



Appeal Decisions

Inquiry Held on 23, 24 & 25 May 2023, and 5 June 2023

Site visit made on 25 May 2023

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2023

Appeals A and B Refs: APP/X0360/C/21/3289909 & 3289910 Land to the South of Twin Oaks, Longwater Lane, Finchampstead

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mrs Amy Jones (Appeal A) and Mr Arthur Gentle (Appeal B) against an enforcement notice issued by Wokingham Borough Council.
 - The enforcement notice was issued on 6 December 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the Land to a use as a caravan site for residential purposes.
 - The requirements of the notice are:
 - i. Cease the use of the Land edged in red as a caravan site for residential purposes.
 - ii. Permanently remove from the Land:
 - a) All caravans;
 - b) The portaloo cabin;
 - c) The mobile home and brick skirt;
 - d) All pipes and cables in connection with; the supply of water, gas, electricity; and, foul drainage and the disposal of sewage
 - e) The fence, posts and gates between points X-Y-Z shown in the approximate position of the blue line on the plan.
 - f) The play equipment and fencing shown in the approximate location edged purple on the plan
 - g) All residential items and associated paraphernalia.
 - h) All vehicles and trailers.
 - iii. Excavate the hardstanding as shown in the approximate location shaded in pink on the plan and spread with top soil to a depth of 20cm and sow with grass seed
 - iv. Re-instate a 1.2m high post and rail fence between points A-Z in the approximate position marked by a green line on the plan.
 - v. Permanently remove from the Land the resulting materials from steps ii to iv.
 - The period for compliance with the requirements is 12 months.
 - The appeals are proceeding on the grounds set out in section 174(2) (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeals C and D Refs: APP/X0360/C/21/3289912 & 3289913 Land to the South of Twin Oaks, Longwater Lane, Finchampstead RG40 4NX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Amy Jones (Appeal C) and Mr Arthur Gentle (Appeal D) against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice was issued on 6 December 2021.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of an open sided covered roofed structure and foundation slab.

- The requirements of the notice are:
 - i. Demolish the open sided covered roofed structure and excavate the foundation slab as shown in the approximate location edged in yellow on the plan.
 - ii. Following compliance with steps (i) and (ii) spread the area with top soil to a depth of 20cm and sow with grass seed.
 - iii. Permanently remove the resultant materials from step (i) above from the Land
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.
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Appeal E Ref: APP/X0360/W/21/3283104

Caravan at Twin Oaks, Longwater Lane, Finchampstead RG40 4NX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Arthur & Amy Gentle & Jones against the decision of Wokingham Borough Council.
 - The application Ref:211549, dated 5 May 2021, was refused by notice dated 15 July 2021.
 - The development proposed is described on the application form as a caravan site for one traveller family: extension of permission APP/X0360/C/10/2125352 & APP/X0360/A/10/2120041 to increase site area and number of caravans.
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Summary Decisions

Appeals A and B are dismissed and the enforcement is upheld with a variation

Appeals C and D are dismissed and the enforcement is upheld with a variation

Appeal E is dismissed

Application for costs

1. At the Inquiry an application for costs was made by Wokingham Borough Council against Mrs Amy Jones and Mr Arthur Gentle. This application is the subject of a separate Decision.

Procedural Matters

2. Evidence at the Inquiry was given under oath by way of affirmation.
3. I carried out an accompanied site visit on 25 May 2023. Later that same day, I carried out an unaccompanied visit of the surrounding area, walking the entire circular route suggested to me by Mr Hannington on behalf of the Council.
4. Appeals A and B were initially proceeding on grounds (d), (e), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act). The appeals on ground (e) were withdrawn at the opening of the Inquiry¹. The appeals on ground (f) were withdrawn during the course of the Inquiry². Appeals A and B are therefore only proceeding on grounds (d) and (g).

¹ The ground of appeal is that copies of the enforcement were not served as required by Section 172 of the 1990 Act.

² The ground of appeal is that the requirements of the notice exceed what is necessary.

5. Appeals C and D were initially proceeding on grounds (e), (f) and (g) as set out in section 174(2) of the 1990 Act. The appeals on ground (e) were withdrawn at the opening of the Inquiry. The appeals on ground (f) were withdrawn during the course of the Inquiry. Appeals C and D are therefore only proceeding on ground (g).
6. The appellants maintain that the procedural omission of an appeal on ground (a) causes no injustice to the parties, as a Section 78 appeal was already lodged and all the appeals have been heard together³. However, an appeal on ground (a) requires the payment of a fee at the appropriate point in the appeal timetable: there is no provision within the Regulations to pay the required fee for the deemed planning application once the specified date has passed⁴. No such fee has been paid and the deemed planning applications have therefore lapsed. In the interests of clarity, in the absence of an appeal on ground (a) for which the requisite fee was paid at the appropriate time, there is not a deemed planning application before me for the breach of planning control alleged in the either Notice A or Notice B.
7. In relation to Appeal E, the development for which planning permission is sought was described on the planning application form as a caravan site for one traveller family: extension of permission APP/X0360/C/10/2125352 & APP/X0360/A/10/2120041 to increase site area and number of caravans. That was subsequently changed by the Council to the change of use of land to form an enlarged caravan site, for the provision of four additional caravans (total of six), a structure for recreational/schooling purposes and ancillary hard surfacing (part retrospective). However, it was agreed at the Inquiry that this description was itself inaccurate and that the word 'enlarged' should be removed.
8. Planning permission was refused for a total of three reasons. The third reason for refusal was, in summary, that the site is within 5km of the Thames Basin Heaths Special Protection Area (SPA) and the use has the potential to increase visitor pressure on the SPA. Following the Inquiry, the appellants submitted a completed Section 106 Agreement which covenants to pay to the Council the SPA Access Management and Monitoring Contribution and the Rooks Nest Wood SANGS Contribution. The Council had previously indicated that payment of these contributions in full would dispense with the third reason for refusal. I have therefore not considered this reason for refusal further. However, the payment of the contributions only addresses a harm that would otherwise arise from the proposed development and as such is not a benefit that arises from that proposal. As such, it is a neutral consideration in the overall planning balance.
9. Notwithstanding the submission of the Section 106 Agreement, Appeal E will be dismissed for reasons not related to the SPA and the SANG. The development will therefore not proceed. Accordingly, it is not necessary for me to conduct an Appropriate Assessment under the Habitats Regulations⁵.
10. There is no dispute that the appellants follow a nomadic habit of life and travel for economic purposes.

³ The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

⁴ The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012.

⁵ The Conservation of Habitats and Species Regulations 2017.

The enforcement notices

11. These appeals relate to two enforcement notices, one alleging a material change of use (Appeals A and B) and the other alleging operational development (Appeals C and D). The Council identifies these as Notice A and Notice B respectively, and I will adopt that practice here.
12. Notice A requires at paragraph 5(ii) that various items are permanently removed from the Land. Similarly, Notice B requires at paragraph 5(iii) of that notice that the materials resulting from compliance with step (i) are permanently removed from the Land. Having regard to the provisions of Section 181(1) of the 1990 Act, which states that compliance with an enforcement notice shall not discharge that notice, the word 'permanently' is unnecessary in this context. I shall therefore delete it from both notices. I am satisfied that no injustice would be caused by so doing.

Background to appeals

13. The appeal site comprises a single pitch gypsy/traveller site located on the south side of Longwater Lane, Finchampstead. At this point, Longwater Lane is an unmade track but to the west of the appeal site Longwater Lane transitions to a public footpath. The site is outside of the settlement boundary of Finchampstead and is located in open countryside.
14. The appeal site itself comprises a narrow strip of land approximately 0.5ha in area. In January 2011, planning permission was granted on appeal for a change of use of the land from agricultural to the stationing of a mobile home and touring caravan for residential purposes (APP/X0360/C/10/2125582) and for a long-stay pitch for one gypsy family (APP/X0360/A/10/2120041). Those permissions are personal to Mrs Amy Jones and Mr Arthur Gentle, and their resident dependants. Those permissions were also subject to a condition requiring, amongst other things, the submission and implementation of a detailed grassland mitigation strategy for the paddock within the appellant's ownership. At the same time, planning permission was granted for associated operational development, including the installation of entrance gates fronting Longwater Lane and the laying of hardstanding (APP/X0360/C/10/2125352).
15. The authorised gypsy/traveller pitch, which I will hereafter refer to as the lawful caravan site, therefore comprised an area of hardstanding with a single static caravan and a pre-existing brick utility building, to which a storage building has subsequently been added with the benefit of planning permission. The lawful caravan site is located on the northern part of the site and was previously separated from the paddock directly to the south of it by a post and rail fence.

The Planning Unit

16. In cases such as this where a material change of use of land is alleged in an enforcement notice, it is first essential to determine the relevant planning unit. The leading case for the determination of the planning unit is *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. This case indicates that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically and/or functionally separate and distinct, and/or occupied for different and unrelated purposes.

17. Prior to the breach of planning control alleged in the Notice A taking place, the appeal site comprised the lawful caravan site and a paddock used for grazing. The former was physically separated from the paddock by a post and rail fence. The uses of the two parcels of land were functionally different: the area to the north of the post and rail fence is used for residential purposes, that to the south as a paddock for the grazing of horses, an agricultural use. The land comprised a single unit of occupation. Having regard to the principles set out *Burdle*, I consider that the land was in two separate planning units at that time.

Appeals A and B: the appeals on Ground (d)

18. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the use had been continuous for a period of ten years beginning with the date of the breach. The test in this regard is the balance of probability and the burden of proof is on the appellant.
19. The appellants' evidence in relation to this ground of appeal is essentially in three parts:
- (i) a Google Earth photograph dated January 2010
 - (ii) an email from a Mr Jeff Easter dated 20 January 2022, and
 - (iii) oral evidence from family members.
20. The Google Earth photograph pre-dates the permissions granted on appeal in 2011. The Inspector who determined that appeal visited the site on 4 August 2010, some eight months after the Google Earth photograph was taken. In paragraph 6 of his Decision, in which the Inspector describes the site at the time of his site visit, he records that: "The southern part of the site beyond a post and rail fence and a belt of willow trees is a paddock on which at the time of my site visit two horses were grazing". There is no reference there to a caravan in residential use in this part of the site, which the Inspector describes as taking place in the part of the site nearest Longwater Lane.
21. The photograph itself is of poor quality. It does show a light-coloured object, which the appellants claim to be caravan, but the image is grainy and it is not possible to determine with any certainty what that object is. In that context, a series of aerial photographs embedded within Mrs Maynard's evidence show a light-coloured object which is consistent with a white horse box shown in a photograph taken at ground level in or around 2015. That object is omnipresent in aerial photographs taken at various times between 2013 and 2021, albeit it appears in different positions around the site. I therefore cannot discount the possibility that the light-coloured object in the January 2010 photograph is actually that white horse box: indeed, taken together with the other evidence, I consider it more likely than not that this is the case.
22. The email from Mr Easter states that a touring caravan was placed at "Twin Oaks, Longwater Lane" at least "12 years ago" i.e. in or before January 2010. Two points arise from this evidence. Firstly, it is not specific about where the caravan was stationed on the land. Secondly, date-wise, this broadly corresponds with the stationing of the mobile home that was ultimately granted planning permission in 2011. It is also known from the Inspector's recording of his site visit in August 2010 that there was not a caravan stationed on the

- paddock at that time. I therefore cannot discount the possibility that Mr Easter is referring to a touring caravan associated with the lawful caravan site.
23. In his email, Mr Easter goes on to say that he recalls Mr Gentle creating a children's play area on the property "some 8 years ago": i.e. in approximately January 2014. However, aerial photographs embedded within Mrs Maynard's evidence show the children's play area on the paddock was not created until at least 2018, at most only some 5 years ago. This casts doubt on the accuracy of Mr Easter's recollection of events. In that respect, Mr Easter did not submit a Statutory Declaration and did not appear at the Inquiry. His written evidence therefore remains untested and this reduces the weight that can attach to that evidence.
24. The oral evidence from family members did not assist their own case. In giving his evidence, Arthur Gentle indicated that his daughters were aged 11 or 12 when they first slept in a touring caravan stationed on the paddock. He accepted that this would have been in 2014 or 2015. He also conceded that the caravan had been slept in "only on special occasions" and therefore very occasionally. This evidence was corroborated by his children.
25. It is settled case law that, in order to become immune from enforcement action, the use in question must have taken place continuously and without being substantially uninterrupted for a period of at least ten years. The occasional use as described by the appellants is patently not sufficient to establish the use of the paddock as a residential caravan site: by definition, there would have been significant periods of time when the use was not taking place. Each of those periods would have represented an interruption of the use, which was therefore not continuous. The 'clock' for the 10-year period specified in section 171B(3) of the 1990 Act, which applies to a material change of use such as in this case, starts again at the resumption of the use after each interruption. Given the occasional use of the caravan described by the appellants themselves, the required period of immunity could never have been achieved. Moreover, there is no evidence that the occasional use has even taken place over a full period 10 years.
26. Against the evidence of the appellants, the Council has produced a series of aerial photographs that cover the period from 2013 to 2021. These photographs are of good quality and clearly show that the sub-division between the residential use located on the north part of the site and the paddock on the south part of the site remained unchanged until at least 2018. Any evidence of the residential use moving on to the paddock, including the re-positioning of the mobile home and the creation of the play area, does not appear until the aerial photograph taken in 2020. Giving the appellants the benefit of the doubt, this means that the residential use alleged in the notice could only have started during 2018 at the earliest: that is only some three years prior to the notice being issued.
27. The above is consistent with the enforcement visits which were carried out in 2014 and 2015, and which did not identify any caravan(s) in the paddock. The dates of these investigations are significant, insofar as it was during 2014 and 2015 that the appellants claim that their daughters first slept in the caravan. The absence of any caravans in the paddock at the time of those enforcement visits, confirmed through the aerial photographs, casts further doubt over the veracity of that evidence.

28. This is therefore not a situation where the local planning authority has no evidence of its own to contradict that of the appellants or make their version of events less than probable. On the contrary, I find that the appellant's evidence is not sufficiently precise to counter the photographic and documentary evidence produced by the Council and that the appellants have not discharged the burden of proof that falls upon them. I therefore conclude that, on the balance of probability, the Council was in a position to take enforcement action against the breach of planning control constituted by those matters stated in the notice, specifically the use of the land as a use as a caravan site for residential purposes. Accordingly, the appeals on ground (d) fail.

Appeals A and B: the appeals on ground (g)

29. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is twelve months.
30. The appellants initially sought a period of compliance of two years on the basis that complying with the notice would be considerably disruptive for the family. However, the appellants have provided no evidence as why the notice could not be complied with within the period of compliance stated in the notice or evidence as to why a longer period of compliance would be justified. Indeed, Dr Home conceded that the work itself would only take six months to complete, which is half that stated in the notice.
31. In the absence of an appeal on ground (a), the appellants are deemed to have accepted that the harms alleged in the notice have occurred. Whilst complying with the notice would undoubtedly cause some disruption to the appellants, I consider that this disruption would be outweighed by the harm caused by the breach of planning control that has occurred. In particular, in the absence of an appeal on ground (a), there is no mechanism through which the impact on the SPA through the potential to increase visitor pressure could be mitigated. The development would therefore not comply with the Habitats Regulations, which in itself constitutes substantial harm.
32. This is not a situation whereby the appellants are at risk of losing their home. Although the notice requires the removal of the mobile home, in issuing the notice the Council were mindful that the appellants have the benefit of the lawful caravan site. Compliance with the notice could therefore be achieved by re-positioning their exiting mobile home to within the lawful caravan site. The appellants accept that this could be achieved within the period stated in the notice. Consequently, the appellants rights under Article 8 and Article 1 of the First Protocol the European Convention of Human Rights⁶, as incorporated into domestic law by the Human Rights Act 1998 (HRA), are not infringed.
33. I have had regard to the Public Sector Equality Duty (PSED) that arises under Section 149 of the Equality Act 2010. I recognise that complying with the notice could detract from the appellant's ability to travel for economic purposes but, given that the appellants accept that the steps required to comply with notice could be achieved in half the time stated in the notice, I am not persuaded that this provides justification for extending the period of compliance.

⁶ The right for respect for private and family life, home and correspondence and right to respect to property, respectively.

34. Accordingly, the appeals on ground (g) fail.

Appeals C and D: the appeals on ground (g)

35. The period for compliance stated in the notice is six months. In response to my question, Dr Home indicated that the required works would only take one month to complete. On the basis of that evidence alone, there is no justification for extending the period of compliance. Accordingly, the appeals on ground (g) fail.

Appeal E

36. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (the 2004 Act) indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. The development plan for this area comprises the Wokingham Borough Core Strategy 2010 (the Core Strategy) and the Wokingham Borough Managing Development Delivery Local Plan 2014 (the Local Plan).

Main Issues

37. The third of the three reasons for refusal has been fully addressed through the submission of the completed Section 106 Agreement. From the remaining two reasons for refusal, the main issues raised are:

- the effect, if any, of the proposed development on the character and appearance of the surrounding area, and
- whether the proposed development would result in a net loss of biodiversity on the appeal site itself.

Character and appearance

38. The appeal site is within Character Area B2: Blackwater River Valley with Open Water (CAB2), as defined in the Council's Landscape Character Assessment 2019 (LCA) and its 2020 Valued Landscape Topic Paper (Topic Paper). The key characteristics of CAB2 include a wooded and character, irregular fields used for small-scale agriculture including horse grazing and paddocks, and a rural linear pattern along leafy lanes on the edge of the floodplain. The LCA identifies this landscape as being ecologically important and has having localised areas of tranquillity and peacefulness. When looked at in the round, these characteristics take CAB2 above mere countryside. The Topic Paper concludes that this landscape should be regarded as a "valued landscape" for the purposes of paragraph 174(a) of the National Planning Policy Framework (Framework), which imposes a duty on planning authorities to "protect and enhance" valued landscapes.

39. I noted on my unaccompanied site visit that there are localised variations in character within CAB2. The restoration of the former gravel workings is more advanced towards the eastern end of CAB2. The fully restored parts towards the eastern end provide areas of open water surrounded by trees and colonised by plants. These areas, such as Moor Green Lake, form an attractive landscape. The unrestored parts towards the western end are harsher in their

- appearance but are nonetheless rural in character and provide great visual interest.
40. The northern section of CAB2 features several small paddocks (some being grazed by horses at the time of my site visit) and some small areas of woodland. The wooded backdrop of the ancient woodland of Fleet Copse provides an important setting to this landscape. The landscape character of CAB2 as a whole is united by the River Blackwater to the south, which not only makes its own significant contribution to its appearance but also provides a sense of tranquillity to the landscape. At the time of my site visit, the landscape was being well used by the public including by birdwatchers, ramblers, dog-walkers, cyclists and horse-riders. I therefore consider that, as a whole, the landscape should be regarded as a valued landscape for the purposes of paragraph 174 of the Framework.
 41. In terms of the contribution of the appeal site to character and appearance of CAB2, the situation is complicated somewhat by the fact that the paddock has been partly covered by hardstanding as part of the breach of planning control alleged in Notice A. The paddock has also been significantly degraded through use for residential purposes since the planning permissions were granted in 2011. The current condition of the paddock is therefore not a true reflection of the contribution that the site could make to the character and appearance of CAB2. However, Notice A will be upheld and with that comes a requirement to cease the use of the land for residential purposes, to excavate the hardstanding and sow with grass seed. In response to my question, Mr Fisher indicated that the grassland previously on the paddock could re-generate over time. I therefore consider that the baseline from which I must consider the effect, if any, of the proposed development is that of wet and dry grassland akin to that noted to be present on the site by the Inspector in 2011.
 42. Before going on to consider the effect of the development on the character and appearance of the area, it is essential to understand the exact development that is proposed. The description of the development, as agreed to be amended, is the change of use of land to form a caravan site, for the provision of four additional caravans (total of six), a structure for recreational/schooling purposes and ancillary hard surfacing (part retrospective). It emerged during the Inquiry that the four additional caravans would all be touring caravans which would be occupied by members of the appellant's family.
 43. An indicative sketch layout produced in 2021 shows the existing mobile home and a total of five caravans, together with the brick building, the storage building that has planning permission and the recreation/schooling structure that is the subject of Notice B. No hardstanding is shown on that sketch plan, either existing or proposed. I have therefore taken that to be the hardstanding existing at the time of my site. Neither the description of the development nor the indicative sketch plan any make reference to the play area constructed at some point during or after 2018, and this therefore does not form any part of the proposed development. The same applies to the newly erected fencing on the site.
 44. The proposed development introduces urban influences into this valued landscape. The structure for recreational/schooling purposes is urban/suburban in character and is an alien feature in this landscape. The hardstanding introduces, or more correctly expands onto the paddock, an alien

- and urbanising feature into the landscape. Moreover, if planning permission was granted, this hardstanding would permanently replace a significant proportion of the wet and dry grassland that existed on this paddock previously. The provision of four additional caravans increases the intensity of the residential use of land, with the associated residential paraphernalia and levels of activity. This would detract from the tranquillity and peacefulness of this part of CAB2, and would further degrade the paddock.
45. One of the most significant impacts of the proposed development is the extension of the use/development into the rear part of site. The site to the east of the appeal site is largely open. The development of the adjoining site to the west (the "Jimmy Lee" site) is largely confined to the site frontage. One of the key characteristics of CAB2 is a linear pattern of development along leafy lanes. The development permitted in the 2011 permission already extends deeper into the site than the development on the adjoining sites. By projecting even deeper into the appeal site, the proposed use/development would be harmful to that key characteristic and would therefore harm the character and appearance of CAB2 as a whole. The further significance of this is that the proposed development would encroach into open and undeveloped land which serves a valuable function in protecting the separate identity of the settlement of Finchampstead.
 46. As the appellants point out, the rear of the site (i.e: the paddock) is not visible from Longwater Lane itself. Glimpses of the site are possible from the public footpath that runs to the east of the site, but those views are at a distance and are heavily filtered by intervening vegetation. However, I take the point made by Mr Hannington that the key to understanding this valued landscape is to assess the wider landscape in which the site sits, and not just the landscape of the site itself.
 47. One of the key characteristics of CAB2 is the irregular fields used for small-scale agriculture including horse grazing and paddocks. I saw examples of those on my site visit. Assessing the baseline position against the wider landscape, the paddock featuring wet and dry grassland would have made a positive contribution to the character of CAB2 and would have formed an intrinsic part of it. To the extent that the proposed (part retrospective) development would result in the replacement of a significant proportion of the paddock with hardstanding, it would be (and already is) harmful to the character and appearance of CAB2. In that context, in allowing the appeals in 2011 the Inspector concluded that even the change of use of a smaller proportion of the paddock for a much more limited development would cause landscape harm. The proposed (existing) expansion of the hardstanding exacerbates that harm. The other elements of the proposed development only serve to exacerbate that harm even further.
 48. I conclude that the proposed development would unacceptably harm the character and appearance of the surrounding area. I therefore conclude that the proposed development is contrary to Policies CP1, CP3 and CP11 of the Core Strategy, as well as Policies CC01, CC02, TB10 and TB21 of the Local Plan. These policies require, amongst other things, that proposals must demonstrate how they have addressed the requirements of the Council's Landscape Character Assessment and can demonstrate that unacceptable impacts on the character and appearance of the surrounding landscape will be minimised through the sensitive and appropriate design of the schemes.

49. In addition, the proposed development fails to accord with the Council's Design Guide Supplementary Planning Document (SPD) which, amongst other things, advises that development must respond positively to the character of the local area in terms of landscape. The proposed development would fail to do that. For the same reason, the proposed development would also be contrary to paragraph 174(a) of the Framework, which states that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. These are both material considerations to which I attach significant weight.

Biodiversity

50. The appeal site is entirely within the Longwater Lane Meadows Local Wildlife Site (LWS). The Berkshire Local Wildlife Site Citation for this LWS describes, in summary, a relatively rank grassland with elements of an unimproved sward and an area of wet rushy grassland towards the south. It follows from this citation that the grassland habitat is a key constituent part of the LWS.
51. The Ecological Assessment prepared on behalf of the appellants in August 2011 concluded that the paddock represents the more botanically diverse grassland described in the citation for the LWS. This survey also notes that the paddock hosts several species which are specifically included in the LWS citation, including Black Knapweed, Oxeye Daisy and Birdsfoot Trefoil.
52. The Inspector in 2011 noted that there did not appear to be any fauna of particular interest on the land but went on to identify the presence of wet and dry grassland communities of plants as being the principal ecological interest on the site. Pursuant to that finding, the appeals were allowed subject to a condition (Condition 8) requiring the submission of a grassland mitigation strategy. In imposing that condition, the Inspector must have found that such a condition met all the relevant policy tests for the imposition of conditions, including that it was necessary to make the development acceptable in planning terms. The grassland strategy for the ongoing management of the paddock was subsequently approved.
53. The proposed development includes an unspecified amount of new hard surface covering part of the paddock. However, this element of the development has already taken place and the Council estimates that this has resulted in a net loss of some 0.11ha of the paddock, equating to approximately 33% of the area of the paddock and 5% of the area of LWS as a whole. Those figures were not challenged by the appellants. In addition to that, the appellant constructed a play area in or around 2018 which has effectively resulted in the loss of a further area of paddock. I also noted at my site visit that, by comparing the current condition of paddock with the findings of the Inspector in 2011, the remaining area of the paddock has been significantly degraded since those permissions were granted. In particular, I noted that there are extensive patches of bare earth or very little grass cover, including one quite extensive area where burning had clearly taken place.
54. The implementation of the grassland strategy should have maintained the principal ecological interest on the site but evidently has not been adhered to. The appellants have not produced a new Ecological Assessment to update that provided in 2017 and to show that the site has maintained its ecological value notwithstanding the changes that have taken place in period since that survey was produced. Consequently, on the evidence that is before me, I can only

conclude that the net loss of grassland habitat and the degradation of the remaining area of that habitat has harmed the ecological value of the LWS. The appellants have not put forward any mitigation or appropriate compensation measures to prevent or offset that harm.

55. I conclude that proposed development would result in a net loss of biodiversity on the appeal site itself. I therefore conclude that the proposed development is contrary to Policies CP1, CP7 and CP11 of the Core Strategy, as well as Policies TB21 and TB23 of the Local Plan. These policies provide, amongst other things, that development which may harm a Local Wildlife Site will only be permitted if the need for the proposal outweighs the need to safeguard the nature conservation importance and that mitigation measures can be put in place to prevent damaging impacts or appropriate compensation measures are provided to offset that harm. I return to the question of need for the proposal below but, in short, I am not persuaded that the need for the development outweighs the need to safeguard the nature conservation importance of the site.

Other considerations

56. I have found that the development proposed conflicts with the development plan in the above respects. In accordance with the 2004 Act, I must consider whether there any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
57. The most recent assessment of the need for Gypsy/Traveller accommodation in the Borough is set out in the Gypsy & Traveller Accommodation (Needs) Assessment published in 2017. The methodology underpinning the GTAA was ultimately not disputed by the appellants, having conceded an initial reliance on the criticism of that GTAA by an Inspector in an appeal decision relating to a site at Nelsons Lane, Hurst, Wokingham (APP/X0360/W/16/3150332). Furthermore, as Dr Bullock explained (supported with examples as evidence), the methodology employed in that GTAA has been endorsed by various Inspectors in other appeal decisions and Local Plan examinations. I am therefore satisfied that the methodology in the GTAA is robust and that the GTAA can be relied upon as in an indication of general need in the Borough.
58. In reaching that conclusion, I have had regard to the implications of the judgment of the Court of Appeal in *Lisa Smith v SSLUHC* [2022] EWCA 1391, which endorsed a more expansive approach to the definition of travellers in the Planning Policy for Traveller Sites (PPTS) than is required under the existing PPTS. However, that judgment and any consequences that may flow from it do not materially affect this case because (a) the appellants and their family do meet the PPTS definition in any event and (b) the Council can demonstrate a 5-year supply of sites which is more than sufficient to accommodate people of follow a nomadic way of life in the Borough. I therefore take the point made by Mr McCabe that the impact of the *Lisa Smith* judgment should not be overstated in this case.
59. The situation in relation to the general need for and supply of Gypsy and Traveller pitches in the Borough, as assessed by the GTAA, is that the Council's current supply and past completions comfortably exceeds the need to 2027/28 by 10 pitches. This evidence was not questioned by the appellants. The significance of this is that the Council is in a position at this time whereby it is

not obliged to accept proposals for new gypsy and traveller pitches in the Borough that do not accord with the development plan and/or which cause environmental harm in order to meet any shortfall in the need for such pitches.

60. Although the GTAA demonstrates that the general need for gypsy and traveller pitches in the Borough can be met and even exceeded, it is still necessary to consider the specific needs of the appellants in this case. The personal circumstances of the appellants are that Amy Jones and Arthur Gentle reside in a mobile home on the site with their five children, having first taken up occupation in 2010. Their eldest daughter, Amy-Jane, is now an adult and is seeking employment. The remaining children are home-schooled, with two now transitioning out of education and into work. Mr Arthur Gentle runs a roofing business and travels for economic purposes.
61. The appellants have been clear that they want five caravans so that their children can remain on the site as they transition into living more independent, adult lives. In that regard, Amy-Jane Gentle spoke very eloquently about her need for privacy and the difficulties of sharing a room (and for that matter a bed) with her siblings. As a young adult she deserves to have her privacy and her personal space, a place to hang her clothes and put her belongings, and to be able to invite her friends to stay over. That is far from being unreasonable: those are things that many, if not most, young adults have.
62. Similarly, the current living arrangements in the mobile home are equally difficult for the other members of the family. In giving his evidence, Master Arthur Gentle explained with equal eloquence that he has aspirations to progress in the sport of boxing and that, in addition to his everyday things, he needs space for his boxing equipment and trophies. That is clearly important to him. I do not underestimate the difficulties and inconvenience endured by all the appellant's children in terms of rotating who sleeps on the floor, who sleeps on a sofa and who sleeps in the touring caravan. There are other consequences too: for example, the condensation caused by the number of people sleeping in the mobile home has resulted in rust forming on the light fittings⁷.
63. The Council considers that the personal circumstances of the appellants should only be afforded (at most) limited weight. But I put it much higher than that. The circumstances surrounding the occupation of the mobile home by the appellant's family should in my view be afforded significant weight. However, in the context of the proposed development, that weight is then tempered by another factor: the availability of the lawful caravan site.
64. The area covered by the lawful caravan site is relatively large. It contains a twin-unit static caravan (mobile home) with three separate bedrooms, one of which is used as a utility room. The site also has permission for one touring caravan, which adds at least one further sleeping space, and the Council considers that the site could also accommodate several more caravans (subject to the requisite planning permission). There is already a large ancillary storage building on the site plus a brick building. The mobile home is currently unlawful due to its location partly on the paddock and partly outside of the lawful caravan site, but the Council accepts that it could be retained if moved back fully onto the lawful caravan site.

⁷ Duly noted during my site visit.

65. During my site visit, and in the absence of any dimensioned plans, I took several moments attempting to visualise whether the proposed development could be accommodated on the lawful caravan site. My initial view is that it could. The Appellants have not provided any analysis or evidence which confirms that the existing site cannot physically accommodate the proposed development. The appellants rely to the guidance in the Council's Design Guide which, amongst other things, requires a 6m separation between distance between each caravan, trailer and park home⁸. However, no plan or other evidence has been provided to demonstrate that four additional caravans (to make the six in total) could not be located on the lawful caravan site in accordance with that guidance. In the absence of that evidence, and based upon my initial visual assessment, I am unable to conclude that the lawful caravan site could not accommodate the proposed development and does not have the capacity to accommodate the appellant's current needs in terms of separate bedrooms to provide privacy and personal space for their children.
66. There is also the related point about the timing of the application. The stated purpose behind the application is so that the appellant's children can remain on the site as they transition into living more independent, adult lives. But not all of the appellants' children are at that stage yet: their youngest two children are both several years from adulthood and from being able to live independent lives. In that sense, the application is premature. I recognise that the appellants do not wish to have to keep coming back to the Council on a piecemeal basis for further permissions to add further caravans but, at this point in time, the stated reason for the proposed development does not fully apply. Consequently, whilst I recognise that the appellants' older children would undoubtedly benefit from their own privacy and personal space, the provision of five caravans is not justified at this time. Moreover, additional caravans for just the appellants' older children could be comfortably accommodated on the lawful caravan site⁹.
67. The appellants' personal circumstances have changed significantly since the appeal was allowed in January 2011, when the Inspector afforded them "substantial weight". The Inspector's reasons for reaching this view were: (a) the absence of alternative sites on which the appellants and their family could live; and (b) the fact that the appellants' children were young and enrolled in the local school. The provision of a settled base close to the local school was a consideration to which the Inspector attached substantial weight. The Inspector found that there would be limited harm to the appearance of this part of the countryside and to an area of ecological interest. This enabled the Inspector to conclude that it would be desirable to grant planning permission for the family to remain at the site.
68. In relation to (a), the appellants now have the lawful caravan site to which they could re-locate their mobile home. There is consequently no need for the appellants to find an alternative site. In relation to (b), the appellants' children are either transitioning out of education into employment and/or are home-schooled. There is consequently no need for the appellants to find a settled base close to a local school. On the evidence before me, I have found that the proposed development unacceptably harms the character and appearance of the surrounding area and would result in a net loss of biodiversity on the

⁸ This for fire safety reasons.

⁹ Subject to obtaining the requisite planning permission.

appeal site itself. I have found that the proposed development is contrary to the development plan in both those respects.

69. In addition, since the appeal in 2011 was allowed, the Framework has been published and reviewed on several occasions. I have found the development now proposed to be contrary to the Framework. That is a material consideration to which I attach significant weight. It follows from the above that the planning balance in this case is very different to that faced by the Inspector in 2011, to the extent that the decision made by the Inspector in 2011 provides no justification for the development now proposed.
70. The best interests of the children residing on the site are a primary consideration. The children are home-schooled and, in that respect, the appellants explain that they use the open sided covered roofed structure for education purposes. In determining an appeal under section 78 planning appeal, I have the power under section 79(1)(b) of the 1990 Act to issue a split decision provided that the two parts are clearly severable, both physically and functionally. The structure for recreational/schooling purposes is specifically listed in the description of development as revised. Accordingly, with the best interests of the children residing on the site firmly in mind, I have considered whether I could grant planning permission for that structure in isolation in a split decision.
71. The structure for recreational/schooling purposes is located on the area that previously formed part of the paddock. As such, it forms part of the change of use of the land for which planning permission is applied and is therefore not severable from that proposal, either physically or functionally. It is therefore not open to me to issue a split decision for that structure, even if the best interest of the children would be served by so doing. Moreover, it emerged during the Inquiry that this structure is largely used for recreational purposes and only used for education when the weather is good enough. Otherwise, the children are educated in the living room of the static caravan, a practice that could continue if the mobile home is re-positioned onto the lawful caravan site¹⁰. I am therefore satisfied that the best interest of the children would not be harmed by refusing planning permission for the proposed development.
72. Although the dismissal of this appeal would not result in the appellants losing their home, their rights under Article 8 and Article 1 of the First Protocol of the HRA would be engaged. Both of the above are qualified rights, and interference with them may be justified where lawful and in the public interest.
73. I have found that the proposed development would unacceptably harm the character and appearance of the surrounding area and would result in a net loss of biodiversity on the appeal site itself. The proposal is contrary to the development plan in those respects, as well as to the guidance in the Framework. In addition, the Council is in a position at this time whereby it is not obliged to accept proposals for new gypsy and traveller pitches that do not accord with the development plan and/or which cause environmental harm in order to meet any shortfall in the need for such pitches. It is therefore in the public interest that planning permission is not granted for the proposed development.

¹⁰ As required by Notice A.

74. Against that, the proposed development would enable the appellants' children to remain on the site as they transition into living more independent, adult lives. It would also provide better living conditions for the family as a whole. However, the appellants have not demonstrated that the proposed development could not be accommodated on the existing lawful caravan site. The appellants' children are home-schooled and this could be continued if the mobile home was re-positioned back onto the lawful caravan site. The best interest of the children would therefore be safeguarded even if planning permission was not granted. Balancing all these considerations, I am satisfied that any interference with the appellant's rights under the HRA that would result for the dismissal this appeal would be limited at most, and would be justified and proportionate in the circumstances.
75. I have also had regard to my duties under the PSED. In her evidence, Amy Jones sets out her aspirations for greater inclusion with their neighbours. The refusal of planning permission would not hinder those aspirations. Similarly, the refusal of planning permission would not prevent Arthur Gentle from operating his roofing business and continuing his nomadic way of life.
76. In this context, the appellants draw a comparison between their proposal and their perceived ability of the settled community to extend their homes, including through the exercise of permitted development rights that do not apply to caravan sites. The appellants point to a total of seven approved applications for extensions to houses in the same postcode as the appeal property between 1998 and 2018. However, there are significant differences between the extension of residential properties and the appellants' proposals.
77. In general terms, a residential property is occupied as a single household. The appellants' proposal is for additional caravans for occupation by their children as they transition into living more independent, adult lives: in other words, the creation of additional households. The extension of a residential property typically occurs within the curtilage of that property: the equivalent, in this case, of the lawful caravan site. It is unlikely that the curtilage of a typical residential property would fall within a LWS or have significant ecological interest, as does the paddock onto which the proposed development would encroach.
78. The extension of that residential curtilage onto agricultural land, should that be proposed, would constitute a material a material change of use of that land and would require planning permission. An application for such a change of use of would be considered against the policies in the Council's development plan and any material considerations in the normal way. This is precisely the scenario proposed by the appellants: in effect, the extension of a residential curtilage/use onto agricultural land. The proposal put forward by the appellants is therefore very different to the extension of a residential property. The two are not comparable and there is nothing before me to suggest that the appellants have been treated any differently in that regard.
79. Similarly, the appellants refer to a panning application relating to the adjoining "Jimmy Lee" site for the proposed change of use from equestrian to a mixed use, comprising equestrian and a Gypsy and Traveller residential use (Council Ref: 223021). At the time of the Inquiry, the Council had resolved to grant planning permission for that development, subject to a section 106 Agreement that had yet to be completed.

80. However, that proposal is materially different from the development sought by the appellants, principally because it would be sited towards the front of the site and forward of an existing stable block. The development would not project towards the rear of that site, and would therefore have very different (and in the Council's view an acceptable) impact on the character and appearance of the area. Furthermore, unlike the appellants' proposal, that scheme does not involve any built form within the LWS. For those reasons, the Council's resolution to grant planning permission for the proposed development on the adjoining site does not provide any justification for the appellants' proposals.
81. The appellants placed considerable store on Policy H11 in the emerging Local Plan Update as well as Policy ADH6 in the emerging Finchampstead Neighbourhood Development Plan, both of which tend to support their position. However, neither currently form part of the development plan for the purposes of section 38(6) of the 2004 Act and accordingly I attach only limited weight to those policies.
82. Speaking in a private capacity as a local resident, Councillor Cundy expressed concerns about the ability of Longwater Lane to absorb the additional traffic generated by the appellants proposed development, taking into account factors such as the existing stables and Alpaca farm served by that lane. This evidence was not supported by any technical highways evidence or traffic counts, and I note that the Highways Authority has not raised any objection to the proposed development on highway safety grounds. I therefore attach only limited weight to this evidence.
83. I have considered whether the imposition of suitably worded conditions could overcome the harms that I have identified above and make the development acceptable in planning terms. However, those harms are intrinsic to the development that is proposed and could not be overcome by the imposition of conditions. Furthermore, discussion at the Inquiry revealed the difficulties in drafting a suitable condition to 'phase' the development so that the stationing of the caravans would take place sequentially as and when the appellants' younger children reached the age when they could live with a degree of independence. To my mind, that difficulty reinforces my conclusion that the proposed development is not appropriate at this time.

Conclusion on Appeal E

84. For the reasons set out above, the proposed development is contrary to the development plan. Having weighed the factors in support of the proposed development and all other relevant considerations, I am not persuaded that there are any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan. Indeed, some material considerations point strongly in the other direction. These considerations include the conflict with the Framework in relation to valued landscapes and, given the Council's position in relation to the supply of gypsy and traveller pitches, that there is no imperative to grant planning permission for a proposal that does not accord with the development plan and which causes environmental harm in order to meet any shortfall in the need for such pitches. Accordingly, I conclude that planning permission ought not to be granted for the development that is proposed.

Conclusion

85. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold both enforcement notices with variations and refuse to grant planning permission for the development proposed in the planning application subject to the appeal made under section 78 of the 1990 Act.

Formal Decisions

Appeal A (APP/X0360/C/21/3289909) and Appeal B (APP/X0360/C/21/3289910)

86. It is directed that the notice is varied by:

- in paragraph 5(ii), deleting the word 'Permanently'

87. Subject to that variation, the appeals are dismissed and the enforcement notice is upheld.

Appeal C (APP/X0360/C/21/3289912) and Appeal D (APP/X0360/C/21/3289913)

88. It is directed that the notice is varied by:

- in paragraph 5(iii), deleting the word 'Permanently'

89. Subject to that variation, the appeals are dismissed and the enforcement notice is upheld.

Appeal E (APP/X0360/W/21/3283104)

90. The appeal is dismissed.

Paul Freer
INSPECTOR

APPEARANCES

For the appellants

Dr Robert Home, acting as both advocate and planning witness

He called:

Mrs Any Jones	Appellant
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Mr Arthur Gentle	Appellant
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Miss Amy-Jane Gentle

Master Arthur Gentle

For the Local Planning Authority

Mr Ben Fullbrook	Of Counsel
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He called:

Dr Michael Bullock	Arc ⁴
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Mrs Helen Maynard BA MSc MRTPI	Team Leader - Development Management & Compliance (Specialist)
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Mr Chris Hannington BSc MPhil CMLI MRTPI	Team Manager - Trees and Landscape (Development Management) Team
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Mr Duncan Fisher	Ecologist, Green Infrastructure Team
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Mr James McCabe BA MA MRTPI	Principal Planning Policy Officer, Growth and Delivery Team
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Interested Persons

Councillor Roland Cundy

Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1/ Opening submissions on behalf of the Local Planning Authority
- 2/ Extracts from the Wokingham Borough Landscape Character Assessment: Character Area B2 Blackwater River Valley with Open Water
- 3/ Series of documents relating to planning permissions in respect of Land west of Twin Oaks, Longwater Lane.
- 4/ Extract from the Council's Design Guide.
- 5/ Extracts from the Council's Local Plan Update
- 6/ Map provided by Mr Hannington showing a recommended circular route of the Blackwater River Valley with Open Water Character Area
- 7/ Closing submissions on behalf of the Local Planning Authority
- 8/ Closing submissions on behalf of the appellants
- 9/ Application for costs on behalf of the Local Planning Authority

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- 1/ Completed Section 106 Agreement