

**APPEAL BY THOMAS SMITH
AGAINST THE REFUSAL OF PLANNING PERMISSION BY
WARRINGTON BOROUGH COUNCIL**

MATERIAL CHANGE OF USE OF LAND TO USE AS A RESIDENTIAL CARAVAN SITE FOR 5 GYPSY/TRAVELLER FAMILIES, EACH WITH 2 CARAVANS INCLUDING NO MORE THAN ONE STATIC CARAVAN/MOBILE HOME, TOGETHER WITH ERECTION OF ANCILLARY AMENITY BUILDING AND LAYING OF HARDSTANDING.

**LAND AT THE SPRING LANE NURSERIES, SPRING LANE, CROFT, WARRINGTON.
WA3 7AS**

PINS REF: APP/M0655/W/25/3367247

LPA REF: 2024/00668/FUL

OUR REF: 25/TS/CROFT

**PROOF OF EVIDENCE PREPARED ON BEHALF OF THE APPELLANT BY
PHILIP BROWN BA (HONS) URBAN AND REGIONAL PLANNING**

1.0 INTRODUCTION

- 1.1 This Proof of Evidence has been prepared by Philip Brown. I hold a Bachelor of Arts degree with honours in the subject of Urban and Regional Planning. I have more than 40 years' experience of planning matters in local government and private practice.
- 1.2 I am Managing Director of Philip Brown Associates Limited, and specialise in assisting Gypsies and Travellers to obtain planning permission for caravan sites and related development. We are the country's leading planning consultancy dealing with gypsy and traveller site development. I frequently appear at planning hearings and inquiries to give expert evidence on planning matters. We have obtained planning permission for more than 350 caravan sites, throughout England and Wales, mainly on appeal.
- 1.3 This Proof is divided into five parts: firstly I describe the site and its surroundings; secondly I give a resume of relevant planning policies; thirdly I summarise the planning history of the appeal site; fourthly I set out the case on behalf of the appellant; and, fifthly, I draw my conclusions.
- 1.4 The appendices referred to in this proof are those submitted with the Statement of Case, numbered PBA 1 to PBA 8, inclusive, and additional appendices numbered PBA – A1 to PBA – A, inclusive.

2.0 SITE DESCRIPTION

- 2.1 The appeal site comprises 0.45 hectare of land located along the eastern side of Spring Lane, Croft and north of the M62 motorway. It forms part of a larger land-holding amounting to about 0.9 hectare of land.
- 2.2 The appeal site is a former garden nursery used subsequently as a wood yard, producing firewood for sale. The site is already substantially hard-surfaced and, contains a derelict storage building along its south-eastern boundary. The remainder of the appellant's landholding is laid to grass.
- 2.3 The site is enclosed by conifer hedgerows along its southern boundary and for part of the western boundary with Spring Lane. There are scattered trees along the south-eastern boundary with the M62 motorway. The motorway is elevated above the level of the appeal site.
- 2.4 Access to the site is from Spring Lane, via entrance gates located in the south-western corner of the land. Spring Lane is approximately 4.8 metres wide in the vicinity of the appeal site and, is capable of two-way traffic. It is a rural lane with no footways or street lighting leading northwards into Croft.
- 2.5 The appeal site is located no more than about 500 metres from the developed edge of Croft village. Croft contains a primary school, public houses, churches, village hall and youth activity centre. There are bus stops along New Lane, close to the northern end of Spring Lane.
- 2.6 Croft is designated as an Inset Village in the Green Belt. Policy DEV1 of the adopted Local Plan takes land out of the Green Belt on the north-east side of Croft and, allocates this land for the development of a minimum of 75 homes, subject to the detailed requirements set out under Policy OS1.
- 2.7 The site is about 4.6 kms by road from Birchwood Shopping Centre, within an eastern suburb of Warrington and, 3 kms from Culcheth, where there are a full range of community services and facilities.

3.0 PLANNING POLICY

Local Planning Policies

- 3.1 The Council's reasons for the refusal of planning permission refer to Policies GB1, DEV3, ENV2, ENV8, DC1 and DC4 of the Warrington Local Plan adopted in December 2023.
- 3.2 Policy GB1 defines the extent of the Green Belt and, in part 10 of the policy, states: *"In accordance with national planning policy, within the Green Belt, planning permission will not be granted for inappropriate development, except in 'very special circumstances'."*
- 3.3 Policy ENV8 seeks to ensure that development proposals, as appropriate to their nature and scale, demonstrate that environmental risks have been evaluated and appropriate measures have been taken to minimise the risks of adverse impacts to air, land and water quality, whilst assessing vibration, light and noise pollution both during their construction and in their operation.
- 3.4 Policy DEV3 relates to the provision of Gypsy and Traveller caravan sites. Based on an assessment of need carried out in 2018, using the 2015 PPTS Definition. Policy DEV 3 assumes that the identified need to 2032 has already been satisfied, except for 2 pitches, by planning permissions granted since the start of the assessment period and, that there is no need to allocate any additional sites until the Local Plan is reviewed. It sets out criteria for the consideration of windfall sites, as follows:

"Where there is an identified need or a demand for the provision of transit and permanent pitches for Gypsy or Traveller use or plots for Travelling Showpeople, proposals will be favourably considered where they satisfy other relevant policies of the Plan and meet the following criteria:

- a. The proposed site is suitable for use as a Gypsy, Traveller or Travelling Showperson's site and can provide an acceptable living environment for future occupiers;*
- b. The site is not subject to physical constraints or other environmental issues that cannot be mitigated to an acceptable level, or that would*

impact upon the health, safety or general wellbeing of residents on the site;

- c. The site is or can be well integrated within the local townscape in a manner in-keeping with the local character, using boundary treatments and screening materials which are sympathetic to the existing urban/rural form;*
- d. Be compatible with surrounding land uses particularly with regards to residential amenity;*
- e. The site has good access to the highway network and adequate provision is made for the parking, manoeuvring and storage of all vehicles associated with the use of the site;*
- f. The site is served, or could readily be provided with, electricity, mains water, drainage, sewage and waste disposal facilities; and for permanent sites*
- g. The proposed site is or can be made accessible to key local services such as primary schools, GPs, shops and other community facilities.*

National Planning Policy Framework (NPPF)

3.5 Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development and states in paragraph 11d): “where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:

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

to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination”.

- 3.6 Footnote ⁸ explains that development plan policies are out-of-date for applications involving the provision of housing, in situations where: the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer as set out in paragraph 78); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.
- 3.7 Paragraph 63 states that: *“Within this context of establishing need, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. These groups should include (but are not limited to) those who require affordable housing (including Social Rent); families with children; looked after children; older people (including those who require retirement housing, housing-with-care and care homes); students; people with disabilities; service families; travellers²⁷; people who rent their homes and people wishing to commission or build their own homes.”*
- 3.8 Footnote ²⁷ makes clear that Planning Policy for Traveller Sites sets out how travellers’ housing needs should be assessed for those covered by the definition in Annex 1 of that document.

Green Belt

- 3.9 Paragraph 143 of the NPPF sets out the five purposes of including land within Green Belt as being:
- a. to check the unrestricted sprawl of large built-up areas;
 - b. to prevent neighbouring towns merging into one another;
 - c. to assist in safeguarding the countryside from encroachment;
 - d. to preserve the setting and special character of historic towns; and

e. to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

3.10 Paragraph 148 states that: *“Where it is necessary to release Green Belt land for development, plans should give priority to previously developed land, then consider grey belt which is not previously developed, and then other Green Belt locations”*.

3.11 In this context Grey Belt is defined in the Glossary as: *“land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143. ‘Grey belt’ excludes land where the application of the policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development.”*

3.12 Footnote ⁷ states that: *“The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 189) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, a National Landscape, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote ⁷⁵); and areas at risk of flooding or coastal change.”*

3.13 Paragraph 153 sets out the presumption against inappropriate development. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt, including harm to its openness⁵⁵.

3.14 Paragraph 153 is qualified by footnote ⁵⁵ which makes clear that it applies other than in the case of development on previously developed land or grey belt land, where development is not inappropriate.

3.15 Paragraph 155 provides that the development of homes, commercial and other development in the Green Belt should not be regarded as inappropriate where:

- a) The development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;
- b) There is a demonstrable unmet need for the type of development proposed⁵⁶;
- c) The development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of this Framework⁵⁷; and
- d) Where applicable the development proposed meets the ‘Golden Rules’ requirements set out in paragraphs 156-157 below.

3.16 Footnote ⁵⁶: Which, in the case of applications involving the provision of housing, means the lack of a five year supply of deliverable housing sites, including the relevant buffer where applicable, or where the Housing Delivery Tests was below 75% of the housing requirement over the previous three years; and in the case of traveller sites means the lack of a five year supply of deliverable traveller sites assessed in line with Planning Policy for Traveller sites.

3.17 Footnote ⁵⁷: In the case of development involving the provision of traveller sites, particular reference should be made to Planning Policy for Traveller Sites paragraph 13.

Planning Policy for Traveller Sites (PPTS)

3.18 *Planning policy for traveller sites* (PPTS) sets out the Government’s aims in respect of traveller sites which include, *inter alia*, local authorities developing fair and effective strategies to meet need through the identification of land for sites; protecting Green Belt from inappropriate development; promoting more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites; and to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply.

3.19 Local planning authorities are required to use a robust evidence base to establish accommodation needs to inform the preparation of local

plans and make planning decisions (*Policy A*). In producing their local plans, local planning authorities should, *inter alia*, set pitch targets; identify and maintain a rolling 5-year supply of specific deliverable sites; and relate the number of pitches to the circumstances of the specific size and location of the site and the surrounding population's size and density.

- 3.20 Paragraph 13 sets out the wider sustainability benefits of providing permanent residential sites for gypsies and travellers which should be taken into account in plan-making and development control (*Policy B*).
- 3.21 Policy C suggests that gypsy sites may be located in rural or semi-rural areas, provided that they are of a scale appropriate to their specific location. This is reiterated in paragraph 26 of Policy H. Paragraph 25 of Policy H sets out issues which should be considered in the determination of planning applications for gypsy sites. Policy H states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan.
- 3.22 Paragraph 16 of PPTS reiterates that inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development **unless** [my emphasis] the exceptions set out in Chapter 13 of the National Planning Policy Framework apply.
- 3.23 Paragraph 18 makes clear that the "Golden Rules", set out in chapter 13 of the National Planning Policy Framework, do not apply to traveller sites.
- 3.24 Paragraph 28 states that, if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, the provisions in paragraph 11(d) of the National Planning Policy Framework apply. Local planning authorities should consider how they could overcome planning objections to particular proposals using planning conditions or planning obligations

4.0 PLANNING HISTORY

4.1 Planning application No. 2024/00668/FUL was submitted The proposal is to develop the site as a residential caravan site for 5 gypsy families with a total of 10 caravans, including no more than 5 static caravans/mobile homes, laying of additional hardstanding and erection of communal dayroom building. The latter building would replace an existing storage building, in the same place but within a smaller footprint.

4.2 Planning permission was refused on 19 March 2025 for the following reasons:

1 The proposed development by virtue of the introduction of a new permanent building, siting of caravans, car parking and associated surfacing is inappropriate development, which is by definition harmful to the Green Belt and would detract from its openness and conflict with the purposes of including land within the Green Belt. No very special circumstances exist to outweigh the harm caused and as such, the proposal is contrary to Policy GB1 (Green Belt) of the Warrington Local Plan (2023) and the NPPF.

2 It has not been demonstrated that adequate drainage would be provided on the site or that the proposal would not increase the risk of flooding on the site and in the local area. It has also not been demonstrated that the proposed caravans would not be adversely impacted by flooding either on the site, at the entrance to the site or on the highway adjacent to the entrance. As such the proposal does not comply with Policy ENV2 of the Warrington Local Plan.

3 The proposed development will be located in an area of potentially poor air quality and odours given the close proximity to the M62 motorway and a chicken farm. Insufficient consideration of air quality impacts /odours or assessment has been submitted with the application, therefore it has not been demonstrated that the proposal would provide an acceptable and/or safe habitable environment, and as such the proposal is contrary to Policy ENV8 of the Warrington Local Plan and the NPPF.

4 The proposed development will be located in a DEFRA Noise Mapped Area where day and night-time noise levels are up to 70db(A) due to the proximity to the M62 motorway. No noise impact assessment has been submitted with the application.

Insufficient consideration or analysis of the impacts from noise have been submitted with the application, therefore it has not been demonstrated that the proposal would provide an acceptable and/or safe habitable environment for the intended occupiers of the site, as such the proposal is contrary to Policy ENV8 and DEV3 of the Warrington Local Plan and the NPPF.

5 In line with current Council standards on appraising sustainability, the site would not meet the full range of criteria, especially in terms of access to more sustainable modes of transport.

As such, the site is considered to be in a less than sustainable location and would conflict with Policy DC1 and would not provide an acceptable living environment for future occupiers or be well placed to access the full range of key local services as required Part 5 (a), (b) and (g) of Policy DEV3 of the Warrington Local Plan.

6 It has not been demonstrated how the proposal would meet the statutory requirements to provide Biodiversity Net Gain (BNG) either on site or at a BNG registered location. As such the proposal is contrary to Policy DC4 of the Local Plan and the NPPF.

5.0 CASE ON BEHALF OF THE APPELLANT

Preliminary Matters

- 5.1 The National Planning Policy Framework (NPPF) puts the presumption In favour of sustainable development at the heart of both plan-making and decision-taking. For decision-taking this means approving development proposals that accord with the development plan without delay; or, if the policies which are most important for determining the application are out-of-date, granting planning permission unless, *inter alia*, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.
- 5.2 In the latter regard, the appeal site is not located within a SPA, SSSI, Conservation Area, Local Green Space, AONB or, National Park. Furthermore, the proposed caravan site is not located within an area shown on the Environment Agency's flood maps as being at high risk from fluvial flooding. The appeal site is located within an area designated as Green Belt.

Need for Traveller Sites

- 5.3 Paragraph 7b) of PPTS requires that local planning authorities should prepare and maintain an up-to-date understanding of the likely permanent and transit accommodation needs of their areas over the lifespan of their development plan.
- 5.4 The Local Plan sets out the need for gypsy/traveller sites based on the GTAA published in 2018 which assessed need on the basis of the definition of gypsy/traveller set out in Annex 1 of PPTS (2015). This definition has subsequently been found by the courts to be discriminatory and, has been amended. The change in definition in 2015 resulted in a 75% reduction in need identified in GTAAs carried out after the change in definition.

- 5.5 The Local Plan sets out existing site provision in Tables 3 and 4. There were 5 private sites in 2018, at the time of the GTAA, accommodating a total of 29 permanent pitches. A further 4 private sites have been granted planning permission after publication of the GTAA, accommodating a total of 26 permanent pitches. Existing provision is as set out below:

Table 1

	Authorised Pitches	No. of households currently on site.
1. Land adj. 57 Gorsey Lane	2	6
2. Pennington Lane	4	4
3. Smithfield Caravan Site	2	3
4. Two Acre Caravan Park	20	20
5. Woodend Farm	1	1
6. Penkford Lane	2	8
7. Grappenhall Lodge	6	12+
8. Manor Park	10	10
Total	55	64

I attach the most recent Google Earth aerial images of 57 Gorsey Lane, Smithfield Stables, Penkford Lane and, Grappenhall Lodge at **Appendix PBA 1**, demonstrating the level of over-crowding, compared with their authorised capacity.

- 5.6 The 2018 GTAA distinguishes between Gypsies complying with the definition in Annex 1 of *Planning policy for traveller sites* (2015), those who do not, and those whose gypsy status is unknown. However, following the Court of Appeal decision in **Lisa Smith v. Secretary of State for Levelling Up, Housing & Communities [2022] EWCA Civ 1391**, and the change in definition, the GTAA cannot be relied upon to determine gypsy

status and, it is the full “cultural” need which must be provided for. A copy of the GTAA is attached at **Appendix PBA 2**.

- 5.7 The GTAA estimates a “cultural” need for a total of 27 permanent gypsy pitches in the period 2017 – 2032. Of these pitches, 11 constituted an immediate need (households on unauthorised sites or, concealed/overcrowded households). The residual need for 16 pitches would be required over a period of 14 years, i.e. 1.1 pitches per annum. Future need comprises household growth within the resident population and, in this respect, the 10 pitches approved at Manor Park, Fir Tree Close, Stretton since publication of the GTAA have not addressed need identified by the GTAA. The family on Manor Park re-located from Halton District.
- 5.8 As a result, 26 pitches have been approved since the start of the GTAA assessment period but, only 16 have contributed towards meeting the identified need. The GTAA is now almost 8 years old and, bearing in mind the influx of travellers onto Manor Park, the overcrowding on existing sites set out in Table 1 above, and the existence of three unauthorised sites accommodating a total of 13 pitches (Spring Lane, Croft; Broad Lane, Collins Green; and Farmers Lane, Burtonwood), the GTAA underestimates need by about 32 pitches in the period to 2032, of which the vast majority is an immediate need. The Council clearly does not have an up-to-date understanding of traveller accommodation needs on which to calculate its 5-year supply. This is agreed by the Council in the Statement of Common Ground (SofCG).
- 5.9 Bearing in mind that the Council has not allocated any land for the provision of gypsy sites this means that, as of today, the Council cannot demonstrate a 5-year supply of deliverable land for gypsy sites to meet the actual level of identified need. The Council, in the SofCG, concedes that it will not know what the five-year supply requirement will be until a new GTAA has been completed early next year. In the meantime, the Council’s reluctance to admit that it does not have a five-year supply is untenable and unreasonable.
- 5.10 If it is accepted that the Council cannot demonstrate that it has a five-year supply of deliverable land for gypsy sites, paragraph 11(d)(ii) of the NPPF is engaged and, the tilted balance must be applied for determination of this appeal.

- 5.11 Furthermore, paragraph 155 of the NPPF is engaged, whereby, the proposals should not be regarded as inappropriate within the Green Belt provided that, amongst other things the development will take place on previously developed land or “Grey Belt”, i.e. land that does not contribute towards checking the unrestricted sprawl of large built-up areas; preventing neighbouring towns merging into one another; and, preserving the setting and special character of historic towns.
- 5.12 In this case, the site is not undeveloped, greenfield land. It already accommodates a derelict building and hardstanding, previously used for non- agricultural purposes as a woodyard, and the site clearly constitutes previously developed land. The Enforcement Notice issued in July 2025 alleges, *“Without planning permission, the material change of use of the land to use as residential caravan site for gypsy/traveller families, with **associated** storage, siting of caravans, vehicles, machinery, laying of hardstanding and construction of buildings / sheds.”*. The requirements of the notice are to remove the hardstanding referred to in the allegation, i.e. any hardstanding laid pursuant to the change of use, and reinstatement of the land to its original condition *“**prior to the breach taking place**”*. Thus, any hardstanding or buildings/structures that were on the land prior to the breach taking place, and that were not associated with the change of use to a residential caravan site, can not only remain but, because the Council has under-enforced, they are deemed to be lawful.
- 5.13 I attach two aerial photographs below, taken in 2022 and 2023, before the appellant purchased the land which demonstrate that the hardstanding was laid, and the derelict barn was in situ, years prior to the change of use enforced against and, show the condition of the land to which the enforcement notice requires it to be returned. The only hardstanding that is required to be removed is that laid pursuant to the unauthorised change of use, which involved the laying of additional material above the pre-existing hardstanding.

Spring Lane Nurseries – July 2022



- 5.14 It is clear from the aerial photographs attached above, which were taken well before the breach took place, that the enforcement notice will not require the site to be returned to a green field and, that it will continue to be hard-surfaced. This is not necessarily relevant to whether the site is Grey Belt but, does establish the baseline for calculating the pre-development biodiversity value of the land.
- 5.15 With regard to the issue of whether the land constitutes “Grey Belt” development of the appeal site would not result in the sprawl of a large built-up area; erode the gap between neighbouring towns; or, affect the setting or special character of a historic town. This is conceded by the Council in the SofCG and, in my opinion, the site therefore constitutes Grey Belt land.
- 5.16 The Council’s case is that the location of part of the site within an area at risk from surface water flooding disqualifies the appeal site from being Grey Belt but, this misinterprets Government policy. The definition of Grey Belt *“excludes land where the application of the policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a **strong** [my emphasis] reason for refusing or restricting development.”*

Flood Risk

- 5.17 The dictionary definition of “*strong*” includes the terms: powerful; forcible; intense; and, difficult to overcome. A ‘strong’ reason for refusal based on surface water flooding must, to my mind, go beyond mere technical conflicts, even if they are important. There must be substantive risks and harms that go beyond conflicts with policy.
- 5.18 I attach an appeal decision at **Appendix PBA – A1** relating to a site which was partly within Flood Zone 2 and, at high risk from surface water flooding. The Inspector made the following findings with regard to flood risk:
- “32. The appeal site lies predominantly within Flood Zone 1. However, part of the western side of the site, part of Plot 1, lies within Flood Zone 2 due to the close proximity to the Badsey Brook, which runs parallel to the western boundary. I also note the Council’s own historical flood mapping data shows that a large proportion of the western end of the site is*

vulnerable to surface water flooding in a 1 in 1000 and 1 in 100 flooding event, albeit they verbally confirmed that this was not any larger than the Flood Zone 2 area identified.

33. Policy SWDP 28 of the SWDP states that in order to minimise the impacts of, and from all forms of flood risk, development proposals must demonstrate that the sequential test has been applied, in addition to the exception test if the sequential test is satisfied. Paragraph 170 of the Framework advises that inappropriate development in areas at risk of flooding should be avoided, by directing development away from areas at highest risk.

34. Having regard to tables 2 and 3 in the Planning Practice Guidance (PPG), the proposal constitutes a “highly vulnerable” development in Flood Zone 2. In accordance with the Framework, it should therefore meet the Sequential Test and the Exception Test, which are set out in the Framework at paragraphs 101 and 102 respectively.

35. At present, the touring caravan would be positioned within Flood Zone 2, whilst part of the static caravan would also be within Flood Zone 2. However, the appellant submits that as Plot 1 is of an ample size, and that as the Flood Zone 2 designation only covers less than half of the plot, both the static mobile home and the touring caravan could be positioned on part of the plot with the lowest risk of flooding. The appellant submit that a revised layout could be secured by way of a suitably worded condition and thus consequently, the sequential test would be passed. The Council argue that they are not persuaded that this could be conditioned as it would impact the proposal in terms of its visual impact and that it would prejudice third parties.

36. I am satisfied that the precise siting of the caravans within Plot 1 of the appeal site is a matter that could be controlled by a planning condition, and that the caravans could be positioned on the part of the site with the lowest risk of flooding, without harming the character and appearance of the area given my findings above. Whilst it is accepted that outdoor areas and parking associated with the use would remain within Flood Zone 2, on balance, I consider that these uses in themselves would not result in the future occupants being at risk to flooding. Along with the FFL of the static caravans being 600mm above ground level, I am satisfied

that future occupants would be safe from flooding within the caravans themselves, and the proposal would not increase flood risk elsewhere through the displacement of flood water. Therefore, as the development can be located in areas of low flood risk, the sequential test is passed.

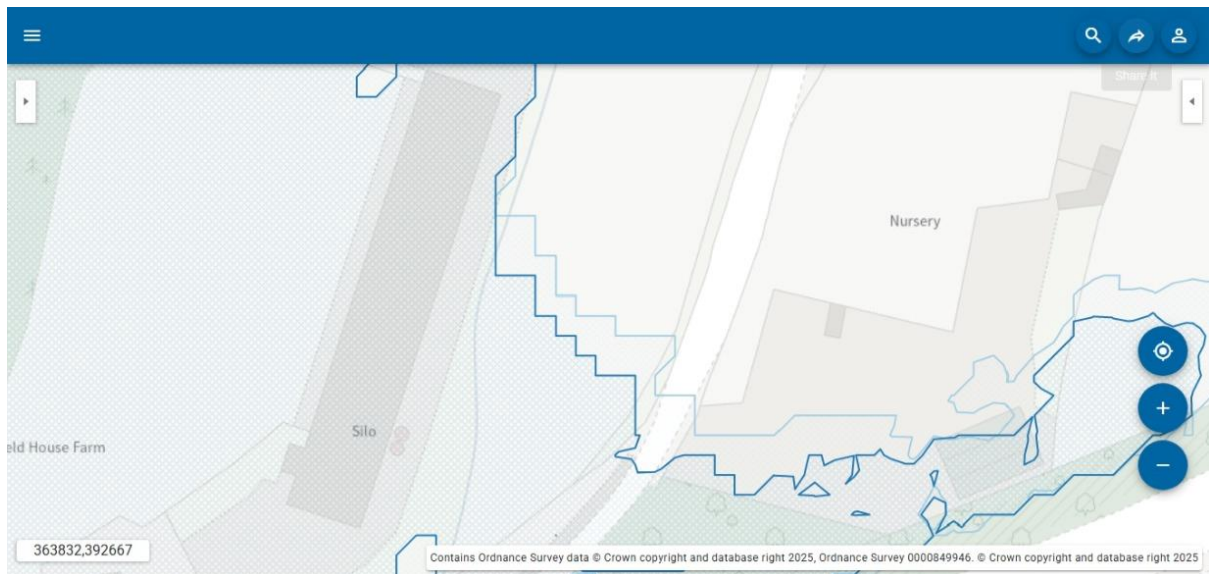
37. Furthermore, the future occupants of Plot 1 would have a safe access and evacuation route, with the access road to the appeal site, including the access to Plot 1, being entirely within Flood Zone 1. I am therefore satisfied that in a flood event, the occupiers would be able to evacuate to the Flood 1 Zone within the site and then gain access to Murcot Road to the east.

39. Given that I have concluded that a revised layout would move the mobile home and touring caravan out of Flood Zone 2, there would no longer be a highly vulnerable use in Flood Zone 2. An exception test is no longer required.

40. Therefore, for the reasons set out above, with a suitably worded condition for a revised layout to be submitted which moves the caravans associated with Plot 1 outside of Flood Zone 2, I am satisfied that the proposal would comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding. Notably, it would be in accordance with the provisions of Policies SWDP 28 and SWDP 29 of the SWDP. Together these policies require development to minimise flood risk, to ensure there would be no increase in flood risk or harm to third parties, ensure that development is safe from flooding for its lifetime and to ensure safe access and exits are available.

5.19 The important points to draw from this decision are that: firstly, provided that vulnerable development is located outside of the areas likely to flood, the proposed development will satisfy the sequential test and, application of the “exception test” is unnecessary; secondly, that the precise location of caravans is a matter that can be controlled by a planning condition; thirdly, that even if outdoor areas and parking associated with the use would remain within the flood risk area, these uses in themselves would not result in the future occupants being at risk to flooding; and fourthly, that the risk from surface water flooding, affecting only part of the site, did not provide a strong reason for refusal.

5.20 In this case, the areas subject to high and intermediate risk from surface water flooding are shown on the Council's interactive policy map (reproduced below) and, only the south-east corner of the appeal site is at high risk from surface water flooding: an area where no caravans are to be stationed.



5.21 By overlying this plan onto the proposed site layout plan, as shown in **Appendix PBA – A2**, it is evident that all of the caravans would be located outside of the area at high risk from surface water flooding and, only part of one static caravan and a touring caravan would be located within the intermediate risk area. The raising of land levels, presumably to fill-in what can only be a shallow depression, would take these two caravans out of the area at intermediate risk of surface water flooding. Alternatively, these caravans could be moved further northwards.

5.22 Bearing in mind the likely shallow depth of flood water (likely to be less than 30cms), along with the FFL of the static caravans being 600mm above ground level, future occupants would be safe from flooding within the caravans themselves, and the proposal would not increase flood risk elsewhere through the displacement of flood water.

5.23 The vehicular access to the site passes through a small area subject to an intermediate risk of surface water flooding: a distance of about 50 metres, at a likely depth of up to 30cms. I attach an appeal decision at **Appendix PBA – A3** in which the Environment Agency's flood maps showed that the

access track was at risk from surface water flooding up to a depth of 30cms in a 1 in 30 flood event. Nevertheless, the Inspector considered that:

“27. The proposed living accommodation would be located on higher land outside of the area affected by surface water flooding. In the event of a flood there is no evidence that occupiers would be at risk of being “cut-off” having regard to the likely shallow depth of water.”

5.24 Spring Lane provides a dry means of escape towards Croft and, notwithstanding the likely shallow depth of flood waters at the site entrance, a pedestrian access could easily be provided in the north-western corner of the site, where the roadside hedgerow becomes sparse, to allow the evacuation of site occupants in an emergency. It should be remembered that paragraph 28 of PPTS states that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, the provisions in paragraph 11(d) of the National Planning Policy Framework apply. In such circumstances, local planning authorities should consider how they could overcome planning objections to particular proposals using planning conditions or planning obligations. In my opinion, the objections relating to flood risk can clearly be overcome by the imposition of planning conditions.

5.25 Flood risk does not, in this case, provide a “**strong**” reason for refusal and, the appeal site falls squarely within the definition of Grey Belt. Furthermore, having regard to the remainder of criterion a. of paragraph 155, the proposed development is not of a scale or in a location where it could fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan. Moreover, there is a demonstrable unmet need for the type of development proposed (criterion b.); and, the “Golden Rules”, set out in chapter 13 of the NPPF, do not apply to traveller sites.

5.26 The final criterion of Paragraph 155 requires that the development would be in a sustainable location, with particular reference to paragraph 13 of PPTS.

Sustainability

- 5.27 Paragraph 4 of the NPPF requires that the Framework should be read in conjunction with the Government's planning policy for traveller sites. Policy C of PPTS makes clear that some sites will be in rural areas and the countryside. This advice is qualified by Policy H (paragraph 26) which states that sites should be very strictly limited in the open countryside **away from** existing settlements. The term "*away from*" infers a significant degree of detachment, such that the site may be considered to be isolated.
- 5.28 PPTS does not define what is meant by "*settlement*" and, there is no suggestion that the expression should be limited to designated settlements or, that they should contain services. Paragraph 26 continues with "*Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure*". PPTS recognises, therefore, that traveller sites that are not within, or contiguous with, the nearest, undefined, settled community are not unacceptable in principle.
- 5.29 The term "*away from*" is, similarly, undefined but, infers a significant degree of detachment, such that the site may be considered to be isolated. I attach two appeal decisions at **Appendices PBA 3** and **PBA 4**, which demonstrate how other Inspectors have approached the issue of whether, or not, sites can be considered to be away from settlements for the purposes of PPTS. In the appeal decision attached at **Appendix PBA 3** the Inspector made clear that a site located 800 metres from the closest settlement, was not away from existing settlements for the purposes of Policy H of PPTS, notwithstanding that the settlement of Bings Heath was no more than a hamlet of 11 houses and, did not contain any community services or facilities. It was 2 miles (3.2 kilometres) from the closest service centre of Shawbury and, 4 miles (6.4 kilometres) from Shrewsbury. The Inspector observed that: "*such a degree of reliance [on private transport] is not that uncommon in a mainly rural areaand the distances involved are not excessive by rural standards*". The Inspector considered that Shrewsbury was only "*a short car journey away*" and, in terms of location, he took the

view that: *“the site is not totally isolated from nearby settlements for the kind and scale of the development”*.

- 5.30 In the appeal decision attached at **Appendix PBA 4**, the Inspector accepted that, because of the dispersed pattern of settlement, a site 1.6 kilometres from the village core (Smallwood contains a primary school and church but, no shop) was not *“away from”* settlements for the purposes of PPTS, despite its reliance on the use of private motor vehicles to access the wider range of services available in Sandbach more than 4 kms away. The term *“away from”* can, therefore, involve distances of 0.8 – 1.6 kilometres, depending on the particular circumstances.
- 5.31 In this case, the appeal development would lie within about 500 metres of the development boundary of Croft and, about 4.6 kms of Birchwood Shopping Centre. Croft contains a limited range of services, including a primary school and, Birchwood contains a full-range of community services and facilities, including an ASDA superstore, Medical Centre and Railway Station. The appeal site, although located in the countryside, is not away from settlements and, is in a reasonably sustainable location for a traveller site.
- 5.32 Neither Local Plan Policy DEV3(g) or PPTS require sites to be accessible by means other than the private car. Notwithstanding this, the appeal site is within a reasonable walking and cycling distance of Croft, and of bus services operating along New Lane. The Local Highway Authority has provided a statement for this inquiry in which they state that they do not consider the roads to be notably different to popular leisure routes throughout the country, where walking and cycling are encouraged and, that other residential properties in the area do not have the benefit of footway, but there is no evidence to suggest this is a safety issue.
- 5.33 Although in this case there are viable alternatives to the use of private motor vehicles, paragraph 110 of the NPPF recognises that different policies and measures will be required in different communities and, opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Paragraph 110 generally seeks to direct developments that generate significant movement to locations where the need to travel will be minimised and the use of sustainable transport

modes can be maximised. PPTS recognises that gypsy sites can be appropriately located in rural or semi-rural areas and a development of 5 caravan pitches would not generate significant movement, i.e. requiring submission of a Transport Statement or Transport Assessment (para. 118 of the NPPF). As such, the proposed development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe (para. 116). In this case, the site residents would be in a similar position to the many other families living in this rural area and, even if primarily reliant on the private car, car trips would be relatively short in both length and duration.

5.34 Notwithstanding the above, the NPPF and PPTS require a consideration of the effects of development on a broader basis than simply in relation to transport. That is true of all developments – but particularly sites for gypsies because they have a travelling way of life by definition and this must be factored into the planning assessment.

5.35 In wider sustainability terms, PPTS makes no mention of distances to services or modes of travel when assessing the sustainability of gypsy sites. PPTS expects local planning authorities to ensure that gypsy sites are sustainable economically, socially and environmentally – by promoting access to appropriate health services, and ensuring that children may attend school regularly, “access” in this sense is related to the fact that gypsies may only have the right to register with a GP or obtain education if they have a settled base. In this case, the site residents have been able to register with local doctors and, will be able to register children in local schools when the need arises.

Appropriate Development

5.36 The appeal site satisfies all of the relevant criteria set out in paragraph 155 of the NPPF and, therefore, the proposed development is not inappropriate in the Green Belt. Furthermore, if it is accepted that the Council cannot demonstrate a five-year supply of deliverable land for traveller sites, the tilted balance must be applied by which planning permission should be granted if the adverse impacts do not significantly and demonstrably outweigh the benefits. This sets a high bar for refusal. It is not enough for there to be some harm or negative effects, or for a scheme to be less than ideal.

5.37 It has been established in case law that: *“Whatever entered the "tilted balance" needed to do so to the extent that it "significantly and demonstrably" outweighed the benefits of the proposed development. Merely to find "harm" or "material harm" or, for that matter, that the development would be out of keeping with the established character would be to apply the wrong test, or at least is not demonstrably consistent with the application of the correct test”* [Green Lane Chertsey (Developments) Limited v SSHCLG [2019] EWHC 990 (Admin)].

Alleged Adverse Impacts

5.38 In this case, the Council alleges harm to the Green Belt and harm in terms of sustainability which I have already addressed but, the remaining reasons for refusal cite a lack of information. The Council does not demonstrate harm, as required by paragraph 11d of the NPPF, with regard to noise, air pollution, odour, surface water drainage, or biodiversity.

Noise

5.39 A noise assessment is attached at **Appendix PBA 5** demonstrating the mobile homes can provide an acceptable residential environment for site residents. The Noise Consultant’s report concludes as follows:

7.4. Noise surveys were undertaken to establish the current noise levels on the site, which are principally attributable to road traffic travelling along the M62, upon which the noise assessment has been based.

7.5. The mobile homes to be sited would be of a residential specification, to allow occupation throughout the year, and compliant with the requirements of BS 3632. This Standard ensures that the homes would be fully insulated and double glazed, with the Standard specifying a minimum sound insulation requirement.

7.6. An assessment of the noise levels calculated within the proposed mobile homes based upon the proposed layout, would ensure that acceptable levels of noise were achieved within the mobile homes during the day and night-time periods assuming windows closed, meeting the requirements of both BS 8233 and ProPG guidance.

7.7. Within the mobile homes, with windows open, the guideline values specified within ProPG and BS 8233 would not be achievable. However, the Standard and guidance is clear that, providing good acoustic design principles have been followed, which has been achieved through layout in this situation, then it is acceptable to base the assessment upon the windows remaining closed, providing adequate ventilation is provided. For residential specification mobile homes, adequate ventilation would be provided, as this is higher than for a standard dwelling, to ensure condensation is minimised. However, there may be a potential for the homes to become warm in summer months, and if considered appropriate, air conditioning / comfort cooling could be provided in the two homes.

7.8. With the proposed layout and utilisation of residential specification mobile homes, no significant adverse noise impacts have been identified and the proposals would therefore fully comply with the requirements of the NPPF.

5.40 The Council does not have any evidence of its own to gain say the appellant's evidence. Furthermore, the construction of the proposed mobile homes can be controlled by condition.

5.41 I attach a recent appeal decision at **Appendix PBA – A4** involving a proposed traveller site adjoining the M40 in Warwickshire in which the Inspector made the following findings with regard to noise:

34. Turning firstly to the levels of noise inside the caravans. At present there are a mix of static caravans of varying age and touring caravans on the site. During the site visit I went inside most of the caravans, both static and touring. Even with the windows closed noise from the motorway was noticeable in all of the caravans including the newer static caravans which I heard at the Hearing are likely to be to the specification assumed by the Noise Assessment. With the windows open the noise is intrusive. Whilst not at a level which would prevent some day to day activities like watching television or having a conversation, on the basis of my observations it would have the potential to disturb sleep or quiet activities such as homework.

36. In terms of the living conditions for residents, the Noise Assessment treats the option of keeping windows closed as a matter of choice. Many of the residents have access to air conditioning either integrated into the caravan or in the form of a portable unit. Similarly, air conditioning was discussed at the Hearing and also argued as a matter of personal choice for residents by the appellant. The issue in this case is whether a resident who chose not to have air conditioning and wanted to have windows open, would be exposed to a poor noise environment. The evidence before me suggests that they would.

37. I have considered whether the effects of noise on the living conditions of residents could be controlled by planning condition. The Council's suggested condition requires the submission of an acoustic, ventilation and overheating strategy for approval. This would include details of ventilation arrangements and methods to reduce overheating while windows are closed in the summer months. The condition meets the tests set out in the Framework, but it would not resolve my concerns in respect of the choices available to residents in relation to being able to open windows without being exposed to a noisy environment.

38. Turning to the external noise environment, there are significant areas of open space within the site layout which are currently used for parking, as play space and for normal domestic activities. Whilst the appellant is correct that the background noise is not at a level that results in voices needing to be raised to have a conversation, nevertheless the continuous hum from traffic using the motorway is ever present.

39. At the Hearing the appellant argued in respect of external noise that guidelines require that noise is reduced to the best practical level. The Council did not dispute this approach but did refer to it applying when consideration was being given to the most efficient use of land. Nevertheless my concern about the poor external noise environment contributes to my overall view that there is a harmful effect on the living conditions of the residents of the site as a result of noise from the motorway.

44. For the reasons set out above, the appeal scheme does not provide for appropriate living conditions for current and future occupiers of the site by reason of traffic noise from the M40 motorway. Given the number of

people affected and the presence of children on the site I attach significant weight to this harm. Policy BE3 of the Local Plan directs that development which does not provide acceptable standards of amenity for future occupiers should not be permitted.

5.42 Notwithstanding these adverse findings, the Inspector had to consider whether, in accordance with the “tilted balance”, the adverse impacts significantly and demonstrably outweighed the benefits:

85. The noise environment to which occupiers of the site are currently exposed is harmful to their living conditions. Mitigation measures which can be secured by planning condition would significantly reduce the level of noise inside the caravans if windows were kept closed. A level of ventilation so as to avoid condensation would be provided as part of the fabric of the mobile home. Several of the occupiers already use portable AC units and there was nothing to suggest that such facilities would not be available to all residents, including families with children. However, I agree with the appellants that the use of AC is a personal choice, and, in this context, it would not be reasonable for me to impose this requirement through a planning condition.

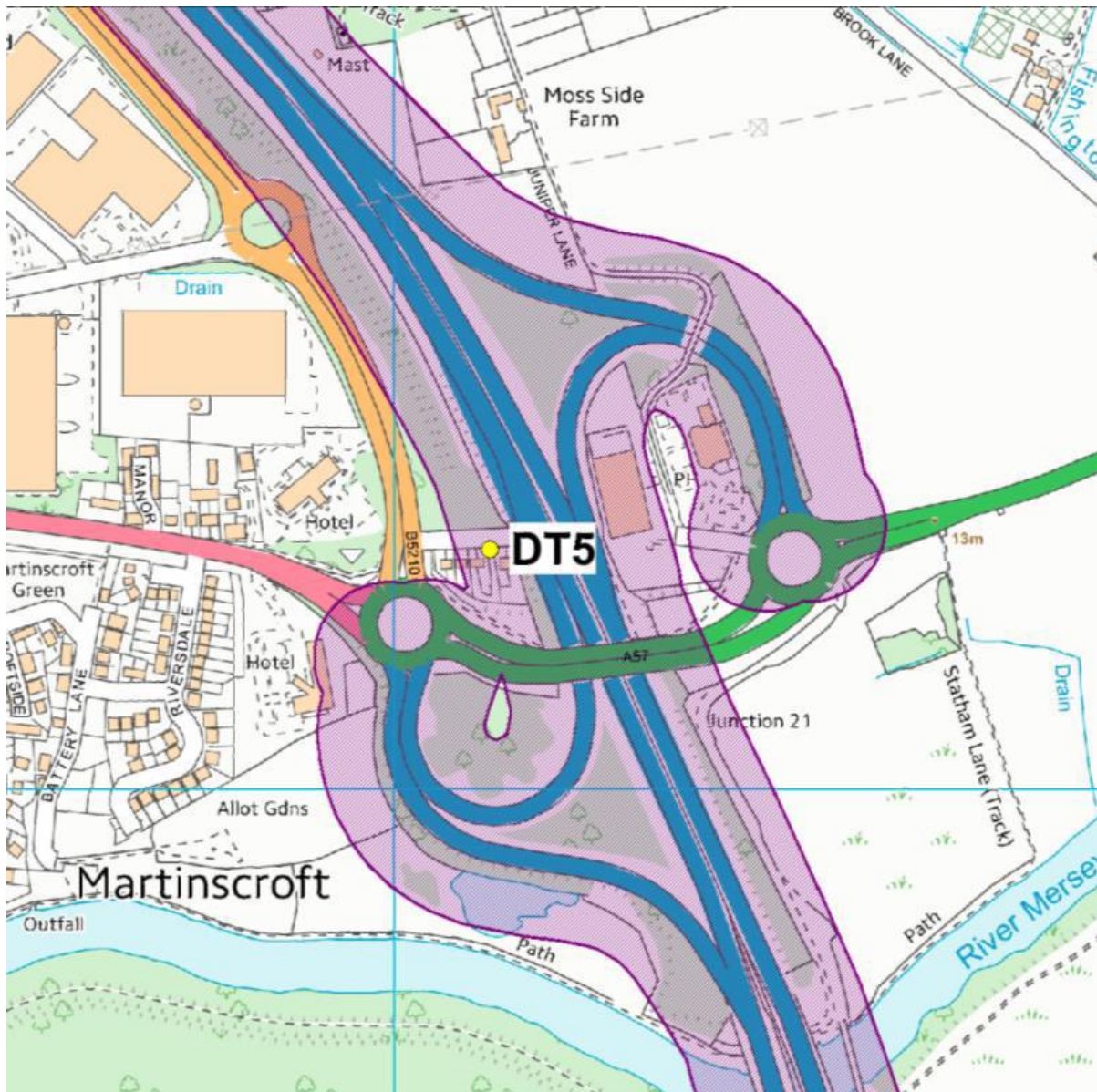
86. The planning condition which has been suggested requires the submission and approval of details of an acoustic, ventilation and overheating strategy. I established at the Hearing that there are no standards applicable to overheating. Nevertheless, I am satisfied that the condition is capable of being discharged taking into consideration the occupiers choices, for example in respect of AC units.

87. In respect of the residual harm arising in terms of the internal noise and the full effect of external noise these will give rise to harmful living conditions. I attach significant weight to this harm. Furthermore I attach moderate harm to the fact that the development amounts to IUD. However, I do not find, in this case, that these harms would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework and the PPTS taken as a whole. As a result the presumption in favour of sustainable development applies in this case.

Air Pollution

- 5.43 In order to fulfil its statutory obligations, Warrington Borough Council undertakes monitoring of air quality across the Borough. This monitoring is in the form of real time and non-automatic/passive monitoring at various locations. The results are compared against national limits, known as objectives, which have been set based on health grounds. The monitoring programme is reviewed regularly to identify the areas most affected, with new developments or changes in traffic flow identified that might impact on an area or that may introduce new receptors close to a significant source.
- 5.44 The Council has identified those areas within the District likely to be most affected by air pollution. There are two Air Quality Management Areas (AQMAs) within the Borough, which were declared because levels of NO₂ exceeded the national annual mean objective. One of these covers an area up to 50m from roadside around the M62, M6 and M56, and includes the appeal site.
- 5.45 The Air Quality Objective for the average concentration of nitrogen dioxide is 40 µg/m³. The latest Air Quality Annual Status Report (June 2025) attached at **Appendix PBA - A5**, demonstrates that pollution levels along the M62, M6 and M56 corridor have been decreasing, and that the levels of nitrogen recorded by Council monitoring stations have been found to be consistently below the annual average objective level. The annual average concentration of nitrogen dioxide was found to be 26.1 µg/m³ in 2024: the fourth year in succession that the annual average objective level had been complied with.
- 5.46 The levels of NO₂ at all locations across the borough now meet the national objectives/standards, within and outside of the AQMAs. As a result, the Air Quality Annual Status Report states that the Council plan to revoke both AQMAs following consultation.
- 5.47 The Rule 6 Party's Air Quality Report does not include any measurement of air quality on or close to the appeal site. Instead, it alleges that the closest monitoring location within the Motorway AQMA does not provide results representative of the appeal site, primarily on the basis of the prevailing wind direction (from the south). Monitoring Point DT5 is located

immediately to the north-west of the junction (Junction 21) between the M6 to the east and A57 to the south, whereas the appeal site is located to the north of the M62. The theory goes that pollutants will be blown towards the appeal site but, away from Monitoring Point DT5.



5.48 The Rule 6 Party's Air Quality Report fails to take into account that: firstly, DT5 is closer to the closest road carriageway (26.5 metres) than the closest static caravan is to the M62 (33 metres); secondly, that DT5 is detecting pollution from both the M6 and A57, and yet the average annual nitrogen dioxide level was still only $19.4 \mu\text{g}/\text{m}^3$; and thirdly, the

report does not give any consideration to traffic volumes along the adjacent trunk roads.

5.49 The A57, south of the monitoring point carried an annual average daily flow of 20319 vehicles (1080 HGVs) in 2024 and, the M6 east of the monitoring point carried an annual average daily flow of 151561 vehicles (17345 HGVs): i.e. a total of 171880 vehicles (18425 HGVs) passing the Monitoring Point. In contrast, the M62 carried an annual average daily flow of 129773 vehicles (13955 HGVs). Traffic volumes, and therefore pollutant levels, are 32.5% higher adjacent to Junction 21 of the M6, than on the M62 just east of the appeal site, and the volume of HGV traffic is 32% higher alongside Junction 21. Extracts from the Department of Transport Road Traffic Statistics are attached at **Appendix PBA – A6**.

5.50 Further east along the M62, where it passes through Whitefield in Bury (as the M60), residential properties (vulnerable receptors) are located immediately to the north of the motorway: in an equivalent location to the appeal site in terms of the prevailing wind. Bury Council maintain an air quality monitoring point along Balmoral Avenue (located between Balmoral Avenue and the M60) and the DoT collect traffic data (collection point 6053). The M60 carried an annual average daily flow of 161487 vehicles (17967 HGVs) in 2024 and yet, the average annual concentration of nitrogen dioxide was found to be 29.1 $\mu\text{g}/\text{m}^3$: well below the national target level. Copies of the Air Quality and Traffic Flow data for Balmoral Avenue, Whitefield are attached at **Appendix PBA - A7**.

5.51 The Rule 6 Party evidence on air quality, such as it is, is clearly flawed and, is not supported by the available empirical evidence. The only empirical evidence available indicates that pollution levels from road traffic emissions are within acceptable limits on the appeal site.

5.52 The Rule 6 Party evidence also refers to the farmworker's dwelling approved at Springfield Farm under planning reference: 2013/22695, subject to a condition requiring the installation of a specific ventilation scheme due to its location within the AQMA. It should however be noted that, pre-covid, nitrogen dioxide levels being recorded at monitoring points DT5 and at Whitefield were above 40 $\mu\text{g}/\text{m}^3$. It is not, therefore, surprising that such a condition was imposed.

Odour

5.53 The Council and Rule 6 Party allege, again without evidence, that the proposed caravan site may be subject to odour nuisance from the adjacent poultry farm. Springfield House Farm is a 9000 bird, organic free-range egg unit approved in 2008. I attach the Design and Access Statement submitted with the planning application for erection of the poultry unit at **Appendix PBA 7**, explaining the design of the building and, management of the operations of the business. It makes clear that the Free Range Unit is designed, and proven in practice, to produce negligible environmental consequences. The Rule 6 Party wrongly characterises this farm as an “intensive” poultry unit whereas it is actually an “extensive” organic egg production unit, with birds able to access fields to the west of the poultry house between 8.00am – 9.00pm (or dusk).

5.54 The poultry unit operates on a 65 week cycle, whereby droppings fall through a slatted floor into a droppings pit and, accumulate throughout the flock cycle. The design of the building ensures that droppings remain dry and friable, and decompose without producing significant quantities of ammonia. The Design and Access Statement makes clear that:

4.14 In practise, any smell within the houses is not apparent beyond its immediate surroundings. The Unit will confirm to “The Code of Good Practice for the Protection of Air” 1998 and as amended.

5.55 Cleanout of the building only occurs once every 65 weeks, for a period of 1-2 days. Waste is removed via the end doors and loaded directly into waiting vehicles for disposal off-site. It is not disputed that unpleasant odours can be generated during the cleaning process, for 1 or 2 days every 65 weeks. A wind from the south, the prevailing direction in this area, would be likely to blow odours away from the appeal site on the relevant day or days. Notwithstanding this, I attach an appeal decision at **Appendix PBA 8** in which the Inspector accepted that other legitimate agricultural activities generate smells occasionally and, that those living in rural areas might reasonably expect such odour from time to time. As a result, the Inspector considered that the possibility of local residents noticing odours for a couple of days at most, less than once a year, did not justify withholding permission for a 12,000 bird free-range egg production unit.

5.56 With regard to dust emissions, the Design and Access Statement makes clear that:

4.21 The nature of a free range Unit precludes the emission of any significant amount of dust particles in the atmosphere. A dust laden atmosphere within the Unit must be avoided to protect the welfare interests of both birds and stockpersons.

5.57 If operated as intended, the free-range egg production unit would not site and, in practice, families living on the appeal site have not noticed any unpleasant odours or dust emanating from the poultry farm since moving onto the land.

Biodiversity Net Gain

5.58 The Biodiversity Net Gain Report submitted with the application calculates that the current plans for the red line boundary will result in a net loss for biodiversity of some 43% and, an increase in hedgerow habitat units of 113%.

5.59 The Council's Ecologist alleges that the submitted metric does not appear to have been completed correctly. *"For example, the only scrub species listed in the "mixed scrub" is bramble; if this is the only species present it should be classed as bramble scrub. The "line of trees", which are all conifers and therefore non-native, are described as being "ecologically desirable" which is clearly not the case. As these calculations affect the number of units required off-site, the metric needs to be completed correctly"*.

5.60 Table 1 of the Appellant's BNG Assessment Report describes the baseline habitat value of the appeal site and describes the area of "mixed scrub" as including: Bramble (D), Thistle (A), Nettle (F), Himalayan Balsam (F), Willow Herb(O) and Ragwort. This would appear to be properly described as mixed scrub and, not bramble scrub as alleged by the Council's Ecologist.

5.61 Asked to reply to the Council's criticism of the accuracy of it's report, Arbtech have made the following comment: *"I've had a look back at some of our reports and I would classify the area as a mixed scrub. The species present are very overgrown and the area likely contains various woody species as there are trees present within the area. Its not always possible to*

determine the species present in dense scrub, especially as this area appears to have been fenced off.

I've attached an image below taken from the PEA".



5.62 Furthermore, the line of trees referred to does not contribute towards the number of habitat units required, it forms part of a separate calculation of hedgerow units. If the value of this line of trees is lower than calculated, this would increase the gain in hedgerow units as a result of the proposed hedgerow planting, i.e. the Council's objections to the Appellant's BNG Assessment are completely unfounded.

5.63 In addition, the Council's ecological consultants note that the Arbtech Report suggests that the 10% net gain could be achieved by "purchasing conservation credits through a registered provider, habitat creation directly through the client owned or LPA offered land or a financial contribution towards another provider such as a local nature reserve or park". The latter as the Council's Ecologist points out, is not permitted now BNG has become mandatory. However, this does not mean than other alternative

means of provision are unavailable or unacceptable. In the first instance, the Appellant is intending to provide on-site benefits in the form of hedgerow planting and scrub enhancement. Further benefits would be provided on other land owned by the Appellant, within the area edged blue on the Site Location Plan. Lastly, and in accordance with the Biodiversity Gain Hierarchy, it may be necessary to purchase biodiversity credits.

5.64 As set out above, the second metric submitted with the application, labelled “recommended” includes measures to enhance the adjacent land to obtain the required credits. If this option were to be used, it is accepted that habitats would need to be legally secured for 30 years and registered on the Biodiversity Gain Sites Register. Being land within the ownership and control of the appellant, these are benefits that can be secured through the imposition of planning conditions. Furthermore, should a section 106 agreement be required to secure off-site benefits, there is no requirement for such an agreement to be in place prior to the grant of planning permission.

5.65 The statutory framework for biodiversity net gain involves the discharge of the biodiversity gain condition following the grant of planning permission to ensure the objective of at least 10% net gain will be met for a development. The determination of the Biodiversity Gain Plan under this condition is the mechanism to confirm whether the development meets the biodiversity gain objective. Development may not be begun until the Biodiversity Gain Plan is approved.

5.66 Given this, paragraph 019 of PPG – Biodiversity Net Gain, states that it would generally be inappropriate for decision makers, when determining a planning application for a development subject to biodiversity net gain, to refuse an application on the grounds that the biodiversity gain objective will not be met.

Other Material Considerations

5.67 Other relevant matters for local planning authorities when considering planning applications for traveller sites are set out in paragraph 24 of PPTS as comprising:

- a) the existing level of local provision and need for sites;
- b) the availability (or lack) of alternative accommodation for the applicants;
- c) other personal circumstances of the applicant;
- d) the locally specific criteria used to guide the allocation of sites in plans or, which form the policy where there is no identified need for pitches/plots, used to assess applications that may come forward on unallocated sites; and,
- e) determining applications for sites from any travellers and not just those with local connections.

5.68 I have already addressed the need for traveller sites and, the latter matter simply means that, even if the appellant has no local connections, this is not a matter which weighs against his appeal. In this case, the appellant and his extended family have long-standing connections to the Warrington area.

Alternative Sites

5.69 In ***Doncaster MBC v. FSS & Angela Smith*** [2007] the Court decided that to be a realistic alternative, accommodation has to be suitable, affordable, available and acceptable. Notwithstanding this, there is no requirement in planning policy, or case law, for an applicant to prove that no other sites are available or that particular needs could not be met from another site (***SCDC v. SSCLG and Julie Brown*** [2008] ***EWCA Civ 1010 at paras 24,27-36***).

5.70 There are no public gypsy sites in Warrington or, land allocated for new traveller sites. All of the existing traveller sites in Warrington are full and, there is evidence of doubling-up on many of these sites. There are a number of unauthorised traveller sites, including the appeal site, which are evidence in themselves of an unmet need and shortage of alternative sites.

5.71 The vast majority of existing traveller pitches are located on sites in the Green Belt which covers most of the open land in Warrington, outside of

the urban area. The Local Plan recognises that additional pitches may be permitted in the Green Belt and, expresses a preference for the use of previously developed land, such as the appeal site.

Local Plan Strategy

5.72 The Council's strategy for meeting the accommodation needs of gypsies and travellers is set out in Policy DEV 3 of the recently adopted Local Plan. This provides that where there is an identified need or a demand for the provision of transit and permanent pitches for Gypsy or Traveller use or plots for Travelling Showpeople, proposals **will be favourably considered** [my emphasis] where they satisfy other relevant policies of the Plan and meet the following criteria:

- a. The proposed site is suitable for use as a Gypsy, Traveller or Travelling Showperson's site and can provide an acceptable living environment for future occupiers;*

The proposed caravan site provides adequate space for the caravans, vehicle parking and manoeuvring, and amenity space. The proposed caravan site would therefore provide an acceptable and culturally appropriate living environment for residents.

- b. The site is not subject to physical constraints or other environmental issues that cannot be mitigated to an acceptable level, or that would impact upon the health, safety or general wellbeing of residents on the site;*

There are no physical constraints to the provision of five adequately-sized pitches, providing a good standard of privacy and amenity. The caravan pitches would be located as far as possible from the M62 and, evidence has been submitted with this appeal to demonstrate that an acceptable residential environment would be available for the site residents, in terms of freedom from undue noise or air pollution.

- c. The site is or can be well integrated within the local townscape in a manner in-keeping with the local character, using boundary treatments*

and screening materials which are sympathetic to the existing urban/rural form;

The proposed caravan site would be well-screened from Spring Lane by existing vegetation and, proposed new hedgerows/tree planting. It is proposed to carry out landscaping which would enclose the caravan site and assimilate the proposed caravan site into its semi-rural surroundings.

- d. Be compatible with surrounding land uses particularly with regards to residential amenity;*

There are no nearby residential properties which would be affected by any residential activity or traffic emanating from the proposed caravan site. I have already addressed the site's proximity to a Free-Range Egg unit and, established that such businesses produce negligible adverse environmental effects in terms of noise, odours or flies.

- e. The site has good access to the highway network and adequate provision is made for the parking, manoeuvring and storage of all vehicles associated with the use of the site;*

The site has safe access onto Spring Lane and, adequate provision can be made for the parking and manoeuvring of vehicles, as shown on the submitted Site Layout Plan.

- f. The site is served, or could readily be provided with, electricity, mains water, drainage, sewage and waste disposal facilities;*

The site already benefits from mains water and electricity, and the intended means of foul drainage is by installing a package sewage treatment plant.

and for permanent sites

- g. The proposed site is or can be made accessible to key local services such as primary schools, GPs, shops and other community facilities.*

The site is reasonably close to both Croft, which contains a limited range of services, including a primary school, and Birchwood, which contains a full range of community services and facilities.

- 5.73 The proposed development would, in my opinion, satisfy all of the Council's locally specific criteria for the consideration of applications for new traveller sites.

Personal Circumstances

- 5.74 The proposed residential pitches would accommodate the following households:

1. Thomas Smith (Junior)
2. Lias Rvalley Smith (brother of Thomas)
3. Pemberlina Smith (sister of Thomas and Lias)
4. Mary Kate Smith (cousin to Pemberlina)
5. Benny Hutchinson

- 5.75 The Smiths have formerly been living on a site owned by Thomas Smith (Senior) at 57 Gorsey Lane, Warrington which has permission for only one permanent dwelling and two traveller pitches. Thomas' (Senior) were only children when permission was first granted for the site at Gorsey Lane and, the site has become increasingly over-crowded as the children have reached adulthood. Gorsey Lane has been accommodating 7 households and the appeal site was purchased to enable the adult children to have their own pitches.

Balance of Considerations

- 5.76 On balance, the unmet need for sites; the extended Smith family's personal accommodation needs and personal circumstances; the absence of alternative sites; lack of a five-year supply; the failure of the development plan to bring forward suitable land for traveller sites in a timely manner; and compliance with the Council's locally specific criteria,

are not significantly and demonstrably outweighed by the adverse impacts alleged by the Council. Planning permission should therefore be granted in accordance with the presumption in favour of sustainable development.

6.0 SUMMARY AND CONCLUSIONS

- 6.1 The National Planning Policy Framework (NPPF) puts the presumption In favour of sustainable development at the heart of both plan-making and decision-taking. For decision-taking this means approving development proposals that accord with the development plan without delay; or, if the policies which are most important for determining the application are out-of-date, granting planning permission unless, *inter alia*, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or the application of policies in the Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed.
- 6.2 In the latter regard, it is agreed that the appeal site is not located within a SPA, SSSI, Conservation Area, Local Green Space, AONB or, National Park. Furthermore, the proposed caravan site is not located within an area shown on the Environment Agency's flood maps as being at high risk from fluvial flooding. The appeal site is located within an area designated as Green Belt and, part is shown to be at risk from surface water flooding.
- 6.3 The GTAA is now almost 8 years old and, bearing in mind the influx of travellers into the Borough at Manor Park, the overcrowding on existing sites, and the existence of three unauthorised sites accommodating a total of 13 pitches, the GTAA underestimates need by about 32 pitches in the period to 2032, of which the vast majority is an immediate need. The Council admits to not having an up-to-date understanding of traveller accommodation needs on which to calculate its 5-year supply.
- 6.4 Bearing in mind that the Council has not allocated any land for the provision of gypsy sites this means that, as of today, the Council cannot demonstrate a 5-year supply of deliverable land for gypsy sites to meet the actual level of identified need. The Council, in the SofCG, concedes that it will not know what the five-year supply requirement will be until a new GTAA has been completed early next year.
- 6.5 If it is accepted that the Council cannot demonstrate that it has a five-year supply of deliverable land for gypsy sites, paragraph 11(d)(ii) of the NPPF

is engaged and, the tilted balance must be applied for determination of this appeal.

- 6.6 Furthermore, paragraph 155 of the NPPF is engaged, whereby, the proposals should not be regarded as inappropriate within the Green Belt provided that, amongst other things the development will take place on previously developed land or “Grey Belt”, i.e. land that does not contribute towards checking the unrestricted sprawl of large built-up areas; preventing neighbouring towns merging into one another; and, preserving the setting and special character of historic towns. It is agreed that development of the appeal site would not prejudice purposes (a), (b) or (d) of including land in the Green Belt.
- 6.7 The Council’s case is that the location of part of the site within an area at risk from surface water flooding disqualifies the appeal site from being Grey Belt but, this misinterprets Government policy. The definition of Grey Belt *“excludes land where the application of the policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a **strong** [my emphasis] reason for refusing or restricting development.”*

Flood Risk

- 6.8 The dictionary definition of “*strong*” includes the terms: powerful; forcible; intense; and, difficult to overcome. A ‘strong’ reason for refusal based on surface water flooding must, to my mind, go beyond mere technical conflicts, even if they are important. There must be substantive risks and harms that go beyond conflicts with policy.
- 6.9 The precise location of caravans is a matter that can be controlled by a planning condition and provided that vulnerable development is located outside of the areas likely to flood, the proposed development will satisfy the sequential test and, application of the “exception test” is unnecessary. Even if the ancillary dayroom building, outdoor areas and parking associated with the use would remain within the flood risk area, these uses in themselves would not result in the future occupants being at risk to flooding. The risk from surface water flooding, affecting only part of the site, does not provide a strong reason for refusal.

- 6.10 If it is accepted that flood risk does not, in this case, provide a “**strong**” reason for refusal and, the appeal site falls squarely within the definition of Grey Belt.
- 6.11 Furthermore, having regard to the remainder of criterion a. of paragraph 155, the proposed development is not of a scale or in a location where it could fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan. Moreover, there is a demonstrable unmet need for the type of development proposed (criterion b.); and, the “Golden Rules”, set out in chapter 13 of the NPPF, do not apply to traveller sites.
- 6.12 The final criterion of Paragraph 155 requires that the development would be in a sustainable location, with particular reference to paragraph 13 of PPTS.

Sustainability

- 6.13 In this case, the appeal development would lie within about 500 metres of the development boundary of Croft and, about 4.6 kms of Birchwood Shopping Centre. Croft contains a limited range of services, including a primary school and, Birchwood contains a full-range of community services and facilities, including an ASDA superstore, Medical Centre and Railway Station. The appeal site, although located in the countryside, is not away from settlements and, is in a reasonably sustainable location for a traveller site.
- 6.14 Notwithstanding the above, the NPPF and PPTS require a consideration of the effects of development on a broader basis than simply in relation to transport. That is true of all developments – but particularly sites for gypsies because they have a travelling way of life by definition and this must be factored into the planning assessment.
- 6.15 In wider sustainability terms, PPTS makes no mention of distances to services or modes of travel when assessing the sustainability of gypsy sites. PPTS expects local planning authorities to ensure that gypsy sites are sustainable economically, socially and environmentally – by promoting access to appropriate health services, and ensuring that children may attend school regularly, “*access*” in this sense is related to

the fact that gypsies may only have the right to register with a GP or obtain education if they have a settled base. In this case, the site residents have been able to register with local doctors and, will be able to register children in local schools when the need arises.

Appropriate Development

6.16 The appeal site satisfies all of the relevant criteria set out in paragraph 155 of the NPPF and, therefore, the proposed development is not inappropriate in the Green Belt. Furthermore, if it is accepted that the Council cannot demonstrate a five-year supply of deliverable land for traveller sites, the tilted balance must be applied by which planning permission should be granted if the adverse impacts do not significantly and demonstrably outweigh the benefits. This sets a high bar for refusal. It is not enough for there to be some harm or negative effects, or for a scheme to be less than ideal.

Alleged Adverse Impacts

6.17 In this case, the Council alleges harm to the Green Belt and harm in terms of sustainability which I have already addressed but, the remaining reasons for refusal cite a lack of information. The Council does not demonstrate harm, let alone harm that significantly and demonstrably outweighs the benefits as required by paragraph 11d of the NPPF, with regard to noise, air pollution, odour, surface water drainage, or biodiversity.

6.18 Noise and flood risk are dealt with in the evidence of Mr Jephson and Mr Ellingham, on behalf of the appellant.

Air Quality

6.19 The Council has identified those areas within the District likely to be most affected by air pollution. There are two Air Quality Management Areas (AQMAs) within the Borough, which were declared because levels of NO₂ exceeded the national annual mean objective. One of these covers an area up to 50m from roadside around the M62, M6 and M56, and includes the appeal site.

6.20 The latest Air Quality Annual Status Report demonstrates that pollution levels along the M62, M6 and M56 corridor have been decreasing, and that the levels of nitrogen recorded by Council monitoring stations have been found to be consistently below the annual average objective level. The Rule 6 Party evidence seeks to suggest that the results of air monitoring at Junction 21 are not representative of conditions on the appeal site. This has failed to take into account the much greater volume of vehicles, and particularly HGVs, passing the monitoring point at Junction 21. The evidence of other monitoring points shows that, even when the prevailing winds are the same as at the appeal site, pollution levels along the M62 corridor remain well below the Air Quality Objective.

Odour

6.21 The Free Range Unit at Springfield House Farm is designed, and proven in practice, to produce negligible environmental consequences. The Rule 6 Party wrongly characterises this farm as an “intensive” poultry unit whereas it is actually an “extensive” organic egg production unit, with birds able to access fields to the west of the poultry house between 8.00am – 9.00pm (or dusk). Odours from waste accumulating within the building are contained within the immediate environment of the building.

6.22 Cleanout of the building only occurs once every 65 weeks, for a period of 1-2 days. Waste is removed via the end doors and loaded directly into waiting vehicles for disposal off-site. It is not disputed that unpleasant odours can be generated during the cleaning process, for 1 or 2 days every 65 weeks. A wind from the south, the prevailing direction in this area, would be likely to blow odours away from the appeal site on the relevant day or days. Notwithstanding this, other legitimate agricultural activities generate smells occasionally and, those living in rural areas might reasonably expect such odour from time to time.

Biodiversity Net Gain

6.23 The Enforcement Notice issued in July 2025 alleges, “*Without planning permission, the material change of use of the land to use as residential caravan site for gypsy/traveller families, with **associated** storage, siting of caravans, vehicles, machinery, laying of hardstanding and construction of buildings / sheds.*”. The requirements of the notice are to remove the

hardstanding referred to in the allegation, i.e. any hardstanding laid pursuant to the change of use, and reinstatement of the land to its original condition “**prior to the breach taking place**”. Thus, any hardstanding or buildings/structures that were on the land prior to the breach taking place, and that were not associated with the change of use to a residential caravan site, can not only remain but, because the Council has under-enforced, they are deemed to be lawful. This then establishes the baseline for calculating the pre-development biodiversity value of the land.

- 6.24 The Council’s criticisms of the accuracy of the submitted BNG Assessment are unfounded and, have no effect on the veracity of the resultant metric calculations. After permission has been granted, and the Biodiversity Gain Condition imposed, a Biodiversity Gain Plan will need to be submitted to establish how the 10% net gain is to be achieved.

Balance of Considerations

- 6.25 On balance, the unmet need for sites; the extended Smith family’s personal accommodation needs and personal circumstances; the absence of alternative sites; lack of a five-year supply; the failure of the development plan to bring forward suitable land for traveller sites in a timely manner; and compliance with the Council’s locally specific criteria, are not significantly and demonstrably outweighed by the adverse impacts alleged by the Council. Planning permission should therefore be granted in accordance with the presumption in favour of sustainable development.

7.0 LIST OF APPENDICES

Attached with the Statement of Case

Appendix PBA 1 – Aerial photographs of authorised Traveller sites

Appendix PBA 2 – GTAA 2018

Appendix PBA 3 – Appeal decision – Shawbury, Shropshire

Appendix PBA 4 – Appeal decision – Smallwood, Cheshire

Appendix PBA 5 – Noise Assessment

Appendix PBA 6 - Air Quality Annual Status Report (June 2024)

Appendix PBA 7 – Design & Access Statement for Springfield Farm

Appendix PBA 8 – Appeal decision – Gnosall, Staffordshire

Attached with this Proof of Evidence

Appendix PBA A1 – Appeal decision – Murcot Road, Childswickham

Appendix PBA A2 – Site Layout Plan with SW Flood Areas shown

Appendix PBA A3 – Appeal decision – Mill Lane, Broom

Appendix PBA A4 – Appeal decision – Henley Road, Budbrooke

Appendix PBA A5 - Air Quality Annual Status Report (June 2025)

Appendix PBA A6 - Department of Transport Road Traffic Statistics

Appendix PBA A7 – Part 1 – Bury MBC - Air Quality Annual Status Report
Part 2 – Location of Balmoral Avenue Monitoring Point
Part 3 - Traffic Flow data for M60 passing Balmoral Av.

