
Appeal Decision

Site visit made on 24 November 2025

by **David M H Rose BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11th March 2026

Appeal Reference: APP/M0655/W/25/3367247

Spring Lane Nurseries, Spring Lane, Croft, Warrington, Cheshire, WA3 7AS

- 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 Thomas Smith against the decision of Warrington Borough Council.
 - The application Reference is 2024/00668/FUL.
 - The development proposed is Change of use of land to use as residential caravan site for 5 gypsy/traveller families, each with two caravans including no more than one static caravan/mobile home, together with the laying of hardstanding and erection of communal amenity building.
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Decision

1. The appeal is deemed to be invalid and I take no further action.

Application for Costs

2. An 'Interim Costs Application' (February 2026) has been made on behalf of the Residents of Spring Lane and New Lane (Rule 6(6)) against Mr Thomas Smith. This will be the subject of a separate Decision.

Preliminary Matters

3. The appeal was scheduled to be heard at a Public Inquiry commencing on Tuesday 25 November 2025. However, the Inquiry was postponed on 24 November 2025 due to unforeseen circumstances. Nonetheless, the accompanied Inquiry site visit was undertaken as planned on that afternoon.
4. Prior to this I held a case Management Conference on 25 September 2025 to discuss procedural and administrative matters. It was agreed that several of the identified preliminary main issues could proceed to be considered on the basis of written statements, including Biodiversity Net Gain (BNG).
5. In relation to BNG, I issued a request for clarification on 16 January 2026 '*..... as to whether the absence of the pre-degradation/pre-development baseline is material and potentially prejudicial to the lawful determination of the appeal as the BNG condition (and the post-permission Biodiversity Gain Plan) cannot substitute for the missing baseline information*'.

Main Issue

6. The main issue is whether the planning application and the subsequent appeal is invalid.

Reasons for Invalidity

Introduction

7. Biodiversity Net Gain (BNG) is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environmental Act 2021) and the Town and Country Planning (Biodiversity Net Gain)(England) Regulations 2024 (SI 2024/43).
8. BNG compliance is mandated for most planning applications submitted on or after 12 February 2024. Under the statutory framework for BNG, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met. The planning application is dated 24 May 2024 and the statutory framework is engaged.
9. For developments that have already been completed, retrospective applications made under section 73A of the 1990 Act may not automatically trigger the mandatory BNG requirement.
10. Under regulation 2(2) of the Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024 (SI 2024/44):
The purposes referred to in paragraph (1)(d) of this regulation relate to planning permission granted on an application made under Part 3 of the 1990 Act, other than planning permission relating to development to which section 73A of the 1990 Act (planning permission for development already carried out) applies.
11. Paragraph (1)(d) sets out the purposes for which the mandatory biodiversity condition applies. However, any new or prospective element of the proposal must adhere to the BNG obligations outlined in Schedule 7A, subject to any applicable exemptions.

The application for planning permission

12. Article 7 (1A) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 sets out that an application for planning permission must be accompanied by a suite of information relating to the biodiversity gain condition.
13. The application for planning permission claimed exemption from the general BNG condition as a 'self-build and custom build development'. However, the Self-build and Custom Housebuilding Act 2015 defines 'self-build and custom housebuilding' as 'the building or completion of houses to be occupied as homes by those individuals'. The application as made was for the 'Change of use of land to use as a residential caravan site'. There is no suggestion that the exemption was met or pursued.
14. The Appellant's Preliminary Ecological Appraisal (22 July 2024) indicated that a BNG report was required for the proposal. A BNG Assessment followed in October 2024. The baseline habitat value of the site was said to be 0.55 units, comprising 0.05 units of ruderal vegetation, 0.24 units of scrub and 0.26 units of other neutral grassland. It was concluded that the post development habitat of the site would be 0.31 units, made up of enhanced scrub and created and retained development land (no units) resulting in a net change in biodiversity of minus 43.19%. However, it was claimed that there would be a net gain of 113% in hedgerows.

15. Recommendations to deliver BNG included either the provision of additional landscaping and/or off-site compensation. The Greater Manchester Ecology Unit, as consultee, suggested that the submitted metric did not appear to have been completed correctly, thus affecting the number of units required. Further, the suggestion that the loss could be made up by purchasing conservation credits was countered by confirmation that this was not permitted as BNG had become mandatory; and any measures to enhance adjacent land would need to be legally secured for a period of 30 years and registered accordingly.
16. The Appellant has not addressed the statutory requirement for BNG in its appeal statement and, as part of its position recorded in the Statement of Common Ground, maintains that the requirement can be secured by condition.
17. Turning to Schedule 7(1A)v paragraph 6 of Schedule 7A of the Town and Country Planning Act 1990 the following applies:
If—
 - (a) *a person carries on activities on land on or after 30 January 2020 otherwise than in accordance with—*
 - (i) *planning permission, or*
 - (ii) *any other permission of a kind specified by the Secretary of State by regulations,*
and
 - (b) *as a result of the activities the biodiversity value of the onsite habitat referred to in paragraph 5(1) is lower on the relevant date than it would otherwise have been, the pre-development biodiversity value of the onsite habitat is to be taken to be its biodiversity value immediately before the carrying on of the activities.*
18. However, the application for planning permission was entirely silent on any activities carried out on the land after 30 January 2020. The Design and Access Statement indicates that the site ‘..... is currently occupied by a commercial yard with existing buildings and hardstanding The proposals also include the laying of hard-standing’. The Site Layout Plan identified the majority of the site as ‘Existing Hardstanding’ with an additional smaller area as ‘Proposed Hardstanding’.
19. I sought clarification of the status of the existing hardstanding on 16 January 2026. The Appellant’s response stated: ‘Prior to its change of use to use as a residential caravan site, it already accommodated a derelict building and hardstanding. The entirety of the area currently laid to hardstanding was hard-surfaced prior to the above-mentioned change of use, as evidenced by the aerial photograph taken in 2022, attached I attach two aerial photographs below, taken in 2022 and 2023, before the appellant purchased the land which demonstrate that the hardstanding was laid’.
20. The photographs are undated and unverified. Further it was said ‘The Appellant’s Biodiversity Net Gain Assessment takes account any changes to the hardstanding that would take place as part of the appeal proposals, i.e. the degradation that would result as a direct result of the appeal proposals’.
21. Whilst that relates to the proposed hardstanding, the material issue is the nature of that area described as ‘Existing Hardstanding’. The Council admits that ‘the exact timing of each area of hardstanding that has been laid is unknown by the Council, however there is no evidence of any hardstanding at the site before it is seen in Google earth aerial image in July 2022’.

22. The Rule 6(6) Party has also submitted a number of aerial images. Significantly, the image dated 22 April 2020 shows what appears to be preparatory works for laying of a hardstanding and the image dated 18 July 2022 clearly shows a new area of hardstanding. I am in no doubt that the Appellant's assessment of the biodiversity value of the site post-dates the degradation occurred since 30 January 2020 and as a result of the activities the biodiversity value of the onsite habitat is lower on the relevant date than it would otherwise have been.
23. It follows that the absence of the pre-degradation/pre-development baseline is therefore prejudicial to the lawful determination of the appeal as the BNG condition (and the post-permission biodiversity gain plan) cannot substitute for the missing baseline information. Even though the planning application was registered as validly made, failure to comply with Article 7 (1A) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 has the potential to nullify the validity of the application.
24. The Appellant in its response to my request for clarification, seeks to argue exemption by virtue of Article 7 (1)(c) by reference to section 73A(2)(c) of the Town and Country Planning Act 1990 ('retrospective planning permissions'):- *'In this case, the change of use of land to use as a residential caravan site, including associated operational development to provide a hardstanding, has already taken place and, therefore, the current application is seeking retrospective planning permission under Section 73A of the Town and Country Planning Act. As set out above, such applications are exempt from the statutory BNG requirements'*.
25. However, there was no suggestion when the application was made that it was retrospective. Indeed, in response to the question *'Has the work or change of use already started?'* the response was *'No'*.
26. Further, the description of development reads: *'Change of use of land to use as a residential caravan site for 5 gypsy/traveller families, each with two caravans including no more than one static caravan/mobile home, together with the laying of hardstanding and erection of communal amenity building'*.
27. The response to *'Existing materials and finishes'* is silent; and the answer to *'Proposed materials and finishes'* is *'Permeable stone'*.
28. Taking account of the proposal as described in the application for planning permission, and as shown on the application plans, the development has not been carried out in full as the area of hardstanding proposed is incomplete; the static units have not been introduced¹; and the amenity building has not been erected. Moreover, the draft planning conditions are largely prospective rather than retrospective.
29. There is every indication that the Appellant is now seeking to claim that the proposal is 'retrospective' so as to circumnavigate the claimed exemption from BNG requirements.
30. Paragraph 20(1) of Schedule 7A of the Town and Country Planning Act 1990 (as amended) states:- *'The Secretary of State may by regulations make provision modifying or excluding the application of this Part of this Schedule in relation to development for which – (a) planning permission is granted under section 73A (planning permission for development already carried out)'* However, this provision has not yet been made.

¹ At the date of my site visit

31. It is argued by the Appellant that the PPG confirms that the mandatory BNG condition does not apply to retrospective planning permissions made under section 73A as would be the case here. However, that does not reflect the basis of the application; the PPG is guidance and cannot override the legislative framework; and, in any event, the proposal includes both retrospective and prospective elements.
32. In summary, the proposal the subject of the appeal is quite different from what existed on the site on the date of my visit. The application as made is not wholly retrospective; the site has been the subject of degradation which has not been accounted for in the BNG metric; and there is no exemption under Section 73A of the 1990 Act as amended.
33. The Appellant has persistently failed to acknowledge or provide the appropriate BNG baseline and as the mandatory BNG condition could not be applied, the application and appeal falls to be deemed invalid.
34. The Appellant has drawn my attention to an appeal decision² in which the Inspector indicated '*.....by virtue of the development being retrospective, it is not subject to the requirement to provide Biodiversity Net Gain (BNG) under the terms of the Environment Act 2021*'. In a later appeal decision³ the Inspector explained that '*I do not consider that position accurate in relation to the appeal scheme before me*'. My views as set out above remain unchanged in terms of my reading of the legislation.
35. Further, although the second Inspector imposed a BNG condition, this appears to have been based on the circumstances of that case and I note that the Inspector does not appear to have been faced with grappling with detailed submissions and an extensive analysis of the legislation and guidance.
36. The power to determine an appeal relies on being satisfied that a valid planning application has been made. Whether the Council has validated the application and issued a decision letter is not determinative. In my opinion, the application was invalid and therefore the Secretary of State has no jurisdiction to determine any appeal and it must be turned away as deemed to be invalid.
37. I have gone on to consider whether I should exercise discretion⁴ to allow the appeal to proceed notwithstanding a failure to comply with the statutory requirements. I am aware that, as confirmed in the Maximus judgment,⁵ this discretion should only be exercised following full regard to all the circumstances, such as the nature of the failure, the remedy, the lapse of time, the effect on other parties and the public and whether any prejudice has been caused to any of the parties. In this case, the failure to comply with statutory requirements cannot be remedied within the bounds of this appeal.
38. Consequently, I am unable to consider the substantive matters of the appeal.

² APP/T3725/W/24/3356326

³ APP/H1840/W/25/3363594

⁴ Section 79(6) Town and Country Planning Act 1990

⁵ Maximus Networks Ltd and SSCLG and Southwark London Borough Council and (2) London Borough of Hammersmith and Fulham

Conclusion

39. Overall, in the absence of a properly completed BNG assessment, statement of degradation and clear evidence of an accurate baseline there is nothing to suggest that this could be addressed by a condition of any planning permission. The failure to provide the necessary information formally and expressly required by The Town and Country Planning (Development Management Procedure) (England) Order 2015 is clear cut. It is judged to be so fundamental that the application and hence the appeal must be deemed to be invalid.
40. An invalid application may not lawfully be determined, and it follows that any appeal relating to such an application is also invalid.
41. For these reasons, I find the appeal to be invalid and no further action on it will be taken.

David MH Rose

Inspector