The Planning Inspectorate

Appeal Decisions

Hearing held on 7 November 2024

Site visit made on 8 November 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11TH NOVEMBER 2024

Appeal A Ref: APP/P0240/W/22/3291001
The Huts, Thorncote Road, Hatch, SG19 1PU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Joseph Robb against the decision of Central Bedfordshire Council.
- The application Ref is CB/21/01019/FULL.
- The development proposed is part retrospective change of use of land for the creation of a two pitch Traveller site, comprising the siting of 2 mobile homes, 2 touring caravans, erection of 2 dayrooms, erection of CCTV camera with post, and associated works.

Appeal B - APP/P0240/C/24/3346787
The Huts, Thorncote Road, Hatch, Sandy, SG19 1PU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Joseph Robb against an enforcement notice issued by Central Bedfordshire Council.
- The notice was issued on 11 June 2024.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of Land from mixed use of agriculture and the storage and maintenance of one commercial vehicle for hobby purposes to a residential Gypsy and Traveller site with the siting of 2 static caravans and 3 touring caravans.
- The requirements of the notice are to (1) cease the use of the Land as a residential Gypsy and Traveller site, (2) to remove the static and touring caravans from the Land, associated with the use of the Land, and (3) return the land to its previous authorised use.
- The period for compliance with the requirements is 12 calendar months.
  The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Appeal C - APP/P0240/C/24/3346788
The Huts, Thorncote Road, Hatch, Sandy, SG19 1PU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Joseph Robb against an enforcement notice issued by Central Bedfordshire Council.
- The notice was issued on 11 June 2024.
- The breach of planning control as alleged in the notice is without planning permission, operational development including the laying of hardstanding and installation of foul water/sewage drainage. The erection of pole mounted CCTV system and the development associated with the material change of use of the Land to the residential Gypsy and Traveller site.
- The requirements of the notice are to (1) remove foul water/sewage drainage installation, (2) remove the CCTV system, (3) remove hardstanding area outlined in blue on the attached map and re-instate grassed areas, (4) remove any debris created by steps (1)-(2), and (5) restore the Land to its previous condition.

- The period for compliance with the requirements is six calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decisions

Appeal A Ref: APP/P0240/W/22/3291001

1. The appeal is dismissed.

Appeal B - APP/P0240/C/24/3346787

It is directed that the enforcement notice is varied by the deletion of the words in section 5(3). Subject to the variation, the appeal is allowed insofar as it relates to land hatched black on the plan appended to this decision. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended), for a residential Gypsy and Traveller site with the siting of two static caravans and three touring caravans at land shown hatched black on the plan appended to this decision, and subject to the conditions in schedule A to this Decision. The appeal is dismissed, and the enforcement notice is upheld as varied insofar as it relates to a residential Gypsy and Traveller site with the siting of two static caravans and three touring caravans shown on land edged black on the plan appended to this decision, where permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Appeal C - APP/P0240/C/24/3346788

2. It is directed that the enforcement notice be varied by (i) deleting the words in section 5(3) and substituting them for '*remove the hardstanding area outlined in blue on the attached map and reinstate grassed areas by grading and levelling the soil and by the sowing of an MG5 grass mix to that area',* and (ii) deleting the words in section 5(5). Subject to these variations, the appeal is dismissed, and the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for Costs

3. In respect of Appeal A, an application for costs was made by Mr Joseph Robb against Central Bedfordshire Council. This application is the subject of a separate Decision.

Preliminary Matters

4. The description of the development (Appeal A) in the banner heading above differs from that in planning application form. In particular, it includes the erection of a CCTV camera on a post and one on a gate. This was agreed between the main parties prior to the planning application being determined. This description of development reflects what was considered by the Council when it refused planning permission. I have therefore determined the appeal based on the description of development on the banner heading above.

5. As part of the appeal, the appellant submitted drawing No. J003824-DD-03 Revision B (as proposed site plan). The Council states that this was not considered by it when it refused planning permission. It states that the relevant 'as proposed site plan' that was considered by it when it refused planning permission was drawing No. J003824-DD-03 Revision A. Notwithstanding the Council's view about this matter, the evidence is that the appellant did submit drawing No. J003824-DD-03 Revision B to the Council prior to it deciding to refuse planning permission. This drawing includes additional landscaping. It was agreed at the hearing that no injustice would be caused to any interested party by accepting drawing No. J003824-DD-03 Revision B for decision making purposes. I have therefore determined this appeal accordingly.

The Notices

6. The appellant has referred to section 171B(4)(b) of the Act. This is a matter that has been raised by the appellant in his accompanying letter dated 20 June 2024. I am aware that similar enforcement notices were withdrawn prior to the subject enforcement notices being issued. For the avoidance of doubt, section 171B(4) does not refer to so-called 'second bite'. Section 171B(4)(b) does not impose a limit on the number of times that a local planning authority (LPA) can issue a notice against the same breach. Indeed, section 171B(4) does not prevent the LPA '*taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach'*. I acknowledge that the operational development notice under appeal C also includes CCTV. In this regard, the Council is not relying on section 171B(4) of the Act. The breach of planning control differs from that contained within a previously withdrawn notice.

7. The appellant acknowledged at the hearing that he was not suggesting that the notices were invalid or null. He confirmed that he was simply making a technical point. In this case, he accepted that the technical point did not make a difference to the outcome of the appeals because no claim was being made about any development being immune from enforcement action, i.e., no ground (d) appeal has been pursued in respect of either Appeal B or Appeal C.

The Notice – appeal B

8. The appellant claims that the notice is invalid as paragraph 5(3) states '*return the land to its previous authorised use'*. There is no power to restore or reinstate a use in sections 173(3) and 173(4) of the Act. To this extent, the notice is flawed and hence invalid. However, I shall vary the requirements of the notice by deleting requirement 5(3) and, in doing so, am satisfied that no injustice would be caused to the main parties. This variation was agreed by the main parties at the hearing and does not make the requirements of the notice more onerous.

The Notice – appeal C

9. The appellant considers that the notice is imprecise as it does not distinguish between areas of authorised and unauthorised hardstanding on the site. However, the appellant does not dispute that an area of unauthorised hardstanding has been formed on the 'land' (i.e., within the land falling within

the red edged line on the plan attached to the notice). It is notable that there are no appeals pleaded on grounds (b) or (d) of section 174(2) of the Act. The notice requires hardstanding, as depicted within the blue edged land of the site as shown on the plan attached to the notice, to be removed. In response to the appellant's concern about requirement 5(5) leading to confusing and conflicting requirements, the Council considers that this requirement could be deleted. I shall vary the requirements of the notice by deleting requirement 5(5) of the notice and, in doing so, find that injustice would not be caused to the main parties.

10. Requirement 5(3) of the notice states *'remove hardstanding area outlined in blue on the attached map and reinstate grassed areas'*. In the interests of precision, and without injustice being caused to the main parties, I shall vary requirement 5(3) of the notice so that it reads *'remove the hardstanding area outlined in blue on the attached map and reinstate grassed areas by grading and levelling the soil and by the sowing of an MG5 grass mix to that area'.* This variation was agreed by the main parties at the hearing.

Ground (a) appeals and s.78 appeal

Main Issues

11. While the development which is the subject of appeals A, B and C are not identical, they are nonetheless interrelated and relate to the same site. The main issues for appeals A, B and C are therefore (i) the effect of the developments on the character and appearance of the area including landscape character and trees, (ii) whether the developments amount to intentional unauthorised development, (iii) the effect of the developments on biodiversity including the extent to which biodiversity net gain can be delivered, (iv) whether the site is sustainably located for a Gypsy and Traveller residential caravan site use, and (v) if any planning harm is identified, whether that harm is outweighed by other material considerations.

Preliminary Matters

12. The appeal site falls within an area of designated countryside and is located to the west of the settlement of Hatch. To the east is open pastureland, to the west is 'Westwinds' which is a detached dwellinghouse, and on the opposite side of Thorncote Road there are some semi-detached dwellinghouses. Much of the site is surrounded by mature trees and vegetation. There is, however, a vegetation gap along part of the eastern boundary and hence part of the existing development on the land, including mobile homes, can be seen from views from Hatch Common.

13. The planning application is made on a partly retrospective basis in so far that an area of hardstanding has been formed, and as the site it is being used by two families who are living in two mobile homes. There is no dispute between the main parties that the two families meet the definition of Gypsies/Travellers as outlined in Annex 1 of the Government's Planning Policy for Traveller Sites, as updated in December 2023 (PPTS). I have no reason to disagree with the position of the main parties about this matter.

14. For the avoidance of doubt, I am determining the planning application based on the submitted plans and not based on current site conditions. Indeed, the site

is not currently laid out as per the submitted plans. It includes solid boundary fencing and substantial frontage gates/fencing. The submitted plans show two mobile homes, two touring caravans, four car parking spaces, an area of hardstanding, a CCTV camera mounted on a pole, a CCTV camera mounted on a gate (no details of gate(s) are submitted) and some internal grassed/planting areas. A storm drainage strategy plan accompanies the planning application.

15. Prior to the unauthorised material change of use of the land taking place, the evidence is that it comprised a mixed agricultural and storage/maintenance of one commercial vehicle for hobby use on that part of the appeal site between the rear of the workshop building and the road, as confirmed by means of a lawful development certificate[1]. The evidence is that the site included a building prior to the site being used for unauthorised residential purposes. I was able to see that building on my site visit. The evidence is that vegetation was removed on the eastern boundary of the site and along its frontage with Thorncote Road to facilitate unauthorised residential use, the construction of hardstanding, and to create a widened vehicular access.

Character and appearance including landscape character and effect on trees

16. The wider area is characterised by small rural dispersed settlements connected by roads which are generally without lights and pavements. This part of the countryside includes a scattering of agricultural and residential development. However, and overall, this part of the countryside includes a limited amount of built development and is rural in character. The nearest hamlet to the site is Thorncote Green which is not defined by a settlement envelope.

17. The site was, at least in part, previously developed and is closely related to surrounding buildings. In that sense, it could not reasonably be said that it is experienced as being very remote or isolated from other development.

18. In respect of Policy C of the PPTS, I acknowledge that there is an existing Gypsy/Traveller site to the east of the small hamlet of Thatch. I understand that it has about seven pitches. This Gypsy/Traveller site is spatially separated from the appeal site. Furthermore, the appeal proposal is for only two pitches. In this case, I do not find that the scale of the site and the number of pitches proposed would dominate the nearest settled community, even accounting for the existing Gypsy/Traveller site to the east of the hamlet of Hatch. Moreover, there is no reasonable or objective evidence before me to indicate that the proposal would put undue pressure on local infrastructure when considered alone, or in combination with the other nearby pitches.

19. The site falls within the Lower Ivel Clay Valley Landscape Character area in the Central Bedfordshire Landscape Character Assessment (LCA). This explains that the disused nurseries and the A1 are locally dominant, but the wooded slopes and the Greensand Ridge to the north provide containment and a rural backdrop. The landscape strategy for the area is to renew elements that have become degraded or lost and to create new features to enhance and strengthen landscape character.

[1] CB/13/00320/LDCE and associated appeal ref APP/P0240/X/14/2215181

20. The evidence is that prior to the unauthorised development taking place on the site, it included a building and part of it was previously developed land. Nonetheless, photographic evidence demonstrates that the site previously had a more rural character and appearance and did not include the extent of hardstanding which is the subject of the appeals. Notwithstanding the site's baseline position prior to unauthorised development taking place, much of the land nonetheless continues to be largely screened from longer distance views owing to the existence of mature boundary trees and planting and intervening surrounding development. I find that the effect of the proposed development on the landscape character of the area is a more localised one. Indeed, the mobile homes and touring caravans can be seen from parts of the nearby Hatch Common to the east. Moreover, when the unauthorised frontage gates are open, the development on the site is now more conspicuous owing to the loss of some frontage vegetation.

21. While the unauthorised fencing and gates on the site do not form part of the planning application which is the subject of this appeal, I agree with the Council's Landscape Officer that this form of development has had an unacceptably urbanising effect on this part of the countryside when experienced from Thorncote Road and from surrounding dwellinghouses. The appellant agreed at the hearing that he would be content to replace the gates/fencing and that it would be possible to erect smaller and more in-keeping frontage gates/boundary treatment combined with enhanced frontage planting along Thorncote Road. He also commented that he would plant additional trees and hedges on the site. I am satisfied that this could be controlled by means of the imposition of a planning condition in respect of the Appeal A and Appeal B developments.

22. In addition to the above, the appellant confirmed at the hearing that additional tree and hedgerow planting would be undertaken along the eastern boundary of the site in respect of appeals A and B. This vegetation gap affords views of the site from Hatch Common. The caravans are clearly visible and prominent from this area as well as from the adjacent menage. Owing to their colour, height, and position, I find that the absence of boundary screening along this boundary means that the development does not assimilate well into the surrounding landscape.

23. I agree with the Council that the proposed planting along the eastern boundary would not amount to an immediate screening of the buildings/caravans on the site. I find that it would likely take several years for the gap in the boundary landscaping to reach maturity and, in the meantime, some of the buildings, caravans and chattels on the site would continue to be seen from public views. Moreover, and, in any event, it cannot be guaranteed that the new planting would endure forever. In this regard, I find that some limited harm has been/would be caused to the landscape character of the area. For this reason, the appeal developments would detrimentally affect the character and appearance of the wider landscape at odds with the requirements of policy H7 of the adopted 2021 Central Bedfordshire Local Plan 2015-2035 (LP).

24. I am mindful of concern raised about the effect of the position of the existing unauthorised hardstanding on the boundary trees. In respect of Appeal C, the hardstanding is positioned within the root protection areas as shown to be provided in respect of the development proposed under Appeal A. The

unauthorised hardstanding has indeed had the effect of undermining the appellant's own Tree Protection Strategy. On the evidence that is before me, I find that there is a possibility that the unauthorised hardstanding may have caused harm to the health and longevity of existing boundary trees/landscaping. In this regard, it remains possible that such trees/landscaping may die. Their loss would exacerbate my concern in respect of the identified harm caused to the landscape character of the area should even more of the site become exposed to public views from Hatch Common.

25. In the absence of any persuasive and objective evidence from the appellant that the existing boundary trees/landscaping on the perimeter of the land has not been materially harmed, I cannot conclude that it would continue to offer the same level of screening of the appeal developments in the future. Moreover, given this finding, I cannot conclude with any certainty that the appellant's Tree Protection Strategy that accompanies Appeal A would be sufficient to ensure that such trees/landscaping remain. In other words, an unauthorised hardstanding has been formed and it is not clear from the evidence whether existing boundary trees/landscaping would endure even if the unauthorised hardstanding were to be removed and a new hardstanding formed as per the plans submitted as part of Appeal A. The boundary trees/landscaping add positively and distinctively to the character and appearance of the area and hence this is an important consideration.

26. While I acknowledge the need for some hardstanding on the land in connection with the siting of caravans and vehicles, the amount that exists on the land (Appeal C), and is proposed as part of Appeal A, is very significant in the context of the landscape character of the area. The frontage gates do not form part of the ground (a) or section 78 appeals. The appellant confirmed at the hearing that the frontage gates/fencing would be replaced by condition with smaller entrance gates/fencing. Nonetheless, there would be times when gates would be open. Passers-by would be able to see into the site when any such gates were open. I appreciate that these would be intermittent occurrences and that views into the site would likely be fleeting. Nonetheless, the extent of the existing and proposed hardstanding is very significant in the context of this rural location, and it is not the case that the hardstanding would never be seen by passers-by.

27. In my judgement, and, when considered as a whole, neither the existing nor proposed hardstanding can be reasonably said to represent a sensitive and in-keeping form of development in this location. In respect of Appeal A, the appellant has missed an opportunity to soften the harsh impact of the proposed hardstanding (coupled with caravans, day rooms and parked cars) by breaking it up with a greater amount of soft landscaping. Moreover, the hardstanding which is the subject of Appeal C extends to the outer limits of the appeal site. I find that either hardstanding is unacceptably extensive and intrusive in the context of the landscape character of the area. In terms of this matter, I also find that the evidence is that the unauthorised hardstanding may have caused harm to the longevity and health of existing boundary landscaping.

28. In reaching the above conclusions about the hardstanding areas, I am mindful that the notice which is the subject of Appeal C requires only the removal of the hardstanding within the blue edged land on the appended plan and its reinstatement to grass. The notice does not attack the hardstanding on the

northern part of the site and therefore the effect of section 173(11) of the Act is that deemed planning permission would be approved for it if the notice was to be upheld. This is a point raised by the appellant which I also address as part of the associated ground (f) appeal. This is a fallback material consideration of considerable weight to weigh in the overall planning balance.

29. However, the notice fallback position does not alter or outweigh my finding in respect of the harmful cumulative impact of the existing and proposed hardstanding as whole on the character and appearance of the area. The land within the blue edge of the plan appended to the notice for Appeal C represents a significant enlargement and incursion into what the evidence indicates was otherwise an undeveloped and essentially landscaped part of the land. There would be cumulative harm caused to the character and appearance of the area arising from the laying of hardstanding (existing or proposed) to the south of the site in conjunction with the hardstanding to the north of the site.

30. In respect of Appeal C, I find that the above level of harm to the character and appearance of this countryside location is exacerbated owing to the erection of an existing pole mounted CCTV system. This is prominent and intrusive when experienced by passers-by on Thorncote Road and has an industrial appearance which is incongruous in this rural setting.

31. The appellant asserts that in respect of the ground (a) appeal under Appeal B, I could consider an alternative layout which effectively confines the two Gyspy and Traveller pitches to the area of hardstanding which would have deemed planning permission if the notice under Appeal C were upheld and complied with. Given this deemed planning permission fallback position, I shall consider whether under the ground (a) appeal for Appeal B, there would be justification in planning terms to grant planning permission for a residential Gypsy and Traveller site on only the hardstanding which constitutes the deemed planning permission fallback position. It is necessary that I consider this option as part of the ground (a) appeal for Appeal B, given section 174(2) (a) of the Act. Indeed, the development arising from an alternative scheme would form part of the matters alleged in the breach of planning control.

32. As detailed below, I find that there is justification to approve an alternative scheme relating to the provision of two pitches on a smaller site and which would relate solely to the hardstanding which would constitute the fallback deemed planning permission.

33. Prior to the unauthorised development occurring, the evidence is that the above land (i.e., the northern part of the site) included a building and was, at least in part, PDL. Confining the caravans, vehicles and associated domestic paraphernalia to the northern part of the land would not lead to the same level of harm to the landscape character and appearance of the area. In this context, the caravans would not be overly conspicuous in view from Hatch Common as they would be positioned away from the vegetation gap which is to the south of the land and along its eastern boundary.

34. In order to soften the impacts of the development on the character and appearance of the area, the grant of planning permission for two pitches on a reduced site area basis would provide scope to impose conditions relating to additional landscaping within the site and the submission of a scheme of boundary treatment/landscaping including that area fronting Thorncote Road. A

layout for the reduced site could be secured and controlled by planning condition. Given the uncertainty about the position of the hardstanding and its effect on boundary trees, it would be necessary to impose a condition requiring the replacement of existing boundary trees/vegetation (e.g., if they die, are damaged or become diseased) within a thirty-year period rather than the normal five-year period. This was agreed at the hearing between the main parties and would go hand in hand with the suggested BNG condition which would include a thirty-year maintenance programme. Such a condition would offer more certainty in terms of ensuring that boundary landscaping continued to soften/screen the caravans and vehicles from surrounding views for many years to come.

35. I find that the siting of caravans and vehicles on the hardstanding area would not in itself give rise to any adverse impacts from a biodiversity or existing boundary trees point of view. These are matters that arise because of the hardstanding that has been formed on the land. However, the LPA has decided that the hardstanding outside of the blue edged land, but within the red edged land on the plan appended to the notice, which is the subject of Appeal C, can ultimately be retained. This is a material planning consideration of significant weight when considering the alternative scheme.

36. For the reasons outlined above, I cannot conclude that when the existing and proposed developments (Appeal A and C) are considered as a whole, they accord with the landscape character, distinctiveness, appearance, design, and landscaping requirements of policies H7(2), HQ1, EE4 and EE5 of the adopted LP, policies NP6 and NP10 of the Northill Parish Neighbourhood Plan 2019-2031 (NP), the Central Bedfordshire Landscape Character Assessment, the PPTS and or chapters 12 or 15 of the National Planning Policy Framework 2023 (the Framework).

37. Notwithstanding the above, I have considered the deemed planning permission fallback position under section 173(11) of the Act in respect of the hardstanding area to the north of the site. This is a matter to which I afford considerable weight in the planning balance. In this context, and, subject to the imposition of planning conditions, I find that an alternative scheme, which confines the two Gypsy and Traveller pitches under the ground (a) appeal for Appeal B to only part of the site, would not have a detrimental impact on the character and appearance of the area, or to landscape character. In this regard, I conclude that there would not be conflict with the landscape character, distinctiveness, appearance, design, and landscaping requirements of the above policies.

Whether intentional unauthorised development

38. The Department for Communities and Local Government policy statement 2015 introduced planning policy to make intentional unauthorised development (IUD) a material consideration that would be weighed in the determination of planning applications and appeals from 31 August 2015.

39. In respect of IUD, planning permission should not be refused simply on the basis that the development was carried out without planning permission or is unlawful. A finding of IUD must be supported by evidence of something more than this, i.e., that the appellant intended the development to be unauthorised or actively sought to harmfully flout the rules.

40. In this case, the evidence is that the appellant submitted a planning application to use the site for residential purposes on 5 March 2021. The next day, the evidence indicates that work commenced to facilitate use of the site for residential purposes. It is noteworthy that the submitted plans are dated February 2021 and hence it is reasonable that I conclude that the professionally represented appellant was aware of the need to submit a planning application for the use/operational development on the land well in advance of submitting that planning application.

41. It is noteworthy that the two families on the appeal site had previously been leading a roadside existence. While I can appreciate the desire to have a settled base for the families, including for the children, the appellant has carried out unauthorised development. On the evidence that is before me, I find that such action was intentional. There is common ground between the main parties in this regard. The IUD clearly prevented the proper application of planning policies, including a more informed position about the baseline position of the site from a biodiversity point of view, and the evidence is that such action caused some friction with the local community.

42. Notwithstanding the above, I do not doubt the desire to have a settled base in March 2021, particularly from the point of view of the young children. Furthermore, I do not doubt that the alternative of continuing to live a roadside existence at this time would have been problematic owing to Covid-19 pandemic lockdowns and restrictions. Moreover, I am mindful that neither the appellant nor the Council have been able to refer me to the availability of any alternative available Gypsy/Traveller pitches in the area or elsewhere when the families moved onto the site. I am also told that the families have an aversion to bricks and mortar accommodation. These matters temper the adverse weight that I afford to IUD.

43. For the reasons outlined above, I conclude that IUD carries limited adverse weight in decision making terms.

Biodiversity

44. Unauthorised development is exempt from the statutory 10% biodiversity net gain (BNG) requirement. In this regard, there is no requirement under appeals B and C, to achieve a statutory minimum 10% BNG. As the planning application which is the subject of appeal A was made on 5 March 2021, it is also exempt from the statutory 10% BNG requirement which relates to planning applications made on or after 12 February 2024.

45. The Council has prepared Biodiversity Net Gain Guidance in Support of Policy EE2 of the LP (March 2022) (BNG Guidance). Paragraph 2.1.4 of the BNG Guidance states *'whilst the Local Plan does not specify a target for BNG, the Council are taking a positive and proactive approach and are encouraging new developments to achieve a net gain for biodiversity of at least 10%'.* Policy EE2 of the LP does not specify a target for BNG and while the BNG Guidance seems to encourage 10% BNG, I do not find that it is necessary for the appeal developments to achieve a minimum 10% BNG. The main parties were of the same view about this matter when questioned at the hearing.

46. There is, however, a requirement for the developments to achieve biodiversity gain as policy EE2 of the LP states *'development proposals will be permitted*

where they provide a net gain in biodiversity through the conservation, restoration and creation of ecological networks of habitats, species and sites (both statutory and non-statutory) or international, national and local importance'.

47. Furthermore, the appeal site falls within the Greensand Ridge Nature Improvement Area (GRNIA) and the B-Line area of priority pollinators. The GRNIA has been designated because of the opportunity it provides to support a better, stronger, and more robust natural environment at a landscape scale, and to make significant improvements to the existing ecological network in terms of enlarging and enhancing existing wildlife assets and increasing ecological connectivity between them. Policy EE8(1) of the LP states that development proposals within the GRNIA will be permitted where they *'demonstrate how a net gain in biodiversity will be delivered, including how gains in the quality and connectivity of ecological networks within and linking to the development will be delivered'.*

48. It is also notable that paragraph 180(d) of the Framework requires that decisions should contribute to and enhance the natural and local environment by *'minimising impacts on and providing net gains for biodiversity'.*

49. While a Preliminary Ecological Appraisal (PEA) was submitted by the appellant alongside the planning application, I agree with the Council that the evidence indicates that the PEA was carried out at post unauthorised development stage. The evidence is that the baseline biodiversity position was based on the unauthorised development that had taken place on the site. At this stage, the evidence is that vegetation had been removed from the site and hardstanding had been laid.

50. The site baseline should have been its original condition, prior to vegetation clearance. The evidence in the form of digital images shows that prior to the unauthorised development taking place, a large part of the site was predominantly grassland with boundary hedging and that it was semi-natural with some biodiversity value. Therefore, some harm had already occurred to biodiversity because of the unauthorised development. Moreover, while there is dispute between the appellant, Council and third parties about what type of vegetation was removed from the site, there is common ground that some form of vegetation was removed from the south-eastern boundary of the site, and from the frontage with Thorncote Road, prior to unauthorised development taking place.

51. It is also noted that the site would effectively become garden space in association with use as a Gypsy and Traveller residential caravan site. Even if one were to consider the proposed space as habitat and not garden space, the evidence is that a net gain in habitat units would not be possible on this site given the extent of the unauthorised hardstanding. Even applying the mix of habitats shown on the appellant's proposed plan and using the category 'vegetated garden', the evidence is that it would lead to losses of approximately 34% of habitat units and 50% hedge units.

52. I agree with the Council's evidence in its updated Ecology Statement of Case, dated September 2024, that the conifers on the eastern boundary should not be given a score of 'good' given the guidance in the Statutory Biodiversity Metric User Guide. Moreover, for appeal A, it is proposed to plant trees within

the grassland which would be small. I do not consider that the claimed 'good' condition would be achieved as that requires the trees to be mature and have opportunities for vertebrates and invertebrates such as cavities or deadwood, which is unlikely.

53. In the absence of correctly establishing the biodiversity baseline position, and hence being able to properly consider the proposed development against the pre-unauthorised development baseline position, and in accordance with the requirements of the Council's Biodiversity Net Gain Guidance 2022, I cannot conclude that the existing or proposed developments would accord with the biodiversity requirements of policies EE2 and EE8 of the LP, or paragraph 180(d) of the Framework. In addition, for the reasons outlined above, I do not find that trading rules have been met for either habitats or hedges in the appellant's submitted biodiversity metric. Overall, the appellant has not suitably demonstrated that the appeal developments would lead to biodiversity net gain. In respect of appeals A and C, this is a matter to which I afford very significant adverse weight in decision making terms.

54. Notwithstanding the above, I afford significant weight to the hardstanding fallback position in respect of the notice under Appeal C. A proportion of the hardstanding is not required to be removed if that notice was to be upheld. No conditions relating to biodiversity are capable of being imposed in respect of a deemed planning permission, under section 173(11) of the Act, for part of the hardstanding on the land. In this context, I find that the ground (a) appeal development which is the subject of Appeal B (i.e., material change of use development) would be acceptable in BNG terms if I decide that the Appeal C notice should be upheld and subject to the Gypsy and Traveller site use being confined solely to the said hardstanding area as shown on the appellant's alternative/indicative layout drawing No. J00491-CD01, dated September 2024.

55. In the context of the above, the material change of use of the land would not in itself have an impact on biodiversity and, moreover, it is noted that new native hedge and tree planting is shown on indicative drawing No. J00491-CD01 along the south-eastern boundary and along the road frontage with Thorncote Road. In this regard, I find that that subject to restricting the area of land for Gypsy and Traveller site use in accordance with the area shown on drawing No. J00491-CD01 dated September 2024, and the imposition of a landscaping condition, there is justification for overriding the harm caused to biodiversity, and hence conflict with policy EE8 of the LP, arising from the laying of the identified hardstanding area.

56. The above conclusion is reached on the basis that the notice under Appeal C is upheld and hence that the area of hardstanding to the south of the site (i.e., annotated in a blue colour on the plan attached to the notice) is removed and that a grassed area is reinstated. This decision is also reached in the context of the comment made at the hearing by the Council's ecologist that based on the alternative scheme, coupled with upholding the enforcement notice for appeal C and hence the retention of hardstanding outside of the blue edge of the plan appended to such a notice, he could not reasonably say that it would not be possible to achieve biodiversity net gain on the site.

57. Indeed, there was broad agreement between the main parties that it would be possible to provide new planting on the frontage of the site with Thorncote

Road (arising from a reduction in the size of the gates/associated fencing) and the provision of additional trees and hedges on the part of the land outside of the blue edged land on the plan appended to the notice which is the subject of appeal C. It was agreed that such replacement and new planting would be capable of being dealt with by condition and including a thirty-year maintenance, retention, and replacement programme.

58. There was some discussion about whether BNG needed to be provided on a like for like area basis, or whether it could be provided on a linear basis. While there are specific requirements in terms of achieving BNG in statutory terms, that does not apply in this case as the achievement of statutory BNG is not applicable to any of the appeals. It is necessary for BNG to be considered against policies EE2 and EE8 of the LP which is silent on whether BNG is delivered on an area or linear basis. On the evidence that is before me, I find that it would, as acknowledged by the Council's ecologist, be therefore possible to achieve BNG in conjunction with the alternative scheme. I acknowledge that the appellant has not provided me with a full or accurate BNG assessment in this regard, but on the basis of the appellant's alternative scheme, my decision in respect of Appeal C, and the comments made by the Council's ecologist at the hearing, I am satisfied that BNG could be dealt with by condition.

Whether sustainably located

59. The Council claims that the site is not sustainably located in so far that it is located outside of a defined settlement envelope. However, policy H7 of the LP, which specifically relates to the provision of Gypsy and Traveller sites, does not prohibit Gypsy and Traveller sites in the countryside. This is also the case in respect of the PPTS and policy SP7 of the LP. The latter policy lists the types of development that will be permitted outside settlements but uses the word *'includes'.* It is therefore not a closed list. In other words, it could include Gypsy and Traveller sites in the context of policy H7 of the LP.

60. Policy SP7 of the LP states that outside settlement envelopes *'the Council will recognise the intrinsic character and beauty of the countryside'*. I have found that subject to the imposition of conditions, part of the Appeal B development (i.e., the alternative scheme) would not cause harm to the intrinsic character and appearance of the countryside. I do not therefore find that this development would conflict with policy SP7 of the LP.

61. The Council also comments that there are limited facilities and services in close proximity to the site and that even where they do exist, such as in the nearby villages of Northill and Ickwell (e.g., village halls, a pre-school, lower school, outdoor recreation facilities and a pub serving food), it would be likely that occupiers of the site would use the private motor vehicle for most day-to-day journeys given the absence of pavements and street lights from the site at Thorncote Road and to these areas, coupled with the frequency and extent of public transport provision in the locality.

62. In respect of supermarket provision and middle and upper schools, the evidence is that there is a Tesco supermarket in Sandy which is about 2.2 miles away from the site, and there are schools a few miles from the site.

63. The Council makes the claim that owing to the above, the site is not sustainably located. However, neither Policy H7 of the LP, nor the PPTS, require

Gypsy and Traveller sites to have good public transport connectivity to day-to-day facilities and services. Policy H7(5) of the LP states proposals for Gypsies and Travellers will be permitted where *'adequate schools, shops, healthcare, and other community facilities are within reasonable travelling distance'*. While most day-to-day journeys would likely be undertaken in private motor vehicles for shopping, education and recreational purposes, most services and facilities would be within one to five miles and hence would be capable of being reached by private motor vehicle in up to about ten minutes. I find that the evidence is that there are adequate facilities within reasonable travel distances and hence the requirements of policy H7(5) are met. Moreover, the appellant confirmed at the hearing that the children travelled to school using a school bus and with a collection point at Thorncote Green.

64. In reaching the above conclusion, I am also mindful of the flexible approach to addressing sustainable transport and accessibility matters as outlined in paragraph 109 of the Framework which states that '*opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making'* and *'significant development should be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering a choice of transport modes'*. The appeal developments relate to two Gypsy and Traveller pitches and so are not 'significant' developments. While not policy, it is also noteworthy that the reasoned justification to policy H7 of the LP states, at paragraph 11.7, that what constitutes a reasonable travel distance will vary in relation to location of the site and services and the local pattern of development.

65. For the reasons outlined above, I do not find that the site that is the subject of the appeals is unsustainably located from the point of view of use as two Gypsy and Traveller pitches. In this regard, I conclude that there is no conflict with policy H7 of the LP, the PPTS or the Framework. This is a matter that carries neutral weight in the planning balance.

Other Considerations

Traveller Status

66. The Council does not dispute that the occupiers of the site meet the definition of a Gypsy and Traveller as contained within annex 1 of the PPTS (as updated in December 2023). I have no reason to disagree with this common ground position.

Need for Traveller Sites

67. There is dispute between the main parties that the LPA can demonstrate a deliverable five-year supply of Gypsy and Traveller sites.

68. The need for pitches up to 2035 was based on a 2016 Gypsy and Traveller Accommodation Assessment for Central Bedfordshire (GTAA). It has been used to inform the strategy for the provision of Traveller pitches in the LP. The GTAA identifies that within Central Bedfordshire, for the plan period 2015 to 2035, there is a need for 29 pitches to meet Gypsy and Traveller need (23 for 'Travelling' Gypsies and Travellers and 6 for unknown Gypsies and Travellers).

69. Paragraph 10.3.3 of the LP states that the *'Council's monitoring data shows it has already exceeded this figure and that a five-year supply can be maintained over the plan period'.* Policy SP8 of the LP states *'the Council has already approved a sufficient number of pitches to meet the Gypsy and Traveller accommodation need in Central Bedfordshire over the period 2015-2035'.* Given the above, the LP does not allocate sites for Gypsy and Traveller pitches and instead includes policy H7 which is a criteria-based policy for windfall Gypsy and Traveller pitches.

70. The Council therefore claims that it has permitted more Gypsy and Traveller pitches than the need identified in the GTAA and that since then it has approved additional pitches pursuant to policy H7 of the LP. In reaching this conclusion, the Council has submitted a statement prepared by Opinion Research Services (ORS). The evidence from ORS is that 72 Traveller pitches have been approved by the Council between 2015-2024. At the hearing, the Council updated the above to include evidence of an additional 12 Traveller pitches being approved on 16 October 2024 for a site in Arlesey[2], and one Traveller pitch being approved for a site in Leighton Buzzard[3].

71. ORS has considered the GTAA and its findings in terms of applying need from the definition of a Traveller in Annex 1 of the 2023 PPTS, as distinct from the definition that existed in the 2015 PPTS. Since the GTAA was published, the definition of a Gypsy and Traveller has been amended in the PPTS to include those who have ceased to travel permanently on the grounds of their own or family's or dependents' educational or health needs or old age. Based on the re-assessment, ORS state that this necessitates an adjustment in need of five additional Gypsy and Traveller pitches. It is stated that since the GTAA was published, and considering the revised need target for 34 pitches, the LPA has permitted enough pitches between 2015-2024 to meet required need. In this regard, the Council claim that a five-year supply of deliverable Gypsy and Traveller sites can still be demonstrated.

72. Notwithstanding the above, I find that there are several matters which cast doubt about whether the GTAA can now be relied upon in terms of considering the extent of need for Gypsy and Traveller pitches in the area. At the hearing, ORS acknowledged that in respect of the GTAA, the household interview return rate at 35% was '*very low'*. When questioned, the representative of ORS said that based on his experience a good household interview return rate was *'about 70%*'. While the household interview rate and GTAA methodology was considered acceptable for the local plan examination, it is nonetheless noteworthy that the GTAA is now over eight years old. It is no longer up to date. At the hearing, the representative from ONS confirmed that a reviewed GTAA was underway and *'was about 60% complete'.* However, he could not provide any sort of update in terms of the extent of Gypsy and Traveller pitch need in the area.

73. The focus of the GTAA was on the 2015 PPTS definition of a Gypsy and Traveller, although it did also seek to assess non-definition Gypsy and Traveller need and 'unknowns'. At the hearing, there was no dispute between the main parties that there were a very high number of 'unknowns' in the GTAA. In my judgement, this casts some doubt about the extent of Gypsy and Traveller

[2] Planning permission CB/23/04089/FULL
[3] Planning permission CB/23/02748/FULL

pitch need in the area now when considered again other matters. Indeed, it is possible that a high number of the 'unknowns' did in fact relate to those that met the definition of a Gypsy and Traveller in the December 2023 PPTS.

74. Moreover, the evidence is that a very significant number of Gypsy and Traveller pitches have been approved by the Council. The number of pitches that have been approved far exceeds that which was envisaged as being needed in terms of the GTAA. In my judgement, this also casts some doubt about whether the GTAA can still be relied upon from a five-year supply point of view.

75. The question of need was considered recently by an Inspector in August 2024 for a site at Home Farm, Dunstable Road, Tilsworth[4]. The Inspector concluded that *'taking into account the age of the GTAA and the large percentage of households who were either unknown or did not meet the 2015 definition, I consider that there is sufficient uncertainty to cast doubt on whether the Council has a five-year supply of specific deliverable sites*'.

76. The Inspector also referred to high caravan counts in the area in her decision. Specifically, she commented that *'it is clear that there has been an expansion of need in the area, with the caravan count having risen from 490 in 2016 to 610 in July 2023'*. While I note that caravan counts should be treated with some caution, as outlined by the representative from ORS at the hearing, it nevertheless provides at least some further indication of likely increased demand/need for Gypsy and Traveller pitches in the area.

77. At the hearing, it was agreed that the evidence submitted by ORS for the above Dunstable Road, Tilsworth appeal was essentially the same that had been submitted to me as part of the consideration of appeals A and B. I am mindful of the need for consistent decision making and, on the evidence that is before me, and, for the reasons outlined above, I do not find that there is a good reason for me to depart from the views expressed by the Inspector in August 2024.

78. The above finding is compounded owing to comments made recently by the LPA as part of the determination of the Arlesey planning application for a Gypsy and Traveller site. In the officer report, considered by Planning Committee, the LPA commented, at paragraph 1.16, *'the Inspectors in these appeal decisions raised concerns that the level of demand was greater than that shown in the GTAA. In the appeal decision for Plot 6 in Great Billington, the Inspector stated that they had "no doubt that there is demand for greater pitches in the area"'.*

79. Based on the above, it is reasonable that I conclude that the LPA is not currently disputing the recent position reached by other Inspectors about the current uncertainty surrounding the actual need for Gypsy and Traveller pitches in the area. If that were not the case, then I would have expected such a position to have been outlined in the above officer report. At the hearing, I asked Mr Hughes if he could provide a comment on this matter. He commented that he was not able to do so as he was *'acting as a consultant on behalf of the Council and no relevant officers were in attendance'.*

80. On the evidence that is before me, and for the collective reasons outlined above, there is uncertainty about whether the GTAA can now be relied on in

[4] Appeal A Ref: APP/P0240/C/23/3331075

terms of the extent of Gypsy and Traveller pitch need. Therefore, I cannot conclude that the Council can demonstrate a five-year supply of Gypsy and Traveller sites. The certainty will be provided when the GTAA review has been completed and a new Local Plan is in place. My conclusion in this matter weighs in favour of granting planning permission for a Gypsy and Traveller site on the land.

Availability of Alternative Traveller Sites

81. There is a dispute between the main parties about the availability of alternative Gypsy and Traveller pitches to accommodate the needs of the occupiers of the site. The Council claims that it is aware of at least 13 vacant pitches on sites in the area and these include:

- Plot 1, Jockey Farm, Caddington (2 vacant pitches on a site with no personal restrictions);
- Preachers Place, Houghton Conquest (2 recently permitted pitches;
- Plot 9, The Stable, Gypsy Lane, Billington (1 vacant pitch, the site is subject to personal conditions, however the Council are not enforcing such conditions and would consider applications to remove such conditions)
- Common Road, Potton - Council run site (1 vacant pitch)
- Riveroaks (1 vacant pitch)
- Old Cartwheel Nurseries (6 vacant pitches)

82. Notwithstanding the above, the Council confirmed at the hearing that its up-to-date position was, in fact, that there were available pitches in respect of the Preachers Place site above (x2), the Jockey Farm site above (x2), and at the recently approved Gypsy and Traveller site at Woodview Lodge, Hitchin Road, Arlesey (x12). In respect of the latter planning permission, it includes conditions which are required to be discharged prior to first occupation of the site. The Council was not able to confirm at the hearing that such conditions had been discharged. In this regard, I do not find that the pitches are currently/lawfully available. Moreover, and, in any event, I do not know whether any of the pitches would be suitable, available, or affordable for the extended family on the appeal site. The Council were not able to provide clarity in terms of such matters at the hearing.

83. In addition to the above, I do not know if the above pitches would be made available to occupiers of the appeal site on a purely rental basis, or whether they would be offered for sale. The appellant made it clear at the hearing that he did not want to rent pitches, but instead wanted a site that was under his ownership and control, and where he could offer a stable and secure base for him and the other occupiers of the site, including the children.

84. On the evidence that is before me, I do not find that there is certainty that the above pitches are suitable, available, or affordable for occupiers of the appeal site. It is nonetheless important that I emphasise that even if there are currently no available alternative pitches for the family on the site, policy H7 of the LP is a criteria-based policy for the consideration of planning applications

for Gypsy and Traveller pitches in Central Bedfordshire. In this context, the appeal site was not necessarily the only option available to the families from the point of view of seeking planning permission for Gypsy and Traveller pitch purposes.

85. There is no objective evidence before me to lead me to conclude that it would not be possible to obtain planning permission on an alternative site elsewhere, ensuring full compliance with the requirements of policy H7 of the LP within the 12-month compliance period in the notice which is the subject of Appeal B. The appellant states that life savings have been invested in purchasing the appeal site and hence it would be difficult to purchase another site. I have no objective evidence before me to substantiate this claim, and, in any event, it remains possible that the appeal site could be sold.

86. Notwithstanding the above, and, importantly, I have granted deemed planning permission for part use of the subject land as a Gypsy and Traveller site. This is subject to compliance with conditions, but nonetheless the compliance period in the Appeal B notice is generous and hence there would be convenient and alternative pitch provision for the families on part of the land arising from this deemed planning permission. In this regard, the availability of suitable and affordable alternative sites is not a determinative matter.

Family circumstances including the best interests of the children

87. Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998 (HRA) states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.

88. Furthermore, in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.

89. It is clear that a settled base for the families has aided the children from an education point of view. There are currently six children on the site and two babies are expected to be born very soon. Four of the children are of school age and attend local schools, one is at pre-school, and one is home schooled. The two pitches on the site offer a stable base in educational and social well-being terms for the children on the site.

90. The evidence is that all family members are enrolled with a General Practitioner. Moreover, it is understood that one child is currently attending hospital visits owing to an eye condition. I afford the provision of a settled base some positive weight from a health point of view. That said, it may be possible for the families to ensure such health stability from securing planning permission for a site elsewhere in accordance with all the criteria in policy H7 of the LP.

Economic contribution

91. The evidence is that the appellant and his brother carry out building work (e.g., paving, driveways, and landscaping) and that they travel away from the area for economic purposes. There is little evidence that building work is routinely carried out in the local area, although it is understood that this may happen from time to time. The two families would provide some economic assistance and support to local services and facilities in the area. Overall, and given the scale of the development that is the subject of the appeals, I afford the economic contribution to the local area some positive, albeit limited, weight in decision making terms.

Previously developed land

92. Following an appeal in 2014, it was confirmed as part of the aforementioned LDC application that a mixed agricultural and hobby use for the storage of one commercial vehicle had occurred on the land. I have not been provided with any evidence to indicate a change in the use of the land since this time and prior to the existing unauthorised development taking place on the site. As part of the Council's statement of case, it seeks to make a claim that the LDC use may have been abandoned. This is a strange claim given the description of the breach of planning control in respect of Appeal B, but, in any event, this claim lacks any credible or objective reasoning or justification.

93. The LDC was approved in 2014 and there is nothing before me to indicate that there had been any intervening use(s) of the land or that the building had remained unused for a considerable time, such that a reasonable person might conclude that the previous use had been abandoned. I accept that the ownership of the land has changed since 2014, but nonetheless there is no indication that the appellant intended to suspend the use, or to cease it prior to the unauthorised development taking place on the land. I do not therefore agree with the Council that the LDC use was 'abandoned' prior to the unauthorised development taking place on the land.

94. Moreover, there is no dispute that there was a building on the land prior to the unauthorised development occurring. Indeed, it is stated that there was a *'single storey workshop building with an electricity supply'*. I was able to see that building on my site visit. The definition of previously developed land (PDL) is contained within annex 2 of the Framework which states, *'land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure'.*

95. It is clear from reading the Planning Inspector's LDC appeal decision that the commercial storage and maintenance of one vehicle was confined to the land between the rear of the workshop building and the main road, and that the rest of land that is the subject of this appeal was in use for horse grazing purposes.

96. I do not doubt that the workshop building on the land had some form of curtilage. However, the site has significantly changed because of the unauthorised material change of use of the land (including formation of the hardstanding). It is not therefore possible for me to reach a very certain conclusion about this matter. However, I do find that the evidence is that much of the land on the appeal site was used for horse grazing.

97. Despite the above, the Council accepted at the hearing that part of the appeal site included hardstanding prior to the notices being issued. Mr Hughes commented that it was the Council's position that it could not be certain about the extent of hardstanding that existed to the northern part of the site, but that it did consider that there was some hardstanding based on the image on page 29 of its updated statement of case. The appellant commented at the hearing that there was hardstanding on this part of the site historically, albeit that some of it had become overgrown with grass. Mr Harrison raised doubt at the hearing about this claim referring to the Neighbourhood Plan which refers to the site as being 'permanent grassland' and that the above image perhaps just showed *'a muddy area'*.

98. In my judgement, and based on the evidence that is before me, including historic aerial photographs, I find that only a small proportion of the appeal site constitutes PDL. I do not find that it could on any reasonable or objective basis be said that the whole of the site was part and parcel of use of the former workshop building on the land. In my judgement, and, as a matter of fact and degree, I do find that part of the northern part of the site did historically include some hardstanding. It also included a building and that is still on the site now. I find that the northern part of the site is therefore PDL.

99. The evidence therefore supports a view that the land partly includes PDL. In this regard, the Appeal A development would make *'effective use of previously developed land'* in accordance with paragraph 26(a) of the PPTS. This is a matter to which I afford some positive weight in favour of granting planning permission. However, this is tempered in so far that the evidence indicates that a large proportion of the appeal site did not include a building or hardstanding prior to the unauthorised development occurring. Therefore, the evidence is that some of the development has occurred on land which is not PDL. In respect of this matter, I afford more weight to the existence of PDL in respect of the alternative scheme (Appeal B) as the two pitches would essentially be confined to an area of land within the curtilage of the workshop building on the land.

Other Matters

100. The main parties have respectively referred me to other appeal decisions. While I have considered the other appeal decisions, they are not directly analogous to the site-specific circumstances that prevail in respect of the appeals. I have determined the appeals on their individual planning merits and considering the identified other considerations.

Planning Balance and Conclusion

101. When the developments which are the subject of appeals A and C are considered as a whole, I have been unable to conclude that they would not or have not caused harm to the character and appearance of the area, including to landscape character. For the reasons outlined, I do not find that the harm could be suitably mitigated by means of the imposition of conditions. This harm is a matter to which I afford moderate adverse weight in the planning balance.

102. Moreover, the appellant has not properly assessed BNG based on an accurate baseline position, and, in any event, guidance has not been suitably applied. Consequently, I have been unable to conclude that when the

developments are considered as a whole (in particular the developments under Appeals A and C), they would deliver BNG in accordance with the requirement of policies EE2 and EE8 of the LP, and the Framework. In respect of the biodiversity issue, there would also be conflict with policy H7 of the LP as this policy states that there should be compliance with *'other relevant policies'* within the LP. This is a matter to which I afford very significant adverse weight in the planning balance. Furthermore, I find that IUD has taken place and limited adverse weight is attributed to this matter.

103. I find that the site is sustainably located as a Gypsy and Traveller site for two pitches. This is a matter which carries neutral weight in decision making terms.

104. Weighed against the above harms, are the other considerations outlined above. These weigh in favour of allowing the appeals. However, the positive weight that I collectively afford these matters is not sufficient to justify granting permanent planning permission for a Gypsy and Traveller site, or for a hardstanding area on the whole of the land.

105. I have considered whether a temporary planning permission would be justified. I acknowledge that the collective harm that I have identified would be diminished if temporary planning permission were to be approved in respect of either the ground (a) deemed planning applications, or in respect of the development proposed as part of the appeal made under section 78 of the Act. However, such collective harm from development within the red edged site areas would still be significant even if the development were to continue for a temporary period.

106. Notwithstanding the above, I afford significant weight to the deemed planning permission fallback position for the hardstanding to the north of the site. In this regard, if the notice under Appeal C were upheld and complied with, a proportion of the hardstanding would be permitted to be retained on the land. This would be permitted without any conditions being imposed, including those relating to BNG. In this context, I have considered the appellant's alternative layout for a Gypsy and Traveller site on this part of the site in respect of the ground (a) appeal made under Appeal B.

107. The evidence is that a large part of the land which forms part of the fallback deemed planning permission hardstanding is PDL. This weighs in favour of allowing a Gypsy and Traveller site on this part of the land. Subject to the imposition of conditions, I do not find that the siting of caravans and vehicles on this part of the land (i.e., material change of use of the land to a Gypsy and Traveller residential caravan site) would have a detrimental impact on the character and appearance of the area (including landscape character).

108. Moreover, I am satisfied that the indicative alternative layout suitably demonstrates that it would not lead to cramped living conditions for the two families. While I acknowledge that caravans and associated development would not be totally screened from public views, replacement and new planting would be capable of softening the impact of the position of caravans and associated development on the reduced site area. In addition, the evidence is that BNG would be capable of being achieved on the alternative site in relative terms and factoring in deemed planning permission for hardstanding on the northern part

of the site. New planting and any required replacement planting would be suitably controlled over a thirty-year period.

109. On balance, and when considered alongside the positive other considerations outlined above, I find that there is therefore justification for granting permanent planning permission for a smaller Gypsy and Traveller site on the land which is the subject of the notice under Appeal B. Subject to the imposition of conditions, and, in the context of the deemed planning permission fallback position for the hardstanding on the land, I find that this material change of use development would be capable of according with the criteria in policy H7 of the LP. In reaching this decision, the personal circumstances of the family (including the best interests of the children) have not therefore been a decisive issue and so a personal condition is not needed.

110. In respect of the alternative scheme and policy H7 of the LP, I find that the scale of the Gypsy and Traveller site and number of pitches would not dominate the nearest settled community; the character and appearance of the wider landscape would not be detrimentally affected subject to the imposition of conditions; there would be a good standard of amenity for occupiers of the smaller site; the site would be of sufficient size to accommodate the identified caravans, mobile homes, parking and storage requirements; amenities and services are within reasonable travelling distances; foul and surface water drainage could be addressed by planning condition, and a mixed residential and business use has not occurred. Moreover, I find that the alternative scheme would largely be confined to a part of the site that is PDL.

111. I therefore find that there is justification for granting permanent planning permission in respect of the 'alternative scheme'. My finding in respect of IUD does not hold sufficient weight to outweigh this finding, particularly when some of the positive other considerations are weighed in the balance.

112. For the reasons outlined, I nonetheless conclude that the appeal developments which are the subject of Appeals A and C do not accord with the development plan for the area taken as a whole and there are no material considerations which indicate the decision should be made other than in accordance with the development plan. Neither permanent nor temporary planning permission is justified in these cases.

113. I conclude that appeal A should be dismissed and that the ground (a) appeal under appeal C fails. However, the ground (a) appeal under appeal B succeeds subject to the imposition of conditions.

114. In reaching my conclusion to grant planning permission under ground (a) for Appeal B and for part of the land to be used as a Gypsy and Traveller site, I have considered the third-party representations made in respect of such an appeal. Comments made about the CCTV on the land and the invasion of privacy are not relevant to Appeal B. They are relevant to appeal C and such a notice is to be upheld. A condition shall be imposed relating to CCTV on the land. Matters relating to the treatment of sewage and surface water drainage shall be addressed by means of the imposition of planning conditions. I accept the point raised by Mr Harrison at the hearing about light being apparent from use of the caravans at night. However, I do not find that the extent of light from the caravans would cause material harm to the area at night and,

moreover, any external lights on the site would be controlled by way of a planning condition.

115. Other third-party matters raised have been considered elsewhere in this appeal decision. None of the other matters raised by third parties alter or outweigh my overall conclusion in respect of Appeal B.

Ground (a) appeal conditions – Appeal B

116. The conditions set out in the accompanying schedule were agreed by the main parties at the hearing. Where necessary, I have made minor word changes to the agreed conditions in the interests of precision and enforceability. I have included the reason for imposing each condition within the accompanying schedule of conditions.

117. In this case, there is clear justification for removing Class A (gates, fences, walls etc) of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) permitted development rights. Without this level of control, harm could be caused to existing or proposed planting, to biodiversity, or to the character and appearance of the area. Moreover, it is necessary that the sufficient space is maintained on the approved Gypsy and Traveller site (i.e., the alternative scheme) for living conditions purposes.

Appeal B and Appeal C - ground (f) appeals

118. The appeals made under ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.

119. In respect of Appeal B, the claim made by the appellant is that the notice is invalid in that requirement 5(3) states '*return the land to its previous authorised use'.* There is no power in section 173(3) and (4) of the act to require a use to be restored or reinstated. This is a matter that I have already considered in 'The Notice' part of this decision. The notice has been varied and so requirement 5(3) is no longer part of it. Consequently, the notice is neither invalid and nor are the varied requirements of the notice excessive or unnecessary. The purpose of the notice is to remedy the breach of planning control. The requirements of the notice remedy the breach of planning control and so are not excessive.

120. In respect of Appeal C, the appellant claims that the notice is not clear in so far that it does not include a plan which precisely identifies the area of hard standing that is unauthorised. This is an invalidity argument rather than a matter that is relevant to a ground (f) appeal. I do not find that the notice is invalid in this regard. The notice includes a plan which includes a red edge which defines the land to which the breach of planning control relates. The appellant has not appealed on grounds (b) or (d) of section 174(2) of the Act and the evidence is that he accepts that a new hardstanding has been formed on the land. The onus is on the appellant to make his case on legal grounds and no objective evidence is before me to indicate that a new hardstanding had not been formed.

121. The notice includes a plan with an area of land edged blue which identifies the area of hardstanding to be removed. Again, the appellant does not make a claim that any part of this hardstanding has not occurred, or that it was immune from enforcement action owing to the passage of time. I find that the notice is clear in terms of what part of the hardstanding is required to be removed.

122. In effect, the appellant's argument is that requirement 5(3) of the notice would result in a deemed planning permission for hardstanding on part of the site (i.e., the northern part of the site) given section 173(11) of the Act. This is not an invalidity or nullity argument and instead is a separate matter that relates to the Council's decision to underenforce. It is a matter that I consider in respect of the ground (a) appeals. I find that the notice is clear and unambiguous: it was not necessary to include a plan which specifically identified the area of unauthorised hardstanding on the land. The notice tells the recipient fairly what they have done wrong and what they must do to remedy it.

123. The appellant claims that requirement 5(5) is conflicted and imprecise. I have already considered this matter in 'The Notice' part of this decision and it has been deleted without injustice being caused to the main parties.

124. For the reasons outlined above, I conclude that the varied steps in the two notices are not excessive. Therefore, the ground (f) appeals fail.

Appeal B and Appeal C - ground (g) appeals

125. The appeals made under ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.

126. The appellant has confirmed that he accepts the period of twelve months to comply with the requirements of the notice for Appeal B. In this regard, there is no actual claim that the compliance period in the notice for Appeal B falls short of what should reasonably be allowed. The appellant's claim is that in respect of Appeal C, which requires the removal of operational development, a compliance period of eighteen months rather than thirteen months would be more reasonable as it would facilitate a full twelve-month residential use of the land for the families and then enable the necessary works to be undertaken after that use has ceased.

127. I agree with the appellant that one month after the residential use has ceased to comply with the requirements of the notice under Appeal C would be too short. However, the appellant does not justify why a period of six months after the residential use has ceased would be needed to comply with the requirements of such a notice. In my judgement, a period of three months is proportionate and justified. I have granted planning permission for part use of the land as a Gypsy and Traveller residential caravan site under Appeal B. The families would not be made homeless as result of compliance with the requirements of Appeal B and a period of thirteen months to remove the specified hardstanding area is reasonable and proportionate in this context.

128. For the above reasons, I find that the compliance period in the notice for Appeal C is reasonable. Consequently, the ground (g) appeals fail.

Conclusions

Appeal A Ref: APP/P0240/W/22/3291001

129. For the reasons given above, I conclude that the appeal should be dismissed.

Appeal B - APP/P0240/C/24/3346787

130. For the reasons given above, I conclude that the appeal should succeed in part only, and I will grant planning permission for a specified part of the land, but otherwise I will uphold the notice with a variation and refuse to grant planning permission in respect of the other specified part of the land. The requirements of the notice will cease to have effect so far as these are inconsistent with the planning permission which I will grant by virtue of section 180 of the 1990 Act (as amended).

Appeal C - APP/P0240/C/24/3346787

131. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

D Hartley

INSPECTOR

SCHEDULE OF CONDITIONS – APP/P0240/C/24/3346787 (APPEAL B)

1)The approved site shall not be occupied by any persons other than Gypsies and Travellers as defined in Annex 1: Planning Policy for Traveller Sites 2015 (as updated in December 2023) (or any subsequent definition that supersedes that document).

Reason: to limit the occupation of the site to persons that meet the definition of Gypsies and Travellers having regard to the circumstances that justified approving development on part of the site.

2)Notwithstanding the deemed planning permission description of development, no more than four caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Site Act 1968 as amended, shall be stationed on the site at any one time, and no more than two of the caravans shall be static caravans.

Reason: to limit the number and type of caravans on the smaller site and to ensure all caravans would meet the legal definition and in the interest of visual amenity.

3)The use hereby permitted shall cease and all caravans, structures, equipment, and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

(i) Notwithstanding the details submitted, within 4 months of the date of this decision a site development scheme with details for:

(a) the internal layout of the site including the extent of the residential pitches, the location of the caravans (reflective of actual scale), vehicle parking, vehicle turning areas, vehicle charging points/cabling, utility connections, siting of CCTV, and the siting of any proposed buildings, in the area cross hatched on plan reference CBC/HUTS/10;

(b) a site access scheme including: a scaled plan detailing an access measuring 4.8 metres wide and surfaced with a bound material for at least 5 metre back from the highway. The plan shall detail arrangements to be made for surface water from the site to be intercepted and disposed of separately so that it does not discharge into the highway; a scaled plan detailing the provision of visibility splays measuring 2.4m measured along the centre line of the proposed access from its junction with the channel of the public highway and 43m measured from the centre line of the proposed access along the line of the centre channel of the public highway. The scaled plan shall detail any works required for the provision of visibility splays including the clearance of any vegetation and relocation of street furniture such as telegraph poles; replacement gates and fencing along the site frontage with Thorncote Road together with a timetable for removal of the existing gates and fence and implementation; and the provision of a refuse collection point located at the site frontage and outside the public highway and visibility splays.

(c) a detailed surface water drainage scheme, to manage surface water for up to and including the 1 in 100 year event (+40%CC), the scheme shall be based on the final agreed Tech note (Ref: AcI604-21024, Adama, 28/0/21) and DEFRAs Non-statutory technical standards for sustainable drainage systems (March 2018);

include a simple investigation evidencing flood risk will not be increased for existing properties and the safety of the proposed development; include volume for volume mitigation for flood water as a minimum, for all above ground construction; not include the culverting of existing watercourses; include a full set of calculations, providing evidence of all surface water retained on site for the 1 in 100 (+40%CC). Any exceedance should be shown with pathways with maximum depths and velocity and; include full detailed drainage drawing showing all connections, control features, storage, inverts etc; and include full detailed design of Land Drainage Consent under the Land Drainage Act 1991 for the discharge of surface water to an existing watercourse/ditch.

(d) a detailed foul drainage assessment and scheme which shall; include a full detailed foul drainage drawing showing all connections, controls and storage, as well as details of any collection or discharge/ release arrangements; include a connection to the public foul sewer unless it is demonstrated to the satisfaction of the Local Planning Authority that it is not reasonable to connect to the public sewer; where a connection to the public foul sewer is not reasonable the scheme shall include a statement considering the following hierarchy of non-mains alternative solutions: package sewage treatment plants (which may be offered to the sewerage undertaker for adoption); septic tanks; and cesspool(s); include a completed FDA1 form, or equivalent information; if considered necessary by the Local Planning Authority details shall be submitted to demonstrate how the requirement of Building Regulations Approved Document H will be met; and details of the management and maintenance arrangements for the foul drainage system.

(e) a biodiversity enhancement and landscaping scheme to include all hard and soft landscaping and a scheme for landscape maintenance for a period of 30 years, the scheme shall include: the removal of existing hardstanding including astro turf; scaled plans detailing the location of replacement hardstanding and details of the materials with construction specification for all hardstanding (which shall be in full accordance with the surface water drainage scheme for the site); the removal of existing fencing, gates and brick plinths; details of all replacement boundary treatments and all other means of enclosure, which shall be more sympathetic in design for the location (any gates shall be sited 5 metres beyond the public highway and shall open away from the highway); the retention of existing trees and hedgerows; a comprehensive planting scheme with screen planting including details of species, plant sizes and proposed numbers and densities (plant species shall visually screen the site, respect the landscape context of the site and contribute towards ecological enhancements); and a comprehensive biodiversity enhancement scheme, which shall detail the location and design of species specific enhancement measures, purpose and conservation objectives for any measures and a scheme for the maintenance and monitoring of the measures for a period of 30 years identifying persons responsible for implementing, monitoring and maintaining the scheme.

(hereafter referred to as the "development scheme") shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

(ii) if within 11 months of the date of this decision the local planning authority refuse to approve the development scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by the Secretary of State.

(iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted development scheme shall have been approved by the Secretary of State.

(iv)the approved site development scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition that scheme shall thereafter be retained. The provided visibility splays at the site access shall be maintained free of obstruction in perpetuity.

In the event of a legal challenge to this decision, or a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Reason: to safeguard the character and appearance of the area and highway safety, to ensure suitable living conditions and arrangements for utilities, vehicle charging, surface water drainage, and foul drainage, to ensure the development would not result in unacceptable on or off site flood risk, to prevent pollution, and to secure a net gain for biodiversity, in accordance with Policies H7, T2, T3, T5, EE2, EE4, EE5, CC3, CC4, CC5, CC6, CC7, CC8, and HQ1 of the Central Bedfordshire Local Plan, Policies NP8 and NP12 of the Northill Neighbourhood Plan and the Framework.

4)At the same time as the site development scheme required by condition 3 above is submitted to the Local Planning Authority there shall be submitted a schedule of maintenance for a period of 30 years of the existing and proposed planting beginning on date of the completion of the final phase of implementation as required by that condition. The schedule of maintenance shall make provision for the replacement, in the same position, of any ecological enhancement feature, tree, hedge or shrub that is removed, uprooted, or destroyed or dies, or in the opinion of the Local Planning Authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

Reason: to ensure the establishment, retention, and replacement of planting and ecological enhancements, in the interest of biodiversity and the character and appearance of the area, in accordance with Policies EE2, EE3, EE4, EE5 and HQ1 of the Central Bedfordshire Local Plan, and the Framework.

5)At the same time as the site development scheme required by condition 3 above is submitted to the Local Planning Authority there shall be submitted a maintenance and management scheme for the entire surface water drainage system, inclusive of adoption arrangements and/or private ownership/ responsibilities. The maintenance and management scheme shall include maintenance of any watercourses within or adjacent to the site, even if there is no discharge to them. The entire surface water drainage system inclusion of the adjacent watercourses shall be maintained and managed in accordance with the approved maintenance and management scheme in perpetuity.

Reason: To ensure that the implementation and long-term operation of a sustainable drainage system.

6)At the same time as the site development scheme required by condition 3 above is submitted to the Local Planning Authority there shall be submitted a maintenance and management scheme for the entire foul drainage system, inclusive of adoption arrangements and/or private ownership/responsibilities. The entire foul drainage system shall be maintained and managed in accordance with the approved maintenance and management scheme in perpetuity.

Reason: To ensure there would be no detrimental impact on the environment in accordance with Policies CC6, CC7 and CC8 of the Central Bedfordshire Local Plan, and the Framework.

7)No commercial, industrial, or business activities shall take place on any part of the site, including the storage of materials and goods.

Reason: to safeguard the amenity of neighbouring occupiers and the character and appearance of the area, in accordance with Policies HQ1, CC8 and EE5 of the Central Bedfordshire Local Plan and the Framework.

8)No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

Reason: to safeguard the amenity of neighbouring occupiers and the character and appearance of the area, in accordance with Policies HQ1, CC8 and EE5 of the Central Bedfordshire Local Plan and the Framework.

9)Notwithstanding the provisions of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates, walls or other means of enclosure shall be erected within the site without the grant of further specific planning permission from the Local Planning Authority, or those approved under Condition 3 of this permission.

Reason: To control the development in the interests of the rural amenity of the area.

10)No external lighting shall be installed or erected at the site, unless details are first submitted to and approved in writing by the Local Planning Authority.

Reason: to safeguard the character and appearance of the area, the natural environment, and the amenity of neighbouring occupiers, in accordance with Policies EE2, EE3, EE4, EE5 and HQ1 of the Central Bedfordshire Local Plan, and the Framework.

11)No equipment, machinery or materials shall be brought on to the site for the purposes of development as agreed under Condition 3 until the protective fencing for the protection of any retained tree(s), has been erected in the positions shown on Drawing "Tree Protection Plan - Date: 25/06/2021". The approved fencing shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition.

Reason: To protect the trees so enclosed in accordance with Section 8 of BS 5837 of 2012 or as may be subsequently amended.

12)All existing onsite buildings shall be demolished and all resultant detritus completely removed from the site prior to the commencement of works as approved under Condition 3.

Reason: In the interests of the visual amenities of the area.

13)The development permitted under condition 3 and 12 shall be undertaken in full accordance with a 'Construction Code of Practice for Developers and Contractors' which shall first have been submitted to and agreed in writing by the local planning authority

Reason: In order to minimise the impact of construction work on the amenities of nearby residential properties and to accord with chapter 12 of the Framework.

The Planning Inspectorate

Plan referred to in the decision for APP/P0240/C/24/3346787 (Appeal B)

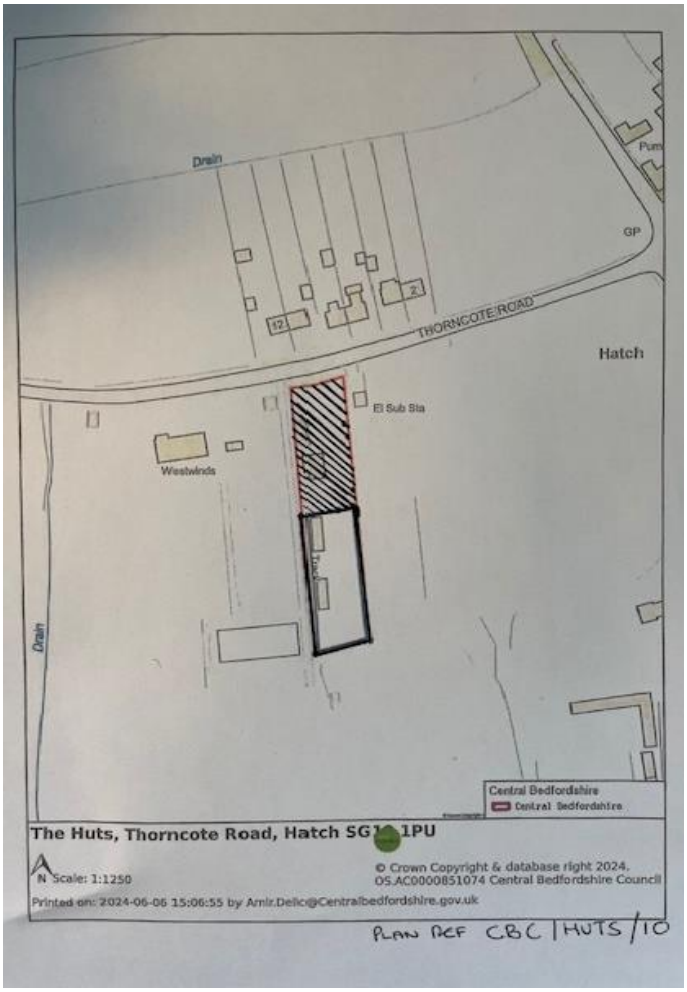
This is the plan referred to in my decision dated: **11TH NOVEMBER 2024**

by D Hartley BA (Hons) MTP MBA MRTPI

Land at: The Huts, Thorncote Road, Hatch, Sandy, SG19 1PU

Appeal reference: APP/P0240/C/24/3346787

Scale: Do not scale



APPEARANCES

FOR THE APPELLANTS:

Alan Masters, Counsel for the appellant

Brian Woods, WS Planning & Architecture

Craig Williams, Arb Tech

Joseph Robb

John Robb

FOR THE LOCAL PLANNING AUTHORITY:

Phillip Hughes, Planning Consultant

Steve Jarman, ORS

Neil Harvey, Place Services

OTHER INTERESTED PARTIES:

Stephen Harrison, resident

Zoe Tofield, resident

Frank Firth, resident

Paul Daniels, ward Councillor

DOCUMENTS SUBMITTED AT THE HEARING

1)Signed statement of common ground

2)Planning permission decision notice CB/23/04089/FULL and the associated officer report

3)Planning permission decision notice CB/23/02748/FULL and the associated officer report

4)Council's additional suggested condition relating to a biodiversity enhancement strategy