To: Members of the Development Management Committee

Councillors: Chair – T McCarthy
Deputy Chair – J Richards
L Ladbury, M McLaughlin, S Wright,
F Rashid, G Settle, L Murphy, J Davidson,
C Jordan, B Barr, S Woodyatt

5 March 2014

Development Management Committee

Thursday, 13 March 2014 at 6.30pm

Council Chamber, Town Hall, Sankey Street, Warrington, WA1 1UH

Agenda prepared by Julie Pickles, Democratic and Member Services Officer – Telephone: (01925) 443212, Fax: (01925) 656278,
E-mail: jpickles@warrington.gov.uk

A G E N D A

Part 1

Items during the consideration of which the meeting is expected to be open to
members of the public (including the press) subject to any statutory right of
exclusion.

Item
1. Apologies for Absence

To record any apologies received.

2. Code of Conduct - Declarations of Interest
Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

Members are reminded of their responsibility to declare any disclosable pecuniary or non-pecuniary interest which they have in any item of business on the agenda no later than when the item is reached.
### 3. Minutes

To confirm the minutes of the meeting held on 30 January 2014 as a correct record.

### 4. Planning Applications (Main Plans List)

Report of the Executive Director Economic Regeneration, Growth and Environment

Attached as a separate document

### 5. Results of Planning Appeals

Report of the Executive Director Economic Regeneration, Growth and Environment

- 5.1 Appeal Decision – Land of Hillock Lane, Woolston
- 5.2 Cost Decision – Land of Hillock Lane, Woolston
- 5.3 Appeal Decision – Romas General Store, 156 Thelwall Lane
- 5.4 Appeal Decision – Land North of Hall Lane, Lower Stretton
- 5.5 Appeal Decision – Land at Prospect Farm
- 5.6 Appeal Decision – T J Hughes Plc, 27 Sankey Street

### 6. Awards of Costs against the Council – Planning Appeals

Report of the Executive Director Economic Regeneration, Growth and Environment

### 7. Planning Enforcement Policy

Report of the Executive Director Economic Regeneration, Growth and Environment

### 8. Pre-Application Advice – (Householder Proposals)

Report of the Executive Director Economic Regeneration, Growth and Environment
Part 2

Items of a “confidential or other special nature” during which it is likely that the meeting will not be open to the public and press as there would be a disclosure of exempt information as defined in Section 100I of the Local Government Act 1972.

Nil

If you would like this information provided in another language or format, including large print, Braille, audio or British Sign Language, please call 01925 443322 or ask at the reception desk in Contact Warrington, Horsemarket Street, Warrington.
DEVELOPMENT MANAGEMENT COMMITTEE

30 JANUARY 2014

Present:  Councillor T McCarthy (Chair)
          Councillor J Richards (Deputy Chair)
          Councillors, L Murphy, C Jordan, F Rashid,
          M McLaughlin and S Woodyatt

DM74  Apologies for Absence

Apologies for absence had been received from Councillor B Barr

DM75  Code of Conduct – Declarations of Interest

There were no declarations of interest received.

DM76  Minutes

Resolved,

That the minutes of the meeting held on 23 January 2014 were agreed as a correct record and signed by the Chair.

DM77  Planning Applications

Resolved,

That Pursuant to the Town and Country Planning Act 1990 (As Amended) the applications for permission to develop land be considered and dealt with in the manner agreed.

DM78  2013/22329 - Novelis UK Ltd, Latchford Locks, Thelwall Lane, Lock Villas, Warrington, WA4 1NN - Major (Small Scale Major) - Proposed installation of a new automotive scrap recycling facility as an additional line to the existing aluminium recycling processes that are undertaken at the Latchford Lock Works. (Provision of a new Barn Extension for the processing of Automotive Aluminium scrap, and the construction of a Dust Filter Unit).

The Executive Director of Economic Regeneration, Growth and Environment submitted the above application with a recommendation of approval subject to conditions.

Representations were heard in support of and against the Officer recommendation.

Resolved,

That application 2013/22329 be granted conditional approval.
### DM79 Results of Planning and Enforcement Appeals

Members were presented with a report of the Executive Director of Economic Regeneration, Growth and Environment that set out the result of recent appeals along with the Inspector’s findings and the Executive Director’s subsequent comment:

<table>
<thead>
<tr>
<th>Application/App eal Reference</th>
<th>Location Description</th>
<th>Committee/Delegated Decision</th>
<th>Appeal Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>APP/M0655/A/13/2203919</td>
<td>5 Allen Street, Warrington, Cheshire WA2 7JD</td>
<td>Refuse</td>
<td>Allow</td>
</tr>
<tr>
<td>APP/M0655/D/13/2208211</td>
<td>108 Longbarn Lane, Woolston, Warrington, Cheshire WA1 4QR</td>
<td>Refuse</td>
<td>Dismiss</td>
</tr>
<tr>
<td>APP/M0655/X/13/2198072</td>
<td>16 Chapel Lane, Rixton, Warrington WA3 6HG</td>
<td>Refuse</td>
<td>Allow, Costs Awarded, Lawful Development Certificate Issued</td>
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<tr>
<td>APP/M0655/A/13/2202301</td>
<td>Land at junction of Stocks Lane/Warrington Road, Penketh, Warrington</td>
<td>Refuse</td>
<td>Allow Costs Awarded</td>
</tr>
<tr>
<td>APP/M0655/A/13/2201474</td>
<td>Former United Utilities Depot, Land off Chester Road, Walton, Warrington, Cheshire, WA4 6EP</td>
<td>Refuse</td>
<td>Allow Costs Awarded</td>
</tr>
</tbody>
</table>

Resolved,

That the report be noted.

### DM80 Planning Application Performance for 2013/2014 including Quarter 3 (October to December)

The Committee considered the report of the Executive Director of Economic Regeneration, Growth and Environment that provided Members with a summary of planning application determination timescales for 2013/2014 and comparative data for the cumulative 2012/13 period.

A follow up to the Peer Review (Planning) challenge took place in November 2013 with the Planning Advisory Service concluding “Performance in respect of the speed of determining planning applications is improved so far in 2013/14 compared with 2012/13 with regard to major, minor and other applications”.

Resolved,
That the report be noted

**DM81 Follow up report to Peer Challenge (Planning Services)**

The Committee considered the report of the Executive Director of Economic Regeneration, Growth and Environment that provided Members with a copy of the report from the Planning Advisory Service/Local Government Association following a “follow up” Peer Review challenge that had taken place in November 2013.

A Peer Review (Planning) challenge was instigated in 2011. In response to the findings a Planning Improvement Board was established in 2012 and had overseen a number of improvements and actions as outlined in a Planning Improvement Plan. A follow up to the Peer Review challenge took place in November 2013 and a copy of the findings/report was attached as appendix A.

In respect of the Planning Improvement Plan actions in summary the Peer Review report stated:

*The Improvement Board has overseen and ensured the successful implementation of a rigorous improvement plan for the planning service… Progress on implementing the actions set out in the improvement plan has been regularly reported to and signed off by the Board. The vast majority of actions have either been signed off or are on track to be signed off as at November 2013.*

Progress was being made in respect of the Improvement Plan and the Board would continue to monitor this and report back to Members.

Resolved,

That the report be noted.

Signed..............................

Dated ..............................
## DEVELOPMENT MANAGEMENT COMMITTEE

**Thursday 13th March 2014**

**Start 18:30**

<table>
<thead>
<tr>
<th>Item</th>
<th>Page</th>
<th>App number</th>
<th>App Location/Description</th>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>2013/22130</td>
<td>Gas Utilisation Compound, Arpley Landfill Site, Forrest Way, Sankey Bridges, Warrington, Cheshire, WA4 6Y2</td>
<td>Approve</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Full Planning - Proposed construction of 3 No 23 metre high engine exhaust</td>
<td></td>
</tr>
</tbody>
</table>
Application Number: 2013/22130

Location: Gas Utilisation Compound, Arpley Landfill Site, Forrest Way, Sankey Bridges, Warrington, Cheshire, WA4 6Y2

Ward: Bewsey and Whitecross

Development

Full Planning - Proposed construction of 3 No 23 metre high engine exhaust emission stacks (to include removal of existing 25 metre high engine exhaust emission stack)

Date Registered: 09-Jul-2013

Applicant: Infinis Plc

8/13/16 Week Expiry Date: 02-Sep-2013

Reason for Referral to Committee

The application is referred to the planning committee due to the number of representations received.

Members should note that this application involves the provision of three emission stacks within a consented gas utilisation compound (electricity generating station) which falls within, and utilises the gases from, Arpley landfill site. However, this application should be judged on its merits and is totally separate from the landfill site.

A member’s site visit has been arranged in advance of the meeting.

Human Rights

The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights has been taken into account in the preparation of this report, particularly the implications arising from Article 8 relating to the right to respect for private and family life, home and correspondence, and Article 1 of Protocol 1, concerned with the right of peaceful enjoyment of possessions and protection of property.
Site Location and Proposal

The site comprises a gas utilisation compound (GUP) which generates electricity from gases arising from the Arpley landfill site. Landfill gas arising from the decomposition of waste is extracted from the landfill cells and piped to the GUP, where it is used in the production of electricity which is exported to the National Grid. The site lies on the southern bank of the River Mersey. The GUP compound includes a range of plant and equipment associated with electricity generation. This includes 18 engines enclosed in acoustically attenuated steel containers. The exhaust gases from these engines are dispersed via a 25m high chimney stack. There are a number of smaller stacks which are used to occasionally flare gases. The development was granted consent in June 1999 for a period of 35 years (Ref – 99/39454). Planning permission for the site therefore expires on 10th June 2034.

The nearest dwellings lie within a housing estate approximately 380m to the north of the site. Immediately to the west lies the River Mersey. To the south and south west lies a combination of open countryside and Arpley landfill.

The application involves the removal of the existing chimney stack (25m high) and the erection of three 23m high chimney stacks which would be positioned at roughly equal distance across the GUP site in order to exhaust the emissions arising from the existing engines. The existing planning permission (99/394454) involves up to eighteen engines, each with a capacity of 1MW. As seventeen of the engines are used, the site has a generating capacity of 17MW.

Relevant Planning History

93/30222- temporary installation of landfill gas control equipment – approved for a temporary period of two years.

99/39454 – proposed installation of equipment for the extraction and utilisation of landfill gas for power generation. Approved for a period of 35 years – subject to conditions. One of the conditions requires the cessation of the use and restoration details should the site cease generating electricity for 12 months.


2011/19244 – Proposed extension of operational life of Arpley landfill facility to 2025 including re-profiling, revised sequence of landfill phasing and restoration works, extension of operational life of existing leachate treatment facility and landfill gas utilisation plant and other ancillary developments including offices, weighbridges, wheel washes, fencing etc. associated with the operations of the landfill – refused – now subject of an ongoing appeal.

2013/22598 - Environmental Impact Assessment Application (Major) - Proposed extension of operational life of Arpley Landfill Facility to October
2018; restoration by October 2019; revised sequence of landfill phasing and restoration works; revised landform; continued use of the existing leachate treatment facility and landfill gas utilisation plant and ancillary infrastructure including access roads, site compound, weighbridges, wheel washes, fences, surface water management, site offices and transfer pad associated with the operations of the landfill – refused by the Council in January 2014.

Planning Policy

The site lies within the Green Belt on the Warrington Unitary Development Plan.

National Planning Policy Framework – includes, amongst other matters, a presumption in favour of sustainable development.

Warrington Unitary Development Plan

Policy DCS1 - Development Control Strategy
Policy HOU7 – The Residential Environment
Policy GRN22 - Protection and Enhancement of Landscape Features
Policy LUT15 – The Green Network
Policy REP10 – Noise

Revised Post Submission Local Plan Core Strategy (2013) – whilst the Warrington Local Plan Core Strategy has not yet been adopted, significant weight can be attributed to its contents as the current version has taken into account the comments made by the Inspector during the previous Examination. The following policies are applicable:

Policy CS1 – Overall Spatial Strategy – Delivering Sustainable Development
Policy QE1 - Decentralised Energy Networks and Low Carbon Development
Policy QE5 – Biodiversity and Geodiversity
Policy QE6 – Environment and Amenity Protection
Policy QE7 – Ensuring a High Quality Place

Supplementary Planning Document

Environmental Protection (2013)
Design and Construction (2010)

Notification Responses

The application and amended plans were advertised by way of site notice, press notice and neighbour letter. The application was also advertised as a Departure from the Development Plan (due to Green Belt status). A total of 67 objections have been received – mostly from the nearby residential area (Saxon Park) which includes observations from residents on, but not limited to, Sunflower Drive, Snowberry Crescent, Honeysuckle Avenue, Lavender Gardens, Rostherne Close, Princess Street. Some objections were received from Liverpool Road. The objections can be summarised as follows:
- The visual and environmental impact of three rather than a single stack.

- The visual impact of three plumes of brown/yellow discharge on a continuous basis, currently a plume can be anything from 25-50m high depending on the weather before they visibly disperse. This is the more significant blight on our landscape and the three plumes compared to the single plume will have a threefold detrimental effect. This is visible from a number of properties.

- The failure in the application to mention the impact of these discharges on the area and its' air quality.

- The assessment fails to recognise the hundreds of residential properties and communities within that radius. It ignores one of its' biggest industrial neighbours in United Utilities, and the College in Forrest Way. The Trans Pennine Way is mentioned but not in regard to the potential harmful impact increasing the amount of discharge may have on its' users. There is no mention of the Mersey sailing club.

- The claim that the stack is currently screened by the tree line is inaccurate as these trees are already mature and have grown very little in height over the seven years I have lived on Saxon Park.

- Application is for permission until 2034 which is a long time.

- The Arpley Landfill site has been refused planning permission and may be closed off.

- Whilst from a planning perspective the application may not increase capacity it clearly does from the current status quo output, raising it from 15 to 17MW capacity. This again will further impact discharges and air quality for those around the site and affected by it.

- There is no attempt in the application to improve the impact of the current or proposed stacks. We would want to see improve filtration and scrubbing of the discharge to remove the disgusting colour and improve its’ impact on air quality.

Consultation Responses

WBC Environmental Protection – I have considered the application and have no objections to the proposal. After reviewing the original air quality assessment, a recommendation was made that the application be withdrawn or refused. This was based on the assessment methodology not being acceptable for the officer to be able to comment on. After discussions recommending the modelling criteria that should be used, a subsequent assessment was submitted on the 12 February 2014. This report has been accepted and a full review carried out. The report shows that there will be a
negligible impact from the proposal on air quality at sensitive receptors. Therefore, there are no objections due to air quality impact from the proposal.

National Grid – no objection.

Environment Agency – no objection.

Observations

Principle of development – the site lies within the Green Belt. As the proposed development type is not specifically listed within paragraphs 89 and 90 of the NPPF, nor is it appropriate development on brownfield land (due to an increase in the impact on the openness of the Green Belt); it is considered to comprise a form of inappropriate development. Inappropriate development is harmful by definition and should not be approved unless the totality of the harm is clearly outweighed by very special circumstances.

As the application comprises a form of inappropriate development, a statement has been submitted which outlines the applicant's consideration of 'very special circumstances' which can be summarised as follows:

- The existing exhaust stack has reached the end of its useful life and due to failing cladding and structural risks, urgently requires replacement.

- The existing exhaust is fed from a bank of 15 engines. Each of the engines require regular maintenance and when they are maintained, there is the risk that exhausts gases from the other engines may leak into the engine which is being worked on – causing potential health and safety hazards. The proposed three stack configuration eliminates these health and safety risks.

- The proposal would better enable the gradual reduction in the number of generators needed to manage the gas over a period of years. This will effectively involve the removal of one engine exhaust at a time, hence providing an associated reduction in the emissions to air (the current configuration where all engine emissions are mixed in a single stack does not allow this reduction in plant and air emissions impacts due to changes in gas volumes and exit velocities).

- If all the engines had to be turned off when maintenance was carried out, using 2013 as an example, this would have led to the loss of approximately 8 million kWh of renewable/low-carbon energy generation – a significant source of renewable/low-carbon would be wasted and the gas would have to be burnt through flaring.

- The NPPF specifically lends support to such schemes. Paragraph 93 states – planning plays a key role in the delivery of renewable and low carbon energy and associated infrastructure.
The principle of development on the site has already been established (99/39454) which allows the GUP to operate until 2034. The GUP has the capacity to generate 17MW of electricity by utilising 17 engines. Emissions are currently diverted to an existing 25m high stack. The proposed development would not lead any change to the number of engines or the generating capacity of the GUP.

It is noted that a number of concerns have been received regarding the relationship between the proposal and the uncertain situation regarding the landfill site. Two planning applications to extend the life of the landfill operations have been refused – one such application is now the subject of an appeal. However, when planning permission was granted for the GUP site it was on the assumption that the landfill operations would cease by 2013. Furthermore, as the landfill site has previously accepted municipal, commercial, industrial and some construction and demolition wastes, these different waste types break down and biodegrade at different times and therefore, if the landfill site is to be closed off in time then it would still be generating landfill gas for a considerable period of time. Hence the GUP site will be required even after the landfill site ceases to operate. In the event that the GUP site does cease to generate electricity – there is an existing condition attached to the 99/39454 consent which requires the decommissioning and removal of the GUP equipment. Should the extension of any landfill application be granted on appeal it would not change the operation of the GUP site. Members are therefore asked to be mindful that the situation in respect of the landfill site has no bearing on the determination of this application. In addition it is not considered that by approving this application it would prejudice any current or future appeal case.

The existing GUP comprises a form of low-carbon/renewable energy generation. The proposal therefore, appears to facilitate the operational improvement of the existing site which, in turn, would increase the potential of the site to maximise the generation of renewable/low-carbon energy from the landfill site. This is consistent with paragraph 93 of the NPPF and policy QE1 of the Core Strategy and offers very significant weight in support of the scheme. However, this should be weighed against the other material considerations set out in this report.

**Visual Amenity** – The existing site comprises an array of existing plant and paraphernalia associated with electricity generation. The site has a functional appearance and most notable is the existing 25m stack which is visible from the immediate locality, including intermittent views from the nearest residential area ‘Saxon Park’.

The proposal involves the removal of the existing 25m stack – to be replaced by three 23m stacks which would be positioned above the existing gas utilisation plant. The additional stacks are two metres shorter than the existing.

The area generally to the southwest of the site comprises the working Arpley landfill site. This is an undulating piece of land with bare slopes which are
surrounding by mix of woodland, grassland and reclaimed workings. The application site is flanked on its western boundary by the River Mersey and to the east and south by relatively open countryside. To the north there is a bridge, beyond which lie a number of other industrial type uses and the Saxon Park housing estate. Whilst the landscape is not considered to be pristine – it nevertheless falls within a relatively open area of countryside. Views of the site from the south would generally be seen against the backdrop of urban Warrington. From the north views offered are more rural and open.

The most sensitive receptors are considered to comprise the residential properties within Saxon Park. From this point views of the site are intermittent as the existing houses often screen views of the site from within the residential estate. However, there are obtainable views of the site particularly from the edge of the estate which face the River Mersey. When viewed from this area the existing stack is visible ‘behind’ the existing road bridge (Forrest Way) and set against a backdrop of large electricity pylons. Therefore, the proposed stacks would not be a novel vertical feature within the landscape. It is considered that obtainable views of the three stacks would be tempered by existing elements within the landscape and their prominence significantly reduced by the distance involved (over some 400m from the site). In addition, they would be seen in context; being sited on an existing electricity generation site and contained within that site boundary. In addition the structures would be removed (secured by condition) when no longer required.

There is a green way (walking/cycling route) to the north which follows the route of Forrest Way in an east to west direction before heading south towards the site and then diverting in easterly direction across open fields. At its nearest point the route would be 80m from the site. However, the provision of two additional stacks would not significantly alter the character and appearance of the area given that there is already a stack in situ. Likewise, views from other paths within the vicinity would result in a similar, minimal impact.

In terms of openness, the proposed stacks are slim elements which would quickly recede with distance when viewed from the surrounding area. Due to the distance from the most sensitive receptors, the slim nature of the masts would mean that they would not appear as significant elements in the landscape, nor significantly affect the openness of the Green Belt over and above the existing emissions stack.

Objectors have also raised the visibility of the existing smoke plume and the potential for additional plumes associated with additional stacks to further add to the visual impact. This was also observed by officers on a site visit as a discoloured brown plume extending almost vertically from the chimney stack. The applicant considers it likely that the visibility of the plume would be reduced as a result of the application due to the smaller diameters of the stacks. In addition, according to the applicant, other sites in the UK which are similar in configuration to the proposal hereby proposed do not result in the same discolouration as the existing GUP. Environmental Protection has assessed the submitted information and concurs with the applicant’s findings
– it is likely that the visibility of the existing plume would be reduced – but it is not guaranteed. However, it appears unlikely that the plume would be increased due to the reasons above and because the three stacks would not lead to any additional generating capacity at the site.

**Residential Amenity** – the site lies approximately 400m to the south of the residential properties on Saxon Park. An Air Quality Assessment has been submitted and further information has been submitted following a number of concerns initially raised by Environmental Protection. These concerns were based on a lack of submitted information. They also considered that there had been no suitable assessment of the potential impact on nearby Air Quality Management Areas (AQMA’s) or Saxon Park.

The applicant’s revised report concludes that the proposed additional stacks would not lead to an increase in the annual emissions of Nitrogen Dioxides or Sulphur Dioxides, nor would it lead to an increase in PM10 or PM2.5. The assessment includes an analysis from Saxon Park and from receptors within the Sankey Green AQMA (along with a number of other local receptors). From all the receptors the report concludes that the additional impact on air quality arising from the proposal would be negligible. After rigorous assessment Environmental Protection is satisfied that the proposal would not lead to an increase in emissions at the nearest sensitive receptors and overall, it is not considered that the three proposed stacks would lead to a significant reduction in air quality over and above the existing GUP. The Environment Agency also raises no objections. The proposal adheres to the Council’s guidance in respect of air quality and it is not considered that there would be an increase in odour or noise.

Notwithstanding the above, the GUP site operates with the benefit of a permit which is issued by the Environment Agency. Members should assume that the site would be properly regulated by external bodies.

**Other Matters** – a number of objectors refer to concerns regarding traffic movements, HGV’s and other matters which relate to the Arpley landfill site. These are not relevant matters in the determination of this application.

**Summary**

The application comprises a form of inappropriate development in the Green Belt and therefore, a balancing exercise is required. Whilst the proposal would lead to an increase in the number of vertical elements in the landscape, it is not considered that there would be a significant visual impact due to the distance of sensitive receptors and the fact that there is already a slightly larger chimney stack in situ.

In addition, there would be a small reduction in the openness of the Green Belt but the overall impact would be reduced due to the slim nature of the stacks and their relationship with receptors. There would be very limited
close-up views of the stacks.

Whilst the applicant considers it likely that the visibility of the plumes arising from the chimney stacks would be reduced; this can be given little weight in the determination process due to a lack of certainty. It seems likely however, that the visibility of the plumes would not be increased.

In terms of air quality impacts, these have been satisfactorily addressed. The proposal would lead to a negligible change to air quality as a result of the proposal and therefore, the proposal complies with policy QE6 and the Environmental Protection SPD in this respect.

The applicant has put forward a number of potential benefits which centre on an improvement to the operation of the GUP facility which would lead to a significant increase in the utilisation of the gases arising from Arpley landfill. According to the applicant’s calculations a significant proportion of renewable/low-carbon energy may not be generated should the current configuration of one stack remain. As the applicant is not proposing to increase the number of engines or the generating capacity of the site there is no reasonable or objective reason available to dispute that the three stack configuration would offer significant operational benefits over the existing GUP configuration. This is consistent with the guidance in the NPPF which emphasises the role that planning has to play in delivering low-carbon facilities.

The overall impact on the Green Belt is considered to be limited.
Notwithstanding the harm by reason of inappropriateness, there is limited overall harm to the openness of the Green Belt arising from the proposal. The development would not lead to any additional encroachment as the stacks are proposed within the existing GUP footprint. The impact on the overall landscape character is limited due to the fact that there is already a stack in situ. In this case therefore, there are considered to be very special circumstances associated with the essential operational need of the existing GUP to facilitate the generation of low-carbon energy and the contribution this would potentially make towards tackling climate change – these are considered to clearly outweigh the totality of the perceived harm. The proposal is considered to comprise a form of sustainable development which complies with policies DCS1, HOU7 and LUT15 of the UDP and policies CS1, QE1 and QE6 of the Core Strategy.

**Recommendation**

Approve subject to Conditions

**Conditions & Reasons**

1. The development hereby approved shall be commenced before the expiration of three years from the date of this permission.
   
   Reason: To ensure that the Local Planning Authority retains the right to
review unimplemented permissions and to comply with Section 91 (as amended) of the Town & Country Planning Act 1990.

2. The development shall be carried out in accordance with the following documents:

(a) The planning application forms, design and access statement and additional information received by Warrington Borough Council on 11th July 2013.
(b) Submitted drawing No’s 5234025, 5234026, 52340245234023 and the Air Quality Assessment - Arpley Landfill Gas Utilisation Plant dated February 2014.

Reason: for the avoidance of doubt and to enable Warrington Borough Council to adequately control the development and to minimise its impact on the amenities of the local area and to conform with Policy QE6 of the Warrington Core Strategy.

3. Prior to the commencement of the development hereby approved, samples of the external facing materials (including colour or render, paintwork and colourwash) shall be submitted to the local planning authority for approval. The development shall be constructed in accordance with the approved details/samples.

Reason: In order to comply with Policy QE6 of the Warrington Core Strategy and the Warrington SPD: Design and Construction

4. The development hereby approved relates solely to the provision of emissions stacks. The use of the site as a gas utilisation plant was approved under planning permission 99/39454 which includes a number of conditions relating to cessation of the use and the restoration of the site.

Reason: For the avoidance of doubt and to enable Warrington Borough Council to adequately control the development and to minimise its impact on the amenities of the local area and to conform with Policy QE6 of the Warrington Core Strategy.

5. The emissions stacks hereby permitted shall be dismantled and removed from the site no later than 15th April 2034, or in the event that the emissions stacks are no longer required in connection with electricity generation (whichever is sooner)

Reason: in the interests of the visual amenities of the Green Belt and in order to accord with policy CC2 of the Core Strategy.
Informatives

1. The Local Planning Authority operates a pre-planning application advice service. All applicants are encouraged to engage with the Local Planning Authority at pre-planning application stage. As part of the determination of this planning application the Local Planning Authority has worked pro-actively and positively with the applicant ensuring that upon receipt all representations and consultation responses are available to view on the Council's web site. The Local Planning Authority has considered the application and where necessary considered either the imposition of planning conditions and/or sought reasonable amendments to the application in order to deliver a sustainable form of development in accordance with the National Planning Policy Framework.
Appendix 1

Photographs and Drawings

View from Forrest Way towards Arpley landfill site.

View from the edge of Saxon Park residential estate.
Close up of existing site.

Proposed emissions stacks
TITLE OF REPORT: Appeal decisions for period between 21st January and 26th February.

1. PURPOSE OF THE REPORT

1.1 To advise members of the planning appeal outcome for sites at 156 Thelwall Lane, TJ Hughes, Hillock Lane, Prospect Lane and Land North of Hall Lane.

1.2 To report the quarterly performance for October to December and annual performance thus far.

2. REPORT BODY

Planning Appeal Decisions

Dismissed Appeal

2.1 Members will note that one new appeal decision has been made. A copy of this decision is attached. The Inspectorate has resolved to dismiss the appeal at 156 Thelwall Lane. Permission was sought to increase the commercial space of the convenience store through the rationalisation of the ground floor. The proposal also entailed a first floor extension to the side and rear to increase the owners residential accommodation above.

The Inspector agreed with the Council in that the proposed extension would be unacceptable in design terms and would affect the outlook of the neighbouring occupier who has residential accommodation at first floor. The Inspector considered those matters outweighed the economic and social benefits of the proposal.

Allowed Appeals

2.2 Advertisement consent has been granted at the former TJ Hughes site which is now occupied by the 99p store. The Inspector considered the advert already in situ is simple in form and appears in proportion, scale and harmony with the host property and surrounding area. They considered the colours used are relatively low key and do not appear any more strident than other nearby adverts.
Taking all of the above into account, they concluded that the development appears sympathetically designed. It combines commercial necessity with a sensitive approach to advertising and does not harm visual amenity. This did not reflect Officers view that the advert would create a demonstrable harm to the visual amenity and character of the street scene due to the illumination, size, colour and materials.

2.3 The Secretary of State (SoS) has reached their decision on the free school application on Hillock Lane. The appeal has been allowed. The SoS agreed with the Inspectors recommendation to approve permission.

The Secretary of State agreed with the Inspector that, for the reasons given at IR54-62, while the proposal would reduce the amount of greenspace, alter the character and appearance of the appeal site significantly and extend the built up area of Woolston, the majority of the playing fields would remain undeveloped and open, continuing to provide a substantial area of greenspace within the urban area. He agreed that the appeal proposal would continue to provide a recreational resource for the local community and, subject to the imposition of conditions to secure the additional facilities negotiated with Sport England, would result in a net benefit in relation to the provision of recreational facilities.

While acknowledging the concerns of local residents about the potential increase in noise, disturbance and general inconvenience, the Secretary of State agreed with the Inspector's conclusion at IR71 that, for the reasons given at IR63-70, the extent of the increased vehicular and pedestrian activity associated with the proposal compared to the current situation would not be sufficient to lead to significant harm to their living conditions.

For the reasons given at IR72-76, the Secretary of State agrees with the Inspector’s conclusions at IR77 that the proposal would bring substantial benefits in terms of education provision and choice, recreation and community facilities and economic investment. He also agrees that the fact that there would be no significant harm in relation to urban greenspace and living conditions adds to the weight of argument in favour of the proposal.

The Secretary of State agreed with the Inspector (IR78) that the appeal site is the only one which is realistically available, deliverable and suitable. He also agreed (IR79) that there would be no significant effect on the outlook from nearby dwellings or on the privacy of their occupiers; and that nearby residents would not be affected by light spillage. He notes (IR79) that the vehicular and main pedestrian access would make use of the current access (with appropriate improvements to provide a suitable and safe access – IR82); and that potential noise and disturbance would be focussed on relatively short periods of time, with a condition requiring the provision of additional screening to help to reduce the impact. He further agrees with the Inspector (IR80) that: the proposals are satisfactory with regard to drainage; there is no evidence that the appeal site is of particular importance as a wildlife habitat; and there is no basis to conclude that it would not provide a suitably secure and safe environment (IR81).

The appellants sought an award of costs against the Council on the basis we had acted unreasonably. The Inspector agreed with the Council, in that both reasons for refusal (loss of greenspace/noise and disturbance) were matters of judgement involving a degree of subjective assessment and that both reasons had been
adequately substantiated at appeal by Officers and Members. Therefore no costs have been awarded.

2.4 The co-joined planning and enforcement appeal at Prospect Farm was allowed. The appeal centred on whether there had been a material change of use of the land from agriculture to clay pigeon shooting as well as the importation of hardcore/soil/road planings to form earth bunds, hardstanding/parking area, the erection of various buildings/enclosures, and fencing.

Regarding the enforcement notice the appellants appealed against the notice on 3 grounds - A, B and C. Ground A relates to planning permission ought to be granted. (this raises the same considerations as a planning application and comments are below) Ground B is that the matters stated in the enforcement notice as having occurred have not, in fact, occurred. Ground C is that there has not been a breach of planning control.

The appellants case on Ground B focussed around the site hadn't been used for shooting activities on less than 28 days in any one calendar year, and that this limited use is permitted under the GPDO and it would be possible for that use to continue even if Appeal A is unsuccessful. They also considered a number of fences and structures, which constitute “associated” facilities in terms of Green Belt policy and which maximise safety for users and minimise the potential for noise disturbance fall also within the provisions of Class B of Part 4 of Schedule 2 to the GPDO, with the only question arising as to their movability.

The Inspector considered the 28 day period would be exceeded, irrespective of the amount of shooting which occurred, because the structures, fencing, forms of enclosure, footpaths, hardstanding and bunding in situ are permanent. The Inspector noted that there has been no reversion to an agricultural use when clay pigeon shooting has not taken place. Ground B therefore failed.

On Ground C the Inspector followed their thoughts in respect of Ground B, as they considered the use of the site for clay pigeon shooting could not fall within the permitted development rights conferred by Class B of Part 4 (the “28-day rule”) for the reasons given above in relation to the appeal on ground (b). Ground C therefore failed.

Joint consideration of the planning application and Ground A took place. The site lies within the Green Belt. Therefore the Inspector needed to satisfy themselves the use and development was appropriate in the Green Belt using the exceptions defined in the NPPF and that very special circumstances needed to be demonstrated to outweigh the harm to the Green Belt. The appellants put forward the following reasons:

- the need for additional clay pigeon shooting activities in Cheshire & the North West, particularly those accessible to all able and disabled users, whilst the proposal would make a significant contribution to the Olympic and Paralympic legacy as there are no other facilities of an equivalent standard in the north of England. (Reference made to para. 81 & 89 of NPPF)
- the use would not be suitable in an urban location, especially with regard to residential amenity
- the site well located in terms of access to the motorway network
• the development would provide substantial social, economic and community benefit to the area
• a landscape and habitat enhancement would accrue from the extensive planting that is involved in the scheme, and the proposal would bring an area of unused land back into beneficial use.

It was our view that the very special circumstances put forward did not outweigh the harm caused to the Green Belt and protected bird species in the area. The Inspector concluded on this issue that the material considerations put forward, in combination, create very special circumstances that outweigh the harm to the Green Belt created by an inappropriate use and by a limited loss of openness.

The Council’s case relies, to some extent, on a claim that birds are likely to be affected by the type of impulsive noise that would be generated by shooting at the site, and that this could affect birds in flight as well as those on the ground. The Inspector was satisfied extensive attempts have been made to ascertain the likely impact of the types of noise on a range of bird species, including raptors, passerines and wildfowl. Scientific literature has been reviewed to examine, amongst other things, the impact of construction noise, the sensitivity of particular bird species to noise, the range of noise audible to birds, and the effects of deliberate disturbance to birds. The appellants have discussed with nature conservation officials the particular times when animals are likely to be unusually sensitive, and arranged for a temporary suspension or reduction in activities.

The Inspector noted Natural England’s lack of objection to the scheme on the basis a restrictive condition was imposed to secure noise mitigation and attenuation to ensure there is not an adverse impact on bird species and the SSSI. The Inspector also considered additional controls, such as shooting times (to avoid winter roosts), the direction of shooting, further bunding, limits on the participation numbers, restrictions of the weight of cartridges to be used would represent a net benefit over an unregulated shooting position. The Inspector concluded that this issue would not, subject to the controls specified, cause material harm to protected bird species either within Risley Moss SSSI or in the surrounding area.

The appeal was therefore allowed under Ground A and the planning application.

2.5 The Secretary of State has arrived at their decision on the above appeal. The appeal was for the change of use of land to form showmen’s family quarters, replacement of the existing access, widening of part of Hall Lane, and the erection of gates and acoustic fencing, in accordance with planning application reference 2011/18728 dated 22 August 2011.

The Inspector recommended that the appeal be allowed and planning permission granted. The Secretary of State agrees with the Inspector’s recommendation.

It was concluded that the proposal would impinge on the openness of the Green Belt, and having regard to the proposed layout of the site, this carries moderate weight. It was also concluded that the proposed development would be satisfactorily assimilated into its surroundings, and it would not have a negative effect on the visual amenities of the Green Belt. The Secretary of State recognises that following the establishment of additional planting, the actual harm arising from the proposal would be the effect on openness, but in this case he is satisfied that the increase in footprint would not be particularly large, and the greater part of the site would remain open. The SoS agreed that prior to this point, use of the land for
showpeople’s quarters would have a limited adverse effect, although this would be localised, and the attractiveness and diversity of the landscape would be maintained.

The need for travelling show peoples accommodation in Warrington was considered to be clear and that a matter which carried significant weigh in favour of the grant of permission. Although the Council intends to allocate sites through a local plan, this process has yet to be completed. The search for alternative sites has not produced any clear prospect of the availability of a suitable site for the Appellants’ families. The SoS agreed that there is no certainty associated with the Winsford site, and, within Warrington itself, none of the sites put forward as alternatives represents a suitable option. The Secretary of State agrees with the Inspector that this adds further important weight to the proposal.

The SoS considered the proposal would not give rise to adverse effects for highway safety or traffic movement, nor subject to the imposition of conditions controlling maintenance and repair works that the development would not unacceptably worsen the living conditions of nearby residents. The Secretary of State agrees that the proposal would not harm the setting of the Grade II listed Stretton Hall.

In conclusion the SoS considered that in this case, in addition to the unmet need for accommodation for travelling showpeople generally, the personal needs of the Appellants’ families and the lack of available alternative sites provide support for the appeal proposal. Taken together, the Secretary of State concludes that these considerations clearly outweigh the identified harm. Overall, the Secretary of State concludes that very special circumstances exist which justify the proposal for use of the land as quarters for travelling showpeople.

Quarterly Appeal Performance

2.6 The reported figures are for the period between October and December.

2.7 In total 16 no. appeal decisions were made, 11 no. dismissed (69%) and 5 no. allowed. (31%) This is an improvement on quarter one and two’s performance, which stood at 58% / 42% and 44.45% / 55.55% respectively for cases dismissed and allowed. Outcomes are still not yet at the target of 25% appeal allowed.
Annual Appeal Performance (To date)

2.8 To the end of quarter 3 our annual performance is 59.45% cases allowed and 40.54% cases dismissed for the year. Although across the year we are moving towards a higher number of dismissed appeals more are required to meet the performance target of 75% cases dismissed.

3. CONFIDENTIAL OR EXEMPT
3.1 Not confidential or exempt.

4. FINANCIAL CONSIDERATIONS
4.1 None.

5. RISK ASSESSMENT
5.1 No risks identified.

6. EQUALITY AND DIVERSITY/EQUALITY IMPACT ASSESSMENT
6.1 Not required.

7. CONSULTATION
7.1 Not required.

8. REASON FOR RECOMMENDATION
8.1 To inform Members of the results of appeals and of performance statistics.

9. RECOMMENDATION
9.1 That members note the appeal decisions and performance.

10. BACKGROUND PAPERS
10.1 None

Contacts for Background Papers:

<table>
<thead>
<tr>
<th>Name</th>
<th>E-mail</th>
<th>Telephone</th>
</tr>
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<tbody>
<tr>
<td>Andrew McGlone</td>
<td><a href="mailto:amcglone@warrington.gov.uk">amcglone@warrington.gov.uk</a></td>
<td>01925 442845</td>
</tr>
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12. CLEARANCE DETAILS

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<thead>
<tr>
<th>Name</th>
<th>Consulted</th>
<th>Date Consulted</th>
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<tr>
<td>Andy Farrall</td>
<td>x</td>
<td>26/02/2014</td>
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Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY GREAT SCHOOLS FOR ALL CHILDREN (t/a KINGS LEADERSHIP ACADEMY, WARRINGTON)
LAND OFF HILLOCK LANE, WOOLSTON, WARRINGTON WA1 4PF
APPLICATION REF: 2013/21175

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Kevin Ward BA (Hons) MRTPI, who held a hearing on 6 November 2013 into your clients’ appeal under Section 78 of the Town and Country Planning Act 1990 against the decision of Warrington Borough Council to refuse planning permission for the erection of a secondary school with associated parking, landscaping, means of access, bin storage, electricity sub-station and replacement sports facilities, dated 18 January 2013, in accordance with application ref: 2013/21175.

2. The appeal was recovered for the Secretary of State’s determination on 18 April 2013, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves proposals for development of major importance having more than local significance.

Inspector’s recommendation

3. The Inspector recommended that the appeal be allowed and planning permission granted. For the reasons given in this letter, the Secretary of State agrees with the Inspector’s recommendation. All paragraph numbers, unless otherwise stated, refer to the Inspector’s report (IR), a copy of which is enclosed.

Procedural matters

4. The application for costs (IR1) made by your clients at the Inquiry is the subject of a parallel decision letter also being issued today.
5. The Secretary of State notes the typographical error referred to by the Inspector at IR3 and is satisfied that nobody's interests in this case have thereby been affected.

Policy Considerations

6. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan for the area is the Unitary Development Plan (UDP) which was adopted in January 2006. The Secretary of State agrees with the Inspector that the development plan policies relevant to the appeal are those set out at IR8-12.

7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework – March 2012); the Ministerial Policy Statement - planning for schools development (August 2011); and Circular 11/1995: Use of Conditions in Planning Permission.

8. The Secretary of State has also taken account of the current status of the Council’s emerging Local Plan Core Strategy (IR13-15) and, like the Inspector, gives its policies significant weight.

Main issues

9. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR54.

Urban Greenspace

10. The Secretary of State agrees with the Inspector that, for the reasons given at IR54-62, while the proposal would reduce the amount of greenspace, alter the character and appearance of the appeal site significantly and extend the built up area of Woolston, the majority of the playing fields would remain undeveloped and open, continuing to provide a substantial area of greenspace within the urban area. He agrees that the appeal proposal would continue to provide a recreational resource for the local community and, subject to the imposition of conditions to secure the additional facilities negotiated with Sport England, would result in a net benefit in relation to the provision of recreational facilities.

Noise and disturbance

11. While acknowledging the concerns of local residents about the potential increase in noise, disturbance and general inconvenience, the Secretary of State agrees with the Inspector’s conclusion at IR71 that, for the reasons given at IR63-70, the extent of the increased vehicular and pedestrian activity associated with the proposal compared to the current situation would not be sufficient to lead to significant harm to their living conditions.

The benefits of the proposal

12. For the reasons given at IR72-76, the Secretary of State agrees with the Inspector’s conclusions at IR77 that the proposal would bring substantial benefits in terms of education provision and choice, recreation and community facilities and
economic investment. He also agrees that the fact that there would be no significant harm in relation to urban greenspace and living conditions adds to the weight of argument in favour of the proposal.

Other matters

13. The Secretary of State agrees with the Inspector (IR78) that the appeal site is the only one which is realistically available, deliverable and suitable. He also agrees (IR79) that there would be no significant effect on the outlook from nearby dwellings or on the privacy of their occupiers; and that nearby residents would not be affected by light spillage. He notes (IR79) that the vehicular and main pedestrian access would make use of the current access (with appropriate improvements to provide a suitable and safe access – IR82); and that potential noise and disturbance would be focussed on relatively short periods of time, with a condition requiring the provision of additional screening to help to reduce the impact. He further agrees with the Inspector (IR80) that: the proposals are satisfactory with regard to drainage; there is no evidence that the appeal site is of particular importance as a wildlife habitat; and there is no basis to conclude that it would not provide a suitably secure and safe environment (IR81).

Conditions

14. The Secretary of State agrees with the Inspector’s reasoning and conclusions on conditions, as set out in IR41-53; and is satisfied that the conditions recommended by the Inspector and set out in the “Schedule of recommended conditions” attached to the IR are reasonable and necessary and meet the tests of Circular 11/95.

Overall conclusions

15. The Secretary of State is satisfied that the appeal proposal accords with national policy and the relevant development plan policies, and would provide substantial benefits in terms of educational provision and choice, recreational and community facilities and economic investment. He does not consider that it would result in an unacceptable loss of urban greenspace or have a significant adverse effect on the living conditions of local residents; and therefore concludes that there are no material considerations of sufficient weight to justify refusing to grant planning permission.

Formal Decision

16. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector’s recommendation. He hereby allows your client’s appeal and grants planning permission for the erection of a secondary school with associated parking, landscaping, means of access, bin storage, electricity sub-station and replacement sports facilities, dated 18 January 2013, in accordance with application ref: 2013/21175, subject to the conditions listed at Annex A of this letter.

17. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
18. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

**Right to challenge the decision**

19. A separate note is attached setting out the circumstances in which the validity of the Secretary of State’s decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

20. A copy of this letter has been sent to Warrington Borough Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak
Authorised by the Secretary of State to sign in that behalf
1. The development hereby permitted shall begin not later than three years from the date of this decision.


3. Within three months of the commencement of the development hereby permitted, samples of the materials to be used in the construction of the development shall be submitted to the local planning authority or a sample board made available for inspection on site. These samples shall include materials to be used on the exterior of buildings, external hard surfaces, car parking areas, footpaths and the access road. The samples shall be approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

4. The approved planting scheme and specification shall be carried out in the first planting and seeding seasons following the occupation or completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

5. If during the course of construction, contamination not previously identified is found to be present, then no further construction works shall be carried out until a remediation strategy setting out how the contamination will be dealt with has been submitted to and approved in writing by the local planning authority. The remediation strategy shall be carried out as approved.

6. Prior to the occupation of the development, details of fixed mechanical plant and any mitigation measures necessary shall be submitted to and approved in writing by the local planning authority. The level of ambient noise from fixed mechanical plant shall not exceed the maximum monitored background noise level during either the daytime (07.00 to 23.00 hours) or night time (23.00 to 07.00 hours) on any day. The noise levels shall be determined by measurement or calculation at the nearest noise sensitive premises. The measurements and assessment shall be made according to BS4142:1997.

7. Prior to the occupation of the development, details of a full air quality assessment/dispersal modelling assessment which reviews impacts of the proposed biomass facility on local air quality shall be submitted to the local planning authority. Comparison against national standards for NOx, PM10 and PM2.5 shall be undertaken. In addition an odour assessment shall be made for emissions from the biomass unit and the biomass store. Any adverse impacts shall be identified and suitable mitigation measures implemented prior to the biomass unit being brought into use.

8. Prior to the occupation of the development, details of the air extraction and filtration system for the proposed kitchen facilities shall be submitted to and approved in writing by the local planning authority. The approved extraction and filtration system shall be implemented in full prior to the occupation of the development.
9. No development shall take place until a scheme for the management of traffic along Hillock Lane and the access road to the school from Hillock Lane has been submitted to and approved in writing by the local planning authority. The traffic management scheme shall include signage, markings and parking prohibitions on Hillock Lane and a “No Waiting At Any Time” parking restriction on the access road to the school from Hillock Lane, and a mechanism for delivery. The approved traffic management scheme shall be implemented in full prior to the occupation of the development.

10. No development shall take place until full construction details of the access road to the school from Hillock Lane have been submitted to and approved in writing by the local planning authority. The access road shall be constructed in accordance with the approved details prior to the occupation of the development.

11. Prior to the occupation of the development the car and cycle parking spaces shown on drawing no. 1661.02C shall be provided and marked out. The car and cycle parking spaces shall be retained thereafter.

12. As shown on drawing no. TRN 10941-SA 95 005 RevB, visibility splays of 2.4m x 43m shall be provided at the proposed access road onto Hillock Lane. Nothing shall be erected or allowed to grow above a height of 0.6m within the visibility splays.

13. No development shall take place until details of the boundary treatments and landscaping along the access road to the school from Hillock Lane and to the rear of 81 Hillock Lane have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. The boundary treatments and landscaping shall be put in place prior to the occupation of the development and retained thereafter.

14. Prior to the first use of the sports facilities, a sports development plan and community use agreement shall be submitted to and approved in writing by the local planning authority following consultation with Sport England. The plan and agreement shall apply to the sports hall, changing rooms, artificial grass pitch and rowing room, and shall include details of pricing policy, hours of use, access by non educational establishment users/non-members, management responsibilities, a mechanism for review and a programme for implementation. The approved plan and agreement shall be implemented from the first use of the sports facilities and shall be complied with thereafter.

15. No development shall take place until details of the design, specification and layout of the sports hall, changing rooms and artificial grass pitch have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

16. No development shall take place until a detailed scheme to ensure that the remaining part of Woolston Playing Fields will be provided to an acceptable standard in accordance with the recommendations set out in the Playing Field Site Investigation 4 April 2013 has been submitted to and approved in writing by the local planning authority. The scheme shall include a written specification of works to be undertaken and other operations associated with grass and sports turf establishment, a programme of implementation and measures to ensure continuity of use during pitch improvement works. The approved scheme shall be implemented in full and in accordance with a timeframe agreed with the local planning authority.

17. The public access from Hillock Lane through the development and into Woolston Playing Fields and Woolston Park shall be kept open throughout the construction of the development and retained thereafter.

18. The teaching facilities as indicated on the Spatial Organisation Plan drawing no. P3600-SKO23E shall only be used between 07.45 and 17.30 on Mondays to Fridays and between 08.00 and 12.00 on Saturdays. On no more than 40 days in each calendar year the teaching facilities shall be open for educational purposes until 22.00. The community sports and leisure facilities as indicated on the Spatial Organisation Plan drawing no. P3600-SKO23E shall only be used between 08.30 and 22.00 on Mondays to Fridays, between 09.00 and 18.00 on Saturdays and between 10.00 and 16.00 on Sundays and Bank Holidays.
Report to the Secretary of State for Communities and Local Government

by Kevin Ward BA (Hons)  MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

Date:  2 December 2013

Town and Country Planning Act 1990

Warrington Borough Council

Appeal by

Great Schools for All Children (t/a Kings Leadership Academy Warrington)

Hearing held on 6 November 2013

Land off Hillock Lane, Woolston, Warrington WA1 4PF

File Ref: APP/M0655/A/13/2203059
File Ref: APP/M0655/A/13/2203059
Land off Hillock Lane, Woolston, Warrington WA1 4PF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Great Schools for All Children (t/a Kings Leadership Academy Warrington) against the decision of Warrington Borough Council.
- The application Ref 2013/21175, dated 18 January 2013, was refused by notice dated 21 June 2013.
- The development proposed is erection of secondary school with associated parking, landscaping, means of access, bin storage, electricity sub-station and replacement sports facilities.

Summary of Recommendation: The appeal be allowed and planning permission granted subject to conditions.

Procedural Matters

1. At the Hearing an application for costs was made by the Appellant against Warrington Borough Council. This application is the subject of a separate report.

2. Following the submission of the planning application a number of plans and supporting documents were revised prior to the Council’s decision. I have considered the appeal proposal on the basis of these amended plans and documents which are listed in the Council’s suggested condition no.12. The correct reference for the General Arrangements Plan is 1661.02C and the correct reference for the Light Spillage General Plan is D21331/PR/G.

3. Due to a typographical error the Council’s first reason for refusal cites Policy GNR10 of the Warrington Unitary Development Plan (the UDP). It should in fact refer to Policy GRN10.

4. In addition to the accompanied site visit at the end of the hearing, I visited the site and the surrounding area on the afternoon of the previous day. My visit coincided with the closing times of local schools. I was able to observe the increased vehicular and pedestrian activity associated with the collection of children from these local schools and the impact on parking and the local road network.

The Site and Surroundings

5. The appeal site extends to some 2.3Ha and sits within the residential area of Woolston. It is an area of public open space containing a grass sports pitch and an all weather "Redgra" pitch with floodlight columns. The all weather pitch has not been maintained recently and the surface is overgrown and in poor condition. The floodlights are not operational. The Council confirmed that it is not in active use for its intended purpose. The appeal site forms part of a larger area of open playing fields containing a number of sports pitches. The quality and use of the sports pitches is affected by poor drainage in some areas. In addition to facilities for outdoor sports, the appeal site and the wider area of playing fields are used for informal recreation and dog walking.

6. The boundaries of the playing fields are formed by significant lines of established trees and hedging, and fencing to the rear of nearby residential properties. The playing fields link in with Woolston Park to the north to form a substantial area of greenspace within the urban area.
7. There is a vehicular access from Hillock Lane serving the playing fields and the adjacent land owned by Woolston Parish Council although this is controlled by a locked barrier. The access road runs between nos. 81 and 85 Hillock Lane. There are pedestrian links to the playing fields from Hillock Lane, Woolston Park and the lane running to the west near the Monk Sports Club.

Planning Policy

8. The development plan for the area is the UDP which was adopted in January 2006. The appeal site forms part of an area of land identified as Urban Greenspace in the UDP. The Council considers the appeal proposal to be contrary to Policies GRN2, GRN10 and DCS1. Policy GRN11 is also of particular relevance.

9. Policy GRN2 concerns environmental protection and enhancement and sets out a number of criteria to be used in making provision for development and in determining planning applications. These include protecting and enhancing valuable green spaces, playing fields and recreational facilities and protecting residential and visual amenity.

10. Policy GRN10 relates specifically to the protection and enhancement of Urban Greenspace. It states that development likely to result in an unacceptable loss of greenspace within the built up areas of the borough will not be permitted and sets out criteria against which proposals will be assessed. In summary these concern:
   - The effect of the loss of greenspace on the level, availability and accessibility of recreational facilities, children’s play provision and public open space.
   - The role that the site plays as part of a network of recreational footpaths and cycle ways or as a link to other green spaces or the countryside.
   - The value of the site in terms of landscape and nature conservation.
   - The value of the site as a visual amenity or townscape feature, its contribution to the character and appearance of the area and its role in avoiding town cramming or as a visual break in an otherwise intensively developed area.
   - The importance of the site as a community resource for formal or informal events.
   - Any associated proposals for the enhancement of existing facilities nearby or the provision of equivalent replacement facilities.

11. Policy GRN11 makes it clear that the loss of existing playing fields will not be permitted unless particular criteria are met. These include cases where alternative or replacement provision of at least equivalent quantity and quality is to be made in a suitable location or where the proposed development is for an outdoor or indoor sports facility of sufficient benefit to the development of sport such that it outweighs the loss of the playing field.

12. Policy DCS1 sets out a development control strategy. It states that development proposals should be designed to a high standard and sets out a number of criteria which include the need to preserve the amenities of near neighbours.

13. The Council’s Local Plan Core Strategy (the Core Strategy) was submitted for examination in September 2012. Policy QE3 relates to green infrastructure. It
emphasises the need to protect existing green infrastructure and the functions it performs whilst improving the quality and functionality of existing provision specifically to increase its attractiveness as a sport, leisure and recreation opportunity and its value as a habitat for biodiversity. It also emphasises the need to improve access to and connectivity between existing and planned provision and to secure the provision of new green infrastructure.

14. Policy QE6 of the Core Strategy seeks to avoid adverse impacts on the environment and residential amenity. It sets out a number of factors to be taken into account including noise and vibration, traffic movements and car parking.

15. Whilst the Inspector’s report has not yet been published, proposed modifications to the submitted Core Strategy have been subject to public consultation. These modifications would not substantially alter Policies QE3 and QE6 of the Core Strategy. These policies are consistent with the policies of the National Planning Policy Framework (the Framework) and given the advanced stage of the emerging Core Strategy they carry significant weight.

16. Other material considerations include the Framework and the Ministerial Policy Statement – planning for schools development (August 2011).

Planning History

17. The appeal site has no relevant planning history.

The Proposal

18. The proposal is for a new secondary school for children aged 11-18 which would accommodate approximately 840 pupils and 96 staff. It would include an auditorium/hall, dining and kitchen facilities, indoor sports hall, changing facilities, artificial grass pitch and associated parking which would all be made available for community use. The car parking area would incorporate 75 spaces including 4 disabled parking spaces and a drop-off zone. Provision for parking up to 80 cycles would also be made. Additional landscaping would be provided and pedestrian routes across the site to the playing fields and Woolston Park would be maintained. The access road to Hillock Lane would be improved.

The Case for the Council

19. The Council’s case can be summarised as follows:¹

20. The playing fields offer significant benefits to the local community due to the sports pitches available and their accessibility and close proximity to residents, community groups and schools. The appeal site plays an important role in creating a leafy suburban character running through the heart of the Woolston community and it provides an attractive setting for nearby dwellings.

21. The loss of greenspace would affect occupiers of nearby residential properties, those involved in outdoor sport and those engaged in recreation such as dog walkers.

¹ Based on the Council’s Written Statement and submissions at the Hearing
22. The urban area would be extended into the “green lungs” of Woolston. The erosion of greenspace would affect the character and appearance of the area. The change would be significant, irreversible and permanent.

23. The proposal would substantially reduce views across to the remaining playing fields from the Hillock Road entrance. It would sub-divide the playing fields and reduce the overall sense of openness. The remaining playing fields would appear visually detached from Hillock Lane. The physical and visual barrier created would change the manner in which the playing fields are enjoyed and experienced. Their function and character would be reduced.

24. There are six existing schools in relative close proximity to the appeal site. The surrounding roads are minor and residential in character. The proposal would result in increased traffic flows and pedestrian activity in the area around school drop-off and pick-up times. Local residents already experience noise and disturbance, congestion and other inconveniences associated with coming and going from schools. The proposal would add to the level of traffic and pedestrian activity and extend the periods of disturbance given the longer school day envisaged. The issue is particularly significant in this case due to the concentration of a number of schools in a small area and the size of the new school proposed.

25. There are concerns regarding the need for additional school places on this scale and the potential adverse effect on existing secondary schools. Whilst the benefits of improved recreational facilities and community use are accepted, this needs to be seen in the context of new recreational facilities proposed nearby at the special needs school currently being built on the site of the former Woolston High School. Investment in the all weather pitch on the appeal site has been affected by the uncertainty surrounding the planning application. Improvements to the pitches are not necessarily reliant on the new school.

26. In overall terms, the proposal would lead to an unacceptable loss of urban greenspace to the detriment of visual amenity and the character and appearance of the area. It would have a detrimental impact on the amenities enjoyed by local residents by virtue of the comings and goings and disturbance from increased and prolonged vehicular and pedestrian activity. The proposal fails to comply with policies GRN2, GRN10 and DCS1 of the UDP, Policies QE3 and QE6 of the Core Strategy and the Framework. The benefits of the proposal do not outweigh the harm.

The Case for the Appellant

27. The Appellant’s case can be summarised as follows:

28. The appeal site only takes up approximately 18% of the wider area of playing fields. The built development proposed would only cover approximately 8% of this area. A substantial area of greenspace would remain. Impact on the landscape would be localised and small scale. There is significant screening of the playing fields from residential properties and Woolston Park due to boundary vegetation. There is little if any visual connection between the playing fields and

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2 Based on the Appellant’s Written Statement, response to the statements from the Council and interested parties and submissions at the Hearing
Woolston Park. Views of the appeal site from residential properties are limited and are from upper floors at distance.

29. The proposal would incorporate significant additional planting and landscape bunding. It would not be unduly prominent from surrounding areas and the function and integrity of the wider area of greenspace would not be significantly affected.

30. The existing all weather pitch on the appeal site has not been maintained and is not in active use. The grass pitch is in need of improvement. The proposed artificial grass pitch and sports hall would be available for community use and the wider area of sports pitches would be improved. There will be a significant benefit in terms of the range and quality of sports facilities available to the local community and the hours that they can be used. Sport England does not object to the revised proposal subject to appropriate conditions.

31. Subject to some relatively minor access and traffic management improvements, additional traffic from the proposal could be accommodated safely on the highway network. Adequate car parking and a drop-off zone would be provided within the site. A significant proportion of pupils would live relatively close to the new school and secondary school pupils have a greater tendency to travel unaccompanied to school. The travel plan will encourage walking, cycling and the use of public transport. There is no other secondary school in the immediate vicinity and the proposed new school would help to reduce out commuting.

32. Any increases in noise levels would not be significant and would be for short periods of time. They would not be particularly noticeable compared with existing background noise levels. The proposed new school will open earlier and close later than existing schools in the area. This will avoid cumulative effects of additional traffic and activity in the area.

33. The proposed school will increase choice and help to raise educational standards, it will complement existing provision. There is significant public demand and support for the proposed school. The proposal accords with Para. 72 of the Framework and the Ministerial Policy Statement – planning for schools development.

34. The construction and operation of the school and associated community facilities would represent a significant economic investment in the area and support jobs.

35. In overall terms, the proposal would not have a significant effect on the appearance or function of the wider area of urban greenspace and would not adversely affect the character and appearance of the area generally. It would not have a significant effect on the living conditions of local residents in terms of noise and disturbance from increased traffic and pedestrian activity. The Council has not provided technical evidence to support its reasons for refusal and the relevant officers considered the proposal acceptable. The proposal would bring significant benefits in terms of education provision, sports and community facilities and the local economy. It accords with relevant local and national policy.

The Case for others who spoke at the Hearing

36. Dennis Pickering, a local resident spoke in opposition to the proposal and made the following points. Hillock Lane is narrow and a bus route and there are
already major problems with the amount of traffic and parking; cycling is hazardous. There would be a significant increase in noise and disturbance from the arrival and departure of pupils and staff, particularly early in the morning. The disturbance and inconvenience would be for an extended period given the proposed hours of use for the school and community facilities. Light spillage from floodlighting would cause problems. There are concerns about the security of the site and unauthorised access. The proposed school would divert resources away from existing schools.

Written Representations

37. The Council received twenty three objections to the planning application. Three Councillors submitted objections as did Woolston Parish Council. Concerns were raised about increased levels of traffic, parking and congestion and the effect on highway safety. It was considered that there would be an unacceptable increase in noise and disturbance due to arrivals and departures from the school and a potential increase in anti-social behaviour. Access arrangements were considered inappropriate and inadequate. There were concerns regarding disturbance during construction, the effect on the privacy and outlook of those living adjacent to the access, the effect on flooding and drainage and the effect on wildlife. The loss of open space and recreation facilities was considered inappropriate. There were concerns regarding the lack of need for the school and the effect on existing schools. It was considered that there were more appropriate sites available.

38. Seventy eight responses were received in support of the planning application. These highlighted the educational, community and recreational benefits of the proposal and the significant level of support from parents. It was considered that the site offered a suitable and sustainable location for a new secondary school and that the effects of additional traffic could be accommodated. Support was expressed for the design of the proposed school and it was considered that it could be readily accommodated on the playing fields.

39. In response to the appeal there were thirteen representations objecting to the proposal. These raised similar issues to those submitted at the application stage and emphasised concerns in relation to the loss of greenspace, increased noise and disturbance, the need for a new school and the effect on other schools. Issues relating to the potential catchment area and the effect on transport modes were highlighted.

40. There were twenty six representations in support of the appeal making similar points to those raised at the application stage.

Conditions

41. The Council suggested thirty four conditions should the appeal be allowed. These were discussed at the hearing and have been considered in the light of Circular 11/95: The use of conditions in planning permissions and Para. 206 of the Framework which require conditions to be necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects.

42. The Council accepted at the hearing that a number of suggested conditions which referred to supporting documents were unnecessary given that suggested
condition no.12 sets out a comprehensive list of such documents. It also acknowledged that in some cases, details sought through suggested conditions were already provided in submitted plans and documents. For these reasons the suggested individual conditions in respect of the Construction Methodology Statement, the Drainage Strategy and surface water management, tree protection, air quality during construction and the Framework Travel Plan are not required.

43. There is no evidence that the appeal site itself is of particular importance for roosting bats or nesting birds. Existing boundary vegetation would be largely unaffected. The suggested conditions relating to the timing of any clearance works and the provision of roosting and nesting facilities are therefore unnecessary.

44. A condition specifically concerning the details and hours of use of the floodlighting for the artificial grass pitch is not required given that sufficient information has already been submitted, it has been demonstrated that there would be no adverse effect on nearby residents and the hours of use of the sports and community facilities would be controlled by a separate condition. The suggested condition relating to additional lighting columns or floodlighting beyond those in the proposed scheme is unnecessary as these would require separate permission.

45. It would be unduly onerous to impose a condition setting out specific class times for the proposed school. Other school class times in the locality are not controlled in this way and could well change over time. On the basis of evidence available such a specific condition would in any case not be required to ensure highway safety or protect the living conditions of local residents.

46. The suggested conditions relating to security measures, a local employment scheme, public art and energy efficiency and renewable/low carbon energy sources are not necessary to make the proposal acceptable in planning terms and are not specific policy requirements.

47. A number of conditions are required in order to protect the living conditions of local residents, these relate to fixed mechanical plant, the extraction system for the kitchen facilities, the details of boundary treatments along the access road (which were not included at the time of the Council’s decision) and the overall hours of use of the school, sports and community facilities. For operational reasons it is appropriate to extend the permitted hours of use of the school and teaching facilities to 17.30 on Mondays to Fridays rather than 17.00 as suggested by the Council. A condition in respect of the proposed biomass boiler and store is required in the interests of the living conditions of local residents and air quality.

48. Conditions requiring the provision of samples of external materials and hard surfacing and the implementation of the landscape planting scheme are necessary in the interests of the character and appearance of the area.

49. In order to ensure adequate highway safety, conditions are required in relation to traffic management measures along and near the access road from Hillock Lane, construction details of the access road, the provision and retention of car and cycle parking and visibility splays.
50. Given the site investigation works already undertaken and the history of the site as an area of public open space, the conditions suggested by the Council in respect of contamination would be unduly onerous and are not required. A simpler condition relating to unexpected contamination encountered during construction is justified however, in the interests of human health and the environment.

51. Conditions regarding the submission, agreement and implementation of a sports development plan and community use agreement, the details and specifications of the sports hall, changing rooms and artificial grass pitch and a scheme for the improvement of the remaining playing fields are required to ensure that there is sufficient benefit to the development of sport, suitable arrangements for community access and that the loss of the existing playing fields on the site is effectively mitigated. It would be unreasonable however to include a clause relating to the long term provision of the remaining playing fields given that such matters would be the responsibility of the Council. A condition ensuring that a pedestrian route to the playing fields and Woolston Park from Hillock Lane is maintained during construction and thereafter is required in the interests of providing effective community access to public open space.

52. For the avoidance of doubt and in the interests of proper planning a condition to ensure that development is carried out in accordance with the approved plans and relevant supporting documents is necessary.

53. I have made a number of amendments to the detailed wording of the Council’s suggested conditions in the interests of clarity.

Inspector’s Conclusions

54. I consider that the main issues in relation to the appeal are:

   a) The effect of the proposal on urban greenspace.
   
   b) The effect of the proposal on the living conditions of local residents in terms of noise and disturbance.
   
   c) The benefits of the proposal and whether these would outweigh any harm in terms of urban greenspace and living conditions.

Urban greenspace

55. Given its current open, undeveloped nature, the appeal site contributes positively to the character and appearance of the area, forming part of a substantial area of urban greenspace. The proposal would reduce the amount of greenspace, alter the character and appearance of the appeal site significantly and extend the built up area of Woolston.

56. However, the majority of the playing fields would remain undeveloped and open. Combined with Woolston Park they would continue to form a substantial area of greenspace within the urban area. Whilst views across the appeal site from nearby dwellings, from within the playing fields and from the access via Hillock Lane would inevitably be affected, existing and proposed landscaping would do much to screen the built development from wider views. The proposal would not have a significant effect on the overall amount of greenspace available. Pedestrian links across to the playing fields and Woolston Park would be retained
and these areas would remain fully accessible to the local community. The perception of a large area of public greenspace would remain.

57. The proposal would not therefore have a significant effect on the integrity and function of the wider area of urban greenspace in terms of townscape and visual amenity and the effect on the character and appearance of the wider area would be limited.

58. As part of the playing fields, the appeal site provides a recreational resource for the local community both in terms of organised sport and informal activity such as dog walking. The existing sports pitches on the appeal site would be lost.

59. However, as noted above, the value of the site in terms of sport is limited by the poor condition of the all weather pitch. Following discussions with Sport England, the proposal was amended to include an artificial grass pitch in line with standards for football and rugby league and a four court sports hall. Subject to the provision of these facilities, improvements to the remaining grass pitches on the playing fields and a sports development plan and community use agreement, Sport England withdrew its original objection on the basis that the benefit to the development of sport would outweigh the loss of the playing field.

60. Whilst opportunities for informal recreation and dog walking on the appeal site itself would be lost, a substantial area of public open space would remain on the rest of the playing fields and in Woolston Park.

61. Subject to appropriate conditions, the proposal would provide a net benefit in terms of the provision, range and quality of sports facilities available to the local community. There would be a very limited impact on the opportunity for informal recreation given the amount of public open space that would remain overall. The Council accepts that on balance the proposal has benefits in terms of recreation. The impact on the recreational value of the appeal site was not specifically referred to in the reasons for refusal or in the Council’s written statement.

62. Whilst there would be a limited effect in terms of townscape, visual amenity and the character and appearance of the area, there would be net benefits in relation to the provision of recreational facilities. The proposal would not result in the unacceptable loss of urban greenspace therefore.

Noise and disturbance

63. The Council does not contend that the proposal would have an adverse effect on highway safety. Its concerns in terms of noise and disturbance relate specifically to the increase in vehicular and pedestrian activity and the extended period for such activity compared with existing schools.

64. The concentration of existing schools, particularly the three primary schools in close proximity to the appeal site already causes issues in terms of parking, localised congestion and the free flow of traffic. There is significant vehicle and pedestrian activity around the schools and surrounding streets at the start and end of the school day.

65. Clearly the introduction of a new secondary school and associated community facilities will involve increases in vehicular and pedestrian activity above current levels. However, it is likely that the majority of the secondary school pupils will
live relatively locally and a significant number would be able to walk or cycle. Hillock Lane is on a bus route and there are bus stops close to the site entrance. Given the age group, there is a greater tendency for secondary school pupils to travel to school unaccompanied compared with those attending primary schools.

66. The provision of 75 car parking spaces would be only slightly below the Council’s adopted maximum standard for such a development (80 spaces). Significant cycle parking would be made available. The design and layout of the proposal would allow for pupils to be dropped off within the site, reducing the need for parking on surrounding streets.

67. The Noise Assessment produced on behalf of the Appellant (and not disputed by the Council) concludes that additional traffic associated with the proposal would only result in a minimal increase in noise compared with background levels.

68. It is intended that the proposed school day would start at 08.20 and finish at 16.30 Monday to Friday. It is also intended to open the school on Saturday mornings. The nearby primary schools currently have school days which start later and finish earlier. The intended arrangements would extend the time periods of increased vehicular and pedestrian activity and potential disturbance. On the other hand they would reduce the likely peak level of activity and spread it more evenly on weekdays.

69. In any event, the technical evidence available concludes that noise levels would not be significantly above existing background levels. Even with the longer school hours proposed, the increased vehicular and pedestrian activity would be for relatively short periods of time. It would not be particularly early in the morning or late at night when local residents are entitled to expect a degree of tranquillity.

70. It is intended that the sports and community facilities would be open until 22.00 on Mondays to Fridays, 18.00 on Saturdays and 16.00 on Sundays and Bank Holidays. Vehicular and pedestrian activity associated with such use is likely to be spread over time and is not likely to coincide to any great extent with the school opening and closing times. Again it would not be particularly early in the morning or late at night and the technical evidence available does not indicate significantly increased noise levels. The Council has not raised specific concerns in respect of noise and disturbance from the sports and community facilities.

71. I appreciate that a number of local residents clearly have genuine concerns about the proposal and the potential increase in noise and disturbance and general inconvenience. However, taking all of the above factors into account, I consider that whilst there would be increased vehicular and pedestrian activity associated with the proposal and the periods of such activity would be extended compared to the current situation, this is not to the extent that it would lead to significant harm to the living conditions of local residents in terms of additional noise and disturbance.

The benefits of the proposal

72. Para. 72 of the Framework makes it clear that the Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. It advocates a proactive, positive and collaborative approach to meeting this requirement and to
development that will widen choice in education. Great weight should be given to the need to create, expand or alter schools. Similar principles are set out in the Ministerial Policy Statement – planning for schools development, which emphasises the commitment to increasing both the number of school places and choice and diversity in the state funded sector and makes it clear that there should be a presumption in favour of the development of state funded schools.

73. I have taken account of the concerns raised by interested parties in terms of the need for additional school places and the potential adverse effect on the operation and viability of existing secondary schools. Similar concerns were raised by the Council at the hearing although they did not form part of the Council’s reasons for refusal and were not set out in its written statement.

74. There are differing views as to the potential effects on existing schools and the justification for the proposed school in terms of the need to raise educational standards. What is clear however is that the proposal will create an additional school, increasing the number of school places available and creating greater choice and diversity for secondary education in the area. In the context of the Framework and the Ministerial Policy Statement, this constitutes a significant benefit that carries substantial weight.

75. As set out above, there are net benefits in respect of the provision of sport and recreational facilities for the local community. Community access and use of a range of facilities within the proposed development, along with improvements to the remaining playing fields represents a significant benefit.

76. The proposal would involve a substantial investment and bring economic benefits to the area both through the initial construction phase and in the longer term through the operation of the school and associated facilities.

77. There would be substantial benefits in terms of educational provision and choice, recreational and community facilities and economic investment. Given that I have found no significant harm in relation to urban greenspace and living conditions, this adds to the weight of argument in favour of the proposal.

Other Matters

78. I have taken account of the range of other matters raised by local residents. The Appellant undertook an assessment of potential alternative sites and having considered options concluded that the appeal site is the only realistically available, deliverable and suitable site. There is no substantive evidence to suggest otherwise.

79. The proposed building would be two storeys in height and sit within the site, set back from the boundaries with residential properties. Existing boundary landscaping would be supplemented by new planting. Given this, there would not be a significant effect on the outlook from nearby dwellings or the privacy of their occupiers. Information submitted in relation to the floodlighting arrangements for the artificial grass pitch demonstrates that nearby residents would not be affected by light spillage. Although the vehicular and main pedestrian access would pass between nos. 81 and 85 Hillock Lane, this is the case with the current access to the playing fields. Potential noise and disturbance would be focussed on relatively short periods of time at the start and end of the school day and subject to a condition, additional screening could be provided along the
boundaries of these properties as suggested by the Appellant (Plan Ref 1661.05.A).

80. There is no evidence that the appeal site is of particular importance as a wildlife habitat. Existing boundary vegetation would be largely unaffected and the proposal would include ponds and additional planting. The appeal site is in Flood Zone 1 and therefore at low risk of flooding. The proposal includes suitable arrangements for on site drainage and the improvements to the remaining sports pitches would assist in alleviating existing drainage problems.

81. The Construction Methodology Statement submitted by the Appellant sets out a comprehensive range of measures to control and reduce the potential impacts on local residents during the construction phase. The proposal will introduce natural surveillance to the site extending into the evenings and will incorporate significant boundary treatments. There is no basis to conclude that it will not be a suitably secure and safe environment.

82. The available evidence demonstrates that the improvements to the entrance from Hillock Lane and associated traffic management measures would provide a suitable and safe access.

Overall conclusion

83. The proposal would not result in the unacceptable loss of Urban Greenspace, it would not have a significant effect on the living conditions of local residents in terms of noise and disturbance and there would be substantial benefits in terms of educational provision and choice, recreational and community facilities and economic investment.

84. The proposal accords with Policies GRN2, GRN10, GRN11 and DCS1 of the UDP, Policies QE3 and QE6 of the Core Strategy and relevant aspects of the Framework.

Recommendation

85. I recommend that the appeal be allowed and planning permission be granted subject to the conditions set out in the attached schedule.

Kevin Ward

INSPECTOR
Schedule of recommended conditions

1) The development hereby permitted shall begin not later than three years from the date of this decision.


3) Within three months of the commencement of the development hereby permitted, samples of the materials to be used in the construction of the development shall be submitted to the local planning authority or a sample board made available for inspection on site. These samples shall include materials to be used on the exterior of buildings, external hard surfaces, car parking areas, footpaths and the access road. The samples shall be approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

4) The approved planting scheme and specification shall be carried out in the first planting and seeding seasons following the occupation or completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

5) If during the course of construction, contamination not previously identified is found to be present, then no further construction works shall be carried out until a remediation strategy setting out how the contamination will be dealt with has been submitted to and approved in writing by the local planning authority. The remediation strategy shall be carried out as approved.

6) Prior to the occupation of the development, details of fixed mechanical plant and any mitigation measures necessary shall be submitted to and approved in writing by the local planning authority. The level of ambient noise from fixed mechanical plant shall not exceed the maximum monitored background noise level during either the daytime (07.00 to 23.00 hours) or...
night time (23.00 to 07.00 hours) on any day. The noise levels shall be determined by measurement or calculation at the nearest noise sensitive premises. The measurements and assessment shall be made according to BS4142:1997.

7) Prior to the occupation of the development, details of a full air quality assessment/dispersions modelling assessment which reviews impacts of the proposed biomass facility on local air quality shall be submitted to the local planning authority. Comparison against national standards for NOx, PM10 and PM2.5 shall be undertaken. In addition an odour assessment shall be made for emissions from the biomass unit and the biomass store. Any adverse impacts shall be identified and suitable mitigation measures implemented prior to the biomass unit being brought into use.

8) Prior to the occupation of the development, details of the air extraction and filtration system for the proposed kitchen facilities shall be submitted to and approved in writing by the local planning authority. The approved extraction and filtration system shall be implemented in full prior to the occupation of the development.

9) No development shall take place until a scheme for the management of traffic along Hillock Lane and the access road to the school from Hillock Lane has been submitted to and approved in writing by the local planning authority. The traffic management scheme shall include signage, markings and parking prohibitions on Hillock Lane and a “No Waiting At Any Time” parking restriction on the access road to the school from Hillock Lane, and a mechanism for delivery. The approved traffic management scheme shall be implemented in full prior to the occupation of the development.

10) No development shall take place until full construction details of the access road to the school from Hillock Lane have been submitted to and approved in writing by the local planning authority. The access road shall be constructed in accordance with the approved details prior to the occupation of the development.

11) Prior to the occupation of the development the car and cycle parking spaces shown on drawing no. 1661.02C shall be provided and marked out. The car and cycle parking spaces shall be retained thereafter.

12) As shown on drawing no. TRN 10941-SA 95 005 RevB, visibility splays of 2.4m x 43m shall be provided at the proposed access road onto Hillock Lane. Nothing shall be erected or allowed to grow above a height of 0.6m within the visibility splays.

13) No development shall take place until details of the boundary treatments and landscaping along the access road to the school from Hillock Lane and to the rear of 81 Hillock Lane have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. The boundary treatments and landscaping shall be put in place prior to the occupation of the development and retained thereafter.

14) Prior to the first use of the sports facilities, a sports development plan and community use agreement shall be submitted to and approved in writing by the local planning authority following consultation with Sport England. The plan and agreement shall apply to the sports hall, changing rooms, artificial
grass pitch and rowing room, and shall include details of pricing policy, hours of use, access by non educational establishment users/non-members, management responsibilities, a mechanism for review and a programme for implementation. The approved plan and agreement shall be implemented from the first use of the sports facilities and shall be complied with thereafter.

15) No development shall take place until details of the design, specification and layout of the sports hall, changing rooms and artificial grass pitch have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

16) No development shall take place until a detailed scheme to ensure that the remaining part of Woolston Playing Fields will be provided to an acceptable standard in accordance with the recommendations set out in the Playing Field Site Investigation 4 April 2013 has been submitted to and approved in writing by the local planning authority. The scheme shall include a written specification of works to be undertaken and other operations associated with grass and sports turf establishment, a programme of implementation and measures to ensure continuity of use during pitch improvement works. The approved scheme shall be implemented in full and in accordance with a timeframe agreed with the local planning authority.

17) The public access from Hillock Lane through the development and into Woolston Playing Fields and Woolston Park shall be kept open throughout the construction of the development and retained thereafter.

18) The teaching facilities as indicated on the Spatial Organisation Plan drawing no. P3600-SK023E shall only be used between 07.45 and 17.30 on Mondays to Fridays and between 08.00 and 12.00 on Saturdays. On no more than 40 days in each calendar year the teaching facilities shall be open for educational purposes until 22.00. The community sports and leisure facilities as indicated on the Spatial Organisation Plan drawing no. P3600-SK023E shall only be used between 08.30 and 22.00 on Mondays to Fridays, between 09.00 and 18.00 on Saturdays and between 10.00 and 16.00 on Sundays and Bank Holidays.
**APPEARANCES**

FOR THE APPELLANT:

Justin Paul | J10 Planning
Richard Berry | Pozzoni Architects
Carl Taylor | TPM Landscape
Robert Ford | Waterman Group
Mark Maclagan | Waterman Group
Sir Iain Hall | Kings Leadership Academy

FOR THE LOCAL PLANNING AUTHORITY:

Andrew McGlone | Senior Planning Officer
Steve Smith | Environmental Health Officer
Hilary Smith | Families and Wellbeing Directorate
Cllr Paul Bretherton | Local Councillor
Cllr Bill Brinksman | Local Councillor
Cllr Colin Froggatt | Local Councillor

INTERESTED PERSONS:

Dennis Pickering | Local resident

**DOCUMENTS**

1. Letter of notification of hearing arrangements
2. UDP Policy DCS2
3. Supplementary Planning Document: Design and Construction
4. Written application for costs submitted by Appellant
RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;
The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector’s report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

Costs Report to the Secretary of State for Communities and Local Government

by Kevin Ward BA (Hons) MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 2 December 2013

Town and Country Planning Act 1990

Warrington Borough Council

Appeal by

Great Schools for All Children (t/a Kings Leadership Academy Warrington)

Hearing held on 6 November 2013

Land off Hillock Lane, Woolston, Warrington WA1 4PF

File Ref: APP/M0655/A/13/2203059
Costs Report APP/M0655/A/13/2203059

Land off Hillock Lane, Woolston, Warrington WA1 4PF

- The application is made under the Town and Country Planning Act 1990, sections 78 and 322, and the Local Government Act 1972, section 250(5).
- The application is made by Great Schools for All Children (t/a Kings Leadership Academy Warrington) for a full award of costs against Warrington Borough Council.
- The hearing was in connection with an appeal against the refusal of planning permission for erection of secondary school with associated parking, landscaping, means of access, bin storage, electricity sub-station and replacement sports facilities.

Summary of Recommendation: The application for an award of costs be refused.

The Submissions for Great Schools for All Children (t/a Kings Leadership Academy Warrington)

1. The application for costs was submitted in writing at the Hearing and cites paragraphs B4, B15, B16, B18, B20 and B29 of Circular 03/2009: Costs awards in appeals and other planning proceedings. It was further emphasised at the Hearing that members of the Council had taken a decision contrary to the guidance provided by officers.

The Response by Warrington Borough Council

2. The planning application had been considered carefully by officers and members. Members had seen the site and fully understood the application and its context. The recommendation of officers is not binding on members who are often better placed to understand issues. The application was considered on its merits and the decision was taken through a democratic process.

3. The Council has presented evidence to support the reasons for refusal. The issues are largely subjective and matters of judgement. The reference to the Travel Plan for Woolston Community Primary School was legitimate in supporting the Council’s case. Evidence has been provided insofar as it relates to matters of judgement. The additional landscape report produced by the appellant was as a rebuttal to the Council’s evidence. The Council has taken account of the benefits of the proposal and other material considerations. Both officers and members appeared at the Hearing to substantiate the Council’s case.

Inspector’s Conclusions

4. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

5. The Council’s first reason for refusal concerns the loss of Urban Greenspace and the consequential effect on visual amenity and the character and appearance of the area. The second reason concerns the effect on the living conditions of local residents in relation to disturbance from vehicular and pedestrian activity. To a large extent these are both matters of judgement involving a degree of subjective assessment.

1 Document 4 submitted at the Hearing
6. The officer’s report to the Development Management Committee was comprehensive, setting out clearly all relevant issues and background information. It summarised the national and local policy context and the views of internal and external consultees. The benefits of the proposal and other material considerations were also set out. The Council’s decision was taken in the light of this information.

7. Despite the lack of technical assessments contradicting the information submitted by the Appellant, the Council was entitled to exercise its judgement in terms of the extent of harm to visual amenity and the character and appearance of the area through the loss of Urban Greenspace and the level of impact on living conditions through increased disturbance. It was also entitled to exercise its judgement in terms of the overall balance between the benefits of the proposal and any adverse effects. Given the nature of the issues, the relevant policy background and other material considerations, it was not unreasonable of the Council to take a decision contrary to the officer recommendation.

8. Again, given the nature of the overall policy context and the legitimate use of judgement in assessing the relevant issues, it is not the case that the Council has caused delay to a development that should clearly have been permitted.

9. The reasons for refusal are complete and relevant to the application. They are sufficiently precise and set out specific concerns relating to the loss of Urban Greenspace and the effect on living conditions. They make clear reference to relevant development plan policies and the National Planning Policy Framework (the Framework). The particular concerns in respect of visual amenity, the character and appearance of the area and disturbance from vehicular and pedestrian activity are set out clearly and it was sufficient to refer to policies and the Framework rather than specific criteria or paragraphs.

10. Whilst the Council’s appeal statement does not include technical assessments it sets out clearly the concerns in respect of the loss of Urban Greenspace and living conditions and elaborates on the reasons for refusal. It seeks to explain why there are particular concerns in this case and how the proposal relates to local and national policy. Given the nature of the issues involved and the extent to which they are matters of judgement the reasons for refusal have been adequately substantiated.

11. It was legitimate to refer to the Travel Plan for Woolston Community Primary School as an illustration of the potential issues of concern to the Council. In terms of Urban Greenspace, the Council’s statement elaborates on and explains the concerns in respect of visual amenity and character and appearance which were already set out clearly in the first reason for refusal. The Council did not seek to introduce new issues or reasons for refusal in its appeal statement.

12. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has not been demonstrated.

Recommendation

13. I recommend that the application for an award of costs be refused.

Kevin Ward

INSPECTOR
Dear Sir,

TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY GREAT SCHOOLS FOR ALL CHILDREN (t/a KINGS LEADERSHIP ACADEMY, WARRINGTON)
LAND OFF HILLOCK LANE, WOOLSTON, WARRINGTON WA1 4PF
APPLICATION REF: 2013/21175

APPLICATION FOR AN AWARD OF COSTS

1. I am directed by the Secretary of State to refer to the enclosed letter notifying his decision on the appeal as listed above.

2. This letter deals with the application of your client, Great Schools for All Children (t/a Kings Leadership Academy, Warrington), for a full award of costs against Warrington Borough Council (the Council). The application as submitted and the Council’s response is recorded in the Inspector’s costs report, a copy of which is enclosed.

3. In planning inquiries, the parties are normally expected to meet their own expenses, and costs are awarded only on grounds of ‘unreasonable behaviour’ resulting in unnecessary expense. The application for costs has been considered in the light of the policy guidance in Circular 03/09, the Inspector’s costs report, the parties’ submissions on costs, the inquiry papers and all the relevant circumstances.

4. The Inspector’s conclusions are stated at paragraphs 4-12 of his costs report. He recommended that your client’s application for partial award of costs be refused.
5. Having considered all the available evidence, and having particular regard to Circular 03/09, the Secretary of State agrees with the Inspector's conclusions in his report and accepts his recommendation. Accordingly, he has decided that a partial award of costs against the Council, on grounds of 'unreasonable behaviour', is not justified in the particular circumstances. The application is therefore refused.

6. There is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly.

7. A copy of this letter has been sent to Warrington Borough Council.

Yours faithfully,

Jean Nowak
Authorised by the Secretary of State to sign in that behalf
Appeal Decision

Site visit made on 5 December 2013

by S P Williamson MBA Dip TP MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 January 2014

Appeal Ref: APP/M0655/A/13/2203962
Romas General Store, 156 Thelwall Lane, Warrington WA4 1LU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Sellathurai Jeervarajah against the decision of Warrington Borough Council.
- The application Ref 2013/21465, dated 1 June 2103, was refused by notice dated 9 August 2013.
- The development proposed is first floor extension at side and rear for living accommodation, and ground floor extension of retail unit.

Decision

1. The appeal is dismissed.

2. **Main Issues**

3. The main issues are the effect of the proposal on:

   a. The character and appearance of the appeal building and the area, and;
   b. Living conditions of the occupiers of No. 154 Thelwall Lane with particular regard to outlook and sunlight.

4. **Reasons**

5. *Character and appearance*

6. The appeal site is the right hand half of a semi-detached, hipped-roof, two storey property that faces on to Thelwall Lane at its corner with Pendlebury Street. It comprises a ground floor shop with a flat roofed storage and toilet extension at the side. This is set back from the main front elevation and at a lower level than the shop.

7. The residential accommodation occupies most of a rear full length flat roofed extension and the whole of the upper floor. The upper side wall of the main building has one small window and supports two prominent wall-mounted extraction units which would be relocated on the side wall of the proposed first floor extension. The side wall of the storage extension sits at the back edge of the footway to Pendlebury Street, and a gated access to a rear yard completes the side frontage.
8. The left hand half of the property (No. 154 Thelwall Lane) also has commercial premises on the ground floor and has residential accommodation to the rear and above. The parapet wall to its single storey rear extension is visible from Pendlebury Street.

9. Across Thelwall Lane from the appeal site is a terrace of older housing and a single storey building that has been converted to religious purposes; however the area as a whole is characterised by a mix of semi-detached buildings of similar age and proportions to the appeal property and terraced houses of a similar age. As with the appeal building, many have a simple and well proportioned hipped roof structure. I noted at the visit that the area had retained much of its original character and that on the whole properties had not been marred by unsympathetic extensions.

10. As the appeal site is prominent in the street scene due to its corner location, any changes at first floor level would be visible from a wide perspective. The appeal proposal is to convert the ground floor living accommodation into shop use, with a small extension at the rear of the storage area. These changes would be in proportion to the existing building; however the bulk of the proposed extensions would wrap round the existing rear and side elevations at first floor level.

11. The first floor extension would be set back from the lower flank wall on Pendlebury Street and would be built up from the existing storage extension wall. It would adopt the same eaves height. Although it would appear subservient to the main building when viewed directly from the road at the front of the building, from every other aspect in the street scene it would be unsatisfactory.

12. The proposed ridge height would be considerably lower than the main building and when combined with the extensive spread of the floor area this would result in the rear roof slope having a significantly lower pitch and profile than the existing roof. The combination of these design elements would be at odds with the simple lines of the existing structure and would give the extension a dominating, clumsy and squat appearance that would harm the character of the existing building.

13. Although it would be recessed from the pavement edge the side wall would project excessively forward of the front elevations of the neighbouring terrace. Its positioning on top of the flat roofed store would appear incongruous. It would have a single window offset towards the rear, but otherwise would be a prominent blank feature that would be made even less appealing by the installation of the relocated extraction units. The rear elevation would also appear unreasonably dominant in comparison with the proportions of the existing building.

14. I have taken account of the use of matching window styles and external materials; however, these details would not overcome the shortcomings I have identified above. I therefore conclude on this issue that the upper floor element of the proposal would be out of scale and proportion to the host building and would harm its character and appearance and that of the of the local area.
15. The Council has referred to Policy QE 7 of its 2012 Submission Local Plan Core Strategy; however there is no indication of the progress of this emerging document on the path to adoption. Whilst I can give it only limited weight, I note that its emphasis on reinforcing the character and appearance of the street scene, and harmonising development with the scale and proportions of existing and adjacent buildings is shared by the quoted policies in the 2006 Warrington Unitary Development Plan (the UDP).

16. As a result of the harm to character and appearance that I have identified above, the proposal would be contrary to UDP Policies DCS1, DCS9 and HOU8 and the UDP Supplementary Planning Guidance on House Extensions. Among other things these policies expect development to preserve the character and appearance of the area, and that alterations and extensions to buildings should harmonise and complement the existing building and be subordinate to it in terms of scale and general massing.

**Living conditions**

17. Following the submission of the appeal the Council has accepted the inaccuracy of its concern regarding loss of sunlight to the garden of No 154 Thelwall Lane during the afternoon and evening; however it maintains its position that the two storey element of the appeal scheme would block sunlight and daylight from the east into the rear north facing windows of No 154, and would cause overshadowing.

18. The ground floor windows and rear garden of No. 154 would already be in morning shadow as a result of the existing extensions to both properties and this would not change as a result of the appeal scheme. The proposed extension would project by some 3m at upper floor level but as the windows face slightly west of north, my assessment is that there would only be a limited loss of very early morning summer sunlight into the upper rear window nearest to the extension. Daylight would be unaffected and I do not consider the limited loss of sunlight to be unreasonable.

19. Turning to the effect of the extension on the outlook from the closest upper floor window of No. 154, the appellant argues that the existing high parapet wall of the ground floor extension to No. 154 already impacts on outlook and that the appeal scheme would not materially worsen the situation. Whilst the outlook from other parts of No.154 may be reasonably unaffected, the proposal would be at significantly greater height than the existing parapet wall. Although the structure would be slightly further away from the window and its roof would slope away, the bulk of the building would be in plain view from within the room and would unreasonably dominate and intrude into the outlook of occupiers.

20. The appellant asserts that the occupier of No. 154 does not object in regard to this issue. In fact the occupier has objected at the appeal stage on grounds including the effect of “the massive build” on the aspect of his property and I take this as referring to outlook.

21. My conclusion on this issue is that whilst there would no unreasonable impact on the living conditions of occupiers of No. 154 in regard to sunlight and daylight, there would be unreasonable loss of outlook when using the rear bedroom. This would be contrary to UDP Policies DCS1 and HOU8 in so far as
they seek to protect the living conditions of occupiers of adjacent from unreasonable harm.

**Other Matters and Conclusion**

22. I have taken account of the support to be found for the appeal scheme in paragraph 21 of the National Planning Policy Framework (the Framework) in respect of support for existing businesses and integrating residential and commercial uses in the same unit. Paragraph 70 is also relevant to the appeal proposal in that it expects that established shops should be able to develop and modernise and be retained for the benefit of the community. These matters carry significant weight; however, the Framework must be read as a whole, and in this case I have given greatest weight in the planning balance to its requirement to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

23. At the visit I saw the rainwater damage being caused to the existing storage extension and the cramped living conditions of the appellant’s family. I have sympathy for the problems caused by these matters and accord them some weight. However, neither they, nor the benefits in terms of the appellant continuing to serve the local community, for which there is apparent local support can outweigh the harm in relation to the issues identified.

24. For these reasons I conclude that the appeal should be dismissed.

*S P Williamson*

INSPECTOR
Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MRS G CAMM AND MRS D SELDON
SITE AT LAND NORTH OF HALL LANE, LOWER STRETTON, WARRINGTON, WA4 4NY
APPLICATION REFERENCE: 2011/18728

1. I am directed by the Secretary of State for Communities and Local Government (“the Secretary of State”) to say that consideration has been given to the report of the Inspector, Richard Clegg BA(Hons) DMS MRTPI, who held an inquiry on 8 January 2013 into your clients’ appeal under Section 78 of the Town and Country Planning Act 1990 against the decision of Warrington Borough Council (‘the Council’) to refuse planning permission for the change of use of land to form showmen’s family quarters, replacement of the existing access, widening of part of Hall Lane, and the erection of gates and acoustic fencing, in accordance with planning application reference 2011/18728 dated 22 August 2011.

2. The appeal was recovered for the Secretary of State’s determination on 1 October 2013, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a traveller site in the Green Belt.

Inspector’s recommendation

3. The Inspector recommended that the appeal be allowed and planning permission granted. For the reasons given in this letter, the Secretary of State agrees with the Inspector’s recommendation. All references to paragraph numbers, unless otherwise stated, refer to the Inspector’s report (IR), a copy of which is enclosed.
Procedural Matters

4. After the inquiry had closed, the Written Ministerial Statement (WMS) Planning and travellers was issued on 1 July 2013. The Secretary of State notes that the Appellants, the Council, Stretton Parish Council and Stretton Residents Group have each been given the opportunity to comment on the WMS in respect of their cases.

Policy considerations

5. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved policies of the Warrington Borough Council Unitary Development Plan (2006). The Secretary of State notes that the Council is currently consulting on both further Modifications and alternatives (where relevant) to the proposed Main Modifications to its Core Strategy. The Secretary of State has taken account of the current status of the Council’s emerging Local Plan Core Strategy and gives its policies significant weight.

6. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (The Framework) and its technical guidance; the Planning Policy for Traveller Sites (PPTS); the Written Ministerial Statement on Planning and Travellers (1 July 2013); the Written Ministerial Statement on the Green Belt (17 January 2014); Circular 11/95: Use of Conditions in Planning Permission; the Cheshire Partnership Area Gypsy and Traveller Accommodation and Related Services Assessment (May 2007); the Gypsy and Traveller Accommodation and Service Delivery Needs in Greater Manchester (2007/8); and the North West Plan Partial Review (July 2009).

7. The Secretary of State has also had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance has not yet been finalised, he has attributed it limited weight.

Main considerations

8. The Secretary of State agrees with the Inspector that the main considerations in this case are those set out by the Inspector at IR3.

Inappropriate development

9. For the reasons given at IR6 – 17, the Secretary of State agrees with the Inspector that the change of use of Buildings F and G, in themselves, for storage and maintenance work would not be inappropriate development, but that the change of use of the land at Hall Lane for the stationing of caravans and for storage of vehicles and equipment would amount to inappropriate development in the Green Belt (IR18).
Openness

10. The Secretary of State has given careful consideration to the Inspector’s analysis at IR19 - 21. For the reasons set out in those paragraphs, he agrees with the Inspector’s conclusion that the proposal would impinge on the openness of the Green Belt, and having regard to the proposed layout of the site, this carries moderate weight (IR21).

Visual amenities

11. Having had regard to the Inspector’s comments at IR22 – 24, the Secretary of State sees no reason to disagree with his view that, with the establishment of additional planting around the site, the proposed development would be satisfactorily assimilated into its surroundings, and it would not have a negative effect on the visual amenities of the Green Belt. He agrees too that prior to this point, use of the land for showpeople’s quarters would have a limited adverse effect, although this would be localised, and the attractiveness and diversity of the landscape would be maintained (IR25).

Other considerations

The general need for travelling showpeople accommodation

12. The Secretary of State agrees with the Inspector’s analysis at IR26 – 29 and he too concludes that there is a clear need for accommodation for travelling showpeople in Warrington, and this is a matter which carries significant weight in favour of the grant of permission (IR30).

Personal need

13. The Secretary of State has given careful consideration to the Inspector’s comments at IR31-35. He agrees that, in this case, the personal need of the Seldon family for accommodation carries significant weight, but that only some weight attaches to the personal need of the Camm family (IR36).

Alternative sites

14. For the reasons given by the Inspector at IR37 – 45, the Secretary of State agrees that the search for alternative sites has not produced any clear prospect of the availability of a suitable site for the Appellants' families. He agrees too that there is no certainty associated with the Winsford site, and, within Warrington itself, none of the sites put forward as alternatives represents a suitable option. The Secretary of State agrees with the Inspector that this adds further important weight to the proposal (IR46).

Highway safety and traffic movement

15. Turning to highway safety and traffic movement, the Secretary of State has carefully considered the Inspector's analysis at IR 47 – 49. For the reasons set out by the Inspector, and taking account of the condition concerning the provision
of junction alterations, the Secretary of State agrees that the proposal would not give rise to adverse effects for highway safety or traffic movement (IR50).

**Living conditions**

16. With regard to noise from vehicle loading and preparation, and also from repair and maintenance activities, the Secretary of State agrees with the Inspector that undue disturbance would not arise (IR51). The Inspector notes that it is intended that only limited maintenance and repair work would take place on the site, and the Secretary of State agrees with him that subject to the imposition of planning conditions controlling these activities, the proposed development would not unacceptably worsen the living conditions of nearby residents (IR52).

**Listed building**

17. For the reasons given by the Inspector at IR53, the Secretary of State agrees that the proposal would not harm the setting of the Grade II listed Stretton Hall.

**The criteria of Policies DCS15 and SN3**

18. The Secretary of State has given careful consideration to the Inspector’s comments at IR54 – 55 and agrees that, in this case, the proposal complies with the criteria included in Policy DCS15 of the UDP and Policy SN3 of the emerging Core Strategy.

**Conditions**

19. The Secretary of State has had regard to the Inspector’s reasoning and conclusions on conditions as set out at IR56. He is satisfied that the conditions recommended by the Inspector and set out in the ‘Schedule of suggested conditions’ attached to the IR are reasonable and necessary and meet the tests of Circular 11/95 and paragraph 206 of the Framework.

**Conclusions**

20. For the reasons given above, the Secretary of State concludes that there would be an adverse effect on openness which carries moderate weight, and that prior to the establishment of additional planting there would be a limited adverse effect on the visual amenity of the Green Belt. The Secretary of State recognises that following the establishment of additional planting, the actual harm arising from the proposal would be the effect on openness, but in this case he is satisfied that the increase in footprint would not be particularly large, and the greater part of the site would remain open.

21. The Secretary of State acknowledges that there is a clear general need for additional accommodation for travelling showpeople in Warrington, and considers this is a matter which carries significant weight in support of the appeal proposal. He also attaches significant weight to the personal need of the Seldon family for their own base, and, whilst the personal need of the Camm family is not as great, he considers it provides some additional weight. Although the Council intends to allocate sites through a local plan, this process has yet to be completed. Other
sites have been suggested, but none presents a suitable alternative to the appeal site. The Secretary of State considers this position carries further important weight.

22. In this case, in addition to the unmet need for accommodation for travelling showpeople generally, the personal needs of the Appellants’ families and the lack of available alternative sites provide support for the appeal proposal. Taken together, the Secretary of State concludes that these considerations clearly outweigh the identified harm. Overall, the Secretary of State concludes that very special circumstances exist which justify the proposal for use of the land as quarters for travelling showpeople.

Formal Decision

23. Accordingly, for the reasons given above the Secretary of State agrees with the Inspector’s recommendation and hereby allows the appeal and grants planning permission for the change of use of land to form showmen’s family quarters, replacement of the existing access, widening of part of Hall Lane, and the erection of gates and acoustic fencing, in accordance with planning application reference 2011/18728 dated 22 August 2011, subject to the conditions listed in Annex A to this letter.

24. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

25. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

26. A separate note is attached setting out the circumstances in which the validity of the Secretary of State’s decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

27. A copy of this letter has been sent to Warrington Borough Council. A notification letter or e-mail has been sent to other parties who asked to be informed of the decision.

Yours faithfully

Lindsay Speed
Authorised by the Secretary of State to sign in that behalf
ANNEX A

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans: location plan dated August 2011, proposed layout plan dated August 2011, and proposed access arrangements ref NTT/634/001/P1.

2. The site shall not be occupied by any persons other than travelling showpeople as defined in Annex 1 of the Planning policy for traveller sites.

3. The occupation of the site hereby permitted shall be carried on only by: Dion and Gail Camm and their resident dependants, Michael and Deborah Seldon and their resident dependants, Michael Seldon Junior and Zachary Seldon.

4. When the land ceases to be occupied by those named in condition No 3 above, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored in accordance with a scheme and programme previously submitted to and approved in writing by the local planning authority.

5. No more than five caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than two shall be static caravans or mobile homes) shall be stationed on the site at any time.

6. Notwithstanding condition No 1, no development shall take place until a scheme for the parking of showpeople’s vehicles and the outside storage of equipment has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.

7. No development shall take place until a scheme for surfacing of the site has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.

8. No development shall take place until a scheme of landscaping, incorporating an implementation programme, has been submitted to and approved in writing by the local planning authority. The scheme shall include details of the treatment of the boundaries of the site with Hall Lane and Northwich Road, the reinstatement to grass cover of the hardstanding on the land immediately to the north of the site, the reinstatement of the existing access, and it shall identify existing trees and hedges to be retained. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with the implementation programme; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with
others of similar size and species, unless the local planning authority gives
written approval to any variation.

9. No development shall take place until a scheme of fencing has been
submitted to and approved in writing by the local planning authority. The
scheme shall include details of screen fencing on the south-west boundary
of the site, and of acoustic fencing on the north-west boundary of the site.
The site shall not be occupied until the fencing has been erected in
accordance with the approved scheme.

10. No development shall take place until a scheme for the protection of
retained trees and hedgerows has been submitted to and approved in
writing by the local planning authority. The scheme shall be implemented
in accordance with the approved details. No excavation, storage of
materials or machinery, parking of vehicles, deposit of soil or rubble,
lighting of fires or disposal of liquids shall take place within the protected
areas. If any retained tree or hedgerow is cut down, uprooted, destroyed
or dies within a period of 5 years from the completion of the development,
it shall be replaced in the next planting season with another of a size and
species to be first approved in writing by the local planning authority.

11. No retained tree shall be cut down, uprooted or destroyed, nor shall any
retained tree be topped or lopped without the written approval of the local
planning authority.

12. No hammering, grinding, sawing or planing shall take place on the site at
any time in connection with the maintenance and repair of vehicles and
fairground equipment. Other maintenance and repair work on vehicles
and fairground equipment shall not take place outside the following times:
0800-1800 hours Monday to Friday and 0800-1300 hours on Saturday, nor
at any time on Sundays and public holidays.

13. There shall be no use of any part of the site as a fairground.

14. No fairground equipment over 4.5m in height shall be stationed or stored
on the site.

15. No musical sound systems or public address systems shall be tested or
used on the site.

16. No equipment, machinery or vehicles shall be stored at the site, or brought
onto the site for maintenance and repair, other than equipment, machinery
and vehicles used by the residents of the site.

17. No development until a scheme of external lighting has been submitted to
and approved in writing by the local planning authority. The scheme shall
be implemented in accordance with the approved details.

18. Noise from the maintenance and repair of vehicles and fairground
equipment shall not exceed 53dB LAeq 1 hour at any point on the south-
west, south-east and north-east boundaries of the site.

19. There shall be no use of generators on any part of the site.

20. The site shall not be occupied until the highway and access works have
been implemented in accordance with drawing ref NTT/634/001/P1.
21. No development shall take place until a scheme for foul and surface water drainage works has been submitted to and approved in writing by the local planning authority. The site shall not be occupied until the drainage scheme has been implemented in accordance with the approved details.

22. No development shall take place until a site investigation has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. Upon completion of remediation, a validation report shall be submitted to and approved by the local planning authority confirming that the site has been remediated in accordance with the approved measures and that the site is suitable for the development hereby permitted.

If, during the course of development, any contamination is found which has not been identified in the site investigation, then additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

23. The development hereby permitted shall begin not later than three years from the date of this decision.

Ends
Report to the Secretary of State for Communities and Local Government

by Richard Clegg BA(Hons) DMS MRTPi

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 22 November 2013

TOWN AND COUNTRY PLANNING ACT 1990

WARRINGTON BOROUGH COUNCIL

APPEAL BY

MRS G CAMM AND MRS D SELDON

Inquiry opened on 8 January 2013

Land to the north of Hall Lane, Lower Stretton, WA4 4NY

File Ref: APP/M0655/A/12/2177362
File Ref: APP/M0655/A/12/2177362

Land to the north of Hall Lane, Lower Stretton, WA4 4NY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs G Camm and Mrs D Seldon against the decision of Warrington Borough Council.
- The application Ref 2011/18728, dated 22 August 2011, was refused by notice dated 26 January 2012.
- The development proposed is described as ‘change of use of land to form showmen’s family quarters’.
- The inquiry sat for four days, on 8-11 January 2013. Site visits took place on 11 and 21 January 2013.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

Procedural Matters

1. The main parties agreed that the proposed development is more clearly described as the change of use of land to form showpeople’s family quarters, replacement of the existing access, widening of part of Hall Lane, and the erection of gates and acoustic fencing: I have considered the appeal on this basis.

2. On 1 July 2013, after the inquiry had closed, the Written Ministerial Statement (WMS) Planning and travellers was issued. The Appellants, the Council, Stretton Parish Council and Stretton Residents Group have each been given the opportunity to comment on the WMS in respect of their cases.

Main considerations

3. I have identified the following main considerations in this case:

   (i) Whether the proposal would be inappropriate development in the Green Belt.

   (ii) The effect of the proposed development on the openness of this part of the Green Belt.

   (iii) The effect of the proposed development on the visual amenities of this part of the Green Belt.

   (iv) If the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

The site and the appeal proposal

4. The appeal site, together with the nearby groups of buildings at Lower Stretton, lies within the Green Belt. It was used as a landscape contractor’s depot until 2007, and comprises an extensive area of hardstanding with a number of buildings and portacabins. It is common ground between the main parties that the site is previously developed land, and I share this view.

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1 Details of the length of time that the site was occupied by the landscape contractors and activity associated with the business are given in the Highways Statement which accompanied the planning application.
5. The site would be occupied by the Appellants (who are sisters) and their families as showpeople’s quarters. It is intended that two chalets and three touring caravans would be stationed on the site to provide living accommodation for the Appellants’ families. The portacabins and one of the existing buildings would be removed. The other two buildings would be retained, with building F being used for the storage of fairground vehicles and equipment and building G being used for ancillary storage and some maintenance work. The largest lorry and an arcade trailer would be parked outside as would domestic vehicles.

Reasons

Inappropriate development

6. There is disagreement between the main parties as to whether the proposal is properly described as the change of use of land or the change of use of buildings. I shall return to this matter below (paras 16-17). In any event, it would clearly involve the change of use of both land and buildings. Within the Green Belt these matters are covered by saved policies GRN1 and GRN6 of the Warrington Unitary Development Plan (UDP). Policy DCS15 sets out criteria which sites proposed for travelling showpeople and other itinerants should satisfy. Criterion 6 stipulates that sites should not be in the Green Belt, but to reach a view on inappropriateness in respect of the UDP, it is still necessary to consider Policies GRN1 and GRN6.

7. Policy GRN1 restricts new development in the Green Belt. Subject to the provisions of Policy GRN6, the re-use of existing buildings would not amount to inappropriate development, and proposals involving a material change in the use of land will not be appropriate unless they maintain openness and do not conflict with the purposes of including land within the Green Belt. The statement of common ground includes a schedule of floorspace of the buildings currently on the site and of the buildings and caravans within the appeal proposal. If planning permission were granted, the caravans could be replaced over time, and replacements may not be exactly the same size as those currently proposed. However, the schedule is based on the present intentions of the Appellants, and gives the best indication of future site coverage. In its existing condition, the site includes six buildings and portacabins with a combined footprint of 419.5m². As a result of the appeal proposal, the combined footprint of the retained buildings and the caravans would be 510m², representing an increase of just over 21.5%.

8. The Appellants’ planning consultant argued that the touring caravans would be away from the site for much of the summer in connection with travelling from one fair to another. Mr & Mrs Seldon’s family follow this way of life, and they would use two of these caravans, amounting to 34m² of footprint. The third touring caravan (17m²) would provide accommodation on the site for Mr & Mrs Camm’s son. Mr & Mrs Camm’s family operate a number of fixed arcades and a candy stall. One of the arcade sites has its own accommodation and travelling to the other is done on a daily basis, and this work would not involve taking a touring caravan off the site. The candy stall is taken to a few events each year. I heard that it had been acquired last year and had been taken to four events. In addition, Mrs Camm travels to fairs on occasions to help her sister. The third

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2 The caravans and buildings are identified on the proposed site plan, dated August 2011.
3 The schedule of existing and proposed floorspace is on page 2 of the statement of common ground.
touring caravan is likely to be away from the site for considerably less time than those belonging to Mr & Mrs Seldon. The agreed figures in the statement of common ground show that the combined footprint resulting from the appeal proposal would be 90.5m² greater than at the present time. Taking account of the absence of the touring caravans, the difference would be 56.5m² for much of the summer, and on the limited occasions when all three caravans were away it would be a lower figure of 39.5m². Crucially, however, at all times of the year the combined footprint would result in greater site coverage than at present. The information on the size of structures on the site does not include dimensions of height. However the largest and tallest buildings would be retained, and the three portacabins and building H which would be removed are relatively low structures. Overall, I do not consider that taking height into consideration would materially alter the comparative effect of the proposal, and I find that the replacement of the three portacabins and building H with two chalets and three touring caravans would reduce openness.

9. The planning permission for the landscape contractor’s depot is subject to a condition which restricts the benefit to the former occupiers of the site, Roots and Shoots. That proposal was linked to the nursery business on the adjacent land to the north, and the condition was imposed to prevent an independent contracting business being established which it was considered would be contrary to policies applying in the Green Belt. I heard that the Appellants had acquired the rights to the name of Roots and Shoots, but not the company, and it is not clear whether any party wishing to use the site as a landscape contractor’s depot with the former name would comply with the occupancy condition or whether a fresh permission would be required. It was argued that such an application would not involve operational development or a material change of use, and that it would not represent inappropriate development in the Green Belt. More importantly, however, there is no evidence of any such proposal, and landscape contracting is not an area of work in which the Appellants’ families are involved. For a fall-back position to carry any significant weight there should be a reasonable prospect of such development coming forward as an alternative proposal for the site. In this case there is nothing before me to this effect.

10. The Appellants have submitted a further planning application for showpeople’s quarters, described as redevelopment of the site with the proposal involving the replacement of two buildings by chalets on foundations. Whilst it was suggested that such a proposal would be capable of not being inappropriate, at the date of the inquiry the application had not been registered, let alone considered by the Council. In this circumstance, it is not an alternative scheme which is capable of implementation, and it does not represent a fallback position.

11. Given the position concerning use of the site as a landscape contractor’s depot, I consider that, in assessing whether or not the proposal would maintain the openness of the Green Belt, the comparison should be made with the land in its existing condition. In addition to the increased footprint, outside parking and domestic paraphernalia would also lessen openness.

12. Taking account of the operation of the site as a depot would not alter my view that the proposal would have a greater effect on openness. The information

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4 Photographs of the existing buildings and portacabins are at Appendix IBA 2 to the design and access statement.
5 Planning permission ref 88/22760, Appendix DE.13 to Mr Erskine’s proof of evidence.
before me is that when the site was in use as a landscape contractor’s depot, about 12 cars would be parked on the site, and vans and a cargo lorry or Land Rover would be used to take staff out to work elsewhere. For much of the day these vehicles would not be present at the same time as the parked cars. The highways statement also refers to deliveries of materials being made by large vehicles, but I note that such deliveries occurred about three times per week, and there is nothing to suggest that the vehicles involved remained on the site for any length of time. The Appellants’ three cars would be parked outside, as would the 16.5 ton lorry and the arcade trailer. These large vehicles are about 4.5m high, with respective lengths of 7.6m and 9.1m and would generally remain on the site over the winter period. In addition, whilst it is intended to store other vehicles (one lorry and two vans) and two rides in building F, there would inevitably be occasions when they would be outside, if only prior to departure, following arrival, or in the transfer of the rides and candy stall to building G for maintenance. I consider that the effect of outside parking on openness arising from the proposal would be similar to that of the former depot. I have reached a similar view in respect of domestic and commercial paraphernalia. The residential element of the proposal would be likely to lead to the presence of external items such as washing lines and garden furniture, whereas certain stock and equipment are likely to have been outside at the depot.

13. The purposes of including land in the Green Belt are set out in paragraph 80 of the National Planning Policy Framework (the Framework). They are carried forward from the former Planning Policy Guidance Note 2 (PPG2), in which context they are referred to in the explanation to Policy GRN1. The Council argued that the proposal would be contrary to the purposes of checking sprawl and safeguarding the countryside from encroachment. Whilst there is built development in the vicinity of the appeal site, this is relatively loosely grouped, and Lower Stretton is not designated as a settlement in the UDP. The first purpose of including land in the Green Belt is directed at checking the unrestricted sprawl of large built-up areas. The main built-up area, extending from Warrington, is on the opposite side of the M56 motorway, which runs to the north of the appeal site. Given the location of the appeal site and the nature of the surrounding area, I do not consider that this proposal would conflict with the purpose of checking the sprawl of a large built-up area. Insofar as encroachment is concerned, the site is previously-developed land (above, para 4). Nevertheless the proposal would involve greater site coverage than at present (above, para 7), and I consider that the extent of this greater physical presence would represent encroachment, albeit limited in scale, in the countryside.

14. Insofar as buildings F and G are concerned, Policy GRN6 sets out a series of criteria against which proposals should be assessed. I have already considered the associated use of the land at the appeal site, and the change of use of the buildings would have no additional effect on openness. I consider the effect on openness and visual amenity from the use of the land below (paras 19-25), but there would be no adverse effect in respect of these matters from the re-use of the buildings alone. Both buildings are of permanent and substantial construction, and there is no suggestion that any reconstruction work is required. Although utilitarian in appearance, they are not out of keeping with their surroundings which include the former depot. The Appellants have no objection to conditions limiting the nature and hours of maintenance and repair work, restricting such work to vehicles and equipment used by the site occupants.
imposing a noise limit at the site boundary, preventing the testing of music and public address systems and the use of generators, and requiring approval for external lighting. With these safeguards in place, I do not consider that there would be any detriment to the amenity of neighbours, and consequently no conflict with criterion 5. As the site has been vacant for several years, there would be no adverse effect on the availability of premises suitable for local commerce or industry, and there is no specific evidence to indicate any harm to nature conservation interests. I consider highway safety and traffic movement below (paras 47-50), but the use of these buildings would not give rise to any additional effect over and above the use of the land for showpeople’s quarters without their availability. I find no conflict with Policy GRN6, and consequently the re-use of the buildings themselves would not be inappropriate development for the purposes of Policy GRN1.

15. The adjacent land to the north, which was previously used in connection with the depot, was acquired in conjunction with the appeal site. Whilst there is tree cover on much of this land, there is also an area of hardstanding. An aerial photograph, taken when the land was occupied by the landscape contractors, appears to show materials stored on this area of hardstanding, whereas the Appellants propose to reinstate it to grass cover. This work would not be necessary to maintain the existing level of openness on this land since the same end could be achieved by the imposition of a condition. I have already explained that I consider that, in this case, the effect of the proposal should properly be compared with the land in its existing condition. Nevertheless I have also had regard to the former depot use. The extent to which storage occurred on the hardstanding is not known, but its replacement with grass would represent an increase in openness. Only limited information is available about the former use of this part of the land to the north of the appeal site, and it is insufficient to enable me to reach a view that the increase in openness here would outweigh the loss of openness on the site itself. Taking this part of the Appellants’ proposal into account does not alter my view that the use of land north of Hall Lane for showpeople’s quarters would diminish openness, and that the proposal overall would amount to inappropriate development under Policy GRN1.

16. The Green Belt policies of the UDP reflect the former PPG2, which was replaced by the Framework last year. The Framework continues to restrict development in the Green Belt. Paragraph 90 makes clear that the re-use of buildings of permanent and substantial construction is not inappropriate development, provided that this preserves openness and does not conflict with the purposes of including land in the Green Belt, although material changes in the use of land are not listed as one of the other categories to which this provision applies. The Appellants argued that the provision for the re-use of buildings should be interpreted as including their curtilage land. In support of the application of such an approach to the whole of the appeal site, the Appellants pointed to the provision in paragraph 89 of the Framework that the redevelopment of previously developed land, which would not have a greater impact on openness and the purpose of including land in the Green Belt, would not be inappropriate development. It was argued that the provision in paragraph 90 for the re-use of buildings should similarly be considered in relation to the whole of the site.

17. There may be merit in this approach where the use of a defined curtilage is for purposes dependent on the use of the building. In this case, the proposed use as showpeople’s quarters involves residential, storage and maintenance elements:
the first of these would occur entirely outside the two buildings, and significant outside storage would be set away from and distinct from the use of the buildings. It does not seem to me that, in these circumstances, the provision for re-use of buildings should be interpreted so widely as to embrace other activities occurring across a wider site. The reference in paragraph 89 of the Framework to complete redevelopment of previously developed land clearly indicates that this exception to inappropriate development for new buildings relates to the whole of a site. Notwithstanding the Appellants’ argument about consistency, the reference to the change of use of buildings in paragraph 90 is not written in the same terms. However, even if the Appellants’ interpretation of the scope of the change of use provision in paragraph 90 were considered correct, it is qualified by the requirements that re-use of buildings must preserve the openness of the Green Belt and not conflict with the purposes of including land therein. I have already found that the proposed use of the land would conflict with the first of these requirements and with one of the purposes of including land in the Green Belt, and consequently, even with the wider interpretation of paragraph 90, it would amount to inappropriate development. Moreover, the national Planning policy for traveller sites (PPTS), which is concerned with sites for travelling showpeople, states that traveller sites in the Green Belt are inappropriate development.

18. I conclude that the change of use of buildings F and G, in themselves, for storage and maintenance work would not be inappropriate development, but that the change of use of the land at Hall Lane for the stationing of caravans and for storage of vehicles and equipment would amount to inappropriate development in the Green Belt.

Openness

19. The proposal would increase site coverage by about 21.5% (above, para 7). External parking of vehicles, including the 16.5 ton lorry, and the arcade trailer, and items of equipment associated with outside domestic activities would add to the effect on openness in comparison with the present vacant condition of the site. Even if comparison is made with the former use as a landscape contractor’s depot, I have found that the proposal to use the land as showpeople’s quarters would reduce openness.

20. The Council’s supplementary planning guidance Extensions within the Green Belt (SPG - Document L2) indicates as a guideline that an increase in floorspace of more than one third added to an original dwelling, and greater than the increase in footprint resulting from the appeal proposal, would be disproportionate. Whilst I note that in an appeal decision concerning a mobile home in Warwickshire, the Inspector referred to a council’s guideline for a percentage increase in floorspace in residential extensions (Document L1), the SPG is addressing the question of inappropriate development and not the effect on openness, and it does not apply to the type of development which is the subject of the appeal proposal.

21. I agree with the Council that there is no effective fallback for the appeal site, and consequently in assessing the effect on openness, comparison is most appropriately made with the existing vacant site. Whilst the increased footprint of caravans and buildings compared with portacabins and buildings, together with external parking, storage and paraphernalia would reduce openness, the increase in footprint of 90.5m² would not be particularly large, and the greater part of the
site would remain open. I conclude that the proposal would impinge on the openness of the Green Belt, and, having regard to the proposed layout of the site, that this carries moderate weight.

**Visual amenities**

22. The appeal site is vacant and has a neglected air, and the portacabins in particular appear dilapidated. There is tree cover around the site and the land to the north, supplemented by bushes in places. Whilst the density of the cover varies around the overall holding, it serves to restrict and filter views of the site, to the extent that the existing degraded condition of the land does not have a significant impact on the character of the surrounding area including the landscape of the countryside around Lower Stretton. The outline of the large buildings adjacent to the south-eastern boundary is apparent through the trees on the Hall Lane frontage, but, other than at the access, there are no clear views into the site from the surrounding roads.

23. The proposal would increase the site coverage and there would be external parking of vehicles and the arcade trailer, together with activity and domestic paraphernalia. Most of the trees around the holding are deciduous, and the site would be fully occupied for the longest period during the winter months when there would be least leaf cover. My visit took place in January, after leaf fall, and I consider that the extent of the tree cover would greatly restrict views of the showpeople’s quarters, as it does of the site in its existing condition. Moreover the two chalets and the acoustic fence would be set back from Hall Lane, being positioned close to the northern parcel of land. The removal of the hardstanding here, and the reinstatement of grass cover would make a modest positive contribution to visual amenity.

24. It is proposed to reposition the access slightly further along Hall Lane from the junction with Northwich Road (the A559). The formation of the new access would entail the removal of a number of mature conifers, creating a gap in the existing frontage treatment. However planting would take place across the position of the existing access, and it is intended that a solid gate of screen height would be installed at the new access. Because of the position of the new access somewhat further from the junction, views into the site, over the gate or through the gateway when open, on the approach along Northwich Road from the south would be more restricted than at the present time. The new position of the access would be opposite to that for Whitegates. However this dwelling is set well back from Hall Lane, with intervening vegetation, and I do not consider that the alteration to the opposite frontage would detract from the outlook from this property. Lane End is closer to the road, but is to the west of the position of the new access and has a hedge and some trees to the front. Whilst some trees may need to be removed to achieve the visibility splay along Hall Lane, the boundary treatment at the site could be strengthened here and elsewhere where it is less dense, and the Appellants had no objection to a landscaping condition to secure this end.

25. With the establishment of additional planting around the site, I conclude that the proposed development would be satisfactorily assimilated into its surroundings, in accordance with criterion 6 in Policy SN3 of the emerging Warrington Local Plan Core Strategy, and that it would not have a negative effect on the visual amenities of the Green Belt. Prior to this point, however, use of the land for
showpeople’s quarters would have a limited adverse effect, and to this extent it would conflict with part 9 of Policy GRN2 in the UDP concerning the protection of visual amenity, and with criterion 5 in Policy DCS15 of the UDP, which stipulates that proposals should not harm the character or appearance of the countryside. This effect would be localised, and I do not consider that, even in the short term, there would be conflict with part 4 of Policy GRN2, which seeks to maintain the attractiveness and diversity of the landscape.

Other considerations

The general need for travelling showpeople accommodation

26. Policy SN3 of the emerging Core Strategy is concerned with the accommodation needs of gypsies and travellers and travelling showpeople. Insofar as travelling showpeople are concerned, the policy refers to a minimum provision of 13 additional permanent plots between 2007 and 2027. Provision is to be achieved through a further local plan. The Core Strategy had been submitted for examination in September 2012. Several modifications have been produced, and at the date of the inquiry the latest version of Policy SN3 was in the Proposed Modifications document of January 2013.

27. The Core Strategy draws on the former North West Plan Partial Review for the level of travelling showpeople accommodation to be provided in Warrington. The Partial Review reached examination in public stage, but will not proceed further due to the revocation of the Regional Strategy which took effect on 20 May 2013: the report of the panel which held the examination in public was not issued and has no formal status. Policy L7 of the Submitted Draft Plan identified a need for 10 additional plots in Warrington during the period 2007-2016. The panel endorsed the distribution of plot requirements and recommended a 2% compound increase beyond 2016. Although the Partial Review has no formal status itself, the Housing Background Paper for the Core Strategy records that the Council considers that this process represents the most robust and transparent assessment of traveller needs undertaken within the region and across the Warrington locality to that date. Consequently, the recommendations of the panel form the basis for the level of accommodation specified in the Core Strategy. At the inquiry, the Council explained that the additional three plots included in Policy SN3 relate to growth.

28. In the statement of common ground, both main parties endorse use of the Partial Review and Policy SN3 to identify the level of need, and I have no reason to disagree with this approach. However it became apparent at the inquiry that the actual number of plots required should be increased slightly. The starting point for the calculation of the number of additional plots is the authorised number in 2007. Both table 7.3 of the Partial Review and the Housing Background Paper give this number as three. Table 1 in the justification to Policy SN3 also refers to three plots, but identifies only one as permanent, and the schedule of travelling showpeople sites produced by the Council for this appeal similarly includes a single permanent plot. As the other two existing plots are not permanent, they represent a component of need, and the main parties agreed that the number of plots required by 2027 is 15, and that the number identified for provision by 2016 (in the Partial Review) should have been 12.

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6 Table 7.3 in Document O6.
29. The date given in the Local Development Scheme for adoption of the local plan which will allocate land for travellers is December 2013. There has already been some slippage and at the date of the inquiry the Council had not finalised a decision on all the stages of plan preparation to be followed. Whilst it explained that every effort would be made to recover lost ground, it also acknowledged that this would be challenging, and that if ground could not be made up adoption would be expected in April 2014. Even if the Council is able to recover its position on preparation of the local plan, there will be a further period of time following adoption during which sites come forward and are laid out and occupied, and the identified need would not start to be met through the plan-making process until some time in 2014 at the earliest. At the date of the inquiry, no provision had been made since 2007, and 12 plots are required by 2016. Policy DCS15 of the UDP and Policy SN3 of the emerging Core Strategy include criteria against which to assess sites which come forward separately from this process, but there is no certainty that adequate progress will be made towards meeting need in this way.

30. There is a clear need for accommodation for travelling showpeople in Warrington, and the position is exacerbated by the lack of additional provision so far in the period since 2007 and the further period of time before sites would be brought forward as a result of plan preparation. This is a matter which carries significant weight in support of the appeal proposal.

Personal need

31. The site would be occupied by the Appellants’ families. Mrs Camm’s household comprises herself and her husband, and their son Douglas, aged 14. Mrs Seldon’s household comprises herself and her husband, and their two adult sons, Michael Junior and Zachary. The families are members of The Showmen’s Guild of Great Britain, which is a group organised for the purposes of holding fairs, circuses and shows. The Seldons have two children’s rides and an arcade trailer, and they travel with these to a series of fairs during the season7, typically from Easter to bonfire night. All the members of the family travel to the fairs. The Camm’s business for the most part involves four fixed site arcades, three of which are in Staffordshire and the fourth is at Tal-y-bont, near Barmouth in North Wales. The Tal-y-bont site operates in the summer, and during this period Mr Camm spends most of his time there. For the rest of the year he travels on a daily basis from the family’s existing base in Hyde to the Staffordshire arcades. A manager is employed to run these arcades when Mr Camm is in Wales during the summer. Mrs Camm spends most of her time at the family base in Hyde as her son attends school in Stockport, but she travels to Tal-y-bont in the school holidays and on occasions assist her sister at fairs. The family acquired a candy stall last year which they took to four fairs, and they expect to continue to attend the same events in the future. Although the Camms do not travel from fair to fair during the season, the definition of travelling showpeople in Annex 1 of the Planning Policy for Traveller Sites includes persons who have ceased to travel temporarily or permanently on the ground of a more localised pattern of trading. The Council does not dispute the status of the Appellants families as travelling showpeople, and, having regard to the definition, I am satisfied that the intended

7 A map and schedule of the fairs attended are at Appendix 3 to Mrs Camm’s proof of evidence.
occupants of the appeal site are travelling showpeople for the purpose of planning policy.

32. The two families each have a base on the authorised Fairhaven Showpeople’s Site at Hyde, Greater Manchester. This site was previously owned by the Appellants’ father and the Appellants themselves have lived there for over 40 years: as it was a family site they had no lease. However for about five years the families have been searching for another site, because of the lack of security of tenure and insufficient space for annexes for the sons. Following the death of the Appellants’ father, the freehold of the site was transferred to their brother, who will not grant the Appellants or their sons any form of lease or security in respect of their continued occupation. Legal advice is that they have no rights or security at the Fairhaven site. In consequence the Appellants have become estranged from their brother. At the inquiry, Mrs Camm acknowledged that they had not been threatened with eviction, and they did not suggest that homelessness was imminent, but they are concerned about the existing situation and wish to achieve security in their living arrangements.

33. The appeal site is in the ownership of Mr & Mrs Camm, and the Council suggested that a move here by the Seldons would not provide them with the security of tenure sought. I heard that the site was registered in the names of Mr & Mrs Camm because finance to contribute to its purchase had been provided by their relatives. The eventual intention was to obtain a conventional mortgage, and to place the site in the names of both couples. I have no reason to doubt this intention, although it is dependent on the families’ ability to secure a mortgage. Whilst it is apparent that the families are keen to share a base, until such time as existing arrangements change, the Seldons would not achieve security of tenure.

34. The Appellants explained that showpeople’s children would generally have an annex for sleeping from the age of 16-17. Mr and Mrs Seldon’s sons are 20 and 23 years old, and Douglas Camm will be 16 within two years. At present the families each have a two-bedroom chalet at the Fairhaven site. They consider that this site is overcrowded. Although there is no definitive information before me on the number of plots and households at Fairhaven, I saw, on my visit to that site, that the chalets are generally positioned fairly close together, and there is no space to accommodate an additional caravan to use as an annex at either of the plots occupied by the Appellants. Given the size of the existing plots and chalets, the Seldons clearly have a need for additional bedroom accommodation, reinforced by the tradition in the showpeople community for separate annexes to be available for older sons and daughters. Mrs Camm acknowledged that there was no immediate need for an annex to be provided for her own son.

35. The Camms have a three bedroom cottage at their arcade site in Tal-y-bont. This is occupied by Mr Camm when he is running the arcade there during the summer season, and he is joined by his wife and son during the holidays. There is no suggestion that the cottage is deficient in terms of the level of accommodation provided. It is, however, considerably further from there than from Hyde to the arcades in Staffordshire. The main parties agreed that whereas the distance from the Fairhaven site to Hanley is 78.3km, the distance from Tal-y-bont is 167.5km. I appreciate that this greater distance could well make the

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8 The advice is contained in the letter dated 2 November 2011 from Breese Gwyndaf Solicitors to the Council, in Appendix 1 to Mr Baseley’s proof of evidence.
daily journey to Staffordshire presently undertaken by Mr Camm outside the summer season impractical. However there may be the opportunity to stay in Staffordshire in the same way as he stays away at Tal-y-bont at the present time. In any event, I find that the availability of alternative accommodation for the Camm family lessens the weight which should be given to their personal need. I note that Mr & Mrs Camm’s son is settled at the school he attends in Stockport, but there is nothing to indicate that his education could not be satisfactorily continued in North Wales.

36. The Appellants and their families have the benefit of a settled base, but it lacks security of tenure, and there is insufficient space for Mr & Mrs Seldon and their adult sons. Mr & Mrs Camm do have other accommodation, which, although less convenient for their arcades in Staffordshire, would provide a base from which they could run their business. Taking these factors together, I consider that the personal need of the Seldon family for accommodation carries significant weight, but that only some weight attaches to the personal need of the Camm family.

Alternative sites

37. The Appellants’ families have been searching for their own site for five years. Initially they made enquiries themselves, and in 2011, after acquiring the land at Hall Lane, a separate site search exercise was undertaken by their planning consultant. Mrs Camm submitted a list of 20 sites which had been investigated in addition to the appeal site9, and explained that others had also been considered, but that records of these had not been kept. Whilst full details of the Appellants’ own exercise were not presented in a systematic way, it was apparent from the answers given by Mrs Camm in cross-examination that she had detailed information about the sites listed. The Council was critical that some sites had been discounted for being too small when they may have been able to accommodate one of the families. The Appellants have always lived on the same site, and I have heard and read that there is a close bond between the families and that they have a clear wish to live together. The limited assistance provided by Mrs Camm to the Seldon’s business does not indicate a need for the two families to share a site, and personal preference is not a strong argument for a larger site. However it is Mrs Camm’s evidence that the families would pool finances to acquire a site. Details of the two families’ financial means are not before me, but she refers to the pooling of resources with additional monies being lent by her family’s relatives to meet the shortfall, and money was borrowed in this way to acquire the appeal site. I understand the reason for discounting the smaller sites, although where information on cost was not available this lessens the rigour of the exercise. Other sites were not available for various reasons: Station Road, Wrenbury (site 3) had been taken forward for other development, the land at Globe Lane, Dukinfield (site 12) was affected by a contamination issue and had been withdrawn by the owner, land at Hanover Street, Audenshaw (site 13) had outline planning permission for housing and had been let on a temporary basis to a road maintenance company, and land at Hazel Grove was affected by a weight limit over the railway. The Council suggested that there was no adequate explanation as to why sites on the market for around £400,000 were rejected as too expensive given the financial commitment involved at the appeal site. However this site cost £300,000 to purchase, with

9 Appendix 4 to Mrs Camm’s proof of evidence.
the assistance of a loan from relatives and the estimate of £65,000 additional expenditure would not bring the total up to the level of £400,000.

38. In the 2011 exercise, Mr Baseley wrote to 17 local authorities in the North-West, the North-West Regional Development Agency, and a large number of estate and property agents based principally in Cheshire and Greater Manchester. Although no specific sites were identified, a few local authorities referred to their strategic housing land availability assessments (SHLAAs) as a source for investigation. I note that the SHLAAs were not interrogated, and that there was no follow-up to local authorities and agents. Such work would have enhanced the credentials of the site search, although if there had been any clear candidates I would have expected these to have been identified in the initial responses. Moreover, Mr Baseley had undertaken a similar exercise in 2009 within the same part of the North-West. Although this exercise was for a different group of showpeople who sought at least six family plots, the letters of enquiry made it clear that smaller sites would also be considered. As with the later exercise for the Appellants, no sites were identified.

39. The report on the planning application for the proposed showpeople’s site to the Council’s Development Management Committee explained that the Planning Policy Unit had been approached by the Appellants’ agent on occasions over several years, on behalf of the Camm and Seldon families and other groups of showpeople. No suitable or available site had been identified as a result of these enquiries. Moreover, efforts by the Council to find a site in public ownership had not met with success. Although the first reason for refusal questioned the comprehensiveness of the Appellants’ investigation into alternative provision, it did not go so far as to claim the existence of suitable alternative sites, and the statement of case reflected this stance.

40. In the Council’s evidence for the inquiry, however, ten potential alternative sites in Warrington were put forward. Following the exchanges at the inquiry, the Council advised that five of these sites were no longer part of its case. The remaining five are Nos 1 - Kerfoot Street, 3 - Land east of Thelwall Lane, 4 – New Cut Lane, 6 – Old Liverpool Road (referred to as the former Motortrade site), and 8 – Laburnum Lane. I had the opportunity to see each of these sites as part of my programme of visits.

41. Planning permission has been granted at Laburnum Lane for the construction of a care home, and I observed that building work was underway at this site. The Council suggested that this work may be being undertaken simply to safeguard the permission. However the extent of foundations which have been prepared, the clearance of the remainder of the site, and the presence of piles of materials points to a genuine building programme. Even if the works were being undertaken simply to safeguard the permission, this scenario does not lend support to the view that the site would be made available for an alternative use as permanent showpeople’s quarters. I do not consider that site 8 is an available alternative to the appeal site.

42. The site at Old Liverpool Road is in flood zone 3. The technical guidance accompanying the Framework refers to caravans and mobile homes intended for permanent residential use as highly vulnerable, and makes it clear that such uses

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10 Appendix 5 to Mr Baseley’s proof of evidence.
should not be permitted in flood zone 3. It is suggested that as a result of investment in flood defences, the flood risk applying to this site may be downgraded in the near future. However at present it would be an inappropriate location to site caravans. The site has been advertised with a guide price of £500,000, significantly more than other sites which the Appellants had considered too expensive (above, para 37), and I note that it is already under offer. In these circumstances, I do not consider that site 6 represents an available location for the Appellants’ families.

43. Sites 1, 3 and 4 are all closely related to industrial development. That of itself would not necessarily indicate that the introduction of showpeople’s quarters would be inappropriate. I note, though, that the SHLAA casts doubt on the compatibility of residential accommodation with the nearby commercial and industrial uses at Thelwall Lane (site 3) and that planning permission for a gypsy site at New Cut Lane (site 4) was refused because of the proximity of industrial activities. Moreover, at least that part of the site at the head of New Cut Lane remains in use as a depot for a firm supplying concrete and aggregates. Whilst there may, nevertheless, be the prospect of redevelopment of the land, the need to achieve vacant possession means that it is not immediately available. There is a variety of industrial and commercial premises in the vicinity of the land at Kerfoot Street (site 1). Some uses, such as window and fencing manufacturers may involve noisy activities, and, although planning permission was previously granted for the storage of fairground equipment and the siting of caravans (without a residential element), a condition was imposed to prevent residential use because of the industrial and commercial nature of the surrounding area. The available information indicates that none of these sites would be a satisfactory location for showpeople’s quarters.

44. Additionally, Warrington & Co (a Council funded regeneration company) has identified a site on which to relocate two families of travelling showpeople from land earmarked for redevelopment. It had been suggested by the Council that this exercise might produce a site with space for additional plots, but no details of the site concerned were available. Without such details this option does not offer a meaningful prospect of an alternative site.

45. Reference was also made to a proposal by Cheshire West & Chester Council to develop a site for travelling showpeople at Winsford. This location is within the area where the Seldon’s travel to fairs, and, for the Camms, it would be closer to the Staffordshire arcades than the appeal site. The Council understood that there was no waiting list for the 10 plots proposed and that allocation would not be restricted to families with a connection to the district. However it acknowledged that Cheshire West & Chester also had its own requirement to meet: I note that Policy L7 of the Partial Review specified 10 plots, as for Warrington, and the 2011 report recommending that the Winsford site be progressed recorded that no additional plots had been provided at that date. I heard anecdotal information about overcrowding on an existing site in Winsford, and expressions of interest. Whilst there would be nothing to prevent the Appellants’ families applying for plots on the proposed site, it appears likely that it could be oversubscribed, and there is no certainty that space would be made available.

46. The search for alternatives has not produced any clear prospect of the availability of a suitable site for the Appellants’ families. There is no certainty associated
with the Winsford site, and, within Warrington itself, none of the sites put forward as alternatives represents a suitable option. The position concerning alternative sites adds further important weight to the proposal.

**Highway safety and traffic movement**

47. Lower Stretton lies on the A559, which connects to the M56 motorway and the A49 into Warrington immediately to the north. The A559 between the M56 and Lostock Gralam is designated as a red route: these are eight routes across Cheshire which potentially carry the highest risk to road users of a serious or fatal crash (Document O10). Initiatives are intended to be delivered to improve road safety on these routes, and traffic calming measures have been introduced on the A559 in Lower Stretton. There is an island in the carriageway to the south of the junction with Hall Lane, with a road narrowing feature beyond this, and this stretch of the A559 is subject to a 30mph speed limit. Nevertheless the Parish Council, the Residents Group and local residents express concern about speeding traffic. On the southern side of the Hall Lane/ Northwich Road junction are several bollards, which the Residents Group explained had been erected to prevent large vehicles turning at this point.

48. The Appellants’ transport statement argues that the proposal would not generate a significant number of trips. During the fair season, the Seldons would be away from the site for much of the time, often travelling from one event to another. Their vehicles, including the lorries and trailers, would only be travelling to and from the site on an occasional basis, and during the winter months the lorries and trailers would remain on the site for most of the time. The Camms have a van and a car. During the summer season, Mr Camm would be away at Tal-y-bont for much of the time, and the whole family would be there during the school holidays. The site would be occupied by just two families, and given the nature of their work-related travel, I do not consider that the number of trips generated by the development would materially alter the level and pattern of movement on the A559.

49. To enable larger vehicles to manoeuvre into and out of the site safely and without obstructing other traffic, the eastern end of Hall Lane would be widened, and the radius on the northern side of the Hall Lane/ Northwich Road junction would be amended. The largest vehicle combination which would travel into and out of the site would be the 16.5 ton lorry and the arcade trailer, with an overall length of 16.7m. A swept path analysis\(^\text{11}\) shows that a longer lorry and trailer of 18.36m length could enter and exit the nearside carriageway of Northwich Road, without crossing the centre line. This vehicle combination would need to use both sides of Hall Lane: however this is a lightly-trafficked road and vehicles travelling to and from the appeal site would only use a short length of the carriageway close to the junction with Northwich Road. Having regard also to the occasional trips by the lorry and arcade trailer, I do not consider that this use of Hall Lane would be likely to reduce highway safety here or interfere with the movement of other vehicles.

50. I note that the Council’s highway engineers raised no objection to the proposal, subject to a condition concerning provision of the junction alterations. With this safeguard, I do not consider that the proposal would give rise to adverse effects

\(^{11}\) Drawing NTT/634/001(SP)P1 attached to the Transport Statement.
for highway safety or traffic movement. Consequently I find no conflict with the second criterion of Policy DCS15 in the UDP and the second criterion of Policy SN3 in the emerging Core Strategy.

Living conditions

51. There is existing housing to the west of the site at Stretton Hall Mews, on the opposite side of Hall Lane, and to the east across Northwich Road. Concern has been expressed by local residents and the Residents Group about noise from vehicle loading and preparation, and also from repair and maintenance activities. Preparation for trips to fairs would essentially involve manoeuvring and attaching trailers to the towing vehicles, which I do not anticipate would be a protracted procedure. Similar activities would occur when the vehicles retuned. Bearing in mind the limited number of trips which these vehicle combinations would make to and from the site, I do not consider that undue disturbance would arise.

52. It is intended that only limited maintenance and repair work, such as painting and washing, would take place on site, and that this would take place within building G. The Appellants have no objection to a range of conditions controlling the scope of maintenance and repair work (above, para 14). Subject to such conditions, I consider that the proposed development would not unacceptably worsen the living conditions of nearby residents, and that it would not, therefore, conflict with the fifth criterion of Policy SN3 in the emerging Core Strategy, nor with the objective to protect local amenity in paragraph 4 of the PPTS.

Listed building

53. Stretton Hall, situated to the south-west of the site, on the opposite side of Hall Lane, is a grade II listed building. The Hall is set back from its access and is further away from the nearest part of the appeal site. This is the south-west corner, where building F would remain in place and where there is tree cover on the boundary. Given the relationship of the appeal site with Stretton Hall, I do not consider that the proposal would harm the setting of the listed building, and there would be no conflict with paragraph 132 of the Framework.

The criteria of Policies DCS15 and SN3

54. Policy DCS15 of the UDP and Policy SN3 of the emerging Core Strategy include a series of criteria against which proposals for travelling showpeople sites should be assessed. I have already considered highway safety, the effect on the character and appearance of the area, and the effect on the living conditions of neighbours. Other criteria in both policies concern accessibility to facilities and services, including public transport, the availability of on-site services, and the adequacy of the size of the site for vehicle parking and manoeuvring.

55. Although the range of facilities and services in Lower Stretton is limited, there are bus stops close to the site on Northwich Road, and buses run to Warrington, where there is a good range of facilities and services, approximately hourly from Monday to Friday. I anticipate that the site would have been provided with water, power and drainage and refuse disposal services when it was in use as a landscape contractor’s depot, and there is nothing before me to indicate that adequate provision could not be made for the proposed showpeople’s quarters. The proposed site plan demonstrates that there is adequate space for vehicles to park and manoeuvre within the site. The Council raises no objection in respect of
any of these matters, and I am satisfied that the proposal complies with these criteria.

Conditions

56. I have already referred to conditions concerning landscaping, highway alterations, the nature and hours of maintenance and repair work, limiting such work to the occupants’ vehicles and equipment, the testing of music and public address systems, the imposition of a noise limit, the use of generators and external lighting. To ensure that the development would be in keeping with its surroundings, conditions concerning the number and type of caravans, the surfacing of the site, fencing, tree protection and a restriction on felling, use as a fairground, the height of equipment, the parking of showpeople’s vehicles, and the outside storage of equipment are necessary. Given the previous use of the site, an investigation for contamination should take place, and to ensure that the site is properly drained a scheme should be submitted for approval. I address occupancy and time-limited conditions as part of my overall conclusions. Finally, it is important that the development is carried out in accordance with the specified plans for the avoidance of doubt and in the interests of proper planning. Suggested conditions are set out in full in the schedule attached to this report.

Conclusions

57. Policy DCS15 of the UDP specifies that sites for travelling showpeople should not be in the Green Belt, but the more recent PPTS provides for such inappropriate development in very special circumstances. In accordance with the Framework, the harm to the Green Belt by reason of inappropriateness carries substantial weight. I also find that there would be an adverse effect on openness which carries moderate weight, and that prior to the establishment of additional planting there would be a limited adverse effect on the visual amenities of the Green Belt. However following the establishment of additional planting, the actual harm arising from the proposal would be the effect on openness. Whilst openness is an essential characteristic of Green Belts, in this case the increase in footprint would not be particularly large, and the greater part of the site would remain open.

58. The Framework stipulates that very special circumstances to justify inappropriate development in the Green Belt will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. There is a clear general need for additional accommodation for travelling showpeople in Warrington, and this is a matter which carries significant weight in support of the appeal proposal. I also attach significant weight to the personal need of the Seldon family for their own base, and, whilst the personal need of the Camm family is not as great, it provides some additional weight. Although the Council intends to allocate sites through a local plan, accommodation would not start to come forward in this way until 2014 at the earliest. Other sites have been suggested, but none presents a suitable alternative to the appeal site. This position carries further important weight.

59. The WMS indicates that the single issue of unmet demand is unlikely to outweigh harm in Green Belt cases. In this case, however, in addition to the unmet need for accommodation for travelling showpeople generally, the personal needs of the Appellants’ families and the lack of available alternative sites provide support for the appeal proposal. Taken together I find that these considerations would
clearly outweigh the harm I have identified. Having regard to the case as a whole, I conclude that very special circumstances exist which justify the proposal for use of the land as quarters for travelling showpeople. As the balance in favour of the appeal proposal is dependent upon the accommodation needs for travelling showpeople and the personal needs of the occupants, conditions limiting occupancy accordingly are necessary. The effect of the revocation of the Regional Strategy has been considered, but in the light of the considerations in this case it does not alter my conclusions.

60. Should the Secretary of State reach a different view on the balance of considerations, a temporary planning permission would involve less harm to the Green Belt than use of the appeal site as showpeople’s family quarters on a permanent basis. A period of two years should allow time for other sites to come forward through the local plan process. However conditions are recommended which require the submission of various schemes and the carrying out of works including surfacing of the site, junction alterations, repositioning of the access, and a drainage scheme. If these conditions are imposed on a temporary permission, it would be appropriate for a time-limited condition to permit use of the site for at least three years.

**Recommendation**

61. I recommend that the appeal be allowed and planning permission be granted subject to conditions Nos 1-23 in the annex to this report.

*Richard Clegg*

INSPECTOR
ANNEX – SCHEDULE OF SUGGESTED CONDITIONS

Conditions relevant to both a permanent and a temporary planning permission

1) The development hereby permitted shall be carried out in accordance with the following approved plans: location plan dated August 2011, proposed layout plan dated August 2011, and proposed access arrangements ref NTT/634/001/P1.

2) The site shall not be occupied by any persons other than travelling showpeople as defined in Annex 1 of the Planning policy for traveller sites.

3) The occupation of the site hereby permitted shall be carried on only by: Dion and Gail Camm and their resident dependants, Michael and Deborah Seldon and their resident dependants, Michael Seldon Junior and Zachary Seldon.

4) When the land ceases to be occupied by those named in condition No 3 above, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored in accordance with a scheme and programme previously submitted to and approved in writing by the local planning authority.

5) No more than five caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than two shall be static caravans or mobile homes) shall be stationed on the site at any time.

6) Notwithstanding condition No 1, no development shall take place until a scheme for the parking of showpeople’s vehicles and the outside storage of equipment has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.

7) No development shall take place until a scheme for surfacing of the site has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.

8) No development shall take place until a scheme of landscaping, incorporating an implementation programme, has been submitted to and approved in writing by the local planning authority. The scheme shall include details of the treatment of the boundaries of the site with Hall Lane and Northwich Road, the reinstatement to grass cover of the hardstanding on the land immediately to the north of the site, the reinstatement of the existing access, and it shall identify existing trees and hedges to be retained. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with the implementation programme; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
9) No development shall take place until a scheme of fencing has been submitted to and approved in writing by the local planning authority. The scheme shall include details of screen fencing on the south-west boundary of the site, and of acoustic fencing on the north-west boundary of the site. The site shall not be occupied until the fencing has been erected in accordance with the approved scheme.

10) No development shall take place until a scheme for the protection of retained trees and hedgerows has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details. No excavation, storage of materials or machinery, parking of vehicles, deposit of soil or rubble, lighting of fires or disposal of liquids shall take place within the protected areas. If any retained tree or hedgerow is cut down, uprooted, destroyed or dies within a period of 5 years from the completion of the development, it shall be replaced in the next planting season with another of a size and species to be first approved in writing by the local planning authority.

11) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped without the written approval of the local planning authority.

12) No hammering, grinding, sawing or planing shall take place on the site at any time in connection with the maintenance and repair of vehicles and fairground equipment. Other maintenance and repair work on vehicles and fairground equipment shall not take place outside the following times: 0800-1800 hours Monday to Friday and 0800-1300 hours on Saturday, nor at any time on Sundays and public holidays.

13) There shall be no use of any part of the site as a fairground.

14) No fairground equipment over 4.5m in height shall be stationed or stored on the site.

15) No musical sound systems or public address systems shall be tested or used on the site.

16) No equipment, machinery or vehicles shall be stored at the site, or brought onto the site for maintenance and repair, other than equipment, machinery and vehicles used by the residents of the site.

17) No development until a scheme of external lighting has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details.

18) Noise from the maintenance and repair of vehicles and fairground equipment shall not exceed 53dB LAeq 1 hour at any point on the south-west, south-east and north-east boundaries of the site.

19) There shall be no use of generators on any part of the site.

20) The site shall not be occupied until the highway and access works have been implemented in accordance with drawing ref NTT/634/001/P1.

21) No development shall take place until a scheme for foul and surface water drainage works has been submitted to and approved in writing by the local planning authority. The site shall not be occupied until the drainage scheme has been implemented in accordance with the approved details.
22) No development shall take place until a site investigation has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. Upon completion of remediation, a validation report shall be submitted to and approved by the local planning authority confirming that the site has been remediated in accordance with the approved measures and that the site is suitable for the development hereby permitted.

If, during the course of development, any contamination is found which has not been identified in the site investigation, then additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

Condition relevant to a permanent planning permission only

23) The development hereby permitted shall begin not later than three years from the date of this decision.

Condition relevant to a temporary planning permission only

24) The use hereby permitted shall be for a limited period, being the period of three years from the date of this decision. At the end of this period the use hereby permitted shall cease, and all caravans, buildings, structures, materials and equipment brought onto the land, or works undertaken to it in connection with the use, shall be removed. Within three months of that time the land shall be restored in accordance with a scheme previously submitted to and approved in writing by the local planning authority.
APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Miss S Reid of Counsel  Instructed by T Date, Solicitor to the Council.
She called
Mr D C Erskine  Senior Consultant, Civitas Planning Ltd.
BSc(Hons) MSc DipLA
MRTPi MLI
Mr G Legg BA(Hons)  Principal Planning Officer, Warrington BC.
MCD MRTPi

FOR THE APPELLANTS:

Mr P Brown QC  Instructed by Mr Baseley.
He called
Mrs G C Camm  Joint Appellant.
Mr N Baseley  Partner, Ian Baseley Associates.
MA(Hons)TP MRTPi

INTERESTED PERSONS:

Mrs J Higgins  Member of Stretton Parish Council.
Mr G Borrows  Member of Stretton Residents Group.
Mr K Mulhearn  Member of the Regional Administration
Committee, the National Planning Committee and
delegate to the National Forum of The
Showmen’s Guild.

Mr M Booth  Neighbour of Fairhaven Showpeople’s Site, Hyde.
Mr G Mitchell  Resident of Fairhaven Showpeople’s Site, Hyde.

THE LPA’S DOCUMENTS

L1  Appeal decision concerning the stationing of a mobile home at Claverdon.
L2  Extract from Supplementary Planning Guidance – Green Belt.
L3  Core Strategy Examination 2012 - Note of Inspector’s Key Concerns.
L4  Core Strategy Examination – Exploratory Meeting Notes, with Appendices A
and G – 11 December 2012.
L5  Core Strategy Examination Clarification Statement – Housing Scale &
Distribution.
L6  Email dated 7 January 2013 from the Core Strategy Inspector to the Council
concerning the progress of the examination.
L7  Extract from the Proposed Modifications to the Submitted Core Strategy.
L8  Extract from Manual for Streets.
L9  Core Strategy Policy SN3 – differences between publication and submission
versions.
L10 Supplementary list of suggested conditions.
L11 Judgement in West Lancashire BC v Secretary of State for Communities &
Local Government.
THE APPELLANTS’ DOCUMENTS

A1 Photograph of foundations on suggested site No 8, Laburnum Lane.
A2 Email dated 4 January 2013 from Mr Warburton to Mr Camm concerning site No 3, Land east of Thelwall Lane.
A3 Email dated 4 January 2013 from Beers Timber & Building Supplies to Mr Camm concerning suggested site No 10, Former Beers site, Station Road.
A4 Email dated 7 January 2013 from Cheshire West and Chester Council to Mr Mulhearn concerning the proposed showpeople’s site at Winsford.
A5 Email dated 4 January 2013 from Intercounty Properties to Mr Camm concerning suggested site 7, Carrington Wire Works.
A5 List of fairs attended by Mr & Mrs Seldon (part of Appendix 3 to Mrs Camm’s proof of evidence).

OTHER DOCUMENTS

O1 Appeal notification letters.
O2 Extract from UDP Proposals Map.
O3 Entry from List of Buildings of Special Architectural and Historic Interest for Stretton Hall.
O4 Extracts from the UDP.
O5 UDP saved policies letter, direction and schedule.
O6 Policy L7 from the Submitted Draft North West Plan Partial Review.
O7 Extracts from the Submission Local Plan Core Strategy.
O8 Appendix 1 to the Housing Core Strategy Background Paper.
O9 Letter dated 24 August 2011 from Mr & Mrs Camm to local residents.
O10 Print-out on red routes from Cheshire West & Chester website.
O11 Location plan of Fairhaven Showpeople’s Site.
O12 Proposed showpeople’s site, Road One, Winsford.
RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector’s report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

Appeal Decisions
Inquiry opened on 26 November 2013
Site visit made on 16 January 2014

by Martin Joyce DipTP MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 February 2014

Appeal A: APP/M0655/C/13/2196229
Land at Prospect Farm, Prospect Lane, Rixton-with-Glazebrook,
Warrington WA3 6EH

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr L Durney (Prospect Target Club Limited) against an enforcement notice issued by the Warrington Borough Council.
- The Council's reference is 2012/19709.
- The notice was issued on 13 March 2013.
- The breach of planning control as alleged in the notice is, without planning permission, the deposit of imported hardcore/soil/road planings to form earth bunds, hardstanding/parking area, the erection of various buildings/enclosures, and fencing and the material change of use of the land from agriculture to clay pigeon shooting activities.
- The requirements of the notice are to:
  (a) Permanently cease the use of the land for clay pigeon shooting;
  (b) Remove from the land all temporary and permanent structures, buildings, storage units, fencing associated with the unauthorised use, (other than the 2 metres high mesh fence considered lawful (under Certificate of Lawfulness application ref: 2011/19010, as shown on the approved plan – 171011-01 Rev A);
  (c) Remove from the land all earth bunds (shown on plan number F1643-01 Rev E) and all non-organic matter forming the car parking area and internal paths within the site, (as shown on F1643-01 Rev E); and,
  (d) Following completion of steps (a), (b) and (c) above, return the land to a condition commensurate with its former agricultural use.
- The periods for compliance with the requirements are 28 days in respect of Step (a), 56 days in respect of Steps (b) and (c) and 77 days in respect of Step (d)
- The appeal is proceeding on the grounds set out in Section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The deemed application for planning permission also falls to be considered.

Summary of Decision: The appeal is allowed subject to the enforcement notice being corrected, in the terms set out below in the Formal Decision.

Appeal B: APP/M0655/A/13/2196226
Land at Prospect Farm, Prospect Lane, Rixton-with-Glazebrook,
Warrington WA3 6EH

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr L Durney (Prospect Target Club Limited) against the decision of the Warrington Borough Council.
- The application, Ref: 2012/19709, dated 16 March 2012, was refused by notice dated 22 February 2013.
The development proposed is the change of use to provide a clay pigeon shooting club, clubhouse and associated parking.

**Summary of Decision:** The appeal is allowed, and planning permission granted subject to the conditions set out below in the Formal Decision.

### Procedural Matters

1. The Inquiry sat for five days on 26-28 November 2013 and 14-15 January 2014. A preliminary site inspection was carried out on 25 November 2013, and a full, post-Inquiry site inspection was made on 16 January 2014.

### Preliminary Matters Concerning the Notice

2. At the start of the Inquiry I raised three matters concerning the wording of the notice with a view to possible clarification and/or correction. Firstly it appeared that the reference in Section 4 of the Notice to Policy QE9 of the Council’s Local Plan Core Strategy was incorrect, and that it should refer to Policy QE5. Secondly, I drew attention to my view that the use of the word “permanently” in Section 5(a) was unnecessary having regard to the provisions of Section 181(1) of the Town and Country Planning Act 1990 (the Act). Finally, I stated that it was normal for plans referred to in a notice, as in Sections 5(b) and 5(c) to be attached to that notice for the avoidance of any doubt.

3. Agreement was reached with the main parties on all three matters, albeit that it was pointed out that Plan F1643-01 Rev E had now been superseded. It was agreed that the notice could be corrected, as far as is necessary pursuant to my decision on the various grounds of appeal, in accordance with the above matters, without causing prejudice, using the powers available to me under Section 176(1) of the Act.

4. Further to these matters I have also given consideration to the way in which the allegation in the notice is framed, and to the fact that, in addition to the clay pigeon shooting that has been carried out on the site, there are facilities for archery and air rifle shooting, as shown on the plans submitted in respect of the application that is the subject of Appeal B.

5. With regard to the allegation, I am satisfied that the notice is aimed primarily at the material change of use of the land to a use for clay pigeon shooting, and also at the associated operational development that has facilitated that change of use. I consider, therefore, that the allegation should be amended to reflect this fact. I do not consider that this would cause any injustice as the cases of both main parties at the Inquiry focussed upon the use of the land, rather than the operational development in question.

6. As for the archery and air rifle shooting elements of the development, I questioned the Council’s planning witness as to whether they had been deliberately omitted from the allegation and was told that they had not, notwithstanding that the Council were content for these activities to continue, presumably because they do not cause the noise disturbance alleged in respect of the clay pigeon shooting and did not, in their view, contravene Green Belt planning policy. Nevertheless, I am mindful of the fact that it has been found in relevant case law\(^1\) that it is the duty of an Inspector to get a notice in order

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\(^1\) *Hammersmith LBC v SSE and Sandral* [1975] 30 P and CR19.
if it possible to do so. In this case, I consider that the archery and air rifle shooting form a definite part of the new use of the land and therefore should be included in a corrected allegation. I do not consider that this would cause any injustice to either party, as the appellants clearly accept that such activities have taken place, and the Council agree that they form part of the use that has been taking place at the site.

7. I also asked whether the Council had considered issuing a split decision in respect of these matters in their determination of the planning application, but the witness stated that he did not think the Council had power to do so. As a matter of fact, I am satisfied that, having regard to relevant case law\(^2\), it is possible for a Local Planning Authority to issue a split decision if there are clearly severable elements to the development for which permission was sought. However, in this case, I consider that the archery and air rifle shooting elements are not clearly severable; whilst discrete enclosures have been formed to contain such activities within the site, the servicing of these elements, in terms of access, parking and proposed clubhouse facilities, is inextricably interwoven with the clay pigeon shooting.

8. In all of the above circumstances, I shall use the powers available to me to correct the notice so far as is necessary in the light of my decisions on the various grounds of appeal under Appeal A and the Section 78 appeal. This is necessary to ensure that the notice is clear, certain and unambiguous.

**Background**

9. The appeals relate, broadly, to the same development; the provision of a clay pigeon shooting club with facilities for archery and air rifle shooting. This use began in June 2011, ostensibly under the provisions of Class B of Part 4 of Schedule 2 to The Town and Country Planning (General Permitted Development) Order 1995, as amended (GPDO). At the date at which the enforcement notice was issued, in March 2013, however, a significant number of structures, fences, internal pathways, an area for car parking, and bunding along the southern boundary had been constructed. There is also extensive tree planting within the site and mesh fencing has been provided around all external boundaries, following the issue of a Certificate of Lawfulness of Proposed Development (LDC)\(^3\). The land was not being used for any agricultural purpose.

**The Appeal Site and Surrounding Area**

10. A full description of the site and the surrounding area is set out in a Statement of Common Ground (SOCG), agreed between the appellant and the Council in October 2013. A further SOCG relating to the highway aspects of the development was also agreed and signed in October 2013. The latter relates to proposed improvements to Prospect Lane, a private road, including through the provision of passing places and the implementation of a routeing strategy, in the event of planning permission being granted.

11. Briefly, the appeal site comprises about 3.76ha of flat land located in open countryside designated as part of the North Cheshire Green Belt, immediately

\(^2\) The discussion at P70.70 of the Encyclopaedia of Planning Law and Practice, Volume 2, quotes a number of cases in this respect, including Kent County Council v Secretary of State for the Environment [1976] 33 P&CR 185 and Wheatcroft (Bernard) Ltd v Secretary of State for the Environment [1982] JPL 37.

\(^3\) Document 6.
to the south of the Manchester to Warrington railway line. It lies about 300m north of the junction of Prospect Lane and Holly Bush Lane, both private roads but with Public Rights of Way along them. Access to the site is gained from a track leading from this junction. That track has been upgraded and retrospective planning permission for such improvement granted in February 2013\(^4\). To the north of the railway line is Risley Moss Site of Special Scientific Interest (SSSI), with the majority of that area being situated to the north-west of the appeal site. There is no access available across the railway line in this area. Other SSSI’s at Holcroft Moss, to the north-east, and Rixton Clay Pits, to the south-east, are more distant. A Local Wildlife Site (LWS), Woolston Moss, lies to the west whilst an area including the appeal site has recently been designated as the Rixton Moss LWS. I shall discuss the status of such designation in my deliberations below.

12. The site is surrounded by agricultural land, principally in arable use. The nearest residential property is Prospect Farm, about 250m to the south-east. Other isolated residential properties are situated further away to the south, south-east and east of the appeal site. An active waste disposal site is located about 500m to the east, also to the south of the railway line. The part of that site closest to the appeal site has been capped and formed to final levels, in readiness for final restoration. An area of fishing lakes lies to the south of Prospect Lane, about 600m to the south-east. Residential housing estates in Birchwood lie to the north and west of Risley Moss SSSI, about 800m from the nearest part of the appeal site.

**APPEAL A ON GROUND (b)**

13. For the appellant, this ground is contended in part because the use of the site for shooting activities has taken place on less than 28 days in any one calendar year, thus such limited use is permitted under the GPDO and it would be possible for that use to continue even if Appeal A is unsuccessful, applying the *Mansi* principle\(^5\). A number of fences and structures, which constitute “associated” facilities in terms of Green Belt policy and which maximise safety for users and minimise the potential for noise disturbance fall also within the provisions of Class B of Part 4 of Schedule 2 to the GPDO, with the only question arising as to their movability. However, it is submitted that these are demountable should use of the land for shooting purposes be discontinued and, in any event, a substantial amount of the timber fencing is permitted development, thus this element of the allegation is incorrect.

14. Irrespective of the points raised under ground (a) and the Section 78 appeal, case law in relation to the 28-day rule suggests that there is a judgement to be made as to whether the other buildings, structure or works which are put in place to facilitate the use are, in fact, permanent. The evidence of the appellant’s planning witness is that this was not the intention and it is clear that, though less desirable, the use could continue without such structures in situ. Attention is also drawn to the fact that the alleged breach refers only to the use of the land for clay pigeon shooting, and makes no reference to other activities, including air rifle shooting and archery, which also take place. These uses, together with a more limited range of temporary fencing and structures, provide for a realistic fallback position for the appellant to adopt and are therefore material to the conclusions as to whether a breach of planning control

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\(^4\) Document 5.

has taken place, in addition to considering what measures for remedying any breach would be reasonable under ground (f). Finally, the extensive planting carried out on the site, which does not comprise development, has rendered the site unusable for its previous arable use, by extensively limiting the extent and configuration of the site available, thereby reducing the weight that should be given to the desirability of reversibility to the lawful use in respect of the 28-day rule.

15. The Council contend that this ground of appeal must fail. Despite the appellant’s reliance on permitted development rights under Class B of Part 4, such usage must be temporary on each of the 28 days that it takes place. As a matter of fact, the use of the site has not reverted to its lawful agricultural use after each use for clay pigeon shooting, rather structures, hardstandings, paths and fencing have been erected which remain in situ. They are not moveable structures within the meaning of the GPDO and it follows that this particular use does not have the benefits of a Class B of Part 4 use. Instead a material change of use of the land requiring planning permission has occurred.

16. In considering these submissions I am mindful of the fact that the burden of proof in an appeal on this ground, and also on that relating to ground (c), lies with the appellant. In the case of this particular ground he must show, on the balance of probability, that the matters alleged in the notice have not taken place as a matter of fact. Those matters are the deposit of imported hardcore, soil, and road planings to form earth bunds, hardstanding and parking areas, the erection of various buildings, enclosures and fencing, and the material change of use of the land from agriculture to clay pigeon shooting activities. Despite the order set out in the allegation, there is no doubt in my mind that this notice is aimed at a material change of use of land, and the associated operational development that has facilitated the new use, as discussed above.

17. It is not a matter of dispute that a temporary use of any land may take place for up to 28 days in any calendar year, and that provision may be made on the land of any moveable structures for the purposes of that permitted use. However, it has been found in relevant case law, that such permitted development rights would not apply where the land retains physical features referable to its temporary use as is the situation in this case. Clay pigeon shooting may only have taken place on up to 28 days in any one year, but the structures, internal fencing and other forms of enclosure, together with pathways, a hardstanding for car parking and bunding along the southern boundary have all remained on the site once shooting activities have ceased. Moreover, none of these physical features are “moveable” and I consider that the possibility of a structure being “demountable” is an incorrect test. Almost any building or structure fixed to, or resting permanently or otherwise on the ground, in a specific location, could be dismantled or taken apart so as to be either moved to another location or removed completely, but that is an entirely different proposition from it being “moveable”. No definition of “moveable” is given in the GPDO, or elsewhere in planning legislation as far as I am aware, thus the normal meaning of the word must apply. That given in the Collins English Dictionary is that moveable means “able to be moved or rearranged; not fixed”.

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7 Class B of Part 4 of Schedule 2 to The Town and Country Planning (General Permitted Development) Order 1995, as amended.
18. The structures such as a timber tower for releasing clays, acoustic shooting enclosures and small buildings to accommodate storage, office facilities and educational classes do not fit this definition. They are all substantial features which have a significant degree of permanence including, in the case of the fencing, physical attachment to the ground. The hardstanding and bunding are permanent features which could not be removed without a significant engineering operation. Above all, it has not been shown that there has been any reversion to agricultural use when clay pigeon shooting has not taken place, and it is disingenuous to claim that this is a consequence of the extensive tree planting that has taken place as such planting is clearly aimed at making the new use more acceptable in visual and environmental terms.

19. I am also mindful of the fact that the appellant clearly wishes the use to be permanent and whilst this may not always have been the situation when the use started in June 2011, the erection of such a comprehensive series of enclosures to facilitate various types of shooting activity, including archery and air rifle shooting, adds further weight to the view that this is a permanent rather than a temporary use. Thus, reliance on the “28-day rule” is misplaced, and the Council would have been justified in taking enforcement action even if shooting had taken place on less than 28 days; the site is clearly, to all intents and purposes, in a different use from that of agriculture, with that use being a principal use for clay pigeon shooting.

20. The question of whether particular elements of the operational development that has taken place require planning permission or whether they are permitted by other parts of the GPDO is a matter for the appeal on ground (c). I am satisfied, on the basis of the above deliberations, that the alleged breach of planning control specified in the notice has, as a matter of fact, taken place. The appeal on ground (b) therefore fails.

APPEAL A ON GROUND (c)

21. The appellant contends that, insofar as the matters set out in the notice might be concluded to have occurred, as a matter of fact, this ground of appeal is satisfied as the use as carried out under the 28-day rule does not constitute a material change of use in the land requiring planning permission. Furthermore, a significant proportion of the timber fencing, and all of the wire mesh fencing, erected on the site constitutes permitted development thus its erection does not lead to any breach of planning control. The other structures and buildings erected on the site have been installed so as to facilitate the use of the land for shooting purposes, under the 28-day rule, in a manner commensurate with achieving an appropriate level of public and user safety and for the purposes of minimising the risk of noise disturbance. Therefore these structures should also be regarded as being permitted under Part 4 Class B rights.

22. The Council rely upon their submissions in relation to the appeal on ground (b) and dispute that any permitted development rights are applicable for either the use or the operational development that has taken place on the site.

23. I have already found that the matters specified in the notice have occurred as a matter of fact and there is no need to re-visit those matters. Whether or not the 28-day rule was being pursued, a permanent change of use of the site has occurred and the facilitating structures are not moveable, neither does other operational development fall within such a definition. I presume, although it has not been submitted in those terms, that the reference to fencing being
permitted development relates, therefore, to rights under Class A of Part 2 of Schedule 2 to the GPDO\(^9\). However, whilst it is not disputed that the wire mesh fencing around the boundaries of the site does not require planning permission, and indeed is excluded from the requirements of the notice, there is no such certainty regarded the other fencing within the site.

24. The fencing that has been erected on the site is shown on Drawing No 1643-01 Rev E (Plan A). It includes 1.8m-high close boarded gates at the entrance and similar fencing around the car parking area. Shooting enclosures, including those for archery and air rifle shooting, are mostly bounded by “hit & miss” fencing as shown in Photographs 1 & 2. This fencing is generally 1.8m in height, but some of it is shown to be 2.3m-high. The latter fences could not, in any event, therefore, be considered as permitted development under Class A of Part 2.

25. The crucial point, however, in the consideration of this ground of appeal is that, irrespective of whether the fencing could have been erected as a means of enclosure having regard to Class A of Part 2, it has only been put in place to create the enclosures needed for the unlawful use that is being carried out on the site. Therefore, having regard to the judgements in relevant case law\(^{10}\), it is legitimate for an enforcement notice to require their removal as the fencing facilities the unauthorised use. The same principle applies to the various structures within the site and the fact that they might achieve a level of public and user safety or noise control commensurate with the use does not make them “permitted development” under the GPDO. Moreover, it is not a legitimate approach to attempt to disaggregate the various elements of the overall development in this way and the material change of use together with the associated operational development needs to be considered in its totality.

26. For the avoidance of any doubt, I do not consider that the use of the site for clay pigeon shooting can fall within the permitted development rights conferred by Class B of Part 4 (the “28-day rule”) for the reasons given above in relation to the appeal on ground (b). The siting of non-moveable structures and permanent development, together with the lack of reversion to the lawful use of the land outside any 28-day temporary use, has meant that a material change of use has occurred that is outwith the rights conferred by this part of the GPDO.

27. My conclusion on this ground of appeal is that both the use and the associated operational development cited in the enforcement notice require planning permission that has not been granted. The appeal on ground (c) therefore fails.

**APPEAL A ON GROUND (a) AND APPEAL B**

**Planning Policy**

28. The SOCG sets out the agreed position between the parties in relation to relevant planning policy so it is unnecessary to repeat it fully here. I will, however, draw attention to the main policy background that the appeals need

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\(^9\) Class of Part 2 permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Class A.1 states that development is not permitted by Class A if a number of circumstances apply, including that the height of any gate, wall, fence or other means of enclosure would exceed 2m above ground level.

to be considered against. Firstly, the Development Plan for this area includes the Warrington Unitary Development Plan (UDP), adopted in January 2006. The appeal site is shown as lying within the North Cheshire Green Belt and is thereby subject to Policy GRN1, but it is not allocated for any other purpose. Policy GRN1 sets out the normal presumption against inappropriate development in the Green Belt except in very special circumstances. Other policies of relevance to these appeals are Policies GRN2 (Environmental Protection and Enhancement), GRN9 (Outdoor Activities in the Countryside), GRN16 (Sites of National Importance for Nature Conservation), GRN17 (Sites of Local Importance for Nature Conservation), GRN21 (Protection of the Nature Conservation Resource) and REP (10 (Noise).

29. The emerging Warrington Local Plan Core Strategy (CS) has recently been subject to an Examination in Public, following the submission of a draft version to the Secretary of State. germane to my considerations are Policies CS5 (Overall Spatial Strategy – Green Belt), PV7 (Promoting the Visitor Economy), QE5 (Biodiversity and Geodiversity), and QE6 (Environment and Amenity Protection). The CS carries significant weight in the light of the advanced stage reached in the adoption process, as there are no detailed objections to these policies.

30. The UDP and CS policies referred to above have to be considered in the context of The National Planning Policy Framework ("The Framework") published in March 2012. In relation to the main issues I set out below, Sections 9 (Protecting Green Belt Land) and 11 (Conserving and Enhancing the Natural Environment) are pertinent. The UDP and CS Policies referred to above are largely consistent with those in The Framework and thereby attract significant weight in the context of these appeals. A material alteration to Green Belt policy is, however, apparent, but I shall deal with that in the context of the first main issue below.

31. During the course of the Inquiry it emerged that the area around and including the appeal site had been “designated” as the Rixton Moss LWS, despite the fact that there no reference to such designation in the SOCG. Further information was sought and provided on the procedure that had lead to such designation and two items of documentation were produced by the Council’s witness\textsuperscript{11}. This, in turn, raises doubts as to the legitimacy of the process followed by the Council as it appears that landowners may not have been fully consulted on the proposed designation, neither has the matter been formally considered by the relevant Committee of the Council. Detailed survey information to support the proposed designation has also not been provided. Moreover, the area shown on Document 19 is not indicated as a LWS on the post-submission edition of the Council’s Local Plan Core Strategy Map\textsuperscript{12}. In all of these circumstances, therefore, I can only give limited weight to the intended status of the appeal site and the surrounding area as a LWS in the context of these appeals.

Main Issues

32. The main issues in this appeal are:

(a) Whether use of the land, and the associated operational development, for clay pigeon shooting activities is appropriate in the North Cheshire Green Belt;

\textsuperscript{11} Documents 17 and 19.

\textsuperscript{12} Plan I.
(b) The effect of the use of the land and the associated operational development on the character and appearance of the surrounding area, including the openness of the Green Belt;

(c) The effect of the use of the land on protected bird species in terms of noise disturbance; and,

(d) Whether, if the use and operational development constitutes inappropriate development in the Green Belt, there are any material considerations sufficient to clearly outweigh the harm to the Green Belt, and any other harm, thereby justifying approval on the basis of very special circumstances.

Reasoning

Whether Appropriate Development

33. The SOCG records agreement between the parties that the use of the appeal site for clay pigeon shooting does not represent inappropriate development in the Green Belt having regard to national planning policy and the provisions of both the UDP and the CS. In this context, I note that Policy GRN1 of the UDP states, amongst other things, that, within the Green Belt, planning permission will not be granted for inappropriate development except in very special circumstances. It goes on to state that the erection of new buildings within the Green Belt will be inappropriate unless the building is for a number of purposes including essential facilities for outdoor sport and recreation. The Policy also states that proposals which involve a material change in the use of land will not be appropriate unless they maintain the openness of the Green Belt and do not conflict with the purposes of including land within it.

34. At the start of the Inquiry, however, I drew the attention of the parties to the recent judgement in the case of Fordent Holdings Limited v Secretary of State for Communities and Local Government and Cheshire West and Chester Council [2013] EWHC 2844 (Admin), which discussed the question of whether a material change of use of land was appropriate in the Green Belt having regard to the policies contained in The Framework. It appeared to me, from this judgement and from a careful reading of that document, that a material change of use of land is not included within the categories of development considered to be "appropriate", as set out in Paragraphs 89 and 90. I therefore invited appropriate submissions as to the effect of this judgement on the agreed position of the parties.

35. Subsequently, in closing submissions, Counsel for each of the main parties accepted that I was bound by this decision albeit that they each considered the judgement to be perverse in that the consequence of it was that operational development in the form of appropriate facilities for outdoor sport and recreation was not inappropriate, in the light of Paragraph 89 of The Framework, yet a material change of use of land to use for such outdoor sport and recreation would be. In this context, whilst accepting that I am bound to follow the case law now established by Fordent Holdings, attention was drawn to the provisions of Paragraph 81 of The Framework. This states that once Green Belts have been defined, Local Planning Authorities should plan positively to enhance the beneficial use of them, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land.
36. It is a matter of fact that The Framework differs from the former guidance given in Planning Policy Guidance Note 2 "Green Belts" that a material change of use of land would not be appropriate unless it maintained the openness of the Green Belt and did not conflict with the purposes of including land within it\textsuperscript{13}. The Framework is, however, silent as to whether a material change of use would be either appropriate or inappropriate. Paragraph 89 states that the construction of new buildings would be inappropriate in the Green Belt but then lists a number of exceptions, including the provision of appropriate facilities for outdoor sport and outdoor recreation. Paragraph 90 lists other forms of development which also are not inappropriate in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land therein. These forms of development include mineral extraction and engineering operations, the former of which would involve a change of use of land, but it does not include a general category of "material change of use of land" such as that involved in these appeals.

37. It must follow from this that, whilst the construction of new buildings for outdoor sport, such as the shooting enclosures, other timber structures and the fencing that separates the various discrete shooting areas may be considered in principle to be appropriate development under Paragraph 89, the material change of use of the land from agriculture to use for clay pigeon shooting does not fall within any of the forms of development that are listed in The Framework as either appropriate or not inappropriate. As the associated operational development facilitates an unauthorised and inappropriate use, I consider, and it is my conclusion on the first issue, that the development as a whole must be considered as inappropriate in the Green Belt and thereby harmful by definition\textsuperscript{14}.

38. I make two further observations at this point. Firstly, in the above circumstances, issue (d) identified above will need to be considered, albeit that the provisions of Paragraph 81 of The Framework should be taken into account as a material consideration. Secondly, whilst agreement has been reached between the parties that the operational development that has taken place does not affect the openness of the Green Belt, it seems to me that there is an argument that this is not the case, given the number of structures and the amount of fencing on the land. I shall, therefore, examine the effect of the development on the openness of the Green Belt in relation to the second issue below.

**Character and Appearance**

39. The character of the surrounding area is essentially rural with a mix of agricultural and nature conservation uses predominant as identified in the description given above. Land to the south of the railway line that dissects the area is primarily in arable use, but the fishing lakes at Moss Side Farm provide an element of outdoor sport and recreation. Other land in the area is also used intermittently for shooting under the permitted development rights referred to above. Further agricultural land lies north of the railway to the north-east of the appeal side, but the main feature in that direction is Risley Moss SSSI, a substantial part of which is a nature reserve open to the public for recreational pursuits such as walking and ornithology. Isolated dwellings and farm

\textsuperscript{13} Paragraph 3.12 of Planning Policy Guidance Note 2 "Green Belts" (revised 1995). This document was replaced by The National Planning Policy Framework in March 2012.

\textsuperscript{14} Paragraph 87 of The National Planning Policy Framework.
buildings are dotted sporadically through the area and the Colliers Waste Disposal site to the east represents another divergence from the primary use albeit a temporary one until the landfilling is completed and the land fully restored.

40. In terms of appearance the area is largely flat with limited vegetation in the area south of the railway other than hedgerows alongside the roads and tracks that cross it. More extensive tree and shrub growth is apparent to the north, including within the SSSI. It is, nevertheless, a relatively attractive landscape with long views available from the Public Rights of Way that run along the private roads south of the site.

41. The appeal development is relatively inconspicuous in the overall landscape of the area, and the Council do not consider it to be unduly visually obtrusive. The boundary fencing screens the majority of the internal fences and structures that have been erected save for the elevated tower that is used to fire clays over the north-eastern shooting areas. Public views towards the site are limited by the distance of the site from the Public Right of Way along Prospect Lane, which is about 200m to the south, but slightly elevated views are available, albeit briefly, from passing trains on the Manchester-Warrington railway line. However, visibility of the development does not necessarily equate to harmful impact. Extensive tree planting has already taken place within the site, and further landscaping is proposed which could be the subject of a condition on any grant of planning permission. This would further mitigate the impact on the surrounding area and I consider that, overall, the site would not have a materially harmful effect in visual terms. Furthermore, the use of the land for shooting and for archery is a form of outdoor sport and recreation, and is not at odds with the other forms of recreation apparent in the area, subject to detailed consideration of noise impacts under issue (c).

42. In terms of the effect on the openness of the Green Belt, it is clear that there has been some impact through the development that has taken place. The site was previously an open arable field, but it is now enclosed by fencing and contains a number of timber structures. Moreover further built development is proposed in that a clubhouse, formed from containers linked together, is intended if planning permission is granted. The structures in themselves are all relatively small, but the fencing that is used to separate internal pathways and shooting areas adds to the loss of openness that has occurred. The Council consider that such loss is acceptable and this is reflected in the SOCG where the main parties have agreed that no significant harm would be created. I do not entirely share that opinion, as it is clear that the site is less open than it was before the development took place. Therefore the reduced openness is a matter that would need to be taken into account in the context of issue (d) below.

43. My conclusion on this issue is that the development does not materially harm either the character or the appearance of the surrounding area, but that it does reduce the openness of the Green Belt in this particular location.

**Effect of Noise on Protected Species**

44. The main reason for the Council’s refusal of planning permission and subsequent issue of an enforcement notice relates to the perceived effect of noise from clay pigeon shooting on protected bird species in Risley Moss SSSI and the surrounding area, and the subsequent damage to the nature
conservation value of the area and its attractiveness for visitors. In the light of their concerns, the planning application which is the subject of Appeal B was accompanied by a number of surveys aimed at informing the Council’s decision and supporting the appellant’s case that the development would not be harmful in this respect. These included an Extended Phase 1 Habitat Survey (March 2012)\(^\text{15}\); a Breeding Bird Survey Report (July 2012)\(^\text{16}\), a Report on the Potential Effects on Ornithology (January 2013)\(^\text{17}\) and a Report of Clay Pigeon Shooting Noise Assessment (January 2013)\(^\text{18}\). These documents have not been supplemented by any further studies for the appeals, but expert evidence, including reliance on extensive scientific literature, was presented by both main parties to the Inquiry. The Council has not, however, undertaken any surveys themselves.

45. The views of Natural England (NE) were sought by the Council on the proposal before them prior to their decision. The chronology of this consultation is set out in Appendix 7 to the SOCG, together with an agreed statement of common ground between NE and the appellant. Initial objections by NE to the application, in May 2012 and January 2013, were amended following the provision of the Shooting Noise Assessment and email correspondence. This culminated in the withdrawal, on 9 April 2013, of NE’s objection on the basis that any planning permission granted should be subject to specific conditions relating to noise levels and monitoring thereof.

46. At this point I note that it is common ground between the parties, and it formed no part of any views expressed by NE, that the habitat of the surrounding area, including that of Risley Moss SSSI, would not be affected by the development and it was accepted by the expert witnesses for both main parties that a Habitat Regulations Assessment\(^\text{19}\) was not required. Moreover, the appeal site itself was not of any interest in nature conservation terms prior to the development that has taken place. It is only, therefore, the impact from noise upon bird species breeding, feeding or visiting the area that is at issue. In this context, a list of the protected birds that the Council consider might be harmed is set out at paragraph 7.32(ii) of the SOCG. This comprises fourteen named species together with all wintering and breeding wildfowl.

47. The starting point for consideration of this issue is the likely noise levels that would emanate from the appeal site during periods of clay pigeon shooting and then to examine whether this would be likely to lead to an adverse impact on protected bird species that use the area surrounding the appeal site, including Risley Moss SSSI. I note at this point that it is agreed that noise levels from air rifle shooting would have no material impact thus it is only noise from the clay pigeon shooting that is at issue.

48. The Shooting Noise Assessment was undertaken by the appellant’s consultants (Wardell Armstrong) in accordance with a Noise Survey Protocol agreed with the Council. This protocol takes account of guidance issued by the Chartered Institute of Environmental Health (CIEH) on noise associated with clay pigeon shooting\(^\text{20}\). Shooting noise levels (SNL) were measured at a range of locations

\(^{15}\) Document CD4 within Document 2.
\(^{16}\) Document CD5 within Document 2.
\(^{17}\) Document CD8 within Document 2.
\(^{18}\) Document CD7 within Document 2.
around the appeal site, including at the closest part of Risley Moss SSSI and at points near to residential properties. The aim of the survey was to calculate SNL on a worst-case basis, through taking the 25 highest shot levels at each receptor location and with positive wind vectors. All measurements were taken in the absence of passing trains – the main existing noise source in the immediate vicinity of the appeal site.

49. In some of the locations the shooting noise, particularly near residential areas in Birchwood, was generally inaudible or near the threshold of audibility at worst. At Risley Moss SSSI the SNL was 54.2 dB(A), whilst at the nearest individual residential properties on Holly Bush Lane and Wood End Lane the calculated levels were 56.9dB and 69.0dB. The CIEH guidance recommends a mean SNL of 55 to 65 dB, thus the latter is above that recommended. However, it is no part of the Council’s case that any local residents would be unduly affected by noise from the appeal development and I am satisfied that this is the case. Whilst measured noise levels at Wood End Farm were higher than those recommended by the CIEH guidance, further bunding, of 2m in height, is proposed around the two boundaries nearest to that property\(^{21}\), and this would ensure a reduction to levels within those considered to be acceptable.

50. Turning, therefore, to the effect on protected bird species, I find it particularly significant that the consultation with NE resulted, ultimately, in a withdrawal of their objection to the proposed development, subject to the imposition of conditions aimed at the control of noise levels, as measured at the nearest part of the SSSI. The scheme before me takes account of this response, through proposed noise attenuation measures. These include the provision of insulated shooting enclosures, a restriction on the weight of shotgun cartridges to be used on the site, limitations on the times and days when shooting may take place, an altered site layout to avoid shooting in a southerly direction, and the provision of bunding and acoustic fencing. All of these measures could be covered by appropriate conditions on any grant of planning permission. Consequently, the appellant’s case depends to a large extent on the contention that the SNL restriction suggested by NE can be met at Risley Moss SSSI and that there would, thereby, be no adverse impact on bird species using that area.

51. Notwithstanding the views of NE, much of the evidence presented at the Inquiry focussed on whether it could be shown that protected bird species would not be adversely affected by noise. In submission, the Council suggested that NE’s response\(^{22}\) did not take account of the effect of the development on birds outside the SSSI, but I do not agree that their views should inevitably be read in that way. Whilst it is clear that their primary concern relates to impact upon the special features of the SSSI, I am mindful of the fact that NE are the Government’s statutory advisers in relation to nature conservation in general. Therefore, whilst their primary concern is likely to be the effect of development on SSSIs, it does not follow that they would not also be concerned about impact on protected species outside such areas. Indeed, I would find it most surprising if they had not considered the potential impact on birds in areas close to, as well as within, the SSSI. In this context, I note that NE were supplied with a copy of the Breeding Bird Survey Report,

\(^{21}\) Drawing No F1643-01 Rev K (Plan K).
\(^{22}\) Email of 9 April 2013
which considered an area within 500m on the appeal site, including areas outside the SSSI, thus they were clearly aware of other species, including red and amber listed species in the area in general. Nevertheless, it is a matter of fact that the views of NE were primarily aimed at achieving a satisfactory noise level at monitoring point No 2 in the closest part of the SSSI to the appeal site.

52. There is no dispute that the potential effect on protected bird species in general is a material consideration in this appeal. The fact that the citation for the SSSI makes reference to a wide range of breeding birds being present including species associated with unmodified mires, and that the area is also of value for wintering wildfowl and raptors, creates particular significance in relation to impact on the species that use the SSSI, but it does not exclude impact on species in the wider area. At this point I would also note that, whilst the reference to birds comes at the end of the SSSI citation, this does not lessen the importance of that element of the reasons for its notification. The withdrawal of NE’s initial objection to the proposed development places, however, in my view, a burden on the Council to show that, in the context of the first two bullet points of Paragraph 118 of The Framework, significant harm which cannot adequately be mitigated would result from the development, and that it would be likely to have an adverse effect on the SSSI’s notified features of special interest which would not be clearly outweighed by the benefits of that development.

53. The Council’s case relies, to some extent, on a claim that birds are likely to be affected by the type of impulsive noise that would be generated by shooting at the site, and that this could affect birds in flight as well as those on the ground, thus the attenuation proposed would not reduce noise for birds in the air. They also draw attention to the fact that no guidance has been issued by any statutory organisation, including NE, relating to the impact of noise from clay pigeon shooting on birds. Moreover, the guidance issued by the CIEH primarily reviews impacts for the human response to noise.

54. From the evidence presented at the Inquiry, I am satisfied that extensive attempts have been made to ascertain the likely impact of the types of noise that would result from the appeal development on a range of bird species, including raptors, passerines and wildfowl. Scientific literature has been reviewed to examine, amongst other things, the impact of construction noise, the sensitivity of particular bird species to noise, the range of noise audible to birds, and the effects of deliberate disturbance to birds. Moreover, the CIEH guidance has been followed in that shoot organisers or their representatives have discussed with the owners of surrounding land and with wildlife preservation bodies or nature conservation officials the particular times when animals are likely to be unusually sensitive, and arranged for a temporary suspension or reduction in activities as necessary. This has been achieved through the discussions held with NE, and the consequent modifications to the scheme, together with the conditions related to noise controls that the appellant is prepared to accept.

55. In relation to impulsive loud noise, a study of construction noise, including that from piling operations, was undertaken in October 2008 by the Institute of

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23 This refers to birds of conservation concern as identified by the RSPB, BTO and BirdLife.
25 Paragraph 4.5, CIEH Guidance, appended to the proof of evidence produced by Mr Dawson.
Estuarine & Coastal Studies (IECS) of the University of Hull in relation to the effects on waterfowl. This showed, amongst other things, a continuum of responses by waterfowl at noise levels between above 50dBA and 70dBA. This included head-turning, scanning behaviour, reduced feeding and movement to other areas close by. However, below 50dBA, there was no effect. Moreover, updated material in the Waterbird Disturbance Mitigation Toolkit, also produced by the IECS, in 2013, suggested that a “low threshold figure of 55dB”, possibly based on research in 1991, recorded no effect of shooting on roosting waders. These figures support the views of NE that the development is acceptable subject to noise levels no greater than 50dB(A), with an LAmx of no greater than 53.9dB. In this context also, I note that it was the opinion of the appellant’s expert witness that waterfowl were more sensitive to noise than the bird species likely to be present in the SSSI, and that this view was not challenged by reference to other available studies or data.

56. Three other studies produced to the Inquiry deal with other aspects of this issue. Firstly, that by Wright, Goodman and Cameron reports that a median value of 63.1dB resulted in no observable response in respect of deliberate disturbance of shorebirds under a licence issued by NE. This study involved four bird species – Curlew, Golden Plover, Common Gull and Lapwing. The latter is of particular significance for the appeal site, given their observed presence in the surrounding area. Secondly, the study by Rowley stated that raptors show the least reaction to noise of all bird species, with reference to the example of a female Northern Harrier preferring to hunt close to locations where bombing took place. This matter was also considered in a third study by Dooling & Popper about the effect of highway noise on birds. This American study included an assessment that humans can hear better than birds over a wider range of frequencies. They considered 49 species, including two species of raptors, one species of waterfowl and three species of owl.

57. Another aspect of the Council’s concern relates to a claim that, once disturbed, birds are unlikely to return but, again, there is nothing in the evidence before me to support such a contention. Indeed, the Wright, Goodman & Cameron study showed that this did not generally happen to the shorebirds observed, other than at a noise level of about 76dBA. Similarly, there is a lack of evidence to support the contention that birds in flight, suffering higher noise levels than the acoustically protected ground areas, would be deterred. The above studies would appear to show that such noise would make little difference to flight patterns and habits.

58. The question of whether or not birds would become habituated to noise from the appeal site was raised, with the Council’s expert witness expressing the view that it was less likely to occur, especially as the site would be used for a

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27 Figure 2, page 32 of the above study.
29 “Exploring behavioural responses of shorebirds to impulsive noise”, Wright, Goodman & Cameron for the Wildfowl & Wetlands trust; extract in the bundle of appendices produced by Miss Lacy.
greater number of days (156) than in the past. Therefore, there would also be less “resting” time between shooting days which, in turn, would lead to adverse effects on protected bird species. However, again, no specific evidence to support such a contention has been provided and the appellants rely on the fact that, whilst there would be a higher number of shooting days than under the previous 28-day rule, it would be subject to much greater control.

59. This leads me to the consideration of the manner in which noise could be mitigated in the light of the Council’s submission that, whilst NE do not object to the development, it is only on the basis that a restrictive condition has to be imposed, thus confirming that there would be adverse impact on bird species and the SSSI without such a condition. In this context, however, I am satisfied that the condition requested by NE could be imposed, and that it would, in principle, secure the noise mitigation and attenuation sought by them. Additionally, such control, and other aspects of the development such as the times at which shooting may take place, so as to avoid winter roosting times for example, the direction of shooting shown on the amended plans, further bunding, a limitation on the numbers of those participating, to fifteen, and the weight of cartridges to be used (to 28g), would all represent a net benefit over the situation which could occur with unregulated shooting under Class B of Part 4 of Schedule 2 to the GPDO, notwithstanding that the site would be used for more days in any one year.

60. Finally, on this matter, I have considered the suggestion that account has not been taken of the possibility of simultaneous shots being fired which would, in turn, lead to increased noise levels above those measured during the noise survey, or predicted in the appellant’s evidence. A calculation was made by the appellant’s expert witness on noise that the likelihood of this happening was 1 in 40 million. This was, however, challenged by a third party who had experience in the provision of risk management for clients in various sectors including defence and the nuclear industry. He suggested that the likelihood of simultaneous shots during the 700 shots per hour that could occur was about 1 in 7. This was challenged by the appellants, who put a revised calculation of 1 in 25 million forward, albeit that this was not accepted by the third party witness. I am unable to rule determinatively on the precise calculation but it seems to me to be of no great relevance if a maximum noise level is set by a planning condition. Should simultaneous shooting occur so that the noise level increases beyond that set, the users of the site would be in breach of such a condition and would need to take remedial action, which could include a reduction in the number of shots so as to reduce still further the likelihood of consequent increased noise. Ultimately, non-compliance with specified noise levels could result in a cessation of the use.

61. Having regard to all of the above matters, therefore, my conclusion on this issue is that the development would not, subject to the controls specified, cause material harm to protected bird species either within Risley Moss SSSI or in the surrounding area. I thereby find no conflict with the provisions of Paragraph 118 of The Framework, or with relevant Council policy in the UDP and CS.

Very Special Circumstances

62. Having found that the use of the site for clay pigeon shooting would be inappropriate development in the Green Belt, in respect of policies in The
Framework and the judgement in *Fordent Holdings*, and thereby harmful by
definition, it is necessary to consider whether there are any material
considerations which would amount to the very special circumstances
necessary to overcome this harm, and the other harm identified in relation to
the other main issues. This includes the reduction in the openness of the
Green Belt found in respect of the second issue.

63. The material considerations put forward by the appellant in the context of this
issue are several. Positive policy support derives from Paragraph 81 of The
Framework, which places a duty on Local Planning Authorities to plan so as to
provide opportunities for outdoor sport and recreation in the Green Belt.
However, there is no evidence of the Council making provision for such
beneficial use of land in the Green Belt in either the adopted UDP or the
emerging CS. In relation to site-specific elements, evidence was provided to
show the need for additional clay pigeon shooting activities in Cheshire and the
North West, particularly those accessible to all able and disabled users, whilst
the proposal would make a significant contribution to the Olympic and
Paralympic legacy as there are no other facilities of an equivalent standard in
the north of England. It would not be practicable for a use of this type to be
located in an urban area or on the edge of a settlement in view of the likely
impact on residential amenity but, in Warrington, any site outside built-up
areas is likely to be in the Green Belt, because of the coverage of the
designated area within the Borough. Given these constraints, the site is well
located in terms of access to the motorway network for users from within the
region and the high quality of the facilities, coupled with the investment that
has and would take place, would provide substantial social, economic and
community benefit to the area. Finally, landscape and habitat enhancement
would accrue from the extensive planting that is involved in the scheme, and
the proposal would bring an area of unused land back into beneficial use.

64. Dealing firstly with the policy position, it is a matter of fact that there is no
positive policy within either the UDP or the CS relating to the provision of new
facilities for outdoor sport or recreation in the countryside. Policy GRN9 of the
UDP permits such provision subject to a number of criteria being met, including
that there is no unacceptable increase in noise likely to harm the amenity of
nearby residential property or the value of other environmentally sensitive
areas or features. Policy PV7 of the CS seeks to promote the visitor economy,
including the diversification of the local economy in the countryside, provided
there is no harm to the openness of the Green Belt or the character of the local
landscape. However, the Council accept that no direct provision has been
made for new facilities for outdoor space or recreation in the open countryside,
or Green Belt in particular, in either plan. The provision of clay pigeon shooting
facilities appears not to have been considered at all, albeit that I am not fully
aware of whether such need was promoted by relevant bodies in the
consultation stages of the two Plans.

65. The absence of specific provision runs counter to the provisions of Paragraph
81 of The Framework, which seeks positive planning by Local Planning
Authorities to enhance the beneficial use of defined Green Belts such as by
looking to provide opportunities for outdoor sport and recreation. Moreover, it
seems to me that the provisions of Paragraph 81 need to be considered also in
the context of the fact that Paragraph 89 states that the provision of new
buildings such as appropriate facilities for outdoor sport and recreation would
not be inappropriate provided the openness of the Green Belt is preserved and
there is no conflict with the purposes of including land within it. Therefore, whilst the use of the land for this type of sport, having regard to *Fordent Holdings*, may be inappropriate development, it is clear that Paragraph 81 has to be taken to mean that the Green Belt is suitable in principle for such development. In this context, it is also significant that there is no land within Warrington outside the Green Belt where outdoor sport could be provided, as the only areas beyond existing developed areas which are not designated as such are those shown on the UDP and CS as intended for employment-based uses.

66. The need for this type of facility has not been quantified in terms of actual demand from members of the public for a clay pigeon shooting club, but the absence of a facility of the extent and quality of that proposed in this case was not challenged by the Council at the Inquiry. Additionally, it is clear that the site itself would provide opportunities for disabled people to take part in this type of sport, and it is no part of the Council’s case that it could not be undertaken without causing harm to residential amenity. However, I do not consider that these matters, and the landscaping and habitat improvements that are likely to accrue, are determinative on this issue, as they would be likely to be needed irrespective of whether or not the site was in the Green Belt. Additionally, I give little weight to the claim that the land would be brought into a beneficial use through this use as neglect or otherwise of agricultural land cannot form a reason for new development which would not normally be acceptable or appropriate.

67. It is also difficult to be certain about the extent to which economic or social benefits would arise from the development, as it seems to me that this is a specialist type of sport that would not appeal to the population at large. Equally, provision of an up-to-date facility to further the Olympic and Paralympic legacy is also not dependent upon a Green Belt location in this particular area. Similarly, the benefit of bringing a use previously carried out in an unregulated manner, albeit on fewer occasions, under tighter controls, whilst positive, is not determinative in itself on this issue.

68. The Council’s view is that the material considerations put forward do not amount to the very special circumstances needed to outweigh the harm to the Green Belt and that caused by harm to protected bird species in the area. However, I have found that any harm to birds could be adequately mitigated and this leaves, therefore, only the principle of the use, having regard to The Framework, and a limited impact on the openness of the Green Belt. In this respect, the provisions of Paragraph 81 of The Framework, coupled with the lack of positive provision for outdoor sport and recreation in an established Green Belt through the Council’s own Plans, plus the benefits of the development which, whilst not determinative alone, combine to create, in this particular case, very special circumstances that outweigh the harm identified above.

69. My conclusion on this issue is that the material considerations put forward, in combination, create very special circumstances that outweigh the harm to the Green Belt created by an inappropriate use and by a limited loss of openness.

**Conclusions on Ground (a) and Appeal B**

70. My overall conclusion on these appeals is that any conflict with the provisions of the adopted Development Plan, the emerging CS and national policy
contained within The Framework is outweighed by the very special circumstances set out above, subject to the safeguards that could be provided through the imposition of appropriate conditions. The appeals therefore succeed and planning permission will be granted. In these circumstances, the appeals on grounds (f) and (g) in respect of Appeal A do not need to be considered.

**Conditions**

71. A schedule of draft conditions\(^{32}\) was drawn up by the main parties and discussed on a “without prejudice” basis at the Inquiry. The conditions cover a number of matters: compliance with approved plans; noise limits and appropriate monitoring; landscaping of the site, including the provision of a pond, feeding stations and nesting boxes; hours of use in relation to shotgun activity; the retention and use of acoustic shelters and a limitation on the size of cartridges to be used; the provision of passing places on the vehicular route to the site, and measures to secure appropriate traffic routeing; details of the further bunding that is to be provided; and, details of foul and surface water drainage provision.

72. The principle of all of the conditions suggested was agreed, and I also agree that the conditions are required and, subject to detailed re-wording as necessary, meet the normal tests for conditions set out in Circular 11/95\(^{33}\). I suggested, however, that many of the specific conditions relating to noise control and landscaping could more readily be dealt with by means of the submission of appropriate schemes for the approval of the Council and this was agreed by both parties. Additionally, I suggested that a default condition was necessary, which would require cessation of the use, removal of operational development and restoration of the site in the event of the necessary schemes not being either submitted or agreed. This was also agreed. I shall, therefore, impose appropriate conditions accordingly.

**Other Matters**

73. All other matters raised in the written representations and in the evidence produced and given at the Inquiry have been taken into account, but they do not outweigh the conclusions reached on the main grounds and issues of these appeals. Matters such as rights of way over the private roads leading to the appeal site and public safety in respect of the use, including the transportation of firearms, are covered by other legislation and are not within my jurisdiction in the context of these appeals. I am satisfied that highway concerns have been addressed in a Statement of Common Ground and can be adequately covered by the conditions referred to above.

**Conclusions**

74. For the reasons given above I conclude that the appeals should succeed. I shall correct the notice in accordance with my deliberations set out above, but Appeal A succeeds on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered. Similarly Appeal B also succeeds and planning permission will be granted.

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\(^{32}\) Document 22.

\(^{33}\) DOE Circular 11/95, The Use of Conditions in Planning Permissions.
FORMAL DECISIONS

Appeal A: APP/M0655/C/13/2196229

75. The enforcement notice is corrected by:

(a) The deletion, in Section 3, of the allegation in its entirety and the substitution thereof of the following allegation:

"THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

Without planning permission, the material change of use of the land from use for agriculture to use for clay pigeon shooting, archery and air rifle shooting activities, and the associated deposit of imported hardcore, soil and road planings to form earth bunds, hardstanding and parking areas, the erection of various buildings, enclosures and fencing.";

(b) the deletion, in Section 4, of the words “Policy QE9” and the substitution thereof of the words “Policy QE5”; and,

(c) the deletion, in Section 5(a) of the word “permanently”.

76. Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under Section 177(5) of the 1990 Act as amended, for the development already carried out, namely the material change of use of the land from use for agriculture to use for clay pigeon shooting, archery and air rifle shooting activities, and the associated deposit of imported hardcore, soil and road planings to form earth bunds, hardstanding and parking areas, the erection of various buildings, enclosures and fencing, on land at Prospect Farm, Prospect Lane, Rixton-with-Glazebrook, Warrington WA3 6EH, subject to the conditions contained in the attached Schedule of Conditions.

Appeal B: APP/M0655/A/13/2196226

77. The appeal is allowed and planning permission is granted for a change of use to provide a clay pigeon shooting club, clubhouse and associated parking at Prospect Farm, Prospect Lane, Rixton-with-Glazebrook, Warrington WA3 6EH in accordance with the terms of the application, Ref: 2012/19709, dated 16 March 2012, and the plans submitted with it, subject to the conditions contained in the attached Schedule of Conditions.

Martin Joyce

INSPECTOR
APPEARANCES

FOR THE APPELLANT:

Mr Peter Goatley of Counsel, instructed by Emily Williams, Irwin Mitchell LLP, Bauhaus, 27 Quay Street, Manchester M3 4AW
He called:
Dr Peter Marshall PhD Director of Shooting Standards for the British Association for Shooting and Conservation (BASC)
Mr C Mark Dawson BSc MA (Env Law) Technical Director and Principal Environmental Scientist with Wardell Armstrong LLP
Mr Kevin Honour MSc MCIEEM Director of Argus Ecology
Mr Paul Singleton BSc MA MRTPI Director of Turley Associates

FOR THE LOCAL PLANNING AUTHORITY:

Miss Ruth Stockley of Counsel, instructed by Mr Paul Clisby, Head of Legal Services, Warrington Borough Council
She called:
Mr Richard Evans BA (Hons) BPL MRTPI Principal Planning Officer, Development Management Section with the Council
Mr Steve Smith BSc DipAc Environmental Health Officer with the Council
Miss Helen Lacy BSc (Hons) Natural Environment Officer with the Council

INTERESTED PERSONS:

Mrs Deborah Copsey Local Resident
Mr Bill Brinksman Ward Councillor for Rixton-with-Woolston
Mr Rob Smith Ecologist and Bird Recorder, Risley Moss Action Group
Mrs Margaret Hornsby Landowner, Risley Moss
Mr Russ Bowden Executive Board member of Warrington Borough Council (Birchwood Ward) and Member of Birchwood Town Council
Mrs Vanessa Hartley Birchwood Resident
Mr Nigel Balding Chairman of Woodlands Trust Friends Group, Friends of Gorse Covert Mounds
Mr Geoff Settle BSc MSc Chairman of Warrington Nature Conservation Forum
Mr Andrew T Coney MRICS FAAC Partner for P Wilson & Company LLP (on behalf of Mr & Mrs J Blundell, Moss Side Farm, Prospect Lane, Rixton)
Mrs Diane Bloxham Birchwood Resident
Mr David Kay MA MSc CEng Birchwood Resident

ADDITIONAL DOCUMENTS PRODUCED AT THE INQUIRY

Document 1 Letter of notification of the Inquiry, and list of those so notified.
<table>
<thead>
<tr>
<th>Document</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Bundle of Core Documents (CD1 to CD35) produced by the appellant.</td>
</tr>
<tr>
<td>4</td>
<td>Comparative list of numbering of core documentation numbering used by Mr Honour in his proof of evidence.</td>
</tr>
<tr>
<td>5</td>
<td>Copy of retrospective planning permission for the upgrade of existing track surface (Ref: 2011/19014), dated 22 February 2013, including application forms, application plans and decision notice, produced by the Council.</td>
</tr>
<tr>
<td>6</td>
<td>Copy of a Certificate of Lawfulness for a Proposed Development in relation to a 2m high boundary fence at the appeal site (Ref: 2011/19010), dated 22 February 2013, including application forms, application plans and decision notice, produced by the Council.</td>
</tr>
<tr>
<td>7</td>
<td>Letter of representation from Dr &amp; Mrs Kerry, received by the Council.</td>
</tr>
<tr>
<td>8</td>
<td>Data sheet relating to acoustic insulation, produced by Mr Dawson.</td>
</tr>
<tr>
<td>9</td>
<td>Information sheet relating to the Manchester Mosses Special Area of Conservation, produced by the Council.</td>
</tr>
<tr>
<td>10</td>
<td>Information sheet relating to Risley Moss Local Nature Reserve, produced by the Council.</td>
</tr>
<tr>
<td>11</td>
<td>Extract from Natural England Website, showing Risley Moss SSSI and information concerning the condition of SSSI units, produced by the Council.</td>
</tr>
<tr>
<td>12</td>
<td>Bundle of appendices, including photographs, produced by Mrs Copsey.</td>
</tr>
<tr>
<td>13</td>
<td>Bundle of appendices produced by Mr Brinksman.</td>
</tr>
<tr>
<td>14</td>
<td>Statutory Declaration of the appellant, Lee James Durney, relating to use of the appeal site for archery and air rifle shooting.</td>
</tr>
<tr>
<td>15</td>
<td>Letter of notification of resumption of the Inquiry, and list of those so notified, produced by the Council.</td>
</tr>
<tr>
<td>16</td>
<td>Bundle of three letters of representation, produced by the Council.</td>
</tr>
<tr>
<td>17</td>
<td>Local Sites: Guidance on their Identification, Selection and Management, Department for Environment Food and Rural Affairs (DEFRA), 2006, produced by Miss Lacy.</td>
</tr>
<tr>
<td>19</td>
<td>Site Description and Management Form relating to Rixton Moss Local Wildlife Site, produced by Miss Lacy.</td>
</tr>
<tr>
<td>20</td>
<td>Bundle of appendices produced by Mrs Bloxham.</td>
</tr>
<tr>
<td>21</td>
<td>Bundle of representations produced by Mrs Bloxham.</td>
</tr>
<tr>
<td>22</td>
<td>Schedule of draft conditions agreed between the main parties in the event of planning permission being granted.</td>
</tr>
</tbody>
</table>
ADDITIONAL PLANS PRODUCED AT THE INQUIRY


Plan B Copy of Drawing No 171011-01 Rev A “Existing Site Layout and Fence Details”, dated October 2011, referred to in the Notice.

Plan C Revised Site Plan, Drawing No F1643-01 Rev H, dated February 2012, produced by the appellant.


Plan E Drawing No M13032-A-001 Rev A, dated 3 June 2013, showing Site Location and Proposed Passing Places on Prospect Lane, produced by the appellant.

Plan F Plan showing the appeal site, Rixton Moss and Woolston Moss Local Wildlife Sites, Risley Moss SSSI and Rixton Clay Pits SSSI and Local Nature Reserve, produced by the Council.

Plan G Plan, extract from MAGIC Survey, showing Rixton Moss agri-environment scheme take-up, produced by the appellant.


Plan K Revised Site Plan, Drawing No F1643-01 Rev K 34, dated February 2012, produced by the appellant.

ADDITIONAL PHOTOGRAPHS PRODUCED AT THE INQUIRY

Photos 1-2 Photographs of the acoustic fencing at the appeal site, produced by Mr Dawson.

34 Revision K is dated 14 January 2014, in the text box on the drawing.
Schedule of Conditions

This is the Schedule of Conditions referred to in my decision dated:

by Martin Joyce DipTP MRTPI

Land at Prospect Farm, Prospect Lane, Rixton-with-Glazebrook, Warrington WA3 6EH

References: APP/M0655/C/13/2196229 & 2196225

1) The development hereby permitted shall be carried out in accordance with the following plans:
   - Drawing No F1643-00 Rev C
   - Drawing No F1643-01 Rev K
   - Drawing No F1643-02 Rev D
   - Drawing No F1643-04 Rev A
   - Drawing No F1643-05
   - Drawing No F1643-06 Rev B.

2) No further shotgun activity shall take place on this site until a scheme of noise control has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following matters:
   (a) Acoustic attenuation to ensure that the shooting noise level from the site at Monitoring Location No 2 (as shown on Drawing No: ST13199/001 attached to the Clay Pigeon Shooting Noise Assessment dated January 2013) and measured in accordance with the methodology set out in that report does not exceed 50 dB(A) and that the LAmx at that point does not exceed 53.9dB, or that the shooting noise level or the LAmx is too low to be assessed;
   (b) Provision for the monitoring of noise levels arising from shotgun shooting at the site and the submission of reports to the Local Planning Authority for their approval, all such monitoring to take place in the absence of passing trains;
   (c) A protocol to ensure that, in the event of shooting noise levels failing to meet the levels specified above, all shotgun activity shall cease until further mitigation measures have been submitted to and approved in writing by the Local Planning Authority, and that the use of the site shall thereafter take place only in accordance with those approved measures;
   (d) Full details of the position, height, appearance and construction of all existing and proposed acoustic fencing on the site;
   (e) Details of the weight of shotgun ammunition cartridges to be used on the site, with no cartridge used at any time on the site exceeding 28 grams in weight;
(f) The positioning and retention of all acoustic enclosures erected on the site, as shown on Drawing No 1643-01 Rev K, or in any other position following the prior approval of the Local Planning Authority in writing to any amendment to that drawing;

(g) Full details, including an appropriate amendment to Drawing No F1643-01 Rev K, of the part of the site to be used for “Simulated Game” shooting. These details shall include an assessment of the potential noise impact from shooting activities in this area to demonstrate that the measured noise levels at monitoring locations 4 and 5 (as shown on Drawing No ST13199-001 attached to the Clay Pigeon Shooting Noise Assessment dated January 2013) are compliant with the limits stated in CIEH guidance ("Clay Pigeon Shooting – Guidance on the Control of Noise" published in January 2003). The noise assessment carried out shall be undertaken in suitable conditions including a positive wind vector towards monitoring locations 4 and 5;

(h) Measures to ensure that no shotgun is discharged on the site outside of an acoustic enclosure or beyond the area allocated for "Simulated Game" in accordance with (g) above; and,

(i) A limitation on the number of participants firing shotguns at any one time to no greater than 15.

All works which form part of the approved scheme shall be completed before any further shotgun activity takes place on the site, and all structures, fencing and other measures of acoustic attenuation shall be retained and maintained for the duration of such shooting activity unless the written consent of the Local Planning Authority to any alteration of the scheme has been firstly obtained. Thereafter the use shall take place only in accordance with such written approval.

3) Within 42 days of the date of this decision a scheme showing full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include the size and species of all planting; proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); bunding around the perimeter of the site (as indicated on Drawing No F1643-01 Rev K) including details of the materials to be used, the number of vehicle movements required in connection with their construction, the estimated timescale of their construction, the route to be taken by such vehicles for access to and egress from the site, and the proposed means of landscaping the bunds including the size, species and spacing of planting and the areas to be grassed; and a programme for the construction or provision of all items and matters contained within the scheme. The details shall also include the following matters:
(a) The depth, size and associated landscaping details in relation to the pond shown on Drawing No F1643-01 Rev K;
(b) The position, size and appearance of five feeding stations for birds;
(c) The position, size and design of 15 nesting boxes; and,
(d) A timetable to ensure the provision of these features within 28 days of the date of the approval of the scheme.

4) All hard and soft landscape works shall be carried out in accordance with the approved details with all planting works carried out during the first full planting season following the approval of the scheme and in full accordance with the programme agreed with the Local Planning Authority. Any part of the agreed landscaping scheme that dies or becomes diseased within 5 years shall be replaced in the next planting season with others of a similar size and species or quality, unless the Local Planning Authority gives written consent to any variation. All elements of the approved scheme, including the bunding, shall remain in place for as long as the site is operational and the use hereby approved persists.

5) No shotgun activity as authorised under this permission shall take place at the site outside the following times:
   1000-1500 Hours (between April and August inclusive) on three days out of every seven days
   and
   1000-1400 Hours (between September and March inclusive) on three days out of every seven days
   The site shall not be open to the public or operational outside of these times or on Sundays and bank/public holidays.

6) No other activities on the site, as authorised by this permission and open to the public, shall take place at the site outside the hours of 0900-1700 Monday to Saturday inclusive. The site shall not be open to the public or operational outside of these times or on Sundays and bank/public holidays.

7) The use of the site for the shooting activities hereby permitted shall not resume until a scheme/full details have been submitted to and agreed in writing by the Local Planning Authority to enable the Local Highway Authority to restrict development-related vehicular activity on Holly Bush Lane. The scheme shall include the following matters:
   (a) A timetable for the provision of the two new passing places on Prospect Lane as shown on TTHC Drawing No M13032-A-001 Rev A;
   (b) Details of a timetable for the provision of Signage directing vehicles leaving the site to use Prospect Lane; and,
   (c) Measures to enable the Local Planning Authority to prepare a Traffic Regulation Order to prevent vehicles associated with the use hereby permitted accessing Holly Bush Lane from its junction with Manchester Road.

Following approval of the scheme/details, the use hereby permitted shall not resume until the measures contained in that scheme/details have been fully implemented.
8) Within 42 days of the date of this decision, a scheme of foul and surface water drainage provision shall be submitted to the Local Planning Authority for their written approval. The approved scheme shall be implemented prior to the first occupation and use of the proposed Clubhouse.

9) The use of the site for clay pigeon shooting hereby permitted shall cease, and all temporary and permanent structures, buildings, storage units, fencing associated with that use, (other than the 2m-high high mesh fence considered lawful (under Certificate of Lawfulness application ref: 2011/19010, as shown on the approved plan – 171011-01 Rev A), all earth bunds (shown on plan number F1643-01 Rev K) and all non-organic matter forming the car parking area and internal paths within the site, (as shown on F1643-01 Rev K) shall be removed from the site and the land returned to a condition commensurate with its former agricultural use within six months of the date of failure to meet any one of the following requirements:

i) Within six months of the date of receipt the plans, schemes, drawings and details required by conditions 2, 3, 7, and 8 shall have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve any plan, scheme, drawings or details or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as valid by, the Secretary of State;

ii) If an appeal is made in pursuance of (i) above that appeal shall have been finally determined and the submitted plan, scheme, drawings or details shall have been approved by the Secretary of State;

iii) The approved plan, scheme, drawings or details shall have been carried out and completed in accordance with the timetable set out in each condition.
Appeal Decision

Site visit made on 24 January 2014

by N McGurk BSc(Hons) MCD MBA MRTPi
an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 February 2014

Appeal Ref: APP/M0655/H/13/2209171
T J Hughes plc, 27 Sankey Street, Warrington, WA1 1XG

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
- The appeal is made by 99p Stores Ltd against the decision of Warrington Borough Council.
- The application Ref 2013/22284, dated 5 August 2013, was refused by notice dated 7 October 2013.
- The advertisement proposed is new fascia and projecting signs for the new 99p store.

Decision

1. The appeal is allowed and express consent for the display of the new fascia and projecting signs as applied for is granted. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations.

Procedural Matters

2. The development the subject of this appeal has been carried out in part and I refer to it below as "the development."

3. Further to the decision notice, the appellant has introduced amendments which exclude illumination. The proposed projecting sign has also been amended, to comprise a non-illuminated hanging sign with a blue background, rather than a yellow sign.

Main Issue

4. The main issue in this case is the effect of the advertisement on visual amenity.

Reasons

5. The appeal property is a three storey former department store, dating from 1908 and built in a beaux arts style, with an attractive, detailed façade above ground floor level, including impressive cupola towers. The building is in retail use and is located in the Bridge Street Conservation Area, which is a largely commercial area comprising fine examples of 18th, 19th and 20th Century commercial and ecclesiastical buildings.

6. During my site visit, I noted that the appearance of the ground floor of the appeal property was dominated by its commercial use. This was in keeping with the ground floors of many other buildings in the surrounding area. Thus,
advertisements, in a wide variety of forms, appear commonplace, reflecting the commercial nature of the area.

7. Further to the above, I also noted that the development already in situ is simple in form and appears in proportion, scale and harmony with the host property and surrounding area. As above, there is no illumination. In this regard, I am mindful that the previous advertisement, which the development has replaced, included internal illumination. The development’s colours are relatively low key and appear no more strident than other nearby advertisements. During my site visit, I observed that there are examples of other advertisements in the surrounding area which appear garish and include illumination.

8. I also note that the proposed projecting sign would comprise a non-illuminated hanging sign and find that this, together with colours which match the fascia, would lead it to appear in keeping with its surroundings.

9. Taking all of the above into account, I find that the development appears sympathetically designed. It combines commercial necessity with a sensitive approach to advertising and does not harm visual amenity. Consequently, I find that the proposal complies with the Framework, UDP¹ policies DCS1, TCD14 and BH8, Core Strategy² policy QE7 and the Council’s SPD³, which together amongst other things, seek to protect local character. In this way, it would preserve the character of the Bridge Street Conservation Area.

Other Matters

10. The appeal property is located opposite a Grade II Listed Building - a three storey Victorian building in French renaissance style, comprising red brick and buff stone, with ornate window surrounds. Neither the Council nor English Heritage raise any specific or detailed concerns regarding the impact on the setting of the Listed Building. I consider that the development neither obscures, nor dominates, the Listed Building or its setting and there is nothing to lead me to consider that the setting Listed Building would not be preserved by the development.

Conclusion

11. For the reasons given above, the appeal succeeds.

N McGurk
INSPECTOR

¹ Warrington Unitary Development Plan, January 2006.
² Submission Local Plan Core Strategy, September 2012.
1. PURPOSE OF THE REPORT

1.1 Members will be aware of a number of recent appeal costs decisions which have been awarded against the Council. This report provides an update on the progress of those claims and expenses sought. Importantly these figures are being questioned and appropriate evidence sought from applicants who need to substantiate their reasonable expenses.

1.2 To advise Members of the reasons why costs have been awarded in this instance and how suggest how we can all reduce the risk of further awards of costs in the future in line with Circular 03/09.

2. REPORT BODY

Costs Decisions

2.1 A number of recent appeal decisions have been coupled with claims for an award of costs against the Council. The Planning Inspectorate has granted a number. As a consequence applicants have and will be submitting their expenses to the Council seeking payment. Copies of the decisions referred to are attached to this report for Members benefit.

2.2 In summary, in the last year, the cases subject of awards of costs are set out below together with the monies sought and settlement figure. The Council’s legal team have been engaged to assist with outstanding claims to ensure applicants only receive expenses which have been reasonably incurred as a result of appeal.

- ADS Recycling, Camsley Lane (Enforcement)
  - Costs settled - £40,000 (exc. vat). Original claim - £56,473.35
- 452 Warrington Road, Clucheth
- Costs settled - £4,600 (exc. vat). Original claim - £6,882.82
- 2 Marton Close, Culcheth (Enforcement)
  - Costs settled - £1,140. Original claim - £3,110
- 10 Malthams Road
  - Costs sought - £24,377.65 (incl. vat)
- Land at Broseley Avenue
  - Costs sought - £10,109.83 (incl. vat)
- Land at Stocks Lane/Warrington Road
  - Costs sought - £18,532
- Former United Utilities Depot, Land off Chester Road
  - Costs awarded to applicant– awaiting claim

2.3 For the two cases above where costs claims have been submitted, Officers are working to reduce those figures as much as reasonably possible. This practice will continue with future claims. Notwithstanding this, the total sums settled/sought since July 2013 is £98,759.48.

2.4 A number of appeal decisions have yet to be made. Two are subject to costs claims. One of those is subject of our own costs claim. They are:

- Land off Hillock Lane
  - Costs sought by applicant– no decision made.
- Heathfield House, Delenty Drive, Birchwood
  - Costs sought by the Council / Costs sought by the applicant – no decision made.

**Circular 03/2009 – Costs Awards in Appeals**

2.5 Circular 03/2009 sets out guidance on awards of costs in respect of planning appeals. The costs regime is designed to increase the discipline of parties when taking action within the planning system, through financial consequences for those parties who have behaved unreasonably and have caused unnecessary or wasted expense in the process. A party may be ordered to meet the costs of another party, wholly or in part, on specific application by the aggrieved party.

2.6 Unreasonable behaviour is defined in the Circular as “having caused the party applying for costs to incur unnecessary or wasted expense in the appeal process - either the whole of the expense because it should not have been necessary for the matter to be determined by the Secretary of State or appointed Inspector, or part of the expense because of the manner in which a party has behaved in the process.”

2.7 Parties should:
• behave in an acceptable way and are encouraged to follow good practice, whether in terms of timeliness or in quality of case;
• take into account the statutory period for making an appeal, appeals are not entered into lightly or as a first resort, without prior consideration to making a revised application which meets reasonable local planning authority objections;
• planning authorities and applicants enter into constructive pre-application discussions;
• at the appeal stage, statements of common ground are provided at the appropriate time;
• planning authorities properly exercise their development control responsibilities, rely only on reasons for refusal which stand up to scrutiny and do not add to development costs through avoidable delay or refusal without good reason;
• unsuccessful applicants exercise their right of appeal responsibly;
• costs applications are not routinely made when they have little prospect of success and merely add to the costs of administering the appeal system;
• all those involved in the appeal process who feel justified in complaining about others’ behaviour use the guidance in this circular effectively, by pursuing substantiated applications for costs in a robust but realistic way.

2.8 The majority of costs awarded against Local Authorities come as a result of authority’s inability to produce evidence to show clearly why the development cannot be permitted. Reasons should be complete, precise, specific and relevant to the application.

_Reasons behind awards of costs in recent appeals_

2.9 Having costs awarded against the Council is not a practice which is financially beneficial. Members and Officers are equally responsible in ensuring we follow good practice in arriving at decisions on planning applications and taking appropriate enforcement action. It is crucial the Council acts reasonably.

2.10 5 no. cases highlighted in paragraph 2.3 have been planning decisions contrary to officer recommendation. 2 no. cases relate to enforcement notices served without the necessary evidence or served imperfectly.

2.11 An important point for Members to remember is that both PASC and DMC are entitled to arrive at a different decision than Officers recommendation, providing robust evidence is presented at appeal as set out in paragraphs 2.7 and 2.8.

2.12 Although we have had a number of costs awards against Council decisions, there are good examples where the Council has successfully fought off claims because reasons for refusal have been properly substantiated and backed up by evidence. Recent cases are at Meadow Brook Cottage, 246 Manchester Road and 16 Chapel Lane. In these instances we supported our decision with a reasoned support of our opposing opinion.

2.13 In looking at our recent awards of costs, in summary the reasons behind the award of costs are:
• ADS Recycling, Camsley Lane (Enforcement)
  • Breach of condition notice and Enforcement notice withdrawn following legal advice confirming lack of evidence to substantiate our case.

• 452 Warrington Road, Clucheth
  • Refusal contrary to Officer recommendation including highway officers.
  • Not clear why Members took a different view regarding off-street parking/hazardous illegal parking taking place, despite Members local knowledge – lack of objective evidence.

• 2 Marton Close, Culcheth (Enforcement)
  • Enforcement notice withdrawn because notice served incorrectly. Notice subsequently re-served correctly and upheld.

• 10 Malthams Road
  • Refusal contrary to Officer recommendation
  • Introduction of a spurious reason for refusal in second application not previously cited as a reason for refusal, despite amendments to scheme.
  • Lack of objective analysis to back up reason.
  • Procedural matter of refusing Conservation Area Consent in line with planning application, despite conformity with the development plan.

• Land to the west side of Broseley Avenue, Culcheth
  • Outline consent sought for two dwellings.
  • Refusal contrary to Officer recommendation
  • Matters relating to character and appearance would be debated in a reserved matters application – the committee pre-judged a matter not yet before it.
  • This is a procedural point.

• Land at Stocks Lane/Warrington Road
  • Refusal contrary to Officer recommendation including highways officers.
  • Unable to substantiate highways reason. Lack of objective evidence to establish developments harm on highway safety.
  • Evidence presented on parking standards and local car ownership in the 2011 census, did not robustly demonstrate harm to highway safety.

• Former United Utilities Depot, Land off Chester Road
  • Refusal contrary to Officer recommendation including highways officers.
  • Unable to substantiate highways reason for refusal – we needed to show why and produce evidence to show why – lack of objective evidence.
  • Expressing concern at the use of car transporters entering/leaving the site was not sufficient enough.
  • The appellants could demonstrate the developments impact was negligible at worst, and at best traffic would be reduced.

2.14 There is a trend that costs are awarded when our case cannot be substantiated with a sound evidence base to demonstrate why decisions have been taken. The
remaining cases point to procedural matters – what we should be considering and when as well as the correct serving of an enforcement notice.

2.15 Three decisions have been based on highways matters. Although a valid planning consideration, it is a technical aspect of a planning decision, rather than a judgemental consideration such as design.

2.16 As a Council, there is an opportunity to improve. A number of suggestions are presented below – this is not an exhaustive list and perhaps could prompt a discussion:

- Ensure officer reports appropriately weigh the positives and negatives of proposals, identifying aspects of the case where it is policy compliant and parts which are in conflict, before weighing the relevant considerations and arriving at a recommendation or delegated decision.
- When refusing applications, ensure there is a base of evidence to do so – more so when relying on technical topics such as highways, noise or air quality. If greater time is needed seek an extension of time of the applicant or defer the application to the next meeting to enable technical experts to examine concerns in more detail.
- Members raise any concerns with Officers at an early stage – for example members may wish to make contact lead officers prior to committee to seek clarification relating to planning application. Where members wish to make a decision that is contrary to officer recommendation it is better to first seek the views of officers/legal prior to making final decisions.

- Ensure reasons for refusal are clear and precise.
- Review our case and provide a clear explanation of our position.
- Only consider the application within its parameters – check if unsure.
- Maintain detailed minutes for Committee – place greater detail on record for refusals to support our reasons.
- Officers and Members work together in defending appeal decisions and providing a robust evidence base – where members have made a decision that is contrary to officer recommendation at least one member of the committee attends a hearing / Inquiry to give evidence.

3. CONFIDENTIAL OR EXEMPT
3.1 Not confidential or exempt.

4. FINANCIAL CONSIDERATIONS
4.1 None.
5. **RISK ASSESSMENT**
   5.1 No risks identified.

6. **EQUALITY AND DIVERSITY/EQUALITY IMPACT ASSESSMENT**
   6.1 Not required.

7. **CONSULTATION**
   7.1 Not required.

8. **REASON FOR RECOMMENDATION**
   8.1 To reduce future awards of costs on appeal.

9. **RECOMMENDATION**
   9.1 That members and officers work together to minimise awards of costs against the Council.

10. **BACKGROUND PAPERS**
   10.1 Various appeal decisions.

Contacts for Background Papers:

<table>
<thead>
<tr>
<th>Name</th>
<th>E-mail</th>
<th>Telephone</th>
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<tbody>
<tr>
<td>Daniel Hartley</td>
<td><a href="mailto:dhartley@warrington.gov.uk">dhartley@warrington.gov.uk</a></td>
<td>01925 442809</td>
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12. **CLEARANCE DETAILS**

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<tr>
<th>Name</th>
<th>Consulted</th>
<th>Date Consulted</th>
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<tr>
<td>Andy Farrall</td>
<td>x</td>
<td>30/01/2014</td>
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TITLE OF REPORT: Planning Enforcement Policy

1. PURPOSE OF THE REPORT

1.1 To adopt the amended planning enforcement policy.

2. REPORT BODY

2.1 The Council approved a planning enforcement policy in 2010. Attached is an amended version of the planning enforcement policy. It reflects changes brought in under the Localism Act 2011 and national planning policy (i.e. the National Planning Policy Framework 2012) and the following changes:

- Includes some targeted enforcement activity as an “urgent item” arising out of discussions at the Enforcement Board meetings.
- Includes non-urgent and urgent enforcement cases but that some cases may be considered to be urgent given the cumulative impact of development and/or the strength of public feeling.
- An indication that the Council will not necessarily send out multiple reminders to persuade landowners to resolve matters before taking formal action.
- Giving land owners fourteen days to initially confirm intentions.
- Giving land owners twenty eight days to resolve matters.

3. CONFIDENTIAL OR EXEMPT

3.1 Not confidential or exempt.

4. FINANCIAL CONSIDERATIONS

4.1 None.

5. RISK ASSESSMENT

5.1 There is a need to adopt a new enforcement policy so that it reflects national planning policy and legislation. It will also help make clear what the Council defines as urgent and non-urgent cases.
Some cases may take longer than others to deal with and are also impacted by resources. Having priorities clearly laid out in the form of an updated policy document will enable the Council to tackle the most serious enforcement cases with the resources it has to hand. The Local Government Ombudsman will take the policy into account if/when complaints about the handling of planning enforcement cases are being considered by them.

6. EQUALITY AND DIVERSITY/EQUALITY IMPACT ASSESSMENT
6.1 Not required.

7. CONSULTATION
7.1 Enforcement team consulted. The Planning Improvement Board considered the draft enforcement policy on 23rd January 2014. The Planning Improvement Board supported the new enforcement policy subject to the inclusion of an additional paragraph to say that some cases may be considered to be urgent given the cumulative impact of unauthorised development and/or the strength of public feeling.

8. REASON FOR RECOMMENDATION
8.1 To manage enforcement proactively and to target the most serious of enforcement cases where priorities and resources dictate.

9. RECOMMENDATION
9.1 To adopt the attached planning enforcement policy.

10. BACKGROUND PAPERS
10.1 None

Contacts for Background Papers:

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</table>
PLANNING ENFORCEMENT POLICY

PLANNING ENFORCEMENT POLICY & PROCEDURES
MARCH 2014

www.warrington.gov.uk
Contents;

Background
Government Guidance
Principles of Good Enforcement
Overview of Planning Enforcement
Scope of Planning Enforcement
Making a Complaint
Prioritising Complaints
Performance Indicators
Dealing with Complaints
Enforcement Action
Comments and review
12 Contact Details
1. **Background**

1.1 This policy and procedures document sets out what individuals and organisations can expect from Warrington Borough Council in the undertaking of its planning enforcement function. These policies and procedures follow on from and sit below the Council's Corporate Enforcement Policy.

1.2 The integrity of the Planning process as a whole depends on the Council’s readiness to take effective enforcement action when it is appropriate. Fair and effective planning enforcement is therefore important to protect the quality of life for the people who live and work in Warrington and the quality of the Borough’s built and natural environment.

1.3 Warrington Borough Council acknowledges the Government’s view that the rapid initiation of enforcement action is vital to prevent a breach of planning control from becoming well established and therefore more difficult to remedy. However, Local Planning Authorities have a general discretion and need take enforcement action only when they regard it as expedient to do so. Action must also be commensurate with the breach of planning control it relates to.

1.4 In order to provide an appropriate service to the public, it is important for the Council to give its customers guidance through this document on how the enforcement system operates in practice. The benefit of this will be to:

- Explain the overall standard of service users the function can expect.
- Outline how complaints can be made
- Explain how investigations are undertaken.
- Define priorities so that the resources can be put to best use.
- Set time-scales so that service delivery can be measured and reviewed.
- Provide an indication of possible enforcement remedies.
- Ensure compliance with Government legislation and guidance.
- Maintain a consistent, fair and transparent approach to planning enforcement in Warrington.
- Provide reporting mechanisms to managers and Members in relation to complaints received and enforcement action taken.

2 **Government Guidance**
2.1 The Council’s Planning Enforcement function is undertaken in accordance with current and emerging Government guidance, policy and legislation which includes:

• Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004)

• Town and Country Planning (Control of Advertisements) (England) Regulations 2011.

• Town and Country Planning (Environmental Impact Assessment) Regulations 2011

• Freedom of Information Act 2000

• Data Protection Act 1998

• Localism Act 2011

• National Planning Policy Framework

• Planning (Listed Buildings and Conservation Areas) Act 1990

• Circular No. 10/97: Enforcing Planning Control

• Enforcing Planning Control: Good Practice Guide for Local Planning Authorities.

• Police and Criminal Evidence Act 1984

• Human Rights Act 1998

• Regulation of Investigatory Powers Act 2000

2.2 The National Planning Policy Framework (paragraph 207) states “effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning enforcement.
permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.”

3 Principles of Good Enforcement

3.1 The Government, in 1998 produced a Concordat setting out the Principles of Good Enforcement Practice. Warrington Borough Council has signed up to the Concordat and is therefore committed to the following principles:

Standards – draw up and publish clear standards of service and performance the public can expect.

Openness – provide information and advice in plain language; be open about how we set about our work; and discuss general issues with anyone experiencing difficulties.

Helpfulness – provide a courteous and efficient service and encourage the public to seek advice/information from us.

Complaints About Service – provide well publicised, effective and timely complaints procedures that are easily accessible to the public.

Proportionality – ensure any action we require is proportionate to the breach.

Consistency – carry out our duties in a fair, equitable and consistent manner.

4 Overview of Planning Enforcement

4.1 Planning enforcement is a technically and legally complex component of the planning system, which means that taking action is not always as straightforward as it seems. Legislation is often qualified by Court judgements and appeal decisions made by the Secretary of State for Communities and Local Government. The Council will operate within the provisions of this legislation, case law and other Government policy and guidance, the main elements of which have been outlined under Section 2.
4.2 In deciding whether it is expedient to take enforcement action, the Council will also give consideration to the objectives and policies of the adopted local development plan(s), National Planning Policy Framework and other relevant government and local guidance.

4.3 Each case will be dealt with on its own merits taking into account the often unique circumstances, along with the level of harm created as well as any history of previous breaches. The Council’s resources are not limitless and it is therefore necessary to target available resources to have maximum effect and not necessarily as a response to who is complaining or how vocally. In some circumstances, breaches causing little or no harm may receive a low priority and investigation may be postponed until resourcing allow. Action is also not taken simply because development or works have been undertaken without the necessary approval. Guidance on how cases will be prioritised is given within Section 7.

4.4 The Councils assessment of ‘harm’ cannot not include private interests, such as potential loss of value to someone’s property, commercial competition, loss of a view, trespass or breach of covenant. In some situations works or developments are done in ignorance or misunderstanding rather than intentionally and the person responsible will first be given an opportunity to remedy the situation. The Council will always try to resolve breaches through negotiation first unless significant and irreparable harm is being caused.

4.5 Investigations will be carried out as promptly and efficiently as possible. Section 8 of this document sets down Performance Standards the Council will aim for, the results of which will be published on at least an annual basis. Transparency of our decision-making is essential so that all involved in the enforcement process understand and have confidence in the basis on which the service is provided. The Council’s Constitution (and associated scheme of officer delegation) sets out the appropriate level of decision making available to enable officers to progress enforcement cases without reference to Development Control Committee.

4.6 Enforcement Officers must have appropriate knowledge and skills to carry out their duties. Warrington Borough Council has a programme of Personal Development in place which reviews skills and training requirements in order that officers maintain the necessary level of competence.

4.7 All Enforcement Officers are required to follow the Council’s protocol for declaration of interests. If that interest is of a personal, financial or any other nature likely to be prejudicial then that officer will take no part in the investigation and will immediately refer the matter and interest to his/her line manager.

4.8 When undertaking their duties, Enforcement Officers will have regard to the Council’s Equal Opportunity Policy to ensure that investigations are carried out in a consistent and fair manner, free from discrimination on any grounds.
4.9 As part of the enforcement process, Human Rights are also an important consideration that will be taken into account and balanced with any action taken. The relevant elements of the Human Rights Act, 1998, are:

i) Article 1 of the First Protocol – Protection of property.
ii) Article 6 – Right to a fair trial
ii) Article 8 – Right to respect for private and family life; and

4.10 The Council will not tolerate any of its staff being threatened with or subjected to physical or verbal abuse in the course of carrying out their official duties and will take appropriate legal action where necessary.

5 Scope of Planning Enforcement

5.1 Warrington Borough Council deals with around 2000 applications every year including planning permission, advertisement consent, listed building and conservation area consent, prior approvals for telecommunications equipment, demolitions and to carry out work to protected trees. The majority of applications are approved, often with detailed conditions attached or a requirement for additional obligations e.g. the signing of a “Section 106” Agreement between the Council and the applicant.

5.2 Conditions attached to permissions frequently require various details to be approved prior to commencement of the development and failure to do this is a breach of planning control and can render any subsequent development as unauthorised. Depending upon the nature of any planning obligation, this also applies to any failure to carry out its terms. It is beneficial to all applicants if any failure relating to non-compliance is addressed as soon as possible.

5.3 In assessing the need for enforcement action, the Government advises Councils to bear in mind the fact that it is not a criminal offence to carry out development without first obtaining planning permission required for it. However, this does not apply to the following works which do carry an immediate criminal liability:

- Unauthorised works to a Listed Building.
- Unauthorised advertisements.
- Unauthorised demolition of an unlisted building in a Conservation Area.
- Unauthorised works to “protected” trees.
- Unauthorised works to trees in Conservation Areas.

5.4 Although development occurs without the necessary permission, sometimes in all innocence, this is still a breach of planning control. In circumstances where the breach is considered not to cause harm, a retrospective application to put the matter right can be requested. The Council expects such an application to be submitted within 3 weeks of this request, however in line with Government Guidance this will be left to the discretion of the owner and
will not be pursued through any formal action where unconditional planning permission would likely be granted. Government Guidance specifically advises against the use of formal powers to regularise technical breaches or appropriate development.

5.5 It should also be noted that individuals may be able to make significant changes and extensions to their home under “permitted development rights” or for some businesses and premises to change their use without needing to apply for planning permission. These rights are granted by the Government under the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). In such instances planning permission is automatically granted and the development complies with the order, enforcement action cannot be taken.

5.6 The Planning Enforcement Team does not investigate the following:

• Non-planning related Neighbour disputes.
• Land boundary, ownership, access or covenant disputes.
• The height of hedges and trees (unless a tree is protected).
• Use of or development on highways, pavements or grass verges.
• Dangerous structures.

Such matters are covered by other legislation. We can advise people where they can seek resolution although where the matter is a Council responsibility; we will pass concerns on to the relevant department.

5.7 There can also time limits as to when enforcement action can be taken. Usually formal action has to be taken within 4 years in relation to the erection of buildings or the change of use of a building for use as a single dwellinghouse. In the case of any other breach of planning control, including breach of planning conditions, action must be taken within 10 years. There is, however, no time limit for the enforcement of breaches in relation to Listed Building legislation.

6 Making a Planning Enforcement Complaint

6.1 To assist the Council and to help avoid misunderstanding, all complaints about possible breaches of planning control should ideally be made in writing to the Planning Department or by using the online reporting form, the details of which are listed in Section 12. Complaints can however still be dealt with by telephone, although these may receive a lower priority or may not be investigated.
6.2 The Council will require as much information as possible in order to carry out its investigations and also to help keep complainants informed of what action it is taking. This information should include:

- Your name, address and telephone number.
- Details of the complaint itself including when the problems started.
- The location of the problem.
- The name and address of the alleged contravenor, if known.
- An explanation of the affect that the problem is causing.

The above information is treated as strictly confidential. The subject of any investigation is not told who has made a complaint, although they can often make assumptions. Anonymous complaints make it difficult for staff to ask follow up questions or update customers on the outcome of cases, therefore anonymous complaints will not normally be accepted.

6.3 Complainants concerned about possibly revealing their identity, or having difficulties explaining the problems affecting them, may wish to discuss the matter with their local Councillor or Parish Council who can then raise the issue on their behalf. Details of your Ward Councillor can be obtained from the Councils web site.

7 Prioritising Complaints

7.1 Warrington Borough Council receives over 400 planning enforcement complaints each year which all need to be progressed as quickly and efficiently as possible. However, investigations can often be lengthy and complex, especially if formal action is required. Given this workload, coupled with limited resources, it is therefore necessary to prioritise cases.

7.2 Prioritisation of action will be taken on the basis of the following list. However, there may be occasions where some unauthorised development would have an adverse cumulative impact when judged against other development in the area and/or where there is strength of public feeling. In these cases such cases may be dealt with as being urgent.

7.3 This list is for general guidance and is not exhaustive:

Urgent cases;
• Unauthorised works / demolition in progress to a listed building or scheduled ancient monument
• Unauthorised works in progress to a tree(s) protected by a Tree Preservation Order or trees within a Conservation Area
• Any complaint where the time limits for taking enforcement action expires imminently
• Focussed or targeted enforcement activity arising out of Enforcement Board discussions / resolutions.
• Any unauthorised development or breach of condition which is causing significant noise / vibration / smell / visual harm
• Unauthorised works likely to or causing a serious highway hazard
• Large scale unauthorised engineering / construction works where a serious impact
• The commencement of any major planning application without compliance with relevant pre-commencement conditions
• Unauthorised development which would adversely affect the character / appearance of a conservation area or the setting of a listed building
• Any on-going breach of a formal notice or injunction

**Non urgent cases;**

• Unauthorised works to unlisted buildings
• Unauthorised signage / advertisements (unless the sign / advert seriously affects public safety)
• Unauthorised telecommunications equipment / satellite dishes / equipment on residential dwellings
• Fly posting
• Any technical or minor breach of planning control
• Any breach of planning control which is of a temporary nature
• Unauthorised fences / walls / gates (unless public safety is compromised / attached to or adversely affecting the setting of a listed building)
• Unauthorised works previously undertaken to a listed building
• Any breach of planning control which is not causing significant noise / vibration / smell / visual harm

7.4 The timing of potential enforcement action can also depend on:

• Time limits for enforcement action to be taken.
• Previous case history.
• The availability of any witnesses and their willingness to co-operate.
• Blatant disregard of the law involved in the breach or if it was a genuine misunderstanding.
• Willingness of the contravener to put right the breach.
• Likelihood of the offence being repeated.
• The overall probable public benefit of formal action.

7.4 From time to time, the Council will also target specific priority enforcement issues, which can require significant proactive enforcement resources, for example to tackle large numbers of illegal advertisements in the Town Centre,
or untidy sites in a particular conservation area. Such proactive enforcement work will impact on our ability to respond to urgent and non-urgent complaint cases. Targeted activity is likely to arise out of Enforcement Board discussions and will be justified on its merits before action is taken.

8 Performance Indicators

8.1 Unlike with the handling of planning applications, there are currently no national performance indicators for dealing with enforcement cases. However, having considered some of the standards set by other Councils, together with an assessment of how Warrington has been performing over recent years, delivery standards to the key stages of the enforcement process have been set in this policy. These may, however, need to be reviewed in the light of experience, workload and available staff resources. The planning enforcement team will endeavour to:

- Acknowledge all complaints within **5 working days** of receipt, providing details of the investigating officer assigned to the case.
- Carry out site visits (when required) on all urgent cases within **24 hours**.
- Carry out site visits (when required) on all non-urgent cases within **28 days**.
- ‘Action’ 80% of cases within **13 weeks** *

* ‘Action’ will be regarded as one of the following:
  - a decision is taken that it is not expedient to pursue enforcement action
  - the matter is resolved through negotiation
  - the breach of development control has ceased
  - a retrospective planning application has been requested
  - a formal notice is served
  - the case is referred to Development Control Committee by the Development Services Manager

8.2 The investigating enforcement officer will aim keep the complainant updated during the course of any investigation, where contact details have been provided. Contact will normally be made via telephone, e-mail or in writing.

8.3 Customers are always welcome at any point in this process to contact the Investigating Officer by telephone or e-mail for an update.

9 Dealing with Complaints

9.1 As enforcement can be a lengthy and legally complex process, it is not possible to give an average time for dealing with a complaint. The time taken for a satisfactory resolution can vary considerably from one complaint to
another. However, the basic process that is followed remains the same in each case.

9.2 When a complaint is received it will be registered, a file created and then allocated to an officer to be investigated. All enforcement complaints will be acknowledged within 5 working days of receipt (where contact details have been provided) and the complainant will be given the name and contact details of the Investigating Officer.

9.3 The Investigating Officer will firstly have to establish the facts surrounding the complaint. This will initially mean carrying out a number of desk based checks having regard, for example, to appropriate legislation, the sites planning history, and any relevant correspondence. Where appropriate, the officer may also contact other Council departments such as Licensing, Highways or Building Control and external agencies such as the Police and the Environment Agency.

9.4 The site of the complaint will be visited, if required, within 24 hours / 28 days, or sooner depending on the nature of the complaint. In the most serious breach cases, officers will endeavour to visit the site on the same day. Site visits will usually be unannounced and photographs may be taken. Officers also have Powers of Entry in order to gain information relating to an alleged breach of planning control, though in the case of a dwellinghouse, a notice period of 24 hours is required before entry indoors can be gained.

9.5 If the complaint involves the use of a property for instance, then officers may have to monitor it for a number of weeks to make their assessment. We may also ask for your help to collect evidence in such circumstances.

9.6 The owner and/or occupier may be asked to provide further information about the alleged breach. Occasionally, in serious cases it may be necessary to conduct a formal interview under caution in accordance with the provisions of the Police and Criminal Evidence Act 1984.

9.7 Following the conclusion of investigations, it may be decided not to take any further action because the breach is minor or because there is actually no breach of planning control. In these circumstances the case will be discussed with the Enforcement Team Leader before closure. All persons who have been involved in the complaint will be notified of the decision and the reason for it, within 5 working days of the closure decision being taken. Any further or new allegations will be treated as new complaints and further investigations will be carried out.

9.8 If a breach of planning control is found and is causing harm, the Council will, whenever possible, talk to the person responsible in an effort to resolve the matter within a reasonable and appropriate timescale. Usually officers will write to the land owner requesting they take steps to resolve the situation within three weeks but asking land owners to confirm their intentions within fourteen days. In the absence of a response within fourteen days officers will assume that land owners do not intend to resolve matters. In the absence of
a reply, from the land owner within the fourteen day period officers will not normally send out further reminders. Legal action may be taken or a prosecution shortly after the 28 day period particularly if land owners have not engaged with officers.

9.9 As part of the initial letter, the investigating Officer will explain what the person has done to breach the planning rules and specify the steps needed for them to put it right. This will change between different types of breaches but may include inviting a retrospective planning application. In these cases such applications would be subject to the Council’s normal publicity and consultation procedures with adjoining occupiers. Enforcement Officers will also aim to ensure that all parties involved in the complaint process are made aware of any application submitted.

Enforcement Action

9.10 The Council will look to progress formal enforcement action if the negotiated approach fails or is not appropriate and the breach is causing significant harm. Officers have delegated powers to instigate a range of actions, which will be undertaken in consultation with Senior Officers, Managers and the Council’s Legal Services department.

10.2 The first step is usually to establish the facts surrounding the case such as ownership of the premises or land, other people who may have an interest and the alleged breach itself. This is achieved through discussion with the owners / tenants or the Council can also serve a Planning Contravention Notice (formal request for information relating to a breach of planning control). Failure to return a planning contravention notice by the set date and/or giving false information are criminal offences and in such circumstances the Council will consider taking legal action.

10.3 The Council then has a range of enforcement options at its disposal depending on the individual circumstances of the case and the degree of harm being created. Once a decision to take formal enforcement action has been made, parties will be notified of the decision within 5 working days.

10.4 A summary of the main possible outcomes are as follows, but the scope of individual enforcement powers are covered in more detail in Appendix A:

- **Enforcement Notice**: this is the most common form of action taken. The notice will specify what the breach of planning control is and the steps needed to put matters right. It also specifies a time before it comes into effect (minimum 28 days) during which time an appeal against the notice can be made. The steps of the notice will not take effect until an appeal against it is determined.
• **Stop Notice**: in exceptional circumstances where a breach continues to cause serious or irreparable harm to either amenity, public safety or the environment, the Council may in addition to an enforcement notice consider serving a Stop Notice.

• **Temporary Stop Notice**: this can be served without an accompanying Enforcement Notice and can halt activity for a maximum period of 28 days where there is serious harm that needs to be stopped immediately whilst further investigations take place. It usually should be followed-up with an enforcement notice.

• **Breach of Condition Notice**: used when certain conditions placed on a planning permission have not been complied with.

• **Injunction**: in only the very most serious of circumstances, where a breach is or is likely to cause irreversible damage and could not be dealt with effectively using any other method; the Council can ask a Judge for a Court Order to prevent/stop the breach.

10.5 An appeal can be made against the service of an enforcement notice, which is handled by the Planning Inspectorate. If an appeal is lodged the notice is held in abeyance, usually for many months, until the appeal is determined. If the appeal is unsuccessful or no appeal is made, the notice takes effect and the period for compliance commences. Failure to comply with the requirements of the notice within the specified period is a criminal offence.

10.6 In addition to the above, other enforcement actions which the Council can use include serving a **Section 215 Notice** when the condition of land or a building is adversely affecting the amenity of an area.

10.7 The Council can also prosecute for unauthorised works to protected trees, listed buildings or where adverts are displayed without consent.

10.8 The Council will use its discretion in deciding whether to prosecute. Prosecution will normally only be pursued where it is considered there is enough evidence that there is a realistic prospect of a conviction and where it is in the public interest to do so.

11 **Comments and Review**

11.1 Warrington Borough Council will strive to provide the highest possible quality of service delivered in a fair and consistent manner. Customer suggestions are therefore welcome as to how we can make improvements to the planning enforcement process. Alternatively, problems may arise from time to time and any difficulties concerning the enforcement service should be brought in the first instance to the attention of the Enforcement Team Leader, Development Management, New Town House, Buttermarket Street, Warrington WA1 2NH or via email to planningenforcement@warrington.gov.uk.
1.2 If you are still dissatisfied with the way your problem has been addressed, you can make further formal representations through the Council's formal complaints procedure and the Local Government Ombudsman. Details of both are available on the Council's web site.

1.3 In order to assist in the improvement of service delivery, a review of the following elements will be undertaken and reported to the Council's Development Control Committee on at least an annual basis (quarterly reporting is likely):

- number of enforcement cases received.
- number resulting in the issue of a formal notice.
- type of notice issued.
- number of appeals made to notices and outcome.
- number of prosecutions initiated.
- achievement of performance standards.
- benchmarking the above with neighbouring authorities where information is available.

1.4 Such a review will enable this policy to be refined as necessary and procedures updated in light of changing workload demands, staffing levels and legislative requirements.

12 Contact Details

12.1 You can contact the Planning Enforcement Team in four main ways:

i) In writing; Planning Enforcement
New Town House
Buttermarket Street
Warrington
WA1 2NH

ii) E-mail; planningenforcement@warrington.gov.uk

iii) Telephone; Enforcement Team Leader:
Direct line, 01925 442816

    Enforcement Officers:
    01925 442810 / 442817 / 442818
Appendix A – Powers available to the Local Planning Authority.

This appendix contains a summary of the main powers available to investigate complaints and deal with breaches of planning control. In each individual case the Council must assess which action or combination of actions is best suited to dealing with the particular breach of planning control in order to achieve a satisfactory and cost effective remedy. Any enforcement action should always be commensurate with the breach of control to which it relates and be in the public interest.

a) Planning Contravention Notice (PCN)
This can often be the first formal step in formally resolving a breach of planning control. It is the main method for gathering further information regarding suspected breaches of planning control. The intention of a PCN is also to send a clear warning that further formal action is being considered once the facts of the case have been established.

b) Section 330 of the Town and Country Planning Act 1990
This power is also used to obtain information but usually in cases where the Council has sufficient details about the activities being carried out but requires further information concerning ownership. It involves serving a formal notice on occupiers and/or persons with other interests in the premises or land.

For both of these cases it is an offence to fail to comply with the requirements of the notice within the period set for its return or to make false or misleading statements in reply. Conviction currently carries a maximum fine not exceeding £1,000.

c) Enforcement Notice
This is the most common form of notice used to deal with a breach of planning control. It is served when the Council is satisfied that there has been a breach of planning control and that it is expedient to take action. An Enforcement Notice will specify the breach, the steps that must be taken to remedy the breach, and a specified time period for compliance. The recipient(s) of such a notice have a right of appeal to the Secretary of State. An appeal suspends the effect of the notice until it is determined. If an appeal is lodged all complainants and immediate neighbours will be advised of the appeal and how to make representations to the Planning Inspectorate.

Failure to comply with an enforcement notice that has taken effect is a criminal offence, which on conviction in the Magistrates’ Court can lead to a maximum fine of £20,000.
d) **Breach of Condition Notice (BCN)**

Used as an alternative to an Enforcement Notice but only in circumstances where there has been a failure to comply with certain conditions placed on a planning permission. (It does not apply to breaches of control relating to listed buildings, advertisements or protected trees.) Again, the BCN would specify details of the breach and the steps required to secure compliance. However, a minimum period of 28 days has to be given for compliance though there is no right of appeal.

**Failure to comply with the requirements of a BCN is a criminal offence with a maximum fine currently not exceeding £1,000 on conviction.**

e) **Stop Notice**

Used following the serving of an Enforcement Notice when the effects of continued unauthorised activity are seriously detrimental to amenity, public safety or causing irreversible harm to the environment and immediate action is justified. This notice can be used to ensure that the activity does not continue when an appeal is lodged against the Enforcement Notice. There are potential and significant compensation liabilities if the Enforcement Notice is quashed.

**Failure to comply with the requirements of a stop notice is a criminal offence, which on conviction in the Magistrates’ Court can lead to a maximum fine of £20,000.**

f) **Temporary Stop Notice**

Such a notice can be served without first having to serve an Enforcement Notice. However, they can only seek cessation of activity for a period of 28 days and so will only be applied where the breach needs to be dealt with immediately and where the Council needs time to consider whether an enforcement notice needs to be issued.

**Failure to comply with the requirements of a temporary stop notice is also a criminal offence, which on conviction in the Magistrates’ Court can lead to a maximum fine of £20,000.**

g) **Injunction**

In exceptional cases where there is a necessary and serious need to restrain an actual breach of planning control, the Council can apply to the County Court or High Court for an injunction. An injunction can be sought whether or not other enforcement action(s) have been taken. Injunctive action can be very costly and is usually only considered as a last report, where other action is unlikely to resolve a breach.

h) **Default Powers**
The Council may enter land and carry out the required works to secure compliance when an Enforcement Notice is in effect but has not been complied with. There is no requirement to give notice to either the owner or occupier of the land, although it is good practice to do so. Anyone who wilfully obstructs the exercise of these powers is guilty of a criminal offence. The costs of the works are then charged to the landowner and a formal charge registered against the property.

i) Section 215 Notice
Under this section of the Town and Country Planning Act 1990, the Council has the power to issue a notice on the owner or occupier of land if it appears that the visual amenity of the area is adversely affected by the condition it is being kept in. Such a notice may deal with buildings as well as land and would specify the steps required to remedy the existing condition and within what time scale. The recipient of a 215 Notice can appeal against it in the Magistrate’s Court. Failure to comply with the notice is an offence with a maximum fine currently not exceeding £1,000 on conviction. The Council may also use default powers in such situations.

j) Listed Building Control
Under the Planning (Listed Buildings and Conservation Areas) Act 1990, it is an offence to demolish a listed building, or to carry out works/alterations, which affect its character, without the Council’s prior consent. It is also an offence to demolish unlisted buildings in Conservation Areas (with a cubic content in excess of 15 cubic metres) without prior consent. A Listed Building Enforcement Notice may be issued or prosecution action instigated depending on the circumstances of the case.

k) Tree Preservation Orders – it is a criminal offence to cut down, uproot or wilfully destroy a tree protected by a Tree Preservation Order or in a Conservation Area. Consent from the Council also has to be obtained for any remedial works to a protected tree such as lopping or pruning. If any of these are carried out, the Council can consider either prosecution action or the serving of a replanting enforcement notice.

l) Advertisements
It is an offence for any person to display an advertisement in contravention of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. The Council will consider whether or not to prosecute in either the interests of amenity or public safety. In situations where an advertisement is displayed with deemed consent, the Council can still require its removal by issuing a Discontinuance Notice. Such a notice, against which there is a right of appeal, can only be issued to remedy a substantial injury to local amenity or if there is a danger to members of the public.
In addition, the Council can serve a **Removal Notice**. Once served, the Council can, at its discretion, take direct action to remove authorised advertisements and recover the costs from the landowner.

m) **Planning Enforcement Order**

Where there has been deliberate concealment of a breach of planning control, the LPA may apply to the Magistrates’ Court for a planning enforcement order (PEO). Where a PEO is granted, the LPA will have will have 1 year and 22 days to serve an enforcement notice, beginning on the day that the order is granted, irrespective of how long ago the breach first occurred. The 4 year and 10 year periods for immunity will not apply in cases of concealed breach. An application for a PEO must be made within 6 months of the LPA becoming aware of the breach sufficient to justify enforcement action being taken. A Magistrates’ Court may only make a PEO if it is satisfied that the breach has been deliberately concealed. There is no definition of what deliberate concealment means in practice.
TITLE OF REPORT: Pre-application advice (Householder Proposals)

1. PURPOSE OF THE REPORT

1.1 To seek members approval to start charging for pre-application advice for householder planning application proposals.

2. REPORT BODY

2.1 As is the case for other service areas in the Council the Development Management Service is required to make savings. Forecasts have assumed that the Development Management Service will bring in additional income to cover the costs of providing non-statutory parts of the service and including householder pre-application advice.

2.2 DMC adopted a pre-application advice protocol and schedule of charges in May 2013. The charging schedule excluded charges for householder pre-application advice proposals. There is no statutory requirement to provide pre-application advice but it is generally seen as good practice and tends to result in better planning applications and provides for a more certain outcome. The Development Management Service has been charging for pre-application advice since July 2013 and this has brought in approximately £15,000 in 6 months.

2.3 The Council’s Medium Term Financial Plan (MTFP) assumes that the Development Service will generate an additional £15,000 per annum from householder advice. It is recognised that householder proposals are not “commercial” in nature and accordingly it is not recommended that a high charge be introduced. However, in order to continue to deliver this non-statutory service it is necessary to start charging for householder advice and a charge of £45 per proposal is recommended.

2.4 For £45 the enquirer would receive a view in terms of (i) whether the proposal required planning permission and (ii) if so whether the proposal would be compliant with the Council’s policies. At the moment householders do not receive very detailed advice but instead receive some information as part of a “duty officer” service or short emails sign posting enquirers to the web site or relevant policies.
2.5 Whilst the introduction of a charge for householder proposals would represent a change it would nonetheless formalise matters for enquirers and ensure some certainty of outcome. The proposed charge would normally be a small fraction of what a householder would have to pay in respect of a house extension. In some circumstances the payment of £45 may in fact minimise a lot of abortive work/costs; for example avoiding the cost of submitting a formal planning application proposal with detailed plans (usually prepared by an agent/architect) if a proposal is unacceptable in policy terms.

2.6 Preparing plans and submitting plans can cost many hundreds of pounds and therefore an initial payment of £45 may actually save members of the public a lot of money particularly if initial proposals are considered to be unacceptable.

3. CONFIDENTIAL OR EXEMPT
3.1 Not confidential or exempt.

4. FINANCIAL CONSIDERATIONS
4.1 If charging is not introduced it may have an impact on existing staffing levels in Development Management / the Directorate; there is a need to make savings or bring in additional income in order to work within a new budget envelope for the Regulation and Protection service.

5. RISK ASSESSMENT
5.1 If the charge is not introduced, and the “free” householder service continues, it will represent a financial/budget risk. It would be possible to stop offering a householder service and instead direct/sign post people to the Council’s web site - the Council does not have to offer a pre-application advice service. However, it is considered that this would not be the best relative option to take in terms of providing a good service to the public.

6. EQUALITY AND DIVERSITY/EQUALITY IMPACT ASSESSMENT
6.1 Not required.

7. CONSULTATION
7.1 Members of the Planning Improvement Board considered the potential for introducing a charge on 23rd January 2014. The Board agreed that a charge of £45 would be acceptable as it would offer some certainty for applicants prior to submitting householder planning applications.

7.2 The Board considered that the cost of submitting a planning application can be many hundreds of pounds (planning fee and preparation of plans) and that a £45 charge for pre application advice may in turn save applicants money in terms of a
more streamlined planning application process (ie less need for amended plans and associated costs and/or avoiding abortive plan preparation costs if schemes are considered to be unacceptable at pre-application stage).

7.3 In 2013 the service engaged with agents in the form of a questionnaire about the Development Management service. Most agents considered that a charge would be acceptable as long as the fee was relatively low.

8. REASON FOR RECOMMENDATION
8.1 To cover some of the costs associated with providing a householder pre-application advice service.

9. RECOMMENDATION
9.1 That the existing pre-application advice protocol (including charges) is amended and approved (as attached at appendix 1) to include a charge of £45 for each householder proposal (£25 for re-submission proposals/follow up meetings) – all fees to be increased in line with inflation on an annual basis.

10. BACKGROUND PAPERS
10.1 None

Contacts for Background Papers:

<table>
<thead>
<tr>
<th>Name</th>
<th>E-mail</th>
<th>Telephone</th>
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<tbody>
<tr>
<td>Daniel Hartley</td>
<td><a href="mailto:dhartley@warrington.gov.uk">dhartley@warrington.gov.uk</a></td>
<td>01925 442809</td>
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12. CLEARANCE DETAILS

<table>
<thead>
<tr>
<th>Name</th>
<th>Consulted</th>
<th>Date Consulted</th>
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</thead>
<tbody>
<tr>
<td>Andy Farrall</td>
<td>x</td>
<td>24/1/14</td>
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</table>
IMPORTANT INFORMATION

All information which forms part of pre-application discussions will be disclosed (if requested under a Freedom of Information Act request) unless an indication, backed up by reasons, is given.

Charges have been introduced for all planning enquiries for householder, advertisement, major and minor developments (charges inclusive of VAT)

March 2014

A flat rate fee of £45 for **Householder Developments**
£25 is charged for follow up meetings/written advice

A flat rate fee of £55 for **Advertisement Developments**
£45 is charged for follow up meetings/written advice

A flat rate fee of £200 applies for **Minor Developments**

- Less than 10 dwellings
- Offices / Research / Business and light Industry <1000m2 or <1 ha
- Heavy industry / manufacturing / storage and warehousing <1000m2 or <1ha
- Change of use / barn conversions
- Retail distribution and servicing <1000m2 or <1ha
- Listed building and conservation area consent proposals
- All other minor developments (including discharge of condition proposals)

£100 is charged for follow up meetings/written advice

A flat rate fee of £650 applies for **Major Developments**
Major Developments

- More than 10 dwellings
- 1-4 wind turbines
- Offices / Research / Business and light Industry >1000m² or >1 ha
- Heavy industry / manufacturing / storage and warehousing >1000m² or >1ha
- Retail distribution and servicing >1000m² or >1ha
- All other major developments

£250 is charged for follow up meetings/written advice

A flat rate fee of £1000 applies for Significant Major Developments

Significant Major Developments

- 5 or more wind turbines
- 30 or more dwellings (for outline applications a density of 30 dwellings to the hectare will be applied)
- 2000 sq m or more of commercial floorspace

£500 is charged for follow up meetings/written advice

Viability

For pre-application advice proposals that are contrary to policy and a proposal is being justified on the basis of viability there will be a requirement for enquirers to pay for the Council to get viability reports independently assessed by a qualified consultant surveyor/accountant. The Council will normally ask enquirers to pay the consultant direct and in advance of a pre-application advice response.

Note

This information should be read in conjunction with the document “Pre-Planning Application advice on Householder, Advertisement Minor and Major Development Schemes” as well as the “Pre-application advice note for wind turbines”.

Payment must be received at the time of the enquiry; cheques should be made payable to Warrington Borough Council. Work on the pre-application advice query will commence upon receipt of the relevant fee.
In respect of requests for written advice following the refusal of planning permission the relevant follow up meeting/written advice charge should be used unless the proposed changes fundamentally change the development scheme.

There are no charges for requests for pre-application advice from charities.
Introduction

This document provides guidance in respect of the Council’s charges and procedures for pre-planning application advice.

The Council's planning officers currently devote considerable time and effort to offering pre-application advice, seeing it as a key part of delivering a good planning service, even though it is not a statutory duty. Many requests for advice, however, are of a speculative nature and do not lead to the submission of an application. Charging for pre application advice allows the Council to recover at least some of the costs incurred through this service. It is also considered that, by charging for pre application discussions, there will be an improvement in the quality of submissions and less ill thought out proposals. Additionally, it will formalise the current “Development Management” approach to pre-application discussions and will lead to internal efficiencies benefiting service delivery as well as efficiencies for the developer/applicant.

Development Management Committee/ Planning Applications Sub Committee and Without Prejudice Advice

The advice that officers give is without prejudice to the final decision made on a planning application. Some planning applications are determined by officers and some planning applications are determined by either the Development Management Committee / Planning Applications Sub Committee (ie decisions made by elected Councillors). As part of the determination of the planning application members of the public will be consulted. Comments received from members of the public will be taking into account as part of the determination of the planning application and depending on what has been said may or may not be material planning considerations. You are therefore advised to discuss your proposals with all those that would be affected and in advance of submission of the planning application.
Agenda Item 8.1

When the Pre-planning application advice service should not be used
(Lawful Development Certificates)

The service should not be used for individuals who want confirmation that proposed development will or will not need planning permission (ie for non householder proposals). In these cases individuals should apply for a certificate of proposed development under Section 192 of the Town and Country Planning Act. The service should not be used for those individuals who want confirmation in respect of what is the lawful existing use of a building and/or land. In these cases individuals should apply for a Certificate of existing lawful use under Section 191 of the Town and Country Planning Act.

The Council’s planning officers will continue to provide informal and without prejudice advice relating to whether a household proposal does or does not need planning permission. The advice will be given in letter form. This is not legally binding. If householders would like legal confirmation that a proposal would not need planning permission (and therefore would be immune from future enforcement action) they should consider applying for a lawful development certificate under Section 192 of the Town and Country Planning Act.

Further advice relating to the submission of lawful development certificates can be found at www.planningportal.gov.uk.

What do we charge for?

We will charge for both written advice and for meetings at the same rate. We charge separately for follow up meetings/written advice (NB: follow up fees are also charged at the same rate for written advice following the refusal of a planning permission).

The charges are set out in the table below, and are inclusive of VAT

<table>
<thead>
<tr>
<th></th>
<th>Significant Major’ Development Proposals</th>
<th>‘Major’ Development proposals</th>
<th>‘Minor’ Development proposals</th>
<th>Advert Proposals</th>
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<tr>
<td>Follow up Meetings /Written Advice</td>
<td>£500</td>
<td>£250</td>
<td>£100</td>
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</table>
Viability

For pre-application advice proposals that are contrary to policy and a proposal is being justified on the basis of viability there may be a requirement for enquirers to pay separately for the Council to get viability reports independently assessed by a qualified consultant surveyor/accountant. The Council will normally ask enquirers to pay the consultant direct and in advance of a pre-application advice response.

“Significant Major” development proposals include:

- 30 or more dwellings (for outline applications a density of 30 dwellings to the hectare will be applied)
- 2000 sq m or more of commercial floorspace
- 5 plus wind turbines

“Major” development proposals include:

- 10 or more dwellings
- Offices / Research / Business and light Industry >1000m² or >1 ha
- Heavy industry / manufacturing / storage and warehousing >1000m² or >1ha
- Retail distribution and servicing >1000m² or >1ha
- 1-4 wind turbines
- All other major developments

“Minor” development proposals include:

- Less than 10 dwellings
- Offices / Research / Business and light Industry <1000m² or <1 ha
- Heavy industry / manufacturing / storage and warehousing <1000m² or <1ha
- Changes of use / barn conversions
- Retail distribution and servicing <1000m² or <1ha
- All other minor developments including listed building & telecommunications proposals & discharge of condition proposals.

How to request a meeting

Householder Proposals

The protocol for offering householder pre-application advice is different to that given for other applications. A meeting does not take place but instead customers are asked to complete a “householder enquiry” form and send it to the Local Planning Authority. Based on the information received the Local
Agenda Item 8.1

Planning Authority will endeavour to provide an in writing response within 28 days of receipt of such forms. The advice given is without prejudice to the formal determination of any subsequent planning application.

Should householders not wish to use this service advice can be sought from the Planning Portal web site www.planningportal.gov.uk using the “interactive house”. However, contact should still be made with Development Management to confirm if permitted development rights have or have not been removed from the property. In this regard please email Devcontrol@warrington.gov.uk and officers will endeavour to provide a response within 10 working days.

Other Proposals (excluding advertisement proposals where no meetings take place)

In respect of all other planning applications requests for meetings should be made on the attached form downloadable from our website (www.warrington.gov.uk). The following information should also be submitted with the form:

- Site Location Plan at an appropriate scale (usually 1:1250 or 1:2500)
- Details of current use(s)
- Draft design and access statement / planning justification
- Photographs and/or sketch drawings of site and surroundings
- Draft/sketch drawings showing height and scale of development
- Draft/sketch drawings showing layout of development

INFORMATION SHOULD BE SENT IN ELECTRONIC FORM WITH A COVERING LETTER BY EMAIL TO:- Devcontrol@warrington.gov.uk

OR BY POST TO:- Development Control, Warrington Borough Council, New Town House, Buttermarket Street, Warrington, WA1 2NH

When all the appropriate information is submitted, you will be contacted within 14 working days of receiving the application to confirm receipt of the pre-application advice enquiry. **Officers will normally, and at least initially, send a response in writing rather than holding a meeting.** A response will normally be sent within 35 days of receipt (subject to staff availability/resources) of the pre-application advice enquiry unless a meeting has been requested.

If applicants specifically want a meeting this will normally take place after the initial pre-application advice letter has been sent. The meeting date will, where possible, be set within 21 days (depending on who needs to attend and staff availability) of the receipt of the request. Meetings will normally be held at New Town House in a private meeting room. Any request for specialist advice should be confirmed at the time the meeting is arranged and subject to their availability the necessary officers will be asked to attend.
**How should the fee be paid?**

In order for officers to assess the pre-application proposal, consult interested parties there is a requirement to include the pre-application fee with the pre-application forms and accompanying information. The cheque should be made payable to Warrington Borough Council. Planning officers will not commence work until the fee has been received.

**What service is provided?**

Once the fee has been paid and the meeting confirmed, a planning officer will be nominated as case officer and, prior to the meeting, will:

- Research the history of the site
- Consult relevant interested parties
- Undertake a site visit (where necessary)
- Identify and assess the prospective application against Council policies and standards
- Arrange and attend the meeting where specifically requested (NB Initially written responses are sent).

The case officer will:

Within 35 working days, provide a detailed written response in the context of the plans provided and meeting discussions.

The written response will make it clear that any views or opinions expressed are given in good faith, without prejudice to the formal consideration of any planning application, and it shall also be made clear that subsequent alterations to local and national planning policies might affect the advice given and may affect the consideration of any applications, particularly if applications are submitted some length of time after pre-application discussions take place.

**Contact details**

For further information in regard to pre application discussions, you may contact us via:

Telephone: 01925 442819
Email: Devcontrol@warrington.gov.uk

**Increase in Fees**

Fees will be increased in line with inflation on an annual basis (charging commenced in June 2013).
**WARRINGTON Borough Council**

**Request for Pre-Application Advice**

**Pre-Meeting Form**

Please complete all sections of the form using **block capital** letters.

<table>
<thead>
<tr>
<th>1) Address/location of Proposed Development</th>
</tr>
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<tbody>
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<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>2) Name/address of proposed applicant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tel no:</td>
</tr>
<tr>
<td>email:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3) Name/address of agent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tel no:</td>
</tr>
<tr>
<td>Email:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4) Description of proposed development</th>
</tr>
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<tr>
<td></td>
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</tbody>
</table>

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5) This is a request for: advice for a MAJOR or MINOR or OTHER planning application (delete where appropriate)

Attached information required (please tick where details are provided)

- Current use of land/building(s)
- Site location plan (1:1250 or 1:2500)
- Draft/sketch plans (height and Scale)
- Draft Design and Access Statement
- Photos / sketches of site and surroundings
- Draft/sketch plans (Layout)

* I (the undersigned) confirm that a pre application meeting is requested and undertake to pay the requisite fee for the service not less than one week prior to the date of the meeting, or:
* I (the undersigned) confirm that pre application written advice is requested and undertake to pay the requisite fee for the service upon request prior to such advice being issued.

(* delete as appropriate)

Signed
Print name
Date

Completed request forms, together with the requisite information, should be sent to Development Control, Warrington Borough Council, Buttermarket Street, Warrington, WA1 2NH by e-mail to Devcontrol@warrington.gov.uk
You have recently made an enquiry asking about the need for planning permission and if so whether your proposal would be acceptable. There is a fee for this service – please refer to the separate list of charges and pre-application advice notes.

Your completion and return of this form will help us determine whether or not you need planning permission for the proposed extension, conservatory, garage, carport or other free standing structure. **You should attach a plan of the property and the proposal with this form, all measurements should be accurate and in METRIC.** Please fill in all relevant sections as we may be unable to respond if you fail to provide all the information requested.

**You should note that the completion of this form is NOT a planning application and the Council will inform you whether or not you need to submit an application.**

You are advised to keep a copy of this completed form and the reply you receive from the Council as they will be of assistance if you ever decide to sell the property.

Should you require legal proof that a proposal is permitted development (ie does not need planning permission) you should complete an application for a **certificate of lawful development** under Section 192 of the Town and Country Planning Act. You can submit such an application on the Planning Portal – [www.planningportal.gov.uk](http://www.planningportal.gov.uk).
Householder Pre-application Advice Form

Please answer the following questions:

1. Your name and address:- Address of proposed works (if different):- 

2. Telephone number & Email Address

3. What works are you proposing to do? (e.g. single storey, side extension, two-storey, rear extension, rear conservatory, balcony)

4. Is the proposal going to be at the front, rear or side of the property? 
   Front □ Rear □ Side □

5. Is there a road at the side of the proposed extension? 
   Yes □ No □

6. How high will the extension/ outbuilding be (in metres measured from ground level)? 
   • To the highest point

   • To the eaves (bottom of roof)
7. How far will the extension project in metres from the wall of the original property?

[Blank space]

8. Will the eaves height (bottom of the roof) of the extension exceed the height of the eaves on the existing property?
   Yes ☐ No ☐

9. Please state what type of roof you are proposing (e.g. flat, single pitch, dual pitch):-

[Blank space]

10. Will any part of the extension be higher than the highest part of the roof of the existing property?
    Yes ☐ No ☐

11. Will any part of the extension/outbuilding come within 2 metres of the boundary of your property?
    Yes ☐ No ☐
    Please mark distance on drawing

12. Is your property within a conservation area or a Listed Building?
    Yes ☐ No ☐

13. Have there been any previous extensions/outbuildings added to your house since it was originally built? (This includes any conservatories, garages, sheds or greenhouse, including detached structures)
    Yes ☐ No ☐
    If you answer yes to this question please provide a brief description including external measurements in metric.

[Blank space]

14. Is a new or altered vehicular or pedestrian access to the highway (road or pavement) proposed as part of the scheme?
    Yes ☐ No ☐
    If yes please mark on plan
15. What are the materials of the existing property (e.g. brick, stone, render)?

16. What materials will be used on the proposed extension?

Signed / Date

NB: Please continue on a separate sheet if necessary.
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Sketch

Please provide a sketch plan of your proposal. This should include ALL the information requested along with measurements in metres. Any photographs or brochure extracts (e.g. conservatory plans, garage plans) you have will also assist the Planning Officer.

Please ensure you include:

1. Sketch of property and boundaries, indicating which is the front and rear of the property
2. How far the extension will project
3. How far the proposal will be from boundaries of the property
4. Any parts of the property to be demolished shown dotted
5. Any new or altered vehicular and/or pedestrian access
6. Any existing extensions
7. Any existing outbuildings
8. A sketch of the extension showing the height to the top, to the eaves, length and width

Here is an example of a suitable sketch:

A. Site Plan

B. Sketch of extension

Please use the space overleaf or attach another sheet to provide your two sketches A and B.
Pre-application Advice Note for Non-Domestic Wind Turbine Proposals

March 2014
**General Requirements**

Proposals for wind turbines need to be carefully considered and in order for officers to provide a view in terms of their acceptability at pre-planning application stage customers will need to provide the following information as a minimum. Officers will not be in a position to commence work on providing pre-planning application advice unless and until the following information has been provided.

**Ministry of Defence (MOD) Initial Checks**

We strongly advise enquirers to check with the MOD whether proposed wind turbine(s) would be within flight paths and/or whether proposed wind turbine(s) would have an impact on radar.

For further information please use the web link below:

[http://www.mod.uk/DefenceInternet/MicroSite/DIO/WhatWeDo/Operations/ModSafeguarding.htm](http://www.mod.uk/DefenceInternet/MicroSite/DIO/WhatWeDo/Operations/ModSafeguarding.htm)

The MOD will be consulted at planning application stage but it is important to engage directly with the MOD early on in the process. It may not be possible for Warrington Borough Council to obtain information from the MOD as part of the formal pre-application advice service (due to MOD workloads) and accordingly enquirers are strongly advised to do their own checks prior to the submission of a formal pre-planning application advice enquiry.

**Location Plan**

Scaled location plan of the site with the proposed tracks, cables and wind turbine(s) annotated in a red line.

**Turbine(s) Height and Appearance**

Scaled drawings to be submitted including the colour and appearance of the turbines.

**Photo-montage illustrations**

To indicate what the turbine(s) will look like from roads, settlements and footpaths. Long and short distance photomontages are required.

**A Landscape and Visual Impact Assessment to include zones of theoretical visibility**

A landscape and visual impact assessment shall be submitted which demonstrates how visual impacts have been minimised / mitigated and how the proposed turbine(s) will fit into the landscape. The assessment should include details of the following:

- Alternative sites which have been considered for the development
- Alternative turbine amounts / layouts / configurations which have been considered
- Alternative turbine heights / models / appearances which have been considered
- Alternative access arrangements / routes which have been considered
- Landscaping arrangements which have been considered to mitigate the visual / landscape impact of the proposed turbine(s).
For each of the above, it should be clearly demonstrated why the chosen arrangements represent the best option in terms of visual and landscape impact minimisation.

The cumulative visual impact of the proposed turbine(s) with other existing operational or permitted turbines, or turbines currently subject to a planning application should be fully addressed in the Landscape and Visual Impact Assessment.

Unless the application is for a single turbine with a height of 25m or less (which is not within 1km of any other operational or permitted turbines, or turbines currently subject to a planning application), the Council will expect applications to be accompanied by two Ordnance Survey based maps showing the ZTV of the proposed turbine(s):

- The first of the maps should show the ZTV of the proposed turbine(s) only.
- The second map should show the cumulative ZTV of the proposed turbine(s) along with any other operational and permitted turbines (and those currently subject to a planning application). Applicants should contact the Council to obtain an up to date list of such turbines.

The radius of the ZTV maps required depends on the proposed height of the turbine(s) in the application and other factors. The following table sets out the Council’s general requirements:

<table>
<thead>
<tr>
<th>Turbine Height (to blade tip)</th>
<th>Number of Turbines</th>
<th>Is the site within 1km of any other operational or permitted turbines, or turbines currently subject to a planning application?</th>
<th>Required Radius of ZTV Maps</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-25m</td>
<td>1</td>
<td>No</td>
<td>Not required</td>
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<tr>
<td>0-25m</td>
<td>1</td>
<td>Yes</td>
<td>2km</td>
</tr>
<tr>
<td>0-25m</td>
<td>2-5</td>
<td>No</td>
<td>10km</td>
</tr>
<tr>
<td>0-25m</td>
<td>2-5</td>
<td>Yes</td>
<td>15km</td>
</tr>
<tr>
<td>0-25m</td>
<td>6-10</td>
<td>No</td>
<td>20km</td>
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<tr>
<td>0-25m</td>
<td>6-10</td>
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<td>20km</td>
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<td>0-25m</td>
<td>10+</td>
<td>No</td>
<td>20km</td>
</tr>
<tr>
<td>0-25m</td>
<td>10+</td>
<td>Yes</td>
<td>30km</td>
</tr>
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<td>26-60m</td>
<td>1</td>
<td>No</td>
<td>20km</td>
</tr>
<tr>
<td>26-60m</td>
<td>1</td>
<td>Yes</td>
<td>30km</td>
</tr>
<tr>
<td>26-60m</td>
<td>2+</td>
<td>No</td>
<td>30km</td>
</tr>
<tr>
<td>26-60m</td>
<td>2+</td>
<td>Yes</td>
<td>30km</td>
</tr>
<tr>
<td>Over 60m</td>
<td>1</td>
<td>No</td>
<td>30km</td>
</tr>
<tr>
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<td>1</td>
<td>Yes</td>
<td>30km</td>
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<tr>
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<td>2+</td>
<td>No</td>
<td>30km</td>
</tr>
<tr>
<td>Over 60m</td>
<td>2+</td>
<td>Yes</td>
<td>30km</td>
</tr>
</tbody>
</table>
Public rights of way and roads

Map showing public rights of way in the vicinity of the site

Noise Survey

To include, if necessary, mitigation (NB: Advice should be sought from Warrington BC Environmental Protection in terms of whether there is a need for background noise readings to accompany a noise survey or whether a desk top study would initially suffice).

Ornithological and Ecology Survey(s)

In the first instance the applicant should carry out a desk study/data search to identify the possible presence of potentially vulnerable species or habitats in the local area, and that the results of the desk study may indicate that surveys for particular species are required.

The applicant will need to address both construction and operational impacts. e.g.

- Construction (turbine foundation, hardstanding areas, access route, cable route, etc) could have impacts on protected or priority species (for example, nesting birds, badgers, great crested newts/common toads, water voles (if water courses affected), etc) and habitats (if for example within a BHS or an area of priority habitat). The applicant will need to demonstrate that impacts on protected and priority species and habitats will be avoided, mitigated or compensated.

- Operational impacts tend to be limited to bats and birds, so

- If the turbine would be located within 50m of potential bat habitat (hedgerows, trees, tree lines, woodlands, watercourses, ponds, buildings, etc), then there should be an assessment of potential impacts on bats. Applicants should refer to guidance issued by the Bat Conservation Trust (Bat Surveys – Good Practice Guidelines) and Natural England (e.g. Technical Information Notes 51 and 59). If impacts on bats (killing or injuring, disturbance, impacts on roosts, etc) cannot be ruled out then options for mitigation should be explored.

- Turbines can result in collision and disturbance/displacement of sensitive bird species. Smaller turbines are less likely to result in significant collision risk or displacement, but even small turbines (perhaps 25m to blade tip) have the potential to disturb/displace sensitive birds (such as curlew) by several hundred metres. The presence of barn owl roosts/nests/foraging habitat should also be considered, as barn owls may be vulnerable to collision but are also affected by the noise of turbines (they have sensitive hearing) and inappropriately sited turbines could result in abandonment of nests/roosts/territories. The applicant will therefore need to demonstrate that the turbine will not result in impacts on priority bird species. The applicant might want also to refer to RSPB guidance (Wind turbines, Sensitive Bird Populations and Peat Soils: A Spatial Planning Guide for on-shore wind farm developments in Lancashire, Cheshire, Greater Manchester and Merseyside), as this will highlight whether or not the turbine is in a potentially sensitive area (and thus whether or not there is a need for some sort of assessment of potential impacts).
If the desk top study indicates a need to undertake specific surveys these must be completed and must accompany the planning application.

In all cases the applicant should provide details in terms of how nature conservation will be both protected and enhanced.

**Hydrological and Soil Assessment report**

It will be important to establish whether for example the proposals would have an impact on peat or hydrology for the area.

**Highways**

Plan showing the route to be used for delivery of the turbine(s) and if necessary temporary alterations to the highway to enable delivery.

**Visual Amenity Assessment**

Statement assessing the impact of the proposal in visual amenity terms

**Need for Turbine(s)**

Details of why the wind turbine is needed – eg is it to serve nearby development or is it to provide energy to feed into the national grid.

**Wind Speeds**

Details relating to wind speeds in the area and whether the turbine(s) would efficiently and effectively generate energy.

**Community Involvement**

Details of engagement with the local community – As a minimum applicants will be expected to have sent letters with proposed plans to those living in residential properties close to the site (at least within 500 metres of the site). A copy of such a letter with list of addresses should accompany the pre-application advice proposal. The pre-application advice proposal should not be submitted until the period (at least 14 days) for receipt of comments from residents has expired. All representations received as part of the pre-planning application consultation should accompany the pre-planning advice application. Applicants are advised to mark the position of the turbine(s) using a wooden stake painted in a bright red colour.

**Shadow Flicker Report**

A report will be needed where there are houses close to the site.

**Location of Turbines**

Wind turbines are often located in exposed locations and where it is difficult to ascertain precise location. Applicants should therefore include OS grid reference coordinates. In addition applicants are advised to mark the position of the turbine(s) using a wooden stake painted in a bright red colour. In exceptional cases the
applicants may be asked to position “weighted” balloons so that the location of the proposed turbine(s) can be clearly viewed/assessed from longer distance vantage points.

Requests for Screening Opinions

Applicants are advised to request that applications for wind turbines are screened by the Local Planning Authority, having regard to Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, in the following circumstances:

(i) The development involves the installation of more than 2 turbines; or
(ii) The hub height of any turbine or height of any other structure exceeds 15 metres.

The information in the general requirements section above should accompany such a request. Applicants should formally request a screening opinion by letter.

The Council charges for pre-planning application advice. Pre-application advice notes, forms and charges are available to be viewed and downloaded from the Council’s web site – www.warrington.gov.uk
## DEVELOPMENT MANAGEMENT COMMITTEE

### CIRCULATION LIST

**Thursday 13th March 2014**

**Start 18:30**

<table>
<thead>
<tr>
<th>Item</th>
<th>Page</th>
<th>App number</th>
<th>App Location/Description</th>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>2013/22130</td>
<td>Gas Utilisation Compound, Arpley Landfill Site, Forrest Way, Sankey Bridges, Warrington, Cheshire, WA4 6Y2</td>
<td>Approve Full Planning - Proposed construction of 3 No 23 metre high engine exhaust</td>
</tr>
</tbody>
</table>

Defer until the next DMC meeting for the following reasons:

To explore (i) the potential for making efficiencies to the existing Gas Utilisation Compound but with fewer stacks or a reduced height of stack(s) (possibly one stack) so that when a decision is made members are certain that all options have been fully explored (with green belt impact in mind) including reasons why certain options have been discounted and (ii) to provide details about existing health and safety issues at the site and when and how health and safety issues will be resolved.

**Appeal Decisions** – noted

**Appeals costs** – noted

**Planning Enforcement Policy** – approved and adopted

**Pre application advice (Householder proposals)** – agreed to introduce a charge of £45 for householder pre-planning application advice (£25 for follow up meetings/re-submission proposals) and all pre-application advice fees to be increased in line with inflation on an annual basis.