

TOWN & COUNTRY PLANNING ACT 1990

SECTIONS 78 & 174

APPELLANT:	Mr Darren Smith
LOCATION:	Land known as Emmanuel Ranch (formerly known as Windmill Meadow), Windmill Road, Towersey, Oxfordshire, OX9 3QQ.
DEVELOPMENT:	<p><u>Appeal A</u> - Change of use of land to use as a residential caravan site for 3 gypsy families, including the stationing of 6 caravans of which no more than 3 are to be static caravans/mobile homes, together with the laying of hardstanding (Planning Application P24/S0941/FUL)</p> <p><u>Appeal B</u> - Without planning permission the material change of use of the land from keeping of horses to a mixed use, namely 1) keeping of horses; and 2) the stationing of four caravans for residential use, together with facilitating development including: (i) earthworks to clear the site of vegetation and create a development platform (shown hatched black on the plan at Attachment 2); (ii) the laying of a hardstanding driveway and parking and manoeuvring areas (also shown hatched black on the plan at Attachment 2); (iii) the erection of close-boarded fences and ornamental pillars (shown coloured blue on the plan at Attachment 2) and gates (in the approximate location shown on the plan at Attachment 2); and (iv) the installation of poles mounted with external lighting and closed-circuit television surveillance equipment (shown coloured orange on the plan Attachment 2) (Enforcement Notice SE23/312).</p>
SODC REF:	P24/S0941/FUL P24/S2018/DA
PINS REF:	APP/Q3115/W/24/3346849 APP/Q3115/C/24/3346856

HEARING STATEMENT

for

SOUTH OXFORDSHIRE DISTRICT COUNCIL

TABLE OF CONTENTS

1.0	Introduction	4-6
2.0	The Appeal Site	7-8
3.0	Relevant Planning History	9-22
4.0	Policy Context	23-35
5.0	Case for the Council	36-68
6.0	Conclusion	69-71

TABLE OF APPENDICES

Appendix 1	Refusal Notice P24/S0941/FUL
Appendix 2	Enforcement Notice SE23/312
Appendix 3	Ordnance Survey Extracts - various scales
Appendix 4	Land Registry
Appendix 5	Aerial photos pre-development
Appendix 6	Drone images - pre enforcement
Appendix 7	Drone images - post enforcement
Appendix 8	P72/M0469 - Application & Decision Notice
Appendix 9	P86/N0765 - Application & Decision Notice
Appendix 10	P87/N0032 - Application & Decision Notice
Appendix 11	P92/N0151 - Application & Decision Notice
Appendix 12	P02/0244 - Decision Notice
Appendix 13	P04/E0383 - Application & Decision Notice
Appendix 14	P06/E0618 - Application & Decision Notice
Appendix 15	Photographs dated 29 June 2006
Appendix 16	P07/E1209 - Application & Decision Notice
Appendix 17	Enforcement notice EE03_144
Appendix 18	Photographs date March & April 2012
Appendix 19	P18/S3504 - Decision Letter
Appendix 20	P19/S0606 - Application
Appendix 21	Phase 1 - Contaminated Land Risk Assessment
Appendix 22	P19/S0606 - Decision Notice
Appendix 23	P22/S2300_DIS - Decision Letter
Appendix 24	Phase 2 - Contamination Investigation
Appendix 25	Phase 3 - Remediation Strategy
Appendix 26	P22/S2895_LDE – Decision Notice
Appendix 27	P22/S3712 - Application
Appendix 28	P22/S3712 - Decision Notice
Appendix 29	Site Visit Photos and Notes
Appendix 30	Record of Telephone Calls
Appendix 31	Injunction
Appendix 32	Email exchange with Agent
Appendix 33	P24/S0941 - Application
Appendix 34	Towersey Parish Council submission
Appendix 35	Drainage Engineer submission
Appendix 36	Local Highways submission
Appendix 37	Contamination submission
Appendix 38	Environmental Protection submission
Appendix 39	Ecology submission
Appendix 40	Policy submission
Appendix 41	Waste Management submission
Appendix 42	Campaign to Protect Rural England submission
Appendix 43	Neighbour Objections
Appendix 44	Letter to Agent 2024-04-12
Appendix 45	P24_S0941 - Report & Decision
Appendix 46	Enforcement Report
Appendix 47	South Oxfordshire Local Plan 2035
Appendix 48	Towersey Neighbourhood Plan

Appendix 49	South Oxfordshire Landscape Assessment
Appendix 50	Joint Design Guide
Appendix 51	Providing for Journeys on Foot
Appendix 52	National Transport Survey 2022
Appendix 53	Planning for Walking 2015

1.0 INTRODUCTION

- 1.1 This hearing statement sets out the council's case in response to two linked planning appeals against decisions to refuse planning permission (Appeal A) and issue and enforcement notice (Appeal B), in connection with land known as Emmanuel Ranch (formerly known as Windmill Meadow), Windmill Road, Towersey, Oxfordshire, OX9 3QQ, for the purpose of gypsy and traveller site.

Appeal A

- 1.2 Appeal A concerns the Council's decision to refuse a part retrospective planning application (P24/S0941/FUL) for the change of use of land to use as a residential caravan site for 3 gypsy families, including the stationing of 6 caravans of which no more than 3 are to be static caravans/mobile homes, together with the laying of hardstanding. A copy of the decision notice can be found at **Appendix 1**. In summary, the application was refused on 9 May 2024 for the following reasons:

- The application site is situated in an unsustainable location.
- The lack of a 5-year supply of gypsy/traveller sites under the South Oxfordshire Local Plan 2035 and the personal circumstances of the applicant and his family are outweighed by other material considerations.
- The proposed development is harmful to the landscape and the intrinsic character, beauty and tranquillity of the countryside.
- The proposed development is contrary to principles of good design and respect for local distinctiveness.
- Insufficient information has been submitted with the application to allow for a proper assessment of the impacts of outdoor lighting relating to the proposed development on the amenity of the area.
- The potential harm to the health of the occupants of the proposed development from existing contaminants on the site has not been adequately addressed.
- The unauthorised development already undertaken by the applicant and the additional development proposed to be undertaken has and will result in a net loss of biodiversity and likely harm to protected species.

- Insufficient information has been submitted to demonstrate that the proposed development can be feasibly and sustainably drained in a manner that addresses flood risk and water quality.

Appeal B

- 1.3 Appeal B concerns an enforcement notice that was issued on 5 June 2024, which alleges the material change of use of the land without planning permission from keeping of horses to a mixed use, namely 1) keeping of horses; and 2) the stationing of four caravans for residential use, together with facilitating development including: (i) earthworks to clear the site of vegetation and create a development platform; (ii) the laying of a hardstanding driveway and parking and manoeuvring areas; (iii) the erection of close-boarded fences and ornamental pillars and gates; and (iv) the installation of poles mounted with external lighting and closed-circuit television surveillance equipment.
- 1.4 In summary, the notice requires the above unauthorised use to cease; the facilitating operations to be removed from the site; and the site reinstated to its former condition. A copy of the notice held at **Appendix 2**.
- 1.5 The reasons underpinning the need for enforcement action can be summarised as follows:
- The breach of planning control has occurred within the last 10 years.
 - The unauthorised development is situated in an unsustainable location.
 - The lack of a 5-year supply of gypsy/traveller sites under the South Oxfordshire are outweighed by other material considerations.
 - The unauthorised development is harmful to the landscape and the intrinsic character, beauty and tranquillity of the countryside,
 - The unauthorised development is contrary to principles of good design and respect for local distinctiveness.
 - The outdoor lighting installed in connection with the unauthorised material change of use is contrary to the amenity of the area.
 - The presence of existing contaminants on the land represents a potential risk to the health of the occupants of the unauthorised development.

- The unauthorised development has resulted in a net loss of biodiversity and likely harm to protected species.
- Insufficient provision has been made for the sustainable drainage of surface and foul water in connection with the unauthorised development.
- The Council does not consider that planning permission should be given, because planning conditions could not overcome these objections.

1.6 The enforcement notices is appealed under grounds (a), (c), (f) and (g).

1.7 Before dealing with those matters raised by the appellant, I will briefly describe the context of the Site, its planning history and identify relevant planning policies and guidance.

2.0 THE APPEAL SITE

- 2.1 Emmanuel Ranch (formerly known as Windmill Meadow) covers an area of approximately 0.80ha. It is situated in the open countryside approximately 200m north of the built-up limits of small village of Towersey and approximately 1.5 km east of the built-up limits of the township of Thame. The site is surrounded on all sides by land in agricultural use. Further to the north (approximately 100m away) is a sewage treatment works and to the northeast (approximately 160m away) is a solar farm. At **Appendix 3** are copies of extracts from the Ordnance Survey at various scales showing the location of the overall holding (edged red), in the context of surrounding development. Public rights of way are shown coloured green on these ordnance survey extracts.
- 2.2 Access to the application site is via an existing access off the western side of Windmill Road, which is unlit, has no separate footpath and is subject to national speed limit (60mph) adjacent to the entrance to the site.
- 2.3 Erected on the site is a small complex of buildings comprising a barn and stables, which are erected adjacent to the southern (side boundary) approximately midway back on the site. Prior to the recent unauthorised development of the site, the complex of buildings was accessed via a modest (unformed) track extending from the existing access in the middle of the front boundary. This complex of buildings was surrounded on three sides by open paddocks used for the grazing of animals, mainly horses, and a manege for the training of horses. The wider site was largely enclosed by a combination of post and rail fences and hedge rows.
- 2.4 At **Appendix 4** are copies of the Land Register showing the Site to be in the ownership of the appellant (Darren Smith) and his son (Milo Lee).
- 2.5 At **Appendix 5** are aerial photographs dated 1999, 2003, 2005, 2009, 2015 and 2020 which all show the relatively unchanging rural character and appearance of the Site prior to the material change of use and facilitating development, which are the subjects of the current appeals.

- 2.6 Part of the wider holding benefits from an extant planning permission (P22/S3712/FUL) dated 21 November 2022, for the conversion of part of the existing stable and barn complex to a 1 x bedroom dwelling. The plan below shows the wider holding (edged red) and the area approved by planning permission P22/S3712/FUL for barn/stable conversion (coloured blue). This permission has not yet been implemented.



- 2.7 In or around October 2023 the council commenced an enforcement investigation (SE23/312) into unauthorised works being undertaken on the wider holding, allegedly for the purpose of developing the land as a caravan site for gypsy travellers, without the benefit of planning permission.
- 2.8 At **Appendix 6** are drone images of the site showing the extent to which the character and appearance of the site has changed as a result of the unauthorised development up to and including the issuing of the enforcement notice on 5 June 2024. At **Appendix 7** are drone images of the site showing the extent to which the character and appearance of the site has continued to change as a result of unauthorised development which has continued to take place subsequent to the issuing of the enforcement notice and remains ongoing.

3.0 RELEVANT PLANNING HISTORY

- 3.1 The following is a summary of the planning history of the wider holding, culminating in the refusal of a part retrospective planning application (P24/S0941/FUL) and the issuing of an enforcement notices (SE13/312), which are the subjects of the current appeals.
- 3.2 On 21st August 1972 the council refused a planning application (P72/M0469) for the erection of two dwellings and access on the site, on the basis that the development would constitute undesirable isolated development in the countryside. The application form describes the existing use of the land at the time to be “agriculture”. Copies of the above planning application and the council’s decision notice are held at **Appendix 8**.
- 3.3 On 21 January 1987 planning permission (P86/N0765) was granted for the erection of two stables and a feed store. The use of the land at the time is described as “the grazing of cattle”. Copies of the above planning application and the council’s decision notice are held at **Appendix 9**.
- 3.4 On 18 March 1987 planning permission (P87/N0032) was granted for the creation of an access. The use of the land at the time was described as “cattle grazing”. Copies of the above planning application and the council’s decision notice are held at **Appendix 10**.
- 3.5 On 11 June 1992 planning permission (P92/N0151) was granted for the change of use of the land from agriculture to the keeping of horses; an extension to an existing building for the storage of hay and straw; the erection of a stable; and the provision of liveries for two horses/ponies. The grant of this permission was made personal to the then owner (condition 3). Copies of the above planning application and the council’s decision notice are held at **Appendix 11**.
- 3.6 On 29 May 2002 planning permission (P02/N0244) was granted for an all-weather manege for riding and schooling of horses and ponies. A copies of

the council's decision notice is held at **Appendix 12**. Regrettably, there are no surviving copies of the application and related plans.

- 3.7 On 10 October 2003 the council commenced an enforcement investigation (EE03/144) into the alleged stationing of a mobile home on the land for residential purposes.
- 3.8 On 17 May 2004 retrospective planning permission (P04/E0383/RET) was granted for the erection of a pole barn. The application describes the existing use as "keeping of horses". Copies of the above planning application and the council's decision notice are held at **Appendix 13**.
- 3.9 On 26 July 2006 retrospective planning permission (P06/E0618/RET) was granted for the continued use of land for equestrian purposes without compliance with condition 3 of planning permission P92/N0151 (no longer a personal permission). The application refers to the use of the land as involving both sheep and horses. Copies of the above planning application and the council's decision notice are held at **Appendix 14**. At **Appendix 15** are copies of photographs of the site dated 29 June 2006, showing the agricultural character and appearance of the site as it then existed, including low level and open-style fences and gates, agricultural buildings, open fields, a modest and largely unformed track and manege.
- 3.10 On 30 January 2008 the council refused a planning application (P07/E1209/RET) to retain the existing mobile home for temporary accommodation, on the basis that *"the proposed development is not essential to the proper functioning of a viable agricultural holding and therefore represents an unnecessary encroachment of development into the countryside, which adversely impacts upon the openness and rural character of the surrounding area"*. The application described the existing use as being both *"equine and agricultural"*. An appeal against this decision was dismissed by the Planning Inspectorate in a decision dated 24 October 2008. It was the inspector's opinion that *"the stationing of the mobile home in this location is materially harmful to the character and appearance of the area"*. Copies of the above planning application and the council's decision notice and the appeal decision are held at **Appendix 16**.

- 3.11 On 18 March 2008 the council issued an enforcement notice (EE03/144) to require the use of the land for stationing of a mobile home for residential purposes to cease for the same reason that planning application P07/E1209/RET was refused. The enforcement notice was upheld at appeal in the same decision dated 24 October 2008 (P08/E0771/DA). The notice was subsequently complied with. A copy of the enforcement notice is held at **Appendix 17**.
- 3.12 On 8 March 2012 the council commenced an enforcement investigation (EE12/030) into the change of use of the land for siting of a residential caravan. The investigation was closed on 11 June 2012 following the voluntary removal of the caravan from the site. At **Appendix 18** are copies of photographs from site visits undertaken on 13 March and 12 April 2012 showing the open agricultural appearance of the site as it then existed.
- 3.13 On 20 December 2018 the council responded to a request for pre-application advice (P18/S3504/PEM) in connection with a proposal for the erection of a 3-bedroom dwelling on the site. The proponent was advised that *“officers would not support a planning application for the proposed development because I am of the opinion that the development does not meet the criteria for infill development. However, as discussed on site you could possibly explore the possibility of converting the existing structure at the back of the stables for residential use”*. A copy of the council written advice is held at **Appendix 19**.
- 3.14 On 1 August 2019 planning permission (P19/S0606/FUL) was granted for the conversion of part of the existing barn and stable complex to a 1 x bedroom dwelling. This permission lapsed on 31 July 2022. The application describes the last use of the site as “sheep”. At **Appendix 20** is a copy of the planning application and supporting information. At **Appendix 21** is a copy of the Phase 1 - Contaminated Land Risk Assessment, submitted in support of the application. At **Appendix 22** is a copy of the council decision notice. This included conditions requiring among other things:

- Compliance with approved plans, including proposed site plan BHD-0055-P1 showing the extent of the proposed carparking, manoeuvring and garden area (Condition 2).
- The submission of a Phase 2 intrusive contamination investigation and Phase 3 contamination remediation strategy (Condition 5).
- Full compliance with the requirements of the approved contamination remediation strategy and the submission of a validation report prior to occupation of the development (Condition 7).
- The construction of a turning area and parking spaces prior to first occupation of the development (Condition 8).

3.15 On 21 July 2022 the council approved a discharge of condition application (P22/S2300) with respect to condition 5 of planning permission P19/S0606 relating to the Phase 2 & 3 Contamination Reports. Although the investigation included testing of the wider site, the approved recommendations and strategies for remediation were limited to the red edged area covered by the above planning permission. It did not include recommendations or strategies for remediation of wider areas of the site that are included in the current Appeals A and B. A copy of the Council's decision letter is held at **Appendix 23**.

3.16 A copy of the Phase 2 Site Investigation Report is held at **Appendix 24**. With regard to the remedial action the report at Section 10.1 states as follows:

“...the only location in which contamination was identified within the red line boundary which will be covered in soft landscaping is BH03. Therefore, remediation is recommended only in the area of BH03 in order to break the Potential Pollutant Linkages identified and to render the site suitable for the proposed residential end use.

Remedial measures will likely comprise of the excavation of Made Ground and replacement with clean certified fill to a depth of 600mm around a 2m radius of this area depending on visual signs of contamination observed during the excavation. 2no. Validation samples will be collected to ensure the imported material is clean.

Once completed, the remedial works will need to be validated by a qualified Environmental Consultant and a remediation verification report...”

3.17 A copy of the Phase 3 Remediation Strategy is held at **Appendix 25**. The approved remediation strategy outlined in Section 6.4 of the Report was in three parts as follows:

- Encapsulation of Contaminated Areas Under Buildings and Driveway/Car Parking area. - This strategy was specifically linked to the approved site plan BHD-0055-P1 which shows the extent of the approved building carparking, manoeuvring and soft garden areas.)
- Installation of Engineered Capping Layer in the area of bore hole BH03.
– Under this strategy *“Made Ground within a 2-3m radius surrounding sampling location BH03 will be manually excavated to a maximum depth 600mm (depending on visual signs of contamination observed during the excavation). The Made Ground will be removed and taken to a licenced disposal facility by a licenced waste transport carrier. The soils removed from the excavated areas will be replaced with clean, imported, verified fill materials. The clean fill will consist of a 200mm thick sub-base (i.e. MOT Type 1 or 2) layer and 400mm topsoil”.*
- Installation of Radon Protection Measures. – Under this strategy *“A Radon protection membrane will be installed by appropriately certified and experienced installers and will be verified by an independent verifier”.*

Contrary to the appellant’s claim these strategies were not presented as alternative option for remediation. Rather, they were to be implemented in concert with one another. The appellant has clearly not implemented the remediation strategy approved in connection with planning permission P19/S0606/FUL. Furthermore, the unauthorised laying of hardstanding materials over extensive areas of the site does not comply with the site plan approved by condition 2 of this permission.

- 3.18 Planning permission P22/S2300 expired on 1 August 2022 as the development for the stable/barn conversion to a one-bedroom dwelling had not substantially commenced within 3 years of the date of the permission.
- 3.19 On 10 October 2022 the council refused an application for a certificate of lawful existing development (P22/S2895/LDE). It was the owner's claim that planning permission P19/S0606/FUL for the barn conversion remained extant on the basis that building and ground works had substantially commenced prior to the planning permission lapsing. However, the available information, on the balance of probability, did not support the owner's claim. The application referred to the existing use as involving only the stabling of horses. A copy of the council's decision notice is held at **Appendix 26**.
- 3.20 On 21 November 2022 planning permission (P22/S3712/FUL) was granted for the conversion of part of the existing barn and stables complex to a 1 x bedroom dwelling. The application was for the same development as that previously approved by expired planning permission (P19/S0606). The application referred to the existing use as involving only the stabling of horses. A copy of the application and supporting information is held at **Appendix 27**. A copy of the council's decision notice is held at **Appendix 28**. This included conditions generally corresponding to those imposed on the expired permission, as follows:
- Compliance with approved plans, including proposed site plan P100 showing the extent of the proposed carparking, manoeuvring and garden area (Condition 2). This plan was materially the same as the proposed site plan approved by the previous permission.
 - Development to be undertaken in accordance with the Phase 2 - Environmental Site Investigation and the Phase 3 - Remediation Strategy approved under application P22/S2300/DIS on 21 July 2022 (Condition 5).

- Full compliance with the requirements of the approved contamination remediation strategy and the submission of a validation report prior to occupation of the development (Condition 7).
- The construction of a turning area and parking spaces prior to first occupation of the development (Condition 8).

For the same reasons stated in paragraph 3.16 above the appellant has not implemented the remediation strategy in accordance with condition 5 of planning permission P22/S3712/FUL; nor do the unauthorised works to lay hardstanding materials over extensive areas of the site comply with the proposed site plan approved by condition 2 of this permission.

3.21 On 12 October 2023 the council commenced the current enforcement investigation (SE23/312) into the alleged carrying out of operations to facilitate the material change of use of the land from equestrian use to a caravan site or gypsy travellers. Initially, these works included: earthworks to clear the land of existing hedgerows and other vegetation; alterations to the levels of the land to create a development platform; erection of domestic style close-board timber fencing to parts of the front, side and rear boundaries (in places exceeding 2m in height); the erection of ornamental entrance pillars and gates exceeding 2m in height; and the laying of hard core material to form a hardstanding over the previously unformed track and newly created development platform.

3.22 At **Appendix 29** are photographs taken during site visits by various council officer during the course of the council's enforcement investigation, together with any related file notes. At **Appendix 30** are records of telephone calls between the council and the appellant or his agent during the course of the council's investigation. The appellant initially denied any claim to gypsy traveller status and indicated that he had no intention of developing the land as a residential caravan site. It was the owner's claim that, in undertaking the above works, he was only seeking to implement planning permission (P22/S3712/FUL) for the barn/stable conversion. However, the area covered

by these unauthorised operations well exceeded the area approved by planning permission P22/S3712/FUL.

- 3.23 According to the owner's agent at the time, the hardstanding was being laid in order to encapsulate known contaminants on the site allegedly in connection with the implementation of the above planning permission. However, these works significantly exceeded the area covered by planning permission P22/S3712/FUL and do not conform to the contamination remediation works approved in connection with that permission; nor did the above permission approve any alterations to the existing levels of the land.
- 3.24 On 6 December 2023 the High Court issued an injunction pursuant to section 187B of the Town and Country Planning Act 1990. Under the terms of the injunction the owners were prohibited from bringing onto the Land any caravan and/or mobile home without the written permission of the council. The injunction also made clear that the council was not to refuse written permission if the proposed use and siting of the caravan and/or mobile home would be lawful by reason of Class A of Part 5 of Schedule 2 of the (General Permitted Development Order (GPDO) when read with paragraph 9 of Schedule 1 to the Caravan Sites and Control of Development Act 1960¹. The injunction further prohibited the defendants from carrying out any works on the land in breach of planning control but did not prevent the defendants from undertaking development in accordance with the extant permission.
- 3.25 At **Appendix 31** is a copy of the injunction issued on 6 December 2023. At **Appendix 32** is a copy of an email exchange with the appellant's then agent, commencing on 11 December 2023 and finishing on 2 February 2024. In this exchange the council agreed to the stationing of just one caravan on the land, to be occupied only by the owner and his two grown sons as the builders employed in the operations to implement planning permission P22/S3712/FUL, for the duration of the operation only.

¹ Class A of Part 5 of Schedule 2 of the GPDO grants a permitted development right for the: *"use as a caravan site of land which forms part of, or adjoins, land on which building or engineering operations are being carried out ... if that use is for the accommodation of a person or persons employed in connection with the said operations"*. This permitted development right exists only for the duration of the lawful operation.

- 3.26 The owner subsequently breached the terms of the injunction by stationing numerous caravans on the site, which are occupied by the owner, his two grown sons and their respective families. It is understood that this includes up to 12 persons, including 7 x adults, 4 x children aged five years or under and 1 x teenage minor. No operations have been undertaken to convert the barn/stable building to a single dwelling in accordance with planning permission P22/S3712. The stationing of these caravans does not benefit from the above claimed permitted development rights.
- 3.27 Furthermore, the owner has continued to undertake works to facilitate the unauthorised use of the land as a caravan site contrary to the terms of the injunction. These ongoing works included:
- the laying of a finishing course of fine road scalplings over the unauthorised driveway and hardstanding area;
 - the placement of ornamental features on the unauthorised entrance pillars further extending their height above 2 metres;
 - the installation of pole and wall mounted exterior lights and closed circuit television surveillance equipment.
- These ongoing works are a breach of planning control and a breach of the terms of the injunction².
- 3.28 On 9 May 2024 the council refused a part retrospective planning application (P24/S0941/FUL) for the change of use of part of the current enforcement site only to use as a residential caravan site for 3 gypsy families, including the stationing of 6 caravans of which no more than 3 are to be static caravans/mobile homes, together with the proposed laying of additional hardstanding. This is the subject of Appeal A. At **Appendix 33** is a copy of the planning application and supporting information.
- 3.29 A total of 31 submissions were received in response to consultations including 9 submissions from various specialist officer and other authorities (see **Appendices 34 - 42**); and 22 neighbour objections (see **Appendix 43**). These can be summarised as follows.

² The above breaches of the injunction are being pursued separately by the council by way of a contempt application to the High Court. The appellant's disregard for the injunction, however, provides evidence of the intentional unauthorised nature of the development, which constitutes a material consideration.

3.30 Towersey Parish Council (see **Appendix 34**) – **Objects** for the following reasons:

- adverse Impact on countryside;
- adverse impact of outdoor lighting;
- highway safety (unlit, no footpath, national speed limit);
- inadequate vision splay;
- close boarded fencing contrary to open rural character;
- inadequate drainage;
- loss of biodiversity;
- loss of landscape feature;
- site contamination issues;
- no evidence in support of gypsy/traveller status;
- an appeal inspector has already noted that a single caravan on this site would have a significant impact on the character of the area;
- unsustainable location;
- boundary treatments have closed the site off from the local community contrary to PPTS;
- deliberate unauthorised development.

3.31 Drainage Engineer (see **Appendix 35**) – **Holding objection** for the following reasons:

- the underlying geology for the area is impermeable;
- percolation testing of the site is therefore required in support of any proposal for surface or foul water drainage reliant on infiltration;
- failing this the demonstration of an alternative method(s) of drainage.

3.32 Highways Liaison Officer (Oxfordshire County Council) (see **Appendix 36**) – **No strong views**, but makes the following comments:

- Windmill Road is subject to national speed limit (60mph) where visibility splays are required to be provided using a 2.4m setback to a distance of 215m in either direction to the nearside kerb - these splays are able to be provided.
- The carriageway allows for two vehicles to pass each other.
- In assessing the sustainability of the development, the Local Planning Authority should give due consideration to the poor accessibility of the site and future residents' likely high dependence on private travel.

- Opportunities for walking are considered unsafe and impractical especially for non-motorised users such as people with mobility difficulties and parents with prams furthermore at night or during inclement weather. Along 'Windmill Road', there is no pedestrian provision separate from the unlit carriageway.
- Within cycling distance, confident and able cyclists may access a range of shops, services and public transport links.
- Provision should be made within the site for bicycle storage
- Conditions regarding the vision splay dimensions, the retention of parking and manoeuvring areas and the provision of bicycle parking facilities, have been recommended in the event that permission is granted.

3.33 Contaminated Land (see **Appendix 37**) – **Holding objection** for the following reasons:

- contamination reports were submitted in connection with planning application (P22/S3712/FUL) for a smaller development site;
- given that the current application area has now changed (is larger) a new preliminary risk assessment covering the new application site needs to be submitted;
- it is understood that significant earthworks have been undertaken potentially rendering previous knowledge on ground conditions unreliable.

3.34 Env. Protection Team (see **Appendix 38**) – **No objection** subject to the inclusion of an informative regarding the need for a caravan site license.

3.35 Ecology Team (South and Vale) (see **Appendix 39**) – **Holding object** for the following reasons:

- the unlawful works have resulted in the net loss and deterioration of habitats within both the red and blue line boundaries;
- it is unlikely that these habitats were priority habitats;
- harm to protected species is reasonably likely to have occurred and, in the absence of ecological survey information, it is not known what

mitigation or compensation would be required to achieve compliance with Policy ENV2 of the local plan;

- it may be suitable to restrict external lighting with planning conditions to mitigate harm to foraging and commuting bats;
- no biodiversity metric has been submitted to support this application;
- The development has likely resulted in a net loss of biodiversity contrary to Policy ENV3 of the local plan.

3.36 Planning Policy (see **Appendix 40**) – Advises that:

- The South Oxfordshire Local Plan 2035 identifies a requirement for 10 traveller pitches to be provided over the life of the plan based upon a 2017 GTAA;
- The definition of ‘gypsies and travellers’ in the Planning Policy for Traveller Sites has recently changed but until such time as an up to date GTAA is completed having regard to the revised definition the number of additional pitches needed is unknown;
- An up to date GTAA is currently being prepared to inform a new local plan to be adopted by the end of 2025;
- Since the last 2017 GTAA was published the council has granted 2 applications for permanent pitches there is therefore a need for 8 pitches to be delivered in the remaining plan period;
- The council is currently unable to identify a 5 years supply of deliverable site and therefore has a zero years’ supply of pitches.
- The current application therefore falls to be assessed against the criteria based provisions of policy H14(2) for unallocated sites.

3.37 Waste Management (see **Appendix 41**) – **No objection**

3.38 Campaign to Protect Rural England (see **Appendix 42**) – **Objects** for the following reasons:

- remote location harmful to the open countryside;
- does not have safe and satisfactory vehicular and pedestrian access to the surrounding highway network;
- does not show how waste will be disposed of;

- is not supported by exceptional person circumstances;
- does not address outdoor lighting which is harmful to wildlife and dark skies.

3.39 Neighbour Objections (22) (see **Appendix 43**) – **Object** for the following reasons:

- contrary to countryside and rural landscape;
- open countryside outside village limits – not infill;
- small village with zero housing allocation target;
- unsustainable location with insufficient access to facilities and services;
- pedestrian access unsuitable (unlit, no footpath, national speed limit);
- completely reliant on private motor vehicles;
- inadequate access and sightlines;
- no details of surface and foul water drainage;
- does not adequately address contamination risks;
- does not adequately address loss of biodiversity;
- recently installed close board fencing contrary to rural character;
- outdoor lighting of the site is harmful to rural character and amenity of the area;
- the application is silent regarding utility buildings normally associated with gypsy/traveller sites;
- flood impacts in village due to hardstanding areas;
- Contrary to the amenity of neighbouring properties.

3.40 At **Appendix 44** is a copy of a letter dated 12 April 2024 to the appellant's agent identifying various deficiencies with the application submitted and giving the applicant an opportunity to address these. No response to this letter was received by the council. At **Appendix 45** is a copy of the officer's delegated report outline the reasons for refusal of the application, which is the subject of Appeal A. At **Appendix 1** is a copy of the council's decision notice.

3.41 On 5 June 2024 the council issued the enforcement notice (SE23/312), which the subject of Appeal B, requiring the unauthorised use of the land for the

stationing of four caravans for residential use to cease; the removal from the land of facilitating development; and the reinstatement of the land to its previous condition. At **Appendix 46** is a copy of the officer's delegated report outlining the planning reasons underpinning the need for enforcement action. A copy of the enforcement notice is held at **Appendix 2**.

- 3.42 At **Appendix 6** are drone images of the site showing the evolution of the unauthorised development up to and including the issuing of the enforcement notice on 5 June 2024. At **Appendix 7** are drone images of the site showing the extent to which the unauthorised development has continued to evolve subsequent to the date of the enforcement notice.
- 3.43 Having regard to the extent to which the unauthorised development has continued to evolve subsequent to the issuing of the enforcement notice on 5 June 2024, the council will ask the Inspector to exercise their power under Section 176 of the Town and Country Planning Act 1990 by amending the notice and plan as required to show the full extent of the changing breach. This can be done without prejudice to the appellant.

4.0 POLICY CONTEXT

National Planning Policy Framework (NPPF)

4.1 The National Planning Policy Framework (NPPF) sets out the Government's national planning policies for England. The latest version of the NPPF was published in September 2023. The following paragraphs are of relevance to this matter:

- Paragraph 2 - Determined in accordance with development plan
- Paragraph 8 - Objectives of sustainable development
- Paragraph 10 - Presumption in favour of sustainable development
- Paragraph 38 - Decision making
- Paragraph 47 - Determining applications
- Paragraph 83 - Location of rural housing
- Paragraph 84 - Avoiding isolated development in the countryside
- Paragraph 90 - Network of settlements
- Paragraph 135 - Achieving well-designed places
- Paragraph 180 - Intrinsic value of countryside and landscape
- Paragraphs 185-186 - Biodiversity
- Paragraph 189 - Contamination.

4.2 Paragraph 2 makes clear that *“Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account...and is a material consideration in planning decisions.”*

4.3 Paragraph 8 identifies three overarching and interdependent objectives that need to be pursued in a mutually supportive way in order to achieve sustainability – these are economic, social and environmental objectives.

4.4 Paragraph 10 makes clear that in order for sustainable development to be pursued in a positive way, at the heart of the NPPF is a **presumption in favour of sustainable development** which is set out at paragraph 11. This

makes clear that decisions should be taken in line with an up to date development plan.

- 4.5 Paragraph 47 states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 4.6 Paragraph 83 relates to 'rural housing' and makes clear that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Paragraph 84 states that planning decisions should avoid the development of isolated homes in the countryside unless certain exceptional circumstances apply, such in the case of an essential rural worker.
- 4.7 Paragraph 90 requires local planning authorities to define a network of town centres and settlements in which new development for mixed purposes (housing, commercial, leisure and other uses) can be encouraged to grow in order to build a strong and sustainable economy.
- 4.8 Paragraph 135 recognises that good design is a key aspect of sustainable development, which creates better places in which to live and work and helps make development acceptable to communities. In this regard paragraph 130 makes clear that decisions should ensure that developments, inter alia, *"add to the overall quality of the area; are visually attractive; are sympathetic to local character, including the landscape setting; maintain a strong sense of place; and create attractive, welcoming and distinctive places to live, work and visit"*.
- 4.9 Paragraph 180 states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and minimising impacts on and providing net gains for biodiversity, among other things.
- 4.10 Paragraphs 185-186 outlines the approach that local planning authorities should apply in order to protect and enhance biodiversity and secure measurable net gains for biodiversity. If significant harm to biodiversity resulting from development cannot be avoided (through locating on an

alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

- 4.11 Paragraph 189 states that planning decisions should ensure that a site is suitable for its proposed use taking account of the ground conditions, including any risk arising from contamination.

Planning Policy for Traveller Sites (PPTS)

- 4.12 The PPTS sets out the governments planning policy for traveller sites and should be read in conjunction with the NPPF.

- Paragraph 3 - Overarching aim
- Paragraph 13 - Sustainability
- Paragraph 22 - Determined in accordance with the development plan.
- Paragraph 23 - Presumption *in favour of sustainable*
- Paragraph 24 - Relevant consideration
- Paragraph 25 - Limit new development in open countryside
- Paragraph 26 - matters to be weighted in planning decisions
- Paragraph 27 - failure to demonstrate an up-to-date 5 year supply of deliverable sites, a significant material consideration when considering the grant of temporary planning permission
- Annex 1 (Glossary) - definition of “gypsies and travellers”.

- 4.13 Paragraph 3 states that is the Government’s overarching aim to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community. It is the Government’s aim, among other things, to enable the provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure, whilst having due regard to the protection of local amenity and the local environment.

- 4.14 Paragraph 13 states that local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally.

- 4.15 Paragraph 22 reminds the decision maker that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 4.16 In addition, paragraph 23 states that: *“Applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the National Planning Policy Framework and this planning policy for traveller sites.”*
- 4.17 Paragraph 24 sets out a number of relevant issues that must be considered in planning decisions, as follows:
- a) *the existing level of local provision and need for sites*
 - b) *the availability (or lack) of alternative accommodation for the applicants*
 - c) *other personal circumstances of the applicant*
 - d) *that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites*
 - e) *that they should determine applications for sites from any travellers and not just those with local connections*
- 4.18 Paragraph 25 is specific to open countryside and states: *“Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure.”*
- 4.19 Paragraph 26 states that when considering applications, local planning authorities should attach weight to the following matters:
- a) *effective use of previously developed (brownfield), untidy or derelict land;*
 - b) *sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness;*

- c) *promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children;*
- d) *not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.*

4.20 Paragraph 27 provides that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission.

4.21 Annex 1 (Glossary) defines “gypsies and travellers” for the purposes of the PPTS as: *Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.*

South Oxfordshire Local Plan 2035

4.22 The South Oxfordshire Local Plan 2035 was adopted on 10 December 2020. The following planning policies are relevant to a consideration of the current appeal, copies of which can be found at **Appendix 47:**

- STRAT1 - The Overall strategy
- DES1 - Delivering High Quality Development
- DES2 - Enhancing Local Character
- DES5 - Outdoor Amenity Space
- DES6 - Residential Amenity
- DES8 -
- ENV1 - Landscape and Countryside
- ENV2 - Priority Habitats and Species
- ENV3 - Biodiversity
- ENV11 - Contamination
- ENV12 - Pollution
- EP3 - Waste Collection and Recycling
- EP4 - Flood Risk

H1 - Delivering New Homes

H14 - Provision for Gypsies, Travellers and Travelling Showpeople

INF4 - Water Resources

TRANS5 - Consideration of Development Proposals

Appendix 7 – Settlement Hierarchy

- 4.23 The thrust of government guidance regarding sustainable development is carried through in the overall strategy of the local plan at policy STRAT1. This strategy seeks to ensure that the majority of new development is focused on the existing hierarch of settlements, where there is better access to services and public transport links. The appeal site does not fall within the built-limits of any settlement and is therefore in the countryside. The strategy seeks to protect and enhance the countryside, by ensuring that outside of the towns and villages any change relates to very specific needs such as those of the agricultural industry or enhancement of the environment.
- 4.24 Policy DES1 requires all new development to be of a high quality design that, among other things, enhances biodiversity and respects the local context, working with and complementing the scale, height, density, grain, massing, type, and details of the surrounding area.
- 4.25 Policy DES2 requires new development to reflect the positive features that make up the character of the local area and should both physically and visually enhance and complement the surroundings. All proposals for new development should be informed by a contextual analysis that demonstrates how the design:
- i) has been informed by and responds positively to the site and its surroundings; and
 - ii) reinforces place-identity by enhancing local character.
- 4.26 Policy DES5 requires a private outdoor garden or amenity space to to be provided for all new dwellings. This should be provided as an integral part of the design and not as an afterthought. These spaces should not be compromised by parking or garages.

- 4.27 Policy DES6 requires that development proposals should not result in significant adverse impacts on the amenity of neighbouring uses, by reason of the following factors:
- (i) loss of privacy, daylight or sunlight;
 - (ii) dominance or visual intrusion;
 - (iii) noise or vibration;
 - (iv) smell, dust, heat, odour, gases or other emissions;
 - (v) pollution, contamination or the use of / or storage of hazardous substances; and
 - (vi) external lighting.
- 4.28 Policy DES8 seeks to promote sustainability by ensuring that all new developments seek to minimise the carbon and energy impacts of their design and improve resilience to the effects of climate change.
- 4.29 Policy ENV1 seeks to protect the district's landscape, countryside and rural areas from harmful development. Development will only be permitted where it protects and, where possible enhances, features that contribute to the nature and quality of the landscapes. Development which supports economic growth in rural areas will be supported provided it conserves and enhances the landscape, countryside and rural areas.
- 4.30 Policy ENV2 states that development likely to result in, either directly or indirectly, the loss or deterioration or harm of priority species, will only be permitted if:
- (i) the need for, and benefits of the development in the proposed location outweighs the adverse effect on the interests;
 - (ii) it can be demonstrated that it could not reasonably be located on an alternative site that would result in less or no harm to the interests; and
 - (iii) measures will be provided (and secured through planning conditions or legal agreements), that would avoid, mitigate or as a last resort, compensate for the adverse effects resulting from development.
- 4.31 Policy ENV3 states that Development that will conserve, restore and enhance biodiversity in the district will be supported. All development should provide

a net gain in biodiversity where possible. As a minimum, there should be no net loss of biodiversity. All proposals should be supported by evidence to demonstrate a biodiversity net gain using a recognised biodiversity accounting metric. Planning permission will only be granted if impacts on biodiversity can be avoided, mitigated or, as a last resort, compensated fully.

- 4.32 Policy ENV11 states that development proposals should be appropriate to their location and should be designed to ensure that the occupiers of a new development will not be subject to the effects of pollution. Development on contaminated land will not be permitted unless the contamination is effectively treated by the developer to prevent any harm to human health and the natural environment.
- 4.33 Policy ENV12 seeks to protect the amenity of the natural environment and neighbouring uses from any significant adverse impacts from new development, by reasons of such things as noise or vibration; artificial light, or various polluting emissions.
- 4.34 Policy EP3 requires development proposals for residential use to ensure that adequate facilities are provided for the sorting, storage and collection of waste and recycling.
- 4.35 Policy EP4 provides, amongst other things, that all developments incorporate a sustainable drainage strategy to ensure that runoff rates are attenuated to greenfield run-off rates; and enhance water quality and biodiversity.
- 4.36 Policy H1 states that proposals for new residential caravan and mobile home sites to accommodate people who do not meet the planning definition for Gypsies will be considered in accordance with this policy. Such development will generally be permitted on allocated sites. On unallocated sites, however, planning permission will only be permitted where:
- i) it is for affordable housing on a rural exception site or entry level housing scheme; or
 - ii) it is for specialist housing for older people in locations with good access to public transport and local facilities; or

- iii) it is development within the existing built up areas of towns and larger villages as defined in the settlement hierarchy (shown in Appendix 7); provided an important open space of public, environmental, historical or ecological value is not lost, nor an important public view harmed; or
- iv) it is infilling, and brownfield sites within smaller and other villages as defined in the settlement hierarchy; or
- v) it is brought forward through a community right to build order; or
- vi) there are other specific exceptions/circumstances defined in a Neighbourhood Development Plan and/or Neighbourhood Development Orders; or
- vii) it would bring redundant or disused buildings into residential use and would enhance its immediate surroundings; or
- viii) the design is outstanding or innovative and of exceptional quality and would significantly enhance its immediate setting.

4.37 Policy H14 of the local plan identifies a requirement for 10 pitches to be provided on allocation sites identified in Part 1 of the policy over the period of the plan. Of those required pitches 8 remain to be delivered. However, the council is currently unable to identify a supply of specific deliverable sites sufficient to provide 5 years' worth of required pitches and therefore has a zero years' supply of pitches. Part 2 of policy H14 also provides a criteria-based policy for determining proposals that come forward on unallocated sites. These additional proposals will be permitted where it is demonstrated that the following criteria have been met:

- (i) the capacity of the site can be justified to meet needs for further Gypsy, Traveller and Travelling Showpeople sites, or extensions to existing sites;
- (ii) the site is not located within the Oxford Green Belt unless very special circumstances are demonstrated;
- (iii) the proposal will not have an unacceptable impact on the character and appearance of the landscape and the amenity of neighbouring properties, and is sensitively designed to mitigate visual impacts on its surroundings;
- (iv) there are no adverse impacts on the significance of heritage assets;

- (v) the site has safe and satisfactory vehicular and pedestrian access to the surrounding principal highway network. The site will be large enough to enable vehicle movements, parking and servicing to take place, having regard to the number of pitches/plots on site;
- (vi) the site can be provided with safe electricity, drinking water, sewage treatment and waste disposal facilities; and
- (vii) no significant barriers to development exist in terms of flooding, poor drainage, poor ground stability or proximity to other hazardous land or installation where other forms of housing would not be suitable.

4.38 Policy INF4 requires all new development to be served and supported by appropriate onsite and off-site infrastructure and services.

4.39 Policy TRANS5 of the local plan requires proposals for all types of development to: provide for a safe and convenient access for all users to the highway network; provide safe and convenient routes for cyclists and pedestrians; provide for covered, secure and safe cycle parking; be designed to facilitate access to public transport; be served by an adequate road network without creating traffic hazards; and provide for loading, unloading, circulation and turning space in accordance with Oxfordshire County Council parking standards.

Emerging Joint Local Plan 2041

4.40 The Council is preparing a Joint Local Plan covering South Oxfordshire and Vale of White Horse, which when adopted will replace the existing local plan. Currently at the Regulation 18 stage, the Joint Local Plan Preferred Options January 2024 has limited weight when making planning decisions. The starting point for decision taking will remain the policies in the current adopted plan.

Neighbourhood Plan

4.41 Towersey Neighbourhood Plan was adopted as part of the development plan on 14 December 2023. The following planning policies are relevant to a

consideration of the current appeal, copies of which can be found at **Appendix 48:**

- TOW1 – Village boundaries
- TOW4 – Design
- TOW7 - Biodiversity

4.42 Policy TOW1 states that proposals for development outside the Village Boundary will only be supported where they are considered appropriate rural development as defined by the NPPF, and are consistent with other policies in the development plan including the other policies in this Plan.

4.43 Policy TOW4 states that development proposals should sustain and where practicable enhance the character of the Parish, appropriate to their scale, nature and location.

4.44 Policy TOW7 seeks to maintaining and, where practicable, improving biodiversity assets including, trees, hedgerows and land of biodiversity value, in the design of their layouts and landscaping schemes.

South Oxfordshire Landscape Character Assessment (2017)

4.45 The Site is situated in the ‘undulating open vale’ of the ‘Clay Vale’ landscape character area. This is described in the South Oxfordshire District Landscape Character Assessment 2017, relevant extracts of which can be found at **Appendix 49.**

Joint Building Design Guide

4.46 The South Oxfordshire and Vale of White Horse Joint Design Guide is a Supplementary Planning Document adopted in June 2022 and is a material consideration when determining planning applications. Relevant extracts of the Joint Design Guide are held at **Appendix 50.**

4.47 The Joint Design Guide under the heading of ‘Place and Setting’ emphasises the importance of undertaking a contextual assessment of the site before undertaking development in order to inform good design. This includes

among other things: the landscape character of the area; attractive views; land uses adjacent to the site and how these will be impacted; the settlement structure of the site and surrounding area; and the built character of the area (scale, form and massing).

- 4.48 The Joint Design Guide under the heading of 'Built Form' emphasis respect for local context whilst striving for excellence in architectural quality and sustainability as a key goal. Development should respond positively to the character and local vernacular; be sensitive to its context regarding scale, massing and height; and work with and respond positively to the existing landscape, topography, settlement pattern and plot patterns. Buildings in rural and lower density areas should be integrated into their landscape setting and site contexts in a sensitive manner. Buildings should not be located on exposed sites where the buildings will become a dominant visual feature to the detriment of the existing landscape character.

Chartered Institute of Highways & Transportation - 'Providing for Journeys on Foot'

- 4.49 The established advice for walking is contained within the document 'Providing for Journeys on Foot' published by the Chartered Institute of Highways and Transport (CIHT) in 2000 and 'Planning for Walking' by the CIHT in 2015. Table 3.2 of CIHT2000 (see **Appendix 51**) sets out the acceptable walking distances. The guidelines in Table 3.2 are:

	Town centre (metres)	Communing/School and sightseeing (metres)	Elsewhere (metres)
Desirable	200	500	400
Acceptable	400	1,000	800
Preferred Maximum	800	2,000	1,200

- 4.50 While it may be suggested that the acceptable walking distance guidelines stated in CIHT2000 are dated, that concern is not borne out by the information contained within Table NTS0303d the National Transport Survey

2021 (see **Appendix 52**). This survey shows that between 2002 and 2022 the average walking trip length has remained relatively constant at 0.7 miles (1.12 km). Those national survey results suggest that individuals' attitudes towards walking trip lengths, have not altered appreciably and that there is no particular issue with the currency of the guidance contained in CIHT2000.

- 4.51 In any event, the more recent document 'Planning for Walking' (CIHT2015) (see copy at **Appendix 53**) cross references to CIHT2000 in sections 4 and 6, indicates that, irrespective of the age of its acceptable walking guidelines, they continued to have currency.

5.0 CASE FOR THE COUNCIL

Appeal A & Appeal B Ground (a) - That planning permission should be granted for what is alleged in the notice (Appeals A and B).

5.1 The planning issues relevant to the assessment of both Appeal A in connection with the refusal of planning application P24/S0941 and the ground (a) appeal in connection with Appeal B against enforcement notice SE23/312, are materially the same, namely:

- Spatial Strategy (Sustainability);
- Provision of Gypsy Traveller Sites;
- Gypsy Traveller Status & Personal Circumstances;
- Countryside and Landscape Impacts;
- Good Design and Respect for Local Distinctiveness;
- Highway Safety and Convenience;
- Amenity Impacts;
- Contamination;
- Biodiversity;
- Drainage; and
- Deliberate Unauthorised Development.

I will therefore consider these matters together.

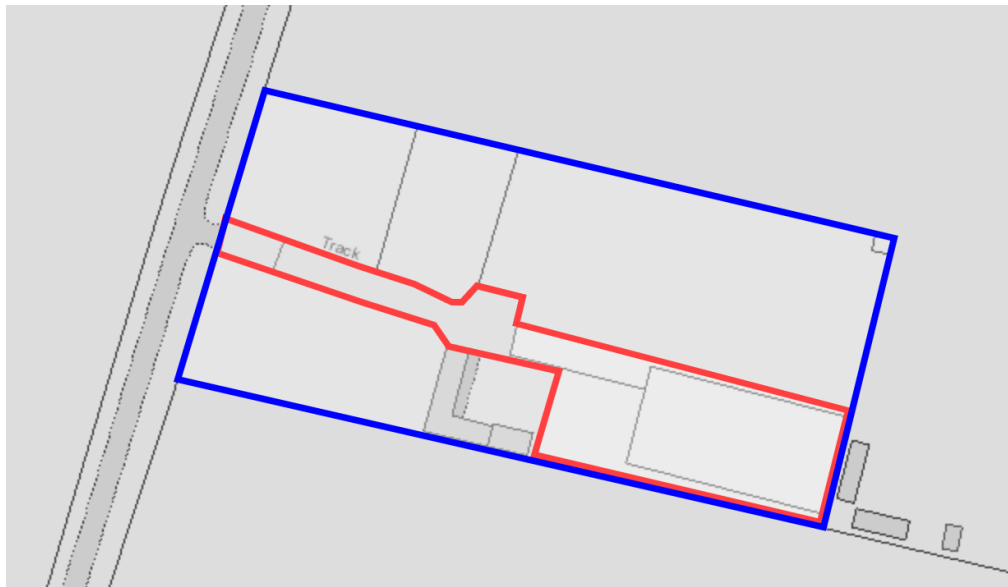
5.2 Before considering the above planning policy issues, however, I will briefly consider the differences between the developments covered by these appeals, including the descriptions of the developments and the relevant planning unit(s).

Development Descriptions and Planning Units

5.3 Appeal A in connection with the refusal of planning application P24/S0941/FUL seeks permission for the “*change of use of land to use as a residential caravan site for 3 gypsy families, including the stationing of 6 caravans of which no more than 3 are to be static caravans/mobile homes, together with the laying of hardstanding*”. This is a part retrospective proposal, that seeks to retain some of the unauthorised facilitating

development that has already been undertaken by the appellant. In the council's letter to the applicant dated 12 April 2024 (**Appendix 44**), the council did seek clarification from the applicant's agent regarding the scope of existing unauthorised works (both within the red and blue edged areas) that are proposed to be retained in connection with the planning application. However, no response was received from the applicant; nor has this matter been addressed in the information submitted in support of the current appeals.

- 5.4 The site plan submitted in support of the planning application provides for planning unit covering 0.2ha, which represents only part of the overall holding of 0.8ha. The following plan shows the application area (edged red) in the context of the overall holding (edged blue).



- 5.5 The balance of the site is therefore proposed to be retained as open paddocks, presumably in connection with its existing lawful use for the keeping of horse. However, the retention of the barn and stables within the same compound as the proposed residential use, would suggest a mixed use of the entire site. In which case the planning unit should extend to the entire 0.8ha. The absence of any suitable outdoor amenity spaces within the area covered by the application area would also suggest that the blue edged area provides some element of outdoor recreation to the proposed occupants of the caravans. This again suggests that the planning unit should cover the wider site. This matter was also raised by the council in its letter to the applicant dated 12 April 2024 (**Appendix 44**). Again, no response was

received from the applicant; nor has this matter been addressed in the information submitted in support of the current appeals.

- 5.6 At the very least it would appear that the applicant is seeking to retain, as part of the Appeal A proposal, the raised development platform that has been created on the site. Contrary to the appellant's claim, this raised platform exceeds the scope of development approved by extant planning permission P22/S3712/FUL for the barn conversion. This platform was created as a result of an engineering operation covering the wider site, with material sourced from the blue edged area being deposited within the red edged planning application area (see photographs at **Appendices 6 and 29**). Again, the red edged area of the application fails to capture the overall area covered by these facilitating operations.
- 5.7 The ground (a) appeal, in the case of Appeal B, gives rise to deemed planning applications for the matters described in the enforcement notice as constituting the alleged breaches of planning control, being: *"...the material change of use of the land from keeping of horses to a mixed use, namely 1) keeping of horses; and 2) the stationing of four caravans for residential use, together with facilitating development including: (i) earthworks to clear the site of vegetation and create a development platform; (ii) the laying of a hardstanding driveway and parking and manoeuvring areas; (iii) the erection of close-boarded fences and ornamental pillars and gates; and (iv) the installation of poles mounted with external lighting and closed-circuit television surveillance equipment"*.
- 5.8 In the council's view, the enforcement notice correctly identifies the mixed use nature of the development as it existed at the time that the notice was issued. The plan attached to the notice also correctly identifies the planning unit and the full scope of development facilitating the material change of use.
- 5.9 Having regard to the extent to which the unauthorised development has continued to evolve subsequent to the issuing of the enforcement notices on 5 June 2024 (compare **Appendices 6 and 7**), the council will ask the Inspector to exercise their power under Section 176 of the Town and Country Planning Act 1990 by amending the and notice as required to capture the full

extent of still evolving breach of planning control. This can be done without prejudice to the appellant.

Spatial Strategy (Sustainability)

- 5.10 The presumption in favour of sustainable development lies at the very heart of government guidance contained in the NPPF. Paragraph 8 identifies three overarching and interdependent objectives that need to be pursued in a mutually supportive way in order to achieve sustainability – these are economic, social and environmental objectives. Paragraph 86 of the NPPF requires local planning authorities to define a network of town centres and settlements, in which new development for mixed purposes (housing, commercial, leisure and other uses) can be encouraged to grow in order to build a strong and sustainable economy.
- 5.11 Paragraphs 13 of the PPTS emphasises the importance of ensuring that traveller sites are sustainable economically, socially and environmentally; and paragraph 25 states that local planning authorities should *“very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan”*.
- 5.12 The thrust of this government guidance is carried forward in policy STRAT1 of the local plan, which seeks to focus new development on existing towns and villages; and protect and enhance the countryside by ensuring that outside of the towns and villages any change relates to very specific needs such as those of the agricultural industry or enhancement of the environment. Policy DES8 seeks to promote sustainability by ensuring that all new developments seek to minimise the carbon and energy impacts of their design and improve resilience to the effects of climate change. Policy TRANS5 requires proposals for all types of development to provide, among other things, safe and convenient routes for cyclists and pedestrians, including links to off-site walking and pedestrian links.
- 5.13 Policy TOW1 of the neighbourhood plan provides that proposals for development outside the village boundary will only be supported where they

are considered appropriate rural development as defined by the NPPF and are consistent with other policies in the development plan.

- 5.14 In the circumstances of the present case the enforcement site is situated outside the built-up limits of the nearby small village of Towersey and is therefore in the countryside. The site is physically separate and remote from the settlement and is therefore in an isolated location within the meaning of paragraph 83 of the NPPF. The unauthorised development does not benefit from any exception under either the NPPF or development plan that would justify its provision in this isolated and unsustainable location in the countryside.
- 5.15 The enforcement site is situated approximately 200m north of the built-up limits of Towersey. The village provides no services other than a public house approximately 800m away and a bus stop approximately 500 metres away, which provides a limited bus service to Thame on Tuesdays and Thursdays only (on a trial basis only). The nearest railway station is at Thame Parkway approximately 8km away. The nearest services are in Thame. These include the nearest food store (2.6 km); school (2.0km); child nursery (2.0km), medical centres (3.0km) and dental surgery (3.5km).
- 5.16 The travel distances to all of the abovementioned facilities would appear to exceed both the desirable and acceptable walking distances outlined in the established advice for walking 'Providing for Journeys on Foot' published by the Chartered Institute of Highway and Transport (see table below). They also either exceed or sit just within the maximum recommended limits of this guidance.

	Town centre (metres)	Communing/School and sightseeing (metres)	Elsewhere (metres)
Desirable	200	500	400
Acceptable	400	1,000	800
Preferred Maximum	800	2,000	1,200

- 5.17 Windmill Road (immediately adjacent to the enforcement site) and other roads on the route to Thame are unlit and have no separate footpath and are, in places, subject to national speed limit (60mph). These factors combine to discourage both walking and cycling to and from the site and make it unsafe to do so. The site does not therefore have safe and convenient routes for cyclists and pedestrians, including links to off-site walking and pedestrian links. This is a concern that is shared by the Oxfordshire County Council as Highway Authority (see **Appendix 36**).
- 5.18 I acknowledge that the nomadic lifestyle of gypsies and travellers whilst engaged in travelling, involves a higher use of private vehicle and reduced opportunities for using public transport. In the context of the application site, however, where the owners are more settled in order to avail themselves of local services and facilities, the same does not apply. Indeed, the PPTS does not suggest that sustainability, should not apply to gypsy and traveller sites in the same way as other residential land uses. Rather, it endorses the principles of sustainability when assessing the suitability of gypsy and traveller sites and requires local planning authorities to *“very strictly limit new traveller site development in the open countryside that is away from existing settlements or outside areas allocated in the development plan”*.
- 5.19 In the circumstances of the present case, the site is not closely linked to nearby settlements through sustainable transport modes (as defined in the NPPF) and the occupiers of the site would be almost completely reliant on the use of private motor vehicle when accessing facilities and services.
- 5.20 The development also fails to achieve a satisfactory balance between the economic, environmental and social objectives necessary to achieve sustainable development.
- 5.21 Economically, the owner has failed to make a case in support of the development other than to suggest that the site will provide a home base from which the applicant and his two grown sons will travel for work.
- 5.22 Environmentally, the development is harmful to the character of the landscape and intrinsic value of the countryside; contrary to principles of good

design and respect for local distinctiveness, which is a key element of sustainability; contrary to the amenity of the area; results in a net loss of biodiversity; fails to adequately address onsite contamination issues; and fails to mitigate and adapt to climate change by minimising the need to use private motor vehicles to access local services.

5.23 Socially, the personal circumstances of the owner and his family, to the limited extent that these has been disclosed, do not , in my opinion, outweigh the development's failure to achieve these other economic and environmental objectives.

5.24 The develop is therefore contrary to policy STRAT1, DES8 and TRANS5 of the local plan; policy TOW1 of the neighbourhood plan; and government guidance contained in the NPPF and the PPTS aimed at achieving sustainable development.

Provision of Gypsy Traveller Sites

5.25 Paragraph 25 of the PPTS states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. In the circumstances of the present case the site is situated in the open countryside and away from the settlement and well exceeds the area, scale and intensity of the extant permission for the barn conversion to a one-bedroom dwelling.

5.26 Paragraph 26 of the PPTS identifies various matters that should be considered when determining planning applications for traveller site, including:

- a) effective use of previously developed (brownfield), untidy or derelict land;
- b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness;
- c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children;

- d) not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.

5.27 The appeal site is not brownfield, untidy or derelict land and it has not been landscaped in a way that positively enhances the environment or increases its openness. Given the unresolved contamination issues and the extent to which the land, including its soil profile and vegetation cover, has been degraded by unauthorised earthworks and the laying of existing and proposed hardstanding material, it is not possible, in my opinion to impose conditions to address the above landscape concerns with any certainty that this harm can be addressed.

5.28 In the case of the Appeal B development, the site has been enclosed by facilitating development comprising close boarded fencing, pillars, gates, CCTV and external lighting in a manner that gives the impression that the occupants are deliberately isolating themselves from the rest of the community.

5.29 The suitability of sites, not allocated under the local plan to support gypsy and traveller development, fall to be assessed against the criteria contained in Part 2 of the Policy H14 of the local plan, including among other things: *“(iii) the proposal will not have an unacceptable impact on the character and appearance of the landscape and the amenity of neighbouring properties, and is sensitively designed to mitigate visual impacts on its surroundings;... v) the site has safe and satisfactory vehicular and pedestrian access to the surrounding principal highway network.”*

5.30 In the circumstances of the present case the proposed development does not have safe and satisfactory access to the surrounding principal highway network. The extent to which the land has been cleared of vegetation and the natural levels of the land altered or proposed to be altered by facilitating earthworks and the laying of hardstanding materials, results in material harm to the character and appearance of the landscape and the visual amenity of the surrounding areas. The earthworks have also resulted in a degradation

of the site to the extent that it is doubtful that the altered site could support any meaningful landscape works that might mitigate this harm.

5.31 Paragraph 27 of the PPTS, states that the lack of a 5-year land supply of gypsy and traveller sites is a significant material consideration weighing in favour of the grant of a temporary planning permission.

5.32 In the circumstance of the present case it is acknowledged that the local plan currently has a zero supply of deliverable sites. This is as explained in the consultation response prepared by Ryan Hunt³ from the Council's Policy Team at **Appendix 40**. In my opinion, however, the lack of a 5-year supply of sites is outweighed by other material considerations, including the adverse impacts of the development in terms of:

- the character of the landscape;
- the intrinsic value of the countryside;
- the character and visual amenity of the surrounding area;
- the unsustainable location of the site;
- the net loss of biodiversity;
- the failure to adequately address contamination risks;
- the failure to adequately address surface and foul water drainage impacts; and
- the deliberate unauthorised nature of the development already undertaken.

5.33 The proposed development is therefore contrary to policy H14 of the local plan and government guidance contained in the PPTS relating to the appropriate location and development of gypsy and traveller sites.

Gypsy Traveller Status and Personal Circumstance

5.34 On numerous occasions during the course of the council's enforcement investigation the owner repeatedly denied that he and his family were gypsy

³ Mr Hunt can make himself available at the Hearing, if required, to answer any questions regarding the need and supply of gypsy /traveller site and the progress being made on the preparation of a new Gypsy Traveller Accommodation Assessment (GTAA). This new GTAA will inform the Reg 19 pre-submission version of the South Oxfordshire and Vale of White Horse Joint Local Plan 2041, which is due for consultation in Autumn 2024 and adoption by the end of 2025.

travellers (see various site visit notes and records of telephone calls at **Appendices 29 and 30**). An admission to the contrary was first offered to the council by his previous planning agent in a telephone conversation on 2 November 2023, though no information was ever submitted in support of this claim.

- 5.35 This matter was raised by the council in its letter to the applicant dated 12 April 2024 (Appendix 44), to which no response was received. Again, this matter has not been addressed in the information submitted in support of the current appeals.
- 5.36 The planning application provided only limited information regarding the personal circumstances of the proposed occupiers of the site. According to the information submitted with the application, the site is proposed to be occupied by the owner, his two grown sons and their respective families. The applicant claimed that this is in order to provide a permanent home base from which they can travel for the purpose of making their livings.
- 5.37 Only limited additional information has now been submitted in support of the current appeal, confirming that the occupiers of the site include 7 x adults and 5 x children. The appellant also refers to serious health issues requiring specialist health care; efforts to register the children in school; and private tuition. However, no corroborating evidence has been submitted in support of these further claims to which the council can attach much weight when considering the best interests of the children (i.e. doctor's certificate, confirmation from the school of registration, evidence of private tuition, etc.). Conversely, the appellant's failure to address onsite contamination issues and the undesirable highway conditions outside the site weigh against the best interests of the children.

Countryside and Landscape Impacts

- 5.38 Paragraph 180 of the NPPF states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. The thrust of this guidance is carried forward in policy ENV1 of the local plan, which states that the districts

landscape, countryside and rural areas will be protected against harmful development. Policy H14 of the local plan states, among other things, that proposals for gypsy and traveller sites: *“will not have an unacceptable impact on the character and appearance of the landscape...”* Paragraphs 25 of the PPTS states that local planning authorities should *“very strictly limit new traveller site development in open countryside.”* Paragraph 26 states, among other things, that when considering applications, local planning authorities should attach weight to sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness.

5.39 The Site is also situated in the ‘undulating open vale’ of the ‘Clay Vale’ Landscape Character Area as identified in the South Oxfordshire Landscape Character Assessment (SOLA). This landscape is described as:

- Low-lying, undulating or gently rolling land form.
- Large-scale farmland, mostly under intensive arable cultivation.
- Typically large fields, with rectilinear pattern of field boundaries.
- Weak structure of tightly clipped or gappy hedgerows, with few hedgerow trees.
- Open, denuded and exposed character, with high intervisibility.
- Distinctive elevated and expansive character on higher ground, with dominant sky and long views.
- Predominantly rural character but some localised intrusion of main roads (including M40/A40), overhead power lines and built development.

5.40 The recommended strategy for the management of this landscape includes, among other things:

- Strengthening the hedgerow network with hedgerow trees such as oak and ash.
- Minimising the visual impact of intrusive land uses at the fringes of towns, villages and farms with the judicious planting of tree and shrub species characteristic of the area.
- Maintaining the nucleated pattern of settlements, and promoting the use of building materials to maintain vernacular style and a scale of development and that are appropriate to the Clay Vale.

- Maintaining local distinctiveness by controlling the quality of built development taking into account its scale, setting and use of local building materials.
- Protect the sparsely settled character of the landscape and the integrity and vernacular character of the established villages.

5.41 The proposed developments, in my assessment, work contrary to the above policies and landscape management strategies. In this regard the facilitating development has resulted in the widespread clearance of existing vegetation, including grassland, scrub and hedgerows. Unauthorised earthworks and the laying of areas of hardstanding materials, have resulted in a significant alteration to the natural levels of the land as it falls away from the highway and towards the rear boundary. This impact will only increase if the proposal put forward under Appeal A succeeds. The unauthorised earthworks have also degraded the land, diminishing its ability to support landscaping. The caravans themselves are clearly of a non-vernacular character and together with the related vehicles and residential paraphernalia are contrary to the rural character of the site and its surroundings. The development (both as constructed and proposed) has and will have an urbanising impact, which sits uncomfortably in the landscape and is contrary to the rural character of the countryside and contrary to the landscape setting of the village.

5.42 The development is therefore contrary to policy ENV1 of the local plan; and government guidance contained in the NPPF and PPTS aimed at protecting the intrinsic value of the countryside and the landscape from adverse development.

Good Design and Respect for Local Distinctiveness

5.43 The NPPF recognises good design as a key element in achieving sustainable development. Paragraph 26 of the PPTS states that when considering applications, local planning authorities should attach weight to promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children. Policy DES1 of the local plan states that all new developments must be of a high-quality design that uses land efficiently while

respecting the existing landscape character. Policy DES2 requires all new development to be designed to reflect the positive features that make up the character of the local area and both physically and visually enhance and complement the surroundings. Policy DES5 requires proposals for new development to demonstrate that the size, location and character of gardens and outdoor amenity spaces have been considered as an integral part of the design and not as an afterthought and not compromised by parking areas. Policy H14 states that new proposals for gypsy and traveller sites should be sensitivity designed to mitigate visual impacts on their surroundings. Policy TOW4 of the neighbourhood plan similarly states that development proposals should sustain and where practicable enhance the character of the Parish, appropriate to their scale, nature and location.

- 5.44 The development, both as constructed and proposed, is of a character and appearance that sits uncomfortably in an otherwise open and tranquil rural setting. The multiple caravans, by their very nature, do not respect the local distinctiveness of the area, being of a standardised, modern, utilitarian and non-vernacular design. This development does not physically or visually enhance or complement its surroundings.
- 5.45 The facilitating development, include close boarded fencing, ornamental entrance gates and pillars, and externally lighting and CCTV installations are also distinctly urban in their character and appearance and are contrary to the distinctiveness of surrounding development.
- 5.46 The development makes no provision for a suitable outdoor amenity space containing adequate landscaping or play areas for children separate and distinct from parking and manoeuvring areas. The unauthorised earthworks and laying of hardstanding areas already undertaken by the owner have diminished the ability of the site to support any meaningful landscaping. As it is the owner's claim that the existing hardstanding has been laid in order to encapsulate contamination and, given the extent to which contaminants may have been spread over the wider site by the unauthorised earthworks undertaken by the appellant, the ability to provide a suitably landscaped play area for children is limited.

- 5.47 The development is therefore contrary to policies DES1, DES2, DES5 and H14 of the local plan; policy TOW4 of the neighbourhood plan; and government guidance contained in the NPPF and PPTS aimed at achieving good design and respect for local distinctiveness.

Highway Safety and Convenience

- 5.48 Oxfordshire County Council (OCC), as local highway authority has expressed concern at the unsustainable location of the development in terms of its sustainability, which has already been discussed in more detail in paragraph 5.14 – 5.19 above (see also the submission at **Appendix 36**).
- 5.49 OCC otherwise raised no objection to the development, subject to conditions regarding the vision splay dimensions, the retention of parking and manoeuvring areas and the provision of bicycle parking facilities.
- 5.50 The unauthorised development is therefore contrary to policy TRANS5 of the local plan only in so far as it fails to *“provide safe and convenient routes for cyclists and pedestrians, both within the development, and including links to rights of way and other off-site walk and cycle routes...”*.

Amenity Impacts

- 5.51 Policy DES6 of the local plan seeks to protect the amenity of neighbouring uses, in relation to such factors as: loss of privacy, visual intrusion, noise and vibration, external lighting and other polluting emissions. Policy ENV12 similarly seeks to protect the natural environment and the amenity of neighbouring users from the impacts of such things as noise and vibration and artificial lights, by ensuring that development proposals are in sustainable locations and are appropriately designed.
- 5.52 The nearest neighbouring residential property is situated approximately 200m away from the enforcement site. At this distance the development will not have an adverse impact on the amenity of the neighbours with regard to privacy, visual intrusion, noise or vibration. Common to many of the objections received from neighbours, however, was concern regarding the harmful impacts that external lighting is having on the amenity of the area.

The impact of the existing unauthorised development on dark skies was also referred to in the submission received from Campaign to Protect Rural England (see **Appendix 42**).

- 5.53 The applicant was invited to submit an outdoor lighting scheme in support of the planning application (see **Appendix 44**), however, no response to that invitation was received; nor has this matter been adequately addressed in connection with the current appeals.
- 5.54 The unauthorised development as constructed in its provision of outdoor lighting is considered contrary to the amenity of the area, the natural environment and the dark sky setting. This is contrary to policies DES6 and ENV12 of the local plan. Insufficient information was submitted with the planning application for a proper assessment of the proposed development.

Contamination

- 5.55 Policy ENV11 of the local plan seeks to protect the occupiers of new development from the potential of harm to health from contamination resulting from previous land uses.
- 5.56 Contrary to the owner's understanding, the impacts of contamination from the former agricultural use of the site have not been resolved in connection with extant planning permission P22/S3712/FUL for the barn/stable conversion.
- 5.57 Although the Phase 2 and Phase 3 contamination investigation and remediation strategy approved by the council in connection with planning permission P22/S3712/FUL identified areas of contamination over the wider site, these sought only to address the remediation of land within the approved red edged area covered by the above permission.
- 5.58 There was only one location within the area approved by planning permission P22/S3712/FUL where microbial contamination was identified. The report therefore recommended the remediation of that area alone, by the excavation of the Made Ground and its replacement with clean certified fill to a depth of 600mm around a 2 metre radius of this area. Upon completion, these works

were then to be validated by a remediation verification report prepared by a qualified Environmental Consultant.

- 5.59 The unauthorised earthworks undertaken by the owner to 1) raise the level of the land, using fill obtained from other areas of the wider site, which were themselves subject to contamination; and 2) lay hardstanding material over the top of this in an alleged effort to encapsulate the contaminants, was not agreed to by the council. These works were not approved by planning permission P22/S3712 and are therefore unauthorised.
- 5.60 The planning application which is the subject of Appeal A and the unauthorised works that are the subject of Appeal B have also moved well beyond the red edged area approved by planning application P22/S3721. The remediation of the wider site was not addressed in the conditions of planning permission P22/S371 or the remediation strategy approved by the above planning permission.
- 5.61 Furthermore, the extent to which the owner has now altered the site by unauthorised earthworks that have redistributed soil over entire site, renders previous investigations into site contamination potentially redundant (see consultation response at **Appendix 37**).
- 5.62 The potential harm to the health of the occupants of the unauthorised development, from existing contaminants on the site has not been adequately addressed by the owner. This is contrary to policy ENV11 of the local plan and contrary to the best interest of the children.

Biodiversity

- 5.63 Policy ENV2 of the local plan seeks to protect priority species from loss, deterioration or harm arising from development. ENV3 seeks to protect biodiversity by ensuring that new development achieves a net gain in biodiversity where possible. As a minimum there should be no net loss of biodiversity. All proposals should be supported by evidence to demonstrate a biodiversity net gain using a recognised biodiversity accounting metric. Policy TOW7 of the neighbourhood plan similarly seeks to maintaining and, where practicable, improving biodiversity assets including, trees, hedgerows

and land of biodiversity value, in the design of their layouts and landscaping schemes. These policies are consistent with government guidance contained in paragraphs 185-188 of the NPPF. However, in the circumstances of the present case, these policies are not entirely consistent with the mandatory requirement for Biodiversity Net Gain (BNG) introduced by Schedule 7A of the Town and Country Planning Act 1990, which does not apply to retrospective developments. These policies remain relevant to the circumstances of the present case, however, to the extent that they seek to prevent a net loss of biodiversity.

- 5.64 The baseline condition of the site for the assessment of biodiversity impacts of the development is best seen in the aerial photograph from 2020, which shows the condition of the site prior to the unauthorised development commencing. When compared with the drone images of the post development site at **Appendices 6 and 7**, the extent to which both the planning application site and wider enforcement site have been removed of grass, scrub and hedgerows can be clearly seen.
- 5.65 The unauthorised earthworks have resulted in the removal of almost all existing vegetation resulting in a net loss of biodiversity. The unauthorised hardstanding material that has been laid along the access driveway, sits above the surface of the adjacent paddocks by approximately 0.3 – 0.4 metres. This has obstructed the natural drainage of the land rendering the adjoining paddocks waterlogged and degraded to an extent that will likely inhibit the reestablishment of the grassland habitats in the adjoining paddocks. It is unlikely that this net loss can be addressed by any scheme for onsite compensation given the degraded condition of most of the land by the unauthorised works undertaken.
- 5.66 The net loss of biodiversity resulting from the unauthorised works is contrary to policy ENV3 of the local plan. Some harm to protected species is also likely to have occurred and, in the absence of an ecological survey, it is not known what mitigation or compensation would be required to achieve compliance with Policy ENV2 (see consultation response at **Appendix 39**).

- 5.67 The appellant was invited to address this issue in connection with his planning application (see **Appendix 44**) but did not respond to that invitation; nor has the matter been adequately addressed in connection with the current appeals.

Drainage

- 5.68 Policy EP4 of the local plan requires all developments to provide a drainage strategy for a sustainable drainage system that ensures that runoff rates are attenuated to greenfield run-off rates. Sustainable drainage systems should also seek to enhance water quality and biodiversity. Policy H14 requires that gypsy and traveller sites should have access to safe sewage treatment and there should be no barriers to development in terms of flooding or poor drainage.
- 5.69 In the circumstances of the current case, the council's drainage engineer has advised that the underlying geology for the area is 'gault mudstone', which is recognised as being impermeable in nature. As there does not appear to be any water course or public sewers in the site's proximity, drainage for the site would be reliant on infiltration methods.
- 5.70 Percolation testing of the site is therefore required in support of any proposal for surface or foul water drainage reliant on infiltration; or failing this the demonstration of an alternative method of drainage. Failure to demonstrate an appropriate and feasible method of drainage is contrary to policies EP4 and H14 of the local plan (see consultation response at **Appendix 35**).
- 5.71 The appellant was invited to address this issue in connection with his planning application (see **Appendix 44**) but did not respond to that invitation; nor has the matter been adequately addressed in connection with the current appeals.

Deliberate Unauthorised Development

- 5.72 In a letter dated 21 August 2015 the Chief Planning Officer in England issued a statement setting out changes to national planning policy. The government is concerned about the harm that is caused where the development of land

has been undertaken in advance of obtaining planning permission. In such cases there is no opportunity to appropriately limit or mitigate the harm that has already taken place. Such cases can involve local planning authorities having to take expensive and time-consuming enforcement action. For these reasons, the Chief Planner's letter introduced a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals.

- 5.73 In the circumstances of the present case the appellant has undertaken development and a materially change the use of the site, not only without planning permission, but in complete defiance of a High Court injunction. The extent of the appellant's deception and absolute disregard for planning control must, in my opinion, add significant weight to the reasons underpinning the decisions to refuse planning permission and enforce against the unauthorised development.

Planning Balance

- 5.74 Paragraph 27 of the PPTS states that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission.
- 5.75 Great weight should also be given to the best interest of any children living on the site. In this regard the owner has provided only limited information regarding the personal circumstances of his family, including health issues and educational needs related to the children. These claimed personal circumstances, however, have not been corroborated from any independent sources any more than the appellant's claim to gypsy traveller status, which the appellant repeated denied during the council's investigation of this matter. The appellant's failure to adequately address contamination issues relating to the site and to make provision for suitable outdoor amenity and play areas also argues against the best interests of the children; as does the unsuitable traffic and pedestrian conditions in the vicinity of the appeal site.

5.76 In my opinion, the lack of a 5 year supply of gypsy and traveller sites together with the personal circumstances of the appellant and his family, do not outweigh the planning harm of the proposed development resulting from other material considerations, including:

- the harmful impact of the development on the intrinsic value and tranquillity of the countryside, to which I attach significant weight;
- the unsustainable location of the site, to which I attached significant weight;
- the net loss of biodiversity resulting from the development to which I attach significant weight;
- the failure of the development to adequately address principles of good design and respect for local distinctiveness to which I attach moderate weight;
- The harmful impact of external lighting on the amenity of the area, the natural environment and the dark sky setting to which I attached moderate weight (Appeal B only)
- The failure of the development to adequately address surface and foul water drainage issues to which I attach moderate weight.
- the fact that intentional unauthorised development has taken place, to which I attach significant weight.

Ground (c) - that matters referred to in the notice do not constitute a breach of planning control

5.77 It is the appellant's claim that:

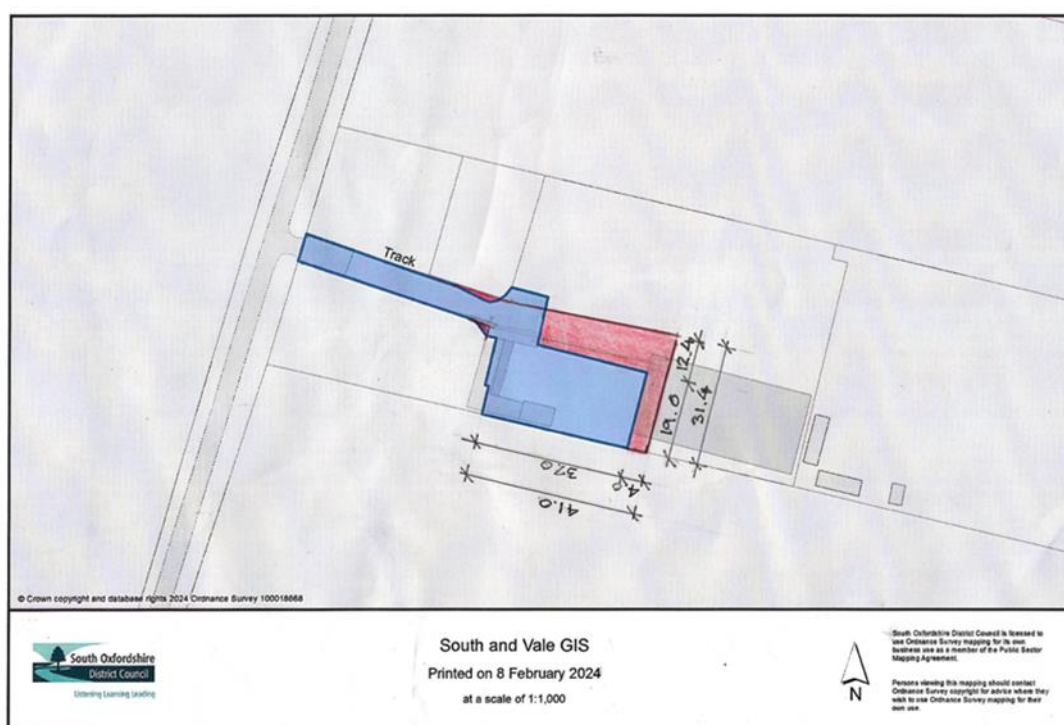
- there was an existing driveway and hardstanding on the land which have been renewed and extended largely in accordance with the planning permission P22/S3712 for conversion of the stable/barn to one-bed dwelling;
- the erection of fencing and replacement of the existing entrance gates has been undertaken in pursuance planning permission P22/S3712 and constituted "permitted development";
- the temporary stationing of a caravan on the land in order to implement the planning permission P22/S3712 is permitted by Class A of Part 5 of

Schedule 2 of the GPDO and an enforcement notice cannot take-away permitted development rights.

Driveway and Hardstanding

- 5.78 In response to the first claim, the council acknowledges that there was an existing access track and manoeuvring area present on the land prior to the unauthorised development occurring. This track and manoeuvring area was largely unformed and at times completely overgrown with grass and constituted a significantly smaller area of the site than the unauthorised hardstanding area as constructed by the appellant. All of this is evident from the series of aerial photographs at **Appendix 5**. Photographs of the site at **Appendices 15 and 18** also show the largely unformed character of the track and manoeuvring area as they existed prior to the unauthorised development occurring.
- 5.79 The unauthorised works undertaken by the appellant constitute more than maintenance and repair of the existing track and manoeuvring area. Rather they constitute an engineering operation for which planning permission is required. The full scope of these works is evident from photographs of site visits undertaken throughout the council's investigation at **Appendix 29** and drone images held at **Appendix 6**. These photographs show that the appellant, as part of an operation covering the entire site and not just the area approved by planning permission P22/S3712, has undertaken earthworks to clear the land of vegetation digging up the existing (unformed) track and manoeuvring areas in the process. A development platform has then been formed, again extending well beyond the area covered by planning permission P22/S3712. This platform was created using material sourced from the wider site, outside of the area covered by the above permission.
- 5.80 The appellant then placed hardstanding material on the land to an extent that again exceeded the area covered by planning permission P22/S3712, by the depositing of a deep layer of course road base material covered with a thinner layer of fine compacted road scalpings. These works resulted in the raising of the track 30-40cm above the level of finished level of the adjacent paddock;

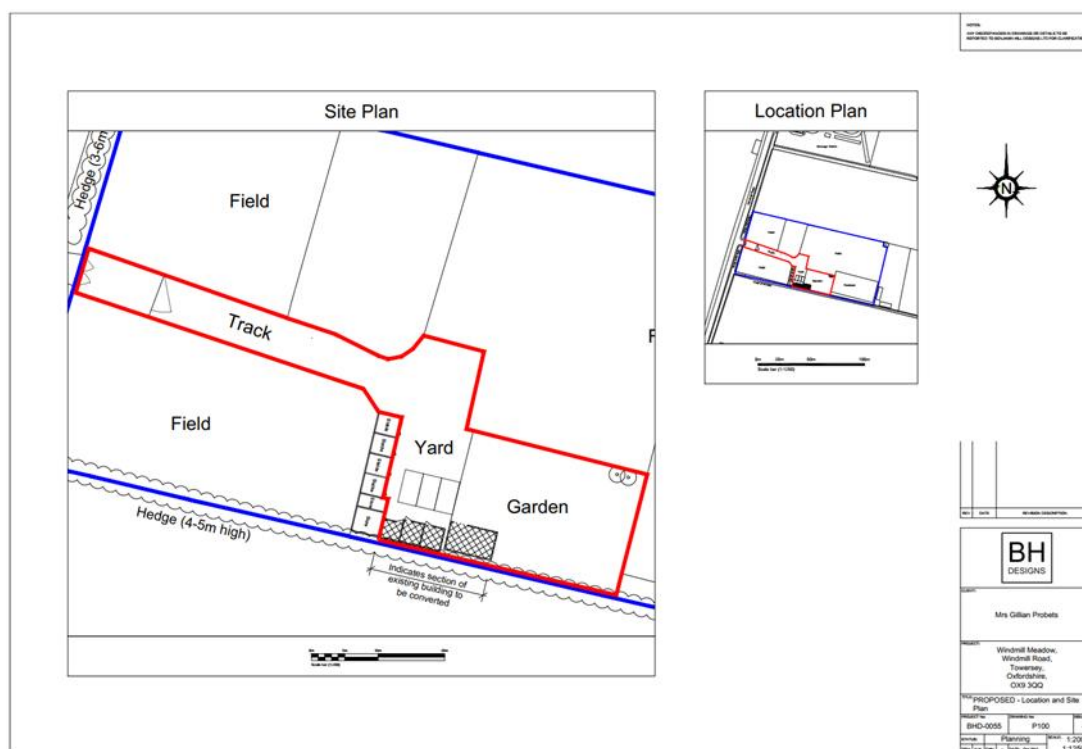
and a development platform that in places exceeds 1.0m above the adjacent field. This has resulted in areas of trapped water in the adjacent fields contrary to sustainable drainage systems (SuDS) principles. The plan below shows the extent to which the laying of this hard standing, in the initial operation exceeded the area covered by planning permission P22/S3712. The appellant has regrettably continued to lay hardstanding materials over larger areas of wider site, subsequent to the issuing of the enforcement notice, which can be seen in the drone images at **Appendix 7**.



- 5.81 Condition 8 of planning permission P22/S3712 (see **Appendix 28**) requires as follows: *“Prior to the first occupation of the development hereby approved a turning area and car parking spaces shall be provided within the curtilage of the site so that motor vehicles may enter, turn round and leave in a forward direction and vehicles may park off the highway. The turning area and parking spaces shall be constructed, laid out, surfaced, drained and completed to be compliant with sustainable drainage (SuDS) principles in strict accordance with specification details to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development...”*
- 5.82 Contrary to condition 8 no specification details for the above required turning and parking spaces were submitted to and approved by the council prior to

the commencement of the unauthorised works by the appellant; nor were the works undertaken by the appellant compliant with SuDS principles as they have disrupted the natural drainage of the wider site. It is unlikely that the council would have given written approval to any specifications for the works undertaken by the appellant, had this condition been complied with.

- 5.83 Furthermore Condition 2 of planning permission P22/S3712 requires the development to be undertaken in accordance with approved plans, including the location and site plan below (see **Appendices 27**). This plan clearly shows the extent of the approved track and yard area, including three car parking spaces, which are distinctly separate from the approved garden area.



- 5.84 Condition 5 of planning permission P22/S3712 requires the development to be undertaken in accordance with the Phase 2 - Environmental Site Investigation (**Appendix 24**) and the Phase 3 - Remediation Strategy (**Appendix 25**) approved under application P22/S2300/DIS on 21 July 2022; and condition 7 requires the submission of a validation report confirming compliance with these works prior to occupation of the development.
- 5.85 The approved remediation strategy outlined in Section 6.4 of the Phase 3 - Remediation Strategy was in three parts as follows:

- Encapsulation of Contaminated Areas Under Buildings and Driveway/Car Parking area. - This strategy was specifically linked to the approved site plan BHD-0055-P1 which shows the extent of the approved building carparking, manoeuvring and soft garden areas.)
- Installation of Engineered Capping Layer in the area of bore hole BH03.
– Under this strategy *“Made Ground within a 2-3m radius surrounding sampling location BH03 will be manually excavated to a maximum depth 600mm (depending on visual signs of contamination observed during the excavation). The Made Ground will be removed and taken to a licenced disposal facility by a licenced waste transport carrier. The soils removed from the excavated areas will be replaced with clean, imported, verified fill materials. The clean fill will consist of a 200mm thick sub-base (i.e. MOT Type 1 or 2) layer and 400mm topsoil”.*
- Installation of Radon Protection Measures. – Under this strategy *“A Radon protection membrane will be installed by appropriately certified and experienced installers and will be verified by an independent verifier”.*

5.86 Contrary to the appellant’s claim these strategies were not presented as alternative option for remediation. Rather, they were to be implemented in concert with one another. The appellant has clearly not implemented the remediation strategy approved in connection with planning permission P22/S3712; nor do the unauthorised works to lay hardstanding materials over extensive areas of the site (allegedly for purposes of remediation) comply with the site plan approved by this permission.

5.87 The unauthorised development does not benefit from planning permission P22/S3712 and the appellant’s ground (c) appeal in so far as it relates to the driveway and hardstanding area should therefore fail.

Fences and Entrance Gates

5.88 The erection of close board fencing did not constitute any part of the development approved by planning permission P22/S3712 for the conversion of barn/stable to a one-bedroom dwelling. Furthermore, most of the close

board fence that is captured by the enforcement notice, has been erected along boundaries of the wider site that fall outside the red edge area (planning unit) approved by planning permission P22/S3712. The appellant's claim that the fencing been undertaken in pursuance planning permission P22/S3712 is completely unfounded.⁴

- 5.89 It is clear from the appellant's claim, however, that he does regard this fencing as facilitating the residential use of the land. Indeed, it is unlikely that domestic style close board fence of this kind would be install in connection with either an agricultural or equestrian use of the land. It is therefore development that facilitates a residential use by contrast with the low level and largely open style fences and gates that characterised the equestrian use of the site prior to the unauthorised development occurring (see pre-development photographs at **Appendices 15 and 18**).
- 5.90 Sections of the close board fencing also exceed 2m in height from the natural level of the land (see site visit notes and photographs dated 2 November 2023 at **Appendix 29**). As single operation, therefore, this fencing cannot be said to be compliant with permitted development rights under Class A, Part 2, Schedule 2 of the GPDO.
- 5.91 The ornamental pillars and gates at the entrance to the site, also well exceed 2.0m in height and do not constitute a mere like for like replacement of the gates that previously existed (see photographs at **Appendix 15**). The pillars and gates do not therefore benefit from permitted development rights; nor did these form part of the development approved by planning permission P23/S3712. Rather, they constitute development facilitating an unauthorised residential use of the land.
- 5.92 The appellant's ground (c) appeal in so far as it relates to the fences, gates and entrance pillars should therefore fail.

Stationing a Caravan (Class A, Part 5 of the GPDO)

⁴ The appellant's claim does, however, support the council's view that the planning unit, encapsulating both the residential use and its facilitating development, should in fact extend to the entire site not just the area covered by the application area.

- 5.93 Class A of Part 5 of Schedule 2 to the General Permitted Development Order (GPDO), when read in conjunction with Paragraph 9 of Schedule 1 to the Caravan Sites and Control of Development Act 1960 grants a permitted development right for the: *"use as a caravan site of land which forms part of, or adjoins, land on which building or engineering operations are being carried out ... if that use is for the accommodation of a person or persons employed in connection with the said operations"*.
- 5.94 The above permitted development right applies specifically to *"persons employed in connection with the said operation"* but does not apply to extended family members not employed in connection with the operation. Nor would the above permitted development right apply to persons living on the site, but employed on land not forming part of, or adjoining, the land on which the building and engineering operations are being carried out.
- 5.95 All of this was conveyed to the appellant's agent in an email dated 15 December 2023 (see **Appendix 32**). In a subsequent email dated 9 January 2024, forming part of the same exchange, the appellant's agent was informed as follows:
- "I would not anticipate, in the normal course of events, that an operation involving the conversion of an existing building to a one bedroom dwelling only, would require the employment of more than two persons who could reasonably be accommodated within a single touring caravan during the course of that operation. Those persons would need to be employed specifically and exclusively in connection with that operation (i.e. not living on the land whilst employed elsewhere).*
- Furthermore, the stationing of a caravan on the site during the course of the operation under the above permitted development right, should not of itself require any alteration to the land (i.e. the laying of hardstanding material, services or the like), for which separate planning permission would be required"*.
- 5.96 In the subsequent exchange of email's ending on the 2 February 2024, following onsite discussions with the appellant, the council agreed to just one

static caravan (not a twin unit) being present on the site during operations to implement planning permission P22/S3712/FUL in compliance with the above permitted development rights. This was on the basis that:

- the caravan would be removed permanently from the land immediately following the completion of the operation, which is anticipated to take no longer than 6 months.
- the caravan would be occupied only by those three persons specifically identified by the appellant's agent as those employed in connection with the operation, namely Darren Smith, Milo Lee and Darren Lee.
- no other person would occupy the caravan or the site at any time during these operations or as long as the caravan remained present on the land.
- the stationing of the caravan on the land would not of itself involve any alteration to the land (i.e. the laying of hardstanding material, services or the like); and
- the only operations to be undertaken are those consistent with the implementation of planning permission P22/S3712/FUL.

5.97 As it currently stands, none of the caravans present on the site benefits from permitted development rights under Class A, Part 5 of the GPDO for the following reasons:

- no operation have been undertaken to implement planning permission P22/S3712 in connection with the conversion of the stable/barn to a one-bedroom dwelling, including the contamination remediation and hardstanding works claimed by the appellant, and there are no ongoing operations being undertaken in connection with this approved development;
- the only ongoing operations being undertaken on the site are for a development for which planning permission has not been granted;
- the caravans are occupied by persons other than those who were alleged to be employed in connection with the approved operation;
- the three persons who were specifically named as employed in connection with the approved operation are engaging in work elsewhere, which is not related to the approved operation.

- the appellant appears to have no intention of undertaking the development approved by planning permission P22/S3712 by the conversion of the barn/stable to a one-bedroom dwelling.

- 5.98 None of the existing caravans present on the site benefit from permitted development rights under Class A, Part 5 of the GPDO for the above reasons. Furthermore, it is the council's view that the implementation of planning permission P22/S3712 for the conversion of the barn/stable to a one-bedroom dwelling is an unlikely fallback option. This opinion is informed by the appellant's comments during site visits undertaken on 1 and 7 February 2024 (see site visit notes at **Appendix 29**), in which he appeared to doubt the viability of implementing the approved scheme given the poor structural condition of the buildings.
- 5.99 The site visit note from 1 February 2024 records, in part that: *"Mr Smith then informed me that he had his engineer inspect the barn and stable buildings that had been approved for conversion to a dwelling. He showed me cracks in the concrete floor of the barn and said that his engineer had expressed surprise that the council had granted permission for the conversion of the building given the poor state of the structure".*
- 5.100 The site visit on 7 February 2024 records, in part, that: *"Mr Smith informed me that what he really wants to do is level the existing barns and stables and construct a really nice dwelling. I informed him that his current permission would not allow him to do that. His permission was for the conversion of existing buildings only and that he could not dismantle, reconstruct or replace the existing building. Anything else would require planning permission, but there was no guarantee would be permission would be granted [Sic.]. Mr Smith acknowledged that he understood this. At one point Mr Smith claimed that all he wants to do was build a nice home for he and his wife to live in. He later appeared to contradict that claim by telling me that he is a man of considerable resources and that this is just a project to him - all he wants to do is build a nice house on the land and sell it for a profit. He then informed*

me that he was thinking of selling the site to others gypsy traveller who could just bring their caravan onto the land”⁵.

5.101 It is the council’s view that the implementation of planning permission P22/S3712 remains an unlikely fallback option. However, if the Inspector is of the opinion that the terms of the notice are contrary to the principle established in Mansi, then it is within the Inspector’s power to amend the requirements of notice under Section 176 of the Act to allow for the temporary stationing of a caravan if compliant with permitted development rights under Class A, Part 5, Schedule 2 of the GPDO. This could be done without injustice to the appellant.

Ground (f) - The steps required by the notice exceed what is necessary to remedy the breach of planning control.

5.102 The appellant’s ground (f) appeal is in two parts, as follows:

- Firstly - It is the appellant’s view that the requirements of the enforcement notice, in so far as they require the digging-up and removal of hardstanding materials from the access driveway, vehicle manoeuvring and parking areas contained within the area edged red on the block plan approved by planning permission P22/S3712/FUL, exceeds what is required to remedy the breach of planning control; and .
- Secondly - The appellant is of the view that the requirement of the notice, in so far as they require the removal of the hardstanding, entrance gates, fencing, or removal of the appellant’s two caravans, which were in situ prior to the alleged change of use occurring, are excessive if the purpose of the notice is to reinstate the land to the condition that it was in prior to the material change of use occurring.

5.103 In response to the first claim, it is noted that unauthorised works undertaken by the appellant to lay hardstanding materials on the access driveway, vehicle manoeuvring and parking areas, constituted more than just maintenance and repair of the largely unformed track and manoeuvring areas

⁵ This was on the basis that other gypsy travellers were not specifically named on the injunction and were not therefore bound by the terms of the injunction.

that existed prior to the breach of planning control occurring. Rather they constitute an engineering operation for which planning permission is required. This is evident from a comparison of the photographs of the pre-existing driveway and manoeuvring area evident in the photographs at **Appendices 15 and 18**, with the photographs of the unauthorised works undertaken by the appellant at **Appendix 29**. The aerial photographs at **Appendix 5** also show the largely unformed character of the driveway and manoeuvring areas prior to the breach of planning control occurring, which at times are completely covered in grass. Any remnants of the driveway as it previously existed were completely obliterated by the unauthorised earthworks undertaken by the appellant.

- 5.104 Furthermore, the area of unauthorised hardstanding laid down by the appellant well exceeds the areas of hardstanding shown on the location and site plan which was approved by condition 2 of planning permission P22/S3712 as distinct from approved garden areas (see plan at paragraph 5.83 above also at **Appendix 27**).
- 5.105 Although condition 8 of planning permission P22/S3712 required that: *“Prior to the first occupation of the development hereby approved a turning area and car parking spaces shall be provided within the curtilage of the site so that motor vehicles may enter, turn round and leave in a forward direction and vehicles may park off the highway”*, this permission required these works to be undertaken in a manner compliant with sustainable drainage (SuDS) principles and in accordance with specification details to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. Contrary to condition 8 above, no specification details for the required turning and parking spaces were submitted to and approved by the council prior to the commencement of the unauthorised works by the appellant.
- 5.106 The unauthorised hardstanding laid down by the appellant has also resulted in the raising of the levels of the track 30-40cm above the level of finished level of the adjacent paddocks; and the levels of the development platform, more than 1.0m above the adjacent paddocks in places. This has resulted in areas of trapped water in the adjacent paddocks contrary to sustainable

drainage (SuDS) principles, as the unauthorised works have disrupted the natural drainage of the wider site. The unauthorised works are significantly over-engineered and are contrary to the rural character of the area. For the reasons stated above, it is unlikely that the council would have approved a specification for the hardstandings as constructed, had it been submitted in accordance with condition 8. Therefore, the unauthorised hardstanding works have not been undertaken in accordance with planning permission P22/S3712 and do not benefit from that permission.

- 5.107 In requiring all hardstanding driveway, parking and manoeuvring areas to be dug-up and removed from the land, the enforcement notice is therefore reinstating the land to the condition that it was in prior to the breach of planning control occurring, and certainly more so than if the areas of pre-existing driveway and manoeuvring or those shown on the site plan approved by planning permission P22/S3712 were excluded from the requirements of the notice.
- 5.108 In response to the appellant's second claim, the enforcement notice requires the land to be reinstated to the condition that it was in "prior to the breach of planning control occurring". The breach of planning control alleged in the notice refers to the material change of use together with the various operations that facilitated that change of use, including hardstandings, fences, gates, pillars, lighting and CCTV poles.
- 5.109 None of these unauthorised operations have been undertaken in a manner benefitting from planning permission P22/S3712 for the barn/stable conversion and the council would suggest that none of these works were undertaken with a view to implementing that permission.
- 5.110 This is borne out by the history of the breach, which has seen the appellant undertake facilitating works covering the entire site, not just the red edged area approved by the above permission. Although the appellant initially refuted any suggestion of his intention to develop the site as a gypsy and traveller site (see file notes at Appendices **29 and 30**) all of the facilitating operations referred to in the enforcement notice are more consistent with the

achievement of this outcome than with the implementation of the extant permission (see drone images **Appendices 6 and 7**).

- 5.111 The appellant made a show of agreeing with the council on terms for the stationing of a single caravan on the site for the purpose of implementing the extant permission (P22/S3712) for the barn/stable conversion pursuant to the Class A, Part 5 of the GPDO (see paragraph 6.91 above). He then immediately disregarded that agreement, in defiance of a High Court injunction by bring multiple caravans onto the site for occupation by persons not employed in implementing the approved barn conversion scheme. This included his entire extended family. He has made no effort to implement the extant permission for the barn/stable conversion. Rather he has continued in his aim of developing the land as a caravan site, without regard to planning controls (see drone images at **Appendices 6 and 7**). The available evidence on balance of probability suggests that all of the caravans referred to in the enforcement notice were brought onto the site with a view to achieving that aim. All of the caravans referred to in the enforcement notice therefore comprise part and parcel of the material change of use alleged in the enforcement and do not precede it in time, as suggested by the appellant.
- 5.112 It is the council's view that the unauthorised operations referred to in the enforcement notice have been undertaken to facilitate the material change of use alleged in the notice and therefore form part and parcel of the same breach of planning control and again did not precede it in time.
- 5.113 For all of the reasons stated above the appellant's ground (f) appeal should fail.

Ground (g) – The time given to comply with the notice is too short (Notices A and B).

- 5.114 The enforcement notice requires compliance with all of its requirements with 9 months. It is the appellant's view, however, that a minimum of 12 months is required for compliance given, the personal health and education needs of

the family and the absence of any alternative site to which the extended family could relocate.

- 5.115 The council is also mindful of the extent to which the unauthorised operations have continued on the site subsequent to the date of the enforcement notice. These works have been undertaken in defiance of High Court injunction, however, the council acknowledges that these additional unauthorised operations will require addition time and resources to remove from the site⁶.
- 5.116 The Council would therefore invite the Inspector to exercise their power under Section 176 of the Act to extend the compliance period to 12 months in accordance with the appellant's ground (g) claim.

⁶ This is on the basis that the Inspector agrees to the council's request to excise their power under Section 176 of the Act to amend the plan attached to the notice to include elements of ongoing breach.

6.0 CONCLUSION

- 6.1 Having regard to the extent to which the unauthorised development has continued to evolve subsequent to the issuing of the enforcement notice on 5 June 2024, the council will ask the Inspector to exercise their power under Section 176 of the Town and Country Planning Act 1990 by amending the notice to include the full extent of unauthorised development. This can be done without injustice to the appellant.
- 6.2 The development is contrary to development planning policies and government guidance related to the spatial strategy (sustainability), the protection of the intrinsic value of the countryside and landscape, principles of good design and respect for local distinctiveness, biodiversity net loss, contamination risk, drainage impacts and the impact of external lighting on character and local amenity. The development has been undertaken as a deliberate breach of planning control, adding further weight to the above reasons underpinning enforcement action. The Inspector is therefore invited to dismiss Appeal A and the ground (a) appeal in connection with Appeal B.
- 6.3 The available evidence confirms that the unauthorised operations involving the laying of a driveway and hardstanding, constituted more than maintenance and repair. These works were not undertaken in accordance with the plans and conditions of planning permission P22/S3712 for the barn conversion and therefore did not benefit from that or any other permission. The appellant's ground (c) appeal in so far as it relates to the driveway and hardstanding should therefore fail.
- 6.4 The close board fencing, entrance gates and pillars referred to in the enforcement notice did not form part of the development approved by planning permission P22/S3712 for the barn conversion. Most of the fencing also falls outside of the area covered by the above permission. Parts of these fences, gates and pillar exceed 2.0m in height, the operation does not therefore benefit from permitted development rights under Class A, Part 2, Schedule 2 of the GPDO. The fences, gates and pillars are of a type that is not characteristic of the lawful use of the land for the keeping of horse but have been installed to facilitate the material change of use to a residential caravan site for which planning permission has not been granted. The

appellant's ground (c) appeal in so far as it relates to the fence, gates and pillar should therefore fail.

- 6.5 None of the caravans referred to in the notice benefit from permitted development rights under Class A of Part 5 of Schedule 2 to the General Permitted Development Order (GPDO). It is the council view that the implementation of planning permission P22/S3712 remains an unlikely fallback option. The appellant's ground (c) appeal, in so far as it relates to the caravans, should therefore fail. However, if the Inspector is of the opinion the terms of the notice are contrary to the principle established in *Mansi*, then it is within the Inspector's power to amend the requirements of notice under Section 176 of the Act to allow for the temporary stationing of a caravan if compliant with permitted development rights under Class A, Part 5, Schedule 2 of the GPDO. This could be done without injustice to the appellant.
- 6.6 The hardstanding driveway, manoeuvring and parking areas referred to in the enforcement notice do not comply with the plans and conditions of planning permission P22/S3712 for the barn conversion and do not therefore benefit from that permission. In requiring all hardstanding driveway, parking and manoeuvring areas to be dug-up and removed from the land, the enforcement notice is therefore requiring nothing more than the reinstatement of the land to the condition that it was in prior to the breach of planning control occurring. The appellant's ground (f) appeal, in so far as it relates to the driveway, manoeuvring and parking areas should therefore fail.
- 6.7 All of the caravans referred to in the enforcement notice comprise part and parcel of the alleged material change of use of the land for the stationing of caravans for residential use and do not precede the alleged breach in time. Similarly, the unauthorised operations referred to in the enforcement notice have been undertaken to facilitate the material change of use alleged in the notice and therefore form part and parcel of the same breach of planning control and did not precede it in time. The appellant's ground (f) appeal on this basis should also fail.
- 6.8 The Council would invite the Inspector to exercise their power under Section 176 of the Act to extend the compliance period to 12 months in accordance with the appellant's ground (g) claim.

- 6.9 The council would therefore invite the Inspector to dismiss Appeal A with respect to the refusal of planning application P24/S2018; and subject to the above suggested amendment to the enforcement notice, the council would invite the Inspector to dismiss all grounds of appeal in connection with Appeal B and uphold the enforcement notice.