



## Appeal Decision

Inquiry held on 1, 2 and 4 July 2025

Site visit made on 1 July 2025

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 August 2025

### Appeal Ref: APP/C3105/C/25/3360309

#### Land adjacent to Hebborns Yard, Bicester Road, Kidlington OX5 2PX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr William James Hebborn against an enforcement notice ("the notice") issued by Cherwell District Council.
- The notice was issued on 20 December 2024.
- The breach of planning control as alleged in the notice is "Without planning permission, the material change of use of the land from use for agriculture to a mixed use comprising the siting of a caravan(s) for residential use and the storage of showground apparatus/rides, machinery, vehicles, trailers and equipment and associated operational development to form hardstanding."
- The requirements of the notice are:
  1. Cease the use of the Land for any storage.
  2. Cease the use of the Land for the siting of any mobile homes or caravans.
  3. Remove from the Land all items not associated with an agricultural use including but not limited to all machinery, vehicles, vehicle parts, caravans and trailers, construction materials, pallets, barrels, dismantled fencing, engines, tarpaulins and cables, all showground apparatuses including rides, machinery, spare parts and associated paraphernalia associated with this use.
  4. Remove from the Land any hardstanding created and restore the Land to its condition before the breach took place.
  5. Remove from the Land all waste and debris resultant from compliance with points (1), (2), (3) and (4) above and restore the Land to its previous condition before the breach took place.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d) and (g) of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act"). 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.

### Decision

1. It is directed that the enforcement notice is corrected by:

*Delete the words "a mixed use comprising the siting of a caravan(s) for residential use and" and substitute the words "the use of land for" in section 3.*

And varied by:

*Delete the words "not associated with an agricultural use including but not limited to all machinery, vehicles, vehicle parts, caravans and trailers, construction materials, pallets, barrels, dismantled fencing, engines, tarpaulins and cables, all showground apparatuses including rides, machinery, spare parts and associated paraphernalia associated with this use" and substitute the words "including, but not limited to, all showground apparatus/rides, machinery, vehicles, trailers and equipment" in section 5. 3.;*

*Delete the words "and restore the Land to its condition before the breach took place" in section 5. 4; and*

*Delete “3 months” and substitute “6 months” in section 6.*

Subject to the correction and variations, the appeal is allowed insofar as it relates to the land edged red on the Site Location Plan – Ref 25/288-101 Rev. A, where permission is granted for the use of the land for the storage of showground apparatus/rides, machinery, vehicles, trailers and equipment, and associated operational development to form hardstanding and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the alleged development in so far as it relates to the land edged red on the Site Location Plan – Ref 25/288-101 Rev. A, and subject to the conditions set out in the Schedule of Conditions attached to this decision.

The appeal is dismissed, and the enforcement notice is upheld as corrected and varied insofar as it relates to the land edged blue on the Site Location Plan – Ref 25/288-101 Rev. A, for the use of the land for the storage of showground apparatus/rides, machinery, vehicles, trailers and equipment, and associated operational development to form hardstanding and planning permission is refused in respect of the alleged development of the land edged blue on the Site Location Plan – Ref 25/288-101 Rev. A on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Matters Concerning the Notice**

2. It is incumbent upon me to put the notice in order if necessary. I will deal with matters concerning the allegation under the ground (b) appeal. There are however issues relating to the requirements that need to be addressed.
3. There is no dispute that the land affected by the notice is not being used for agriculture. There is therefore no need for step 3. in section 5. to provide for the retention of items associated with agriculture. The words “*associated with this use*” are also superfluous. The items listed to be removed should also replicate those specified in the allegation to ensure it does not go beyond what is necessary to remedy the breach of planning control. Step 3. shall be varied accordingly.
4. The requirement to restore the land to its condition before the breach of planning control took place is duplicated in steps 4. and 5. The duplication shall be deleted from step 4.
5. The variations of the steps identified above will give precision and avoid ambiguity. I am satisfied they will not therefore cause injustice to either the appellant or the Council.

### **Preliminary Matters and Background**

6. The Inquiry sat for 3 days. All witness evidence relating to grounds (b) and (d), and the round table discussions on grounds (a) and (g) were dealt with in person during days 1 and 2. The conditions discussion and closing submissions were dealt with virtually on day 3.
7. Oral evidence provided by William James Hebborn and Amy Sedman, in respect of the grounds (b) and (d) appeals, was given to the Inquiry under affirmation. The statement made by George Gess was not given under oath or affirmation, he did however submit to questions from me and the Council’s advocate.

8. I have been directed to various legal authorities, to which I shall have regard in the determination of this appeal.
9. There is no dispute that the appellant and his family meet the definition of Travelling Showpeople as defined in Annex 1 of the Planning Policy for Traveller Sites ("the PPTS"). There is also no dispute that the adjacent Hebborns Yard is an authorised Travelling Showpeople's yard, which incorporates space for the storage of equipment<sup>1</sup>.
10. The appellant confirmed that he, his wife and their two children live in a caravan on Hebborns Yard ("the Yard"). While his father now lives with one of his sisters in Cowley, he retains a caravan on the Yard for when he comes to stay/help. The appellants states the other three touring caravans on the Yard are occupied by his staff; Stephen Shepherd, who has lived at the Yard for 17 years, and Ashley Holloway, who has lived at the Yard for 14 years, and the appellant has recently taken on a "young lad"<sup>2</sup>.
11. The appellant has two further members of staff; "Philip"<sup>3</sup>, who has worked for the appellant for approximately 10 years, and "Dylan"<sup>4</sup>, who has worked for the appellant for approximately 5 years. Philip and Dylan live in bricks and mortar accommodation in Oxford and Essex respectively, when not employed operating the appellant's rides and machinery at fairs and shows, where they stay in touring caravans provided by the appellant.
12. The appellant explained how the life of travelling showpeople has changed; the show season used to be between Easter and November, outside of which showpeople would over-winter on their yards, carrying out maintenance and repairs to their rides and equipment. Now, however, fairs and shows occur throughout the year and can overlap one another. The appellant told of how he may have rides and equipment operating at different fairs and shows at the same time, leaving staff to operate them. He also supplies rides and equipment to private functions.
13. At the site visit I was shown rides and equipment that is currently used by the business as well as vehicles, rides and other fairground items that have been handed down through the generations to the appellant. I was also shown items that are kept as 'spares' to be used in the maintenance/repair/ refurbishment of stored items. While the Council do not consider these items to be reasonably required for the appellant's travelling showperson's activities, I find they are integral to the appellant's showperson's activities, represent the appellant's heritage and are typical of what is routinely stored on a travelling showperson's permanent quarters.
14. The Yard is subject to a condition restricting occupancy to the appellant, his father and two sisters and any of their dependents. While there may be some question of whether the Yard is being occupied in breach of a condition, that matter is not before me. I shall proceed on the basis that the Yard continues to be lawfully occupied.

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<sup>1</sup> Planning permission having been granted on appeal reference APP/C3105/A/01/1069035 for "Change of use of land to use for showmen's permanent quarters."

<sup>2</sup> Mr Hebborn's oral evidence

<sup>3</sup> Mr Hebborn's oral evidence

<sup>4</sup> Mr Hebborn's oral evidence

15. In response to the initial enforcement investigation, an application was made for planning permission to *“use the land for the storage of (non-residential) portable fairground rides and equipment in connection with, and strictly ancillary to, the authorised use of Hebborns Yard, Kidlington as Showmen’s Permanent Quarters (existing unauthorised)”* in February 2019<sup>5</sup> (the 2019 PA). While the officer report (OR) confirms the use was already taking place across the land the subject of this appeal, the 2019 PA relates to a smaller area of the land, located at its western end.
16. The OR confirms that, while the development and proposal did not involve the provision of additional plots for residential purposes, the Council considered policy BSC6: Travelling Communities of the Cherwell Local Plan 2011-2031 Part 1 (20 July 2015) (the LP) to be one of the relevant policies against which to assess the acceptability of the provision of additional storage space associated with the use of the adjacent Yard. The Council concluded that the storage use confined to the 2019 PA red lined area complied with policy BSC6<sup>6</sup>.
17. The 2019 PA was considered and found to be acceptable by the Council in all respects except flood risk. At the time of the 2019 PA the land was found to be in Flood Zone 3b functional floodplain. The application was not accompanied by an acceptable site-specific flood risk assessment. Further, it was not demonstrated the development was justified in the functional floodplain or that it could be made safe for the lifetime of the development. The development was therefore found to be contrary to policy ESD6 of the LP.
18. A subsequent appeal<sup>7</sup> of the 2019 PA was dismissed as that Inspector was not satisfied that the appellant had demonstrated sufficient justification for exceptionally allowing development in the floodplain. Furthermore, even if it had been demonstrated, they also considered insufficient information had been provided to assure them that a flood evacuation plan could mitigate any residual risk for the lifetime of the development.

### **The Ground (b) Appeal**

19. An appeal on this ground is that the matter alleged has not occurred as a matter of fact. It is for the appellant to show that, on the balance of probabilities, the material change of use of the land from agriculture to *“a mixed use comprising the siting of a caravan(s) for residential use and the storage of showground apparatus/rides, machinery, vehicles, trailers, and equipment, and associated operational development to form hardstanding”* has not occurred.
20. There is no dispute that prior to the appellant’s purchase of the land it formed part of a larger field used for agricultural purposes. It is agreed that the appellant purchased the part of the field identified on the plan attached to the notice (“the EN Plan”) on 10 November 2014. At the time the notice was issued the land identified on the EN plan formed a single unit of occupation that was not divided into physically or functionally separate areas of use. Having regard to *Burdle*<sup>8</sup>, I see no reason to disagree with the main appeal parties, and find the land identified in the EN plan is a single planning unit.

<sup>5</sup> Council ref: 19/00290/F refused planning permission 3 April 2020

<sup>6</sup> CDC6 19/00290/F Delegated Officer Report

<sup>7</sup> APP/C3105/W/20/3260535

<sup>8</sup> *Burdle v SSE [1972] 1 WLR 1207*

21. The Council's written evidence suggests that the residential use of caravans on the land is derived from people living in the caravans. Despite numerous visits being carried out by several different Council officers, at no time did any of them enter a caravan to see whether it was being lived in, as confirmed by the officers' site notes and by Mrs Sedman in her oral evidence. The Council however argues domestic rubbish being seen in a wheeled bin on the land, caravans being connected to gas bottles, the presence of a freestanding television aerial and a washing machine being located outside a caravan, along with bicycles being lent against caravans is evidence of residential occupation.
22. It is the appellant's contention that caravans stationed on the land have been stored in connection with the use of the Yard as their showmen's permanent quarters. In his oral evidence the appellant confirmed that Philip and Dylan have slept in caravans on 3 or 4 occasions when they have returned from fairs and shows late at night and there are no trains running to get them home. I agree with the appellant, that such infrequent occurrences would be *de minimus*. He also acknowledged that the caravans have been used to provide welfare facilities when he and his staff are working on rides and equipment stored on the Land.
23. The appellant told the Inquiry that the American style caravan, with slide out sides, had been purchased by one of his staff as a "fixer upper". From the information available, it seems to me it was purchased for the purpose of doing it up as a project to occupy their time while living on the adjacent Yard.
24. The appellant also explained that domestic refuse generated from the occupation of Hebborns Yard has not always been collected by the local authority. Previously they had two wheeled bins; when the one on the Yard was filled with rubbish it would be taken round to the land using one of the lifting machines and the empty wheeled bin would be brought back to the Yard. The rubbish contained in the full bin would then be burnt on the land at some point. The presence of domestic rubbish on the land is not determinative of caravans being used for residential purposes.
25. The presence of a free-standing aerial, washing machines, a variety of gas bottles (regardless of whether they are connected to caravans) and bicycles are also not determinative of caravans being put to residential use. The appellant provided explanations for the presence of these items on the land, which I find plausible.
26. Having heard the appellant's oral evidence, the Council's stance relating to the "*residential use*" of the caravans stationed on the land changed from one of caravans being lived in, to them being used as welfare facilities. The Council claims use as welfare facilities is a residential use. I do not however concur. For example, it is generally accepted that caravans used as welfare facilities in connection with agricultural or equestrian uses would not result in a material change in the use of the agricultural or equestrian land upon which they are sited.
27. While the Council argue caravans sited on the land and used for welfare facilities would amount to the same use as day rooms on traveller caravan sites, I do not agree. Day rooms do not contain all the residential facilities for day to day living. Instead, they are an integral part of the caravan site's use for residential purposes. I have already found that the land is not being used to station caravans for residential purposes, as such their use as welfare facilities cannot be integral to a



residential use of the land. Their use as welfare facilities can only be integral to the storage use occurring on the land.

28. Although not conceded, the Council's change of stance demonstrates to me, that they accept caravans on the land have not be lived in for residential purposes. From the evidence before me and the reasons set out above, I find it less than likely that the caravans have been stationed on the land for any primary residential purpose. The appellant has therefore demonstrated, on the balance of probabilities, that the mixed use alleged has not occurred as a matter of fact.
29. The deletion of the stationing of caravans for residential use from the allegation would not cause injustice to the appellant as he accepts that the storage use alleged has occurred. I shall correct the allegation accordingly by deleting that a mixed use has occurred. The corrected allegation shall refer to the material change of use of the land for the storage of the items specified in section 3. of the notice.
30. The appeal on ground (b) succeeds to this extent.

### **The Ground (d) Appeal**

31. An appeal on this ground is that, at the time the notice was issued, the time for taking enforcement action against the corrected matter alleged had passed. The relevant period is 10 years, and the material date is 20 December 2014. It is for the appellant to show, on the balance of probabilities, that the use of the land for the storage of showground apparatus/rides, machinery, vehicles, trailers and equipment, and associated operational development to form hardstanding began on or before the material date and has continued without significant interruption for 10 years or more.
32. While the appellant purchased the land on 10 November 2014, he claims that he had had been using the land from approximately August/September 2014, when he had negotiated the purchase of the land from the previous owner. Both dates are before the material date.
33. Aerial imagery, taken on various dates, has been provided by both main appeal parties. These images only provide snapshots in time, and it is generally accepted that the dates given for these images may not be accurate. The image dated 9 March 2014 shows the land forming part of the larger field, this image is before the appellant says he started using the land. The next aerial image is dated September 2015, after the appellant claims to have started using the land. It shows hardsurfacing has been laid in the field entrance, extending a short way into the land, and vehicle tracks running through the land to where vehicles and rides are stored in the northwestern corner of the land.
34. Later imagery, from April 2017, shows the stored items have spread eastwards across the land. Images captured in 2019 show most of the land covered with vehicles, rides and other items. Collectively, the images show how the number of items stored, and the land area covered has changed over time.
35. Whether the land was purchased so that a reliable electricity supply could be secured for the Yard, so that storage could occur or to improve highway safety, does not change the fact that the land was purchased on 10 November 2014. The appellant recalls using the land from when his purchase of the property was

agreed, in advance of completing the purchase. He described how he would walk through the land, around items being stored, with his wife while she was pregnant with their first child.

36. The written submission of Merlin Smith confirms that the appellant has been on the land since 2014 when he bought it. Mr Gess told the Inquiry how he remembers pulling on to land with his own fairground ride after attending a bonfire night event in early November 2014. His vehicle had broken down and the appellant allowed him to park on the land for several weeks while he managed to secure the parts to fix it. At the time that his vehicle was on the land, he recalls rides and equipment being stored on the land.
37. The appellant's, Mr Smith's and Mr Gess's evidence shows the use of the land for storage to have commenced by November 2014, which is before the material date. The aerial imagery provides no assistance in this regard as it either pre-dates the material date or is a significant time after. The Council has no evidence of its own of when the use commenced. I therefore find, on the balance of probabilities, that the appellant has shown with sufficient precision and unambiguity that the use for the storage of showground apparatus/rides, machines, vehicles, trailers and equipment began before the material date, 20 December 2014.
38. There is no suggestion that the use for storage purposes has not been continuous throughout the relevant period. It is however argued by the Council that the use has intensified, thereby changing its character in some fundamental way. The courts have held that it must be determined whether the increase in scale of the use has reached a point where, as a matter of fact and degree, it has resulted in a material change to the definable character of the use that it amounts to a material change of use.
39. The aerial images show the use of the land through 2015 and 2016 to be of a low intensity, contained to a small area north of the entrance. This use coincides with the appellant's explained need to provide a simpler means of pulling vehicles and rides clear of the highway. The aerial imagery throughout this period shows most of the vehicles and equipment to be transitory, in that they are not always present in images or have changed position within the small area of land located in the north western corner of the land.
40. The appellant recalls the rides and equipment stored when he first started using the land based on the fairs and shows he attended. These were: the dodgem ride (comprising a 12 m articulated trailer, 10 m box trailer and 3 m control unit); twister ride (16 m articulated trailer with lorry unit); gallopers ride (8 wheel lorry, 12 m in length with control unit attached); lady bird ride (7 m long tandem axle trailer); roundabout ride (7m long tandem axle trailer); and staff caravans. These items can be identified within the early aerial imagery.
41. The appellant told that when returning with rides and equipment to the Yard, its narrow width means that vehicles must be reversed in, which causes highway safety issues and obstructs the free flow of traffic. Whereas when using the land for storing these items, he can pull vehicles straight into the land and turn around without causing highway safety issues or obstructions to the free flow of traffic on Bicester Road. The land was first used for storing items that would regularly leave the premises.

42. I would expect the rides and equipment stored on the land to fluctuate as these are rides and equipment that would be regularly taken to fairs and shows. It would even be reasonable to expect the number of rides and other equipment on the land to increase overtime, as additional items are purchased or brought into active use. However, if that were the case, aerial imagery from later dates would still show the transitory nature of the items being stored, albeit across a larger area of the land.
43. In the imagery dating from approximately April 2017, the number of items stored and the area of the land being used for storage has increased considerably. Furthermore, some items appear in the same place in images taken months or even years apart, showing the character of the storage has changed from just the storage of transitory rides and associated vehicles and equipment to items being stored on a much more permanent basis.
44. Discussions during the site visit identified items that had been stored, unmoving on the site for considerable lengths of time. The type of items stored has also changed from just rides and associated vehicles and equipment that are regularly taken out to fairs and shows, to items such as cars that are kept for sentimental reasons, lorries and other machinery that are being kept for spare parts, cabling that will be used for repairs and maintenance, items that will be used in the refurbishment of rides and equipment. This storage takes place on a permanent basis, with items not being moved on and off the land.
45. For the reasons given above, I find there has been, as a matter of fact and degree, a fundamental change in the character of the storage activity taking place on the land through the relevant period. The appellant has not therefore shown, on the balance of probabilities, that the storage of showground apparatus/rides, machinery, vehicles, trailers and equipment has occurred throughout the relevant period.
46. The appeal on ground (d) therefore fails.

### **The Ground (a) Appeal**

47. An appeal on this ground is that planning permission should be granted for the corrected matters stated in the notice. The appellant is not however seeking planning permission for the use of all the land identified in the notice. Instead, he is seeking planning permission on a smaller area, which approximately coincides with the application site for the 2019 PA. For clarity, the land to which the ground (a) appeal relates is shown edged red on drawing: Site Location Plan – Ref 25/288-101 Rev. A that was handed up at the Inquiry. Considering the acceptability of the use on a reduced area of the land is part of the matters before me for consideration. I shall refer to the land edged red on Site Location Plan – Ref 25/288-101 Rev. A as ‘the reduced area’.
48. Furthermore, the appellant is only seeking planning permission for “*use of the land for the storage of (non-residential) portable fairground rides and equipment in connection with, and strictly ancillary to, the authorised use of Hebborns Yard, Kidlington as Showmen’s Permanent Quarters*”<sup>9</sup>. This proposed use represents a reduction in the types of items that would be stored on the reduced area, which clearly forms part of the matters before me for consideration. It also clarifies the

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<sup>9</sup> Paragraph 33 of the Appellant’s Closing Submissions



use would be integral to the use of the adjacent lawful Yard. The appellant, Council or interested parties would not be prejudiced by my consideration of the appellant's suggested alternative scheme.

49. The **main issues** are:

- Whether the development is inappropriate in the Green Belt;
- If it is inappropriate in the Green Belt, its effect on openness;
- Whether the development undermines the Green Belt purpose of safeguarding the countryside from encroachment;
- The effect of the development on the character and appearance of the countryside;
- The effect of the development in terms of flood risk;
- Whether the development is intentional unauthorised development; and
- Whether harm by reason of inappropriateness, and any other harm, would be outweighed by other considerations so as to amount to the necessary very special circumstances required to justify inappropriate development in the Green Belt.

50. There is no dispute that the land is being used for storage purposes. There is also no suggestion that the storage activity is being carried out by anyone other than the appellant. From the evidence before and what I saw at the site visit, items being stored are ancillary or incidental to the use of the Yard as Permanent Showmen's Quarters. I do not therefore agree with the Council that the land is being used for general storage purposes. Given this context, I find the policies of key relevance to be ESD 14: Oxford Green Belt, ESD6: Sustainable Flood Risk Management and BSC6: Travelling Communities.

#### *Flood Risk*

51. The current appeal is accompanied by a flood risk assessment (FRA) prepared by ADC Infrastructure Limited (ADC). Richard Winn, an Associate Director of ADC, and the Environment Agency (EA) gave evidence to the Inquiry. Based on changes to the EA's flood maps and the findings of the FRA, the EA confirms the land is no longer considered to be in the functional floodplain<sup>10</sup>. The EA also confirms that the uncorrected alleged use and the appellant's proposed use are appropriate uses in the current flood zone<sup>11</sup>. This is a significant change in position since the dismissal of the 2019 PA.
52. The EA's remaining concern rests with the development's potential to increase the risk of flooding elsewhere. To that end the EA recommends the imposition of a condition that will allow the management of the development to ensure it does not increase the risk of flooding in line with section 14 of the Framework. The exact wording of a condition was discussed and agreed, which will control what items can be stored on the (design) flood extent part of the reduced area. The Council does not dispute the EA's revised position.

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<sup>10</sup> Paragraph 22 of the Environment Agency's Appeal Statement

<sup>11</sup> Paragraph 41 and 42 of the Environment Agency's Appeal Statement

53. Having regard to the flood risk evidence and the EA's current advice and recommendations, I find the development is not at risk from flooding. As the land is no longer recognised as being at risk from flooding, this no longer provides a strong reason for refusing the development<sup>12</sup>.

*Whether the land is Grey Belt*

54. For the purposes of decision-making, Annex 1 of the Framework defines 'grey belt' as *"land in Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any purposes (a), (b) or (d) in paragraph 143."* Furthermore, 'grey belt' excludes land *"where the application of policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusal"*. As the issue of flood risk has been addressed by the FRA and the EA's withdrawal of their objection, areas or assets in footnote 7 do not provide a strong reason for refusal.
55. The land does not comprise previously developed land, it is however 'other land'. There is no dispute that the land does not strongly contribute to Green Belt purposes (b) or (d). The Council however claims that, while Kidlington is described as a village in the development plan, it has a size, population, and level of service provision comparable to settlements that would commonly be described as large built-up areas. The Council also directed me to the 'Settlement Hierarchy Topic Paper' prepared as part of the Cherwell Local Plan Review (December 2024), which confirms Kidlington is a Local Service Centre, and the 'City & Town Classifications of Constituencies & Local Authorities' (June 2018), which provides new classifications based on settlement size, to assist in analysing data, and understanding differences, trends and inequalities across Great Britain.
56. The appellant however argues that s39(6) of the 1990 Act requires applications for planning permission to be determined in accordance with the development plan. The LP describes Kidlington as both an *"urban area and a village"*, with its urban area including parts of Gosford and Water Eaton parishes. The LP also acknowledges Kidlington is *"the smallest of three urban centres in the District"*.
57. Kidlington is of a significant size, both in terms of geographical area and population. It also has extensive services, education facilities and employment opportunities, which would not all generally be found in a village. In my view, Kidlington being identified as an 'urban centre' and 'local service centre' shows it is something greater than a village. As such, I find Kidlington is a large built up area.
58. National Planning Practice Guidance (NPPG) gives illustrative features that can be used to assess the contribution sites make to checking the unrestricted sprawl of large built up areas. The land is free from authorised development, however there is a substantial hedgerow to its northern boundary and the southern and eastern boundaries are defined by post and wire fencing. Being on the eastern side of Bicester Road, the land is adjacent to a large built up area. If all the land were developed it would result in a 'finger' of development extending into the Green Belt. However, restricting development to the reduced area would prevent it extending into the Green Belt beyond the line of development already created by the lawful Yard, Bramley Close and other residential and commercial developments along the eastern side of Bicester Road.

<sup>12</sup> Footnote 7 of the Framework

59. Having regard to the above, I find the reduced area would be partially enclosed by existing development, such that it would not result in an incongruous pattern of development. The reduced area therefore makes a moderate contribution to Green Belt purpose (a).
60. As the reduced area does not strongly contribute [my emphasis] to Green Belt purpose (a), I find the reduced area is grey belt land.

*Whether inappropriate development in Green Belt*

61. The fundamental aim of Green Belt is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. The five purposes of Green Belt include checking the unrestricted sprawl of large built-up areas and safeguarding the countryside from encroachment.
62. The Framework at paragraph 153 confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It goes on to confirm that 'very special circumstances' will not exist unless potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the development, is clearly outweighed by other considerations.
63. Policy E of the Planning Policy for Traveller Sites ("the PPTS") confirms that traveller sites (temporary or permanent) in the Green Belt are inappropriate development unless the exceptions set out in Chapter 13 of the Framework apply. Paragraphs 154 and 155 of the Framework specifically identify the types of development that are not to be considered inappropriate in the Green Belt.
64. The development does not fall within any of the categories of development identified in paragraph 154 of the Framework. Turning to paragraph 155, this states that "*other development in the Green Belt should also not be regarded as inappropriate where all the following apply:*
- a. The development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;*
  - b. There is a demonstrable unmet need for the type of development proposed;*
  - c. The development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of this Framework; and*
  - d. Where applicable the development proposed meets the 'Golden Rules' requirements set out in paragraphs 156-157 below."*
65. The development of the reduce area would utilise grey belt land. The land is located outside the recognised development boundary for Kidlington, in the countryside. The eastern side of Bicester Road is not however devoid of development. To the north of the land, the authorised Hebborns Yard projects eastwards into the countryside along part of the boundary with land identified in the EN plan. To the south, albeit beyond a narrow strip of undeveloped field and a public right of way, is the Bramley Close housing development, beyond which there are other in-depth housing developments.

66. In my view, the lawful developments along the eastern side of Bicester Road establish a defensible edge. While developing all of the land represents an unacceptable encroachment into the countryside, restricting the use of the land to the reduced area would cause no such encroachment. I am therefore satisfied that developing the reduced area would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan. Criterion (a) of paragraph 155 of the Framework is therefore met.
67. The PPTS, at paragraph 20, requires that regard should be had to the need that travelling showpeople have for mixed-use yards to allow residential accommodation and space for storage of equipment. The Council contends the appellant has no need to expand his authorised yard, only a desire to use the adjoining land. I do not share this contention.
68. Since Hebborns Yard was granted planning permission over 20 years ago there have been distinct changes in the occupiers needs, such as the appellant's father and two sisters moving away, and the appellant getting married and having children of his own. There have also been changes in the way his business operates and the number of fairground rides, equipment and associated vehicles he travels with as well as the historic rides, vehicles and associated equipment he has inherited and accumulated.
69. The appellant claims the existing yard has been outgrown and is constrained by its narrow width. The Council however claim that Hebborns Yard could accommodate all the appellant's space needs if he were to tidy it and operate it in accordance with the extant planning permission. Their view is based on their assessment that many of the vehicles, machines, equipment etc are unrelated to a travelling showperson's use and/or are 'stuff' that should be disposed of. I have already addressed this point above.
70. During my site visit the appellant pointed out items that could be disposed of on the EN land. However, there remained a considerable number of vehicles, rides, other equipment and items that need to be retained. I also saw how congested the Yard is. I appreciate that the Yard is not necessarily laid out as per the approved layout plan (the Ian Baseley Associates plan labelled 'Revised: March 2002'). From what I saw, the residential accommodation is roughly in accordance with the approved plan and the area identified for storage is being used for that purpose. The test area is occupied by a workshop and further storage is taking place throughout the yard. If the Yard were to be laid out as per the approved plan, even more items would be displaced, increasing the need for items to be stored elsewhere.
71. From the evidence provided by the appellant and what I saw, it would seem more likely than not that the appellant's travelling showperson's activities have outgrown Hebborns Yard. If I find that it is not acceptable in planning terms to extend his activities on to the reduced area, then he will need to find an alternative, larger yard. In the alternative, I suppose he could reduce the number of rides and amount of equipment he has, which could result in the business becoming unviable. Although I did not hear evidence regarding viability.
72. When considering the 2019 PA the Council considered the acceptability of extending the Yard onto the reduced area against policy BSC6. I am not aware of any significant changes to policy that would lead me to conclude the application of

this policy is no longer appropriate. I have also set out above why I do not consider the activity taking place on the land to be a general storage use as being suggested by the Council.

73. The LP, at policy BSC6, confirms a need to provide 24 (net) additional plots for Travelling Showpeople from 2012 – 2031. To meet this requirement, and to maintain a 5 year supply of deliverable sites, it goes on to say that land will be allocated in the *“Local Plan Part 2 and planning applications will be granted for suitable sites”*. Green Belt locations will only be considered in exceptional circumstances, having regard to whether the suitability of the site in respect of the listed criteria.
74. The Local Plan Part 2 has not been progressed and no plots have been allocated. The Council does not therefore have a five-year supply of deliverable sites. Paragraph 28 of the PPTS confirms that the provisions of paragraph 11(d) of the Framework applies in such circumstances. Furthermore, the lack of supply confirms there is a demonstrable unmet need for Travelling Showperson’s plots. There are therefore no available alternative sites that the appellant could relocate to accommodate his need for a larger yard. For these reasons, I find that criterion (b) of paragraph 155 of the Framework is met.
75. There is no dispute that the site is in a sustainable location, with reference to paragraphs 110 and 115 of the Framework. Criterion (c) of paragraph 155 of the Framework is therefore met.
76. The development does not relate to the provision of housing, as the stationing of caravans has been for storage purposes only. Even if the caravans had been stationed for residential purposes, the ‘Golden Rules’ identified in criterion (d) do not need to be met as confirmed by paragraph 18 of the PPTS.
77. Taking all these factors together, I find the use of the reduced area meets the relevant criteria set out in paragraph 155 of the Framework and the development is not inappropriate in the Green Belt. As such, there is no need for the development’s effect on openness to be considered, nor is there any need for very special circumstances to be identified to justify allowing the development. Furthermore, the development complies with policy ESD14 of the LP, which seeks to ensure development accords with national policy and guidance, amongst other things.

*Effect on character and appearance of the countryside*

78. As already identified, the eastern side of Bicester Road is not devoid of development. The countryside surrounding the land is characterised by large fields divided by hedgerows. Further from the site there are pockets of woodland and sporadic developments surrounded by open fields. The A34 travels in a roughly north/south direction beyond the development.
79. The development is screened from Bicester Road by established hedgerows. The development can be seen over the entrance gate, which is paired with the neighbouring field gate. These views are however fleeting while passing the site. The land can also be seen from the public right of way that runs from Bicester Road down the side of Bramley Close and across the fields towards Water Eaton or out on to Water Eaton Lane. The haphazard nature of the storage currently



taking place is incongruous in this countryside setting as the post and wire fencing along the site boundaries does not provide effective screening.

80. Allowing the development would provide an opportunity to enhance the character and appearance of the local landscape as additional hedgerow and tree planting could be secured by condition. Furthermore, the removal of items from the wider appeal site and restricting their storage to within the reduced area would be consistent with other neighbouring developments along Bicester Road.
81. The creation of hardstanding within the site entrance and extending back a short distance into the reduced area is not dissimilar to other entrances in the locality. The materials are not visually intrusive in the street scene and, when the gates are closed, the hardstanding within the reduced area is hardly visible at all. The operational development therefore has no significant adverse effect on the character and appearance of the countryside.
82. Subject to restricting the development to the reduced area and the provision of appropriate landscaping, the development accords with policy ESD13: Local Landscape Protection and Enhancement, which seeks to secure opportunities to enhance character and appearance of the landscape in urban fringe locations, amongst other things.

#### *Intentional Unauthorised Development*

83. A Written Ministerial Statement (WMS) dated August 2015 establishes that Intentional Unauthorised Development (IUD) is a material consideration to be weighed in the determination of planning applications and appeals. The WMS relates to all forms of development. It places particular emphasis on IUD in the Green Belt. Part of the underlying reason for seeking to deter IUD is to avoid prejudicing the opportunity to mitigate the impact of development by using planning conditions.
84. There is no dispute that the development occurred without the benefit of planning permission. An application was however lodged to develop the reduced area of the land, the 2019 PA. This provided the Council with an opportunity to assess the acceptability of development on this land and determine whether the IUD could be made acceptable through the imposition of conditions. While the 2019 PA was refused and subsequently dismissed on appeal, the only reason for refusing to grant planning permission related to flood risk, a matter that has now been overcome.
85. The ground (a) appeal also provides an opportunity to determine whether the development can be made acceptable through the imposition of conditions on the application deemed to have been made under s177(5) of the 1990 Act. The 1990 Act also makes provision for a grant of retrospective planning permission. Furthermore, planning enforcement is remedial rather than punitive. The intentional unauthorised nature of the development therefore attracts negligible weight in my judgement.

#### *Other matters*

86. The Council has suggested that the appellant may have buried waste on the land and there is no dispute that the appellant has burnt waste on the land. These issues have not been raised as reasons for issuing the notice or why planning

permission should not be granted. However, burying or burning waste is not a suitable method of disposal for either residential or commercial waste.

87. I am satisfied these issues can be controlled by the imposition of a suitably worded condition and there are other forms of controlling legislation that could be applied should it be demonstrated that an unauthorised landfill use is taking place. Subject to the imposition of conditions, the development would therefore accord with policy ENV1 of the LP, which seeks to ensure that development does not cause environmental pollution.

#### *Planning balance*

88. I have found the development of the reduced area of land to not be inappropriate in the Green Belt. The development is not therefore harmful to the Green Belt by definition nor does it harm openness. Conversely, the development of all the land would be inappropriate development in the Green Belt, which would be harmful by definition and to which I would attribute substantial weight.
89. Limited visual harm arising from the development can be addressed by conditions and therefore is neutral in the planning balance. The intentional unauthorised nature of the development attracts negligible weight against the development.
90. I do not agree with the Council that the need for a larger site is a desire of the appellant's, instead I find it is a necessity. The lack of allocated sites to accommodate the needs of Travelling Showpeople coupled with the lack of a 5-year supply of sites significantly reduces the appellant's ability to identify and relocate to a suitable larger yard. Furthermore, the expansion of authorised traveller sites, even in the Green Belt, are generally considered acceptable in principle. These matters attract moderate weight in support of the development.
91. There are no footnote 7 reasons to refuse the development and there are no other adverse impacts that would significantly and demonstrably outweigh the benefits. Paragraph 11(d) is engaged, and planning permission should be granted, to which I attribute significant weight.
92. I have balanced the harm arising from the development against the supporting factors set out above. Having regard to the Framework, the PPTS and the NPPG, I find the harm arising from the development of all the land clearly outweighs the supporting factors and development. However, the weight attributed to the supporting factors clearly outweighs the harm arising from the development of the reduced area. In the context I find that the development of the reduced area complies with the development plan taken as a whole.
93. As I have found the corrected allegation use to be acceptable in planning terms on the reduce area, there is no need for me to consider the appellant's requested reduction of the items that could be stored.

#### *Conditions*

94. The appellant and Council provided an agreed set of suggested conditions. As the use is only acceptable in planning terms on the reduce area which is shown edged red on the plan Site Location Plan - Ref 25/288-101 Rev. A, condition 1 is required to identify the approved plan. Condition 2 is required as the storage use is only justified on the basis that it is ancillary to the use of Hebborns Yard as Permanent Showmen's Quarters.

95. Condition 3 requires a site development scheme (SDS) to be submitted for approval, which includes details of the layout of the site, a landscaping scheme, biodiversity enhancements, and protection of hedgerows and trees. The SDS shall also include a scheme of contamination investigation as materials have been brought on to the site from unknown sources and it is necessary to identify and deal with any contamination to ensure the site is safe for its intended purpose. This condition is necessary for the development to comply with policy ESD15 of the LP, which seeks amongst other things to deliver high quality development.
96. As condition 3 requires the submission of schemes to be approved it will include a sanction to ensure the required details are submitted, approved and implemented to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition. The condition will ensure that the development can be enforced against if the required details are not approved and implemented within the periods given.
97. Condition 4, relating to the need to have any proposed drainage schemes approved in advance of them being carried out, is necessary to ensure they will not cause flooding elsewhere.
98. Condition 5 prevents anything being stored on the land exceeding 5 metres in height. This is in the interest of visual amenity to comply with policy ESD13.
99. Condition 6 seeks to control any lighting proposed on the site in the interests of preserving natural habitats and biodiversity. Condition 7 is required to protect ground nesting birds that may be present on the site. Condition 8 is also required to ensure the development does not cause flooding elsewhere.
100. There may be need to carry out maintenance and repairs of showground apparatus/rides, machinery, vehicles, trailers and equipment stored on the land. It would therefore be reasonable to impose condition 9, to control the times when such maintenance and repairs can take place in the interests of residential amenity.
101. Condition 10 will prevent the burning of waste on the land in the interests of pollution prevention.
102. There is no need for conditions preventing the use of the land as a fairground, or the residential use of the land or the stationing of caravans for residential purposes as such uses would require the benefit of planning permission. The development does not include any significant areas of hard standing and that which does exist is permeable, and it is not therefore reasonable to require a detailed surface water disposal scheme to be submitted for approval.
103. It was suggested that a condition requiring the site to be returned to its condition before the development took place be imposed should the site no longer be required for the approved use. The permission being granted is for a permanent use of the site. There is no similar condition imposed on Hebborns Yard, as such I find this condition would not be reasonable.
104. Conditions requested by the EA requiring the submission of details and controlling what occurs within the design flood extent area would be covered by conditions

03 (i) (a) and 08. Matters relating to the blue edged land on the Site Location Plan - Ref 25/288-101 Rev. A shall remain the subject of the notice.

*Conclusion on ground (a)*

105. For the reasons given above I conclude that the appeal should succeed in part only, and I shall grant planning permission for the reduced area of the land edged in red on Site Location Plan – Ref 25/288-101 Rev. A, but otherwise I will uphold the notice with a correction and variations and refuse to grant planning permission in respect of the land edged blue on Site Location Plan – Ref 25/288-101 Rev. A. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

**The Ground (g) Appeal**

106. An appeal on this ground is that the compliance period specified in the notice falls short of what should reasonably be allowed. The appellant was seeking to have the period extended to 3 years to allow an alternative Permanent Showmen's Quarters to be found to accommodate his use of the land and Hebborns Yard. Given the partial success under ground (a), there is no longer a need for the appellant to look for an alternative site.

107. The Council concede that 3 months is too short and suggest that 6 months would be a reasonable compromise. There is a need for schemes to be submitted for approval by the Council in respect of the planning permission granted for the reduce area. A period of 6 months would provide a sufficient amount of time to secure the approval of those schemes and for items to be removed from the land to which the notice continues to apply.

108. The ground (g) appeal succeeds to this limited extent.

**Overall Conclusion**

109. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the storage of showground apparatus/rides, machinery, vehicles, trailers and equipment on the land edged red on the Site Location Plan – Ref 25/288-101 Rev. A, but otherwise I will uphold the notice with variations and refuse to grant planning permission in respect of the storage of showground apparatus/rides, machinery, vehicles, trailers and equipment on the land edged blue on the Site Location Plan – Ref 25/288-101 Rev. A. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the 1990 Act (as amended).

*M Madge*

INSPECTOR

### **Schedule of Conditions**

01. The development hereby permitted shall (subject to the provisions of condition no. 04 below) be carried out in accordance with the following approved plan:
- Site Location Plan – Ref 25/288-101 Rev.A
02. The site shall only be used for the storage of showground apparatus/rides, machinery, vehicles, trailers and equipment ancillary to the authorised use of the adjoining Hebborns Yard as a Showmen's Permanent Quarters.
03. The use hereby permitted shall cease and all showground apparatus/rides, machinery, vehicles, trailers, equipment and hardstanding shall be removed within 28 days of the failure to meet any one of the requirements set out in i) to iv) below:
- i) within 3 months of the date of this decision, a Site Development Scheme (hereafter referred to as 'the scheme') and a timetable for the scheme's implementation shall be submitted for the written approval of the local planning authority. The scheme shall include the following details:
    - a) an up to date topographical survey of the site and a scaled site layout plan showing the extent of the storage use of the site, the extent of any hardstanding, and detailing those parts of the site affected by the 1% annual probability, including climate change, (design) flood extent;
    - b) a landscaping scheme for the site, including details of hard and soft landscaping, species, plant sizes and proposed numbers as well as material and height detail of any boundary treatment. Also a schedule of maintenance for a period of 5 years to include provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting 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;
    - c) a scheme for enhancing biodiversity to include ecological enhancement features such as bird/bat boxes and native species planting;



- d) a scheme for the protection of retained trees and hedgerows. The scheme shall provide that no excavation, storage of materials or machinery, parking of vehicles, deposit of soil or rubble, lighting of fires or disposal of liquids will take place within the protected areas; it shall also provide that if any retained tree or hedgerow is cut down, uprooted, destroyed or dies within a period of 5 years from completion of the development, it shall be replaced in the next planting season with another of a size and species to be first approved in writing by the local planning authority;
  - e) a scheme for determining the presence, nature and extent, or otherwise of contaminated land on the site, and where remediation is necessary, a detailed remediation scheme to bring the site to a condition suitable for the intended use. Following completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out has been submitted to and approved in writing by the local planning authority. The assessment shall include measures to prevent, mitigate and remediate contamination found on the site.
- ii) If within 11 months of the date of this decision, the local planning authority refuse to approve the Site Development Scheme or fails 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 Site 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 details and timetable.

Upon implementation of the approved Site Development Scheme specified in this condition its provisions shall thereafter be maintained and retained.

In the event of a legal challenge to this decision, or to 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.

04. No drainage systems or infiltration of surface water drainage into the ground is permitted without the prior written consent of the local planning authority. Only the approved drainage systems or infiltration of surface water into the ground shall be implemented.
05. Showground apparatus/rides, machinery, vehicles, trailers and equipment stored on the site shall not exceed 5 metres in height.
06. No external lighting shall be installed at the site unless and until such time as a lighting strategy has first been submitted to and approved in writing by the Local Planning Authority. Only the approved lighting strategy shall thereafter be implemented and maintained.
07. Any work to vegetation that may provide suitable nesting habitats shall be carried out outside of the bird breeding season (March to August) to avoid destroying or damaging bird nests. If vegetation needs to be removed during the breeding season, then mitigation measures must be implemented to protect breeding birds. This includes examination by a suitable qualified and experienced ecologist immediately prior to the commencement of the necessary work and if any nesting birds are found during the work, development must cease until after the birds have fledged.
08. Following written approval of the drawings required by condition 03 (i) (a), there shall be no raising of existing ground levels, storage of materials or any other development, except as approved by this permission, within the (design) flood extent as approved in condition 3 (i) (a).
09. The maintenance or repair of showground apparatus/rides, machinery, vehicles, trailers and equipment shall only take place on the site between the following hours:  
0800 – 1700 Monday – Friday  
0800 – 1600 Saturday – Sunday
10. There shall be no burning of waste on the site.

- - - END - - -

## APPEARANCES

### FOR THE APPELLANT:

|                                           |                                                       |
|-------------------------------------------|-------------------------------------------------------|
| Edward-Arash Abedian of Landmark Chambers | Counsel for the appellant, instructed by Nick Baseley |
| Nick Baseley                              | IBA Planning Ltd – Planning Agent                     |
| Richard Winn                              | ADC Infrastructure – Flood Risk Consultant            |
| William James Hebborn                     | Appellant                                             |

### FOR THE LOCAL PLANNING AUTHORITY:

|                                   |                                                                                                                      |
|-----------------------------------|----------------------------------------------------------------------------------------------------------------------|
| Michael Rudd KC of Kings Chambers | Counsel for the Council, instructed by Shiraz Sheikh, Assistant Director Law & Government, Cherwell District Council |
| Amy Sedman                        | Principle Planning Enforcement Officer, Cherwell District Council                                                    |
| Rebekah Morgan                    | Development management Planning Officer, Cherwell District Council                                                   |

### INTERESTED PARTIES:

|               |                              |
|---------------|------------------------------|
| George Gess   | Former Travelling Showperson |
| Lewis Tree    | Environment Agency           |
| Michelle Kidd | Environment Agency           |

## DOCUMENTS

|     |                                                                   |
|-----|-------------------------------------------------------------------|
| ID1 | Suitable Alternative Sites Marketing Information (CDC 22a)        |
| ID2 | Appeal Decision APP/N1920/W/23/3320599                            |
| ID3 | Environment Agency's Statement                                    |
| ID4 | Additional Photographs taken at each of the Council's Site Visits |
| ID5 | Appellant's Opening Submission                                    |
| ID6 | Council's Opening Submission                                      |
| ID7 | Policy BSD6: Travelling Communities                               |

- ID8 Policy SLE1: Employment Development
- ID9 Site Location Plan – Ref 25/288-101 Rev. A
- ID10 Council's Closing Submissions
- ID11 Appellant's Closing Submissions