APPEAL REF. APP/M0655/W/25/3367247

APPENDICES TO RULE 6 PARTY STATEMENT OF CASE

(ON BEHALF OF SPRING LANE & NEW LANE RESIDENTS GROUP)

APPENDIX R6 – G

Appeals APP/K0235/C/22/3303839 AND 3303840

MATTER: APPEAL AGAINST REFUSAL OF APPLICATION 2024/00668/FUL

OUR REF: SLR01/1

DATE: OCTOBER 2025

Planning Inspectorate

Appeal Decisions

Inquiry held on 6 August 2024, 1-4 April and 7 April 2025

Site visit made on 3 April 2025

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 28 April 2025

Appeal A Ref: APP/K0235/C/22/3303840
Appeal B Ref: APP/K0235/C/22/3303839
Land known as Land South West of The Manor, Pertenhall Road, Keysoe, Bedfordshire MK44 2HR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mr Brendan Macfarlane (Appeal A) and Mr Tom Mongan (Appeal B) against an enforcement notice issued by Bedford Borough Council.
- The notice was issued on 5 July 2022.
- The breach of planning control as alleged in the notice is:
  i) Without planning permission, the material change of use of the land for the siting of 1 mobile home and 3 touring caravans for residential occupation.
  ii) The carrying out of engineering operations for the formation of a widened access and the laying of hardcore and gravel to form a driveway and standing areas forming the pitches.
  iii) The carrying out of engineering operations for the installation of a septic tank.
  iv) The carrying out of engineering operations for the erection of timber fencing with concrete kick boards and posts around the pitches.
- The requirements of the notice are to:
  i) Remove permanently all the mobile homes and caravans from the land and cease the use of the land for the stationing of the mobile homes and caravans for residential purposes.
  ii) Remove permanently from the land all the hardcore and gravel spread on the land including the access to restore the land to its former condition as agricultural /grazing land.
  iii) Remove permanently the septic tank from the land and fill the hole with earth.
  iv) Remove permanently all timber fencing, concrete kickboards, concrete posts and foundations erected on the site.
- The period for compliance with the requirements is six months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 (as amended) and Appeal B is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 (as amended). Since Appeal A has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld with a variation in the terms set out in the Formal Decisions.

Appeal C Ref: APP/K0235/W/22/3309709
Land South West of The Manor, Pertenhall Road, Keysoe, Bedfordshire MK44 2HR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Tom Mongan against the decision of Bedford Borough Council.
- The application Ref is 22/01311/S73A.

- The development proposed is change of use of land for 2 Gypsy/Traveller Pitches comprising the siting of 1 mobile home, 1 touring caravan, alongside formation of hardstanding, access, gates, and boundary treatments (Retrospective), and the proposed erection of 1 dayroom per pitch.

Summary of Decision: The appeal is dismissed.

Decisions

Decision on Appeal A

1. It is directed that the enforcement notice is varied by deletion of the word 'Six' in paragraphs 6 i), ii), iii) and iv) and substitution with the word 'Eighteen'.

2. Subject to this variation, the appeal is dismissed, and the enforcement notice is upheld.

Decision on Appeal B

3. It is directed that the enforcement notice is varied by deletion of the word 'Six' in paragraphs 6 i), ii), iii) and iv) and substitution with the word 'Eighteen'.

4. Subject to this variation, the appeal is dismissed, and the enforcement notice is upheld.

Decision on Appeal C

5. The appeal is dismissed.

Procedural and preliminary matters

6. The Inquiry opened on 6 August 2024 but had to be adjourned as one of the main party's witnesses had been taken ill. The Inquiry resumed on 1 April 2025 and we sat for 5 days. Closings were heard at a virtual session on Monday 7 April 2025. I closed the Inquiry in writing on Wednesday 9 April 2025 following the submission of final documentation.

7. The National Planning Policy Framework, December 2024 (NPPF) and the Planning Policy for Traveller Sites, December 2024 (PPTS) have been issued since the appeal was made and proofs of evidence prepared. It was agreed prior to the Inquiry that relevant changes to those documents would be addressed by the parties in giving evidence.

8. Following discussions during opening on 6 August 2024 and confirmed in my Inspector Note, dated 7 August 2024 a timetable was agreed for the appellants to respond to Mr Sibbett's ecological evidence and surveys, and for evidence in relation to surface water flood risk to be provided. Those deadlines were adhered to, and Mr Williams and Mr Quigg appeared at the Inquiry to give evidence on those matters on behalf of the appellants.

9. In response to discussions held between the Council and the appellants prior to the Inquiry opening, they agreed that evidence would not be produced on matters relating to the need and supply of Gypsy and traveller sites within the District. A signed Supplementary Statement of Common Ground (SOCG) was handed in at the Inquiry, dated 1 April 2025, which set out the parties agreed position on that issue. The Council confirmed that as a result of the changes to the PPTS in December 2024 they are no longer in a position to demonstrate a 5-year supply of deliverable pitches to meet the need in the District. The

SOCG also confirmed that there are no available alternative sites, having regard to *Doncaster MBC v FFS & Angela Smith* [2007].

10. After the notice was served and appeals lodged, Mr MacFarlane (Appeal A, Appellant) left the site. It was suggested by Mr Woods in his Proof of Evidence (PoE) that as Mr MacFarlane no longer had an interest in the Land, Appeal A would now be progressed in the interests of Mrs Dolan, his ex-partner, who remains an occupier of the Land[1]. It is the Council's case that there is no legal authority or caselaw which supports the appellants' proposition that a ground (a) appeal under section 174 of the Town and Country Planning Act, 1990 (the Act) can be transferred or assigned.

11. Confirmation by correspondence produced at the Inquiry (Documents 4 & 5) confirms that Mr MacFarlane's interest in the Land has been transferred to his ex-partner, Mrs Dolan, who remains an occupier of the Land. The correspondence also indicates that a Mr MacFarland gives authority to Mrs Dolan to continue with the appeal and the deemed planning application.

12. I appreciate that the letter of authority is undated and signed by Brendan MacFarland, as opposed to MacFarlane. However, Mr MacFarlane made a valid appeal, paid a fee for the deemed planning application, and from the evidence before me it appears that he is content for the appeal to proceed in the interest of Mrs Dolan. Moreover, I have not received any communication from him that he wishes to withdraw his appeal. That said, I am not satisfied that the correspondence received from Mr MacFarland could be said to be a legal instruction for the appeal to be transferred to Mrs Dolan, nevertheless, Mr MacFarlane's appeal remains valid. I shall deal with the appeal on that basis. Mrs Dolan remains an interested party.

Appeal A on ground (a), deemed planning application and Appeal C

Main Issues

13. The main issues are:

- the effect of the development on ecology, including protected species and biodiversity;
- the effect of the development on the character and appearance of the area, including any impact on the adjoining Public Right of Way;
- whether the occupants of the site would have reasonable access to services and facilities; and
- whether the occupants of the site would be at risk from surface water flooding.

Another matter is intentionally unauthorised development and the weight to be attached to that.

14. Other considerations, potentially weighing in favour of the development, include the need and supply of Gypsy and traveller sites, the availability (or lack) of alternative accommodation for the occupiers of the site and their other personal circumstances, including the best interests of the child.

[1] Mr Woods PoE Para 2.4.

15. Integral to my decision-making will be exercising duties under the Human Rights Act 1998. Article 8, a Convention Right[2] (ECHR), affords a person the right for their private and family life, their home and their correspondence. It is a qualified right that requires a balance between the rights of the individual and the needs of the wider community. In applying Article 8 there is a positive obligation to facilitate the Gypsy way of life to the extent that the vulnerable position of Gypsies as a minority group means that some special considerations should be given to their needs and the different lifestyles in the regulatory planning framework and in reaching decisions on particular cases. Under the Equality Act 2010, I will have regard to the public sector equality duty (PSED).

Reasons

Ecology, protected species and biodiversity

16. Expert evidence for the appellant was provided by Mr Williams, and by Mr Sibbett on behalf of the Rule 6 Party. In giving evidence Mr Williams relied on the Preliminary Ecological Appraisal (PEA) prepared in May 2022 to accompany the appellant's planning application (Appeal C), and the File Note he had produced to review the PEA, local desk study resources and other available evidence to rebut the Rule 6 case and outline why the 2022 PEA can be relied upon as an accurate baseline survey[3].

17. The PEA was prepared by a Graduate Ecologist (George Collier-Smith) employed by Arbtech and following a field survey undertaken by him on 13 May 2022, a couple of weeks before the unauthorised works took place. The report acknowledges that it only provides a preliminary view of the likelihood of protected species being present and that a biological records data search had not been undertaken. The PEA found habitats present within and adjacent to the site to include semi-improved grassland, species poor grassland, species hedgerows, scattered trees, scrub, and stream. It found a lack of ponds within 500m of the site to mean the presence of great crested newts (GCN) on site unlikely, albeit acknowledging that the grassland would provide a suitable terrestrial habitat for GCN. Presence of reptiles on the site was found to be unlikely, although again acknowledging that the grassland would provide suitable foraging and refuge opportunities for reptiles. No badger activity, including badger setts were recorded on or within 30m of the site. The banks of the stream were assessed to be too steep to be suitable for sett excavation, and the rest of the site flat and therefore also unsuitable. It was considered very unlikely that bats would be roosting within the site, that the proposed development would not result in the removal of any habitats which could be used by foraging or commuting bats and assumed that lighting would not be used during the development.

18. In July 2022, local residents in response to a consultation on the planning application now the subject of Appeal C, advised that there were currently two badger sett entrances in recent use within the banks of the stream adjoining the site and numerous bat roosts in adjacent trees. Attention was also drawn within those responses to two ponds within 120m of the appeal site, one of

[2] Article 8 of the European Convention on Human Rights, enshrined into UK law by the Human Rights Act 1998.
[3] File Note prepared by Craig Williams, Arbtech, dated 18 October 2024.

which had evidence of GCN within it. Concerns were raised over the accuracy of the PEA[4].

19. In response to the appellants lodging the appeals, MK44 2HR Residents Group acquired Rule 6 status and advised in their statement of case (R6SOC) that they had employed a specialist ecologist to conduct surveys in relation to protected species and to provide evidence at the Inquiry on matters of ecology, protected species and biodiversity[5].

20. The appellants did not engage with the Rule 6 concerns until after Mr Sibbett's proof of evidence/surveys had been submitted and at the start of the Inquiry in August 2024. However, on the basis that the Inquiry at that time had to be adjourned for other reasons, I was keen to ensure that the appellants had an opportunity to engage with the evidence submitted and provided them with an opportunity to provide a rebuttal. Mr Williams produced his File Note for that purpose[3]. However, on cross examination Mr Williams confirmed that when preparing that File Note he was only aware of the R6SOC and had not had sight of Mr Sibbett's proof of evidence nor his surveys. Mr Williams also confirmed that Arbtech had not been provided with copies of any of the consultation responses from neighbouring residents, including those on behalf of Bedford Badger Group. Furthermore, he had not visited the appeal site, either before producing the File Note nor before attending the Inquiry.

21. Mr Sibbett sets out in his proof of evidence why he considers the appellants' PEA to be inconsistent with the industry guidelines and standards which the PEA purports to have been undertaken with due consideration to. In particular, defects identified include: omission of a desk study, habitat survey unreliable, uncertainty not addressed by recommending further surveys; did not identify or investigate nearby ponds containing GCN, did not report on limitations such as not assessing the proposed development and an assumption about external lighting which was incorrect; and did not use standard methodology or geographical context for impact assessment. In Mr Sibbett's opinion the PEA does not meet the minimum standards for a satisfactory report.

22. When Mr Williams was asked in cross examination if, now having been made aware of the surveys and evidence produced by Mr Sibbett, he stood by his File Note which concluded the PEA can be relied upon. Mr Williams accepted that that was no longer the case, and that in relation to the conclusions on badgers and GCN, the PEA was factually incorrect.

23. To try to understand the baseline habitats, and species present or potentially present, Mr Sibbett's company carried out their own post development habitat survey on the adjacent road verge and land to the north and northeast of the appeal site. He viewed the site from the public road and land to the north of the site, carried out surveys for GCN, reptiles and badgers and made a request for data from Bedford and Luton Biodiversity Monitoring and Recording Centre.

24. Mr Sibbett concludes, and from the evidence before me, including what I heard at the Inquiry, I am satisfied that as far as a baseline can be established:

[4] Appeal Questionnaire, APP/K0235/W/22/3309709
[5] Statement of Case, Rule 6 Part, dated February 2023.

- the site comprised grassland and associated scrub which should be valued at the Parish scale of importance;
- the site provided suitable terrestrial habitat for GCN, and having established that GCN were present in the two ponds in the vicinity of the site there is a reasonable likelihood that GCN were present on the development site at the time of construction;
- the 2023 survey found four well established badger setts excavated into the stream bank in the vicinity of the unauthorised development. The site visit undertaken during the Inquiry also found a recently excavated badger set on the appeal site.
- the site would be used by bats for foraging and commuting. The stream corridor would be an important commuting route and foraging resource. The site boundary hedges and trees provide a good commuting and foraging resource and connects to the wider landscape containing such features. Grassland acts as a source of flying insects which bats eat.
- the site provided suitable terrestrial habitat for reptiles but did not follow this up with a reptile survey. Thus, it remains unknown if reptiles were present or absent at the time the unauthorised development took place.

25. At the Inquiry the appellant introduced, with the consent of the parties, a video showing the appeal site two days after he had acquired the Land in October 2021. The video showed the land closely grazed and evidence that there had been a recent bonfire on the Land. There is no dispute that prior to the appellants' purchase of the Land it had been used for grazing of horses, and the Rule 6 Party explained through their expert planning witness that some of them had tenanted the Land prior to its sale in auction. They accepted that when the Land was, or had recently been grazed, it would have the appearance indicated on the video. However, throughout their tenancy they had grazed the Land for only two three-week periods per year, rotating their horse grazing with other grazing land to ensure good grazing conditions were maintained throughout. They confirmed that the general appearance of the Land during their tenancy was as it appears on the photograph within the auction catalogue, and the photographs which form part of Table 3 of the PEA. Those photographs show lush pasture and wildflowers.

26. In terms of the impact of the unauthorised development:

- loss of around one-third of the grassland which Mr Sibbett concludes is moderate harm at the Parish scale;
- there is a reasonable likelihood of GCN being killed or injured during the construction (GCN are European Protected Species[6]);
- there is no credible evidence before the Inquiry to enable an understanding of impact on badger sets in the construction zone. The level of harm which has been caused is thus unknown. However, badgers are disturbed by light and noise which is now evident on the site with a generator operating and external lighting in place. Mr Sibbett confirmed

[6] Conservation of Habitats and Species Regulations 2017 (as amended)

in evidence that he had revisited the site following the surveys and File Note and the main badger sett had been abandoned. However, a recent visit before the Inquiry showed evidence that this set was now being used again as an outlier sett. His view was that if the appeal were to be dismissed and the site vacated, then in all likelihood the badgers would return and utilise it again as a main sett. Thus, whilst the appeal site is in use there is permanent harm;

- loss of grassland and lighting has impacted on bat foraging. Because no bat surveys were carried out as part of the PEA it is not possible to understand the impact on bats which has been caused. There is reasonable likelihood of harm by external lighting.
- if reptiles had been present on the Land they would have been killed or injured during construction works. There is also loss of foraging habitat.

27. Paragraph 187 of the NPPF advises that planning policies and decision should contribute and enhance the natural and local environment by, amongst other things, minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures and incorporating features which support priority or threatened species such as swifts, bats and hedgehogs.

28. Paragraph 193 of the NPPF requires local planning authorities in determining planning applications to apply a number of principles which include:

a) If significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;

29. Consistent with the NPPF, Policy 42S of the Bedford Local Plan 2030, adopted January 2020 (LP), requires *'planning applications for development to assess the impact of the proposal on the biodiversity and geodiversity value of the site and its surroundings. This should be carried out by a suitably qualified professional in accordance with industry standards…..development should be designed to prevent any adverse impact on locally important sites, species and habitats of principal importance contained within the Natural Environment and Rural Communities (NERC) Act 2006. However, in these circumstances where an adverse impact is unavoidable, the application shall demonstrate how the harm will be reduced through appropriate mitigation. Where protected species or priority habitats of principal importance are adversely affected, the application will need to demonstrate how the proposed mitigation will reduce the adverse effects. If adequate mitigation is not possible, the application will need to demonstrate that the overriding reasons outweigh the impacts on the biodiversity and geodiversity of the borough otherwise the development will be refused…'* Policy 43 of the LP advises that *'development proposals should provide a net increase in biodiversity….'*

30. Mr Williams on behalf of the appellant accepted at the Inquiry that the PEA did not meet the industry standards and is unreliable. In addition, neither in drawing up the proposed development the subject of Appeal C, nor in carrying out the unauthorised development, was there any attempt to minimise impacts on biodiversity. Thus, there is clear conflict with Policy 42S of the LP and 187 of the NPPF.

31. Furthermore, I am persuaded by Mr Sibbett's assessment of the harm from this development as significant in relation to grassland of value and significant in respect of protected species (GCN, badgers and bats).

32. During the Inquiry the appellants first advanced that mitigation could be provided in the form of an ecological enhancement scheme on the undeveloped part of the site. On the final day of the Inquiry the appellant suggested a couple of conditions to require the submission and approval of a lighting scheme and a biodiversity enhancement scheme (BES). The paddock to the northeast of the public right of way which dissects the appeal site is currently used to keep Mr Mongan's ponies. It is this part of the site that the appellants suggest could provide a BES.

33. The requirement for a lighting scheme is necessary to prevent harm to bats whose commuting routes are affected by light nuisance. It was accepted by both experts that in this case it is necessary to provide a five metre wide dark buffer between the adjoining stream and hedgerow boundaries to the north and southwest of the development. It was clear from observations on my site visit that existing development on site does not make such provision, with development within 3m of the stream and hedgerows. However, the deemed planning application would be the subject of a site development scheme, and considering the number of static (1) and touring caravans (2) which would be part of that scheme, I am satisfied that there is sufficient space within the developed area to provide a 5m wide dark buffer. However, the proposed development the subject of Appeal C would include two static homes, two touring caravans and two day rooms. Thus, considering the amount of development proposed and layout submitted there is less scope and certainty that a 5m wide buffer could be provided.

34. In the absence of detailed proposals and considering that the PEA undertaken is unreliable, thus providing no baseline for which a BES could be measured, I am not persuaded that adequate mitigation would be achieved. Mr Cottle in closings suggests that the paddock will not just return to how it was prior to the development taking place, but there will be 'designed in enhancement measures'. However, despite concerns over ecological damage to the Land being raised back in July 2022, when the planning application was first made, the appellants have not provided any substantial evidence as part of their appeal to demonstrate that adequate mitigation and/or enhancements could be provided. I am also mindful that utilising the paddock for the grazing of the appellant's ponies is integral to his Gypsy way of life and his mental wellbeing. Mr Mongan was clearly unaware before the Inquiry that he might have to remove the ponies from the Land. There is no certainty that alternative arrangements could be provided for the ponies. Nevertheless, even if alternative provision could be made, I conclude that the development would be harmful to ecology, including protected species, contrary to Policies 42S, 43 and of the LP and paragraphs 187 and 193 of the NPPF, the aims of which are set out above. I attached significant weight to this harm, but some of the harm can be undone if permission is refused.

Character and appearance of the area, including any impact on the adjoining Public Right of Way

35. The appeal site comprises 0.5ha of land located northeast of the settlement of Brook End in a rural area. The site comprises grassland, surrounded by

mature native hedgerows and trees, and a stream adjoins its northern boundary. There is an existing field access from Pertenhall Road in the southern corner of the site and a public footpath (PROW35) dissects the site, traversing from the field gate in a northerly direction through a latch gate adjacent to the stream, and then crossing it via stepping stones.

36. Access to the site is from Pertenhall Road (B660). A hard surfaced track has been formed, as part of the unauthorised development, to provide vehicular access into and through the site. This has been laid to run parallel to and immediately to the west of PROW35. The land to the west of the track has been laid with hardcore, enclosed by approximately 1.8m high closed boarded fences and gates, and laid out as two traveller pitches. At the time of my site visit the southerly pitch had a single touring caravan on it and the northerly pitch a static/mobile home. The deemed planning permission is for one mobile home and three tourers. A cesspit has also been installed. The proposal (Appeal C) is for two pitches, each comprising a mobile home, a tourer and a day room. The proposed site layout indicates that the access track would be bordered with new hedgerow planting and the existing close boarded fencing would be replaced with post and rail fences. The remainder of the site, which lies predominantly to the east of PROW35, is shown as retained grassland and currently used to graze the appellant's ponies.

37. Policy 37 of the LP relates to landscape character and advises that development should protect and enhance key landscape features and visual sensitivities of the landscape character areas identified in the Bedford Borough Landscape Character Assessment, May 2014 (BLCA). It requires proposals to, amongst other things, protect and enhance the character and qualities of local landscape through appropriate design and managements. Local Plan Policy 7S is consistent with paragraph 187 b) of the NPPF and requires all development in the countryside to recognise its intrinsic character and beauty. It further advises that development should not give rise to other impacts that would adversely affect the use and enjoyment of the countryside by others. Policies 28S and 29 of the LP are consistent with the National Design Guide, Jan 2021, in requiring development to be of a high-quality design and contribute positively to the area's character and identity; integrating well with and complementing the character of the area.

38. Criteria (vii) and (viii) of Policy 63 of the LP seek to ensure that proposals for Travellers sites on unallocated land in the countryside would not have, (vii) an unacceptable adverse impact on the amenity of the surrounding land uses, the countryside and landscape impact, village character, historic environment or biodiversity interests or from traffic generated; and (viii) the site location would not have an unacceptable adverse impact on the effectiveness and amenity of existing or proposed public rights of way. This policy is consistent with paragraph 135 (c) of the NPPF which seeks to ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).

39. The appellant appointed a Chartered Landscape Architect, Mr Petrow, to prepare evidence in support of their case and represent them on matters relating to landscape and visual effects on the countryside, effect on adjacent dwellings and effect on PROW35, open spaces and rights of way. Mr Petrow has carried out an independent appraisal of the appeal site, its landscape

value and visual impacts, based on the Guidelines for Landscape and Visual Impact Assessment, Third Edition 2013 (GLVIA3) prepared by the LI/Institute of Environmental Management and Assessment. GLVIA3 is the key guidance when assessing landscape and visual impacts.

40. In terms of Natural England's National Landscape Character Assessment, the site lies within the Bedfordshire and Cambridgeshire Clayland's. At the local level the BLCA identified the site as being located within the 1B Riseley Clay Farmland landscape character area. Some of the key characteristics of the Riseley Clay Farmland BLCA include:

- a rural, peaceful area with a remote feel.
- dominated by arable farmland with some scattered woodlands and smaller horse paddocks near settlements.
- varied field patterns with small to medium fields around villages plus open areas of larger geometric fields bounded by hedgerows, fences and ditches.
- scattered woods give variety to distant views and include some ancient woodlands of high biodiversity interests including Swineshead Wood SSSI.
- dispersed settlement, low but even density, consists of scattered farmsteads and villages, many made use of loose knit small groups of buildings known as 'ends'.
- consistent network of footpaths, bridleways and green lanes with the Three Shires Way crossing the northwest of the area.
- views are generally distant over the subtly undulating open farmland with blocks of woodland and the wind turbines visible on the skyline.

41. The appeal site is located in the countryside, and it is common ground that it does not form part of a valued landscape. Nevertheless, in accordance with national policy, all development should recognise the intrinsic character and beauty of the countryside. I agree with Mr Hickling[7] that the appeal site is representative of the BLCA assessment as it is:

- within a rural, peaceful area with a remote feel;
- dominated by arable farmland with some scattered woodlands;
- part of a varied field pattern of small to medium fields around villages;
- part of a dispersed low-density settlement with scattered farmsteads and villages made up of loose knit small groups of buildings known as 'ends'; and
- forms part of a network of footpath and bridleways.

42. Mr Petrow further refined the broad scale BLCA by carrying out a locally based LCA to identify the distinct landscapes within the study area which is defined by a 1km radius from the development site. His assessment largely agrees with the BLCA and identified four distinct landscape zones: 1) Solar Farm; 2) Clay Farmed Large-Scale Landscape; 3) Clay Farmed Small-Scale Landscape; and 4) Rural Settlement. He locates the appeal site within Landscape

[7] Paragraph 8.26 Rule 6 Proof of Evidence, FH.

Character Zone 3: Clay Farmed Small-Scale Landscape and identified the following key characteristics associated with it:

- small-medium scale fields located adjacent to settlement area with small-built form – mainly dwellings or farmsteads- forming the backdrop;
- fields bounded by trees and hedgerows in mainly good condition, often associated with ditches and streams;
- land use varies from paddocks and equestrian use to a meadow containing native flowers, noted immediately north of the appeal site;
- a few remnant apple trees may indicate that land was previously used as orchards or smaller scale food growing;
- short distance views and generally a more intimate landscape than the large-scale farmland of Zone 2; and
- located in the countryside.

The zone is rated as having overall **Medium – High Value and Medium – High Landscape Sensitivity**.

43. In the context of the landscape baseline of the site itself, Mr Petrow considers the development will have a **Minor-Adverse** effect on landscape character. He accepted during cross examination that 'adverse impacts' mean harm. Mr Petrow recognises that the built form results in a slight deterioration to the landscape character but considers that this deterioration is limited to the site itself. He considers that the proposed landscaping will assist in enhancing and strengthening the character and distinctiveness of the landscape and the provision of buffer areas and appropriate protection would ensure that the existing physical features can be maintained.

44. A visual appraisal has also been undertaken by Mr Petrow to assist in the understanding of how the development would affect views to people and their visual amenity. The assessment was undertaken by Mr Petrow in June 2024. He acknowledges in his proof of evidence that the site visits were carried out when deciduous planting was in full leaf and the screening afforded by them was substantial. It was a "summer" assessment, and he accepted in cross examination that GLVIA is clear that an LVIA should be based on worst-case scenario in winter. That said, despite having the opportunity to reassess the site during the winter of 2024/2025 prior to the Inquiry re-opening, Mr Petrow had not re-visited the site during the winter months, stating that he had not been instructed to do so. His conclusions are therefore under-stated on effects by incorporating the best-case position (summer) conditions into his conclusions.

45. The Council and Rule 6's primary concerns relate to the impact the development would have on the intrinsic character and beauty of the countryside, including local character and landscape setting, and on the effectiveness and amenity of existing public rights of way (particularly PROW35 which passes through the appeal site). It is generally accepted by all the main parties that the primary visual receptors are PROW35 and Pertenhall Road, and that users of PROW35 are categorised as highly sensitive within the terms of

the LVIA[8]. Table 14 of Mr Petrow's LVIA provides a summary of the visual effects, concluding:

46.

Visual Receptor	**Significance** Major, Moderate, Minor or neutral	**Construction phase magnitude of visual change**	**Year 1 magnitude of visual change**	**Year 15 magnitude of visual change**
PROW35	Moderate/Minor Adverse	Moderate Adverse. Built form clearly visible when passing on Footpath 35	Moderate Adverse. Built form clearly visible when passing on Footpath 35	Minor Adverse. Once the proposed buffer native hedgerow planting is established, the walker will have filtered views of the built form.
Pertenhall Road	Minor Adverse	Minor Adverse. Site entrance and built form beyond visible from Pertenhall Road	Minor Adverse. Site entrance and built form beyond visible from Pertenhall Road	Minor Adverse. Site entrance and built form beyond partially visible from Pertenhall Road once proposed buffer planting within the site is established.

47. Mr Petrow's observations in relation to his conclusions note that in winter months there will be filtered views of the development from Pertenhall Road, and similarly when travelling along PROW35 from the north towards the stream and the appeal site. The development is not visible when the vegetation is in full leaf, but there may be filtered views from this point during the winter months. He also notes that a walker travelling on PROW35 would pass the built form within the site for approximately 60 secs[9].

48. During cross examination and having regard to Mr Petrow's own matrix utilised in his assessment of visual effects[10], Mr Grant, for the Rule 6 Party, questioned

[8] Table 7: Visual Receptor Sensitivity, LIVIA, June 2024.
[9] Notes, Table 14 LIVIA, June 2024.
[10] Table 9, LIVIA, June 2024.

Mr Petrow's assessment of the magnitude of change in relation to PROW35 as a visual receptor. Mr Petrow accepted that he had incorrectly stated the level of significance in Table 14 and should have recorded **Moderate/Major in Year 1 and Minor to Moderate in Year 15.** A major significance would result from a high magnitude of visual effects, described in Table 8 of the LVIA as substantial, obvious, loss of or addition of features to the view, draws the eye, and are not commonplace in the view.

49. Mr Hickling on behalf of the Rule 6 Party carried out his own assessment of the visual effects. Acknowledging that he is not a landscape architect, his assessment was undertaken applying his extensive experience as a professional planner and following visits to the site in June 2024. He assesses the impact from a number of views[11], and considers winter conditions and possible mitigation. He concludes that the development has a significant detrimental effect on the experience and enjoyment of PROW35 which cannot be mitigated due to the site's direct effect on the PROW. He also finds moderate harm from Pertenhall Road when passing the site entrance. That harm would increase to significant when the leaves are off the trees and light spillage from the caravans and external lighting will be particularly evident.

50. Mr Hughes on behalf of the Council, also an experienced professional planner, considers the proposal would have an unacceptable adverse impact on the countryside and landscape character and an unacceptable impact on the effectiveness and amenity of the public rights of way network. The proposals are not well designed, fail to have regard to their context and will not enhance positive features and improve negative ones[12]. He confirmed when cross examined by Mr Cottle that he considered there to be significant harm at the upper end of the scale, and he does not consider that the harm could be mitigated, or the development integrated into the countryside and landscape.

51. The appeal site is situated outside of the settlement of Brook End, forms part of an area of tranquil pastoral land and makes a significant contribution to the intactness and tranquillity of the rural landscape. It is clear from aerial views of the site[13], and consultations from the public in response to the appellant's planning application, that PROW35 is a well-used footpath, connecting to a wider network of rights of ways. Whilst I accept that crossing the stream can be 'tricky', the stepping stones add interest to the right of way. From the evidence before me, prior to the unauthorised development taking place, the character and appearance of the appeal site made a positive contribution to the enjoyment and use of PROW35.

52. The development that has taken place, including extensive hard surfacing, gates, fencing, lighting and siting of a mobile home and touring caravans have a strong and detracting impact on the landscape character. That adverse impact would be reinforced by the introduction of an additional mobile home and the day rooms proposed in Appeal C. I recognise that caravan sites are a form of development that often appear in the countryside, and the PPTS makes it clear that such sites for Gypsy and travellers can be acceptable in the countryside. However, the scale and form of development that has taken place has a significant urbanising effect on the rural character of the appeal site. Whilst I accept that the impact is localised, in the context of the site's intimate

[11] Figure 15, POE, FH, July 2024.
[12] Paragraphs 6.3 – 6.46 POE Mr P Hughes on behalf of Bedford Borough Council.
[13] Figure 12 POE, FH, July 2024.

bucolic setting, the harm is strengthened. The visual impact of the development on users of PROW35 is a significant detractor, and to my mind the harm is not diminished just because it is only experienced for a short duration. In my view there would be a high magnitude of visual effects, the development is substantial, obvious, draws the eye, and is not commonplace in the view. The impact would therefore be major/adverse.

53. There is also harm to the views from Pertenhall Road, in particular from the site entrance. Having regard to the deciduous planting along the roadside boundary, I also anticipate that the development will be more visible during the winter months to passing vehicles. The impact on this receptor would be minor/adverse.

54. The proposed development, and that the subject of the deemed application, would replace the existing close boarded fencing and gates with post and rail fences and provide hedgerow planting along either side of the access track. Whilst the replacement fencing would have a less stark appearance, the large mobile homes, tourers, parked vehicles, extensive hard surfacing, sheds, and residential paraphernalia would be more visible, at least until the hedgerows have established, a significant number of years in the future. Even with new established hedgerows, the development as a whole would remain a visually intrusive form of development in this deeply rural setting. Furthermore, the planting of hedgerows alongside the PROW would further fragment the appeal site and detract from the spatial character of the field.

55. I have had regard to the appellant's case that the removal of the pony grazing from the Land would improve the quality of the pasture and visual appearance of the appeal site. Whilst I appreciate that the keeping of the appellant's ponies on the Land results in intensive grazing, their removal alone would not outweigh the harm I have found to the character and appearance of the area, and enjoyment of PROW35.

56. For the reasons given above, I conclude that the development conflicts with Policies 37, 7S, 28S, 20 and 63 (vii) and (viii) of the LP, the aims of which are set out above. There would also be conflict with paragraphs 135 (c) and 187 (b) of the NPPF. The significant adverse impact of the development that has taken place, and of that proposed does not recognise the intrinsic character or beauty of the countryside, which has been established in case law means 'protect'. There would thus be conflict with national policy. The harm to the character and appearance of the countryside is unacceptable, significant and carries substantial weight.

Access to services and facilities

57. Policy 63 of the LP advises that planning permission for Gypsy, traveller and Travelling Showpeople sites on unallocated land in the countryside will be granted where, amongst other criteria, adequate schools, shops and other community facilities are within reasonable travelling distance and preferably can be reached safely by foot, cycle or public transport.

58. The appellant accepts that by use of the words 'reasonable' and 'preferably', Policy 63 recognises that Gypsies and travellers do not have the same sustainability requirements as would be required for housing for the settled population. The nomadic lifestyle of Gypsies and travellers involves the use of the private vehicle irrespective of location, and thus whilst travelling, the same

opportunities for using public transport do not apply. Furthermore, regard should be had to paragraph 13 of the PPTS which advises that local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally and seeks to promote access to health services and schools and to provide a settled base to reduce the need for long distance travel.

59. It is the appellant's case that whilst the site occupiers in this case may be reliant on private vehicles to access services and facilities, on a day-to-day basis those journeys are not long ones and are within a reasonable distance. The NPPF and PPTS recognise that opportunities to maximise sustainable transport solutions will vary between urban and rural areas and that this is particularly important when considering the context of Gypsy and traveller sites. Mr Woods also provided a significant number of other Inspector's decisions within his appendices which he believes support his case that sustainability of a Gypsy and traveller site needs to be given careful consideration. In giving evidence, attention was drawn to Appendices 2 & 4 of Mr Woods PoE, which provide copies of Inspector's decisions in relation to traveller sites in Bedford. The appellants consider those decisions to be comparable to this site in terms of access to services and facilities[14]. I shall consider these later in my decision.

60. On the other hand, the Council and Rule 6 Party contend that the site is not well located either functionally or spatially to a sustainable settlement and does not have reasonable access to services and facilities. Having regard to the limited bus service available, they do not consider that the site offers a genuine choice of transport modes. Furthermore, Paragraph 26 of the PPTS states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Bedford's Settlement Hierarchy Addendum, April 2022[15], produced as part of the evidence base for the Bedford Borough Local Plan 2040, assesses the sustainability of all the settlements in the Borough. Keysoe and Brook End scored only 4 points in that assessment, with the highest scoring settlement scoring 92. Keysoe and Brook End is rated as a Group 4 Settlement and is ranked joint 59th, with only two other settlements achieving lower scores. The Rule 6 Party consider this evidence supports their view that the appeal site is not sustainably located and has poor access to services and facilities.

61. The agreed Statement of Common Ground (SOCG) between the appellants and the Rule 6 Party, dated July 2024, sets out agreed distances from the appeal site to key services and facilities. The nearest local shop is in Riseley, 4.9km from the site and the nearest doctors and dentists in Kimbolton, 7km from the site. There is a pre-school and primary school in Kymbrook, 2.6km away and the nearest secondary school is Sharnbrook Academy 13.9km away. There is a bus stop 300m from the site which provides a daily, but limited bus service, to Bedford. The bus journey time is 45mins.

62. Considering Braintree[16], I accept that the appeal site is not isolated. It does not lie within the settlement of Brook End, however, it is not physically or functionally remote from it. Nevertheless, Brook End and Keysoe have limited

[14] APP/K0235/W/21/3268247 & APP/K0235/W/19/3243608
[15] Appendix 6, POE, PH, June 2024.
[16] *Braintree DC v SOSCLG* [2018] 2P.& C.R.9

services and facilities, albeit I am mindful that paragraph 83 of the NPPF acknowledges that where there are groups of smaller settlements, development in one village may support services in a village nearby. Nevertheless, having had regard to the distances set out in the SOCG, as a matter of judgement, I conclude that the appeal site is not within reasonable travelling distance of key services and facilities. The nearest hospitals and supermarkets are some 19km away in Bedford, which in a private vehicle is at least 25minutes drive. A bus service is available, but this would increase the journey time to 45 minutes to Bedford. Having regard to the distances to the nearest convenience stores, it was common ground that these would be accessed by a motor vehicle. In this rural location, away from sustainable settlements there is limited choice of transport options available to the site occupiers.

63. I recognise that when the appellant's son is old enough to attend the nearest primary school, a school bus is available to provide transport. However, considering the evidence before me, there will be other sites in rural areas which have better access to services on foot or by other sustainable modes of transport. I am also mindful that Brook End and Keysoe are very small settlements, and in terms of community facilities, Brook End only has a Public House with limited opening hours. There are thus very few opportunities for the site residents to integrate into the community, which is small.

64. The Inspector's decisions referred to in Appendices 2 & 4 of Mr Woods' proof were both much closer to Bedford and journey times were much shorter to key services and facilities. In addition, they were much more closely linked to the strategic road network than the appeal site in this case, which is important for work and travelling, and part of the Gypsy lifestyle. I therefore give those decisions limited weight as they are not directly comparable.

65. I have had regard to a decision made by the Council in relation to a proposed new dwelling in Keysoe, which the Council approved[17]. It is the appellants' case that if Keysoe was considered sustainable for a new house for the settled population, then the same consideration should apply for travellers. Mr Hughes stated in cross examination that he believed it was remiss of the Council not to have addressed proximity to services and facilities in the Officer Report. That said, I am also mindful that the new dwelling proposed in that case was within the built framework of the settlement, and Policy 6 of the LP makes provision for development within small settlements where the proposal contributes to the character of the settlement and is appropriate to the structure, form, character and size of the settlement as a whole. The case is not therefore directly comparable to this appeal, where the development is outside of the built framework of the settlement.

66. For the reasons given above there is conflict with Policy 63 (ii) of the LP and Paragraph 26 of the PPTS. I also find conflict with paragraph 115 of the NPPF which seeks to ensure that sustainable transport modes are prioritised when considering the location of a development. I acknowledge that the provision of a settled base could limit journeys for work, whilst enabling access to health and education for the appellant and the site residents in line with PPTS paragraphs 4 and 13. These are material considerations, notwithstanding the conflict with the development plan, PPTS paragraph 26 and paragraph 115 of

[17] Appendix 1, POE Mr Woods

the NPPF. I therefore attach moderate weight to the harm arising from the absence of services and facilities within a reasonable travelling distance from the site.

Flood Risk

67. In response to initial concerns raised by the Council regarding possible risk to the site from surface water flooding, the appellant submitted a Flood Risk Assessment (FRA)[18]. The site is in Flood Zone 1. However, surface water flood risk was identified across areas of the site, with potential risk during extreme rainfall events. The site-specific assessment undertaken, using advanced modelling techniques and the latest terrain-ground levels, provided a more accurate flood risk picture than the Environment Agency (EA) maps at that time, and suggested that the site is less exposed to surface water flooding than previously suggested by the mapping. The FRA suggested that the development could integrate Sustainable Drainage Systems, including permeable paving and basins to manage surface water. Raised finished floor levels for the mobile homes and day rooms would ensure that all buildings remain flood free during extreme weather events.

68. Mr Quigg, of Flume, attended the Inquiry and presented a Note setting out the current position[19]. In summary, the Note advised that on 25 March 2025 the EA released updated surface water flood maps (NaFRA2) which now represent the most up-to-date, EA approved, data set available for flood risk assessments. The updated flood risk evidence aligns with the site-specific modelling carried out by Flume, which identified only shallow depths of surface water flooding, and which are shown to be well outside of the developed area.

69. In response to my request, the Council's Lead Local Flood Authority Officer subsequently reviewed Mr Quigg's Note and the updated EA maps. On the basis of the updated mapping, he is satisfied that the development already carried out, including access and egress, are safe from surface water flood risk and mitigation measures previously suggested in the FRA. Further land raising, elevated floor levels and flood basins are therefore no longer necessary.

70. I conclude that the development is not at risk from surface water flooding and there is no conflict with the NPPF nor with Policy 92 of the LP which seek to ensure that new development is safe from flood risk from any source for its lifetime.

Intentional Unauthorised Development

71. A Written Ministerial Statement (WMS) dating from August 2015 established that Intentional Unauthorised Development (IUD) is a material consideration to be weighed in the determination of planning applications and appeals. The WMS relates to all forms of development not just relating to Gypsy and traveller sites. It places particular emphasis on IUD in the Green Belt.

72. There is no dispute between the parties that IUD has taken place. The disagreement lies in how much weight should be attached to it. Mr Woods contends that having regard to established case law, enforcement procedure is intended to be remedial rather than punitive. Furthermore, it has been held

[18] Flood Risk Assessment, Flume Consulting Engineers, October 2024.
[19] Document 3 submitted at the Inquiry.

that a grant of retrospective planning permission is not inherently unlawful, although this should not afford an advantage[20]. It is Mr Woods' case that the works undertaken are easily removeable and as the appellant did apply for planning permission prior to undertaking the works, he clearly did not intend for the development to remain unauthorised. There is therefore an opportunity, if necessary, to impose conditions on any permission granted. The impacts are considered by Mr Woods to be negligible and whatever weight is attributed to the IUD, he believes that it should not be determinative. It was his view in cross examination that the appellants had gained no advantage from the unauthorised works. In closings, Mr Cottle also advanced that extenuating circumstances, such as Mr Mongan's untenable previous living arrangements in St Albans, should justify giving IUD limited weight. He made reference to an Inspector's decision whereby a similar view had been taken, however, that decision was not before me.

73. It is understood that the appellants purchased the Land in October 2021. Mr Mongan confirmed in cross examination that he took planning advice from a number of people prior to the purchase, and Mr Woods confirmed that he had been contacted prior to the purchase and also advised on the likelihood of gaining planning permission on the site. Mr Woods also confirmed in cross examination that he had advised there would be landscape harm, that ecology and arboriculture reports would be required, and that the development would cause harm to the countryside. Mr Woods said he made it clear that carrying out works without planning permission would "count against the appellants". Mr Mongan was thus clearly aware that he would require planning permission. Sometime in late April/early May 2022, ecologists and arboriculturists were commissioned to undertake reports.

74. Late in the day on Wednesday 1 June 2022, after the Council Offices had closed, and on the eve of the extended Jubilee Bank Holiday weekend, a planning application was submitted for development of the Land. The following morning eight large lorries arrived and deposited hardcore, the entrance to the field levelled and by Thursday lunchtime four caravans had arrived and were sited on the Land. When the Council's Traveller Officer visited the site, on the request of the Parish Council, it is understood that he was advised by the appellants that they had planning permission, and he was shown a document purporting to support that claim. However, at that time the Officer was unable to certify if the document was genuine. Mr Mongan told the Inquiry that he recalls having the layout that formed part of the application submitted by WPS Planning the night before, because he wanted to lay out the site as proposed in that application. A temporary stop notice was served on Tuesday 8 June, after the Bank Holiday, by which time all the works to develop the site and station the caravans had been undertaken. No further operational development has taken place since.

75. As set out above, the appellants knew that planning permission was required, substantial works were carried out to facilitate the occupation, and those works were undertaken during a Bank Holiday weekend. It was not in my judgement a coincidence that the works were undertaken the day after the planning application was submitted and at the start of a Bank Holiday weekend when the Council Offices were closed and thus staff resources scarce. The occupation was clearly planned and executed.

[20] *Ardagh Glass v Chester CC & Quinn Glass* [2009] EWHC 745 (Admin).

76. I recognise that the 1990 Act, as amended, makes provision for a grant of retrospective planning permission, and planning enforcement action is remedial rather than punitive. However, part of the underlying reason for seeking to deter IUD is to avoid prejudicing the opportunity to mitigate the impact of the development through the use of planning conditions. I appreciate that a PEA was undertaken prior to the incursion taking place, and no further survey work or licences were recommended in that report. However, the PEA is now recognised by all parties as not being robust, and failings only became apparent during the application and consultation process, which occurred after the incursion took place. No mitigation could thus be considered as part of the application process in relation to bats, GCN, badgers or reptiles, and I found that it is more than likely that there has been some irreversible harm to those protected species. Other harms, though reversible, have endured for some considerable time.

77. I have had regard to *South Bucks DC v Porter No 2 [2002] 1 WLR 1953 & 45-56 & 49* and to *Zoumbas v Secretary of State for the Home Office [2013] 1 WLR 3690.* I understand the personal circumstances surrounding Mr Mongan and his extended family, and concerns for their mental wellbeing and safety, meant that continuing to reside on the St Alban's site was becoming untenable. However, I am also mindful that there was a six month period after the appellants had acquired the site and before the incursion took place. During that time, despite the urgency to move from the St Alban's site, a planning application had not been progressed, although Mr Mongan clearly knew he needed to gain planning permission before moving onto the site. Mr Mongan stated in cross examination that he did not have the funds available at that time, which I recognise. I also accept that attempts have been made to regularise the situation with the deemed planning application and s78 application. However, in all the circumstances, including the implications for ecology, and notwithstanding that the site is not within the Green Belt, I conclude that the fact that this was IUD should carry at least moderate weight against this appeal. The personal circumstances of the family would carry weight in favour of the appeal on their own accord, and as I found in a previous case in Market Harborough[21], I am not convinced that this should reduce the weight attached to IUD, particularly having regard to the timing of events set out above.

78. I recognise that in the Market Harborough appeal, and the Loddington appeal[22], harm found to non-heritage assets was found to be irreversible. However, in this case I have also found there to have been more than likely irreversible impacts on protected species, including GCN. In any event, the circumstances of IUD are site and case specific, and therefore the planning judgement I have made in this case takes account of all the circumstances surrounding the incursion.

Personal circumstances of the occupiers, including the best interests of any children, all in the context of Human Rights considerations and the Public Sector Equality Duty (PSED)

79. I heard at the Inquiry and the Witness Statement provided by Mr Mongan, confirms that the site would provide a permanent base for his family, including his wife, young child, and his mother-in-law. Prior to moving onto the site Mr

[21] APP/U2805/W/21/3275791
[22] APP/L2820/C/19/3240989

Mongan and his wife had previously resided on a public site in St Albans. However, and as confirmed by a Council Officer responsible for that Gypsy site, due to personal circumstances, resulting in intimidation and threats of violence, continuing to reside on the St Alban's site was untenable for the family. The appeal site provides space for Mr Mongan to graze his horses and attend to their welfare and he told the Inquiry that since occupying the site, the family feel safe. The family still travel to fairs to trade horses and carts, and Mr Mongan also carries out general building work and gardening when he is well and able to do so. He made it clear that he cannot live in bricks and mortar, as that is not his way of life, or heritage as a traveller. He feels that he could not return to the St Alban's site due to his personal circumstances and his previous pitch is now occupied by other family members.

80. Article 8 of the ECHR is incorporated into UK law through the Human Rights Act 1998 and provides that everyone has the right for their private and family life, home, and correspondence. The duty to facilitate the Gypsy way of life is part of that, and Article 8 must also be considered in the context of Article 3(1) of the United Nations Convention on the Rights of the Child. This states that the best interests of the child shall be a primary consideration. Whilst these interests can be outweighed by other factors, no consideration can be inherently more important.

81. There is a young child living on the site. I heard that he has been registered to attend the nearest pre-school once he is old enough. His father is keen for his child to have the opportunity to take up education, as this is something that he was unable to do. Having a settled base would enable the child to access education. That said, it may be possible for the family to ensure such access to education by securing planning permission for a site elsewhere in accordance with all the criteria in Policy 63 of the LP.

82. The adults residing on the site have health concerns, which in some cases are serious and give rise to a protected characteristic under the Equalities Act. The residents have been able to register with local doctors and access specialist health care whilst living on the site. A roadside existence would make access to healthcare more difficult for everyone on the site, including the child. Living together as a family group also enables the family to care and support each other. Indeed, Mrs Mongan is the primary carer for her mother who requires daily, continual support and care. Furthermore, it is also not in the public interest to have families living on the roadside with no access to drainage or facilities to store waste. We also heard at the Inquiry that Mr Mongan currently does not have a touring caravan.

83. Dismissing the appeal would give rise to an interference with the occupants' Article 8 rights. Any interference must be in accordance with the law, necessary in a democratic society in the interest of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. In consideration of these appeals, I have had regard to case law submitted by the appellants at appeal[23] which recognise the status of Gypsies and the plight of Romany Gypsies and Irish Travellers and the special circumstances and considerations that should be given to them. I have had due regard to the PSED contained within the

[23] Closing submissions for the appellant & As'list of authorities, Doc 9 at the Inquiry.

Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.

84. I recognise, as submitted by Mr Cottle in closings, that individual resident occupiers each have their own set of personal circumstances which require consideration. Having regard to those circumstances and for the reasons set out above, I attach substantial weight to all the personal circumstances of the family group, including the best interests of the child.

Other Matters

85. I have had regard to correspondence received from a neighbouring resident, from a local farmer and also from the charity, Friends, Families & Travellers and all of whom offer support for the family and their appeals.

86. I have also considered the appellants' assertion that there has been a failure of policy by the local planning authority in respect of the provision of Gypsy and traveller sites. It is the Council's view that having regard to their relevant policies in the adopted LP there has been no failure of Policy. The Council is, however, reliant on the provision of new sites now through the planning application process and accepts that since December 2024 it does not have a 5-year supply of deliverable sites.

Planning Balance on Appeal A

87. Policy H of the PPTS is a reminder that planning law requires that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Furthermore, it states that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, the provision in paragraph 11(d) of the NPPF applies. Thus, having regard to the local planning authority's position that they cannot demonstrate an up-to-date 5 year supply of deliverable sites, there is a presumption in favour of sustainable development and a grant of planning permission unless criteria (i) or (ii) in paragraph 11(d) apply. With regard to criteria (i), there would be no strong reason to refuse the development in line with specific NPPF policies set out in footnote 7.

88. In this case I have concluded that the development is contrary to the development plan and the NPPF in terms of policies which seek to protect landscape and local character, including two of the criteria against which the development of Gypsy and traveller sites are judged. This harm arises due to the site's design and location in a sensitive and relatively remote part of the countryside adjoining a public right of way. This impact has not been shown to be capable of being successfully mitigated through changes to the site layout in combination with landscaping. Conflict with the NPPF includes those policies specified in footnote 9 of the NPPF and this matter attracts substantial weight against allowing the appeal.

89. I have also concluded that the development is contrary to the development plan and the NPPF in terms of policies which seek to protect ecology. This harm arises due to the development's impact on protected species and biodiversity. This impact has also not been shown to be capable of being

successfully mitigated by conditions. This matter attracts significant weight against allowing the appeal.

90. The development is also contrary to the development plan, NPPF and PPTS, including a further criterion against which the development of gypsy and traveller sites are judged. This harm arises from the site's location in the open countryside that is away from existing settlements where there is little choice of sustainable means of transport. Conflict includes with policies specified in footnote 9 of the NPPF and this matter attracts moderate weight against allowing the appeal.

91. I have also found that conflict with the WMS on intentional unauthorised development carries moderate weight against allowing the appeal.

92. The absence of harm arising from surface water flooding has a neutral impact on the planning balance.

93. On the other side of the balance, the absence of a 5 year supply of deliverable Gypsy and travellers, as defined in Annex 1 of the PPTS carries significant weight in favour of the appeal.

94. I have found that it would be in the best interests of the child on the site to allow the appeal, and this factor together with the site residents' overall personal circumstances and the lack of alternative accommodation carries substantial weight, all in the context of human rights considerations and the PSED.

95. In relation to Article 8 of the ECHR, safeguarding the environment, the countryside and its appearance are relevant to both the economic well-being of the country and the rights and freedoms of others. Under PSED, eliminating discrimination and advancing equality of opportunity, in terms of providing decent places to live, may often necessitate treating Gypsies and travellers more favourably than the settled community. However, the harms associated with the occupation of the site and the objections raised by the Rule 6 Party means that its continued occupation would be unlikely to foster good relations. Human rights and PSED considerations will nevertheless be relevant to my consideration of ground (g) in the enforcement appeal.

96. I conclude that the adverse impacts I have identified of granting planning permission significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, including the PPTS, and having particular regard to key policies for directing development to sustainable locations and securing well-designed places. The development is not therefore sustainable and there is conflict with Paragraph 11(d)(ii) of the NPPF. The dismissal of the appeal is a proportionate response.

97. The appellant seeks a permanent permission but, failing that a temporary one. Planning Practice Guidance indicates the circumstances in which a temporary planning permission may be appropriate include where a trial run is needed to assess the effect of the development on the area or where it is expected that planning circumstances will change in a particular way at the end of that period. In this case a trial run is not needed. The circumstances in relation to the supply of pitches may however change with the adoption of the Local Plan 2040, however, this is not anticipated for at least another 4 years.

Furthermore, the appellant would not be provided with any certainty over his future accommodation if the permission was only granted for a 4 year period.

98. Moreover, in this case in addition to the continuing harm to landscape character and appearance, and use of the PROW, I have found significant harm to ecology, including protected species. In these circumstances, it would not be appropriate or proportionate to allow continuation of that harm for a period of years, added to the harm which has already existed since June 2022. Furthermore, if conditions could be applied, for example those suggested to mitigate ecology, they would be even more onerous in connection with a temporary permission.

99. I conclude that temporary planning permission should not be granted and the appeal on ground (a) fails.

Planning Balance on Appeal C

100. For the reasons set out in the paragraphs above, I have found that neither permanent nor temporary planning permission should be granted in Appeal A. The considerations in favour of Appeal C, including matters in relation to Gypsy and traveller need and supply of sites, personal circumstances, including the best interests of the child, carry the same weight identified in Appeal A. However, the harm in relation to landscape character and the appearance of the countryside, as set out in my second main issue, would be reinforced in Appeal C, by reason of the greater intensity of built development, i.e. day rooms, and an increased number of caravans. Consequently, the planning balance would not alter in Appeal C and the adverse impacts I have identified of granting planning permission significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The development is not therefore sustainable and there is conflict with Paragraph 11(d)(ii) of the NPPF. The appeal should not therefore succeed and dismissal of the appeal is a proportionate response having regard to the PSED considerations set out above.

Appeal A and Appeal B on ground (g)

101. The issue is whether the compliance period of six months is reasonable and proportionate. After further consideration the Council and the Rule 6 Party consider that having regard to the personal circumstances of the residents occupying the site, and their need to find alternative accommodation, then a period of 12 months would be more reasonable. The appellants have requested a period of 18 months.

102. I recognise that the appellants have been on the site now for nearly 3 years. However, having made their appeals in 2022, they would have been hoping that they would receive a grant of planning permission during that time. Whilst, for the reasons given above, I have refused to grant a permanent or temporary planning consent, a period of 6 months as set out in the notice is not a reasonable period for the appellants to find a new home. Having regard to the personal circumstances of this family group, the decision that I have come to is that a period of 18month would be proportionate and a more reasonable timeframe within which the appellants could sell their land and liaise with the Council to try and find a more suitable site within the Borough that would comply with all the criteria in Policy 63 of the LP.

103. The appeals on ground (g) thus succeed to that extent.

Conclusion on Appeal A

104. For the reasons given above, I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Conclusion on Appeal B

105. For the reasons given above, I conclude that the appeal succeeds to the extent indicated under ground (g). I shall uphold the enforcement notice with to a variation.

Conclusion on Appeal C

106. For the reasons given above, I conclude that the appeal is dismissed.

Elizabeth Pleasant

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Cottle of Counsel instructed by WS Planning

He called:

Tom Quigg BSc MSc CEng MICE, Flume Consulting Engineers
Craig Williams BSc MSc DIC MRSB, Arbtech
Robert Petrow, Chartered Landscape Architect, Petrow Harley
Brian Woods, WSP Planning BA (Hons), MRTPI
Tom Mongan, The Appellant
Bernadette Dolan, Site Occupier

FOR THE LOCAL PLANNING AUTHORITY:

Mark O'Brien O'Reilly of Counsel

He called:

Mr Phillip Hughes BA (Hons), MRTPI, FRGS, Dip Manc MCIN

FOR THE RULE 6 PARTY:

Ed Grant of Counsel

He called:

Nicolas Sibbett BSc (Hons), MSc, CEcol, MCIEEM, Sibbett Ecology Ltd.
Frazer Hickling BA (Hons) DipUD MRTPI, Phillips Planning Services Ltd

INTERESTED PARTIES:

Kevin Morgan Jones Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY:

1) Letter dated 14 July 2024, Mr Kevin Morgan Jones.
2) Supplementary Statement of Common Ground, dated 1 April 2025.
3) Note from Mr Quigg on updated National Surface Water Flood Maps (NaFRA2).
4) Letter dated 3 January 2025, Harvey Law Solicitors.
5) Letter of Authority, undated from Brendan McFarland.
6) Bus Timetable, Stagecoach Route 28A.
7) Letter dated 2 April 2025, Mr Tom Ryan, The Cottage.
8) Letter dated 30 July 2024, Dr R Phillips, The Surgery, Sharnbrook, Bedford.
9) As' list of authorities
10) Revised Schedule of Conditions, plus additional conditions suggested by the appellants in relation to lighting and ecology/biodiversity.
11) Response Note from Lead Local Flood Authority Officer, received 8 April 2025.
12) Video clip of the appeal site, dated 16 October 2022.

Appendix 1
List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/K0235/C/22/3303840	Mr Brendan Macfarlane
Appeal B	APP/K0235/C/22/3303839	Mr Tom Mongan
Appeal C	APP/K0235/W/22/3309709	Mr Tom Mongan