Planning Inspectorate

Appeal Decisions

Inquiry held on 14 - 17 January, 29 January and 7 February 2025

Site visit made on 17 January 2025

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th March 2025

Appeal A Ref: APP/W0340/W/24/3346878
Land approximately 150 metres south of Brimpton Lane and west off Blacknest Lane, Brimpton Common RG7 4RS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) ("the Act") against a refusal to grant planning permission.
- The appeal is made by Mr Jimmy Slater against the decision of West Berkshire District Council.
- The application Ref is 23/02984/FUL.
- The development proposed is the change of use of the land to a residential site for occupation by Gypsies and Travellers, including the siting of 1 mobile home and 1 touring caravan plus 1 dayroom.

Appeal B Ref: APP/W0340/C/24/3351139
Land south of Brimpton Lane and west of Blacknest Lane, Brimpton Common, Reading RG7 4RS

- The appeal is made under section 174 of the Act. The appeal is made by Mr Jimmy Slater against an enforcement notice issued by West Berkshire District Council.
- The notice was issued on 7 August 2024.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land by the stationing of a mobile home for residential use (the "Unauthorised Development").
- The requirements of the notice are to:
  A. cease the residential use of the Land;
  B. remove from the Land the mobile home;
  C. take the following additional actions:
    - disconnect the electricity supply and remove all electrical supply apparatus from the Land;
    - remove from the Land all septic tanks, water tanks and associated pipework;
    - remove from the Land all field shelters, all fencing and gates;
    - remove from the Land all hardstanding;

  All of which facilitate the Unauthorised Development; and
  D. Remove from the Land all debris associated with the above steps.
- The period for compliance with the requirements is 3 months after the effective date of the notice.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (g) of the Town and Country Planning Act 1990 (as amended).

Decisions

1. Appeal A is dismissed.

2. It is directed that the enforcement notice ("EN") subject of Appeal B is corrected and varied by:

    - the deletion of the allegation in paragraph 3 and its substitution with the words "without planning permission, the change of use of the land to a residential caravan site for occupation by Gypsies and Travellers, including the creation of a new access to the highway and the stationing of a mobile home (the "Unauthorised Development")."

- the deletion of “remove from the Land the mobile home” and its substitution with “remove from the land the mobile home, the converted field shelter used for ancillary domestic use and the concrete base on which the converted field shelter is sited, and all other domestic paraphernalia” in requirement B in paragraph 5.
- the deletion of “all field shelters,” in bullet point 3 in requirement C in paragraph 5.
- the deletion of “3 months” and its substitution with “12 months” as the time for compliance.

3. Subject to the corrections and variations, Appeal B is dismissed, and the EN is upheld.

Applications for costs

4. An application for costs was made by Brimpton Common Residents Group (“BCRG”) against Mr Jimmy Slater. This application is the subject of a separate decision.

Preliminary Matters

5. Despite the commonality in the development that is the subject of Appeals A and B, there are differences also. Hence, I have considered Appeal A based on the development applied for, save for the inclusion of reference to a dayroom, as that forms part of the submitted plans. I have included that reference in the description of development in the banner heading, as it accurately describes the proposal.

6. The appellant completed certificate A on the planning application form for the planning application (Appeal A). The accuracy of this was queried on numerous occasions by the BCRG before and after the Council determined the planning application. Despite the appellant being asked to clarify the situation, it remained a matter in dispute and went to the heart of whether Appeal A was valid. Notice was served by the appellant on two previous owners of the land, and sufficient time had passed before the Inquiry opened to enable Appeal A to be treated as valid. However, the BCRG clarified that the appellant legally owned the land from 3 September 2024. Hence, the notices served were incorrect. However, Appeal A could nevertheless be treated as valid.

7. The Council confirmed the withdrawal of its fifth reason for refusing planning permission relating to highway matters (Appeal A).

8. An appeal on ground (a) was initially made in respect of Appeal B; however, where an EN has been issued after 25 April 2024, ground (a) is barred if the requirements of s174(2A) and (2AA) of the Act are met. Namely, the EN was issued during the time allowed for determining a related retrospective planning application (Appeal A). Appeal A had, by the time the EN was issued, been submitted for consideration and yet to be determined. Appeal B has therefore proceeded on grounds (b) and (g) only.

9. The revised National Planning Policy Framework (“the Framework”) and the Planning policy for traveller sites (“PPTS”) were published on 12 December 2024. The parties were able to comment on both documents as part of the appeals, and I have taken their responses into account in reaching my decision.

10. After the Inquiry closed, the Council submitted a decision notice relating to land

south of Abbottswood. This decision had not been made when the Inquiry closed, and as it is material to my decision, I accepted this document and gave each party the opportunity to comment on it. I have had regard to the parties' comments in reaching my decisions.

11. Having regard to Annex 1 of the PPTS, there is no dispute that the appellant and his family accord with the definition of Gypsies and Travellers. Therefore, the appellant and his family have protected characteristics for the purposes of the Public Sector Equality Duty ("PSED"), I have had due regard to the Human Rights Act 1998 ("HRA") and the PSED under the Equality Act 2010. Article 8 of the HRA requires that decisions ensure respect for private and family life and the home. Article 3(1) of the United Nations Convention on the Rights of the Child also states that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. In reaching my decision, I have kept these interests at the forefront of my mind given the implication of my decisions. However, these are qualified rights, and interference may be justified where in the public interest. The concept of proportionality is key.

The Enforcement Notice

12. I have a duty to ensure that the EN subject of Appeal B is in order. Under s176(1) of the Act, as amended, it is open to me to correct any defect, error, or misdescription in the EN or to vary its terms, provided I am satisfied that the correction or variation will not cause any injustice.

13. To put the EN on a proper footing, I consider that the allegation can be amended without causing injustice to identify the specific residential use of the land and the formation of a new access to the highway so that the allegation accurately describes the development. Furthermore, requirement B can be further corrected without causing injustice to include "all other domestic paraphernalia" as that is ancillary to the use of the land.

14. The EN does not contain a requirement to return the land to its previous condition after carrying out steps A to D. The Council suggested wording for an extra requirement, but this would have been more onerous and could have resulted in a betterment of the land, leading to an injustice for the appellant. Further, adding a requirement to 'return the land to its previous condition' would be more onerous than the EN's existing requirements, so I have not corrected the EN to this effect.

Appeal B on ground (b)

15. Initially, the appellant considered that the allegation ought to include a brick-built dayroom on site as it is ancillary to the residential use of land; however, the appellant now contends that the dayroom's omission gives rise to a prejudice in that the full development is not correctly described and that the EN cannot be amended to include the dayroom.

16. To remedy the Council's oversight about the dayroom, they and the BCRG, a Rule 6 party to the Inquiry, propose that the allegation be amended to include reference to the dayroom. They consider no injustice would be caused in doing so.

17. The dayroom on site is not brick-built. It is a field shelter that has been converted into a dayroom through the installation of glazed doors in its front opening. The structure is also on top of a concrete base, and pins attach the structure to the concrete and then into the ground. It is not capable of being moved, and it was constructed on site. There are water and electricity connections. Therefore, the

parties agree that the structure is a building and that it is ancillary to the residential use of the land. I agree. It is used as a dayroom. Hence, the building could be described as either a 'dayroom' or a 'converted field shelter'.

18. However, prior to the installation of the glazed doors, which BCRG says took place on 25 April 2024, a point not disputed by the appellant, the structure was a field shelter in appearance and use based on a photograph from 22 March (likely to be 2024), as the land was used for horse grazing for a short period until the change of use and works took place on 23 March 2024. However, once the doors were installed, the building has not been capable of being used as a field shelter due to the doors, unless it is modified in some way.

19. The EN's allegation does not need to refer to ancillary development, though the requirements can seek to remove any 'works' carried out to facilitate the use. As such, it is not necessary to amend the allegation to include the dayroom/converted field shelter. Nor does the EN under enforce against the development.

20. However, requirement C was not correct at the time the EN was issued because events relating to a field shelter took place in March and April some months prior to the EN being issued. I understand that another field shelter was demolished before the EN was issued. The appellant considers prejudice would arise if I corrected the requirements of the EN to reflect the situation on the ground when the EN was issued, and because ground (a) has been barred on Appeal B, they do not have any opportunity to obtain planning permission for the dayroom in situ, and that leads to a breach of Article 6 of the HRA.

21. However, the appellant could at any time have sought to amend the dayroom proposed in Appeal A for the dayroom in situ. He didn't do so despite the professionals representing him, and the appellant proposes to build a brick-built structure to provide an adequate shelter in case of an emergency for reasons that I come onto, as the existing dayroom/converted field shelter would be inadequate.

22. Therefore, no injustice would occur if I were to delete reference to 'field shelters' in requirement C. Further, the dayroom/converted field shelter is ancillary to the use of the land; it is the same field shelter structure, albeit improved. Hence, having regard to the 'Murfitt principle' no injustice would arise if I were to correct requirement B so that it refers to 'converted field shelter' and it also refers to the concrete base that it sits on. I will therefore correct the EN to that effect and the appeal on ground (b) succeeds to this extent.

Appeal A

Main Issues

23. The main issues in respect of Appeal A are:

1) whether the appeal site is a suitable location for the proposed development, including whether occupants would have adequate access to facilities and services, having regard to local and national policies;
2) the effect of the proposal on the character and appearance of the area;
3) whether the proposal would ensure public safety, having regard to the Atomic Weapons Establishment site at Aldermaston (AWE A);
4) the proposal's effect on ecology, including biodiversity net gain;
5) the proposal's effect on green infrastructure;

6) the proposal's effect on Grade II listed building at Lane End Cottage and the Scheduled Monument of Bell Barrow; and
7) whether there are material considerations which exist that outweigh any conflicts with the Development Plan and any other identified harm resulting from the appeal proposal
    a) need and supply
    b) alternatives
    c) personal circumstances
    d) intentional unauthorised development
    e) precedent
    f) anything else

Reasons

Suitable location

24. Area Delivery Plan Policy 1 of the West Berkshire Core Strategy (2006-2026) Development Plan Document ("Core Strategy") says that most development will be within or adjacent to the settlements included in the settlement hierarchy and related to the transport accessibility of the settlements…their level of services and the availability of suitable sites for development. The majority of development will take place on previously developed land.

25. The appeal site lies outside of any defined settlement boundary but within the hamlet of Brimpton Common. Hence, this is not an isolated location. However, for the purposes of Core Strategy Policy ADDP1 the site lies in the open countryside. Here only appropriate limited development in the countryside will be allowed, focused on addressing identified needs and maintaining a strong rural economy.

26. For reasons that I will come onto, there is at least an identified long-term need for new pitches. While the occupants of the proposal would contribute to the local economy, the extent of this would not make a material difference in maintaining a strong rural economy. Hence, even setting aside the various other issues that I will come to in terms of whether the proposal could be considered to be appropriate, the proposal would conflict with Core Strategy Policy ADPP1.

27. Like the PPTS, Core Strategy Policy CS 7 (and emerging Policies D1 and DM20) anticipate that planning applications for Gypsy and Traveller pitches might arise outside of settlement boundaries, albeit PPTS paragraph 26 explains that new sites in the open countryside should be very strictly limited. That said, the proposal would not conflict with the PPTS given its location within Brimpton Common.

28. Proposals for sites outside of settlement boundaries need to satisfy a list of criteria in Core Strategy Policy CS 7. Policy TS 3 of the Housing Site Allocations DPD (2006-2026) ("DPD") sets out another list of criteria to satisfy. Those criteria are also proposed in Policy DM20 of the Local Plan Review ("Emerging Plan").

29. Core Strategy Policy CS13 seeks to reduce the need to travel, improve and promote opportunities for healthy and safe travel, facilitate sustainable travel, and minimise the impact of all forms of travel on the environment. Framework paragraph 110 explains that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Given that Core Strategy Policy CS 7 and the PPTS both contemplate Gypsy and Traveller sites within the

countryside, the location of such sites will inherently bring with it tensions with the availability and suitability of travel by sustainable transport modes and the proximity of facilities and services. That is the case here.

30. The nearest smaller village with a settlement boundary is Brimpton (around 1.8km away by road). Ashford Hill is to the south. Travelling to Brimpton and Ashford Hill from the site involves overcoming a gradient. Tadley District Centre and several facilities and services are between 3.5km to 4.8km away. The nearest Service Village is Aldermaston which is around 4.2km away by road. These settlements contain the nearest facilities and services. The primary school that the children would attend is a short drive away.

31. The bus stop on Brimpton Lane offers limited and infrequent services between Thatcham and Calcot. There are no footways along the well-used roads of Brimpton Lane, Blacknest Lane, or the B3051. The roads have a 40 mph or national speed limit. They are not lit and even if they may well be used by people on foot or bicycle, they are not routes that encourage people to access facilities and services by, or that offer an inherently safe environment, especially during hours of darkness. Even though the bus is an option, most, if not every, journey to and from the site would be by private vehicle, with journeys using existing roads, relatively short, safe, and easy to do. The children could therefore attend school regularly, and allow the family to access health services, have a settled base, and avoid long distance travelling. There would also be no undue pressure on local infrastructure and services, but the possibility of deliveries to the site does not mean that the site would have adequate access to facilities and services.

32. Planning conditions to secure cycle storage and an EV charging point would provide those facilities on the site, but the former would not improve travel by bicycle beyond the site. The latter could encourage the use of ultra-low and zero emission vehicles and improve the environmental impact of private vehicle journeys, meaning that the proposal would accord with bullet point 8 of DPD Policy TS 3 and bullet point 2 of Core Strategy Policy CS 14. However, there is little prospect of other sustainable transport modes being used due to the distance people would need to travel or their potential experience and safety in doing so.

33. In the round, I consider that safe and suitable access to the site can be achieved for all users in accordance with Framework paragraph 115 b) and adequate on-site facilities for parking, storage, play, and residential amenity would be provided as per Core Strategy Policy CS 7 and DPD Policy TS 3 (bullet point 2). This is based on the submitted plans, the access to Blacknest Lane, and the width, use, and alignment of the lane. However, the proposal would conflict with Core Strategy Policy CS 7 (bullets 1 and 2), and Core Strategy Policy CS 13. Moreover, the proposal would not prioritise the use of sustainable transport modes even when opportunities for such will vary between urban and rural areas. Hence, the proposal would not accord with Framework paragraphs 110 and 115 a) or PPTS paragraph 13 in respect of being sustainable.

34. However, even if BCRG is correct about the capability of turning facilities on the site based on the proposed site plan, I consider that the internal layout could be altered to achieve this without affecting the proposed access point. A planning condition could be imposed to secure this.

35. Core Strategy Policy CS 7 and PPTS paragraph 13 a) both seek the co-existence between the site and the settled community, with the former referring to adequate

levels of privacy and residential amenity for occupiers of the site and those neighbouring it. The proposal would ensure adequate levels of privacy or amenity to occupiers of the site and those that neighbour it, but there has not been to date a peaceful and integrated co-existence between the occupiers and the settled community of Brimpton Common. The actions of the appellant and others have not helped, and interactions between the various parties have not been ideal, leaving aside any fault. Whether bridges can be built and people can live peacefully and with each other is down to the individuals involved, but the possibility exists, though interactions to date suggest that this may be difficult. However, the children are settled at school and have the chance to make friends.

36. The site would be located outside an area of high flooding risk, and no mixed use is proposed. A residential use of land is also compatible with surrounding land uses which are predominately residential. The site also lies outside of the North Wessex Downs National Landscape (formerly AONB). As such, the proposal would not conflict with bullet points 3, 6, 7, and 9 of Core Strategy Policy CS 7.

37. I have identified several aspects of the proposal that would accord with Core Strategy Policies CS 7 (bullet points 3, 4, 5, 6, 7, and 9), CS 14 (bullet point 2), DPD Policy TS 3 (bullet point 8) and Framework paragraph 115 b). However, these do not alter or outweigh my view that the appeal site is not a suitable location for the proposed development, as the occupants would not have adequate access to facilities and services, having regard to local and national policies. In respect of this issue, the proposal would conflict with Core Strategy Policies ADDP1, CS 7 (bullets 1 and 2), CS 13, PPTS paragraph 13, and Framework paragraphs 110 and 115 a). Further, although not determinative, the proposal would not accord with bullet points iii and v of Emerging Plan Policy DM20.

Character and appearance

38. The appeal site lies within a triangular area of land bound by Brimpton Lane, Blacknest Lane and the B3051. The area if characterised by a complex pattern of land use, dominated by woodland with a mosaic of land cover including arable fields, damp pasture, paddocks, and areas of remnant heathland. Fields are also enclosed by hedgerows and trees on low banks with ditches. There are ponds in the site's vicinity. Brimpton Common comprises a dispersed collection of dwellings. The triangular area of land has an open and undeveloped character, with low fencing that permits views through to the separate parcels of land. That would not change even if the land was used for a short period to graze horses.

39. As the appellant has not submitted a Landscape and Visual Impact Assessment (LVIA) to help inform the development design and layout of the site and requirements for green infrastructure as required by DPD Policy TS 3 (bullet point 13), I have had regard to the LVIA's carried out by the Council and the BCRG. In these, the authors have identified the site as being of high landscape sensitivity. This reflects the value of the landscape that the site sits within, even though it is not a valued landscape for the purposes of Framework paragraph 187 a).

40. Due to the site's location off Blacknest Lane, the alignment of Brimpton Lane, and the gaps or breaks in mature vegetation along those roads, there are views of the site access, boundary treatment, the mobile home, and domestic paraphernalia. The removal of the close boarded fencing and introduction of a low post and rail fence would mark the site's boundaries with planting behind. That would accord with PPTS paragraph 27 d) as sites do not need to be hidden. The design and external materials for the proposed dayroom would broadly reflect other

development found in the area. However, the development has and would urbanise the site, detract from its openness, and the form of development does not and would not conserve or enhance this area of open countryside. Added to this, the development results in an enclosed parcel of land jutting out into a wider parcel of land away from Blacknest Lane. The effect is evident from the site access, Brimpton Lane, and the public right of way to the rear of the site.

41. In line with PPTS paragraph 27 b), triple native planting around the site's perimeter would soften the development, but this would take time to establish, and even if it is maintained, the planting would not change the proposal's effect jutting out from the lane or its effect on openness. Similarly, native planting within the site could soften views along the access from Blacknest Lane, but they would not overcome the harm caused by the change to the site's character.

42. Planning conditions to secure a recessive colour for the mobile home and wooden cladding for the proposed dayroom would lessen the proposal's impact, but that would not be overcome to the extent that no material harm would occur.

43. The appellant advances a fallback position comprising the land being used for horse grazing and that a high close boarded fence could be erected after the terms of the EN are complied with. Neither has a real prospect as access to the land is required to be removed by the terms of the EN. Therefore, a horse would need to be walked across the ditch, and even if one was, and feed were brought onto the land, as the appellant did prior to moving onto the site, then I have no reason to disagree with the appellant that such a use would fall outside the definition of 'agriculture' and be 'development' having regard to the Act. There is no planning permission for this use. Further, it is highly unlikely that a new tall close boarded fence would be erected to enclose an undeveloped grassed piece of land as the existing fence was only erected once the residential use of the land commenced.

44. I conclude, on this issue, that significant harm will be caused to the character and appearance of the area. Thus, the proposal conflicts with Core Strategy Policy CS 7 (bullet point 8), CS 14, CS 19, DPD Policies C1 and TS 3 (bullet points 3, 4, and 13), and Framework paragraphs 135 a), b), and c) and 187 b). Furthermore, the proposal would conflict with criterion i of Emerging Plan Policy DM20.

Public safety

45. The site is around 1.8km from AWE A, a nuclear licenced site to design, manufacture, maintain, and disassemble nuclear warheads as part of the Continuous At Sea Deterrent (CASD) for the Government. AWE A is a unique, irreplaceable, and critical to UK defence.

46. Core Strategy Policy CS 8 seeks to protect public safety and restricts development close to AWE A. Core Strategy Policy CS 8 is consistent with Framework paragraph 102, which advises that planning policies and decisions should promote public safety and take into account wider security and defence requirements by, amongst other things, recognising and supporting development required for operational defence and security purposes and ensuring that operational sites are not affected adversely by the impact of other development proposed in the area.

47. The policy relies upon the Land Use Planning Consultation Zones: Office for Nuclear Regulation (ONR). These comprise of the Inner, Middle, and Outer zones. On face value, if Core Strategy Policy CS 8 is applied, the site is just outside the Inner zone in the Middle zone. However, the ONR Land Use Consultation Zones in Core Strategy Policy CS 8 reflected the Radiation (Emergency Preparedness and

Public Information) Regulations 2001 ("REPPIR01").

48. Matters have moved on. In May 2019 the Radiation (Emergency Preparedness and Public Information) Regulations 2019 ("REPPIR19") came into force and superseded REPPIR01. REPPIR19 takes a more conservative approach to risk assessment and emergency planning. It also imposes duties on operators who work with ionising radiation and local authorities to plan for radiation emergencies. Hence, the Council was legally required to determine the detailed emergency planning zone ("DEPZ") for AWE A. The DEPZ is the zone around AWE A for which the Council is legally required to prepare an off-site emergency plan ("OSEP"). REPPIR19 led to the reconsideration of the minimum geographical areas around AWE A which require detailed emergency planning.

49. The OSEP contains protective actions to be implemented in the event of a radiological emergency at AWE A. The OSEP must be designed to mitigate, so far as is reasonably practicable, the consequences of a radiation emergency outside AWE A, and thus ensure public safety. Although the likelihood of a radiation emergency is low, there would be a high impact if an event occurred. Therefore, the Council needs to be able to implement the OSEP effectively. The appeal site is within sector M of the DEPZ for AWE A. The DEPZ was carefully configured to consider a range of factors.

50. AWE and the MoD consider that the Inner zone cited in Core Strategy Policy CS 8 should be replaced by the DEPZ, as this has effectively replaced the Inner Zone under REPPIR19. I disagree. The Hollies Nursing Home decision[1] provides the reasons. That said, regardless of what zone the site lies within for the purposes of Core Strategy Policy CS8, consideration needs to be given to whether a proposal is acceptable or not in public safety terms. But it is fair to say that REPPIR19 has not changed the risk to anyone living in the DEPZ. It does, however, reflect a change of appetite for the risk and how the Council should go about planning and preparing for a response to a nuclear emergency.

51. Emerging Plan Policy SP4 proposes using the DEPZ, and development here is likely to be refused planning permission where the ONR advises against the proposed development. I agree with the main parties that this policy carries limited weight at present as the Emerging Plan is still undergoing examination and consultation on the Main Modifications recently took place. I do not know the outcome or content of that consultation. I understand there are outstanding objections to that policy, and the Examining Inspector's report has not yet been published. Emerging Plan Policy SP4 is not therefore to be preferred over Core Strategy Policy CS 8 for the time being.

52. The Council currently has an adequate OSEP in place, but the ONR is concerned that the OSEP is under significant strain, though they have not objected in this case. Improvements to the OSEP were deemed necessary by the ONR in November 2023, and the ONR can, if they consider the OSEP to be inadequate, restrict operations at AWE A until the OSEP is adequate, or in a worst-case scenario, stop AWE from working with ionising radiation. Such restrictions would pose an adverse impact to AWE's operations, CASD, and thus, national security.

53. The scale of the proposal is modest but would add to the population within the DEPZ. More specifically, it would add to the population of vulnerable persons inside the DEPZ, as residents inside caravans and mobile homes are treated as

[1] CD5.9, Paragraph 21

vulnerable in accordance with REPPIR19 and the Approved Code of Practice[2]. Half of those residents would be vulnerable individuals. Although a radiation emergency at AWE A is very unlikely, and even if one did occur, the likely radiation doses that individuals at the appeal site or elsewhere in the DEPZ would experience would also be low. The requirements of the REPPIR19 regime are precautionary and seek to mitigate the remote risk of a nuclear incident and its potential to result in harm to the surrounding population. Even so, the proposal would see people placed in an area where there is a known risk, and there would be a complex multi-agency response to an incident.

54. The consequences report for AWE A[3] confirms the actions that people are instructed to take in the event of an incident. There is a short period of 13 minutes for anyone in the DEPZ to be warned and to go into adequate shelter.

55. In emergency planning terms, the appeal site is relatively isolated. A dayroom is proposed. This would need to be adequate to accommodate the intended occupants for 48 hours while radiation monitoring takes place. The submitted plan shows that this would be brick built and contain toilet and washing facilities. The submitted layout does not, however, show any sleeping or cooking facilities or provision of a landline. A planning condition is suggested to secure these details, but I am not satisfied that the size and layout of the proposed dayroom could accommodate sleeping and cooking facilities for each of the intended occupants as the available space is modest and affected by opening doors. Unlike in the Pelican Road decision[4], the suggested planning condition would not therefore secure an adequate shelter on the appeal site.

56. The mobile home on the appeal site would not provide adequate shelter for the occupants[5] either. That would not be in the children's best interests, and the proposal would add to the 231 caravans/mobile homes already within the AWE A DEPZ that do not have adequate shelter. These are not in the same geographic location, but of these, there are currently 28 caravans/mobile homes very close to the appeal site. These homes are within the context of a population in the whole of the DEPZ between 22,000 and 24,000. As radiation monitoring can take many hours, those vulnerable residents would be actively encouraged to move to an alternative location after they are alerted to the radiation emergency. This would likely require support from responding agencies by way of notification(s), transport, and PPE to reduce the risk of resuspension of contaminants. To provide the best protection to those residents, responders would need to act as soon as they could after the on-site incident is under control.

57. Hence, the proposal would place an increased burden on emergency responders at a time when they would already be under pressure, especially as they include vulnerable individuals. It would also increase the burden during the recovery period, including in terms of the potential number of properties to be decontaminated as well as the need for radiation monitoring and alternative accommodation. The proposal's quantifiable effect on those resources would be limited and is unlikely to materially impact the effectiveness of the OSEP. However, I consider the OSEP is not infinitely scalable and that incremental, unplanned development could, over time, erode the effective management of the

[2] CD9.1, Page 7
[3] CD7.9, electronic page 81, c
[4] CD1.17, Paragraphs 21 and 23
[5] CD7.9, Paragraph 5.15

land use planning consultation zones and be detrimental to public safety. My findings here are consistent with the views reached in the decisions at the Hollies Nursing Home, Shyshack Lane, Benham's Farm and 132 Recreation Road[6].

58. While planning permission was granted for 32 dwellings in the Hollies Nursing Home decision, the appeal site is not an allocated site within the DEPZ, and it does not provide adequate shelter. The two are not therefore directly comparable.

59. The Council run Four Houses Corner site is due to re-open in the coming months (after delay) and planning permission was granted to change of use of 8 of the 16 transit pitches at Paices Hill to permanent pitches. Despite the appellant's point about the lack of public safety concern in connection with these sites, the OSEP already accounts for both sites even without dayrooms to provide adequate shelter at Paices Hill, and the OSEP's adequacy would not be affected by either site, nor would there be any extra impact created for emergency responders.

60. Operational sites such as AWE A should not be adversely affected by other development proposed in the area. AWE and the MoD contend that the approach taken in the Hollies Nursing Home decision is incorrect, as if there was evidence of an impact on AWE's operations, that threat would have already materialised. Further, they say that it is imperative to avoid reaching this point given the national and international importance and irreplaceable nature of the AWE sites.

61. On its own the proposal is unlikely to materially impact the effectiveness of the OSEP, but it would add to the collective effect of incremental, unplanned development that could lead to the OSEP being found inadequate. The precise tipping point is unclear, but the situation is of concern given the objection from AWE and MoD and the improvements needed to the OSEP so that it responds to the expansion of the DEPZ and the needs of the existing population, including from development without permission, but not yet built. The risk of an inadequate OSEP would be that AWE A could not continue to work with ionising radiation or limitations could be placed on how and when it could carry out such activities. If that scenario were to arise, then AWE's operability to support the CASD would likely be adversely affected. It would not be in the national and international interest to reach this point.

62. Although the ONR has not objected to the proposal, I have considered the views of AWE and the MoD along with the other available evidence. I conclude that the proposal would not ensure public safety, having regard to AWE A. The proposal would not accord with Core Strategy Policy CS 8, Emerging Plan Policy SP4, and Framework paragraphs 102 b), 198, and 200. Jointly these policies seek, among other things, to ensure public safety and that the operation of defence and security sites are not adversely affected by other development in the area and that existing businesses and facilities do not have unreasonable restrictions placed on them as a result of development permitted after they were established.

Ecology and biodiversity net gain

63. The appeal site lies within an area of grassland at the western end of the Burghfield to Tadley Plateau Biodiversity Opportunity Area (BOA) and adjacent to the Greenham and Crookham Plateau BOA, which jointly stretch for around 12 miles. The site lies in the middle of the BOA's close to the woodlands of Wasing Wood, Oxford Copse, and Hyde End. Roughly 420 metres to the south of the appeal site

[6] CD5.9, Paragraph 31 – includes references for each decision

lies Ashford Hill Woods and Meadows Site of Special Scientific Interest (SSSI), part of which is also designated as a National Nature Reserve. The SSSI is designated for its extensive and varied complex of woodlands and agriculturally unimproved meadows.

64. There is a dispute about what the site's ecological baseline was. Horses may have grazed the land for a short period prior to 23 March 2024, and in doing so may have reduced the ecological value of the site as the grass sward would have been shorter. But I cannot precisely say whether that was the case, and not long prior to that date the land had similar characteristics to the surrounding grassland[7].

65. The Preliminary Ecological Appraisal (PEA) dated 11 October 2024 (site visited 21 June 2024) was carried out after the 23 March 2024 and the refusal of planning permission. This is contrary to DPD Policy TS 3. The PEA did not also assess the suitability of nearby ponds for Great Crested Newts (GCN) as they were not visited, and no assessment was made of the culverted drainage ditch across the site's frontage. That was the appellant's responsibility, not the BCRG's. The appellant did not also provide the further survey detail that the Council had asked for in respect of GCN, bats, and reptiles in line with DPD Policy TS 3. Hence, the change of use that took place did so without properly assessing the site's ecological significance, and a baseline was not established. That position remains.

66. That is a matter that weighs against the proposal as it is then extremely difficult to determine whether any mitigation and enhancement may be required and to what extent. Therefore, a precautionary approach should be adopted.

67. The nearest of four ponds within 500 metres of the site is around 65 metres to the south west. There may be further ponds within 500 metres, though these are beyond Brimpton Lane and Blacknest Lane, which, given their use by traffic would reduce connectivity and the likelihood of GCN being affected by the proposal. Even so, the site lies within the 'Red Zone' for GCN as it is highly suitable habitat. The PEA explains that if the two closest ponds to the site host GCN, then "it is very likely that GCN would inhabit some areas within or adjacent to the site during the terrestrial phases of their lives." The PEA goes on to explain that the works on site could have been harmful to GCN if they were present on site and that an 'offence likely[8]' assessment would arise if the closest two ponds were GCN breeding ponds.

68. Several species of bats are known to be in the area, and trees and hedgerows that line nearby roads provide foraging habitat. Added to this, the PEA explains that "the grassland surrounding the site is suitable for common species of reptile such as grass snake." The available evidence therefore supports the presence of protected species in the area or the suitability of the habitat for them.

69. I am unable to form a determinative view about whether the proposed access has resulted in the loss of 'important' hedgerow[9] and whether this was a 'priority habitat'. However, there is now a large break in what was a continuous line of vegetation to the rear of the ditch across the site's frontage. This loss cannot be compensated for even with new planting as the gap in the hedgerow would remain.

70. The appellant contends that suitable mitigation and enhancement measures can be secured through planning conditions. The laurel planting and close boarded fencing

[7] CD7.17 Photo A, Mr Greenslade PoE Paragraph 4.2, and Mr Hawker PoE Paragraph 4
[8] Wildlife and Countryside Act 1981 (as amended)
[9] Management of Hedgerows (England) Regulations 2024, Regulation 3

currently around the site's perimeter could be removed and replaced by mixed native hedgerow and a post and rail fence. Despite my finding about this insofar as the character and appearance of the area, this could introduce suitable native habitat to the site and provide routes to and from the site for wildlife. Further, suitable low level, directional, low lux and motion triggered lighting could be secured by planning condition to minimise light pollution and thus bats foraging and commuting along the tree line. I am also satisfied that a biodiversity enhancement scheme (BES) could secure bat and bird boxes and that these could be accommodated on the site. A BES could theoretically secure a wildflower meadow and habitat suitable for reptiles, though there are no details of these measures.

71. A planning condition is suggested to secure a GCN method statement, which would require fresh assessments of GCN habitat to be carried out before any mitigation is considered. The appellant suggests that the mitigation could include a new pond and a refugia for GCN. However, unlike The Lawn Hill decision[10] the ponds near the appeal site have not been surveyed for the presence of GCN. This means that there is no certainty whether any mitigation will be required, or if so, what that might be. There are also no details of the potential refugia or pond before me. Nor are they shown on the proposed site layout plan. Added to this, there are no details of a potential wildflower meadow. I am also mindful that any mitigation would need to consider the recreational disturbance that would occur on the appeal site.

72. To ensure that any mitigation or enhancement measures fulfilled their objectives, they would need not to be disturbed. Theoretically, GCN refugia could be formed below any new areas of hedgerow, which would need to be at least 2 metres wide. The GCN refugia in The Lawn Hill decision were to be a minimum of 1 metre high and 2 metres wide, but Mr Woods accepted that he did not know how big the refugia would need to be or where it would need to be located. For character and appearance purposes, any refugia would need to be sited to avoid creating gaps in the hedgerow. The combination of both, as well as a pond, wildflower meadow, and reptile habitat, all of an unknown size and siting, would mean that the proposed site layout would need to alter to avoid recreational disturbance.

73. To achieve this, the bulk of any mitigation and compensation measures would likely need to be furthest away from Blacknest Lane and closest to the remainder of the grassland. The site is of a good size, but there are too many unknowns due to the limitations of the PEA and absence of other survey work. Therefore, I cannot be certain what the necessary mitigation and enhancement measures might be, and whether they can be accommodated within the site and that the site could still accommodate the proposed hardstanding, the mobile home, dayroom and parking while still facilitating safe and suitable access to Blacknest Lane with vehicles and any caravan entering and leaving the site in forward gear. Although I consider that an alternate internal access could be achieved without affecting the proposed access point, if that eventuality were to occur, it would only add further uncertainty to whether everything could be accommodated on the site, including any mitigation and compensation measures.

74. As such, I consider that conditions relating to the site development scheme and GCN would fail the test of 'necessary', and by extension, so would the approved plans condition. Those conditions would not therefore overcome the identified harm to ecology and biodiversity net gain.

[10] CD7.12, p124, Paragraph 1.3

75. I conclude on this issue that the proposal would not conserve and enhance ecology or maximise opportunities to achieve a biodiversity net gain. Although a PEA was submitted, further necessary detailed surveys were not, and it is therefore not possible to identify appropriate mitigation and enhancement measures and impose a suitable planning condition to secure them. The proposal would not accord with Core Strategy Policy CS 17 or DPD Policy TS 3 (bullet point 14). Jointly, these policies seek to conserve and enhance the District's environmental capacity to ensure any protected species are not adversely affected and to provide appropriate mitigation to offset impact on key species and habitats, with all new development maximising opportunities to achieve net gains. The proposal would also not accord with criterion x of Emerging Plan Policy DM20.

Green infrastructure

76. Prior to the change of use occurring, the land formed part of the GI network even if the land was used for horse grazing because the land was of an open nature and character and formed part of a rural setting to the nearby housing. The proposal would alter that, and users of the nearby public right of way would have a clear view of that change, and the land was, and still is valued by the local community.

77. The proposal would not protect or enhance the GI that was once present. The Council considers securing new GI of equal or greater size and standard to mitigate the proposal's effect would have little purpose. Given the scale of the appeal scheme, I agree. That does not, however, mean that the loss of GI, which has already occurred, has not caused harm given the importance of the multi-functional nature of GI as explained in Core Strategy paragraph 5.125. Planting would add GI to the land, but it would affect its openness.

78. While the appellant says that Core Strategy Policy CS 18 could be used to 'block' Gypsy and Traveller development coming forward when the PPTS and Policy CS 7 would otherwise permit them, I disagree. Firstly, such development could take place on sites that are not GI. The GI on a site could also vary. Further, schemes could be designed to protect or enhance GI or to include GI within them. Failing all of that, alternative provision could be proposed to mitigate a proposal's effect.

79. I conclude on this issue that the proposal has and would cause a loss of GI. As such, GI on the site and thus the district will not be protected and enhanced. The proposal would therefore conflict with Core Strategy Policy CS 18. Even if I were to agree with the appellant about the weight that this policy should carry, this does not change the conflict that would be caused with it.

Heritage assets

80. The Grade II listed building at Lane End Cottage lies to the north of the appeal site. The two storey cottage dates from the 18th century. Its original form has been altered in recent years through side and rear extensions which now give it a courtyard layout. A combination of brick, painted brick, clay tile, and thatched roofs along with the traditional form provides architectural interest, and the property's occupation by the founding father of the NHS for a period means that the building also holds cultural significance. However, having regard to the intervening distance, mature landscaping, and other nearby development, the proposal would not harm the cottage's setting, and thus its significance. I give great weight to its conservation, but the special architectural and historic interest in Lane End Cottage would be preserved.

81. The Scheduled Monument of Bell Barrow is around 246 metres to the south east

of the site. This designated heritage asset is of national importance. It comprises of a large bell barrow in a private garden. The monument has a maximum diameter of 60 metres and the central mound is 25 metres across and has a height of 2.5 metres. A berm, bank and a wide shallow ditch surround this. The bell barrow is a funerary monument dating to the Early and Middle Bronze Age, mostly between 1500-1100 BC. This bell barrow is particularly important as it survives well and appears as an outlier to a wider barrow cemetery 600 metres to the south-east. This gives an indication that the area may have been well settled during the Bronze Age. The burials are frequently accompanied by weapons, personal ornaments, and pottery and appear to be those of aristocratic individuals, usually men. Bell barrows are rare nationally, and as such, the Scheduled Monument has historic and archaeological interest.

82. The site is physically and visually separated from the Scheduled Monument. Existing planting helps with that, and further planting on the appeal site would assist and ensure that the setting of the Scheduled Monument would be unaffected. However, the site and its surroundings are of 'high archaeological potential' according to the West Berkshire Historic Environment Record. No assessment or information was submitted by the appellant of the situation prior to the works that were carried out as required by Framework paragraph 207. It is therefore impossible to know whether the site has any archaeological interest, though it is possible given its proximity to two bell barrows and other Bronze Age material found locally. However, a proportionate response is necessary.

83. The works subject of Appeal A would result in a different site layout with new hardstanding laid and the mobile home and dayroom being sited on a concrete base or foundations. These works would be shallow and likely cause little disturbance to the ground. However, given the situation, a planning condition to secure a written scheme of investigation to be carried out before any demolition, site works, or development would enable assessment of the site's archaeological interest, and if any remains are found, then they are appropriately recorded or preserved. On this basis, I consider that no harm would be caused to the significance of the Scheduled Monument.

84. I conclude, on this issue, that proposal would not harm the Grade II listed building at Lane End Cottage and the Scheduled Monument of Bell Barrow subject to the imposition of a planning condition. Accordingly, the proposal would accord with Core Strategy Policy CS 19 and Framework paragraph 218.

Other considerations

Need and supply

85. The Gypsy and Traveller Accommodation Assessment 2021 Update ("the 2021 Update") is the most recent evidence available to identify the accommodation needs across the District. It is a snapshot in time, but it shows that there is a need for 30 pitches between 2021 and 2038. Up to 2026, there is a need for 13 pitches, with the remaining 17 pitches between 2026 and 2038. The assessed need conforms to the revised definition of Gypsies and Travellers in the current PPTS.

86. The appellant says that the need is likely to be greater because of the passage of time since the 2021 Update, the formation of new households, or indicators such as the number of pitches that have been refused planning permission and the

caravan count[11]. The latter is a snapshot in time, so it must be viewed in that context. The former is an indication of people's intentions, and there is no definitive evidence either way about new household formations. That will only become clear after the Council carries out a new GTAA once the Four Houses Corner site is re-occupied as recommended in the 2021 Update[12], which also expressly addresses the need on Paices Hill. Residents at Four Houses Corner were decanted for refurbishment work to take place. The site is likely to start accepting people in the spring in a phased manner, though not everyone who wants to live here will be able to do so. The GTAA will take place in the winter of 2025/26, and the Council accepts that the need previously assessed could change and may be higher. An assessment of need is not an exact science, and the Council recognises that it is a minimum, not a maximum.

87. There is no clear evidence about a sub-regional need as there are no precise figures before me, though I understand neighbouring authorities are not able to accommodate needs arising from other authorities, such as the Councils.

88. The Council considers that it can demonstrate a five-year supply of pitches with planning permissions granted for the change of use of 8 of the 16 transit pitches at Paices Hill to permanent pitches; an extra pitch at Four Houses Corner; a pitch at Ermin Street; two further pitches at Wash Water; and a new pitch at land south of Abbottswood. That leaves a residual need for 17 pitches until 2038.

89. I disagree with the appellant's contention about the pitches at Paices Hill not forming part of the supply. Those pitches were previously transit pitches with a time limited stay that were not capable of addressing a longer-term need even if the situation on the ground differed from how the pitches were meant to operate. A new GTAA would also enable the occupants of these 8 pitches to be considered.

90. The Emerging Plan will not change the current supply of pitches as no new allocated sites are proposed, though the current Local Plan and the Emerging Plan do enable windfall sites to be considered and permitted. This will remain the case until the Council has prepared a Gypsy and Traveller Accommodation Development Plan Document. This is at an early stage, and a 'call for sites' has been conducted. Further, the Council suggests that it is likely that a new Local Plan will need to be progressed after the adoption of the Emerging Plan, if it is found sound. It is unclear whether a future Local Plan may include sites for Gypsies and Travellers, but it is possible.

91. None of this will provide the certainty or comfort to the Gypsy and Traveller community. But I agree with my colleague in the Lawrences Lane decision[13] about the failure of policy. Further, I consider the 2021 Update to be up to date, fair and robust. There is no assessed shortfall, though that is a minimum and there is still an assessed need to provide for in the future, and the actual need is likely to be higher. But the Council is following through on what was recommended in the 2021 Update, which will provide a fresh assessment taking into account new household formations, and while that has yet to happen, there are several moving parts that, along with mobile individuals and groups, make it challenging to identify the need and address that need.

92. The Council intends to address the need through a plan-led system, but that will

[11] ID11
[12] CD3.8, Paragraph 2.23
[13] CD5.5

take time and provides no certainty to Gypsies and Travellers in need of an authorised site in the meantime. The Council have nonetheless periodically assessed needs and granted windfall sites planning permission. However, even with a five-year supply of pitches, that is not a ceiling to pitch provision. The Council also knows what the need is as a minimum. Given that there is a forward-looking assessed need and an unknown quantum of actual need that is potentially higher than the 2021 Update, and a requirement to cater for whatever the need is, I consider that the provision of an additional pitch carries moderate positive weight.

Alternatives

93. The PPTS along with Core Strategy Policy CS 7 anticipate Gypsy and Traveller sites outside of settlement boundaries in the countryside. Such development is subject to satisfying several criteria, albeit it should be strictly limited. The Emerging Plan is proposing the same approach.

94. Of the decanted residents from the Four Houses Corner site, 12 households hold a tenancy that gives them an opportunity to return if they wish. Those persons would occupy the 17 available pitches before any of the 6 households on the waiting list are considered. All would not be able to occupy a pitch at the Four Houses Corner site. The appellant does not hold a tenancy, nor is he on the waiting list for this site. Numerically, therefore, given the situation with the need and supply of sites in the District, it seems unlikely that the Council would be able to offer the appellant a pitch here when the site reopens shortly. But the appellant also pointed out that while he would be open to living on this site, it would depend on who the other occupants were given past incidents relating to people who lived at this site before it was closed for refurbishment. That situation is unknown until the Council starts to repopulate the site, and for both reasons, I consider this site to be an unlikely alternative, albeit it might be possible.

95. There is an extant planning permission at a site on Headley Road[14] to use the land for the stationing of caravans for residential purposes. The site is owned by the appellant's brother-in-law, Mr Black, who is a property developer. The appellant gave evidence at that hearing as he, along with several others, was an intended occupant of the site. The planning permission has not been implemented, but it is extant until 11 November 2025. Subsequently, planning permission has been obtained by the landowner for housing on the land. This has also not been implemented and remains extant.

96. The appellant has been looking for a suitable site before the appeal site was 'gifted' to the appellant by Mr Black, a family member. The same family concern could apply if I were to dismiss the appeals and uphold the EN. This could be resolved through the implementation of the planning permission on the Headley Road site. Whether that happens is for the landowner to determine, but it is a possibility given the family tie to the landowner, and the gifting of the appeal site to the appellant. No evidence was also put forward suggesting that there were any technical issues with implementing the Headley Road permission. As such, it could provide suitable accommodation for the appellant and his family to live lawfully.

97. For these reasons, I consider that an alternative to the appeal site exists, and there is a chance, albeit an unlikely one, that a second alternative may exist. Hence, this weighs against the appeal proposal, or at best, attracts neutral weight.

[14] CD7.15, Appendix H

98. I have reached this finding mindful that BCRG questions whether the appellant and his family have lived at the appeal site consistently since 23 March 2024 and whether they have in fact lived somewhere else. This is disputed by the appellant, who gave evidence on oath to confirm that the family has lived at the site since 23 March 2024, and I give this marginally greater weight than the BCRG's evidence due to the inaccuracies of the appellant's other evidence and due to the absence of supporting information from the appellant.

Personal circumstances

99. It is common ground that the appellant and his family are entitled to their traditional way of life, have protected characteristics for the purposes of the PSED, and a personal need for a permanent site.

100. The appellant and his wife have two children. Both children attend a nearby primary school where they regularly attend, can form friendships, and be part of the community. There are no health or educational needs associated with the children. There are also no health needs relating to the appellant's wife. The appellant has a medical condition for which he is accessing medical assistance.

101. Having a settled base would allow the family unit to all reside on the same site, avoid a roadside existence, and provide a stable environment for the children to continue with their education at the primary school and form friendships. Also, having a settled base at the site would enable the family, including the appellant, to access a GP, other health services and be part of a community. This chimes with PPTS paragraphs 3, 4 j), 13 c) and d).

Intentional unauthorised development (IUD)

102. The Written Ministerial Statement (WMS) explains that IUD is a material consideration that is to be weighed in the determination of planning appeals[15]. The relevant point is the lack of opportunity to appropriately limit or mitigate the harm that has been caused where the development of land has been undertaken in advance of obtaining planning permission.

103. The appellant accepts that they moved onto the site and carried out the works to facilitate the material change of use in the knowledge that they required planning permission and that doing so was against the professional advice that they had received before the planning application was submitted on 1 December 2023. They also conceded that the appeal site was acquired as it was affordable to establish a residential site for his family close to a local school with no thought of the requirements of development plan policy.

104. While the planning application was being considered, the family stayed at several stopping places[16] between December 2023 and 23 March 2024. The appellant was concerned for the safety of his family living on the roadside, particularly his children. He explained under oath that he understood that residents were not happy with him moving onto the land, but he wanted his family to be safe.

105. The IUD, while not unlawful, has caused harm in respect of the site's location, the character and appearance of the area, public safety (inadequate shelter), ecology (even if no GCN were harmed), and GI since the appellant moved onto the land on 23 March 2024. They continue to occur, albeit the precise harm to ecology is

[15] Green Belt protection and intentional unauthorised development, 17 December 2015
[16] ID8

unknown, as is whether there is or could be suitable mitigation and compensation. These harms go to the heart of the concern about undertaking development before planning permission is obtained. They would continue to different degrees if retrospective actions were secured by the imposition of planning conditions. The harm to public safety cannot be limited or mitigated. In addition, considerable public resources and expenses relating to Appeal B have been caused, as that appeal would not have happened if the IUD had not taken place.

106. The IUD was a conscious choice, though the appellant had submitted a planning application to use the land for the purpose that he has developed the land. The safety of the appellant's family is understandable, but the IUD weighs against the proposal even though retrospective applications are possible and there may be a need that is greater than what the 2021 Update assesses.

Precedent

107. Between the 1980s and October 2023, the appeal site formed part of a parcel of land roughly 1.9 hectares in size, which was under single freehold ownership. On 20 October 2023, the parcel of land was sold at auction and divided up into 11 separate plots of land[17] (A to K). On the same day, Mr Black purchased land plot D (the appeal site) from a company that invests in land with the intention of achieving an enhancement in value by obtaining planning permission. The conveyances of several plots include covenants by the owners not to oppose applications for planning permissions[18].

108. There have been no applications to the Land Registry for transfers of plots A, B, F, G, H, or I, and they remain in the name of the company that buys and sells real estate. There have been no planning applications or appeals relating to the plots A and B, though BCRG anecdotally say that someone intended to put two mobile homes on the land with the aim of building two five bedroom dwellings. Plot C was purchased, but no planning application has been submitted. Plot E was purchased, and planning permission was refused for a change of use of the land to equestrian[19]. The Council also refused planning permission on Plot F for a two storey dwelling[20], and for two pitches relating to around half of plots G, H, and I. The former decision could still be appealed, but the latter was not appealed, though the application was submitted by the agent who is acting on the appellant's behalf. Plots J and K were purchased by a resident of Brimpton Common.

109. In refusing planning permission for plots F and G, H and I, the Council cited similar concerns as main issues 1, 2, 3, and 5. Concerns relating to the stationing of a caravan unrelated to the proposed use were also cited for plot E.

110. Save for plots J and K, each of the other plots has either been the subject of planning application or appeal, or intentions for the land have been discussed. Collectively, there is either an intention or desire to develop or use the parcels of land in a different manner. Given the prior planning applications, the Council could potentially decline to determine a similar application on half of plots G, H, and I, though an application could still be made for the other half of that site. A similar application could also potentially be turned away for plots D, E, and F, but that does not mean other proposals could not come forward and be considered.

[17] Mrs Gordon Rebuttal, Appendix 8
[18] CD8.4, Page 22
[19] Council Ref: 24/01470/FUL
[20] Council Ref: 24/01549/FUL

111. Owing to the shape and size of each parcel, the amount and type of development could well vary compared to that proposed under Appeal A. However, there is a reasonable prospect of plots C, E, G, H, and I being subject of proposals to change the use of the land to a residential site for occupation. This is due to the ownership of the land/previous application and the physical similarities in the plots. At its lowest, this would relate to plots G, H, and I. In any event, my decision could result in a change of circumstances that the Council would need to consider when determining future planning applications here.

112. Plots C, E, G, H, and I together with the appeal site on plot D adjoin each other and would occupy most of the overall parcel of land (or alternatively plots D, G, H, and I). The specific circumstances of each proposal would need to be considered. However, proposals on these plots for residential use would be likely to give rise to similar harms in respect of location, character and appearance, public safety, ecology, and GI, whether individually or cumulatively, even though policies do not prevent Gypsy and Traveller development, as there would be extra development, demands on emergency services, and disturbance to ecology.

113. Therefore, more than mere fear or generalised concerns exist, and I consider that a precedent would be set if I were to allow Appeal A, as it would make it more difficult for the Council to resist future similar proposals for neighbouring plots. This is a matter that weighs negatively against the proposal subject of Appeal A.

Other matter

114. The appellant says that the Council inconsistently applies DPD Policy TS 3 to different proposals, such as land south of Abbottswood. That is a matter for the Council, and if the appellant is aggrieved with the Council's approach, then they should raise the matter with the Council in the first instance. I have considered Appeal A on its planning merits, applied my professional judgement, and determined it having regard to the development plan and the other matters raised.

Planning Balance and Conclusion on Appeal A

115. I have found that the proposal is not in a suitable location as the occupants would not have adequate access to facilities and services, having regard to local and national policies. Significant harm would flow from that. Planning conditions would not overcome the significant harm that would be caused to the character and appearance of the area. Further, the proposal would not be acceptable in public safety terms and could have consequences for the operation of AWE A. That matter attracts substantial harm. The proposal would also not conserve and enhance ecology or maximise opportunities to achieve a biodiversity net gain. Planning conditions would not overcome that harm for the reasons explained. The proposal has and would cause a loss of GI. These matters would result in significant harm. There would be a neutral effect relating to heritage assets.

116. While the proposal would accord with numerous aspects of the criteria in Core Strategy Policy CS 7 and DPD Policy TS 3, I consider that the proposal would overall not accord with those development plan policies. There would also be conflict with Core Strategy Policies ADDP1, CS 8, CS 13, CS 14, CS 17, CS 18, CS 19, and DPD Policy C1. Hence, the proposal would not accord with the development plan.

117. Further, the proposal would not accord with Emerging Plan Policies SP4 and DM20, though they are not determinative in this case. The proposal would also set a precedent, and there has been IUD. Both are material considerations that weigh

significantly against the proposal. I have also found harm against Framework paragraphs 102 b), 110, 115 a), 135 a), b), c), 187 b), 198, and 200, and PPTS paragraphs 13 and 27 b).

118. While the Council can demonstrate a five-year supply of deliverable sites as required by the PPTS, that is the minimum, and the actual need is likely to be greater than the 2021 Update. There is merit in addressing whatever the need is, avoiding roadside living, and ensuring equality. Hence, the provision of a single pitch therefore attracts moderate weight in favour of the proposal, although there are alternatives available to the occupants. But the Council's ability to demonstrate to a five-year supply of pitches means that the tilted balance found in Framework paragraph 11d) is not engaged, having regard to PPTS paragraph 28.

119. The personal circumstances of the family and the best interests of the children weigh in favour of the proposal. Providing a settled base for the children to access education is important, as is the benefit of the family living together on a suitable site for the reasons explained. However, those objectives could be realised at a site in a different location that complies with planning policies, and the children could attend the same school from either alternative site. Hence, although these matters carry significant positive weight, the material considerations collectively (even setting aside the IUD not caused by the children) do not indicate that I should take a decision other than in accordance with the development plan. Thus, I will not grant permanent planning permission or a personal permission.

120. In the alternative, a three-to-five-year temporary planning permission is suggested by the appellant. The identified harms would remain, albeit they would be time limited. However, that does not diminish the potential safety consequences were an incident at AWE A to occur and the substantial weight I afford this harm. The harms arising from the site's location and the character and appearance of the area would reduce to moderate, but the harm to ecology and GI would still be significant. Planning conditions would not change my views on these harms, and I have made my assessment on the basis that all the suggested planning conditions are imposed, despite the concerns raised about their effectiveness and merit. I therefore conclude that the identified harms (even setting aside the IUD not caused by the children) collectively outweigh the scheme's benefits, and as such, I will not grant a temporary planning permission even on a personal basis. Further, the principle of finding and securing planning permission for a policy compliant windfall site within 12 months is possible, and the compliance period on the EN could be varied to this effect.

121. For the reasons set out, I conclude that Appeal A should be dismissed.

The appeal on ground (g) (Appeal B)

122. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed. The appellant says that the three months stated on the EN is woefully short of reasonable. The basis for this relates to the lack of alternatives that would lead to a roadside existence and the inability to meet the family's needs elsewhere in the immediate future, which together would be to the cost of the family's health, safety, and welfare. They say there would also be a cost to the community. Therefore, a compliance period of 12 months is sought for requirement A and a further 42 days for the remaining requirements to provide time for the appellant and his family to explore and consider their options and to avoid a return to the roadside.

123. The harms that I have identified would exist up until the end of whatever the compliance period is and the EN's requirements are fulfilled. It is a legitimate public aim to protect the national security, environment, public safety, and the rights and wellbeing of others through the regulation of land use. The EN is the means to remedy those harms. But the compliance period stipulated on the EN is too short, as a proportionate response is needed bearing in mind the appellant and his family despite the inadequate shelter that currently exists on site in the event of an incident at AWE A.

124. A longer compliance period would enable the Four Houses Corner site to reopen in a phased manner as intended and for the Council to know whether they will be able to offer the appellant a pitch, and if so, for the appellant to know whether this site would be suitable. A longer time period would also enable that potential move to happen and all the requirements on the EN to be complied with. A greater compliance period would enable the situation with the Headley Road planning permission to become clear. This permission remains extant, and the land is owned by the appellant's brother-in-law. While this planning permission may not come to fruition, a longer compliance period would allow that permission to be implemented and for the move to happen, thereby avoiding the appellant and his family living by the roadside. Further, in the alternative, a longer compliance period would allow the appellant to look for an alternative and policy compliant site, albeit without certainty, to apply for planning permission and implement any permission, given that the development plan enables windfall sites to be considered.

125. For these reasons, a longer compliance period of 12 months would be a reasonable, necessary, and proportionate response. This centres particularly on the stability that the appeal site affords the children and their education, but also the social and health considerations of the family. The children's best interests are to continue with a settled life. While I recognise that these could be secured at another site, there would still be inconvenience and an unsettled period for them.

126. Given the identified harm, especially in relation to public safety, I consider a single longer compliance period is appropriate in this case. In practice, the residential use of the land would need to cease before all the remaining requirements are complied with. This would foreshorten the residential use of the land but provide the longest period for a policy compliant alternate to be secured.

127. I have had regard to the parties' points about the Emerging Plan and the new GTAA, but as the former will not contain any pitch allocations and the surveys for the GTAA will not take place until the winter of 2025/26, neither will provide certainty of where the appellant can move to. Further, while the Council will have a new GTAA, the identified need would then need to be translated into provision.

128. For these reasons, a variation of the compliance period would be justified to 12 months to strike a fair and proportionate balance between the need to remedy the breach of planning control and the public interest and the interference with the Article 8 rights of the family. Accordingly, ground (g) succeeds, and I shall vary the EN by deleting the compliance period of 3 months and substituting it for 12 months. This would not cause injustice to either of the main parties.

Overall Conclusions

129. For the reasons set out above, I shall uphold the EN subject of Appeal B with corrections and variations and refuse to grant planning permission on Appeal A. In doing so, I recognise that the appellant and his family would lose their home. This

would cause an infringement of rights under Article 8 of the HRA. But the harm that I have identified in Appeal A is of such weight that upholding the corrected and varied EN subject of Appeal B is a proportionate, legitimate, and necessary response that would not violate those persons' rights under Article 8. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

Andrew McGlone

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Cottle, Counsel

He called:

Brian Woods BA, MRTPI	Managing Director, WS Planning and Architecture
Jimmy Slater	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mark Beard, Counsel

He called:

Michael Butler BSc (Hons), M Phil	Principal Planning Officer
Cheryl Willett BSc, MSc, MRTPI	Senior Planning Officer
Carolyn Richardson BSc (Hons), CIEH	Service Manager, Emergency Planning
Fiohn Menpes Greenslade BSc (Hons)	Senior Ecology Officer
Liz Allen CMLI	Landscape

FOR THE BCRG

Ben Fullbrook, Counsel

He called:

Aaron Smith BA (Hons) Dip TP, MRPTI	Director, Master Land and Planning Ltd
Sarah Gordon	Resident
Nick Paus	Resident
Grahame Hawker	Resident
Elizabeth Bryant BA (Hons), MA, CMLI	Director, Bryant Landscape Planning

INTERESTED PARTIES:

Mr Ian Rogers, appearing on behalf of AWE and MoD

INQUIRY DOCUMENTS

ID1	Appellant opening submissions, including authorities
ID2	BCRG opening submissions
ID3	Council opening submissions
ID4	AWE letter, 31 January 2024
ID5	Paices Hill Decision Notice Ref: 22/00120/FUL
ID6	Four Houses Corner Decision Notice Ref: 23/01552/REG3
ID7	Mr Rogers Statement, AWE and MoD
ID8	Appellant schedule of stopping places
ID9	Letter from children's primary school
ID10	Core Strategy Proposals Map Extract, Policy CS8
ID11	Traveller caravan count Table 1, July 2024
ID12	Four Houses Corner waiting list
ID13	BCRG closing submissions
ID14	Council closing submissions
ID15	Appellant closing submissions

DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY

1	Email and Decision Notice Ref: 23/01045/FUL, land south of Abbottswood
2	BCRG response regarding Decision Notice Ref: 23/01045/FUL
3	Appellant response regarding Decision Notice Ref: 23/01045/FUL including Committee Report and Update Report

CORE DOCUMENTS

As per those found and listed on the Inquiry website which was updated by the close of the Inquiry on 7 February 2025.