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## Appeal Decisions

Hearing Held on 7, 8 November and 14 December 2023

Site visit made on 7 November 2023

**by Elizabeth Pleasant BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date 22 January 2024**

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### **Appeal A Ref: APP/U2805/C/21/3269943**

**Land at Peasdale Hill Field, Ashley Road, Middleton, Market Harborough LE16 8YP**

- 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 Patrick Delaney against an enforcement notice issued by Corby Borough Council.
  - The enforcement notice was issued on 26 January 2021.
  - The breach of planning control as alleged in the notice is: Without planning permission, the change of use of the Land from grass field/paddock to land for the stationing of caravans.
  - The requirements of the notice are:
    1. Cease using the Land for the stationing of caravans and remove the caravans from the Land.
    2. Remove the hardstanding, gravel, aggregate and any other imported materials from the Land.
    3. Restore the Land to the condition it was prior to the unauthorised use taking place.
  - The period for compliance with the requirements (1) and (2) is 1 month and requirement (3) is 2 months
  - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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### **Appeal B Ref: APP/U2805/W/21/3275791**

**Peasdale Hill Field, Ashley Road, Middleton, Market Harborough LE16 8YP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Joe Delaney against North Northamptonshire Council.
  - The application Ref NC/21/00036/DPA, is dated 22 January 2021.
  - The development proposed is change of use of land for residential purposes for 5 gypsy and traveller pitches including the provision of hardstanding ancillary to that use.
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## **Decisions**

### **Decision of Appeal A**

1. The enforcement notice is quashed.

### **Decision on Appeal B**

2. The appeal is dismissed.

## Preliminary Matters

3. The Hearing opened on 7 November, and I sat for two consecutive days. Discussions in relation to the submitted planning obligation, conditions and the matter of 'precedent' were dealt with through a 'virtual session' on Microsoft Teams on 14 December, with interested parties able to participate. I conducted an accompanied site inspection on 7 November and an unaccompanied visit to view the site from agreed vantage points on 9 November 2023.
4. Appeal B was submitted to Corby Borough Council in January 2021. However, on 1 April 2021 Corby Borough Council was disbanded and now forms part of North Northamptonshire Unitary Authority.
5. After the Hearing closed the Government published a Revised National Planning Policy Framework (NPPF) and updated their Planning Policy for Gypsy and Travellers. The main parties have had an opportunity to make representations on those changes and I have had regard to the responses I received.

## Appeal A

### *Enforcement Notice*

6. On an appeal any defect, error, or misdirection in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
7. The breach of planning control relates to '*the change of use of the Land from grass field/paddock to land for the stationing of caravans.*' The appellant alleges, mainly under ground (f), that the notice is defective as it does not allege a breach of planning control. It is their contention that the 'stationing of caravans' is not development<sup>1</sup>. Furthermore, it is their case that the allegation and requirements cannot be corrected to specify the use of those caravans for residential purposes, because there would be clear prejudice to the appellant. Such a correction would introduce a breach of planning control not alleged in the original enforcement notice.
8. At the Hearing the local planning authority (LPA) did not dispute that the allegation, as set out in the notice, should have specified that the caravans stationed on the site were being used for residential purposes. However, it is their case that this was a typographical error, and taking into consideration the linked section 78 appeal, the notice could be corrected without any injustice to the appellant.
9. It has been established in case law that an enforcement notice must specify what use of land the caravans are sited for. I am also mindful that in this case the reasons for issuing the notice also give no indication as to what the unauthorised land use is, but merely a reference to the stationing of caravans not being an appropriate use of land in the open countryside. Thus, the notice does not make it clear to the appellant, or any other person, what unauthorised development is alleged. If I were to correct the notice, as suggested by the

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<sup>1</sup> *Restormal v Secretary of State for the Environment and Patrick George Rabey and others* [1982] JPL 785

LPA, and allege: *'the material change of use of the Land from grass field/paddock to land for the stationing of caravans for residential purposes'*, it would also be necessary for me to correct the notice's requirement to include: *'cease using the Land for the stationing of caravans for residential purposes'*. That correction would be more onerous because it requires the cessation of a residential use that is not currently cited in the enforcement notice.

10. Furthermore, the terms of a deemed planning application are derived from the alleged breach. Therefore, if I were to correct the notice to include a residential use, there would be clear injustice to the appellant because he has not had an opportunity to respond to that correction in a ground (a) appeal. The existence of the linked s78 appeal cannot be relied on to determine whether a correction to the notice would result in injustice. On the other hand, my decision to quash the notice leaves open to the Council the option of issuing a further, corrected notice, under the provisions of section 171B (4) of the 1990 Act, should it wish to do so.

### **Conclusion on Appeal A**

11. For the reasons given above I conclude that the notice is defective. It is not open to me to correct the notice in accordance with my powers under section 176(1)(a) of the 1990 Act since injustice would be caused were I to do so. Consequently, the notice is invalid, and I will quash the notice. In these circumstances Appeal A under grounds (f) and (g) as set out in section 174(2) of the 1990 Act do not fall to be considered.

### **Appeal B**

#### **Application for costs**

12. An application for costs was made by Mr Joe Delaney against North Northamptonshire Council. This application is the subject of a separate decision.

### **Procedural Matters**

13. The Council has resolved that had it been in a position to determine the application, it would have refused planning permission for reasons relating to (1) the effect on landscape character and appearance, (2) whether the development is sustainably located/closely linked to a settlement, (3) effect on highway safety, (4) effect on protected species and biodiversity and 5) effect on archaeological remains.
14. During the course of the appeal the appellant produced a Revised Proposed Site Layout Plan 22\_1150\_003C and Revised Dayrooms Plan 21\_1150\_005, which were intended to provide some more accuracy in relation to how each of the pitches would be laid out and to reduce the size/scale of the proposed individual dayrooms. The Council and interested parties had an opportunity to comment on these drawings. I do not believe that any party would be unfairly prejudiced by my determining the appeal with regard to the revised plans, and I have made my decision on that basis.

### **Main Issues**

15. The main issues are:

- the effect of the development on the character and appearance of the landscape;
- whether the occupants of the site would have adequate access to services and facilities;
- the effect of the development on highway safety;
- the impact of the development on archaeological remains;
- the effect of the development on ecology, including protected species and biodiversity;
- whether the development constitutes intentional unauthorised development and, if so, the weight to be attached to that;
- the need for and supply of Gypsy and traveller pitches, including the availability of alternative accommodation; and
- other personal circumstances, including the best interests of any children, all in the context of Human Rights considerations and the Public Sector Equality Duty.

## **Reasons**

### *Character and appearance of the landscape*

16. The appeal site comprises 0.8ha of land located on the southerly side of Ashley Road and approximately 1 kilometre from the villages of Cottingham and Middleton. The site is roughly rectangular in shape, comprises rough grassland and forms part of a wider field which extends to the south. There is an existing field access off Ashley Road and a small field shelter located close to this access. The field boundaries comprise mature hedgerows and some hedgerow trees.
17. Access to the site is from Ashley Road. The proposal is for the internal access road to be located within the northern part of the site, parallel to Ashley Road and separated from it by the boundary hedgerow. The five caravan pitches would lie to the south of and take access directly from the internal accessway. Each pitch would have space to park two cars, a static and touring caravan and have a timber amenity block constructed on a concrete base. To the south of the proposed pitches would be a bank incline, beyond which the field remains open and is characterised by rough grassland.
18. Policy 3 of the North Northamptonshire Joint Core Strategy, 2011-2031 (JCS) relates to landscape character and advises that development should be located and designed in a way that is sensitive to its landscape setting, retaining and where possible, enhancing the distinctive qualities of the landscape character area which it would affect. In addition, criteria h) of Policy 31 of the JCS seeks to ensure that new sites for Gypsy and travellers do not have a significant adverse impact on the character of the landscape and take account of the Landscape Character Assessment of the area. This policy also requires appropriate landscaping and treatment to boundaries to be provided to mitigate impact. Policy 180 of the NPPF says that policies and decisions should recognise the intrinsic character and beauty of the countryside and valued landscapes should be protected.

19. The Council appointed a landscape consultant, Mr Dudley, to prepare evidence in support of their case and to represent them on matters relating to landscape impacts at the Hearing. Mr Dudley has carried out an independent appraisal of the appeal site and its landscape characteristics. Subsequently, and based on a recognised Landscape and Visual Impact Assessment Methodology (LIVA) he set out the anticipated landscape impacts of the proposed development in his Rebuttal Statement<sup>2</sup>.
20. In terms of Natural England's National Landscape Character Assessment, the site lies within the Northamptonshire Vales National Character Area (NCA). The NCA is broadly described as a series of low-lying clay vales and river valleys, including the valleys of the Rivers Nene and Welland and their tributaries. Taking into account the key characteristics of the NCA, Mr Dudley identifies the following as being relevant to characteristics to the appeal site:
- An open landscape of gently undulating clay ridges and valleys with occasional steep scarp slopes. There is an overall visual uniformity to the landscape and settlement pattern.
  - Diverse levels of tranquillity, from busy roads to some deeply rural parts.
  - Mixed agricultural regime of arable and pasture with arable land tending to be on the broader flat river terraces and smaller pastures on the slopes or many minor valleys and on more undulating ground.
  - Relatively little woodland cover but with a timbered character derived largely from spinneys and copses on the ridges and more undulating land, and from waterside and hedgerow trees and hedgerows, though the density, height and patterns of hedgerows are varied throughout.
  - A strong field pattern of predominantly 19<sup>th</sup> century and less frequently Tudor enclosure.
  - Distinctive river valleys of the Welland and the Nene, with flat flood planes and gravel terraces together with the tributaries (Including the Ise)
  - Riverside meadows and waterside trees and shrubs are common, along with flooded gravel pits, open areas of winter flooded grassland, and wetland mosaic supporting a large number of wetland birds and wildfowl.
  - Relatively frequent prominent historic parklands and country houses towards the outer edges and close to more wooded areas. Other characteristics include ridge and furrow and nationally important townships such as Sutton Bassett and Clipston.
21. At the local level, Northamptonshire's Current Landscape Character Assessment (NCLCA) places the appeal site within the Welland-Market Harborough to Cottingham Character Area, associated with the Broad River Valley Floodplain Landscape Type. Mr Dudley identifies the following key characteristics that represent this landscape to be relevant to the site and its valley setting:
- Broad, flat and predominantly wide floodplain surrounded by rising landform of adjacent landscape types.

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<sup>2</sup> Landscape Rebuttal Statement, Land at Peasdale Hill Field, Ref 22-2489, dated 21 August 2023.

- River channel with slow flowing watercourse with limited bank side vegetation in areas.
  - Predominance of unimproved pasture with pockets of both neutral and improved grassland and scattered arable land in fields of varying size; arable land becomes more frequent within the western section of the Nene Valley.
  - Limited woodland cover confined to occasional broadleaved copses scattered throughout the floodplain.
  - Hedgerow trees, although infrequent, are an important feature where they do occur, creating localised well treed areas.
  - Hedgerows are generally overgrown and reinforced with post and wire fencing with intermittent sections showing evidence of decline.
  - Settlement is very limited within the floodplain with a sequence of small nucleated villages on the lower valley slopes, along the western section of the River Nene.
22. Based on the above analysis Mr Dudley considers the appeal site and its landscape setting to be strongly representative of the NCA and moderately representative of the Broad River Valley Floodplain Landscape Type. He considers it notable that the characteristics reflected by the site and its setting are those which are indicative of the more tranquil and rural parts of this Landscape Type. Whilst those less representative are those which are connected with settlement and human activity.
23. Mr Dudley also considers the site and its setting to be very strongly representative of the Welland-Market Harborough to Cottingham Area, and to display the following key characteristics of this specific character area:
- Watercourses generally inconspicuous within the landscape.
  - Largely flat floodplain with two prominent hillocks.
  - Area characterised by arable and pastoral fields of varying sizes, with the latter more abundant.
  - Pastoral fields vary in quality from highly improved pasture to scrubby areas.
  - Rural landscape of isolated farms and dwellings beyond the principal settlement of Stoke Albany. Views southward restricted by the undulating hills and Valleys Landscape type.
  - Vehicular access largely limited to minor roads.
  - Pedestrian access limited to infrequent Public Rights of Way and limited sections of Long Distance Recreational Routes.
24. Mr Dudley notes that landscapes within Northamptonshire are not designated at local level. However, he considers that it is relevant that the site is located in an area which was locally designated as a Special Landscape Area within the Corby Borough Local Plan. Although this Local Plan has now been superseded by the JCS and Part 2 Local Plan for Corby, neither of which, in line with prevailing government guidance, have designated landscapes identified within them, Mr Dudley believes its former designation indicates that the quality and



condition of this landscape was notably high in the context of the Borough and worthy of protection.

25. In terms of the anticipated effects of the proposed development upon defining characteristics of the site and its setting, Mr Dudley identified the relevant landscape receptors and has conducted an analysis of their susceptibility to change, their value and overall sensitivity; the magnitude of change resulting from the proposed development and the overall level of impact significance. In summary his conclusions on the landscape impacts were:

- Pastoral land use: **Major to Major/Moderate adverse.**
- Strong historic connection, including Medieval ridge and furrow earthworks and the Gartree Way Roman Road: **Major.**
- Strongly vegetated field boundaries: **Moderate adverse.**
- Deeply rural countryside: **Major Adverse.**
- Overall character of the Site: **Major adverse.**
- Overall character of the setting of the Site: **Major Adverse.**

26. It is Mr Dudley's professional opinion that considering the appraisal he has carried out, this is a high value landscape which is sensitive to change and he concludes that the rural valley landscape in which the appeal site is located is a 'valued landscape' for the purposes of applying paragraph 180(a) of the NPPF.

27. On the other hand, Mr Green (GPS) on behalf of the appellant does not consider the appeal site to be situated in a 'valued landscape'. He points out that the NCLCLA does not identify any areas as a valued landscape, and that no weight should be given to the Corby Local Plan's former designation as a Special Landscape Area, as this is no longer part of the Development Plan. My attention is drawn to other appeal decisions where Inspectors have not agreed with Mr Dudley on whether a particular landscape should be considered a 'valued landscape', and GPS cite case law as a relevant consideration, namely: *Stroud District Council v SSCLG* [2015] EWHC 488; *Cheshire East BV SSCLG* [2016] EWHC 694; and *Forest of Dean DC v SSCLG* [2016] EWHC 2429.

28. Having regard to that case law, it seems to me and acknowledged by the main parties at the Hearing, that whether an area is a 'valued landscape' is a matter of planning judgement. A consideration is whether the landscape has any physical qualities that take it out of the ordinary, however, it is not necessary for a landscape to be nationally or locally designated to be a 'valued landscape'. Furthermore, the requirements in Policy 31 (h) and Policy 3 of the JCS are to take account of the LCA of the area and protect its distinctive qualities.

29. Whilst I appreciate that the Council did not make specific reference to a 'valued landscape' in their reasons for issuing the enforcement notice, nor their initial submissions in relation to this appeal, they were clear that they considered the development would harm the landscape character and appearance of the area. In that regard the Council considered it appropriate to appoint a professional landscape consultant to undertake a LIVA, and the findings and evidence of Mr Dudley are a material consideration in this appeal.

30. From the evidence before me, including observations on my site visits, I would concur with Mr Dudley that the appeal site is in an area of tranquil pastoral land and makes a significant contribution to the intactness and tranquillity of this deeply rural landscape. Whilst I have had regard to the appellant's view on the projected alignment of the Gartree Way Roman road in relation to the appeal site, there is no dispute that the pastoral grassland within the site displays clear evidence of Medieval ridge and furrow earthworks which are a strong indicator of the area's cultural heritage as an agricultural landscape. Overall, the landscape displays a high degree of intactness, including the ridge and furrow earthworks, and small pastoral fields with overgrown hedgerow boundaries.
31. The landscape qualities identified, including the Medieval ridge and furrow earthworks, the deeply rural and tranquil character of the locality and the degree to which the site and its landscape setting is representative of key characteristics in the NCA and the Welland-Market Harborough to Cottingham Character Area, are such that I find the area to be out of the ordinary. I am satisfied that it is a valued landscape for the purposes of paragraph 180(a) of the NPPF.
32. The proposed development, including extensive hardsurfacing and reprofiling within the site, proposed amenity buildings, erection of fencing, lighting and siting of mobile homes and caravans would clearly have a strong and detracting impact on the landscape character. I recognise that caravan sites are a form of development that often appears in the countryside, and the PPTS makes it clear that such sites for Gypsy and travellers can be acceptable in the countryside. I have also had regard to GPS suggestion that all landscapes have manmade elements, and that a landscape will evolve over time. However, the scale and form of the development proposed in this location would appear isolated and incongruous and would have a significant adverse impact on the character of the landscape. Harm to the fabric of the landscape cannot be mitigated through planting.
33. I observed on my site visit the Gypsy and traveller site known as Oakley Park and noted the Van Equine Openn Equine's Yard, a residential bungalow and some agricultural/livery buildings. However, I would concur with Mr Dudley that as you pass the stream corridor on Ashley Road, there is a marked change in the character of the landscape. The appeal site is located within an area of intact and tranquil countryside which is separate and isolated from the human activity associated with the village of Middleton, to which Oakley Park, neighbouring uses, including the sewage works are more closely associated.
34. I have also had regard to the comments of previous Inspector's dealing with appeals at Oakley Park. However, for the reasons set out in the paragraph above, I consider that Oakley Park is in a much less isolated location than the appeal site, and more recent decisions have related to extensions to that site, and the context is therefore not directly comparable.
35. In terms of visual impact, the closest visual receptor is from the public highway, Ashley Road. Whilst in the summer months the hedgerows would provide significant screening, I noted on my visit in the winter that the caravans were visible from Ashley Road, both through the hedgerows and from the site entrance. The proposed development, with amenity buildings and mobile homes would have an even greater visibility and urbanising impact.



However, the proposed planting along the access at the entrance to the site and suggested new/strengthening of hedgerow planting would assist in screening from the road, such that the impact on this receptor would be minor/adverse.

36. I walked along sections of the Jurassic Way as agreed and identified by Mr Hughes on behalf of RAG, Residents Action Group. Although the views were distant, the existing unauthorised caravans were clearly visible from this public right of way as it traverses the ridge on the edge of East Carlton Country Park, and also when travelling East on this footpath beyond Camsdale Walk, Middleton. Whilst I appreciate that summer vegetation is likely to provide more screening, I noted that the stark white touring vans appeared isolated within the rural landscape and were a detracting feature, albeit the impact on this receptor would be no more than moderate/adverse.
37. For the reasons given above, I conclude that the development conflicts with Policy 3 and Policy 31(h) of the JCS, the aims of which are set out above. There would also be conflict with Paragraph 180 of the NPPF. The significant adverse impact of the proposed development would neither recognise the intrinsic character and beauty of the countryside nor protect and enhance a valued landscape. There would thus be conflict with national policy. Even if I were wrong to conclude that the site lies within a valued landscape, the harm to the character and appearance of the landscape is significant and carries substantial weight.

#### *Access to services and facilities*

38. Policy 31 of the JCS advises that in allocating and determining applications for planning permission for sites for Gypsies and travellers and travelling show people consideration should be given to a number of identified criteria, including criteria a), which requires the site to be closely linked to an existing settlement with an adequate range of services and facilities.
39. The appellant believes this policy precludes rural sites, which are clearly permitted by the PPTS. Policy C of the PPTS states that when assessing the suitability of sites in the countryside and in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community. It is further contended that Policy 31 is inconsistent with the NPPF which promotes sustainable development in rural areas where it will enhance or maintain the vitality of rural communities.
40. Having regard to the PPTS, Paragraph 25 says that new traveller site development should be very strictly limited in the open countryside, away from existing settlements or outside areas allocated in the development plan. Paragraph 13 seeks to promote access to health services and schools and to provide for settled bases to reduce the need for long-distance travel. That said, it seems to me that there needs to be both a spatial and functional relationship between the site and nearest settlements. The requirement in Policy 31 to be "closely linked" does not preclude sites in the countryside and I consider it to be consistent with the spatial and functional relationships envisaged in the PPTS and NPPF.
41. I have also had regard to paragraph 109 of the NPPF which says that significant development should be focussed on locations which are and can be made sustainable through limiting the need to travel and offering a genuine choice of

transport modes. Taking into consideration the site's rural location, the development of five residential pitches is a significant development. However, I am also mindful that paragraph 109 acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be considered in both plan making and decision making.

42. The appeal site is located approximately 1km from the edge of the settlement of Middleton which adjoins the settlement of Cottingham. Cottingham has a primary school, village store and café which are 1850m and 2050m from the appeal site. The local shop is open between 8am and 1pm. There is also a pub, church, village hall and playing fields all in a similar location /distance from the site. The nearest secondary schools and health provision is within Corby.
43. The appellant considers that the appeal site at 1km to the edge of Middleton and just less than 2km to services/facilities is a reasonable distance to walk or cycle, particularly when collision records indicate that the use of Ashley Road by cyclists and pedestrians, has not led to personal injury accidents occurring. In addition, Ashley Road only has low volumes of traffic. Furthermore, there are bus services from the nearest settlement which provide sustainable onward journeys to access additional services and facilities. My attention has also been drawn to two appeal decisions which relate to a Gypsy and traveller site at Oakley Park<sup>3</sup> some 600m from the appeal site, where it was concluded that the site in that case was not isolated and to be in a sustainable location.
44. Having regard to the evidence and distances recommended for walking to services set out in 'Providing for Journeys on Foot' published by the Institution of Highways & Transportation (CIHT), 2000 and Planning for Walking (CIHT), 2015<sup>4</sup>, the nearest facilities in Cottingham would be beyond what is considered the maximum walking distance to a destination of 1650m, and the average length of a walk journey of 1km. Furthermore, Ashley Road is subject to the national, 60mph speed limit, has no lighting or footways, and between the appeal site and Occupation Road there is also limited verge. Considering the recorded traffic speeds, 85<sup>th</sup> percentile speeds are above 40mph, and from my own observations on my site visit, I do not consider that walking would be an attractive proposition, particularly for children and in the hours of darkness. Furthermore, there was no evidence from the site residents to indicate that they walked or cycled into Middleton and the children attend school in Corby.
45. On the other hand, Oakley Park is much closer to the settlement of Middleton. Although there are no footways or lighting between the edge of the settlement and Oakley Park, the verge is deeper and the distance to services and facilities in Cottingham is more akin to the maximum and average walking distances suggested in the CIHT Documents set out in the paragraph above. Oakley Park is not as isolated as the appeal site. It adjoins the site of a residential bungalow, is much closer to buildings at Van Equine Openn Equine's Yard and lies opposite the sewage works.
46. As a matter of judgement, I conclude that the appeal site is not closely linked either spatially or functionally to an existing settlement with an adequate range of services or facilities. Middleton and Cottingham do not have provisions for health, and the convenience store has limited opening times. There is

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<sup>3</sup> GPS Statement of Case Appendices A12 and A13

<sup>4</sup> Mr Jupp, Appendices 12 and 13.

therefore conflict with Policy 31 of the JCS and Paragraph 25 of the PPTS. Whilst adequate services and facilities can be accessed through relatively short car journeys, and the children on the appeal site are able to access a school bus, it seems to me that there will be other sites in rural areas which have better access to services on foot or by other sustainable modes of transport.

47. I acknowledge that the provision of a settled base could limit journeys for work, whilst enabling access to health and education services for the appellant and the site residents in line with PPTS paragraphs 4 and 13. These are material considerations, notwithstanding the conflict with the development plan, PPTS paragraph 25 and paragraph 109 of the NPPF, I therefore attached limited weight to the harm arising from the lack of close links to services and facilities.

### *Highway Safety*

48. The appeal site takes access from Ashley Road, a Class C minor rural road, which is subject to the national speed limit of 60mph and has no footways or street lighting. The site access is in its north-eastern corner in the position of an historic field gateway. The access sits at the end of a straight when approaching from the southeast and on the inside of a right-hand bend on approach from the northwest. There is no dispute that the access is in the best location to maximise junction visibility opportunity. The visibility splays achievable are also agreed and comprise a 'Y' distance of 45.2m to the near edge of the carriageway to the right (southeast) and 58.3m to the near edge of carriageway to the left (northwest), with a 2.4m 'X' distance (set-back from the near carriageway edge along the access centreline).
49. The main dispute between the parties' centres around whether visibility splays should be provided in accordance with guidance set out in Department of Transport's *Design Manual for Roads and Bridges* (DMRB), preferred by the Council or *Manual for Streets* (MfS1 & MfS2), preferred by the appellant.
50. MfS2 was published in September 2010 and is endorsed by the Department of Transport. It builds on the advice in MfS1, published in 2007, and is intended to fill the perceived gap between the latter and DMRB. Paragraph 1.3.6 of MfS2 recommends the application of DMRB parameters for stopping sight distances (SSDs) where actual vehicle speeds are above 40mph for significant periods of the day. It goes on to say that where there may be some doubt as to which guidance to adopt, actual speed measurement should be undertaken to determine which is most appropriate. Nevertheless, paragraphs 1.3.2 and 1.3.3 recommend that MfS should be the starting point for any scheme affecting non-trunk roads and that, if DMRB standards are used, they should be applied in a way that respects local context.
51. RAG appointed Consulting Engineers to carry out a speed survey on Ashley Road, for the purposes of assessing visibility requirements<sup>5</sup>. The data recorded in the Technical Note show the 85<sup>th</sup> percentile vehicle speeds in the vicinity of the site access to be 51.3mph/82.6kph for southeast bound traffic and 48.4mph/77.9kph for northwest bound traffic. In addition, from the traffic counts recorded, it was agreed at the Hearing that Ashley Road is only lightly trafficked.

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<sup>5</sup> Sanderson Associates (Consulting Engineers) Ltd, Technical Note, Dated 07.04.2021.

52. I have had regard to the appellant's highway experts stance that advice in DMRB is aimed at maintaining constant speed and to ensure emerging traffic does not influence speeds on major roads. Considering the recorded traffic speeds, regard should be had to DMRB parameters as far as SSDs are concerned. However, I also consider that key principles of MfS2 should be taken into account in applying them, so as to respect local context. The Council notes that taking into account the recorded traffic speeds, DMRB specifies a requirement at the proposed access for a visibility splay extending 141.2m (adjusted for bonnet length) to the right (southeast) as measured along the near edge of the carriageway (Y distance) and a set back at the access centre line of 2.4m (X distance) to the nearside edge of the carriageway. The equivalent 'Y' distance to the left (northwest) is 155.6m (adjusted for bonnet length).
53. In terms of local context, Ashley Road is a country lane with relatively low vehicle numbers. With the site being close to the home of a local cycling club and equine users, Ashley Road in the vicinity of appeal site is also used by horses and cyclists. It does not have parked cars, but there are a number of field gates/direct accesses where vehicles, including agricultural/livery vehicles may exit. There is a bend in the road to the northwest of the site access, however, I noted on my site visit that there were no traffic/road signs indicating that curvature or suggesting lower traffic speeds, although there are markings in the centre of the road at this point to delineate each side of the carriageway.
54. Considering the local context, it seems to me that Ashley Road does not have the characteristics of a trunk road, and thus the rigid application of DRBS is not necessary. What is important is the ability for a driver to identify the hazard, react to it and slow the vehicle to a safe stop. MfS confirms that the SSD principle may be applied on routes subject to 40mph and 50+ mph speed limits *"subject to local context."*
55. Having regard to the above the appellant has sought to demonstrate that in calculating SSD, taking into account a 2 second perception/reaction time and 0.375g deceleration rate as set out in Table 10.1 of MfS2, recorded approach speeds, and considering where the 'Y' distance is measured to, a reduced 'X' distance of 2m and measured forward visibility for drivers travelling towards the access, the available visibility is such that the potential for a collision to occur is not significant.
56. MfS2 sets out that a 2.4m 'X' distance is desirable, but also allows for a reduction to an 'X' distance of 2.0m. Paragraph 10.5.8 of MfS2 recognises that using a reduced 'X' distance of 2m will mean that the front of some vehicles will protrude slightly into the running carriageway of the major arm, and that vehicles will tend to nose out into traffic. Thus, it is necessary to consider the ability of drivers and cyclists to see this overhang from a reasonable distance, and to manoeuvre around it without undue difficulty. The guidance goes on to states that this also applies to lightly trafficked rural lanes.
57. In this case I agree with the appellant that taking into account forward visibility towards the access from the right, which extends beyond 600m, drivers and cyclists could undoubtedly see vehicles edging out from a reasonable distance and manoeuvre around the 0.4m overhang without undue difficulty on what is agreed to be a lightly trafficked lane. Thus, a 2m 'X' distance could be

considered acceptable when considering visibility for emerging vehicles to the right. That said, as the vehicle edges out to a 2m 'X' distance, the visibility to the near edge to the right increases to 118m, which would equate to an approach speed of 51.5 mph which is greater than the observed 85<sup>th</sup> percentile speed of 48.4 mph. Considering the above, I am satisfied that the potential for a collision to occur between a vehicle emerging from the appeal site access with one approaching from the right (southeast) along Ashley Road is not significant.

58. In terms of visibility to the left, again based on a 2 second perception/reaction time and 0.375g deceleration rate, and again accepting a reduced 2m 'X' distance, the visibility available at the centreline equates to 42.4mph. This increases to 96.7m distance if measured to the centreline of the far oncoming traffic lane, which correlates with a speed of 45.4mph and 101.2m to the far edge of the carriageway, which corresponds with a speed of 46.75mph. Observed 85<sup>th</sup> speeds from the left were recorded at 51.3mph and require a stopping distance of 117.37m.
59. I have had regard to the advice in 10.5 of MfS2 in relation to the measurement of 'Y' distances, and recognise that some circumstances make it unlikely that vehicles approaching from the left on the main arm will cross the centreline of the main arm, for example, if opposing flows are segregated at that point. In such cases, the visibility splay to the left can be measured to the centreline of the main arm. In this appeal case the appellant contends that although there is no such segregation, another example would be a blind bend through which it would be dangerous to overtake. Given the bend to the northwest of the access, the appellant considers that it is highly unlikely that southbound traffic would approach from the left of the appeal site in the near traffic lane, and thus the 'Y' splay can be taken to the centreline. However, given the use of Ashley Road by cyclists, it seems to me that it is possible that a vehicle may seek to overtake a cyclist in that location. Given the limited width of the road, larger vehicles carrying out that manoeuvre may well encroach into the nearside carriageway. I am not therefore convinced that it is appropriate to depart from a 'Y' distance measured along the nearside carriageway of the main arm in this instance.
60. I have had regard to the appellant's suggestion that in considering traffic approaching from the left, it might be more appropriate to consider reducing the perception-reaction time to 1.5 seconds, and the effect of emerging braking deceleration rates on the required stopping distances. In addition, the distances calculated are also compared with the forward visibility for drivers travelling southbound towards the appeal site access, which is measured at 132m. However, taking into account recorded vehicle speeds, and my assessment that the 'Y' distance measurement should be taken to the nearside carriageway, I do not consider that a SSD can be achieved with the restricted visibility. Whilst I recognise that some reductions to the required visibility splays may be appropriate, including a reduced 'X' distance, I am not satisfied that a safe stopping distance can be achieved from the right.
61. I appreciate that there have been no recorded personal injury accidents in the immediate vicinity of the appeal site within the most recent 5-year period. However, I am mindful that the current use of the site commenced less than 3 years ago and the use of the site access before then would have been limited. Furthermore, for some of the time since the appellant's use commenced, traffic



on Ashley Road will have been reduced by COVID-19 restrictions. The lack of recorded accidents therefore provides insufficient reassurance.

62. I have had regard to decisions made by other Inspectors, which were appended to Mr Huddleston's Rebuttal Statement. Those decisions recognised, as I have done in this appeal case, the need to consider local context. Thus, in each case the access and road have different visibility, recorded vehicle speeds and/or traffic numbers. Those other decisions are not therefore directly comparable to this appeal, which I have considered on its own merits.
63. I conclude that there would not be satisfactory and safe access to the site, and there would be an unacceptable impact on highway safety. A concern which is exacerbated by the likely frequent need for vehicles to enter and exit the site towing caravans. For the reasons given, the development would conflict with Policy 31(e) and (f) of the JCS which seek to ensure, amongst other things, that Gypsy and traveller sites have satisfactory and safe access. There is also conflict with Policy 8(b) of JCS which similarly seeks to ensure satisfactory access and avoid prejudice to highway safety. These policies are consistent with paragraph 115 of the NPPF, which provides that development should be prevented where there would be an unacceptable impact on highway safety. The development thus also conflicts with paragraph 115 of the NPPF.

### *Archaeology*

64. Annex 2 of the NPPF defines a heritage asset as a building, monument, site, place or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It further defines that there will be archaeological interest in a heritage asset if it holds, or potentially holds, evidence of past human activity worthy of expert investigation at some point. Significance for the purposes of heritage policy is defined as the value of a heritage asset to this and future generations because of its heritage interest. Significance derives not only from a heritage asset's physical presence, but also from its setting.
65. The appeal site is described in terms of its Historic Landscape Character as a semi-regular enclosed landscape with relic features of ridge and furrow. Those earthworks represent survival of an archaeological resource which could, for example, provide further information relating to the origin and development of the open-field system and its impact on agricultural practices. At the Hearing Mr Green questioned whether 'ridge and furrow' features should be considered to be a heritage asset, as field systems of enclosure are not seen as such. However, an assessment provided on behalf of the appellant, conducted by Witham Archaeology (WA)<sup>6</sup>, and the Council's Archaeologist, both agree that this feature is a non-designated heritage asset, and I agree.
66. In addition, Historic Environment Records (HER) within a 1km search radius of the site record observations made in relation to the Roman Road known as Gartree Road, formerly the principal route-way between contemporary settlements at Leicester and Godmanchester. The course of the road in the vicinity of the site is projected, based on its known locations elsewhere. Records of stonework and earthwork remains of the road have been observed

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<sup>6</sup> Historic Environmental Impact Assessment, Land at Peasdale Hill Filed, Witham Archaeology, dated November 2021.



740m south-east of the site, and the HER projected course of the route passes through the southern most part of the proposed development area.

67. Paragraph 200 of the NPPF says: "Where a site on which development is proposed includes, or has potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-base assessment and, where necessary, a field evaluation."
68. Paragraph 211 of the NPPF says: "Local planning authorities should require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible. However, the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted."
69. Policy 2(d) of JCS is consistent with the NPPF and says: "Proposals should demonstrate an appreciation and understanding of development on heritage assets and their setting in order to minimise harm to these assets and their setting. Where loss of historic features or archaeological remains is unavoidable and justified, provision should be made for recording and the production of a suitable archive and report."
70. The Department for Transport Document Design Manual for Roads and Bridges (DMRB LA 104) provides a set of criteria for assessing the significance of heritage assets. Assessments utilising those criteria have been undertaken by both WA on behalf of the appellant, and by the Council's Archaeologist, both of whom have assigned value and rated the significance of the heritage assets. The guidance for the assessment sets out a staged approach, the final stage of which is to define the significance of effect on the receptors, as set out in Table 3.8.1 of the DMRB LA 104. This final stage has not however been undertaken by WA.
71. In terms of value, WA suggest the value of the ridge and furrow is 'Medium'. However, considering that large areas such as the extensive surviving pattern of ridge and furrow found within the appeal site's setting are becoming rare, and whereas in this case, those areas are contiguous with settlement earthworks, I accept the Council's view that the value of this heritage asset is 'High'.
72. Both parties agree that the unauthorised development undertaken has resulted in the total loss of the ridge and furrow within the site and thus its impact should be regarded as Major Adverse. Whilst WA suggest that this impact could be lessened to Moderate Adverse considering the surviving adjacent ridge and furrow, the criteria for assessing the magnitude of impact do not take into account whether the asset is part of a more extensive feature. Thus, I would concur with the assessment that the impact is Major Adverse.
73. With regard to Gartree Road, and taking into account background information from HER and other sources, WA assess its value as 'Medium'. On the other hand, the Council consider that the route of the road, both as a whole and for local well-preserved stretches such as the one found to the southeast of the appeal site, its value should be 'High'. Gartree Road runs between the major Roman Settlements of Leicester and Godmanchester. It links sites of regional and national significance, including the bridge at Titchmarsh which is a

Scheduled Monument, and the route extends into East Anglia. Considering the Council's evidence, I concur that the road should be ascribed a 'High' value.

74. WA consider the impact of the development on the Gartree Road to be 'Moderate Adverse', considering it would represent a limited sample of a much more extensive landscape feature. As set out in paragraph 72 above, criteria for the assessment do not take into account whether the asset is part of a more extensive feature. There is no doubt, that if the road were present within the northern part of the site where excavation works have been undertaken, then evidence of it would have been removed and the loss would be a 'Major Adverse' impact. However, I accept that the impact of the works depends entirely on the validity of its conjectured route. I have also had regard to Mr Green's belief that it is unlikely that the route would follow a straight line, particularly considering the location and route of the river. I recognise that when WA conducted their site visit in November 2021, they saw no evidence of this heritage asset. However, WA visited the site many months after the unauthorised excavation/engineering works were undertaken, and thus any assets revealed at that time would more than likely be no longer visible due to resettling, vegetation growth and impact from machinery. I therefore give that consideration little weight.
75. Considering the works undertaken on the site, mitigation is not possible. In damaged areas the Council consider that the only recourse would be to clean the vertical faces where deep excavation has taken place and the ground surfaces in the shallower areas, and to investigate and record any archaeological remains present. These would be remedial works rather than mitigation. However, mitigation works for the southern part of the site, which has not been excavated, could include trial trenching and further investigation if required.
76. The final stage of assessment of the significance of heritage assets as set out in DMRB LA 104 has not been undertaken by WA. However, utilising the WA assessments of value of the assets, and magnitude of impact, their proposed mitigation measures and consideration that the loss of heritage assets are permanent and irreversible, the Council has completed the assessment on behalf of WA, concluding a 'Moderate' significance of effect in relation to Gartree Road and 'Moderate' or 'Large' in relation to the ridge and furrow. On the other hand, considering the Council's own assessment of value and impact, the significance of effect in relation to both heritage assets is 'Very Large'.
77. For the reasons set out above I concur with the Council's assessment of significance of effect in relation to the ridge and furrow. I attach very substantial weight to harm resulting from the complete loss of a significant area of high value ridge and furrow earthworks. Whilst I recognise that the earthworks could have been destroyed by a previous landowner through ploughing at any time, there is no reason to suggest that this would be a likely scenario. Indeed, the asset has remained intact for many centuries. Furthermore, although only part of the field has been excavated, with the southern part retaining evidence of the ridge and furrow, this does not mitigate the harm identified, and I therefore give these considerations little weight.
78. I appreciate that the impact of the development on Gartree Road depends on the validity of its conjectured route. However, HER support the projected route alignment and in the absence of any substantive evidence to the contrary,

there is no reason to dispute that assumption. Furthermore, as no predevelopment investigations were carried out, it is not possible to know the impact the unauthorised development has had on this asset. Nevertheless, the site contained a heritage asset with archaeological interest in the form of ridge and furrow earthworks which are irreplaceable, and the damage is permanent, whilst it is also more than likely that the site contained other heritage assets with archaeological interest.

79. I therefore conclude that the development has resulted in harm to a high value heritage asset to which I attached substantial weight. Policy 2(d) of JCS has been breached and there is conflict with the development plan and the NPPF.

### *Ecological Matters*

80. Policy 4 of JCS is consistent with paragraph 185 of the NPPF and seeks to ensure protection, management and enhancement of the natural environment. In addition, it advises that development proposals will need to take account of the Northamptonshire Biodiversity Supplementary Planning Document, August 2015.
81. In support of the appeal, a Preliminary Ecological Appraisal Report (PEA) of the site was undertaken on behalf of the appellant<sup>7</sup>. In addition, RAG commissioned a Great Crested Newt Survey Report (GCNSR)<sup>8</sup>.
82. There is agreement that the appeal site comprises grassland classed as 'other neutral grassland' in 'poor condition'. It was also agreed at the Hearing that the surrounding hedgerows are in 'moderate' condition. Furthermore, having regard to the GCNSR and Natural England's 'Rapid Risk Assessment' tool, the Council consider it highly unlikely that GCN were disturbed by the site clearance, and there is no evidence before me that would lead me to a different conclusion.
83. In addition, the parties agree that the site is not being used by badgers, dormice or otters. The site does, however, provide potential for foraging and commuting of bats. No trees or hedgerows have been or would be removed, and it was agreed at the Hearing that a condition could be imposed to ensure the submission and agreement of a lighting design strategy for biodiversity which would ensure there would be no harm to the bat's habitat.
84. The appellant recognises that planning policy requires new development to provide a net gain in biodiversity (BNG) where possible. Whilst there was some discussion at the Hearing over several small errors in relation to inputs into Defra's Biodiversity Metric 4.0 Calculator in the updated PEA, it was agreed that the appeal site, and adjoining field in the ownership of the appellant, would provide sufficient area for BNG to be achieved. In addition, it was accepted at the Hearing that the details of a BNG Scheme and a habitat management and monitoring plan could be secured by a suitably worded condition and planning obligation to secure the implementation and maintenance of the agreed scheme for a 30-year period.
85. The appellant has submitted a planning obligation in the form of unilateral undertaking ('UU'). This UU secures the implementation of any BNG Scheme secured by a planning condition, and to undertake any maintenance

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<sup>7</sup> Preliminary Ecological Appraisal Report V1, November 2021, V2, October 2023, Prepared by RSK biocensus.

<sup>8</sup> Great Crested Newt Survey Report, Lockhart Garratt, June 2021.

requirements under the Scheme for the period of time agreed under the Scheme. The provision of the UU is necessary to make the development acceptable in planning terms, the obligations are directly related to the development and fairly and reasonably related in scale and kind to the development. The UU meets the relevant tests, and the planning obligation is a material consideration which satisfactory mitigates harm in this case.

86. For the reasons set out above, I conclude, subject to the agreed condition and UU, the development would not have a harmful effect on biodiversity or protected species. There is no conflict with Policy 4 of JCS, the aims of which are set out above. There is also no conflict with the NPPF.

#### *Intentional Unauthorised Development*

87. A Written Ministerial Statement (WMS) dating from August 2015 establishes that Intentional Unauthorised Development (IUD) is a material consideration to be weighed in the determination of planning applications and appeals. The WMS relates to all forms of development not just relating to Gypsy and traveller sites. It places particular emphasis on IUD in the Green Belt.
88. It is understood that the appellant first undertook works on the appeal site on 22 January 2021 when a bulldozer was witnessed stripping back the top soil. In discussions that day between the appellant and the Council it was agreed that no further activity or importation would take place on the Land, and a site meeting was agreed for the following week. The subsequent meeting revealed that seven touring caravans had been brought onto the Land with further soil scraped back. The appellant advised that he had bought the site in 2020 and understood a planning application had been submitted by his agent. The Council advised that the works undertaken constituted a breach of planning control. An Enforcement Notice and a Stop Notice were served on the appellant on 26 January 2021. The Stop Notice required no further caravans to be brought onto the Land and to cease the importation of hardcore, aggregate or materials onto the Land. Following an explanation by a Council Officer the appellant stated that he understood the documentation and that it would be a criminal offence to fail to obey the terms of the Stop Notice. On 27 January 2021 the planning authority confirmed that a planning application for the use of the site for 5 Gypsy and Traveller pitches, including provision of hardstanding had been received.
89. On Monday 15 February 2021 the Council noted that approximately 10 tons of hardcore had been delivered to the site. The appellant said this was required to provide a solid base for the caravans that were sinking into the land. During the following week an area of hardstanding measuring approximately 15metres wide by 70 metres long had been created within the site by utilising approximately 80 tons of stone. Subsequently, two porta-loos have been erected on the site.
90. In this case, it is clear that the appellant knew that planning permission was required. A Stop Notice was ignored, and substantial works carried out over a significant area to facilitate the occupation. The occupation was clearly planned and executed in the knowledge that planning permission would be required and continued after the service of a Stop Notice.
91. I recognise that the 1990 Act as amended makes provision for a grant of retrospective planning permission, and planning enforcement action is remedial

rather than punitive. However, part of the underlying reason for seeking to deter IUD is to avoid prejudicing the opportunity to mitigate the impact of the development through the use of planning conditions. In this case, the harm I found in relation to archaeology is irreversible. Other harms, though reversible, have endured for some considerable time.

92. I appreciate that this large family unit did not have a permanent site, have moved around a lot, staying with friends and doubling up. This became difficult with the COVID-19 pandemic, and with nowhere else to go the family felt they needed to move onto the site. I also accept that attempts have been made to regularise the situation with the s78 application. However, in all the circumstances, including the implications for archaeology, and notwithstanding that the site is not within the Green Belt, I conclude that the fact this was IUD should carry significant weight against this appeal. The lack of alternative accommodation and the likelihood of having to resort to the roadside would carry weight in favour of the appeal on their own account, but, like the Inspector in the Loddington appeal<sup>9</sup>, I am not convinced that this should reduce the weight attached to IUD.
93. I have noted that only limited weight was attached to this matter by the Inspector in *Shawn Follows* appeal<sup>10</sup>. However, in that case she found the overall harm to be limited, and not irreversible. That is not the case in this appeal.

#### *Need for/supply of gypsy and traveller sites*

94. There is a generally accepted national need for more traveller sites. The Framework expects that the housing needs of different groups in the community should be reflected in planning policies. The PPTS, which in itself is a material consideration, makes it clear that a relevant matter in the consideration of planning applications for traveller sites is the existing level of local provision and need for sites. More specifically, local planning authorities should identify and update annually a supply of deliverable sites sufficient to provide 5 years worth of sites against their local set targets. Footnote 41 of the Framework indicates that, "For the avoidance of doubt, a five year supply of deliverable sites for travellers – as defined in Annex 1 to Planning Policy for Traveller Sites – should be assessed separately, in line with the policy in that document.
95. PPTS provides that local planning authorities should make their own assessment of need for the purposes of planning. They should identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against locally set targets for Gypsies and travellers who meet the definition in Annex 1 of PPTS.
96. It is the Council's position that they have a 5-year supply of pitches in North Northamptonshire, despite a recent appeal decision in relation to a site at Braybrooke, Kettering<sup>11</sup>, where the Inspector concluded that he was not satisfied that on the balance of probability the Council could demonstrate that it has a 5-year supply of deliverable sites for Gypsies and travellers, having regard to the *Smith* judgement<sup>12</sup>. The Braybrooke decision had regard to a

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<sup>9</sup> APP/L2820/W/20/3249281

<sup>10</sup> Appendix B35 Appellants SOC.

<sup>11</sup> APP/L2820/C/20/3262337 & APP/L2820/W/3262332, dated 21 August 2023

<sup>12</sup> *Smith v SSLUHC & Ors* [2022] EWCA Civ 1391.



recent decision relating to a site at Thrapston Road, Woodford, where the Inspector concluded in July 2023 that there is a likelihood that the current need is greater than that anticipated in the current GTAA.

97. Evidence produced by Opinion Research Services Limited (ORS), on behalf of the Council, included a rebuttal which amongst other matters, addressed the findings of the Thrapston Road decision, in particular regarding the baseline figures and how calculations are undertaken in relation to household formation. Their rebuttal also included observations in relation to the findings in the Braybrooke decision, drawing attention to two decisions relating to a site at Oakley Park, which lies close to this appeal site. Permission was granted on appeal for those sites in April 2023, and provided for an additional supply of 7 pitches. Those additional pitches had not been included in the previous 5-year supply calculation which was before the Inspector at the time of the Thrapston Road appeal. ORS believe the Inspector in the Braybrooke appeal was wrong to conclude on the evidence before him that a 5-year supply cannot be delivered.
98. During the Hearing I heard a considerable amount of evidence in relation to need, including survey data, concealed households, bricks and mortar and household formation. Concerns were raised by GPS regarding low interview rates, particularly in relation to identifying concealed households and doubling up. Mr Jarman of ORS accepted that this was a difficulty and advised that he was now seeking to do some further modelling around this issue. There is a similar concern with the absence of interviews in relation to hidden need which can also contain concealed households. Discussions were also had around discrepancies relating to supply in relation to existing pitches/unauthorised pitches, for example the number of authorised pitch numbers at The Caravan Site and Hilltop Farm in East Northamptonshire, where the Council accepted that the pitch numbers in the GTAA may not be accurate.
99. The North Northamptonshire Gypsy and Traveller Accommodation Assessment (GTAA), published in March 2019, represents the most up to date reference when assessing need. In the absence of an updated GTAA, proposals for new pitches should be made in the context of existing data available. Furthermore, the Inspector concluded in the Braybrooke appeal, *"following Smith, households who have been discounted in the 2019 GTAA as not meeting the definition under Annex 1 of PPTS, may now fall to be considered as having a need"*. In December 2023 the Government amended the definition of Gypsy and travellers within the PPTS to take account of the findings of that judgment, and the new definition reverts to the previous definition provided in the 2012 version of the PPTS. Thus, notwithstanding the concerns raised by GPS in relation to the baseline figure, including calculations of concealed households, those living in bricks and mortar and new household formation, whilst also recognising that the GTAA completed by ORS includes an assessment of need for all Gypsies and travellers, the identified need and 5-year supply position in support of the Council's case relates solely to Gypsies and travellers who met the 2015 PPTS definition.
100. I have had regard to the age of the GTAA and the evidence before me, in particular in relation to the low interview rates, concealed households and discrepancies with pitch numbers. Even if I were to accept the Council's figures in relation to household formation rates, considering the numbers who did not meet the planning definition as set out in the GTAA and in the light of the 2023



revised PPTS definition of Gypsies and travellers, the needs of all whom now need to be addressed, it seems to me that the Council will not be able to deliver the number of pitches needed for all Gypsies and travellers. In all the circumstances, I cannot be satisfied on the balance of probability that the Council can demonstrate an up to date 5-year supply of deliverable sites.

101. In addition to general need, the availability (or lack) of alternative accommodation for the current occupiers is a relevant consideration, as indicated by the PPTS. The Council was not able to suggest alternative, acceptable, affordable and available site(s) for the occupiers to move to if their appeal is not successful. There is no obligation on a local authority to provide a site. However, the probability is that finding suitable alternative pitches would be very difficult, bearing in mind the site search undertaken by the Council as part of the development plan process and the wider shortfall in traveller site provision, and the particular needs of the current occupiers.
102. I am also mindful that in the Braybrooke decision, the Inspector found that there was an on-going policy failure. Given my findings on the 5-year supply position, I would concur that there is an on-going failure of policy.
103. The PPTS indicates only that the inability to demonstrate a 5-year supply should be a significant material consideration when assessing an application for temporary accommodation. Weight is therefore a matter for the decision maker. I find that, when taken together with a failure of policy, the inability to demonstrate a 5-year supply and the lack of alternative sites this carries significant weight in favour of the appeal, even when considering a grant of planning permission.

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

104. I heard at the Hearing and the Witness Statements provided by the site residents, confirm that the site would provide a permanent base for a large family group comprising five individual families. The families have always lived and work together, predominantly carrying out roofing and ground works in the Leicestershire and Northampton Area. They have never had a settled base. They also travel to Gypsy and traveller fairs as a family, and Peasdale Hill Field provides space to graze their horses. Previously they have encamped on the roadside or doubled up and stayed with family and friends, which became more difficult with COVID-19.
105. Article 8 of the European Convention on Human Rights (ECHR) is incorporated into UK law through the Human Rights Act 1998 and provides that everyone has the right to respect for their private and family life, home, and correspondence. The duty to facilitate the Gypsy way of life is part of that, and Article 8 must also be considered in the context of Article 3(1) of the United Nations Convention on the Rights of the Child. This states that the best interests of the child shall be a primary consideration. Whilst these interests can be outweighed by other factors, no consideration can be inherently more important.
106. Dismissing the appeal would give rise to an interference with the occupants' Article 8 rights. Any interference must be in accordance with the law, necessary in a democratic society in the interests of national security, public

safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

107. There are 11 children living on the site, including five under the age of five, and one of the residents is pregnant. All the children who are school age now attend either the Primary School or Secondary School in Corby. I heard at the Hearing that since moving into permanent education the children have made friends and enjoy school life. Having a settled base would enable the children to continue to access education, whereas having to leave the site would undoubtedly mean them having to leave a school they are settled in.
108. Several of the site residents have health problems, which in some cases are quite serious and probably give rise to a protected characteristic under the Equalities Act. The residents have been able to register with local doctors whilst living at the site and a roadside existence would make access to healthcare more difficult for everyone on the site, including the children. However, there is no evidence that a particular medical facility or specialist close to the site is essential to the health of any of the site occupiers. Living together as a family group also enables the family to care and support each other.
109. For the reasons set out above, I attach substantial weight to all the personal circumstances, including the best interests of the children.

### **Planning Balance**

110. I find harm in relation to landscape character and appearance to which I have attached substantial weight. The harm I identified to highway safety carries significant weight. The harm caused to archaeology carries substantial weight and I attribute significant weight to the fact that this is intentional unauthorised development. The last factor is exacerbated by the harm to archaeology which is irreversible. I also attach limited weight to the harm arising from the lack of close links to services and facilities. I am not persuaded that these harms could be adequately addressed by any reasonable planning conditions.
111. As a result of the above, I find the development to be in breach of Policies 2(d), 3, 8(b), and 31 (a), (e) and (f) of the JCS and conclude that it conflicts with the development plan as a whole. It also conflicts with paragraphs 109, 115 and 180 of the NPPF, paragraph 25 of the PPTS and the WMS on intentional unauthorised development.
112. On the other side of the balance, I have determined that the Council cannot demonstrate a 5-year supply of deliverable sites for Gypsy and travellers, as defined in Annex 1 to the PPTS, and there has been a failure of policy. Together, these factors carry significant weight in favour of the appeal, whether in the context of considering a permanent or temporary permission.
113. I have found that it would be in the best interests of the children on the site to allow the appeal and this factor carries substantial weight. To this I add the significant weight attached to the site residents' overall personal circumstances and the lack of alternative accommodation, all in the context of human rights considerations and the PSED.

114. In relation to Article 8 of the ECHR, safeguarding the environment, the countryside and its appearance are relevant to both the economic well-being of the country and the rights and freedoms of others. Under the PSED, eliminating discrimination and advancing equality of opportunity, in terms of providing decent places to live, may often necessitate treating Gypsies and travellers more favourably than the settled community. However, the harms associated with the occupation of this site and the objections raised by RAG means its continued occupation would be unlikely to foster good relations.
115. I conclude that material considerations do not indicate planning permission should be granted, despite conflict with the development plan and dismissal of the appeal is a proportionate response.
116. The appellant seeks a permanent permission but, failing that a temporary one. Planning Practice Guidance indicates the circumstances in which a temporary planning permission may be appropriate include where a trial run is needed to assess the effect of the development on the area or where it is expected that planning circumstances will change in a particular way at the end of that period. In this case a trial run is not needed. The circumstances in relation to the supply of pitches may however change with the adoption of a Traveller Sites Allocation Development Plan Document, however, this is not anticipated until at least December 2024.
117. Moreover, in this case in addition to the continuing harm to landscape character and appearance, I have found significant risk to highway safety. In these circumstances, it would not be appropriate or proportionate to allow the continuation of that harm for a period of years, added to the harm and risk which has already existed since January 2021. Furthermore, if conditions could be applied, for example those agreed to mitigate ecological impacts and remediate archaeology, they would be even more onerous in connection with a temporary permission.

118. I conclude that temporary planning permissions should not be granted.

### **Conclusion on Appeal B**

119. For the reasons given above, I conclude that the appeal should not succeed.

*Elizabeth Pleasant*

INSPECTOR

### **APPEARANCES**

#### **FOR THE APPELLANT:**

Mr Matthew Green	Green Planning Studio Ltd
Mr Jeremy Hurlestone BSc (Hons), CMILT, MCIHT	The Hurlstone Partnership
Mr Lang	RSK biocensus
Mr Patrick Delaney	Appellant
Mr Joseph Delaney	Appellant's brother

Mr Joe Delaney	Appellant's father
Mr Johnny Delaney	Appellant's brother

#### FOR THE LOCAL PLANNING AUTHORITY

David Lintot of Counsel	Cornerstone Barristers
Mr Steven Jupp MRTPI	Planning Solutions
Steve Jarman	Opinion Research Services Ltd
Heather Webb	Ecologist, North Northamptonshire Council
Liz Murdue BA (Hons)	Lead Planning Archaeologist, North Northamptonshire Council
Martin Draper BEng (Hons)	Senior Development Management Engineer, North Northamptonshire Council
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#### THIRD PARTIES

Phillip Hughes BA (Hons) MRTPI, FRGS, Dip Man MCIN	On behalf of RAG
Mr Alan Eaton	Local Resident

#### Documents at hearing

1. Written Statement, Tom Pursglove MP.
2. Additional Draft Planning Conditions.
3. OS Extract, Recommended Viewpoints for Inspector.
4. Updated Witness Statement: Johnny Delaney; Joseph Delaney, Joe Delaney; Patrick Delaney.
5. Tracey Holland and Jim Smith v SSCLG and Taunton Deane Borough Council [2009] EWHC 2161 (Admin).
6. Unilateral Undertaking, dated 9 December 2023.
7. Council's Suggested Conditions V2.

#### Documents after hearing

1. Biodiversity Condition.