile homes for residential purposes. | Land To The South Of Chear Fen Boat Club Twenty pence

114. The Council's chronology is incorrect. The 2021 EN was withdrawn on 24th October 2021 (Appendix A16) not 2022. Notwithstanding that error, the Council's Expediency Report (A17) confirms that they received reports in June 2022 that the new occupiers had moved onto the Appeal Site. On the Council's case therefore, the period of non-use was at best 9 months (October 2021 – June 2022).

115. The evidence shows that:

- They contacted Green Planning Studio about gaining planning permission at the Site in or around September 2021

- The Site was purchased in 9th November 2021.
- They moved onto the Site in or around June/ July 2022 having completed some preparatory work in the months prior, and having instructed GPS to make two applications, a s.192 application for 2 mobile homes, and the subsequent planning application.

116. Whilst there may have been a short period where the Appeal Site did not have a residential occupant whilst the transfer of the Appeal Site and preparation of the Appeal Site was ongoing this would be insufficient to amount to abandonment. Cessation of a use for short periods of time does not amount to abandonment. As per ***Nicholls v SSE and Bristol CC*** [1981] there needs to have been the cessation of the use in such a way and for such a time to provide the impression to a reasonable onlooker that the use would not be resumed. Given the short period of time and works being undertaken at the Appeal Site, as noted by the Council's own site visit photographs, this conclusion could not reasonably be reached.

The intention of the owner

117. The Council's positions on abandonment relate to the period of time when the Appeal Site was in the ownership of previous owners. No evidence has been adduced by the Council from the previous owners to support their position on abandonment.

118. I however, have had direct contact with the previous owners and am able to comment on my interactions with them as follows.

119. As above, GPS Ltd were contacted by the previous owners in February 2021. I have reviewed the notes from that contact and confirm that the information provided by the previous owners included that:

- They were living on the Appeal Site
- The Council issued a letter to them in October 2020.

- The Council visited in November 2020 advising there was a problem with the location of the mobile home.
- Another family member had moved onto the Site and they wanted to secure permission for both families to live there.

120. On June 2021, the 2021 EN was issued, alleging:

“Without planning permission, the material change of use of land to a caravan site for residential use involving the siting of two sectional caravans and three touring caravans and the unauthorised development of concrete bases”

121. The 2021 EN was appealed and a ground (a) appeal, seeking permission for the breach was included. This clearly demonstrates the intention of the previous owners to reside on the Appeal Site in mobile homes.

122. Further, I completed a site visit on 13th August 2021 where I met with the previous owners.

It was confirmed to me during that site visit:

- They had been living on the Appeal Site
- They intended to remain if appropriate planning permissions could be secured.

123. It is therefore clear that the previous owner's intention was to continue a residential use at the Site.

124. The Council rely on the alleged clearance of the Appeal Site following the withdrawal of the 2021 EN in October 2021. However, the Council have no evidence to support their position; the evidence instead is contrary:

- As at September 2021, the previous owners were actively seeking planning permission for residential use at the Site via an appeal against the 2021 EN.
- As at September 2021, the previous owners were also in discussions with the now Appellant's about the purchase of the Appeal Site, whom had advised the previous owners of the intention to reside at the Appeal Site

125. A more logical, objective, explanation is that the clearance of the Appeal Site by the previous owners occurred due to the sale of the site, not an intention to cease residential use. A simple sale of land cannot be sufficient to the intention to abandon a use. If that were the case all house sales would amount to such.

126. There is no evidence that the previous owners (or indeed the current owners) intended to cease the residential use of the Appeal Site, in fact, all the available evidence is strongly to the contrary.

Intervening uses

127. The Council's Final Comments allege:

"Moreover, it appears that the lawful use the subject of the 2016 Certificate, i.e. the siting of a mobile home for residential use was abandoned or changed as the mobile home became dilapidated and derelict. The introduction of the present use was a new chapter in the planning history representing a material change of use in the land."

128. As per ***Pioneer Aggregates (UK) Limited v Secretary of State for the Environment*** [1985] 1 A.C. 132 HL, (Appendix B5), in considering the loss of existing use rights, an intervening use would need to amount to the formation of a new planning chapter or implementation of a permission incompatible with the claimed use right (inconsistent permissions).

129. Since the issue of the 2016 CLEUD there have been no inconsistent intervening uses on the Appeal Site.

130. The 2024 EN alleges:

"without planning permission, the material change in use of the land for the stationing of caravans for residential occupation"

131. There has not been the formation of a new planning unit. Further, the use as alleged in the 2024 EN, is not inconsistent with either of the fallback positions or the 2016 CLEUD.

132. Having completed an objective assessment in relation to whether the 2016 CLEUD could be considered to have been abandoned, it is clear since the issue of the 2016 CLEUD the land has continued to be used lawfully for the stationing of a mobile home for residential purposes and therefore has not been abandoned.

133. Furthermore, case law states once a use has ceased, its resumption would not amount to a material change of use unless that use had been abandoned, and as outlined above the site has not been abandoned any periods of non-use and in activity as referred to by the Council are not sufficient to indicate a change of use.

134. GPS have been involved in some appeals where the issues around potential abandonment of a residential use of a mobile home through not being lived in, were similar, one example is **Wayne Stanley v Braintree** (Appendix B37) another is **Mr A Barney v Eastleigh BC** (Appendix B38). In both cases the Inspector focused more on intent of the owners, rather than on any particular period of time.

Intensification amounting to a material change in use

135. The Council's alternative position is that the stationing of an additional mobile would constitute intensification amounting to a material change of use and thus constituting development pursuant to the Town and Country Planning Act 1990 ("**the TCPA**").

136. The TCPA controls development and imposes a requirement to obtain a planning permission for the development of the land. Development is defined in section 55 of the TCPA, which provides, in so far as is material:

"... 'development', means the carrying out of...any material change in use of any buildings or other land..."

137. As 2016 CLEUD relates to a single use, the following caselaw falls to be considered. In **Hertfordshire County Council v SSCLG and Metal and Waste Recycling Limited [2012]** EWHC 277(Admin) (1st February 2012) ('MWRL') Ouseley J addressed the issue of a

material change of use by intensification. The judgement of Ouseley J was upheld by the Court of Appeal in ***Hertfordshire County Council v Secretary of State for Communities and Local Government and Metal Waste Recycling Limited*** [2012] EWCA Civ 1473. (Appendix B19).

138. MWRL involved a scrapyard which more than doubled its throughput. The Council served enforcement notices alleging a material change of use by way of intensification. On appeal to the Secretary of State the Council were found to be wrong and the appeals against the enforcement notices upheld. The Council appealed that decision, but it was dismissed by Ouseley J in February 2012. This case is now of considerable significance when considering the issue of intensification.

139. The Court of Appeal considered the issue of a material change of use of land in the context of the number of caravans in the case of *Reed v Secretary of State for Communities and Local Government and Bracknell Forest District Council* [2014] EWCA Civ 241; [2014] JPL 725 (Appendix B10). The Inspector found that a doubling of the number of caravans on the land amounted to a material change in use but failed to identify any material change in the definable character of the land. Sullivan LJ stated at paragraph 21 and 28:

"If the inspector did consider whether there had been a change in the character of the mixed use on the site, then it would seem that the sole basis on which he concluded that there had been a material change of use was the simple fact that the additional caravan amounted to a "doubling of the number of caravans". A caravan site with four caravans rather than two caravans upon it still has the character of a caravan site that is the very reason for the imposition of conditions relating to the numbers of caravans such as were imposed on the 2017 permission granted on appeal. Thus, the only express reasoning in the decision is consistent with the inspector having adopted an erroneous approach: that "mere intensification" could amount to a material change of use

.....

I for my part am left in no doubt that the inspector did apply the wrong test, namely a mere intensification test, and that therefore this appeal should be allowed..”

140. The issue of a material change of use by intensification is addressed in the Encyclopedia of Planning Law and Practice (Sweet & Maxwell) at P55.53 which states;

‘....There may be a material change in use where an existing use has become intensified.....but mere intensification of a use does not in itself constitute a material change....it must be intensification of such a degree as to amount to a material change in the character of the use....a caravan site is still a caravan site whether three or 300 caravans are accommodated. Whilst an increase in numbers need not in itself constitute development, it will do so if the increase is of a scale sufficient to constitute a material change in the character of the use....’

141. It is noted that within the officer's report provided, the Council have not given any consideration to the above case law, despite the case law being provided with the CLOPD application.

142. It is clear that for the proposal to constitute 'development' in this case there must be a 'material change of use'. The test is not whether there has been a material change in the character of the area, but a material change in the character of the 'use' of the site, and a site for 1 caravan is a caravan site, as is one for 10 or 15, it is still the same use, a caravan site. There has to be something significant which changes about the use itself that creates the material change in the character of the use.

143. In considering the extent to which the use of caravans on the land could be increased without there being material changes in use, it is necessary to determine the current definable character of the land and the impact, if any, on the definable character of any change in the number of caravans. I accept that the proposal for an additional caravan is an intensification of the use of land. However, as case law shows, the intensification of the number of caravans on the site is unlikely to constitute a material change of use.

144. A residential mobile home is permitted to be sited on the land pursuant to the 2016 CLEUD. Increasing the number of caravans that can be stationed within the whole site from one to two is an intensification of the existing use. However, it is a mere intensification, the intensification is not such that it would constitute a material change in the character of the use and therefore would not fall into the definition of 'development' as described above.

145. For the reasons set out above, the Inspector is requested to grant the CLOPD application in the terms sought.

Appeal 2: S78 Appeal

146. Appeal 2 (Appeal reference 3308444) (Appendix A3) is a s.78 appeal against the refusal by the Council of an application for the material change of use of land through intensification to the stationing of caravans for residential purposes, nine dayrooms and the formation of hardstanding ancillary to that use (reference 22/01703/FUL) (**“the planning application”**) (Appendix A4).

National Policy

147. Planning Policy for Traveller Sites (“the PPTS”) is the current National Policy in relation to provision for gypsy caravan sites. It was published on Monday 26th March 2012 and came into effect on Tuesday 27th March with the publication of the National Planning Policy Framework. The PPTS was amended in August 2015, December 2023 and most recently December 2024.

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

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

- The clear intention of paragraph 4 to increase the number of gypsy sites with planning permission.
- In Policy A at paragraph 7(c) the need for a ‘robust evidence base to establish accommodation needs.
- In Policy B at paragraph 10(a) the need to maintain a five-year supply of sites.
- Policy C which deals with traveller sites in rural areas and the countryside.
- Policy H which deals with determining applications (and therefore appeals). In particular paragraph 24 which refers to the presumption in favour of sustainable development and paragraph 25 which sets down some of the material considerations to be considered by the decision maker.

- Paragraph 28 sets out 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.

- Annex 1: Sets down the revised definition of “gypsies and travellers” as:

*“Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily or permanently, **and all other persons with a cultural tradition of nomadism or of living in a caravan**, but excluding members of an organised group of travelling showpeople or circus people travelling together as such. **[GPS Emphasis]”***

150.SSCLG has withdrawn Designing Gypsy and Traveller Sites – Good Practice Guide (2008). However, in the absence of any replacement guide, there is no indication that the government believes that standards lower than previously applied to gypsy and traveller sites should not be applied.

National Planning Policy Framework

151.The revised National Planning Policy Framework (NPPF) was published on 12th December 2024, coming into effect immediately. The NPPF 2024 replaces the previous NPPFs published in 2023, 2021, 2019, 2018 and 2012.

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

- Paragraph 8 which sets out the three dimensions to sustainable development.
- Paragraph 11 which sets down the presumption in favour of sustainable development.
- Paragraph 32-34 set out how Local Plans should be prepared and reviewed.

- Paragraph 39 relates to decision-making of Local Planning Authorities and all other levels. It states that decision-takers at every level should seek to approve applications for sustainable development where possible.
- Paragraph 48 and 49 which set out how weight should be attributed to Development Plan policies.
- Paragraph 57 states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.
- Paragraph 61 which seeks to ensure sufficient land is developed to boost the supply of homes including *'that the needs of groups with specific housing requirements are addressed.'* The 2024 NPPF amended paragraph 61 to make it clear that the overall aim *'should be to meet an area's identified housing, including with an appropriate mix of housing types for the local community'*, as opposed to meeting 'as much of' that need as possible as set out in the 2023 NPPF.
- Paragraph 63 sets out how *"context, size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to...travellers...)"*
- Paragraph 116 states that applications should only be refused on highways grounds if there would be an unacceptable impact on highways safety or the residual cumulative impacts on the road network, post mitigation would be severe.
- Paragraph 187 states that planning policies and decision should prevent unacceptable levels of noise pollution.

- Paragraph 193 states that *‘if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused’*.
- Paragraph 225 provides development in mineral safeguarding areas should not normally be permitted if it might constrain potential future uses for mineral working.
- Paragraphs 231-232 which set out how weight should be attributed to Development Plan policies going forward.
- The NPPF makes it clear that development plan policies have to be considered in the light of the publication of the NPPF.

Presumption in favour of sustainable development

153. Paragraph 11(d) confirms that:

‘plans and decisions should apply a presumption in favour of sustainable development.

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:

- *the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or*
- *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, 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 ..'

154. Footnote 8 further clarifies that:

'This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites...'

155. Paragraph 28 of the PPTS 2024 states:

"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"

156. A High Court Judgement ***Monkhill Limited v Secretary of State for Housing, Communities and Local Government and Waverley Borough Council*** (Appendix B21), dated 24th July 2019, sets out a staged approach to the presumption in favour of sustainable development at paragraph 39.

National Planning Practice Guidance

157. The National Planning Practice Guidance (PPG) was published on the 6th March 2014 and runs alongside the NPPF in order to make the planning process more accessible. Sections have been updated from time to time.

Local Policy

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

159. The Local Policy is set out in the South Cambridgeshire Local Plan 2018 which was adopted on 27th September 2018. It sets out the planning policies and land allocations to guide future development to 2031.

160. The Decision Notice, Officer's Report and Council's Final comments (so far as they relate to Appeal 2) make reference to the following policies of the Local Plan.

- S/3 – Presumption in favour of sustainable development
- S/7 – Development Frameworks
- TI/2 – Planning for sustainable travel
- TI/3 – Parking Provision
- H20 – Provision for gypsies and travellers and travelling showpeople
- H22 – Proposals for gypsies and travellers and travelling showpeople on unallocated land outside development frameworks
- H23 – Design of Gypsy and Traveller Sites and Travelling Showpeople Sites
- HQ/1 – Design Principles
- NH/4 - Biodiversity
- SC/10 – Noise Pollution
- SC/11 – Contaminated Land
- CC/8 – Sustainable Drainage Systems

- CC/9 – Managing Flood Risk

161. Reliance is also placed on the Cambridgeshire and Peterborough Minerals and Waste Local Plan (“MWLP”), which was adopted on 28 July 2021. The Minerals and Waste Local Plan sets the framework for all minerals and waste developments until 2036. It sets out policies to guide mineral and waste management development. The following policies are referenced:

- Policy 5 - Mineral Safeguarding Areas (MSAS)
- Policy 16 – Consultation Areas (CAS)

162. The Council refer also to the Cottenham Neighbourhood Plan (2021), however, as no policies are referred to no further examination of this document is offered by this section of the proof.

163. As set down by Dove J at paragraph 58 of **Wavendon Properties Ltd v SoSoHCLG & Milton Keynes Council** [2019] EWHC 1424 (Admin) (Appendix B15) the basket of most important policies should be considered in the round:

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

development plan taken as a whole. A similar holistic approach to the consideration of whether the most important policies in relation to the decision are out-of-date is consistent with the purpose of the policy to put up-to-date plans and plan-led decision-taking at the heart of the development control process. The application of the tilted balance in cases where only one policy of several of those most important for the decision was out-of-date and, several others were up-to-date and did not support the grant of consent, would be inconsistent with that purpose.'

164. It would seem logical that the most important policies will be those that govern the particular type of development proposed (in this case gypsy and traveller) and those governing development in the particular area of the LPA (in this case the countryside). General policies that might apply to more than one form of development potentially anywhere in the Council's area would logically usually not be the most important policies.

165. In this case, the site has been allocated as a gypsy and traveller site, as such the policies that govern development in the Countryside are not the most important policies, as the principle of the development on the site has been accepted and is part of the development plan.

166. It is considered that the **most important policies** for determining the appeal are:

- H20 – Provision for gypsies and travellers and travelling showpeople; and
- H22 – Proposals for gypsies and travellers and travelling showpeople on unallocated land outside development frameworks

167. Policies that are relevant, but not the most important for determining the appeal are as follows:

- H/23: Design of Gypsy and Traveller Sites, and Travelling Showpeople Sites
- S/3 - Presumption in Favour of Sustainable Development
- SC/10 - Noise Pollution
- TI/2 - Planning for Sustainable Travel

- S/7 Development Frameworks
- HQ/1 Design Principles
- NH/4 - Biodiversity
- Policy 16 of the Cambridgeshire and Peterborough Minerals and Waste Local Plan
- Policy 5 of the Cambridgeshire and Peterborough Minerals and Waste Local Plan

168. The following policies are not considered relevant to the appeal. Copies of all policies referred to are at Appendices A24 and A25.

- TI/3 – Parking Provision – The planning application was not refused on the grounds of parking provision.
- SC/11 – Contaminated Land – The Council confirmed by way of email dated 1 November 2024 that refusal reason 6, which related to contaminated land was not being pursued. This policy is therefore not relevant to the determination of the appeal.
- CC/8 – Sustainable Drainage Systems - The Council confirmed by way of email dated 1 November 2024 that refusal reason 7, which related to flood risk and cited this policy was not being pursued. This policy is therefore not relevant to the determination of the appeal.
- CC/9 – Managing Flood Risk - The Council confirmed by way of email dated 1 November 2024 that refusal reason 6, which related to flood risk and cited this policy was not being pursued. This policy is therefore not relevant to the determination of the appeal.

169. The most important policies for determining the appeal are:

Policy H/20: Provision for Gypsies and Travellers and Travelling Showpeople

1. Provision will be made for at least 11 plots for Travelling Showpeople between 2011 and 2031, as indicated in the Cambridgeshire, King's Lynn & West Norfolk, Peterborough and West Suffolk Gypsy and Traveller Accommodation Assessment 2016.
2. Sites that have unrestricted planning permission for Gypsy and Traveller or Travelling Showpeople site use are safeguarded for this use. Planning permission for alternative development or changes of use will not be permitted.

170. Policy H/20 does not reflect the latest GTAA which was published in September 2024 and relies on the now outdated 2016 GTAA to inform the policy and its figures. This policy is therefore outdated.

Policy H/22: Proposals for Gypsies, Travellers and Travelling Showpeople Sites on Unallocated Land Outside Development Frameworks

Planning permission for Gypsy and Traveller caravan sites and sites for Travelling Showpeople (as defined in the Government's Planning Policy for Travellers) on unallocated land outside development frameworks, and outside the Cambridge Green Belt, will only be granted where:

- a. The Council is satisfied that the applicant has adequately demonstrated a clear need for a site in the district, and the number, type and tenure of pitches proposed, which cannot be met by a lawful existing or available allocated site;
- b. The site is located in a sustainable location, well related to a settlement with a range of services and facilities, including a primary school, a food shop and healthcare facilities, and is, or can be made, safely accessible on foot, by cycle or public transport;
- c. The needs of residents of the site can be met appropriately by local facilities and services without placing undue pressure on them;
- d. The number and nature of pitches provided on the site is appropriate to the site size and location, will address the identified need;
- e. The site would not present unacceptable adverse or detrimental impact on the health, safety and living conditions of the residents of the site by virtue of its location;
- f. The site, or the cumulative impact of the site, in combination with existing or planned sites, would respect the scale of, and not dominate, the nearest settled community;
- g. The site, or the cumulative impact of the site in combination with existing or planned sites, would not have an unacceptable adverse impact on the amenity of surrounding land uses, the countryside and landscape character, village character, on heritage or biodiversity interests, or from traffic generated;
- h. The site location would not have an unacceptable adverse impact on the effectiveness and amenity of existing or proposed public rights of way;
- i. Sites for Travelling Showpeople must also be suitable for the storage, maintenance and testing of items of mobile equipment.

Gypsy and Traveller sites are inappropriate development in the Green Belt. Any proposals in the Green Belt would have to demonstrate they comply with National and Local Policy regarding development in the Green Belt. If, through the application of such Policy, provision of a Gypsy and Traveller site in the Green Belt is considered acceptable in principle, the proposed development is required to comply with the criteria set out within this policy.

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

172. Policy H/22 incorrectly states that gypsy and travellers sites are inappropriate development in the Green Belt. This does not reflect the possibility that such can constitute appropriate development by virtue of the land being located in the Green Belt and compliance with paragraph 155 NPPF.

173. Policy H/22 fails to acknowledge that gypsy and traveller sites can be sustainably located without being well related to a settlement with specific facilities. This is not reflective of the PPTS or the NPPF, in particular, paragraph 83 which provides:

“To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.”

174. The PPTS at paragraph 13 sets down eight considerations for local authorities in terms of their policies on sustainability of gypsy and traveller sites(a-h). The requirements of policy H/22 are considerably more restrictive.

175. Policies that are relevant, but not the most important for determining the appeal are as follows:

Policy H/23: Design of Gypsy and Traveller Sites, and Travelling Showpeople Sites

Proposals for Gypsies and Traveller sites and Travelling Showpeople sites will only be granted planning permission where they are of a good design layout, have regard to government good practice guidance, and where:

- a. The proposal clearly demarcates the site and pitch boundaries using appropriate boundary treatment and landscaping sympathetic to, and in keeping with, the surrounding area. There should also be clear delineation of public communal areas and private space, and between residential areas and any non-residential areas;
- b. Site design takes account of the needs of residents, and provides an appropriate pitch layout that ensures security and safety of residents, and allows ease of movement, whether walking, cycling or driving;
- c. There is safe access for pedestrians, cyclists and vehicles, including for turning and parking, vehicles towing caravans, emergency vehicles and servicing requirements, including waste collection;
- d. All necessary utilities can be provided on the site including mains water, electricity supply, drainage, sanitation and provision for the screened storage and collection of refuse, including recyclable materials;
- e. The site is not located on contaminated land, unless the land is capable of adequate amelioration prior to occupation;

(continued)

- f. The proposal would avoid any unacceptable adverse or detrimental impact on the health and living conditions of the residents of the site or on neighbouring uses, including as a result of excessive noise, dust, fumes, lighting, traffic generation or activity;
- g. Built development in the countryside is kept to the minimum required, in order to minimise harm to the surrounding area. Any amenity buildings proposed are of an appropriate scale and reasonably related to the size of the pitch, and are of an appropriate design for the location;
- h. Pitches should be an appropriate scale for the size and number of caravans to be accommodated, without over-crowding or unnecessary sprawl at an appropriate density;
- i. Provision of space for play should be made on larger sites (10 or more pitches).

176. This policy is broadly consistent with National Policy. The proposed development complies with this policy.

Policy S/3: Presumption in Favour of Sustainable Development

1. When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It will always work proactively with applicants jointly to find solutions which mean that proposals that accord with the Local Plan and Neighbourhood Plans can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area unless material considerations indicate otherwise.
2. Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise – taking into account whether:
 - a. Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or
 - b. Specific policies in that Framework indicate that development should be restricted.

177. Limb 2 (b) fails to adequately reflect the position at paragraph 11(d)(i) of the NPPF..

Policy SC/10: Noise Pollution

1. Planning permission will not be granted for development which:
 - a. Has an unacceptable adverse impact on the indoor and outdoor acoustic environment of existing or planned development;
 - b. Has an unacceptable adverse impact on countryside areas of tranquillity which are important for wildlife and countryside recreation;
 - c. Would be subject to unacceptable noise levels from existing noise sources, both ambient levels and having regard to noise characteristics such as impulses whether irregular or tonal.
2. Conditions may be attached to any planning permission to ensure adequate attenuation of noise emissions or to control the noise at source. Consideration will be given to the increase in road traffic that may arise due to development and conditions or Section 106 agreements may be used to minimise such noise.
3. Where a planning application for residential development is near an existing noise source, the applicant will be required to demonstrate that the proposal would not be subject to an unacceptable noise levels both internally and externally.
4. The Council will seek to ensure that noise from proposed commercial, industrial, recreational or transport use does not cause any significant increase in the background noise level at nearby existing noise sensitive premises which includes dwellings, hospitals, residential institutions, nursing homes, hotels, guesthouses, and schools and other educational establishments.

178. This policy is consistent with the NPPF

Policy TI/2: Planning for Sustainable Travel

1. Development must be located and designed to reduce the need to travel, particularly by car, and promote sustainable travel appropriate to its location.
2. Planning permission will only be granted for development likely to give rise to increased travel demands, where the site has (or will attain) sufficient integration and accessibility by walking, cycling or public and community transport, including:
 - a. Provision of safe, direct routes within permeable layouts that facilitate and encourage short distance trips by walking and cycling between home and nearby centres of attraction, and to bus stops or railway stations, to provide real travel choice for some or all of the journey, in accordance with Policy HQ/1;
 - b. Provision of new cycle and walking routes that connect to existing networks, including the wider Rights of Way network, to strengthen connections between villages, Northstowe, Cambridge, market towns, and the wider countryside;
 - c. Protection and improvement of existing cycle and walking routes, including the Rights of Way network, to ensure the effectiveness and amenity of these routes is maintained, including through maintenance, crossings, signposting and waymarking, and, where appropriate, widening and lighting;
 - d. Provision of secure, accessible and convenient cycle parking in accordance with Policy TI/3;
 - e. Securing appropriate improvements to public and community transport (including infrastructure requirements) in accordance with the aims of the Cambridgeshire Local Transport Plan and South Cambridgeshire Community Transport Strategy.
3. Developers will be required to demonstrate they will make adequate provision to mitigate the likely impacts (including cumulative impacts) of their proposal including environmental impacts (such as noise and pollution) and impact on amenity and health. This will be achieved through direct improvements and Section 106 contributions and/or the Community Infrastructure Levy (CIL), to address transport infrastructure in the wider area including across the district boundary.

4. Developers of 'larger developments'¹ or where a proposal is likely to have 'significant transport implications'² will be required to demonstrate they have maximised opportunities for sustainable travel and will make adequate provision to mitigate the likely impacts through provision of a Transport Assessment and Travel Plan. All other developments will be required to submit a Transport Statement. Where a Transport Assessment / Statement or Travel Plan is required, a Low Emissions Strategy Statement should be integrated.
5. Travel Plans must have measurable outputs, be related to the aims and objectives in the Local Transport Plan and provide monitoring and enforcement arrangements. Planning obligations may be an appropriate means of securing the provision of some or all of a Travel Plan, including the requirement for an annual monitoring and progress report. Submission of area-wide Travel Plans will be considered in appropriate situations. Outline planning applications are required to submit a framework for the preparation of a Travel Plan.

¹ Larger development includes proposals of over 20 dwellings or 0.5 hectares for residential development and over 1,000m² or 1 hectares for other development.

² Developments with 'significant transport implications' are those:

- In particularly congested locations and/or generating larger numbers of trips;
- Where there are particular local travel problems;
- That will have an adverse impact on an existing, or will result in the declaration of new, Air Quality Management Area or an unacceptable adverse impact on local air quality.

179. Point 1 of Policy TI/2 is out of step with the NPPF which states that only "significant development" should be focused on locations which are or can be made sustainable, through limiting the need to travel.

180. The current policy is written in such a way that all development no matter how small would need to provide new walking and cycle routes which connect to the existing network should it result in increased travel demands.

181. Policy TI/2 is more restrictive than the NPPF and is therefore out of step with it.

Policy S/7: Development Frameworks

1. Development and redevelopment of unallocated land and buildings within development frameworks (as shown on the Policies Map) will be permitted provided that:
 - a. Development is of a scale, density and character appropriate to the location, and is consistent with other policies in the Local Plan; and
 - b. Retention of the site in its present state does not form an essential part of the local character, and development would protect and enhance local features of green space, landscape, ecological or historic importance; and
 - c. There is the necessary infrastructure capacity to support the development;
2. Outside development frameworks, only allocations within Neighbourhood Plans that have come into force and development for agriculture, horticulture, forestry, outdoor recreation and other uses which need to be located in the countryside or where supported by other policies in this plan will be permitted.

182. The NPPF takes a less restrictive approach compared with Policy S/7, supporting the growth of existing settlements while preventing isolated homes that could lead to sporadic development in the countryside unless they meet with exceptions set out.

183. Policy S/7 is significantly out of step with the NPPF specifically Paragraph 83 'Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services', Paragraph 88 'Planning policies and decisions should enable:
a) the sustainable growth and expansion of **all types of business** in rural areas' and Paragraph 89 'Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements'.

184. Policy S/7 is directly at odds with the aims of the NPPF with regards to development outside of 'development frameworks' (existing settlements).

Policy HQ/1: Design Principles

1. All new development must be of high quality design, with a clear vision as to the positive contribution the development will make to its local and wider context. As appropriate to the scale and nature of the development, proposals must:
 - a. Preserve or enhance the character of the local urban and rural area and respond to its context in the wider landscape;
 - b. Conserve or enhance important natural and historic assets and their setting;

- c. Include variety and interest within a coherent, place-responsive design, which is legible and creates a positive sense of place and identity whilst also responding to the local context and respecting local distinctiveness;
- d. Be compatible with its location and appropriate in terms of scale, density, mass, form, siting, design, proportion, materials, texture and colour in relation to the surrounding area;
- e. Deliver a strong visual relationship between buildings that comfortably define and enclose streets, squares and public places, creating interesting vistas, skylines, focal points and appropriately scaled landmarks along routes and around spaces;
- f. Achieve a permeable development with ease of movement and access for all users and abilities, with user friendly and conveniently accessible streets and other routes both within the development and linking with its surroundings and existing and proposed facilities and services, focusing on delivering attractive and safe opportunities for walking, cycling, public transport and, where appropriate, horse riding;
- g. Provide safe and convenient access for all users and abilities to public buildings and spaces, including those with limited mobility or those with other impairment such as of sight or hearing;
- h. Ensure that car parking is integrated into the development in a convenient, accessible manner and does not dominate the development and its surroundings or cause safety issues;
- i. Provide safe, secure, convenient and accessible provision for cycle parking and storage, facilities for waste management, recycling and collection in a manner that is appropriately integrated within the overall development;
- j. Provide a harmonious integrated mix of uses both within the site and with its surroundings that contributes to the creation of inclusive communities providing the facilities and services to meet the needs of the community;
- k. Ensure developments deliver flexibility that allows for future changes in needs and lifestyles, and adaptation to climate change;
- l. Mitigate and adapt to the impacts of climate change on development through location, form, orientation, materials and design of buildings and spaces;
- m. Include high quality landscaping and public spaces that integrate the development with its surroundings, having a clear definition between public and private space which provide opportunities for recreation, social interaction as well as support healthy lifestyles, biodiversity, sustainable drainage and climate change mitigation;

- n. Protect the health and amenity of occupiers and surrounding uses from development that is overlooking, overbearing or results in a loss of daylight or development which would create unacceptable impacts such as noise, vibration, odour, emissions and dust;
 - o. Design-out crime and create an environment that is created for people that is and feels safe, and has a strong community focus.
2. Larger and more complex developments will be required to submit Masterplans and Design Codes to agree an overall vision and strategy for a development as a whole that demonstrates a comprehensive and inclusive approach.

185. Policy HQ/1 is significantly out of step with National Policy which dictates that only designated areas such as National Landscapes have the standard of 'conserving and enhancing' applied to them.

Policy NH/4: Biodiversity

1. Development proposals where the primary objective is to conserve or enhance biodiversity will be permitted.
2. New development must aim to maintain, enhance, restore or add to biodiversity. Opportunities should be taken to achieve positive gain through the form and design of development. Measures may include creating, enhancing and managing wildlife habitats and networks, and natural landscape. The built environment should be viewed as an opportunity to fully integrate biodiversity within new development through innovation. Priority for habitat creation should be given to sites which assist in the achievement of targets in the Biodiversity Action Plans (BAPs) and aid delivery of the Cambridgeshire Green Infrastructure Strategy.
3. If significant harm to the population or conservation status of a Protected Species, Priority Species¹ or Priority Habitat resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission will be refused.
4. Where there are grounds to believe that a proposal may affect a Protected Species, Priority Species or Priority Habitat, applicants will be expected to provide an adequate level of survey information and site assessment to establish the extent of a potential impact. This survey information and site assessment shall be provided prior to the determination of an application.

5. Previously developed land (brownfield sites) will not be considered to be devoid of biodiversity. The reuse of such sites must be undertaken carefully with regard to existing features of biodiversity interest. Development proposals on such sites will be expected to include measures that maintain and enhance important features and appropriately incorporate them within any development of the site.
6. Planning permission will be refused for development resulting in the loss, deterioration or fragmentation of irreplaceable habitats, such as ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss.
7. Climate change poses a serious threat to biodiversity and initiatives to reduce its impact need to be considered.

¹ Priority Species and Habitats are those that are identified within a Biodiversity Action Plan (BAP) and / or the Natural Environment and Rural Communities Act, 2006, Section 41.

186. There is no explicit requirement in Policy NH/4 to achieve a 10% net biodiversity gain.

POLICY 16: CONSULTATION AREAS (CAS)

Consultation Areas (CAs) are identified on the Policies Map, as a buffer around Mineral Allocation Areas (MAAs), Mineral Development Areas (MDAs), Waste Management Areas (WMAs), Transport Infrastructure Areas (TIAs) and Water Recycling Areas (WRAs). The Mineral and Waste Planning Authority must be consulted on all planning applications within CAs except:

- (a) householder applications (minor development works relating to existing property);
and
- (b) advertisements.

Development within a CA will only be permitted where it is demonstrated that the development will:

- (c) not prejudice the existing or future use of the area (i.e. the MAA, MDA, WMA, TIA or WRA) for which the CA has been designated; and
- (d) not result in unacceptable amenity issues or adverse impacts to human health for the occupiers or users of such new development, due to the ongoing or future use of the area for which the CA has been designated*.

Within a CA which surrounds a WRA, and unless convincing evidence to the contrary is provided via an odour assessment report, there is a presumption against allowing development which would:

- (e) be buildings regularly occupied by people; or
- (f) be land which is set aside for regular community use (such as open space facilities designed to attract recreational users, but excluding, for example, habitat creation which is not designed to attract recreational users).

In instances where new mineral development, waste management, transport infrastructure or water recycling facilities of significance have been approved (i.e. of such a scale that had they existed at the time of writing this Plan it could reasonably be assumed that they would have been identified as a MDA, WMA, TIA or WRA), the policy principle of a CA around such a facility is deemed to automatically apply, despite such a CA for it not being identified on the Policies Map.

When considering proposals for non-mineral and non-waste management development within a CA, then the agent of change principle will be applied to ensure that the operation of the protected infrastructure (i.e. MAA, MDA, WMA, TIA or WRA) is not in any way prejudiced. Any costs for mitigating impacts on or from the existing minerals and/or waste-related uses will be required to be met by the developer. It is for the developer to demonstrate that any mitigation proposed as part of the new development is practicable, and the continued use of existing sites will not be prejudiced.

*Where development is proposed within a CA which is associated with a WRA, the application must be accompanied by a satisfactory odour assessment report. The assessment must consider existing odour emissions of the WRC at different times of the year and in a range of different weather conditions.

187. This policy is consistent with National Policy. The proposal is capable of complying with this policy.

POLICY 5: MINERAL SAFEGUARDING AREAS (MSAS)

Mineral Safeguarding Areas (MSAs) are identified on the Policies Map for mineral resources of local and/or national importance. The Mineral Planning Authority must be consulted on all development proposals in these areas except:

- (a) development that falls within a settlement boundary*;
- (b) development which is consistent with an allocation in the Development Plan for the area;
- (c) minor householder development within the immediate curtilage of an existing residential building;
- (d) demolition or replacement of residential buildings;
- (e) temporary structures;
- (f) advertisements;
- (g) listed building consent; and
- (h) works to trees or removal of hedgerows.

Development within MSAs which is not covered by the above exceptions will only be permitted where it has been demonstrated that:

- (i) the mineral can be extracted where practicable prior to development taking place; or
- (j) the mineral concerned is demonstrated to not be of current or future value; or
- (k) the development will not prejudice future extraction of the mineral; or
- (l) there is an overriding need for the development (where prior extraction is not feasible)**.

*a 'settlement boundary' is that which is defined on the relevant Policies Map for the area (e.g. a village envelope or urban area boundary). If no such boundary is identified on the Policies Map, it will constitute the edge of the built form of the settlement or, should an edge be defined in words (rather than map form) in a Local or Neighbourhood Plan, then that definition will be used for that local area.

** within (l), 'overriding need' will need to be judged in the planning balance when any planning application is assessed, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy. That judgement should also consider the cost of, and scope for, developing outside the MSA, or meeting the need for it in some other way. By 'not feasible' in (l), this could include viability reasons.

188. Policy 5 MWLP is generally consistent with the NPPF.

189. The proposal is capable of complying with this policy.

Supplementary Planning documents

190. The Council also make reference to Supplementary Planning Documents (SPD)

- South Cambridgeshire District Design Guide SPD (2010)
- Greater Cambridge Sustainable Design and Construction SPD (2020)
- Biodiversity SPD – Adopted 2022
- Trees and Development Sites SPD – Adopted January 2009
- Landscape and new development SPD – Adopted March 2010

Landscape Character Assessment

191. The Council, within their Landscape Proof of Evidence make reference to the following landscape character assessments.

- National Character Areas by Natural England - National Character Area 46 – The Fens.
- Cambridgeshire Landscape Guidelines 1991
- Regional Landscape Character study by Landscape East 2011
- Greater Cambridge Landscape Character Assessment 2021 (Part of the emerging Local Plan evidence base)

Emerging Policy

192. Work is being undertaken on a Greater Cambridge Local Plan which will replace the South Cambridgeshire Local Plan.

193. In November 2024 the Greater Cambridge Local Development Scheme updated Addendum: Local Plan Timetable Update (Appendix A29) providing the following timetable:

Draft revised GCLP timetable

Autumn/Winter 2025	Draft Plan Consultation (Reg 18)
Summer/Autumn 2026	Proposed Submission Plan Consultation (Reg 19)
Winter 2026 (by Dec 2026 as per current NPPF consultation)	Submission to Secretary of State for independent Examination (Reg 22)

194. I have concerns as to the reliability of this timetable. There have already been delays in the production of the Greater Cambridge Local Plan. An update in March 2024 posted on Cambridge City Council's website (Appendix A30) detailed:

"As the existing timetable for the Local Plan can no longer be met, owing to multiple external factors which need to be addressed before it can be completed, the timetable update sets out the planning service's best estimate for the Local Plan's next steps."

195. At present there is no emerging plan for consideration in the appeal.

Potential adverse impacts (harms) of the development:

196. The Decision Notice for the planning application (Appendix A22) sets out eight refusal reasons.

197. Refusal reason 6 provided:

“The development is proposed on contaminated land. In the absence of an assessment of the extent of contamination and any possible risks, the proposed development is contrary to Policy SC/11 of the South Cambridgeshire Local Plan 2018.”

198. Refusal reason 7 provided:

“The proposed development partly falls within Flood Zone 3. At present the flood risk of part of the site means the safety of people and ability of people to reach places of safety or access by emergency services is compromised, The proposed development is therefore contrary to Policies CC/8 & CC/9 of the South Cambridgeshire Local Plan 2018 and Section 14 of the NPPF.”

199. The Council confirmed by way of email dated 31st October 2024 (Appendix A31) that refusal reasons 6 and 7 were no longer pursued. The issues of contaminated land, flooding and drainage are not therefore considered any further herein.

200. The remaining refusal reasons are set out and address below

Principle of Development

201. The Decision Notice states:

“The site is located outside of the development framework boundary of Cottenham. The proposal would result in the encroachment into the open countryside and incremental growth in an unsustainable location. To access local services/facilities the future occupiers of the site will have to travel a significant distance via a car. The proposed development would represent encroachment of the open countryside, incremental growth in an unsustainable location and a need to travel, particularly by car. The proposal is therefore contrary to Policies S/3, S/7, H/22 & T1/2 of the South Cambridgeshire Local Plan 2018 and fails to comply with the provisions of the National Planning Policy Framework.”

202. Policy S/7 only permits development, outside of the development boundaries for agriculture, horticulture, outdoor recreation and the ambiguous *“other uses which need to be located in the countryside”*

203. The Council within the Officer’s Report (Appendix A21) conclude that as the Appeal Site is located outside of the development boundaries, it is located within the open countryside. This approach is incorrect, fails to distinguish open countryside from other countryside locations and means that higher tests are invoked across all countryside including areas which are not open countryside, such as the appeal site.

204. Policy C of the PPTS 2015 states:

‘When assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community.’

205. As a matter of principle gypsy sites are therefore acceptable within the countryside, as per Policy C of the Planning Policy for Traveller Sites, provided they do not dominate the nearest settled community.

206. The Inspector in the appeal decision **C West v Ashford Borough Council** (Appendix B28) states, at paragraph 14, that:

‘...whilst recognising that new traveller site development in the open countryside should be strictly limited, the new PPTS clearly acknowledges that sites in rural areas and the countryside are acceptable in principle, subject to protecting local amenity and environment [paragraph 9e) refer] and ensuring that the scale of such sites does not dominate the nearest settled community (Policy C refers).’

207. Regarding the proposed development’s location in the countryside, the starting point in this instance is paragraph 26 (previously paragraph 25) of the PPTS, which states:

“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.”

208. There are two elements to this test to be engaged for proposed development to be strictly controlled. The first is that development has to be in open countryside, and the second is that development has to be away from existing settlements. These have to be engaged in combination to enable new development to be “very strictly limited” in accordance with paragraph 26.

209. It is not sufficient for new development to be very strictly limited when it is either in open countryside, or away from existing settlements. It must be considered as a whole. It is also noted that “very strictly limit” does not mean “refuse”.

210. This was acknowledged by the Inspector in **Mrs M McDonagh v Cheshire West and Chester** (Appendix B30) at paragraph 14 of the decision:

“Policy H, paragraph 25 advises that local planning authorities should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. To ‘very strictly limit’ does not have the same meaning as to prevent.” (GPS emphasis added)

211. As will be demonstrated below the appeal site is neither located in open countryside or away from existing settlements. As such, paragraph 26 of the PPTS is not engaged.

212. In this context, regard should be given to the 2012 decisions of **Mr Jimmy Cash v Three Rivers District Council** (Appendix B29) where the Inspector outlines the difficulty in assessing open countryside based on the lack of definition. In this context the consideration was given to the appropriate definition of ‘open countryside’.

“31. I have taken account of the conflicting views about whether the site is in open countryside. Paragraph 23 of PPTS says traveller sites in open countryside away from existing settlements or outside areas allocated in the development plan should be strictly limited. The Council argue that the presence of trees around the development does not mean that it is not in open countryside and that this test has to be read with the phrase “away from existing settlements and outside areas allocated in the development plan”. For the appellant it is asserted that the enclosing presence of the woodland means that it is not in “open” countryside.

32. I do not consider that this piece of guidance is clear cut on the point and there is a level of ambiguity as “open countryside” is not defined. Nevertheless, I am more inclined to the appellant’s submission on this point on the basis that if it were meant to apply to all countryside that is away from existing settlements and not allocated for development then it begs the question as to why the word “open” was added in. It suggests to me that a distinction is being made between open countryside and that which is not. On this basis, I accept the contention for the

appellant that, due to the presence of the surrounding woodland, which is protected by a TPO, it is not open countryside such as an area of open fields broken by limited amounts of vegetation and hedgerows.”

213. Clearly then, the same logic should be applied in this case. The Google Earth images below shows that the Appeal Site.



214. The Appeal Site is bounded to the north and east by a mature hedgerow and trees. The presence of trees can be sufficient to prevent a finding of open countryside, as highlighted by the **Cash** appeal decision referenced above.

215. Beyond the hedgerow and trees to the north is the River Great Ouse, Twenty Pence Marina and some residential properties.

216. To the west of the Appeal Site is the B1049 from which the Appeal Site is accessed. To the east is agricultural fields, beyond which lies Cambridge Gun Club.

217. To the South of the Appeal Site is an agricultural field intersected by Long Drove beyond which is Mitchell Hill quarry and further residential properties.

218. It is noted that the Council within the Officer's report have not undertaken any assessment of whether the Appeal Site in fact is located in the Open Countryside and instead based

this conclusion on the existing development boundaries which is a flawed approach. Given the existing development in close proximity to the Appeal Site, it could not be considered to be in 'open' countryside.

219. It is also the case that the site is not 'away from existing settlements', for the purposes of paragraph 25 of the PPTS.

220. The Appeal Site is approximately:

- 3.8km to Wilburton
- 4km to Cottenham

221. As such the appeal site is not 'away' from existing settlements in planning terms.

222. In Appeal Decision APP/L3245/A/14/2215836 **Mr John Dean Price** v Shropshire Council, (Appendix B34) the inspector found the following:

"16. The Council, supported by the Parish Council and some local residents, are concerned about the location of the site relative to nearby facilities. They question the sustainability of the site given its distance from Shawbury which is about 2 miles away. Shawbury has a limited range of facilities such as a Post Office, some retail shops and a doctor's surgery. Shrewsbury, which is the nearest town with a wider choice of facilities, is about 4 miles away. Bings Heath, the closest settlement, is 800m but it is a small hamlet without any amenities. The nearest bus stop is in Bings Heath but this section of the A53 is unlit and it does not have footpaths making potential use of public transport facilities by the occupiers of the site less attractive.

17. For these reasons, it is likely that the occupiers of the site would be reliant almost entirely upon the private motor car for most of their day-to-day travel needs. Currently, that is how the appellant gets around. However this degree of reliance is not that uncommon in a mainly rural area such as this, and the distances involved are not excessive by rural standards. In addition, Shrewsbury is also a

short car journey away. In terms of location, I take the view that the site is not totally isolated from nearby settlements for the kind and scale of the development.”

223. Further in Appeal Decision APP/L3245/W/22/3300532 **Mr Luke Vincent v Shropshire Council [2022]**, (Appendix B35) the inspector found a site which was 1.6km and 3.3km from the nearest settlements to be acceptable.

“In summary, I find the development is close to settlements and provides reasonable access to a range of facilities. It is in a rural area and so most trips to and from the site would be by car. However, services needed on a day to day basis, including schools and health facilities, are at local settlements within short driving distances. Therefore, it is reasonable to expect occupiers would support the vitality of rural communities. Also, the site is a short drive from bus and railway links to towns further afield. Bearing in mind the rural location and the difficulty in finding Gypsy and Traveller sites in villages and towns, the site provides reasonable access to services and facilities. For these reasons, I conclude the development is in a suitable location having regard to CS policies CS5 and CS12, the PPTS, the Framework and accessibility.”

224. There is no reason why similar rationale ought not be applied here. The Appeal Site is sufficiently close to existing settlements, as to not be ‘away from’.

225. As neither of the elements of paragraph 26 of the PPTS are triggered, and they both have to be, the paragraph is not engaged.

226. Further as the Appeal Site is not located in the open countryside, the proposed development could not cause encroachment into the open countryside as contended.

227. It also appears that in using this terminology the Council are confusing the green belt considerations, which are not applicable here, with the appropriate countryside considerations as set out above.

228. Paragraph 84 of the NPPF states that ‘Planning policies and decisions should avoid the development of isolated homes in the countryside’ unless certain criteria apply.

229. Considering the **John Dean Price** and **Luke Vincent** decisions, it is argued that the proposal is positive in this regard.

230. The proposal is also considered to be positive regarding paragraph 83 of the NPPF, which states;

‘...housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services.’

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

232. Thriving communities need to include a mix of households of all ages, including families with children, who will of course utilise local services, helping therefore to maintain their presence. This can include bus services, pubs and schools.

233. The principle of development is considered to be in line with national policy.

Sustainability

234. The Decision Notice states:

“The site isin an unsustainable location. To access local services/facilities the future occupiers of the site will have to travel a significant distance via a car. The proposed development would represent encroachment of the open countryside, incremental growth in an unsustainable location and a need to travel, particularly by car. The proposal is therefore contrary to Policies S/3, S/7, H/22 & TI/2 of the South Cambridgeshire Local Plan 2018 and fails to comply with the provisions of the National Planning Policy Framework.”

235. The Officer's Report further particularises this refusal reason as follows:

“.....the application site is not in a sustainable location and this is evident on the grounds that it is located a significant distance away from any local services/facilities along a road that carries a speed limit of 60mph. Cambridgeshire County Council's mapping system shows the site falls within the catchment area of Wilburton CofE Primary School which is 4km (2.49miles) from the site. The speed limit of the road notwithstanding, this distance exceeds the statutory walking distance between home and school (2 miles) that a child under eight years of age should be able to walk. The nearest secondary school is Cottenham Village College at 5km (3.11 miles). This exceeds the 3 mile limit that children between 8 -16 years should be able to walk.

The nearest doctors are at Stretham Surgery at 5km (3.11 miles) away and the nearest pharmacy is Haddenham Pharmacy at 5km (3.11 miles) away. The nearest food shop appears to be the Co-Operative at 5km (3.11 miles). These local services cannot be accessed via foot as Twentypence Road does not benefit from a pedestrian footpath and has no street lighting and is a 60mph road. There is no local bus service. As such, there will be an over reliance on a motor vehicle to access the local services/facilities which are

a significant distance away which provides more evidence that the application site is not in a sustainable location.

Therefore it is considered that the routes from the site are unattractive in particular after dark and these circumstances would not encourage walking or cycling from the site and the site is not within walking distance of the nearest settlement with services/facilities or the nearest public transport links.”

236. The approach of the Inspector in the appeal decision **Mr J Cash v Three Rivers District Council** is considered to be an excellent exposition, for sustainability considerations. At paragraphs 35 and 36 the Inspector states:

“Paragraph 7 of the NPPF states that there are three dimensions to sustainable development: economic, social and environmental. This paragraph then goes on to expand the aspects of each dimension. It is evident therefore then when considering development it is not just a matter of building a strong and competitive economy or supplying housing to meet required needs or protecting the environment but a balance between each of these roles. Hence when considering sustainability it needs to be looked at in the round and not just on the basis of distance to services and facilities. However, this is one factor that should be assessed in terms of environmental impact”

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

238. The assessment of sustainability below mirrors the approach undertaken by the Inspector cited above.

Planning policy for Travellers sites: Sustainability Considerations

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

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

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

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

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

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

Location

245. There are a number of settlements within close proximity of the Appeal Site.

246. The Appeal Site is approximately:

- 3.8km to Wilburton
- 4km to Cottenham

247. Wilburton contains, a restaurant, primary school, garden centre, play area, recreation field and church.

248. Cottenham contains, a post office, a primary school, a village college, a village hall, two care homes, a co-op food store, restaurants/bars, Cottenham Medical Practice, a dentists, a Greengrocers, Bakery, Butchers and Cottenham Baptist Church.

249. Cottenham is identified in Policy ST/5 as a rural centre. The supporting paragraphs to policy ST/5 (Appendix A24) confirm that:

“Rural Centres are the largest, most sustainable villages of the district. They have good access to a secondary school (either within the village or accessible by good public transport), employment opportunities, a variety of services and facilities and have good public transport services to Cambridge or a market town.”

250. Policy ST/5 provides there is no limit on the size of proposed developments within the development frameworks of Rural Centre's. It is therefore clear that the Council considers not only that Cottenham is sustainable but also that the services therein are sufficient to support increasing population and residential development.

251. Slightly further away from the appeal site are a number of towns and villages; including Streatham, Haddenham *which* contain further facilities and services such as schools, shops, post offices, restaurants, churches, recreational facilities and further transport links including bus stops and rail network links.

Local Services

252. The nearest shop is Willow Grange Farm Shop, which is approximately 2.5km along a public right of way situated to the north of the appeal site running west to east.



253. Approximately, 3.7km to the north of the Appeal Site is Twenty Pence garden centre. The garden centre's website confirms that it includes a pizzeria and coffee bar along with a food hall, mini golf and play area (Appendix A32).

254. Cottenham includes various shops including a Co-op food store, bakery and butchers and Cottenham convenience store which is approximately 4.6km from the Appeal Site.

255. The nearest doctor's surgery is Cottenham Surgery which is approximately 4.8km from the Appeal Site by road.

256. The nearest dentist surgery is Cottenham Surgery which is approximately 5.6km from the Appeal Site by road.

257. The Appeal Site provides access to several schools including:

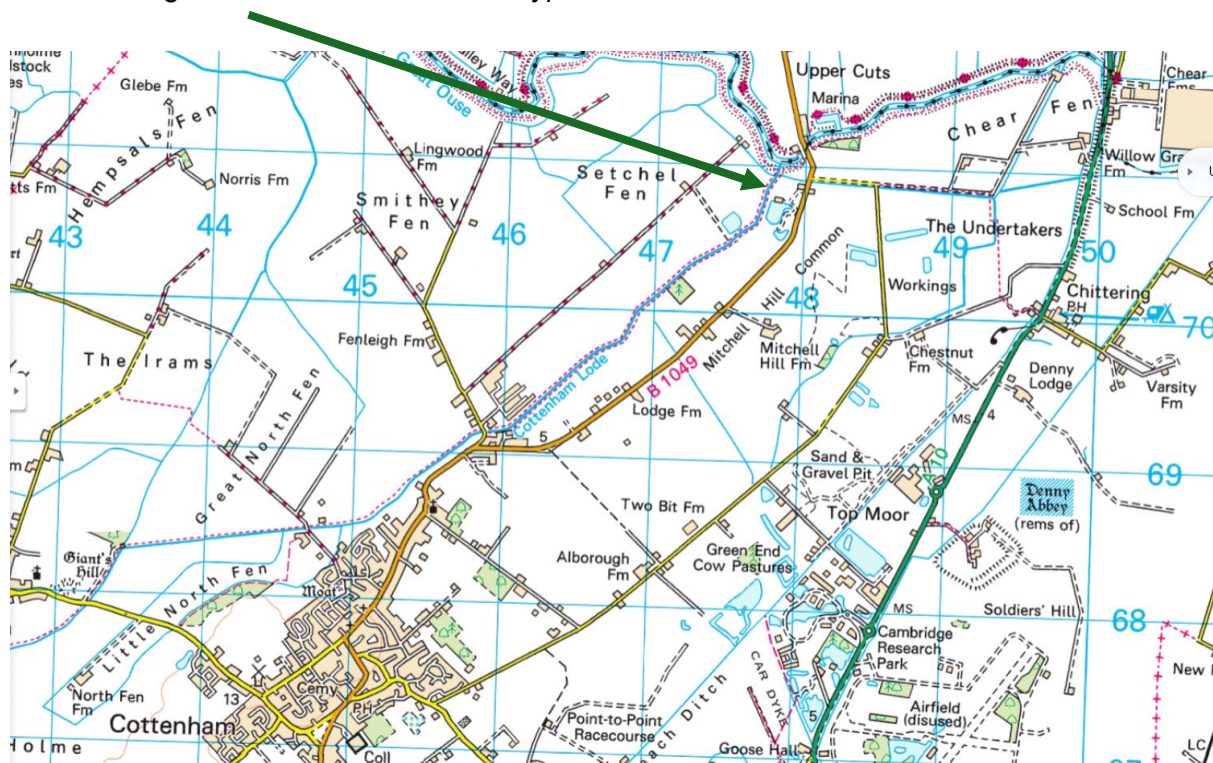
- Wilburton Church of England Primary School, approximately 4km from the Appeal Site.
- Cottenham Primary School is approximately 6km from the Appeal Site.
- The Officer's report details that "*The nearest secondary school is Cottenham Village College at 5km*"

258. The Council's main concern appears to be the perceived reliance on private car as a means to access the above facilities.

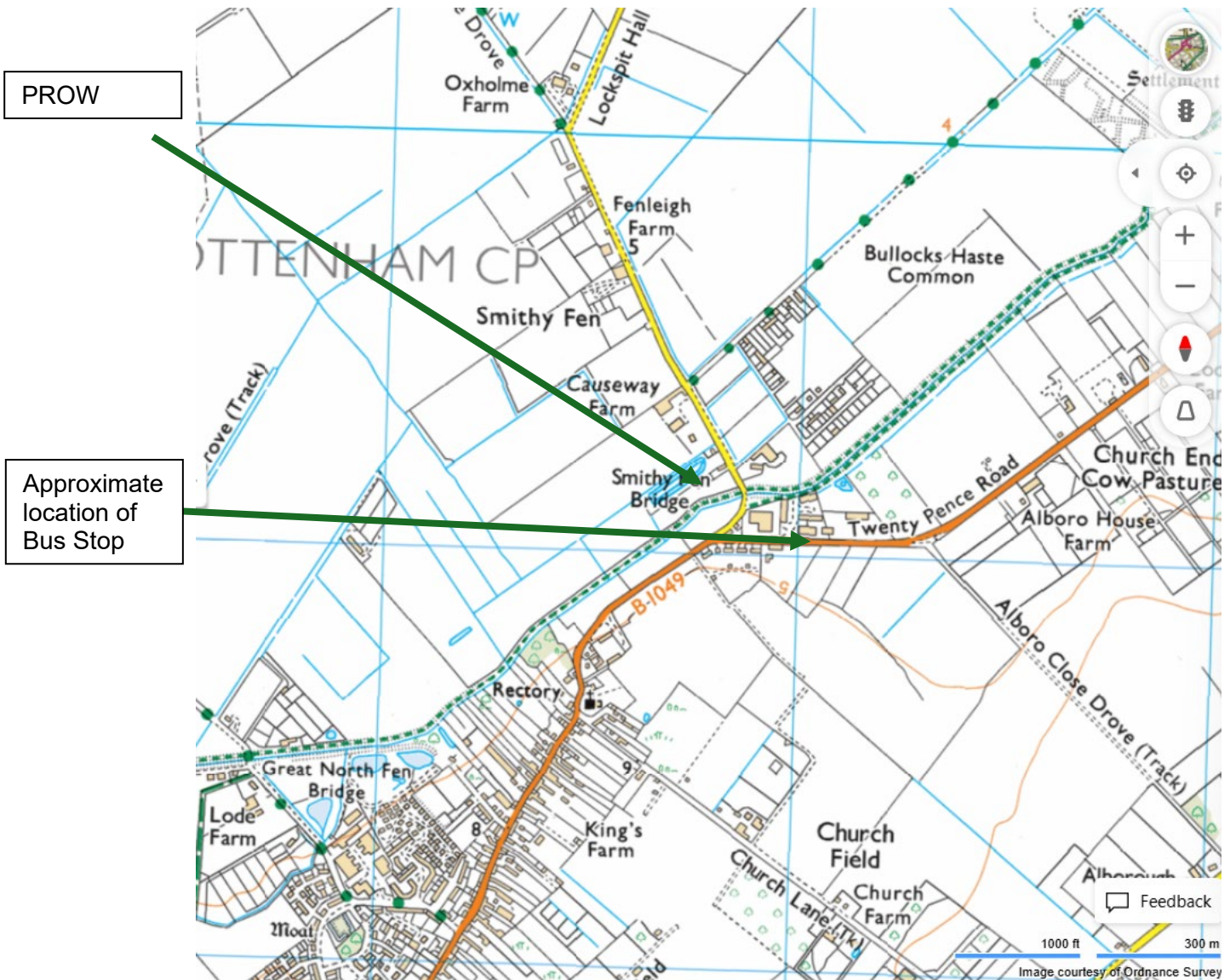
259. The Officer's Report contends that it is not possible to access the services by foot due to lack of pedestrian footpaths and an absence of street lighting along Cottenham Road.

260. The Council's analysis fails to take into account the existence of public rights of way, which as above provide direct access to the local farm shop.

261. Further the Council's analysis fails to take into account the public right of way also proceeds in a southerly direction providing access to Cottenham and the services therein, avoiding the need to walk on Twentypence Road.



262. The closest bus stop to the Appeal Site is approximately 3km to the South, along Twentypence Road, which can be accessed using the above public right of way.



263. The closest bus stop to the Appeal Site is approximately 3km to the South, along Twentypence Road, which can be accessed using the above public right of way. This bus stop is served by the 8A and 110 services. This provides services between Ely and Impington, including stops in Cottenham, which allows for access to onwards transportation.

264. Additional bus stops exist in Cottenham, including at Manse Drive, which provides access to the Number 8 service with hourly trips to and from Histon and Cambridge City Centre and the onward transport links.

265. Inadequate consideration has been given to the ability of the site residents to access service via cycle yet a significant number of services and facilities, as identified above, are within the widely accepted cycling distance of 5km.

266. The Council seek to contend that the road would be unsuitable for cycling after dark, it is assumed due to a lack of street lighting. However, if this were so cycling would not occur on the majority of rural roads, which is clearly not the case.

267. The above analysis shows that access to services and additional public transport methods, including the bus stops and routes referred to above, are within walking or cycling distance of the site (or a combination of the two).

268. More specifically, Cottenham as identified in Policy ST/5 as a rural centre as having good access to services and public transportation can be accessed via the PROW or by road, and is within 5km of the site (the acceptable cycling distance).

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

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

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

271. These are considered in turn.

a) Peaceful and integrated co-existence

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

273. The Inspector commented in the case of **Brooks v Shropshire Council** (Appendix B31)

that;

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

274. The Inspector commented in the ***J Dolan v Durham County Council*** (Appendix B32)

that;

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

a. Health

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

c) Education

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

277. A base ensures that any children are able to attend school on a regular basis. It is widely recognised that gypsies and travellers are believed to experience the worst education status of any disadvantaged group in England, linked with the lack of good quality sites

for gypsies and travellers. A grant of permission makes a positive contribution toward considerations of sustainability. This weighs in favour of a decision that the site is sustainable.

d) Reducing the need for long-distance travelling

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

e) Local environmental quality

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

f) Undue pressure on local infrastructure and services

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

g) Flooding

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

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

h) Traditional lifestyles

282. Paragraph 13 h) of PPTS states that local planning authorities should ensure that their policies reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability. The site provides the occupants with access to the road networks to allow them to travel for their work. This is a benefit compared to them being in an area, particularly within a town, that would increase their travel time to the major road networks around the country. This weighs in favour of a decision that the site is sustainable.

Conclusion on gypsy and traveller site sustainability

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

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

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

286. In this case the considerations identified in the PPTS are all benefits to be considered

in the round when considering issues of sustainability.

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

288. It is clear that the Appeal Site is in a sustainable location for this gypsy site with regard to the PPTS and NPPF.

Character and Appearance

289. The Decision Notice states:

"The proposed development would result in a significant urbanisation of the application site in a rural setting. The urbanisation of this site would fail to appropriately relate to its setting and would significantly harm the character of the site and the wider surrounding area. Accordingly, and given the proposal would be located outside of the development framework of Cottenham, the development contravenes Policies S/7, H22 & HQ/1 of the South Cambridgeshire Local Plan 2018 and fails to comply with the provisions of the National Planning Policy Framework and therefore allow a form of development that is not sustainable."

290. The Officer's Report details:

"The application site is set within the open countryside. As a result of the proposal, it would see the built form for residential purposes increase significantly and would cause harm to the rural setting. For this reason, it is considered that the proposal would cause significant harm to the open countryside character and appearance of the area. As such, the proposal is contrary to Policy HQ/1 of the South Cambridgeshire Local Plan and Section 12 of the NPPF in this instance"

291. Within the Proof of Evidence of Helen Sayers, on Landscape and Design issues, it is stated that the planning application ought to have been provided with the follow:

- tree survey to BS5837
- information on existing and proposed ground levels, including site sections
- information on the public footpaths
- supporting design statements on site layout, access and landscape design
- landscape strategy and landscape design drawings

292. This level of detail is unnecessary for the proposed, minor, application. The submitted plans clearly demonstrate the proposed landscaping and scale of the development which is sufficient for the assessment of the proposal. A tree survey would be disproportionate given that Council clearly concludes within the Officer's report that the development would not cause any detrimental impact on trees within the local area. Proof of Evidence of Helen Sayers also overlooks the fact that additional landscaping can be secured by way of an appropriately worded condition.

293. The Council in undertaking their assessment of the impact on character and appearance within the officer's report and the above proof have incorrectly assessed the that the Appeal Site is in the open countryside, as above. Further, the Council have failed, within the officer's report and the above proof, in assessing the impact that the proposed development would have on the area, to establish the baseline or existing development on the site. As above, the Appeal Site has the benefit of the 2016 CLEUD, which allows the stationing of a mobile home on the Appeal Site. Further, if the Inspector considers that the S195 appeal should succeed, the proposed base line should be that of two mobile homes stationed on the Site. The Site must be considered in the context of the lawful use to which the Appellant will be entitled to revert.

Impact on Character

294. In terms of character, all nearby and adjacent land uses and buildings should be considered as part of the character of an area regardless as to whether they are considered positive or not. It should also consider the pattern of development in the immediate area whether it is visible or not.

295. As above, the Appeal Site has the benefit of the 2016 CLEUD, which allows the stationing of a mobile home on the Appeal Site, which must be considered as part of the prevailing character of the area.

296. Beyond the hedgerow and trees to the north is the River Great Ouse, Twenty Pence Marina and some residential properties as picture below.



297. Additional residential properties (pictured below) are located to the southwest of the Site, adjacent to Mitchell Hill quarry.



298. Mitchell Hill Quarry, including formal gravel pits and Cambridgeshire Gun Club, as pictured below, are also significant parts of the prevailing character of the area.



299. The Proof of Evidence of Helen Sayers details that:

“The fencing around the site perimeter encloses the site and block views through the site which changes the open aspect of the site and the landscape character”

300. In reaching this conclusion, the Proof of Evidence of Helen Sayers has clearly overlooked the hedgerows and vegetation surrounding the Site which encloses the Site naturally as well as restricting views. As a result the Site ought not be described as having an open aspect.



301. Further it is noted that the Council in adopting this approach have failed to consider that fencing could be erected as permitted development.

302. The character of the area surrounding the Appeal Site is of a mixed use including residential, commercial, agricultural and recreational land uses. Given the existing

residential use in the area including the permitted 2016 CLEUD, the proposal, is in keeping with the prevailing land uses and would at worst have a modest impact given the scale of the development.

Impact on Appearance

303. In terms of appearance, this is assessed in relation to public viewpoints.

304. The public views of the site will be from Twenty pence Road and the surrounding Public Rights of Way.

305. There are extremely limited views of the Appeal Site from Twenty pence Road at the access of the Appeal Site, as pictured below.



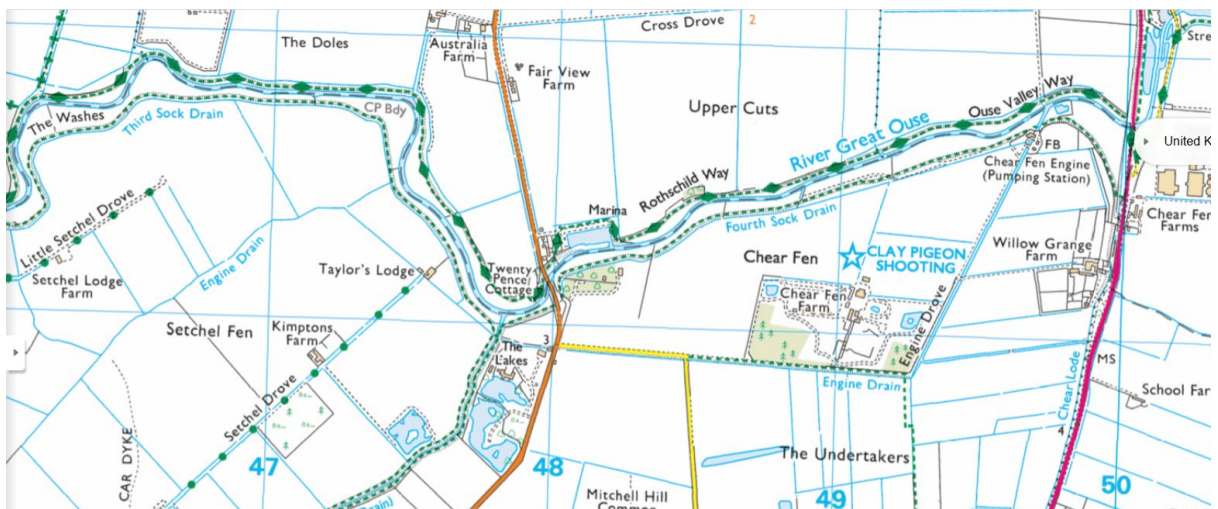
306. In the event, the Ground (d) appeal in relation to the access and/or access road is successful, any impact on appearance, must be considered in the context of that lawful development.

307. Views of the Appeal Site are possible from the north of the site on Twenty Pence Road as per the below.



308. However, those views will generally be from motorists using Twenty Pence Road and as such will be fleeting and limited.

309. The below map shows public rights of way in the vicinity of the Appeal Site.



310. The Public Rights of Way include:

- Two PROW's running along the north of the Appeal Site one of which runs southwards toward Cottenham; and
- A public right of way, Engine Drain, which runs adjacent to Long Drove to the South of the Appeal Site.

311. There will be views of the Appeal Site from the PROW's running along the north of the Appeal Site. However, these views must be considered in the context of the permitted use pursuant to the 2016 CLEUD on the Appeal Site and the built development comprising residential dwellings and the marina further to the north. The PROW intersects these two areas of development and any impact on appearance must be considered in the context of such as opposed to the open countryside that the Council seeks to do.

312. Any views from the part of the PROW that runs southwards towards Cottenham, will be blocked by existing vegetation and screening as shown below.



313. There will be no views of the Appeal Site from the public right of way along Long Drove to the South of the Appeal Site due to the distance from the Appeal Site and the existing vegetation. The below image shows views from Long Drove in the direction of the Appeal Site.



314. Given the scale of the development and the proximity of the PROW to the north and resultant views, I accept that there will be moderate harm to the appearance of the area as a result of the development due to the increase in caravan numbers. However, this impact can be reduced with appropriate landscaping, to such that any harm would at worst be modest.

Noise:

315. The Decision Notice states:

“The proposed development does not accord with Policy 16 of the Cambridgeshire and Peterborough Minerals and Waste Local Plan nor paragraph 187 of the NPPF because it has not been demonstrated that the Mitchell Hill Quarry will not result in unacceptable amenity issues or adverse impacts to human health for the occupiers or users of the proposed development; dust and noise are of particular concern. The applicant has also failed to demonstrate that the proposed development is compatible with the adjacent quarry.”

316. The Officer's report does not further substantiate this reason for refusal. It is unclear what is meant by *“The applicant has also failed to demonstrate that the proposed development is compatible with the adjacent quarry.”*

317. The issues of noise and dust, which were specifically referenced by the Council are addressed herein and in the accompanying evidence. If, the Council seeks to raise further allegations in relation to the vague allegation cited above, the Appellant will need to be provided with further opportunity to respond and obtain necessary evidence.

318. In relation to the issue of noise, the Appellant relies on the evidence of Mr Tim Green, which was submitted to the Planning Inspectorate on 4th February 2025. The Inspector is referred to Mr Green's Proof of Evidence for full details, however Mr Green's conclusion is replicated below for ease:

“6.1 The future operations at Phase 6 of Mitchell Hill mineral workings have been assessed for their impact at the Appeal Site. These are detailed in the TGSacoustics, 2023 Report No. 02489, V1.1.

6.2 Measurements were undertaken in March of 2023 to provide baseline Background Levels for the assessment at The Site. The sound levels for stationary and mobile plant

have been taken from those used within the original report by Sharps Redmore which informed the successful planning application for the Mitchell Hill mineral quarry.

6.3 The Site does not exceed the limits provided in the Minerals Technical Note to the NPPF from either routine activities, or for temporary workings, neither at Phase 6 nor Phase 7.

6.4 The satisfactory result is considered to be based on onerous, or worst-case scenarios. The Periodic Noise Monitoring undertaken, and observations of Phase 4 operations, support the onerous nature of assumptions made in the initial prediction process by Sharps Redmore, providing a greater margin of acceptability to that reported by them.

6.5 The additional work undertaken by Sharps Redmore to assess variations in plant, and Saturday working, informs the validity of the outcomes in the TGSacoustics Report.

6.6 Significant detail, providing transparency in the conditions, data, process, and calculations that inform the measurement and assessment, have been reported.

6.7 With the assumptions laid out in the TGSacoustics Report, The Site achieves an acceptable acoustic environment when assessed by the procedures within BS 5228:2009-1+A1:2014 and the guidance limits provided in the Minerals Technical Note to the NPPF.

6.8 Both an acceptable acoustic environment for the residents of The Site and the required safeguarding of the mineral workings are achieved.”

319. In line with Policy 16 MWLP there is no evidence to suggest any adverse impact on the proposed residents will result because of noise emissions from the quarry.

320. It is noted that the Council have not, to date provided any noise levels or evidence to support their allegation. The Council are invited to withdraw this reason for refusal. If the Council maintains this reason for refusal but fails to substantiate their reasoning for doing so, it will be shown that this clearly amounts to unreasonable behaviour and the appropriate costs application sought.

Dust

321. The Decision Notice states:

“The proposed development does not accord with Policy 16 of the Cambridgeshire and Peterborough Minerals and Waste Local Plan nor paragraph 187 of the NPPF because it has not been demonstrated that the Mitchell Hill Quarry will not result in unacceptable amenity issues or adverse impacts to human health for the occupiers or users of the proposed development; dust and noise are of particular concern. The applicant has also failed to demonstrate that the proposed development is compatible with the adjacent quarry.”

322. The Council within their full particulars of case on minerals and waste by Matthew Breeze and Deborah Jenkins states:

“There is, therefore, a significant level of noise, dust and general impact from these operations. At the time of determining planning applications for the quarry, the residential use at the appeal site was not taken into account in relation to mitigation measures which were implemented to ensure that impact on residents was acceptable. Therefore, now that the quarry is operational, the location of the appeal site adjacent to an active quarry has an unacceptable impact on residential amenity. It has not been demonstrated by the Appellants that policy 16 is complied with.”

323. Permission was granted in 2018 pursuant to reference S/0088/18/CM for the *“Extraction of sand and gravel, restoration using inert material and inert waste recycling.”* (Appendix A33) (**“the 2018 Quarry Permission”**).

324. It is noted that the Council have not, to date provided any evidence that dust from the quarry would impact on the proposed residents of the Appeal Site as alleged. In fact, this is contradictory to the evidence submitted in respect of the 2018 Quarry Permission.

325. The 2018 Quarry Permission included four conditions (numbered 19 -23) relating to dust and to limit any impacts on local amenity as follows:

19. Dust Suppression

Prior to the commencement of development, a scheme for providing a hard wearing bound and sealed surface for the private haul road between the processing plant and the metalled road surface at the Waterbeach Waste Management Park shall be submitted to and approved in writing by the Mineral and Waste Planning Authority. The scheme shall provide a timetable for implementation that reflects the need to temporarily accommodate the delivery of infill material to backfill Gravel Diggers Quarry.

Date: 21-Dec-2018

Signed:

Emma Fitch, Joint Interim Assistant Director - Environment and Commercial
Cambridgeshire County Council, Shire Hall, Castle Hill, Cambridge, CB3 0AP
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EC Fitch

Ref. No. S/0088/18/CM Extraction of sand and gravel, restoration using inert material and inert waste recycling Mitchell Hill Farm, Twentypence Road, Cottenham, CAMBRIDGE, CB24 8PP

The development shall subsequently be carried out in accordance with the approved scheme.

The haul road shall be maintained to a good standard, free of potholes, for the duration of the proposed development. The haul road, together with its crossing of the public highway on Long Drove as set out in condition 7, shall be the subject of regular mechanical sweeping to minimise dust emissions from traffic movements such mitigation being supplemented by the use of mobile water bowsters to minimise any fugitive emissions from the site.

Reason: *In the interests of limiting the effects on local amenity and to control the impacts of the development on air quality, in accordance with Policy CS34 of the Cambridgeshire and Peterborough Minerals and Waste Core Strategy Development Plan Document (2011) and Policy SC/12 & SC/14 of the South Cambridgeshire Local Plan (2018). The dust suppression scheme needs to be agreed and put in place pre-commencement to limit the effect upon local amenity throughout the period during which development takes place.*

20. Prior to any HCVs entering onto the private haul road at the processing plant site and before crossing Long Drove, such vehicles shall pass through a vehicle wheel cleaning facility of a type and in a location to be submitted to and approved in writing by the Mineral and Waste Planning Authority prior to its construction. The facility shall be maintained in an operational condition at all times and vehicular circulation routes and site signage shall ensure that vehicles leaving the site pass through the facility.

Reason: In the interests of limiting the effects on local amenity and to control the impacts of the development, in accordance with Policy CS34 of the Cambridgeshire and Peterborough Minerals and Waste Core Strategy Development Plan Document (2011) and Policy SC/12 & SC/14 of the South Cambridgeshire Local Plan (2018).

21. The surfaces of internal haul roads should be maintained in good condition with dust suppression facilities being made available on-site so that the running surfaces of haul roads can be kept damp during periods of dry and/or windy weather.

Reason: In the interests of limiting the effects on local amenity and to control the impacts of the development on air quality, in accordance with Policy CS34 of the Cambridgeshire and Peterborough Minerals and Waste Core Strategy Development Plan Document (2011) and Policy SC/12 & SC/14 of the South Cambridgeshire Local Plan (2018).

Date: 21-Dec-2018

Signed:

Emma Fitch, Joint Interim Assistant Director - Environment and Commercial
Cambridgeshire County Council, Shire Hall, Castle Hill, Cambridge, CB3 0AP
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EC Fitch

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22. Dust emissions within the Inert Materials Recycling Area shall be controlled with facilities being made available and brought into use to ensure that the surface of operations and unprocessed and processed stockpiles are kept damp in periods of dry weather.

Reason: In the interests of limiting the effects on local amenity and to control the impacts of the development on air quality, in accordance with Policy CS34 of the Cambridgeshire and Peterborough Minerals and Waste Core Strategy Development Plan Document (2011) and Policy SC/12 & SC/14 of the South Cambridgeshire Local Plan (2018).

326. It is therefore clear that the proposal was considered capable of proceeding without an adverse impact on local amenity.

327. Two of those conditions (19 and 20) were pre- commencement conditions, which have been discharged pursuant to the following applications

- Condition 19 - S/0088/18/CM/C2(Appendices A35 and A36)
- Condition 20 - CCC/20/034/DCON (Appendices A37 and A38)

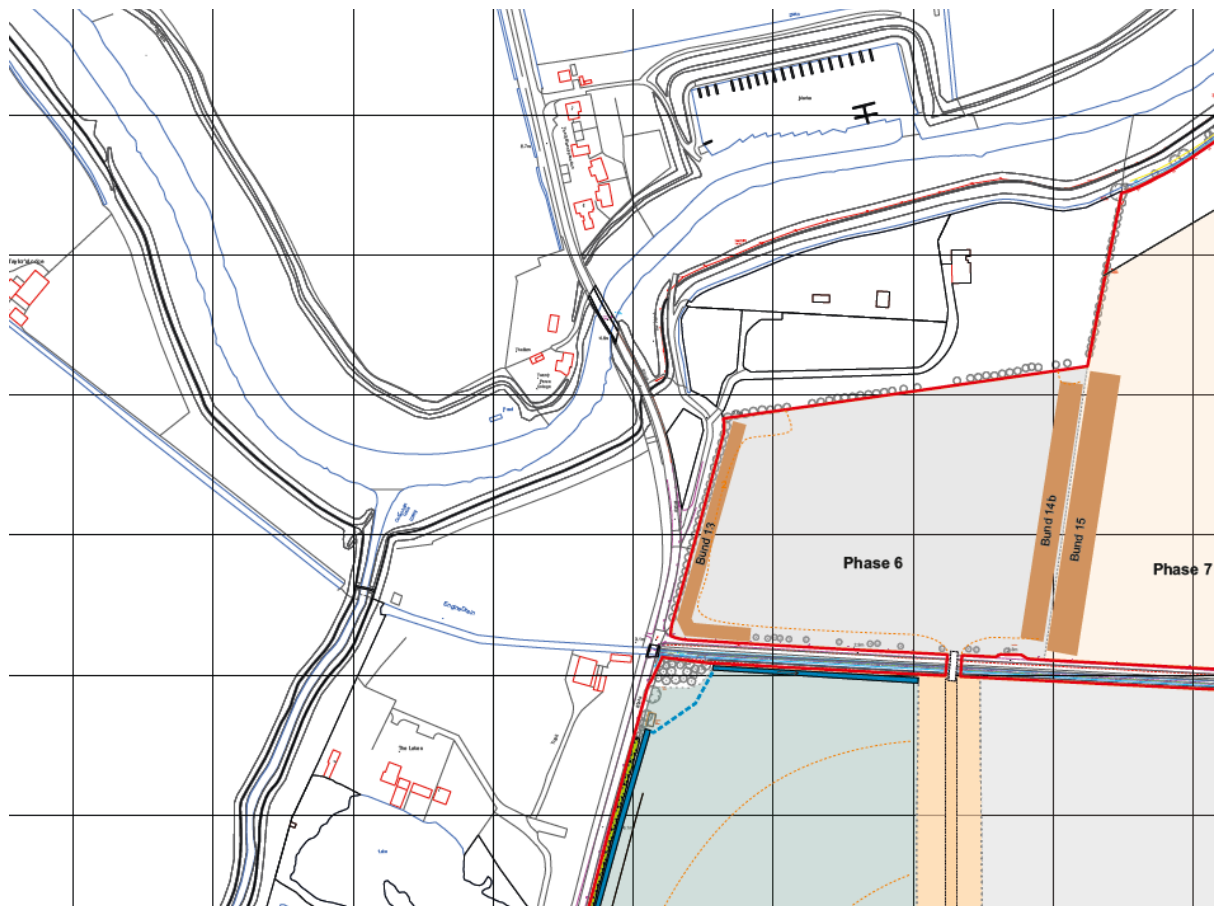
328. There is no evidence that there is any ongoing breach of these conditions.

329. Furthermore, as part of the application and in accordance with The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 an Environmental Statement was produced wherein dust emissions were considered, setting out practices that would be employed to minimise dust emissions. The non-technical summary of the Environmental Statement (Appendix A39) concludes at paragraph 9.5:

“The adoption of good working practices and appropriate dust control measures would ensure any dust emissions are adequately controlled within the site. It is considered that the dust emissions from the proposed development would be kept to a minimum and that no dust nuisance would arise”

330. The above conditions secure those measures.

331. The plan at Appendix A40, indicates the proximity of residential development to the quarry, an extract of which is provided below.



332. This plan indicates dwellings near the west of the quarry, opposite Long Drove which were considered during the application process for the 2018 Quarry Permission. These dwellings are a similar proximity to the Appeal Site. Given the conclusions of the Environmental Statement that “*no dust nuisance*” would arise it is reasonable to assume that this would also be the case for the Appeal Site.

333. This is particularly the case given that the Environmental Statement confirms that any dust emissions will be contained within the quarry area, which is not adjacent to the Appeal Site:

*“The Plant Site where there is more potential for the operations to give rise to dust emissions and it is enclosed by proposed bunds of up to 5 metres high, this together with the existing planting along Long Drove east of the plant site will help to ensure **any dust emissions arising from the operations are contained within the quarry area.**” (GPS emphasis added)*

and

*“The significant separation distances between the nearest residential properties and the processing plant site reduce the risk of potential dust emissions. The location of the plant site at a lower level (some 1 metres below) and screening bunds will ensure that operations which may give rise to dust emissions **can be controlled within the working area.** The provision of appropriate screening bunds and boundary planting will reduce the risk of dust emissions causing a nuisance and with the proposed mitigation measures in place potential dust impacts would be negligible.” (GPS emphasis added)*

334. Consideration was given to the nearest public footpaths within the Environmental Statement, which as set out above in the context of impact on character and appearance, are situated just to the north of the Appeal Site and to the South adjacent to Long Drove (this footpath being called Engine Drain) and thus these considerations would be indicative of the likely impact at the Appeal Site. The Environmental Statement provides:

*“The nearest footpaths to the proposed site run along the river bank to the north of the extraction area and there is also a public footpath along Engine Drain which runs from the corner of the site which splits the northern and southern sections, eastwards and then south to the Fruit Farm on the A10. In this northern section of the site the mineral will be worked damp and **there is no processing proposed in this area therefore users the footpaths of will not be affected by dust emissions from the proposed workings**”.*
(“GPS emphasis added”)

335. Whilst it is accepted that residential development will be more sensitive than users of public footpaths give, these conclusions along with the conclusions of the Environmental Statement in considering similarly proximal residential development that “*no dust nuisance would arise*”, that “*any dust emissions arising from the operations are contained within the quarry area*” **and** that there is to be no processing in the areas adjacent to the Appeal Site it is clear that there will be no unacceptable adverse impact on the proposed residents.

336. The Council within their full particulars of case on minerals and waste by Matthew Breeze and Deborah Jenkins highlight ‘agent of change’ principle as set out in, what was then, paragraph 187 of the NPPF 2021, which is now found under paragraph 200 of the NPPF 2024.”

337. Paragraph 200 NPPF provides

*“Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. **Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or ‘agent of change’)** should be required to*

provide suitable mitigation before the development has been completed". (GPS emphasis)

338. The first point to note is that there is no significant adverse effect on the proposed development by the quarry as identified above. Even if this were the case pursuant to paragraph 200 NPPF this would not constitute a reason for refusal if mitigation can be provided. There is no suggestion that mitigation is required or even if it were that such could not be provided within the Appeal Site secured by condition. It is notable that the Environmental Statement concludes that bunds are "*highly effective in controlling dust emissions*", thus if the below ground (d) appeal is successful, this would provide an additional element of protection to the Site occupants.

339. The Council are invited to withdraw this reason for refusal. If the Council maintains this reason for refusal but fails to substantiate their reasoning for doing so, it will be shown that this clearly amounts to unreasonable behaviour and the appropriate costs application sought.

Minerals safeguarding

340. The Decision Notice states:

“In the absence of a statement demonstrating safeguarding of the Sand and Gravel Mineral Safeguarding Area, the proposal is contrary to Policy 5 of the Cambridgeshire and Peterborough Minerals and Waste Local Plan (June 2021).”

341. The Appellant relies on the evidence of RPS, which accompanies this Proof of Evidence and summarises the evidence previously submitted to the Planning Inspectorate on 4th February 2025. The Inspector is referred to report by RPS for full details, however in summary it is concluded that:

- The lawful use of a residential mobile home present at the Appeal Site renders most of the site non-viable for potential mineral extraction.
- If the 2016 CLEUD is found to be abandoned the application of other buffers for the protection of the Fourth Sock Drain, periphery hedgerows and existing priority habitat reduces the area potentially available for mineral extraction with the levels of likely extraction rendering it unlikely for extraction to be economically viable.
- Site-wide prior extraction of sand and gravel is not considered practicable on the Appeal Site.
- There is not considered to be a viable resource at the Appeal Site and therefore it is unlikely that the Appeal Site would be put forward for a mineral allocation in the future.

342. The RPS Report therefore demonstrates compliance with Policy 5 of the Cambridgeshire and Peterborough Minerals and Waste Local Plan.

343. Even, if the Inspector is not in agreement that the Appeal Site is not a viable for mineral extraction any sterilization of the Appeal Site as a result of the proposed development

would be by a development that had few permanent features which could be easily and cheaply dismantled. Thus, the impact of allowing the development would be small and if any conflict with the policy is found, it could at worst be minor with any weight to be ascribed to that harm, negligible. This was the approach taken by the Inspector in *Kiely v Central Bedfordshire Council* Appeal Reference APP/P0240/A/12/2179237 (Appendix B25).

344. It is noted that the Council have not, to date provided any technical evidence to support their allegation. In the event that the Council maintains this reason for refusal but fails to substantiate their reasoning for doing so, it will be shown that this clearly amounts to unreasonable behaviour and the appropriate costs application sought.

Biodiversity

345. The Decision Notice states:

“In the absence of submission of a biodiversity statement outlining the mitigation methods of the impact the proposal will have upon the local wildlife or existing planting, the proposed development is contrary to Policy NH/4 of the South Cambridgeshire Local Plan.”

346. The Appellant relies on the Proof of Evidence of Ben Crossthwaite. The Inspector is referred to Ben Crossthwaite's Proof of Evidence for full details, however in summary:

- No further ecological surveys are considered necessary. Mitigation measures for bats, nesting birds and amphibians are prescribed on site.
- The Appeal Site was occupied prior to the dates associated with the adoption of Statutory Biodiversity Net Gain.
- Local policy outlines aspirations for developments to provide 20% net gain, however, such policy has not been adopted.
- It is considered the Appeal Site is not to be subjected to the statutory 10% net gain requirements.
- The retrospective baseline habitats, pre-clearance, are judged to consist of broadleaved woodland, of which is formally identified as priority habitat, tall, forbs and bare earth.

347. The site is predicted to result in a net loss of biodiversity units, largely due to the loss of the tall forbs and woodland. If the Inspector considers necessary, the client will have to pursue offsetting options to mitigate for the relevant habitat units in order to the relevant net gain. However, the primary position is that the Appeal Site was occupied prior to the dates associated with the adoption of Statutory Biodiversity Net Gain and there is no local policy requiring the provision of such.

348.If required, the issue of BNG can be addressed through an appropriately worded condition.

349.The ecological evidence provides offers no reason why planning permission ought not be granted.

350.It is noted that the Council have not, to date provided any technical evidence to support their allegation. In the event that the Council maintains this reason for refusal but fails to substantiate their reasoning for doing so, it will be shown that this clearly amounts to unreasonable behaviour and the appropriate costs application sought.

Highways

351. The Decision Notice states:

“The proposed development would lead to the creation of an access on a stretch of classified highway where the principal function is that of carrying traffic freely and safely between centres of population. The vehicular movements associated with the use of the access in respect to stationing of caravans for residential purposes, nine dayrooms and the formation of hardstanding ancillary to that use would lead to conflict and interference with the passage of through vehicles to the detriment of the principle function and introduce a point of possible traffic conflict, being detrimental to highway safety. The proposed development is therefore contrary with Policy TI/2 of the South Cambridgeshire Local Plan 2018 and Section 9 of the NPPF.”

352. The Appellant relies on the evidence of Mr Jeremy Hurlstone, which accompanies this Proof of Evidence. The Inspector is referred to Mr Hurlstone’s Proof of Evidence for full details, however, for ease part of the summary is replicated below.

“Having completed the review I have found that the proposed development would not lead to the creation of an access, as the access already exists and has done for many years, serving a lawful residential use within a mobile home.

8.6 Following a review of empirical speed and traffic data, I have demonstrated the turning movements at the site access would not have a material detrimental impact on through movement along Twentypence Road and that visibility at the access is adequate when assessed against national guidance.

8.7 Having completed my review, I conclude that the highway impact of the proposed development is acceptable, and that planning permission should not be refused on highways grounds, as confirmed by national planning policy.

8.8 It is hoped that the evidence presented in this Proof of Evidence will allow the Council to formally withdraw their Highway concerns and therefore the 8th reason for refusal from

the Appeal proceedings, in order to reduce unnecessary costs being incurred on both sides and to save time at the Public Inquiry. Progress to date on a draft SoCG suggests this is likely at present.

8.9 Irrespective of the Council's decision whether or not to withdraw the highway objections and 8th reason for refusal, I trust the Inspector agrees with my own conclusion, that planning permission should not be refused on the alleged highway grounds, as the access is demonstrably safe due to the visibility being adequate in the local context, and the cumulative residual impact on the road network would not be severe. Accordingly, I respectfully invite the Inspector to allow this Appeal."

353. Upon review of Mr Hurlstone's evidence, the Council has agreed that a satisfactory vehicular access has been demonstrated, that reason for refusal 8 is not contested and may be considered withdrawn from the Appeal proceedings. This is confirmed in a statement of common ground (Appendix A42).

354. The Inspector will note that the Appellant no longer intends to call Mr Hurlstone to give evidence as a result.

Intentional unauthorised development

355. Whilst not raised as a reason for refusal, the Council within the Officer's Report raises the issue of intentional unauthorised development, referencing the Written Ministerial Statement of 31st August 2015, and considers that this weighs against the proposal.

356. The Written Ministerial Statement dated 17th December 2015 by Brandon Lewis states:

"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."

357. This is predicated upon the Statement issued by Steve Quartermain, the Government's Chief Planner on 31st August 2015 which states in part that:

"...this statement introduces a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals."

358. This statement and consequent WMS both state that intentional unauthorised development can be a material consideration in planning appeals. Neither the WMS, nor the Statement defines what "intentional unauthorised development" is, and furthermore, they do not define the amount of weight to be attributed to it.

359. The WMS also notes that:

"After six months we will review the situation to see whether it is delivering on our objective of protecting land from intentional unauthorised development."

360. The Appellant is unaware of any publicly available review.

361. The site occupants are a large extended family unit. The Appellant did not own the Site as at the time of the Enforcement Notice EN/01535/20 was issued in 2021. The

Appellant's sought permission at the Site with the submission of the planning application, which took place in April 2022. The witness statements at appendices A42 to A50 confirm that due to the family's personal circumstances, no other suitable and alternative pitches were available.

362. The Inspector in **Shawn Follows v Melton Borough Council** (APP/Y2430/C/21/3277030 & APP/Y2430/W/20/3246224) (Appendix B33) attaches only limited weight to this matter:

"34. The appellant accepts that there has been development and that it was not permitted and thus falls within the ambit of the Written Ministerial Statement.....one of the families occupying the site came from a roadside existence and the appellant and his family were required to leave the pitch they were on and had nowhere else to go at that time. The appellant moved into the site around Easter 2021, and I accept that the restrictions on movement and the worry associated with Coronavirus pandemic were significant at that date.

35. I have also taken into account that the appellant had applied for permission before moving onto the site (Appeal B) and has also appealed the enforcement notice on ground (a). In both instances the appellant is attempting to regularise the situation with the opportunity for conditions to be imposed if appropriate, and the statutory framework does allow for the grant of retrospective permission and has a remedial rather than punitive enforcement regime.

36. For these reasons I attached limited weight to this consideration." [GPS Emphasis]

363. This case is similar to the appeal before the Inspector now. As set out in the draft witness evidence the site was moved onto as a result of personal circumstance and lack of alternative pitches and there have been attempts to regularise the situation to the best of the Appellant's ability.

364. Furthermore, the purpose of the WMS was to avoid irreparable harm. There is no evidence that any harm the Inspector could reasonably conclude will result from the development will be irreparable.

365. Consideration also needs to be given to the existence of the 2016 CLEUD and that a lawful use exists at the Site. It is unclear what irreparable harm could result from the development, particularly in the context of existing lawful uses.

366. For the reasons set out above, only limited weight should be attributed in this instance

Third Party comments

367. Where third party comments have raised issues not addressed above, these are considered below.

Unauthorised connection to Site Utilities

368. There is no evidence the connections on Site have impacted water levels or undermined the riverbank. This allegation is unsubstantiated.

Flooding

369. The Council in withdrawing the reason for refusal relating to flooding have acknowledged that the site is acceptable for development from a flood risk perspective.

Livestock escaping from public footpath

370. This allegation is unsubstantiated along with the suggestion that this would increase if permission were granted. There are no planning grounds upon which this would justify a refusal of permission.

Conclusion on harm

371. The principle of the development at its location is considered to be in line with national policy.

372. It is concluded that the site is sustainably located for a gypsy and traveller site

373. The above analysis shows that access to services and additional public transport methods, including the bus stops and routes referred to above, are within walking or cycling distance of the site (or a combination of the two). More specifically, Cottenham as identified in Policy ST/5 as a rural centre as having good access to services and public transportation can be accessed via the PROW or by road, and is within 5km of the site (the acceptable cycling distance). It would clearly be feasible for residents of the site to access local services and facilities and public transport without reliance on private motor vehicles.

374. The Council in undertaking their assessment of the impact on character and appearance within the officer's report and the Landscape Proof have incorrectly assessed that the Appeal Site is in the open countryside and failed to correctly establish the baseline or existing development on the Site.

375. The character of the area surrounding the Appeal Site is of a mixed use including residential, commercial, agricultural and recreational land uses. Given the existing residential use in the area including the permitted 2016 CLEUD, the proposal, is in keeping with the prevailing land uses and would at worst have a modest impact given the scale of the development.

376. Given the scale of the development and the proximity of the PROW to the north and resultant views, I accept that there will be moderate harm to the appearance of the area as a result of the development. However, this impact can be reduced with appropriate landscaping, to such that any harm would at worst be modest.

377. Both an acceptable acoustic environment for the residents of the Site and the required safeguarding of the mineral workings are achieved with the proposed development.

378. There is no evidence to suggest any adverse impact on the proposed residents will result because of dust emissions from the quarry.

379. The 2016 CLEUD renders most of the site non-viable for potential mineral extraction. Even if the 2016 CLEUD is found to be abandoned the application of other buffers for the protection of the Fourth Sock Drain, periphery hedgerows and existing priority habitat reduces the area potentially available for mineral extraction with the levels of likely extraction rendering it unlikely for extraction to be economically viable. Site-wide prior extraction of sand and gravel is not considered practicable on the Appeal Site. There is not considered to be a viable resource at the Appeal Site and therefore it is unlikely that the Appeal Site would be put forward for a mineral allocation in the future. The proposal is therefore compliant with Policy 5 of the Cambridgeshire and Peterborough Minerals and Waste Local Plan.

380. In relation to Biodiversity no further ecological surveys are considered necessary and mitigation measures for bats, nesting birds and amphibians are prescribed on site which can be addressed through appropriately worded conditions

381. The Appeal Site was occupied prior to the dates associated with the adoption of Statutory Biodiversity Net Gain. It is considered the Appeal Site is not to be subjected to the statutory 10% net gain requirements.

382. Local policy outlines aspirations for developments to provide 20% net gain, however, such policy has not been adopted.

383. There is therefore no requirement to demonstrate a BNG. If the Inspector is not in agreement, the issue of BNG can be addressed through an appropriately worded condition.

384. Only limited weight should be attributed to the intentional unauthorised development at the Appeal Site. The Appeal Site was moved onto as a result of personal circumstances and lack of alternative pitches and there have been attempts to regularise the situation to the best of the Appellant's ability

Material Considerations (Benefits) in Favour of the Development

385. There are several material considerations in favour of the appeal that could be used to outweigh any harm.

386. These material considerations are:

- Local, Regional and National Need
- The Provision of Available Alternative, Suitable, Acceptable and Affordable Sites
- Failure of Policy
- Lack Of a Five-Year Supply
- Fallback position
- Personal Circumstances (Gypsy status, personal need, health, education, extended family grouping and the best interests of the child).

387. The Inspector's decision in **Mr. J McDonagh** v South Gloucestershire Council (Appendix B26) dated 10th February 2016 held that each material consideration is weighted in its own right. The Inspector stated at paragraph 26 that:

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

[GPS Emphasis]

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

Local, Regional and National Need

389. The need for gypsy and traveller sites in the district is primarily dealt with in the Need Statement submitted alongside this Statement on behalf of the Appellant.

390. There are a number of errors identified in the methodology of the GTAA which will have resulted in an underestimation in the level of need for pitches in the District. These include inaccuracies in recording the number of pitches with permanent planning permission in the district at the base date; failing to properly consider households that were doubled up/concealed/overcrowded, and the failure to establish an accurate number of households in bricks and mortar wishing to move to sites. These will have resulted in the recorded base date figure being too low. This will have also resulted in the calculation of future family growth being too low.

391. Adjusting the figures in accordance with the conclusions above, Green Planning Studio identified a need for 362 households as at the base date. To be offset against this is a supply of 304 pitches: an immediate need as at the base date of 58 pitches. Taking into account the emerging growth on GPS' figures by 2028 there should be a minimum of 398 pitches in the District and by 2033, 435 pitches. The Inquiry in this appeal is due to be heard in 2025; the appropriate period for consideration is therefore 2025 – 2030. On this basis the figure for the purposes of establishing a five-year supply figure is 412 pitches.

392. It is clear from the above assessment that the Council is working to too low a figure in its site allocations, it is my opinion that they will fail to meet the actual need for sites in the district.

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

Provision of Available Alternative, Acceptable and Affordable Alternative Sites

394. In assessing the possible alternatives, the decision maker should assess not just availability but also affordability, acceptability, and suitability. This is the approach followed by the Inspector in the **Angela Smith** v Doncaster MBC appeal (Appendix B16) at paragraph 40.
395. The Inspector's decision however is clearly based on the ruling set out in the **Chapman v The United Kingdom** ECHR Judgement in 2001 (Appendix B1, paragraphs 103 and 104). This formulation of words was subsequently upheld in the High Court.
396. It is established case law in **South Cambridgeshire District Council v SSCLG & Brown** [2008] EWCA Civ 1010 that there is no burden on an Appellant.
397. The proposed site occupants do not have any alternative accommodation. There is no suggestion in the Officer's Report of alternative sites.
398. The Local Plan does not include any allocations for gypsy and traveller pitches and as set out above, it remains unclear when or if the emerging local plan and/or the any allocations will be adopted and in what form.
399. In any event it is clear that there such are not available for the Appellant now and are unlikely to be so in the immediately foreseeable future.
400. In the **Angela Smith** v *Doncaster MBC* decision (Appendix B16) this was sufficient with need, and lack of progress in identifying sites, to clearly outweigh the combined harm so that very special circumstances existed for permanent permission to be awarded in the green belt.
401. In the **Yvette Jones** v *South Gloucestershire DC* decision (Appendix B27), need, lack of alternatives and lack of progress in identifying sites sufficiently outweighed the harm to the Green Belt in general that a permanent permission was granted without a personal condition.

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

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

404. The Secretary of State in the appeal decision, **Amer & ORS v Mole Valley District Council** [2013] (Appendix B22) gives significant weight after finding that there are 'no identified alternative sites in the Borough for travellers in general'.

405. Therefore, the lack of sufficient supply of alternative sites is a material consideration of significant weight in favour of the appeal.

Failure of Policy

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

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

408. GPS have identified a number of failings in policy by the Council each of which should be treated as its own separate consideration. These failures of policy include:

- The Council's policies are out of date. The Local Plan is based on a previous GTAA where no need was identified. Even on the Council's evidence this is no longer the position.
- The Council is not complying with the PPTS requirement to maintain a five-year supply of sites.

- The GTAA relied upon by the Council underestimates the level of need in the District and therefore the Council will fail to meet the actual level of need in the District. The Need Statement prepared by GPS demonstrates a number of inaccuracies or methodological issues with the GTAA, which have resulted in an underestimation of the number of pitches that are required in the District. As such the Council are working to too low a figure.
- There is no adopted up to date allocations policy for Gypsy and Traveller sites and no realistic prospect that one will be adopted in the near future.

409. There is currently no evidence that could lead to anyone conclude that the Council will provide the required level of new pitches in the District. Further it is clear from the Council's website that the emerging local plan has already experienced delay and is unlikely to be adopted for a number of years.

410. In the **Crawt** v Guildford Borough Council case (Appendix B23) the Secretary of State sets out at paragraph 21 that 'this failure to progress the delivery of the necessary sites is a matter of considerable weight in favour of the appeal'.

411. In **Stanley** v St Alban's City and District Council Appeal (Appendix B24) the Secretary of State at paragraph 17 states that 'the failure of the development plan to meet the need weigh significantly in favour of the appeal'.

412. In **Amer & Others** v Mole Valley [2020] (Appendix B36) the Inspector attached a significant weight to a lack of alternative sites and the ongoing failure of policy. The Inspector sets out at paragraph 25-26 that:

"25. ...It is accepted by the Council that the Appellants and other occupants of the site have nowhere else to go. It was acknowledged that if this appeal were to be dismissed then the Council would need to decide whether to seek to take enforcement action at the end of the current time limited permission (in June 2020). Furthermore, it is accepted by the Council that there are no identified

alternative sites which are suitable, available, affordable and acceptable.

This is a significant material consideration in favour of the appeal.

26. It is abundantly clear to me that the Council had been afforded many years in which to seek to resolve the issue of gypsy and traveller site provision. It has significantly failed to do so notwithstanding that planning permission has been granted on occasion. It has in particular failed to implement its policy (CS5) by bringing forward a land allocations development plan document. The assurances given in previous public inquiries have not been acted upon in a manner which has provided the necessary site provision. Whilst I accept that the emerging LP is in the past process of bringing forward proposals for consultation, the past performance of the Council amounts to a demonstrable failure of policy. This in itself is a significant consideration in favour of the proposal.” [GPS Emphasis]

413. The Inspector in the **Amer** [2020] appeal granted permanent planning permission for the following reasons (paragraphs 30 – 31):

*“30. Refusal of the proposal would interfere with the Article 8 rights of the site occupants. In this case, because of its particular circumstances, interference would not be proportionate, with particular reference to the best interests of the children. Dismissal of the appeal would result in the site occupiers having no home after a period of many years residing in this location **following a serious failure of policy by the Council.***

*31. The balance here is abundantly clear. The harm to the Green Belt carries substantial weight, but the substantial weight to be given to the best interests of the children on site, **together with the failure of policy over many years and the lack of any alternative sites available to the Appellants, carry yet more***

***weight.** Other considerations clearly outweigh the harm by inappropriateness and the minor impact on the character and appearance of the area, and very special circumstances have been established. It follows that I have decided that planning permission should be granted.”*

414. The Council's policy approach thus far towards gypsy and traveller sites is nothing short of a systemic failure given the lack of allocations, failure to comply with the PPTS and no likely changes in the foreseeable future. This failure of policy is a material consideration of **significant weight** in favour of the appeal.

Lack of a Five-Year Land Supply

415. The Council are unable to show a five-year land supply of deliverable land for gypsy and traveller sites which the government required them to do by 27 March 2013.

416. The lack of a five-year supply is a matter that should attract significant weight in favour of a grant of planning permission, either on a temporary or a permanent basis. The point that it applies to consideration of both temporary and permanent has been made clear by the Secretary of State in **Amer** [2013] at DL20.

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

418. Green Planning Studio identified a need for 362 households as at the base date. To be offset against this is a supply of 304 pitches: an immediate need as at the base date of 58 pitches. Taking into account the emerging growth on GPS' figures by 2028 there should be a minimum of 398 pitches in the District and by 2033, 435 pitches. The Inquiry in this appeal is due to be heard in 2025; the appropriate period for consideration is therefore 2025 – 2030. On this basis the figure for the purposes of establishing a five-year supply figure is 412 pitches.

419. The Council currently have no mechanism in place to provide these additional pitches and this does not look set to change for a substantial period.

420. The lack of a five-year land supply a material consideration of **significant weight** in favour of the appeal.

Fallback position

421. As set out above, the fallback position for the land is either a '*mixed use for the stationing of mobile homes for residential purposes, agriculture and storage of vehicles, boats and materials*'. The number of caravans that can lawfully be stationed on the land for residential purposes being two, in line with the appellant's s.195 Appeal. The Inspector is referred to the above evidence in support of this position.

422. If the Inspector is not in agreement with the mixed use as set out above being the fallback position, then in the alternative, the fallback position would be that of the stationing of one or two mobile homes for residential purposes and agriculture.

423. In the case of *Mansell v Tonbridge and Malling BC* [2017] EWCA Civ 1314 (Appendix B12), Lindblom LJ, confirmed the approach of Sullivan LJ judgment in *Samuel Smith* ([2009] EWCA Civ 333) that a fallback position must have a real prospect of being taken up, but a "real prospect" does not have to be probable or likely, a possibility will suffice. (paragraphs 26-37)

424. Either of the suggested fallback positions are of **considerable weight** in favour of appeals.

Personal Circumstances

425. Personal circumstances only need to be considered if the Inspector finds a departure from policy and/or other harm and then finds that the other material considerations are insufficient to outweigh the identified harm. If necessary, personal circumstances can be added into the pot to clearly and substantially outweigh any harm. These will be set down and appropriate weight indicated below.

426. The proposed site occupants' details are set out within the draft witness statements at Appendices A42 to A50.

Gypsy Status

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

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

Personal Need

429. There is a clear personal need for the permanent base for the occupants as set out in the draft witness statements.

430. The proposed site occupants do not currently have a suitable site with the benefit of planning permission and as such are in personal need of the permission.

431. In line with other decisions, including the Secretary of State in **Crawt**, **considerable weight** should be given to the site occupant's need for a base.

Health

432. Easy access to GP's and hospitals which this site provides is clearly a very positive advantage, particularly when compared to the realistic alternatives of a roadside existence or doubling up and this is recognised by the Appellant.

433. In **Crawt**, the Secretary of State at paragraph 23 recognised that weight be attached even when the family were in good health.

434. Substantial weight should be given to the health needs of those proposed site occupants with significant health needs, as outlined in the witness statements.

435. Significant weight should be given to the health needs of the proposed site occupants with moderate health needs, as outlined in the witness statements.

436. Considerable weight should be given to the health needs of the other proposed site occupants.

Education

437. There will be 26 children living at the appeal site.

438. A stable base allowing for a stable and consistent education is clearly of benefit to all children.

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

440. The possibility that the child may not be able to attend school for some considerable time at all if the family is on the roadside must be considered. It is well documented that mobile pupils are often unable to find places in local schools especially if they are short stay pupils.

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

442. Significant weight should be attached to the education of the children who are proposed to live on the site.

Extended family grouping

443. Many of the proposed occupants are part of an extended family grouping. A grant of planning permission will allow this wider family to remain living together in line with their cultural values. This is a material consideration of **modest** weight in favour of the appeal.

Best interests of the child

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

SSCLG and South Gloucestershire District Council [2012] EWHC 3660 (Appendix B18).

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

446. In the case of **Dear v SSCLG** [2015] EWHC 29 (Admin) (Appendix B14) paragraph 44 is of note in relation to the Secretary of State's acceptance of the weight to be attached to the best interests of the child:

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

447. Best interests of children on sites are of paramount consideration and no consideration should be given greater weight than best interest of the child when considering whether the material considerations outweigh any harm. In the assessment of proportionality there is an explicit requirement to treat the needs of the children on the site as a primary consideration (UNCRC Article 3, fully set out at para 80-82 of **AZ**) and, in respect of a decision by the LPA to safeguard and promote the welfare and well-being of the children (Children's Act 2004 s.11(1)).

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

449. There will be 26 children living at the appeal site. The welfare and wellbeing of children can only be safeguarded by the grant of a permanent planning permission, or in the alternative a temporary permission for a period that should give certainty of alternative suitable and lawful accommodation being secured by the LPA through the plan process.

Presumption in favour of sustainable development

450.Paragraph 11 of the NPPF makes it clear that “Plans and decisions should apply presumption in favour of sustainable development”.

For decision-taking this means:

- a) “Approving development proposals that accord with an up-to-date development plan without delay; or...”
- b) “where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting planning permission unless:
 - i. *The application of policies in this Framework that protects areas or assets of particular importance provides a strong reason for refusing the development proposed, or*
 - ii. *“any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”.*

451. Footnote 8 further clarifies that:

“This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites...”

452. This is not a case where there are no relevant development plan policies. The most important policies are:

- H20 – Provision for gypsies and travellers and travelling showpeople; and
- H22 – Proposals for gypsies and travellers and travelling showpeople on unallocated land outside development frameworks

453. These policies have been shown to be inconsistent with the NPPF, as set out earlier in this proof of evidence; there appears to be a clear-cut case that the ‘weighted balance’ of paragraph 11 d) is engaged.

454. Alternatively, as the Council, cannot demonstrate a five-year housing land supply of gypsy and traveller sites, paragraph 11(d) is engaged by virtue of footnote 8. Planning permission should therefore be granted unless either limb (i) or limb (ii) is satisfied.

455. It is clear the weighted balance should be engaged for these reasons. This means that for planning permission to not be granted, the harmful impacts must significantly and demonstrably outweigh the benefits of the proposal.

456. If the Inspector determines that the most important policies are up to date and there is a departure from those policies, then the material considerations are advanced, such that any identified harm is outweighed by these, entailing that a grant of planning permission should be forthcoming.

457. The High Court, in **Cheshire East Borough Council v SSCLG and Renew Land Developments Ltd** [2016] EWHC 571 (Admin) has given judgment as to how a decision on what is ‘sustainable development’ should be approached (Appendix B17).

458. The judgment sets down at paragraph 20, that:

“...the proposal should be approved as sustainable development unless the adverse impacts clearly and significantly outweighed the benefits”.

459. Mr. Justice Jay states at paragraph 23:

“In my judgment, this is not, and cannot be, a question of assessing whether the proposal amounts to sustainable development before applying the presumption within paragraph 14. This is not what paragraph 14 says, and in my view would be unworkable. Rather, paragraph 14 teaches decision makers how to decide whether the proposal, if approved, would constitute sustainable development.”

460. Further, paragraph 25 of the judgment states as follows in relation to paragraph 14 (now 11) of the Framework:

“...a decision maker will only know if a proposal is sustainable or not by obeying the processes mandated by the paragraph.”

461. This essentially means that a development will be determined as sustainable development or not through the paragraph 11(d) balance and a separate assessment need not be carried out beforehand.

462. A High Court Judgement, ***Monkhill Limited v SSHCLG and Waverley Borough Council*** [2019] EWHC 1993 (Admin) (appendix B21), as upheld by the Court of Appeal, sets out a staged approach to the presumption in favour of sustainable development at paragraph 39.

463. Paragraph 28 of the PPTS 2024 states:

“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”

464. Thus it is clear that the absence of a five-year supply of gypsy and traveller sites triggers the weighted balance.

Temporary consent

465.If the Inspector concludes that the material considerations outlined above, do not outweigh the harm sufficient to justify a permanent consent then clearly a temporary consent falls to be considered consistent with paragraph 14 (reference ID: 21a-014-20140306) of the NPPG.

466.It is common sense as well as case law **McCarthy v SSCLG & South Cambridgeshire DC** [2016] EWHC 3287 that a temporary consent means the harm is reduced.

467.Indeed, even in Green Belt cases where the Secretary of States sets down in policy that substantial weight to the harm to the Green Belt should be applied, there is a reduction in that weight when considering temporary permissions. In the case of **Moore v SSCLG and London Borough of Bromley** [2013] EWCA Civ 1194 (Appendix B6) the Court of Appeal considered the lawfulness of the planning balance carried out by an Inspector when assessing temporary planning permission. Included in that assessment was an implicit acceptance of the observations of Cox J in the Administrative Court (para 13 of the CoA judgement) that:

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

468.In line with paragraph 14 (reference ID: 21a-014-20140306) of the PPG, temporary consent should be long enough for where it is expected planning circumstances will change in a particular way at the end of that period. This would be when alternative sites become available, and as yet this has not occurred.

469.There are currently no allocations, nor is there any draft allocations policy to consider.

470.According to the November 2024 Greater Cambridge Local Development Scheme updated Addendum: Local Plan Timetable Update (Appendix A29) it is proposed that the

local plan will be submitted by examination by December 2026. However, as above, I have concerns as to the reliability of this timetable as there have already been delays in the production of the Greater Cambridge Local Plan.

471. Even if this timetable is complied with, the examination itself could be a lengthy process and it is also widely accepted that that a period of at least 18 months will be required after the adoption of an allocations DPD or Local Plan, before sites will start to be delivered.

472. On this basis allocations could not be expected to start delivering until mid - late 2029 at the earliest.

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

474. This is the course followed by the Inspectors at paragraph 45 of **Angela Smith v** Doncaster MBC (Appendix B16), at paragraph 20 in **Yvette Jones v** South Gloucestershire DC (Appendix B27). The first of these decisions was subsequently held in the High Court.

475. The Council currently have no mechanism in place to meet the actual and more realistic level of need in the District. The time needed for feasible change then, is an issue.

476. I am Green Planning Studio are aware of a few Inspectors and on one occasion the Secretary of State have followed a different route when considering this issue and have instead concluded that as circumstances are not going to change within say 3-5 years a refusal should follow. Loath as I am to be critical of Inspectors, this disturbing logic as it 'rewards' a Council who have not carried out their duties diligently. This would appear to be a clear abuse of power and is almost certainly merit a sustained challenge. In any

event this scenario does not take into account that the Secretary of State can step in where Councils are unduly tardy.

477. Instead, it would be reasonable to conclude that the Council will act, if a s.78 appeal Inspector concludes that they have an unmet need, with no mechanism of meeting that need. In light of the above any temporary consent would need to be for at least five years.

Planning Balance

478. The proposal is, subject to conditions, considered to be in line with the development plan (in so far as that policy is consistent with national policy) and national policy, as such permission should be granted without delay in line with paragraph 11 c) of the NPPF. This is the Appellant's **first position**.

479. If it is not agreed that the proposed development accords with the Development Plan then consistent with the **Wavendon** approach, the basket of policies is considered to comprise of:

- H20 – Provision for gypsies and travellers and travelling showpeople; and
- H22 – Proposals for gypsies and travellers and travelling showpeople on unallocated land outside development frameworks

480. Given the significant inconsistencies of those policies with the NPPF and the PPTS, there appears to be a clear-cut case that the 'weighted balance' of paragraph 11 d) is engaged.

481. Additionally, the Council cannot demonstrate a five-year housing land supply of gypsy and traveller sites, so the 'weighted balance' of paragraph 11(d) is engaged by virtue of footnote 8.

482. Therefore, paragraph 11(d) is engaged either by virtue of the basket of most important policies being out of date, or through the absence of a five-year supply of gypsy and traveller sites. Limb d) i. (with reference to footnote 8) is clearly not engaged and therefore the test of d) ii. falls to be considered.

483. Paragraph 11(d) (ii) requires the decision maker to assess the proposal against policies in the Framework taken as a whole. It is concluded that the development does not depart from any policies of the NPPF and that it could not be concluded that any adverse impacts (harm) that could be reasonably attributed to the development could significantly and demonstrably outweigh the benefits of need, lack of alternatives, lack of a five-year supply and failure of policy.

484. The principle of the development at its location is considered to be in line with national policy.

485. It is concluded that the Appeal Site is sustainably located for a gypsy and traveller site

486. The above analysis shows that access to services and additional public transport methods, including the bus stops and routes referred to above, are within walking or cycling distance of the Appeal Site (or a combination of the two). More specifically, Cottenham as identified in Policy ST/5 as a rural centre as having good access to services and public transportation can be accessed via the PROW or by road, and is within 5km of the site (the acceptable cycling distance). It would clearly be feasible for residents of the site to access local services and facilities and public transport without reliance on private motor vehicles.

487. The Council in undertaking their assessment of the impact on character and appearance within the officer's report and the Landscape Proof have incorrectly assessed that the Appeal Site is in the open countryside and failed to correctly establish the baseline or existing development on the Appeal Site.

488. The character of the area surrounding the Appeal Site is of a mixed use including residential, commercial, agricultural and recreational land uses. Given the existing residential use in the area including the permitted 2016 CLEUD, the proposal, is in keeping with the prevailing land uses and would at worst have a modest impact given the scale of the development.

489. Given the scale of the development and the proximity of the PROW to the north and resultant views, I accept that there will be moderate harm to the appearance of the area as a result of the development. However, this impact can be reduced with appropriate landscaping, to such that any harm would at worst be modest.

490. Both an acceptable acoustic environment for the residents of the Site and the required safeguarding of the mineral workings are achieved with the proposed development.

491. There is no evidence to suggest any adverse impact on the proposed residents will result because of dust emissions from the quarry.

492. The 2016 CLEUD renders most of the site non-viable for potential mineral extraction. Even if the 2016 CLEUD is found to be abandoned the application of other buffers for the protection of the Fourth Sock Drain, periphery hedgerows and existing priority habitat reduces the area potentially available for mineral extraction with the levels of likely extraction rendering it unlikely for extraction to be economically viable. Site-wide prior extraction of sand and gravel is not considered practicable on the Appeal Site. There is not considered to be a viable resource at the Appeal Site and therefore it is unlikely that the Appeal Site would be put forward for a mineral allocation in the future. The proposal is therefore compliant with Policy 5 of the Cambridgeshire and Peterborough Minerals and Waste Local Plan.

493. In relation to Biodiversity no further ecological surveys are considered necessary and mitigation measures for bats, nesting birds and amphibians are prescribed on site which can be addressed through appropriately worded conditions

494. The Appeal Site was occupied prior to the dates associated with the adoption of Statutory Biodiversity Net Gain. It is considered the Appeal Site is not to be subjected to the statutory 10% net gain requirements.

495. Local policy outlines aspirations for developments to provide 20% net gain, however, such policy has not been adopted.

496. There is therefore no requirement to demonstrate a BNG. If the Inspector is not in agreement, the issue of BNG can be addressed through an appropriately worded condition.

497. Only limited weight should be attributed to the intentional unauthorised development at the Appeal Site. The Appeal Site was moved onto as a result of personal circumstances

and lack of alternative pitches and there have been attempts to regularise the situation to the best of the Appellant's ability

498. In contrast the benefits (material considerations) of need, lack of alternatives, lack of a five-year supply, failure of policy, fallback position, and extended family grouping should be given substantial, significant, significant, significant, considerable and modest weight respectively.

499. It is therefore inconceivable that the adverse impacts of granting permission, could outweigh, let alone significantly and demonstrably outweigh the benefits and therefore planning permission should be granted. This is the Appellant's **second position**.

500. There should be no necessity to consider the personal circumstances of the site occupants and therefore no reason to impose a personal condition; nor would, in these circumstances a temporary condition be reasonable or necessary.

501. Consequently, the proposal is sustainable development as set out in paragraph 8 of the NPPF, where planning permission should be granted without delay.

S.38(6) planning balance

502. If it is concluded that the paragraph 11 'weighted balance' does not apply and some conflict with the development plan is identified, then, even applying the traditional planning balance, the material considerations relied upon outweigh any harm identified such that a permanent non-personal permission should be granted. This is the **Appellant's third position**.

503. Personal circumstances only need to be considered if the Inspector finds a departure from policy and/or harm and then finds that the other material considerations are insufficient to outweigh the identified harm. I consider this is unlikely to be necessary. However, if the Inspector reaches this stage, then the personal circumstances, (taking into account the best interests of the child), are very weighty considerations and if this is

what the Inspector considers tips the balance then a personal condition would be necessary. This is the Appellant's **fourth position**.

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

Human Rights Article 8 considerations

505. This is a clear obligation upon the Inspector to ensure that any decision made by a state body accord with the obligations under Article 8 ECHR. Incorporated into that obligation are the obligations set out under the United Nations Convention of the Rights of the Child, and in this case specifically Article 3. This obligation was not crystallised upon in the publication of **AZ v SSCLG and South Gloucestershire District Council** [2012] EWHC 3660 (Admin) (Appendix B18) but has existed for a number of years.

506. This has more recently been confirmed in the Court of Appeal judgment **Collins v SSCLG & Fylde Borough Council** [2013] EWCA Civ 1193 (Appendix B7) and **Moore v SSCLG and London Borough of Bromley** [2013] EWCA Civ 1194 (Appendix B6).

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

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

509. In the assessment of proportionality there is an explicit requirement to treat the needs of the children who live on the site as a primary consideration (UNCRC Article 3, fully set

out in para 80-82 of **AZ**) and to consider as a primary consideration those needs which amount to a requirement to safeguard and promote the welfare and well-being of children (Children's Act 2004, s.11 (1)).

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

511. The decision to refuse permanent planning permission and to maintain that decision impacts upon the Article 8 ECHR rights of those children and there is a statutory duty in these circumstances to keep any decision impacting upon those rights under review (**AZ** para 81).

512. The Article 8 ECHR rights of all the site occupants are clearly engaged in this case and would be clearly infringed by the appeal being dismissed. To maintain the refusal, it must be determined that such an action is proportionate.

513. There will be 26 children living at the appeal site. It is clearly in the best interests of a child to have a settled base and home life where they are living together with family. It is also in the best interests of a child to have regular and consistent access to education and healthcare. It cannot be in the best interests of a child to deny them of this, which will be a natural consequence of dismissing the appeal.

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

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

515. In **Zoumbas v SSHD** [2013] 1 WLR 3690 (Appendix B2) Lord Hodge in the Supreme Court set out seven relevant principles at paragraph 10:

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

- 1) The best interests of a child are an integral part of the proportionality assessment under article 8 ECHR;*
- 2) In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary*

consideration; and the child's best interests do not of themselves have the status of the paramount consideration;

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

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

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

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

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

516. Further to this, Baroness Hale in ***Makhlouf v SSHD*** [2016] UKSC 59 (Appendix B3) at paragraph 46 and 47 held that the rights of children must be considered separately from those of their parents and the public interest; children must be recognised as rights-holders in their own right and not as adjuncts to other people's rights.

517. The welfare and wellbeing of the child can only be safeguarded by the grant of a permanent planning permission.

Suggested Conditions

518. Paragraphs 56 and 57 NPPF 2024 set out:

“56. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

57. Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.”

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

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

521. An appropriately worded landscaping condition could be used if the Inspector considers such to be necessary.

522. The issue of temporary conditions is dealt with above, if applied it should be for at least five years to give the Council the longest possible period to allocate land for alternative pitches.

523. The usual 3-year commencement condition is appropriate.

f

Appeal 3: S.174 Appeal

524. Appeal 3 (Appeal reference 3349303) (Appendix A5) is a s.174 appeal against the 2024 EN issued by the Council alleging:

“without panning permission, the material change in use of the land for the stationing of caravans for residential occupation”

525. The 2024 EN is appealed on grounds (b), (c), (d), (f) and (g).

526. As above, the application of Section 57(4) of the TCPA1990 is relevant to the Appellant's ground (b), (c), (d) and (f) appeals. The Appellant's fallback position is set out in full above, however for ease the following positions are advanced:

- *A'mixed use for the stationing of mobile homes for residential purposes, agriculture and storage of vehicles, boats and materials'.* The number of caravans that can lawfully be stationed on the land for residential purposes being two, in line with the appellant's s.195 Appeal; or
- The stationing of caravans for residential purposes.

Ground B – Whether the alleged breach of planning control has occurred as a matter of fact:

527. It is the Appellant's position that as a matter of fact the breach of control as alleged has not occurred for the reasons set out below.

528. The plan attached to the 2024 EN includes an area of land which is not part of the current planning unit. Pastureland is included which runs around the functional plain of the river and is not used for the use of the alleged breach of planning control.

529. The witness statement of James Ball (Appendix A42) confirms that:

- This area is used for pasture land for the horses.

530. The below Google Earth images from 2023 (the closest to the date of issue of the 2024 EN) demonstrate that the trees, hedgerows and fencing clearly demark this area **and** that

there is a different use of the land with the northern area being used as pasture lands and the area to the south for the stationing of caravans for residential purposes.



531. Using the criteria for identification of planning units as set out in the judgment of ***Burdle v Secretary of State for the Environment and another* [1972] 3 All ER 240** (Appendix B13) it is clear that there is a functional and physical separation of this area from the remainder of the Site and as such the area to the north of the tree line, as at the time of the issue of the 2024 comprised a distinct planning unit. This area needs to be removed from 2024 EN.

532. The following aspect of the ground (b) appeal is predicated on the basis that the Inspector concludes that the fallback position is that of a single use planning unit either for the stationing of one or two mobile homes. In this scenario the breach of planning control as alleged is incorrect.

533. In this scenario reliance will be placed on the 2016 CLEUD and, if successful, the S195 appeal which confirms the lawfulness of the existing use of land for the siting of either one or two residential mobile homes. The breach of planning control as framed fails to take this lawful use into account.

534. For the breach of planning control to be correct, considering the existing lawful use, the breach of planning control would need to allege a material change of use through intensification.

535. This appears to be accepted by the Council, who within their final comments set down the below:

In the event it is determined that the use the subject of the 2016 Certificate was not abandoned nor subsumed as part of the new chapter in the planning history, it is the Council's view that the use had intensified such as to constitute a material change in use of the land. The law permits intensification of a lawful use provided this does not amount to a material change of use. In this case there has been a material change of use of the site as a whole.

536. Thus, if the Inspector accepts that the 2016 CLEUD was not abandoned or lost due to the establishment of a new planning chapter, which, as I have explained above in the context of Appeal 1 has not occurred, it has to follow that the breach as alleged in the 2024 EN is incorrect and requires amendment.

537. The Appellant will not be prejudiced by the amendment, no ground (a) claim being pursued.

Ground C – That there has not been a breach of planning control

538. If the Inspector accepts that the 2016 CLEUD has not been abandoned in respect of the area which the Inspector concludes is subject to the 2016 CLEUD, planning permission for the stationing of a caravan for residential occupation for the area will not be required.

539. Similarly, if Appeal 1 is upheld, planning permission for the stationing of two mobile homes caravans for residential occupation for the area will be not required.

Ground D – The time for enforcement has passed

540. As above, Section 57(4) of the Town and Country Planning Act applies. Even if the breach is found to have taken place, the appellant is entitled to revert to the previous lawful use which would be the fallback positions as identified above. The Inspector is referred to the above, in relation to evidence supporting the relevant fallback positions.

541. In addition to the fallback position pursuant to Section 57(4) TCPA 1990, it is clear that the following elements which the 2024 EN seeks to remove, are immune from enforcement action:

- The access with the highway and the access track; and
- Earth Bunds.

542. Each element is considered separately below.

543. Section 191 of the Town and Country Planning Act 1990 (the “TCPA”) refers to Certificates of Lawfulness of existing use or development. By virtue of s.191(3), uses and

operations are 'lawful' if the time for enforcement action has expired and they are not in contravention of any enforcement notice or breach of condition notice which is in force

544. In accordance with Section 171B Town and Country Planning Act, Section 3 of The Planning Act 2008 (Commencement No. 8) and the Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulations 2024, the relevant period of consideration in respect of the above elements is four years.

545. S.191(4) of the TCPA states that if, on an application under the section, the local planning authority *[for this read the Inspector]* are provided with information satisfying them of the lawfulness of the use at the time of the application, they shall issue a certificate to that effect.

546. It is established case law ***F W Gabbitts v SSE and Newham LBC*** [1985] JPL 630 that the applicant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted.

547. If the Council have no evidence of their own to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the issue of a certificate.

The access with the highway and the access track

548. The 2024 EN was issued on 18 July 2024. The relevant period for consideration is four years prior to the issue of the 2024 EN i.e. 18th July 2020 – 18th July 2024. The Appellant relies on witness evidence, photographs and aerial imagery in support of the ground (d) claim.

Google Earth imagery.

549. Google Earth imagery is used in support of this ground of appeal and demonstrates that the access with the highway and access track have been in situ well in excess of the required four year period.

550. The image below dated 1st January 2005 shows the access and access track in situ.



551. The below image dated 5th November 2007 shows the access and access track in situ.



552. The image below dated 15th September 2012 shows the access and access track in situ.



553. The image below dated 10th September 2018 shows the access and access track in situ.



554. The image below dated 28th May 2020 shows the access and access track in situ.



555. The image below dated 3rd August 2022 shows the access and access track in situ.



556. The image below dated 20th April 2022 shows the access and access track in situ.



557. The image below dated 13th June 2023 shows the access and access track in situ.



558. Google Earth imagery is therefore supportive of access with the highway and access track having been in situ in excess of four years.

Site photographs

559. I attended the Appeal Site on 13th August 2021 and took the following photograph which shows the access track.



Witness Evidence

560. The witness statement of James Ball (Appendix A43) confirms:

- He first visited the Appeal Site in July/August 2021 and the access road and access with the highway were in place.
- He moved onto the Appeal Site in summer of 2022 at this time the access road and access with the highway were in place.

- The access track and access with the highway have remained in place throughout his ownership.

561. The witness statement of Drew Price (Appendix A43) confirms:

- When they first looked to purchase the Appeal Site there was already an access road.
- The access has remained.

562. The witness statement of Ben Ball (Appendix A44) confirms:

- The access track and access with the highway were there when they moved on.

563. The witness statement of Chris Jenkins Senior (Appendix A45) confirms:

- The access track and access with the highway were there when they moved on.

564. The witness statement of John Lee (Appendix A46) confirms:

- The Appeal Site had an existing access when they moved on.

565. The witness statement of Ned Till (Appendix A47) confirms:

- The Appeal Site had an existing access when they moved on.

566. The witness statement of Tony Till (Appendix A50) confirms:

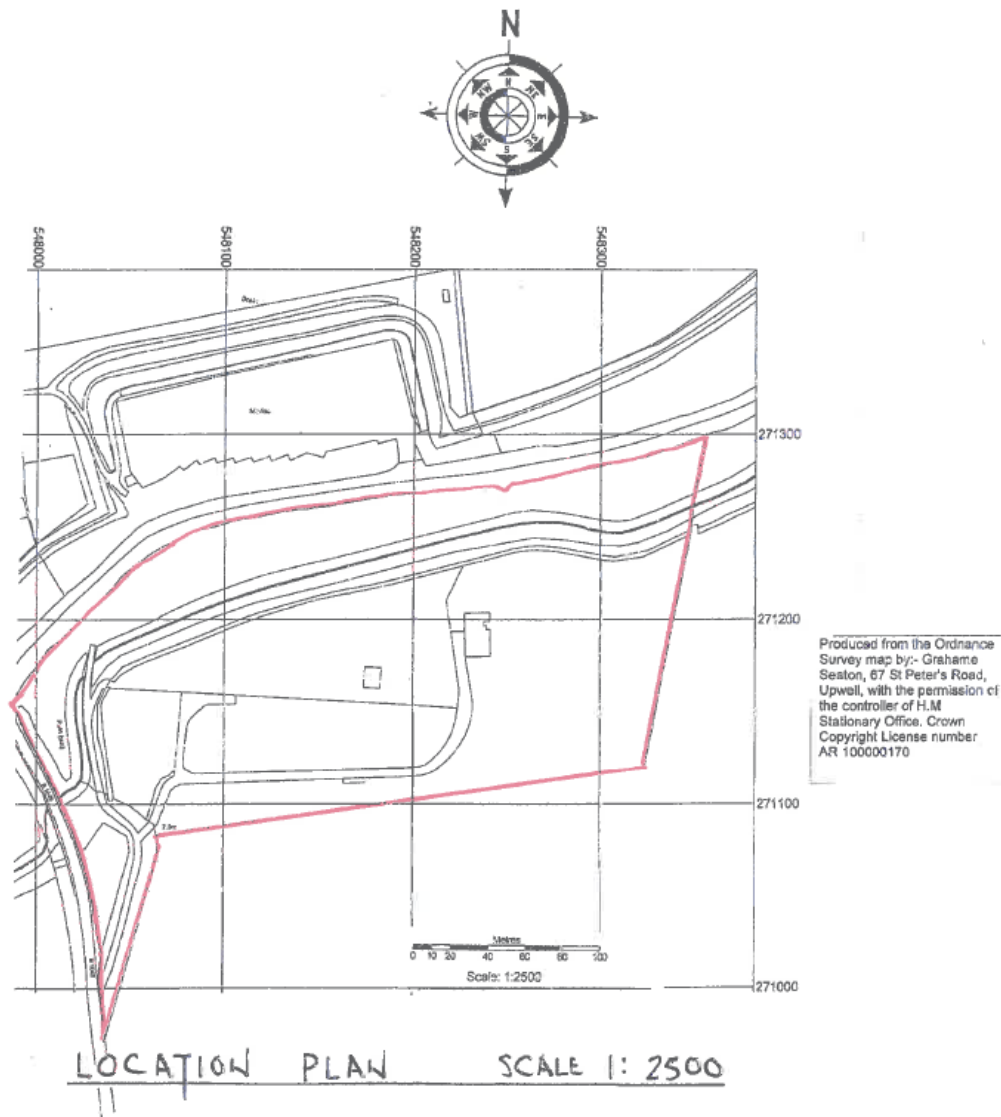
- There was already an existing access to the Appeal Site.

2016 CLEUD

567. The 2016 CLEUD established that the site had been used for the stationing of a mobile home for residential purposes for which there would have been an access and access track. Irrespective of the dispute between the parties as to the correct red line area for the 2016 CLEUD, there is no suggestion that the access was anything other than that now in suite.

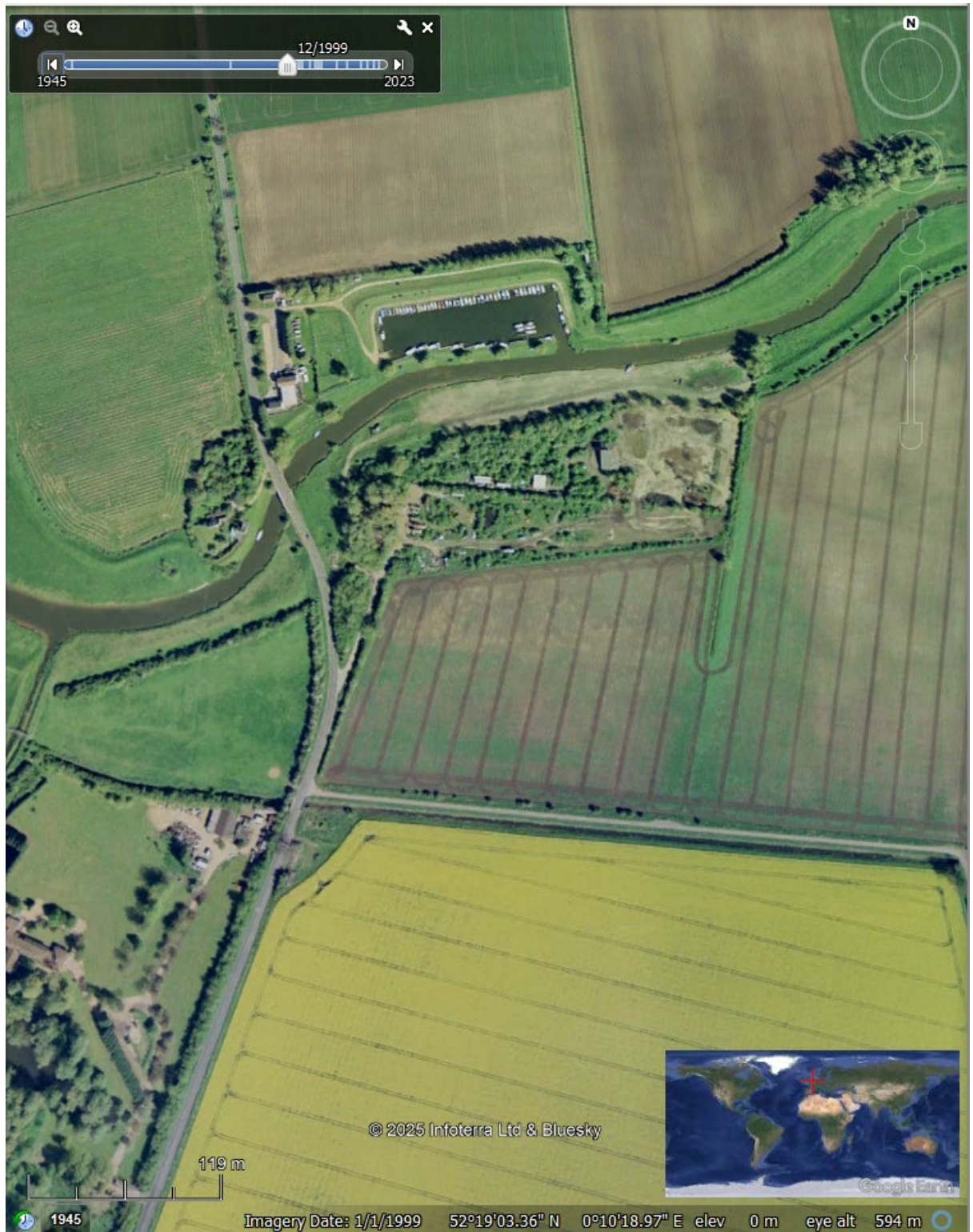
568. This is supported by the below image and location plan submitted with the 2016 CLEUD.





Prior applications

569. Pursuant to reference S/0564/99/F, permission was granted for variation of Conditions 1 and 2 of planning permission S/0759/96/F for the permanent use of land as Clay shooting grounds on Fridays, Saturdays and Sundays (Appendix A52). The Council's website does not include the full application or the relevant plan. However, the below Google Earth image from 1999, shows the same access and track in situ.



570. It is therefore clear that there has been an established access and track for a number of years.

571. The Appellant has demonstrated with reference to witness statements, aerial photography, planning documentation and site photographs that on the balance of

probabilities the highways access and access road is immune from Enforcement Action, the operational development having incurred in excess of four years prior to the issue of the 2024 EN and as such is considered to be lawful and immune from enforcement action.

Earth Bunds.

572. The 2024 EN was issued on 18 July 2024. The relevant period for consideration is four years prior to the issue of the 2024 EN i.e. 18th July 2020 – 18th July 2024. The Appellant relies on witness evidence, photographs and aerial imagery in support of the ground (d) claim.

573. The Council refutes the lawfulness of the bunds within their Statement of Case with reference to site photographs taken on 27th June 2022 which shows earth mounds and diggers on the site. It appears to be the Council's contention that these works were the creation of the bunds.

574. The Council have however failed to have regard to what existed lawfully prior to any works that took place in June 2022. It is clear from considering the relevant evidence that lawful bunds existed four year prior to the issue of the 2024 EN. Whilst some additional works may have been done in June 2022, the Council cannot seek to remove those aspects of the bunds that are lawful through the passage of time.

Google Earth imagery.

575. Google Earth imagery is used in support of this ground of appeal and demonstrates that the access with the highway and access track have been in situ well in excess of the required four year period.

576. The image below dated 1st January 2005 shows the bunds in situ.



577. The below image dated 5th November 2007 shows the bunds in situ.



578. The image below dated 15th September 2012 shows the bunds in situ.



579. The image below dated 10th September 2018 shows the bunds in situ.



580. The image below dated 28th May 2020 shows the bunds in situ.



581. The image below dated 3rd August 2022 shows the bunds in situe.



582. The image below dated 20th April 2022 shows the bunds in situe.



583. The image below dated 13th June 2023 shows the bunds in situ..



584. Google Earth imagery is therefore supportive of access with the bunds in situ. having been in situ in excess of four years.

Site photographs

585. I attended the Appeal Site on 13th August 2021 and took the following photographs which shows the bunds in place, and covered with significant levels of vegetation.





Witness Evidence

586. The witness statement of James Ball (Appendix A42) confirms:

- When he first visited the Appeal Site in July/August 2021 the banks on the Appeal Site were in place.
- The banks have remained in place throughout his ownership.
- In 2022 they did some work to secure them, levelling them off and stabilising them.

587. The witness statement of Chris Jenkins Senior (Appendix A45) confirms:

- The earth embankments were on site when they moved on. Some works were done to tidy them up.

588. The witness statement of Ned Till (Appendix A47) confirms:

- The Appeal Site had existing earth banks when they moved on.

Council's evidence

589. The Council's own evidence demonstrates that the bunds have been on the Appeal Site for a significant period of time.

590. The 2021 site visit photographs as appended to their Enforcement Statement of Case demonstrate the bunds were in place.



591.As do the 2016 CLEUD photographs, also annexed to the Council's Enforcement Statement of Case.



592. The Council refutes the lawfulness of the bunds within their Statement of Case with reference to site photographs taken on 27th June 2022 which shows earth mounds and diggers on the site. It appears to be the Council's contention that these works were the creation of the bunds.

593. The Council have, however, failed to have regard to what existed lawfully prior to any works that took place in June 2022. It is clear from considering the relevant evidence that lawful bunds existed four years prior to the issue of the 2024 EN. Whilst some additional works may have been done in June 2022, the Council cannot seek to remove those aspects of the bunds that are lawful through the passage of time.

594. The Appellant has demonstrated with reference to witness statements and aerial photography that on the balance of probabilities the bunds are immune from Enforcement Action, the operational development having incurred in excess of four years prior to the issue of the 2024 EN and as such is considered to be lawful and immune from enforcement action.

595. Whilst some removal works may be required to reflect height and extent of the bunds the Inspector considers lawful through the passage of time, this cannot amount to the bunds in their entirety.

Ground F - The steps required to comply with the requirements of the notice are excessive and lesser steps would overcome the objections.

596. Without prejudice to the aforementioned grounds, the requirements of the 2024 EN are excessive.

597. Requirements (i) requires the cessation of the land for the stationing of caravans for residential occupation.

598. Either, by virtue of the 2016 CLEUD or two caravans for residential purposes are (if the s.195 appeal is upheld); or the fallback positions identified above a lawful use for at least one mobile home to be stationed on the land for residential purposes.

599. Requirement (i) is excessive and unenforceable as it seeks to prevent a lawful use on the site.

600. Requirements (v) and (vi) of the 2024 EN require the restoration of ground levels to its previous condition, but it is far from clear what the Council believe this is, or indeed and perhaps more pertinently, what they accept it lawfully is. Given the uncertainty, this requirement should be deemed excessive.

601. In addition, Requirement (v) requires the removal of '*all hardstandings facilitating the material change of use of the Land.*' For the avoidance of doubt this could not include the highways access and access road.

602. As evidenced with the above ground (d) appeal, the access with the highway and the access track running northwards into the site are clearly lawful through the passage of time. In case the Council believes it can rely on ***Murfitt v Secretary of State for the Environment*** [1980] 40 P. & C.R. 254, reliance will be placed on ***Secretary of State for Levelling Up, Housing and Communities v Ian Nivison Caldwell and Timberstore Limited***, [2024] EWCA Civ 467 (Appendix B9) to demonstrate that if the Inspector accepts that the access and access track are lawful through the passage of time then the 2024 EN cannot require their removal.

603. At paragraph 49, Lindblom said:

“This understanding of the Murfitt principle was incorrect. The court has consistently held that, to come within the principle, the operational development in question must be “ancillary” or “incidental” to the change of use itself.”

604. For the access and access track to be caught by the 2024 EN, they would have either had to have been substantially completed less than four years prior to the issue of the 2024 EN or otherwise be ancillary or incidental to breach of planning control.

605. Essentially, only operational development which is subordinate in nature to the breach of planning control can be caught by the 2024 EN.

606. The above ground (d) appeal demonstrates that the access and access track were in situ, significantly before the alleged breach of planning control. The access and access track is clearly not subordinate in nature to, nor reliant on the alleged breach of planning control.

607. As such, its removal cannot be required by the 2024 EN.

608. Similarly, requirement (vi) requires the removal of ‘*all earth bunds facilitating the material change of use of the Land*’. These bunds, which are operational development, are lawful through the passage of time, being erected by previous occupiers of the land, to facilitate the previous use. As above, the principles of *Secretary of State for Levelling Up, Housing and Communities v Ian Nivison Caldwell and Timberstore Limited*, [2024] EWCA Civ 467 will apply.

609. For the bunds to be caught by the 2024 EN, they would have either had to have been substantially completed less than four years prior to the issue of the 2024 EN or otherwise be ancillary or incidental to breach of planning control.

610. Essentially, only operational development which is subordinate in nature to the breach of planning control can be caught by the 2024 EN.

611. The above ground (d) appeal demonstrates that the bunds were in situ and significantly complete before the alleged breach of planning control. The bunds are not subordinate in nature to, nor reliant on the alleged breach of planning control.

612. It is accepted that any additions to the bunds resulting from the 2022 works evidenced by the Council would not be lawful through the passage of time and could be removed. However, this would not extend to the removal of the original bunds which were substantially complete prior to the issue of the EN and having predated the alleged breach of planning control cannot be considered subordinate in nature to the breach of planning control.

Ground G – The time given to comply with the notice is too short

613. The time for compliance is 3 months.

614. Taking into account the scale of need for additional pitches in the district, the lack of a five-year supply of gypsy and traveller pitches, the lack of suitable, affordable, available and acceptable alternative sites and the LPA's ongoing failure of policy a compliance period of at least 2 years is required to enable the occupiers living on the site to find alternative accommodation.

Summary and conclusion

615. Appeal 1 (Appeal reference 3308443) (Appendix A1) is a s.195 appeal is against the refusal by South Cambridgeshire Council ("**the Council**") of an application ("**the CLOPD application**") (reference 22/01574/CLPD) (Appendix A2) for a certificate of lawfulness pursuant to Section 192 of the Town and Country Planning Act for the use of land for the stationing of two mobile homes for residential purposes.

616. Appeal 2 (Appeal reference 3308444) (Appendix A3) is a s.78 appeal against the refusal by the Council of an application for the material change of use of land through intensification to the stationing of caravans for residential purposes, nine dayrooms and the formation of hardstanding ancillary to that use (reference 22/01703/FUL) (**“the planning application”**) (Appendix A4).

617. Appeal 3 (Appeal reference 3349303) (Appendix A5) is a s.174 appeal against an Enforcement Notice issued by the Council on 18th July 2024 (**“the 2024 EN”**) (Appendix A6) alleging:

“without panning permission, the material change in use of the land for the stationing of caravans for residential occupation”

618. The 2024 EN was appealed on 1st August 2024 on grounds (b),(c),(d),(f) and (g).

619. The Appeal Site is described.

620. In addition to the subjects of the appeals the most pertinent planning history to which consideration ought to be given is a Certificate of lawful development for the standing of a mobile home, reference S/1346/16/LD, granted on 11 October 2016 (Appendix A18) (**“the 2016 CLEUD”**).

621. The relevant fallback position is of relevance for all three appeals.

- Appeal 1 assists in establishing the relevant fallback position in considering the appropriate planning units, whether the 2016 CLEUD has been abandoned and whether an increase in the number of mobile homes from that permitted in 2016 CLEUD to two, is lawful.
- The application of Section 57(4) of the TCPA 1990 is relevant to the S78 appeal (Appeal 2) as it will form the baseline against which the Site’s impact ought to be assessed as well as constituting a material consideration in favour of the appeal.

- The fallback position is also relevant to Appellant's ground (b), (c), (d) and (f) appeals under Appeal 3.

622. The above demonstrates that the lawful fallback position is likely to be *'the mixed use of the land for the 'stationing of mobile homes for residential purposes, agriculture and storage of vehicles, boats and materials'*.

623. If the Inspector is not in agreement with the mixed use as set out above being the fallback position, then in the alternative, the fallback position would be that of the stationing of caravan(s) for residential purposes and agriculture.

Appeal 1: S.195 Appeal

624. The CLOPD Application is predicated on the existence of the 2016 CLEUD and sought confirmation that the siting of two residential mobile homes within the red line area of the application site as identified on the Location Plan (Ref: 21_1161A_001), as an increase in the number of caravans from the one permitted pursuant to the 2016 CLUED, would not constitute 'development' pursuant to S.55 TCPA 1990 and thus would be lawful.

625. The Council erred in amending the plan in respect of the 2016 CLEUD and the appropriate area over which the lawful use forming the subject of the 2016 CLUED existed was as indicated on the 2016 Location Plan, which includes the area sought pursuant to the CLOPD application.

626. Applying the principles in *Hughes v Secretary of State for the Environment, Transport and the Regions and South Holland District Council [2000]* and having completed an objective assessment in relation to whether the 2016 CLEUD could be considered to have been abandoned, it is clear since the issue of the 2016 CLEUD the land has continued to be used lawfully for the stationing of a mobile home for residential purposes and therefore has not been abandoned.

627. Furthermore, case law states once a use has ceased, its resumption would not amount to a material change of use unless that use had been abandoned, and as outlined above

the site has not been abandoned any periods of non-use and in activity as referred to by the Council are not sufficient to indicate a change of use.

628. A residential mobile home is permitted to be sited on the land pursuant to the 2016 CLEUD. Increasing the number of caravans that can be stationed within the whole site from one to two is an intensification of the existing use. However, it is a mere intensification, the intensification is not such that it would constitute a material change in the character of the use and therefore would not fall into the definition of 'development' as described above.

629. For the reasons set out above, the Inspector is requested to grant the CLOPD application in the terms sought.

Appeal 2: S78 Appeal

630. Appeal 2 (Appeal reference 3308444) (Appendix A3) is a s.78 appeal against the refusal by the Council of an application for the material change of use of land through intensification to the stationing of caravans for residential purposes, nine dayrooms and the formation of hardstanding ancillary to that use (reference 22/01703/FUL) (**“the planning application”**) (Appendix A4).

631. It is considered that the **most important policies** for determining the appeal are:

- H20 – Provision for gypsies and travellers and travelling showpeople; and
- H22 – Proposals for gypsies and travellers and travelling showpeople on unallocated land outside development frameworks

632. The Decision Notice for the planning application (Appendix A23) sets out eight refusal reasons.

633. Reasons for refusal 6 and 7 were withdrawn by the Council on 31st October 2024.

634. The Highways SOCG at Appendix A41 confirms that there is no highways objection.

635. The principle of the development at its location is considered to be in line with national policy.

636. It is concluded that the site is sustainably located for a gypsy and traveller site

637. The above analysis shows that access to services and additional public transport methods, including the bus stops and routes referred to above, are within walking or cycling distance of the site (or a combination of the two). More specifically, Cottenham as identified in Policy ST/5 as a rural centre as having good access to services and public transportation can be accessed via the PROW or by road, and is within 5km of the site (the acceptable cycling distance). It would clearly be feasible for residents of the site to

access local services and facilities and public transport without reliance on private motor vehicles.

638. The Council in undertaking their assessment of the impact on character and appearance within the officer's report and the Landscape Proof have incorrectly assessed the that the Appeal Site is in the open countryside and failed to correctly establish the baseline or existing development on the Site.

639. The character of the area surrounding the Appeal Site is of a mixed use including residential, commercial, agricultural and recreational land uses. Given the existing residential use in the area including the permitted 2016 CLEUD, the proposal, is in keeping with the prevailing land uses and would at worst have a modest impact given the scale of the development.

640. Given the scale of the development and the proximity of the PROW to the north and resultant views, I accept that there will be moderate harm to the appearance of the area as a result of the development. However, this impact can be reduced with appropriate landscaping, to such that any harm would at worst be modest.

641. Both an acceptable acoustic environment for the residents of the Site and the required safeguarding of the mineral workings are achieved with the proposed development.

642. There is no evidence to suggest any adverse impact on the proposed residents will result because of dust emissions from the quarry.

643. The 2016 CLEUD renders most of the site non-viable for potential mineral extraction. Even if the 2016 CLEUD is found to be abandoned the application of other buffers for the protection of the Fourth Sock Drain, periphery hedgerows and existing priority habitat reduces the area potentially available for mineral extraction with the levels of likely extraction rendering it unlikely for extraction to be economically viable. Site-wide prior extraction of sand and gravel is not considered practicable on the Appeal Site. There is not considered to be a viable resource at the Appeal Site and therefore it is unlikely that

the Appeal Site would be put forward for a mineral allocation in the future. The proposal is therefore compliant with Policy 5 of the Cambridgeshire and Peterborough Minerals and Waste Local Plan.

644. In relation to Biodiversity no further ecological surveys are considered necessary and mitigation measures for bats, nesting birds and amphibians are prescribed on site which can be addressed through appropriately worded conditions

645. The Appeal Site was occupied prior to the dates associated with the adoption of Statutory Biodiversity Net Gain. It is considered the Appeal Site is not to be subjected to the statutory 10% net gain requirements.

646. Local policy outlines aspirations for developments to provide 20% net gain, however, such policy has not been adopted.

647. There is therefore no requirement to demonstrate a BNG. If the Inspector is not in agreement, the issue of BNG can be addressed through an appropriately worded condition.

648. Only limited weight should be attributed to the intentional unauthorised development at the Appeal Site. The Appeal Site was moved onto as a result of personal circumstances and lack of alternative pitches and there have been attempts to regularise the situation to the best of the Appellant's ability

649. There are several material considerations in favour of the appeal that could be used to outweigh any harm.

650. These material considerations are:

- Local, Regional and National Need
- The Provision of Available Alternative, Suitable, Acceptable and Affordable Sites
- Failure of Policy

- Lack Of a Five-Year Supply
- Fallback position
- Personal Circumstances (Gypsy status, personal need, health, education, extended family grouping and the best interests of the child).

Local, Regional and National Need

651. The need for gypsy and traveller sites in the district is primarily dealt with in the Need Statement submitted on behalf of the Appellant.

652. Adjusting the figures in accordance with the conclusions above, Green Planning Studio identified a need for 362 households as at the base date. To be offset against this is a supply of 304 pitches: an immediate need as at the base date of 58 pitches. Taking into account the emerging growth on GPS' figures by 2028 there should be a minimum of 398 pitches in the District and by 2033, 435 pitches. The Inquiry in this appeal is due to be heard in 2025; the appropriate period for consideration is therefore 2025 – 2030. On this basis the figure for the purposes of establishing a five-year supply figure is 412 pitches.

653. It is clear from the above assessment that the Council is working to too low a figure in its site allocations, it is my opinion that they will fail to meet the actual need for sites in the district.

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

Provision of Available Alternative, Acceptable and Affordable Alternative Sites

655. There are no alternative available sites for the site occupants to move to and there seems little likelihood that there will be in the immediately foreseeable future.

656. The lack of sufficient supply of alternative sites is a material consideration of significant weight in favour of the appeal.

Failure of Policy

657. I have identified a number of failings in policy by the Council each of which should be treated as its own separate consideration. These failures of policy include:

- The Council's policies are out of date. The Local Plan is based on a previous GTAA where no need was identified. Even on the Council's evidence this is no longer the position.
- The Council is not complying with the PPTS requirement to maintain a five-year supply of sites.
- The GTAA relied upon by the Council underestimates the level of need in the District and therefore the Council will fail to meet the actual level of need in the District. The Need Statement prepared by GPS demonstrates a number of inaccuracies or methodological issues with the GTAA, which have resulted in an underestimation of the number of pitches that are required in the District. As such the Council are working to too low a figure.
- There is no adopted up to date allocations policy for Gypsy and Traveller sites and no realistic prospect that one will be adopted in the near future.

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

Lack of a Five-Year Land Supply

659. The Council are unable to show a five-year land supply of deliverable land for gypsy and traveller sites which the government required them to do by 27 March 2013.

660. The lack of a five-year land supply is a material consideration of **significant weight** in favour of the appeal.

Fallback position

661. As set out above, the fallback position for the land is a '*mixed use for the stationing of mobile homes for residential purposes, agriculture and storage of vehicles, boats and materials*'. The number of caravans that can lawfully be stationed on the land for residential purposes being two, in line with the appellant's s.195 Appeal. The Inspector is referred to the above evidence in support of this position.

662. If the Inspector is not in agreement with the mixed use as set out above being the fallback position, then in the alternative, the fallback position would be that of the stationing of caravans for residential purposes.

663. In the case of *Mansell v Tonbridge and Malling BC* [2017] EWCA Civ 1314 (Appendix B12), Lindblom LJ, confirmed the approach of Sullivan LJ judgment in *Samuel Smith* ([2009] EWCA Civ 333) that a fallback position must have a real prospect of being taken up, but a "real prospect" does not have to be probable or likely, a possibility will suffice. (paragraphs 26-37)

664. Either of the suggested fallback positions are of **considerable weight** in favour of appeals.

Personal Circumstances

665. Personal circumstances only need to be considered if the Inspector finds a departure from policy and/or other harm and then finds that the other material considerations are insufficient to outweigh the identified harm. If necessary, personal circumstances can be added into the pot to clearly and substantially outweigh any harm.

666. In line with other decisions, including the Secretary of State in **Crawt**, **considerable weight** should be given to the site occupant's need for a base.

667. Substantial weight should be given to the health needs of those proposed site occupants with significant health needs, as outlined in the witness statements.

668. Significant weight should be given to the health needs of the proposed site occupants with moderate health needs, as outlined in the witness statements.

669. Considerable weight should be given to the health needs of the other proposed site occupants.

670. Significant weight should be attached to the education of the children who are proposed to live on the site.

671. Many of the proposed occupants are part of an extended family grouping. A grant of planning permission will allow this wider family to remain living together in line with their cultural values. This is a material consideration of **modest** weight in favour of the appeal.

672. The best interests of the children on the site are of paramount consideration and no consideration should be given greater weight than the best interests of the child when considering whether the material considerations outweigh any harm.

673. The welfare and wellbeing of children can only be safeguarded by the grant of a permanent planning permission, or in the alternative a temporary permission for a period that should give certainty of alternative suitable and lawful accommodation being secured by the Council through the plan process.

Planning Balance

674. The proposal is, subject to conditions, considered to be in line with the development plan (in so far as that policy is consistent with national policy) and national policy, as such permission should be granted without delay in line with paragraph 11 c) of the NPPF. This is the Appellant's **first position**.

675. If it is not agreed that the proposed development accords with the Development Plan then consistent with the **Wavendon** approach, the basket of policies is considered to comprise of:

- H20 – Provision for gypsies and travellers and travelling showpeople; and
- H22 – Proposals for gypsies and travellers and travelling showpeople on unallocated land outside development frameworks

676. Given the significant inconsistencies of those policies with the NPPF and the PPTS, there appears to be a clear-cut case that the 'weighted balance' of paragraph 11 d) is engaged.

677. Additionally, the Council cannot demonstrate a five-year housing land supply of gypsy and traveller sites, so the 'weighted balance' of paragraph 11(d) is engaged by virtue of footnote 8.

678. Therefore, paragraph 11(d) is engaged either by virtue of the basket of most important policies being out of date, or through the absence of a five-year supply of gypsy and traveller sites. Limb d) i. (with reference to footnote 8) is clearly not engaged and therefore the test of d) ii. falls to be considered.

679. Paragraph 11(d) (ii) requires the decision maker to assess the proposal against policies in the Framework taken as a whole. It is concluded that the development does not depart from any policies of the NPPF and that it could not be concluded that any adverse impacts (harm) that could be reasonably attributed to the development could significantly and demonstrably outweigh the benefits of need, lack of alternatives, lack of a five-year supply and failure of policy.

680. The principle of the development at its location is considered to be in line with national policy.

681. It is concluded that the Appeal Site is sustainably located for a gypsy and traveller site

682. The above analysis shows that access to services and additional public transport methods, including the bus stops and routes referred to above, are within walking or cycling distance of the Appeal Site (or a combination of the two). More specifically, Cottenham as identified in Policy ST/5 as a rural centre as having good access to services and public transportation can be accessed via the PROW or by road, and is within 5km of the site (the acceptable cycling distance). It would clearly be feasible for residents of the site to access local services and facilities and public transport without reliance on private motor vehicles.

683. The Council in undertaking their assessment of the impact on character and appearance within the officer's report and the Landscape Proof have incorrectly assessed the that the Appeal Site is in the open countryside and failed to correctly establish the baseline or existing development on the Appeal Site.

684. The character of the area surrounding the Appeal Site is of a mixed use including residential, commercial, agricultural and recreational land uses. Given the existing residential use in the area including the permitted 2016 CLEUD, the proposal, is in keeping with the prevailing land uses and would at worst have a modest impact given the scale of the development.

685. Given the scale of the development and the proximity of the PROW to the north and resultant views, I accept that there will be moderate harm to the appearance of the area as a result of the development. However, this impact can be reduced with appropriate landscaping, to such that any harm would at worst be modest.

686. Both an acceptable acoustic environment for the residents of the Site and the required safeguarding of the mineral workings are achieved with the proposed development.

687. There is no evidence to suggest any adverse impact on the proposed residents will result because of dust emissions from the quarry.

688. The 2016 CLEUD renders most of the site non-viable for potential mineral extraction. Even if the 2016 CLEUD is found to be abandoned the application of other buffers for the protection of the Fourth Sock Drain, periphery hedgerows and existing priority habitat reduces the area potentially available for mineral extraction with the levels of likely extraction rendering it unlikely for extraction to be economically viable. Site-wide prior extraction of sand and gravel is not considered practicable on the Appeal Site. There is not considered to be a viable resource at the Appeal Site and therefore it is unlikely that the Appeal Site would be put forward for a mineral allocation in the future. The proposal

is therefore compliant with Policy 5 of the Cambridgeshire and Peterborough Minerals and Waste Local Plan.

689. In relation to Biodiversity no further ecological surveys are considered necessary and mitigation measures for bats, nesting birds and amphibians are prescribed on site which can be addressed through appropriately worded conditions

690. The Appeal Site was occupied prior to the dates associated with the adoption of Statutory Biodiversity Net Gain. It is considered the Appeal Site is not to be subjected to the statutory 10% net gain requirements.

691. Local policy outlines aspirations for developments to provide 20% net gain, however, such policy has not been adopted.

692. There is therefore no requirement to demonstrate a BNG. If the Inspector is not in agreement, the issue of BNG can be addressed through an appropriately worded condition.

693. Only limited weight should be attributed to the intentional unauthorised development at the Appeal Site. The Appeal Site was moved onto as a result of personal circumstances and lack of alternative pitches and there have been attempts to regularise the situation to the best of the Appellant's ability

694. In contrast the benefits (material considerations) of need, lack of alternatives, lack of a five-year supply, failure of policy, fallback position, and extended family grouping should be given substantial, significant, significant, significant, considerable and modest weight respectively.

695. It is therefore inconceivable that the adverse impacts of granting permission, could outweigh, let alone significantly and demonstrably outweigh the benefits and therefore planning permission should be granted. This is the Appellant's **second position**.

696. There should be no necessity to consider the personal circumstances of the site occupants and therefore no reason to impose a personal condition; nor would, in these circumstances a temporary condition be reasonable or necessary.

697. Consequently, the proposal is sustainable development as set out in paragraph 8 of the NPPF, where planning permission should be granted without delay.

S.38(6) planning balance

698. If it is concluded that the paragraph 11 'weighted balance' does not apply and some conflict with the development plan is identified, then, even applying the traditional planning balance, the material considerations relied upon outweigh any harm identified such that a permanent non-personal permission should be granted. This is the **Appellant's third position.**

699. Personal circumstances only need to be considered if the Inspector finds a departure from policy and/or harm and then finds that the other material considerations are insufficient to outweigh the identified harm. I consider this is unlikely to be necessary. However, if the Inspector reaches this stage, then the personal circumstances, (taking into account the best interests of the child), are very weighty considerations and if this is what the Inspector considers tips the balance then a personal condition would be necessary. This is the Appellant's **fourth position.**

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

701. The Article 8 ECHR rights of all the site occupants are clearly engaged in this case and would be clearly infringed by the appeal being dismissed. To maintain the refusal, it must be determined that such an action is proportionate

Appeal 3: S.174 Appeal

702. The 2024 EN is appealed on grounds (b), (c), (d), (f) and (g).

Ground B – Whether the alleged breach of planning control has occurred as a matter of fact

703. The plan attached to the 2024 EN includes an area of land which is not part of the current planning unit. Pastureland is included which runs around the functional plain of the river and is not used for the use of the alleged breach of planning control.

704. The following aspect of the ground (b) appeal is predicated on the basis that the Inspector concludes that the fallback position is that of a single use planning unit either for the stationing of one or two mobile homes. In this scenario the breach of planning control as alleged is incorrect.

705. For the breach of planning control to be correct, considering the existing lawful use, the breach of planning control would need to allege a material change of use through intensification.

706. If the Inspector accepts that the 2016 CLEUD was not abandoned or lost due to the establishment of a new planning chapter, which, as I have explained above in the context of Appeal 1 has not occurred, it has to follow that the breach as alleged in the 2024 EN is incorrect and requires amendment.

Ground C – That there has not been a breach of planning control

707. If the Inspector accepts that the 2016 CLEUD has not been abandoned in respect of the area which the Inspector concludes is subject to the 2016 CLEUD, planning permission for the stationing of a caravan for residential occupation for the area will not be required.

708. Similarly, if Appeal 1 is upheld, planning permission for the stationing of two mobile homes caravans for residential occupation for the area will be not required.

Ground D – The time for enforcement has passed

709. As above, Section 57(4) of the Town and Country Planning Act applies. Even if the breach is found to have taken place, the appellant is entitled to revert to the previous lawful use which would be the fallback positions as identified above. The Inspector is referred to the above, in relation to evidence supporting the relevant fallback positions.

710. In addition to the fallback position pursuant to Section 57(4) TCPA 1990, it is clear that the following elements which the 2024 EN seeks to remove, are immune from enforcement action:

- The access with the highway and the access track; and
- Earth Bunds.

711. It is established case law ***F W Gabbitts v SSE and Newham LBC*** [1985] JPL 630 that the applicant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted.

712. It is clear with reference to witness statements, aerial photography, planning documentation and site photographs that on the balance of probabilities the highways access and access road is immune from Enforcement Action, the operational development having incurred in excess of four years prior to the issue of the 2024 EN and as such is considered to be lawful and immune from enforcement action.

713. The Appellant has demonstrated with reference to witness statements and aerial photography that on the balance of probabilities the bunds are immune from Enforcement Action, the operational development having incurred in excess of four years prior to the issue of the 2024 EN and as such is considered to be lawful and immune from enforcement action.

714. Whilst some removal works may be required to reflect height and extent of the bunds the Inspector considers lawful through the passage of time, this cannot amount to the bunds in their entirety.

Ground F - The steps required to comply with the requirements of the notice are excessive and lesser steps would overcome the objections.

715. Without prejudice to the aforementioned grounds, the requirements of the 2024 EN are excessive.

716. Requirement (i) is excessive and unenforceable as it seeks to prevent a lawful use on the site.

717. Requirements (v) and (vi) of the 2024 EN require the restoration of ground levels to its previous condition, but it is far from clear what the Council believe this is, or indeed and perhaps more pertinently, what they accept it lawfully is. Given the uncertainty, this requirement should be deemed excessive.

718. In addition, Requirement (v) requires the removal of *'all hardstandings facilitating the material change of use of the Land.'* For the avoidance of doubt this could not include the highways access and access road.

719. For the access and access track to be caught by the 2024 EN, they would have either had to have been substantially completed less than four years prior to the issue of the 2024 EN or otherwise be ancillary or incidental to breach of planning control.

720. Essentially, only operational development which is subordinate in nature to the breach of planning control can be caught by the 2024 EN.

721. The above ground (d) appeal demonstrates that the access and access track were in situ, significantly before the alleged breach of planning control. The access and access track is clearly not subordinate in nature to, nor reliant on the alleged breach of planning control.

722. As such, its removal cannot be required by the 2024 EN.

723. Similarly, requirement (vi) requires the removal of *'all earth bunds facilitating the material change of use of the Land.'* These bunds, which are operational development, are lawful through the passage of time, being erected by previous occupiers of the land, to facilitate

the previous use. As above, the principles of *Secretary of State for Levelling Up, Housing and Communities v Ian Nivison Caldwell and Timberstore Limited*, [2024] EWCA Civ 467 will apply.

724. For the bunds to be caught by the 2024 EN, they would have either had to have been substantially completed less than four years prior to the issue of the 2024 EN or otherwise be ancillary or incidental to breach of planning control.

725. The above ground (d) appeal demonstrates that the bunds were in situ and significantly complete before the alleged breach of planning control. The bunds are not subordinate in nature to, nor reliant on the alleged breach of planning control.

726. It is accepted that any additions to the bunds resulting from the 2022 works evidenced by the Council would not be lawful through the passage of time and could be removed. However, this would not extend to the removal of the original bunds which were substantially complete prior to the issue of the EN and having predated the alleged breach of planning control cannot be considered subordinate in nature to the breach of planning control.

Ground G – The time given to comply with the notice is too short

727. The time for compliance is 3 months.

728. Taking into account the scale of need for additional pitches in the district, the lack of a five-year supply of gypsy and traveller pitches, the lack of suitable, affordable, available and acceptable alternative sites and the LPA's ongoing failure of policy a compliance period of at least 2 years is required to enable the occupiers living on the site to find alternative accommodation.

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12 March 2025

Appendices A

1. Appeal Form reference APP/W0530/X/22/3308443 dated 6th October 2022
2. Application documents reference 22/01574/CL2PD
3. Appeal Form reference APP/W0530/W/22/3308444 dated 6th October 2022
4. Application documents reference 22/01703/FUL
5. Appeal Form reference APP/W0530/C/24/3349303 dated 1st August 2024
6. Enforcement Notice and Plan dated 18th July 2024
7. Enforcement Notice and Plan dated 10th July 2023
8. Withdrawal of Enforcement Notice and Plan dated 10th July 2023
9. Enforcement Notice and Plan dated 23rd December 2023
10. Withdrawal of Enforcement Notice and Plan dated 23rd December 2023 by way of letter dated 10th July 2024
11. Planning Contravention Notice dated 10th November 2022
12. Planning Contravention Notice response dated 22nd December 2022
13. Enforcement Notice and Plan dated 9th September 2022
14. Withdrawal of Enforcement Notice and Plan dated 9th September 2022 by way of letter dated 20th September 2022.
15. Enforcement Notice and Plan dated 21st June 2021
16. Withdrawal of Enforcement Notice and Plan dated 21st June 2021 by way of email dated 24th November 2021
17. Expediency Report dated 30 August 2022
18. Application documents for S/1346/16/LD, granted on 11 October 2016
19. Officer's Report reference 22/01574/CLPD
20. Decision Notice reference 22/01574/CLPD
21. Officer's Report reference 22/01703/FUL
22. Decision Notice reference 22/01703/FUL
23. Extracts of South Cambridgeshire Local Plan 2018
24. Extracts of Cambridgeshire and Peterborough Minerals and Waste Local Plan
25. Extracts of National Character Areas by Natural England
26. Extract of Regional Landscape Character study by Landscape East 2011
27. Extract of Greater Cambridge Landscape Character Assessment 2021
28. Extract of Greater Cambridge Local Development Scheme updated Addendum: Local Plan Timetable Update
29. Extract of Cambridge City Council's website.
30. Council's email dated 31st October 2024
31. Extract of Twentypence Garden Centre website
32. Decision Notice S/0088/18/CM - Quarry Planning permission
33. Decision Notice reference S/0088/18/CM/C2

34. Decision Notice reference S/0088/18/CM/C2 – Condition 19
35. Statement to accompany the application for approval of details reserved by condition S/0088/18/CM/C2
36. Decision Notice reference S/0088/18/CM/C2 – Condition 20
37. Applicant's discharge conditions, including Condition No. 20
38. Mitchell Hill Quarry Environmental Statement Non-Technical Summary
39. Mitchell Hill Quarry Environmental Statement – Chapter 9 Dust
40. Working Phase 7 Drawing S/0088/18/CM/C2
41. Highways Signed statement of common ground
42. Draft witness statement of Mr James Ball
43. Draft witness statement of Mr Drew Price
44. Draft witness statement of Mr Ben Ball
45. Draft witness statement of Mr Chris Jenkins
46. Draft witness statement of Mr John Lee
47. Draft witness statement of Mr Ned Till
48. Draft witness statement of Mr Steve Upton
49. Draft witness statement of Mr Tommy Lee
50. Draft witness statement of Mr Tony Till
51. Decision Notice S/0564/99/F
52. Expediency Report dated 19th April 2021
53. Site visit photos taken 13th August 2021
54. Email from LPA to Joseph Tidd dated 3rd November 2020.
55. Email to Alastair Funge dated 10th March 2021
56. Appeal form for appeal against Enforcement Notice dated 21st June 2021.

Appendices B

1. ECHR Judgement on the case of: ***Chapman v the United Kingdom***, January 18th 2001.
2. Supreme Court Decision: ***Zoumbas v Secretary of State for the Home Department (Respondent)*** [2013] UKSC 74.
3. Supreme Court Decision: ***Makhlouf v Secretary of State for the Home Department*** [2016] UKSC 59.
4. Supreme Court Decision: ***ZH(Tanzania) v Secretary of State for the Home Department*** [2011] UKSC 4.
5. House of Lords Decision: ***Pioneer Aggregates (UK) Limited v Secretary of State for the Environment*** [1985] 1A.C. 132 HL.
6. Court of Appeal Judgement: ***Moore v SSCLG & London Borough of Bromley*** [2013] EWCA Civ 1194.
7. Court of Appeal Judgement: ***Collins v SSCLG & Fylde Borough Council*** [2013] EWCA Civ 1193
8. Court of Appeal Judgement: ***Wychavon District Council v SSCLG and Butler*** [2008] EWCA Civ 692, dated 23rd June 2008
9. Court of Appeal Judgement: ***SSLUHC v Caldwell*** [2024] EWCA Civ 467
10. Court of Appeal Judgment: ***Reed v Secretary of State for Communities and Local Government and Bracknell Forest District Council*** [2014] EWCA Civ 241; [2014] JPL 725
11. Court of Appeal Judgment: ***Hughes v Secretary of State for the Environment, Transport and the Regions and South Holland District Council*** [2000] EWCA Civ 506
12. Court of Appeal Judgment: ***Mansell v Tonbridge and Malling BC*** [2017] EWCA Civ 1314
13. ***Burdle v Secretary of State for the Environment and another*** [1972] 3 All ER 240
14. High Court Judgment: ***Dear v Secretary of State for Communities and Local Government and Doncaster Metropolitan Borough Council*** [2015] EWHC 29 (Admin) 19 January 2015

15. High Court Judgement: **Wavendon Properties Ltd v SoSoHCLG & Milton Keynes Council** [2019] EWHC 1424 (Admin).
16. High Court Judgement: **Doncaster MBC v SoS and Angela Smith**, February 19th 2007 and Appeal Decision APP/F4410/A/05/1184850, **Angela Smith v Doncaster MBC**, dated March 6th 2006.
17. High Court Judgment: **Cheshire East v SSCLG (1) and Renew Developments** [2016] EWHC 571
18. High Court Judgement: **AZ (Applicant) v Secretary of State for Communities and Local Government and South Gloucestershire District Council (Respondents)** [2012] EWHC 3660 (Admin) dated 20th December 2012.
19. High Court Judgement: **Hertfordshire County Council v Secretary of State for Communities and Local Government and Metal Waste Recycling Limited** [2012] EWCA Civ 1473.
20. High Court Judgement: **M&M (Land) v Secretary of State of Communities and Local Government** [2007] EWHC 489 (Admin)
21. High Court Judgement: **Monkhill Limited v Secretary of State for Housing, Communities and Local Government and Waverley Borough Council** [2019] EWHC 1993 (Admin) dated 24th July 2019.
22. Secretary of State Decision, APP/C3620/A/12/2169062 & Others, **Mr Roy Amer & Others v Mole Valley District Council**, dated 10th April 2013 and attached Costs decision.
23. Secretary of State Appeal Decision APP/Y3615/A/10/2131590, **Mr G Cawt v Guildford Borough Council**, dated 24th February 2011
24. Secretary of State Decision APP/B1930/A/11/2153741/NWF, **Mr N Stanley v St Albans City & District Council**, dated 15th December 2011.
25. Secretary of State Decision: APP/P0240/A/12/2179237 **Kiely v Central Bedfordshire Council** [2013]
26. Appeal Decision: APP/P0119/W/15/3065767, **Mr J McDonagh v South Gloucestershire Council** dated 10th February 2016.
27. Appeal Decision: APP/P0119/C/07/2037529, **Mrs Yvette Jones v South Gloucestershire DC**, dated 16th August 2007.

28. Appeal Decision APP/E2205/C/12/2168321, **Mr C West** v *Ashford Borough Council*, dated 18th June 2012 and attached costs decision.
29. Appeal Decision APP/P1940/C/11/2164949 **Jimmy Cash** v *Three Rivers District Council*, dated 9th July 2012.
30. Appeal decision APP/A0665/W/23/33300039, **Mrs M McDonagh** v *Cheshire West and Chester*, dated 27th February 2024.
31. Appeal Decision: APP/L3245/A/13/2196615 **Paul Brooks** v *Shropshire Council*, dated 7th February 2013
32. Appeal Decision: APP/X1355/C/14/2222375 **J Dolan** v *Durham County Council*, dated 5th August 2015
33. Appeal Decision: APP/Y2430/C/21/3277030 & APP/Y2430/W/20/3246224 **Shawn Follows** v *Melton Borough Council*, dated 18th May 2023
34. Appeal Decision: APP/L3245/A/14/2215836 **Mr John Dean Price** v *Shropshire Council* dated 26th September 2014
35. Appeal Decision: APP/L3245/W/22/3300532 **Mr Luke Vincent** v *Shropshire Council* [2022]
36. Appeal Decision: APP/C3620/W/18/3205739 **Amer & Others** v *Mole Valley* [2020]
37. Appeal Decision APP/Z1510/C/23/3328254PP & APP/Z1510/X/23/3328256 **Wayne Stanley** v *Braintree DC* dated 27th March 2024
38. Appeal Decision APP/W1715/X/14/2221824 **Mr A Barney** v *Eastleigh BC* dated 24th March 2015