The Planning Inspectorate

Appeal Decisions

Inquiry held on 9 - 11 November 2021, 17 – 20 and 24 – 27 May 2022

Site visit made on 26 May 2022

by J A Murray LLB(Hons) Dip.Plan.Env DMS Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30 August 2022

Appeal A Ref: APP/L2820/C/19/3240989
Land east of Cransley Road, Loddington, Northamptonshire, NN14 1JX.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr James Delaney against an enforcement notice issued by Kettering Borough Council.
- The notice, numbered ENFO/2019/00160, was issued on 15 October 2019.
- The breach of planning control as alleged in the notice is, without planning permission, the making of a material change of use of the land from a use for agriculture to a use for the stationing and human habitation of caravans, the construction of an area of hard standing together with a hard standing means of access and erection of a breeze block building on the western side of the site adjacent to the point of access onto Cransley Road.
- The requirements of the notice are to:
  (1) Cease the use of the land for human habitation.
  (2) Permanently remove from the land all caravans, vehicles, buildings, portable toilets, machinery, equipment and personal items, and other items and works associated with human habitation.
  (3) Take up and permanently remove from the land all hard core, road planings and other such materials deposited in and on the land and forming areas of hard standing. Remove from the land all materials and rubble arising from this step.
  (4) Restore the land to its condition before the breach took place by re-seeding it with grass seed.
- The periods for compliance with the requirements are 7 days for each of requirements (1) to (3) and 14 days for requirement (4).
- The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.

Appeal B Ref: APP/L2820/W/20/3249281
Land east of Cransley Road, Loddington, Kettering, Northamptonshire, NN14 1JX, 482053, 278056

The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.

- The appeal is made by Mr James Delaney against the decision of Kettering Borough Council.
- The application Ref KET/2019/0711, dated 10 October 2019, was refused by notice dated 26 February 2020.
- The development proposed is the change of use of land to use as a residential caravan site for 8 gypsy families, each with two caravans, including erection of 8 No. utility buildings, laying of hardstanding and improvement of access.

Decisions

Appeal A – Ref APP/L2820/C/19/3240989

1. It is directed that the enforcement notice is varied in section 5 by substituting the following periods for compliance:

   6 months in relation to Steps 1 and 2; and

   8 months in relation to steps 3 and 4.

2. Subject to these variations, the appeal is dismissed, and the enforcement notice is upheld.

Appeal B - Ref APP/L2820/W/20/3249281

3. The appeal is dismissed.

Procedural and preliminary matters

4. With effect from April 2021, Kettering Borough Council was superseded by North Northamptonshire Unitary Authority (the Council).

5. Although appeals A and B were lodged in November 2019 and March 2020 respectively, the start of the inquiry was delayed by the Covid-19 pandemic, as the appeals were deemed unsuitable for a 'virtual' inquiry. The inquiry opened on 9 November 2021 but was adjourned on 11 November, when one of the participants fell ill. I resumed on 17 May 2022 and sat during two consecutive weeks. Evidence and submissions were heard face to face, save that, with the agreement of the parties, closing submissions were made through a 'virtual' session on Microsoft Teams, but interested parties were able to observe.

6. I conducted an accompanied site inspection on 26 May 2022. I also carried out several unaccompanied inspections, namely on 8, 9 and 11 November 2021 and 26 May 2022. During those visits, I walked along public footpaths GG6, HC3, GR5 and bridleway GR10. I viewed from and drove along Cransley Road in both directions and viewed from Northfield Road to the southeast of the site. I also saw the location of the Northfield Farm caravan site on Northfield Road, Cransley, some 2 miles by road from the appeal site. In all, I spent about 3 hours in the area and on the site.

7. The appellant intended to appeal against the enforcement notice on grounds (a) and (g). Ground (a) is that planning permission should be granted for the matters alleged. However, he applied for planning permission for the development and the Council issued the enforcement notice before the time to determine the application had expired. Accordingly, by letter of 29 November 2019, the Planning Inspectorate confirmed that the appeal on ground (a) was barred under section 174(2A) of the 1990 Act.

8. The appeal against the enforcement notice (appeal A) therefore proceeds on ground (g) only. I will consider the appeal against refusal of planning permission (appeal B) first because, if permission is granted, the notice will cease to have effect in so far as it is inconsistent with that permission.

9. Given the nature of the issues, evidence was not taken under oath. Drainage, ecology, and need and supply were all addressed through 'round table' sessions

(RTS). The remaining matters were the subject of formal examination in chief, cross examination and, where necessary, re-examination.

10. The Council had initially requested amendments to the enforcement notice to require reinstatement of the original profile of the land.[1] However, for the R.6 party, Mr Hughes indicated that expanding the requirements in this way would probably cause injustice, and it would not be possible to protect any remaining archaeological remains. On 26 May 2022, Mr Lintott confirmed the Council no longer sought that amendment because of possible prejudice to archaeology.

APPEAL B

The description of the development

11. The description of the development in the application, refusal notice and appeal form, makes no reference to the terracing and reprofiling works that have taken place on site. A cut and fill operation has created terraces, namely 4 on each side of the central driveway, with a pitch on each. The soil and stone on the southern sides of each terrace is retained by timber walls, around 1m in height, with timber post and rail fencing above. Similar walls and fences retain each side of the central driveway, which slopes from north to south, down towards Cransley Reservoir.

12. It is not entirely clear when these works were carried out, but Mr Jupp says they appeared to have been recently undertaken when he visited the site on 4 June 2020, a few months after the refusal of the planning application. This is broadly consistent with the chronology at Mr Hughes' appendix 4. That refers to deliveries of stone and timber, and ongoing work, including the erection of fences and groundworks, at the end of May and beginning of June 2020.

13. These reprofiling and terracing works represent significant engineering operations. On the first day of the inquiry, Mr Brown said that, because of the terracing, it would be necessary to split the proposed utility buildings. These are shown on the plans as semi-detached blocks, each serving 2 pitches and straddling the east-west pitch boundaries. The appellant clearly intends the terracing works to remain, even though they were not indicated on the application plans.

14. The fact that the site, as developed does not accord with the refused site plan, because of the considerable terracing works and their implications for the utility buildings, is recorded in the Statement of Common Ground (SOCG)[2]. I am satisfied that all parties have had an opportunity to consider the implications of those works, and in the circumstances, the description of the development should be altered from that in the application to:

> "The material change of use of land to use as residential caravan site for 8 gypsy families, each with two caravans, including erection of 8 No. utility buildings, the reprofiling and terracing of the site, laying of hardstanding and improvement of access."

I have considered the appeal on that basis.

[1] Mr Jupp's proof paragraph 3.16 and Inquiry Document (ID) 3 paragraph 2.5.
[2] ID10

Main Issues

15. The main issues are:

- the effect of the development on the character and appearance of the landscape;
- whether the occupants of the site would have adequate access to services and facilities;
- the effect of the development on highway safety;
- whether the development will result in contaminated runoff impacting on the Cransley Reservoir Local Wildlife Site;
- the effect of the development on ecology, including protected species and the Cransley Reservoir Local Wildlife Site;
- the need for and supply of Gypsy and traveller pitches;
- the impact of the development on a potential non-designated heritage asset, namely potential below ground archaeology
- whether the development constitutes intentional unauthorised development and, if so, the weight to be attached to that; and
- the availability of alternative accommodation and other personal circumstances of the occupiers, including the best interests of any children, all in the context of Human Rights considerations and the Public Sector Equality Duty.

Reasons

The character and appearance of the landscape

16. As set out in the SOCG, the appeal site comprises 0.64 hectares of land located along the eastern side of Cransley Road, about 350 metres south of the village of Loddington. It is roughly rectangular in shape and bounded by a bridleway to the northwest (GR10) and by open fields to the east and northeast.

17. The site has hedgerows to all boundaries and is within a valley, whereby it slopes down towards the south. Access to the site is from Cransley Road via an entrance at the northern end of the road frontage, adjacent to the start of the bridleway. The northern end of the appeal site would remain as a grass paddock, with the access driveway running eastwards from the road, before turning south down the centre of the land, to serve 8 caravan pitches; 4 each side of the access road.

18. Although among the reasons for issuing the enforcement notice, the impact on the character and appearance of the landscape was not one of the original reasons for refusing the planning application. It was added by the Council's Planning Committee on 29 July 2020, after the appeals were lodged.

19. The appellant's planning consultant, Mr Brown, says Planning Policy for Traveller Sites (PPTS) acknowledges that some gypsy and traveller sites will be in rural areas and the countryside, and this has inevitable consequences. Caravans, hard standings, utility buildings and residential paraphernalia can be

atypical in the countryside, so some degree of visual harm must be accepted, if an adequate supply of gypsy sites is to be provided.

20. Policy 31(h) of the North Northamptonshire Joint Core Strategy 2011 – 2031 (JCS), adopted July 2016 requires that gypsy and traveller site development should not have "a significant adverse impact" on the character of the landscape. It should also take account of the Landscape Character Assessment of the area and provide appropriate landscaping and treatment to boundaries to mitigate any impact. This policy is compatible with the recognition that some harm is inevitable. Mr Brown says the test is whether unacceptable harm is caused, and he notes that paragraph 26 of PPTS makes clear soft landscaping can positively enhance the environment.

21. Whilst paragraph 174 of the National Planning Policy Framework (the Framework) says policies and decisions should recognise the intrinsic character and beauty of the countryside and valued landscapes should be protected and enhanced, Mr Brown draws attention to paragraph 175. This makes clear local plans should distinguish between the hierarchy of international, national, and locally designated sites. He acknowledged in oral evidence that the appeal site is in an attractive area of countryside, and the development will cause some harm. However, he said it is not nationally designated or identified in the development plan as being of any particular landscape quality; it is not really out of the ordinary and cannot be regarded as a valued landscape in terms of paragraph 174(a) of the Framework. I shall return to that issue.

22. In any event, the appellant says the site is only visible within short range views and any harm could be mitigated to some extent by hedgerow and tree planting carried out along the southern edge of the access driveway, between the proposed pitches and, in the south-western corner of the site. Mr Brown says the development is capable of assimilation into this part of the countryside without significant adverse effect on landscape character or visual amenity. Glimpses from Cransley Reservoir, the footpath, or road cannot have a significant adverse impact. He adds that PPTS places weight on sites not being so enclosed as to give the impression of being deliberately isolated from the rest of the community and CS31 places weight on landscape mitigation.

23. Mr Brown is not a landscape architect but said that some 40 years' experience as a planning consultant enables him to judge what will be acceptable in landscape and visual impact terms, which ultimately is a subjective judgement. In any event, the appellant draws support from the response to the planning application from the Council's landscape consultant.

24. The Council consulted Mr Dudley on landscape matters when the application was submitted. In short, his response[3] was that the development would be likely to result in some harmful effects upon the character and appearance of the local landscape, because of its incongruous appearance and the loss of characteristic grassland. It would not therefore entirely recognise the intrinsic character and beauty of this rural landscape, or accord with the Framework, PPTS and relevant development plan policies, including JCS Policy 31.

25. However, due to factors such as the restricted visual envelope of the site and the location of the development on the most sheltered part of the field, Mr Dudley's conclusion at the time was that the conflict with national and local

[3] Mr Brown's appendix 1

policies would be insufficient to make it unacceptable in landscape and visual terms.

26. However, in oral evidence, Mr Dudley explained that his initial consultation response was "a brief outline exercise based on information communicated", but it was "defective in terms of the baseline information relied on". He had used the field survey findings of the Council's planning officer, but his response would have been different had he personally undertaken a site visit. In cross examination, he said was not carrying out a full landscape and visual impact assessment (LVIA) at the consultation stage.

27. Ultimately, when the appeal was lodged, the Council revisited the issue of landscape character and visual impact, and Mr Dudley was instructed to prepare a full LVIA. I have that, in the form of his proof, along with a separate LVIA prepared by Ms Bolger on behalf of the R.6 party.

28. Both Mr Dudley and Ms Bolger are qualified landscape architects and explain that their LVIA's have been prepared in accordance with the third edition of the Guidelines for Landscape and Visual Impact Assessment (GLVIA), published by the Landscape Institute and Institute of Environmental Management and Assessment. That is the industry standard, generally regarded as best practice and it is a material consideration for me. In line with GLVIA, both landscape architects assess landscape and visual effects separately.

29. Mr Dudley's LVIA sets out the landscape and visual baseline context. Dealing first with **landscape impact**, in terms of Natural England's National Landscape Character Assessment, the site lies within the Northamptonshire Vales National Character Area (NCA). This is broadly described as a series of low-lying clay vales and river valleys, including those of the rivers Nene and Welland and their tributaries. However, it has several keys characteristics, of which Mr Dudley says the site and its landscape setting are highly representative, namely:

    - An open landscape of gently undulating clay ridges and valleys with occasional steep scarp slopes. There is an overall visual uniformity to the landscape and settlement pattern.
    - Diverse levels of tranquillity, from busy urban areas to some deeply rural parts.
    - A mixed agricultural regime of arable and pasture, with arable land tending to be on the broader, flat river terraces and smaller pastures on the slopes of many minor valleys and on more undulating ground.
    - Relatively little woodland cover but with a timbered character derived largely from spinneys and copses on the ridges and more undulating land, and from waterside and hedgerow trees and hedgerows, though the density, height and pattern of hedgerows are varied throughout.
    - A strong field pattern of predominantly 19th-century and, less frequently, Tudor enclosure.
    - Riverside meadows and waterside trees and shrubs are common, along with flooded gravel pits, open areas of winter flooded grassland, and wetland mosaics supporting large numbers of wetland birds and wildfowl.

- Frequent small towns and large villages often characterised by red brick buildings and attractive stone buildings in older village centres and eastern towns and villages. Frequent imposing spired churches are also characteristic, together with fine examples of individual historic buildings.

30. At the local level, Northamptonshire's current Landscape Character Assessment places the site within the Kettering and Wellingborough Slopes Character Area, associated with the Rolling Ironstone Valley Slopes Landscape Type. Among other things, that assessment says, "Despite urban influences having an impact on the character and perception of wide tracts of the landscape, much retains a quiet rural character." Mr Dudley says the following key characteristics are relevant to the site:

- Broad valley slopes dissected by numerous tributary streams.
- Ironstone geology expressed in local vernacular buildings and in rich red soils.
- Rolling landform, extensive views, and sense of exposure on some prominent locations.
- Steep slopes adjacent to more elevated landscapes.
- Numerous water bodies.
- Productive arable farmland in medium and large scale fields predominates on elevated land although sheep and cattle pastures are also prevalent, often in smaller fields adjacent to watercourses.
- Agricultural practices create a patchwork of contrasting colours and textures extending across valley slopes.
- Where broadleaved woodlands and mature hedgerow trees combine, these impart a sense of a well treed landscape.
- Building materials vary although vernacular architecture and churches display the local ironstone.

31. Mr Dudley concludes that the site and its setting are highly representative of the most positive characteristics of the Rolling Ironstone Valley Slopes. Detracting influences such as the presence of urban areas are notably absent, despite the proximity to Kettering. He says the site reflects the more positive and tranquil rural characteristics. The village of Loddington, on the ridgeline to the west, represents the only urbanising influence within this otherwise deeply rural valley landscape. However, it features a characteristic and imposing spired church and much of the village is covered by a Conservation Area designation

32. Mr Dudley says the valley is strongly characterised by the presence of the picturesque Cransley Reservoir, which the public can access and appreciate from public footpaths HC3 and GG6. The reservoir now has a tranquil, recreational character, with no motorised sports, and it supports sailing, paddleboarding and angling, as well as a Local Wildlife Site. The website of the sailing club based on the reservoir describes it as "one of the prettiest inland sailing areas in the county located in an idyllic valley", implying an associative value.

33. Mr Dudley notes that landscapes in Northamptonshire are not designated at local level. Nevertheless, he concludes in his proof and oral evidence that, having seen the area, the discrete rural valley landscape in which the appeal site is located is a "valued landscape", for the purposes of paragraph 174(a) of the Framework. In reaching that conclusion, he had regard to a range of factors including: landscape condition; scenic quality; representativeness; conservation interest; recreation value; and perceptual aspects, namely the tranquil deeply rural character.

34. Mr Dudley also had regard to the fact that Cransley Reservoir was protected by saved Policy 10 of the Local Plan for Kettering Borough, where development would not normally be permitted.[4] However, closer examination of the Proposals Map[5] in cross-examination of Ms Bolger, later established that the appeal side lay outside the defined area of the reservoir for the purposes of Policy 10. In any event, when the inquiry resumed on 17 May 2022 it was confirmed that Policy 10 was no longer saved, following the adoption of the Kettering Site Specific Part 2 Local Plan in December 2021.

35. Nevertheless, when cross-examined, Mr Dudley said his conclusion that this is a valued landscape was based on his full assessment, and the development plan requirement to have regard to the Landscape Character Assessment of the area, not just on the relationship with Cransley Reservoir or the former Policy 10 protection. I note that the Northamptonshire Landscape Character Assessment includes a statement that reservoirs are an important landscape feature.[6] I shall return to what is meant by "valued landscape."

36. Mr Dudley finds the landscape to be particularly sensitive to new development and says that, where it may be acceptable, development should contribute to local distinctiveness and reinforce vernacular styles. He conducted a site visit and identified the relevant landscape receptors, setting out a detailed analysis of their susceptibility to change; their value and overall sensitivity; the magnitude of change resulting from the proposed development; and the overall level of impact significance. His conclusions are summarised as follows:

Landscape receptor	**Overall level of impact significance**
Open, pastoral grassland typical of lower valley slopes	Major/Moderate Adverse.
Well-developed boundary hedgerows and trees	Moderate Adverse.
Adjacent Cransley Reservoir	Major Adverse.
Deeply rural character to surrounding landscape	Major/Moderate Adverse.
Overall character of the Site	Major/Moderate Adverse.
Overall character of the setting of the Site	Major Adverse

[4] Mr Dudley's proof paragraphs2.10 and 4.57.
[5] Inquiry document (ID) 6
[6] Ms Bolger's proof, paragraph 5.2.2.

37. On behalf of the R.6 Party, Ms Bolger also finds that the landscape surrounding the site is representative of several the key characteristics of the Northamptonshire Vales NCA. She particularly highlights the following, in broad agreement with Mr Dudley:

    - overall visual uniformity to the landscape;
    - diverse levels of tranquilly – the deeply rural character of the location, despite the proximity to the urban area of Kettering;
    - timbered character;
    - strong field pattern; and
    - frequent imposing spired churches, with the spire of the church at Loddington having a strong visual presence in landscape.

38. Ms Bolger similarly finds the landscape surrounding the site to be representative of the Kettering and Wellingborough Slopes Character Area, and the Rolling Ironstone Valley Slopes Landscape Type. She especially highlights the following factors, which again accords with Mr Dudley's assessment:

    - the rolling landform and extensive views;
    - the numerous waterbodies, in this case, Cransley Reservoir;
    - the patchwork of contrasting colours and textures extending across valley slopes; and
    - the sense of a well-treed landscape.

39. Ms Bolger finds that the ridge and valley formation is clear in the landscape surrounding the site and Cransley Reservoir is an important landscape feature lying between two ridges on which the villages of Loddington and Great Cransley are located. Cransley Road links those ridges, rising and falling with the rolling landform and, despite the proximity to the urban edge of Kettering the area has a well-managed rural character and a strong sense of place.

40. Ms Bolger finds that the value of the landscape in which the site is located is high. She undertakes a similar assessment to that of Mr Dudley and agrees that it should be considered a "valued landscape" for the purposes of paragraph 174(a) of the Framework. She describes the site as an integral part of the landscape that provides a setting to Cransley Reservoir. The previous character of the site, a small sloping hedged field of improved or semi improved grassland, was entirely in keeping with the rural nature and quality of this valley landscape and made a positive contribution to the setting of the reservoir.

41. In finding this to be a valued landscape, Ms Bolger also relied to some extent in her proof on her contention that the site was covered by Policy 10 of the Local Plan for Kettering Borough. However, when cross-examined, she accepted the site lay outside the Policy 10 area, and that policy is no longer saved anyway. Nevertheless, Ms Bolger maintained that a landscape does not have to be designated to be a valued landscape for the purposes of the Framework. This is consistent with advice in GLVIA and Technical Guidance Note 02/21 (Assessing

landscape value outside national designations), which is also published by the Landscape Institute and indeed Ms Bolger is one of its authors.

42. In any event, Ms Bolger said that, even if this is found not to be a valued landscape for the purposes of the Framework, that does not mean there would be no significant landscape harm, should the appeal proposals be allowed. It still contains many valued features which are an integral part of the intrinsic character and beauty of the countryside. Having regard to the distinctive qualities, she finds the following harm:

- The topography of the valley slope within the site has been altered and the overall integrity of the valley side harmed as a result of the ground levelling.
- There has been a loss of pasture, harm to the hedgerows and potential harm to hedgerow trees.
- The setting of the reservoir has been harmed by the introduction of visually intrusive and incongruous development.
- The impression of a well-wooded landscape has been interrupted.
- The settlement pattern has been diluted.
- The quiet, rural, and well managed character has been disrupted, particularly as experienced from Cransley Road.

43. Ms Bolger says the unauthorised and proposed works are not sensitive to the landscape setting and would harm rather than enhance the distinctive qualities of the Kettering and Wellingborough Slopes LCA. Whilst Mr Dudley looked at individual receptors, Ms Bolger explained in cross-examination that she takes a broader approach; there is no set procedure, but both approaches are consistent with GLVIA and require professional judgements. Her broad findings are that:

- the site has **medium/high** susceptibility to the change proposed due to the harm that would be caused to the distinctive qualities of the Kettering and Wellingborough Slopes LCA;
- considering the **high** value of the landscape in which the site is located and the **medium/high** susceptibility of the site to the development proposed, the sensitivity of the site to the proposed development is **medium/high;**
- the magnitude of change is **medium** and the nature of the change would be **adverse**. The overall effect on the landscape would be **moderate/major** adverse, the magnitude of change would be medium and the nature of the change would be adverse; and
- the overall effect on the landscape would be **moderate/major adverse**.

44. These conclusions are broadly in line with those of Mr Dudley and Ms Bolger confirmed that a moderate/major adverse effect amounts to a significant adverse impact in terms of JCS Policy 31(h).

45. Returning to the question of valued landscapes, on day 3 of the inquiry Mr Masters accepted that, having regard to *Nixon & East Herts DC v SSCHLG & Mahoney* [2020] EWHC 3036 (Admin)[7] a landscape does not have to be

[7] ID8.

designated to be a valued landscape for the purposes of the Framework; it is simply a matter of judgement. However, on resumption, Mr Masters reopened that question when taking Mr Brown through his evidence in chief. He ultimately submitted that, in *Nixon*, the court merely considered whether the Inspector had properly applied the test in *Forest of Dean DC v SSHCLG* [2016] EWHC 2429, the relevant passage from that judgment being quoted at paragraph 50 of *Nixon*, as follows:

> ""31. As I have indicated, it was common ground between the parties before the Inspector that the relevant landscape was not designated; and, following *Stroud*, the issue for the Inspector was whether the landscape was "valued" in the sense that it had physical attributes which took it out of the ordinary. On the basis of the submissions made to him, that was quite clearly an issue that required determination." [emphasis added]"

46. Mr Masters noted that both paragraph 174(a) in the current version of the Framework and paragraph 170(a) of the 2019 version, in force at the time of *Nixon*, stated as follows:

> "…Planning policies and decisions should contribute to and enhance the natural and local environment by:
>
> a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan)…"

47. Mr Masters' point for the appellant is that, at the time of the judgment in *Forest of Dean*, the words in parenthesis were not included in the equivalent paragraph of the Framework. Mr Masters was one of the advocates in *Nixon* and says this point was never made to the court.

48. However, the question before the court in *Nixon* was, "whether the Inspector erred by finding that this was not a valued landscape within the meaning of [170] of the NPPF." Paragraph 170 was set out in full in the judgment, including the words in parenthesis. The court in *Nixon* was applying *Forest of Dean*, but nevertheless held in unequivocal terms that, "Ultimately the question of whether or not the area is a valued landscape is a matter of planning judgement. The Inspector applied paragraph 170 correctly by considering whether it was within a statutory designation and whether it had any particular qualities that took it out of the ordinary…"

49. I am unable to conclude that, having clearly stated the terms of paragraph 170, Mrs Justice Lieven simply misunderstood it. Where valued landscapes are designated, the Framework now requires their protection and enhancement in a manner commensurate with their designation. However, I am not driven to the conclusion that a landscape must be nationally or locally designated to be a valued landscape. Moreover, the requirements in JCS Policy 31(h) and 3 to take account of the Landscape Character Assessment of the area effectively necessitates protection commensurate with the identified quality of the landscape.

50. I am also mindful of Ms Bolger's evidence that, whilst a local landscape designation would indicate value, many planning authorities gave up on local designations, as they were encouraged by national policy to rely on criteria

based policies such as JCS Policy 3. It is unreasonable to assume all those local authorities no longer have valued landscapes outside national designations.

51. I respect Mr Brown's professional experience and judgement as a planner. However, I have summarised the more detailed, methodical, and rigorous analysis of the 2 landscape architects, in line with transparent criteria from GLVIA, and I find that more compelling. The proposed development, including extensive hard surfacing within the site, reprofiling and terracing, the alterations to the access, the proposed utility buildings, siting of mobile homes and caravans and erection of fences would effect a marked change in the character of the landscape.

52. Nothing from my own extensive inspection of the area leads me to depart from the landscape architects' conclusions. They clearly indicate that the development would be incongruous and have a significant and unacceptably adverse impact on the character of the landscape. I also accept their oral evidence that the harm to landscape character, as opposed to visual impact, could not be mitigated by planting. Mr Brown tended to talk as if landscape impact and visual impact were the same thing.

53. I also find that the landscape qualities identified mean the area is out of the ordinary. These include the deeply rural and tranquil character of the locality; its scenic quality and contribution to the setting of the very pretty Cransley Reservoir; and the degree to which the site and area are representative of key characteristics in the NCA & relevant Northamptonshire Landscape Character Assessment area. I am satisfied that it is valued landscape for the purposes of paragraph 174(a) of the Framework.

54. Turning to **visual impact**, Mr Dudley established a Zone of Theoretical Visibility to identify a list of visual receptors to guide his field survey and find representative viewpoints. These assisted my own unaccompanied inspections. The visual envelope is heavily influenced by the valley landform. Whilst no views are likely to be available beyond the ridges, the sloping nature of the site results in significant exposure across the valley slopes and reservoir, particularly in winter, given the deciduous nature of surrounding vegetation.

55. Mr Dudley considered the identified visual receptors in terms of their sensitivity to change, and the magnitude of change caused by the development, to form a view on the extent of any adverse impact. In the context of his belief that before the development of the site, there were no visually detracting features, Mr Dudley's conclusions can be summarised as follows:

Visual receptor	**Visual impact**
Users of Public Footpath GG6	Major/Moderate Adverse
Users of Cransley Reservoir	Major Adverse
Users of Public Bridleway GR10	Major/Moderate Adverse
Users of Cransley Road	Major/Moderate Adverse
Users of Public Footpath GR5	Moderate Adverse
Users of Northfield Road	Moderate Adverse

56. Ms Bolger similarly assesses visual effects as being a result of the sensitivity of visual receptors and the magnitude of change to existing views. She explains that the most sensitive receptors are residents at home; people engaged in outdoor activities whose attention is focused on the landscape and view; and visitors to heritage assets or other attractions, where views are an important part of the experience. The sensitivity of road users varies according to how busy or main the route is. Those on busy or main routes are considered to have medium or low sensitivity, whilst users of rural roads or scenic routes will have medium or even high sensitivity.

57. Having regard to the sensitivity of the visual receptors and the magnitude of change, Ms Bolger's conclusions in relation to what she identifies as the main receptors are as follows:

Visual receptor	**Visual impact**
Users of Public Footpath GR10	Moderate Adverse in summer Moderate/Major Adverse in winter
Users of Public Footpath GG6	Minor Adverse in summer Moderate Adverse in winter
Users of Cransley Road	Moderate Adverse in summer Moderate/Major Adverse in winter
Users of/visitors to Cransley Reservoir	Minor Adverse in winter Moderate Adverse in winter
Users of Public Footpath GR5	Minor Adverse

58. Mr Dudley and Ms Bolger therefore agree that the visual impact on users of the bridleway GR10 and Cransley Road would be moderate/major adverse, at least in winter, and this conforms with my own view. Whilst there were still leaves on the hedges and trees during my November site visits, it was clear that these vantage points afford more than the glimpsed views described by Mr Brown.

59. From the bridleway, even without the more urbanising effect of the proposed utility buildings and mobile homes, whatever their colour, the site represented quite a dense collection of caravans and vehicles. For those enjoying a walk or ride along the bridleway, this is a marked change from the previous pastoral field. The site appears incongruous in this tranquil valley, detracting from the rural setting of the reservoir and the area generally. Although some of the site residents said the site was untidy before they moved onto it, I have seen no evidence to indicate that its prior condition seriously diminished its value in visual amenity terms.

60. I note Mr Brown's contention that caravan sites are not unexpected in locations such as this. My attention was drawn to one Caravan Club Site at Northfield Farm, Northfield Road and, with the parties' agreement, I visited that location unaccompanied on 26 May 2022. However, that is some 2 miles by road from the appeal site and the caravan pitches are set back from

Northfield Road, with any views being screened by a roadside hedge and bank, and rising ground beyond those. Other than from signage, that caravan site was not apparent from the road, and I was not made aware of any public rights of way from which it might be viewed. The visual impact of that site is not comparable to that of the appeal site and its existence does not indicate that caravan sites are characteristic of this area.

61. From Cransley Road, there are views into the appeal site, which is now largely hard surfaced, with terracing and internal fencing and it is populated by caravans and vehicles. The proposal would add mobile homes and utility buildings and the alterations and increased hard surface at the access exacerbate the site's visual impact. That involves a prominent interruption to the former glimpsed views of the reservoir across a grassland site. Those views are clearly illustrated by photographs appended to Mr Dudley's and Ms Bolger's proofs. Whilst planting along the lines indicated on the site layout plan could partially mitigate the adverse visual impact, given the topography and extent of development, I am not persuaded that suitable planting would reduce it to an acceptable level.

62. Mr Dudley was more concerned than Ms Bolger about the impact on users of Cransley Reservoir, footpaths GG6 and GG5 and Northfield Road. Ms Bolger says the impact on users of and visitors to Cransley Reservoir is likely to be similar to that on the users of footpath GG6. I agree, save that those on the water will come closer to the site than those on GG6, which traverses the dam at the reservoir's eastern edge.

63. Mr Dudley's Zone of Theoretical Visibility plan indicates that this development on the lower valley side is likely to be visible across a significant proportion of the reservoir. The site was formerly an area of sloping pasture, which contributed to the attractive, rural backdrop to the reservoir; the "idyllic valley" setting referred to on the sailing club's website.

64. Being located on the ridge above the valley, the village of Loddington does not detract significantly from that setting. Notwithstanding that some of the village development may be recent, this is a historic settlement. Settlements on upper valley slopes are characteristic of the Kettering and Wellingborough Slopes Character Area, and St Leonards Church is an example of the imposing spired churches, which are among the key characteristics of the NCA.

65. Having regard to Ms Bolger's explanation of the sensitivity of receptors, the attention of people enjoying activity on and around the water will be focused on the landscape and views to a significant extent. The landscape and views will be important aspects of the experience of the reservoir, as an attraction in itself. Taking the evidence of Mr Dudley and Ms Bolger together with my own observations, I am satisfied that the visual impact of the development on users of Cransley Reservoir will be at least moderate/major adverse.

66. The attention of users of footpath GG6 will also be focussed on the landscape and view, but from further away than for some users of the reservoir. Caravans on the site were visible from that footpath when I visited, as was some lighting at dusk. I would chart a middle course between the evidence of Mr Dudley and Ms Bolger on this. I conclude the impact on those users would be moderate adverse, even though lighting, including from caravans, utility buildings and vehicles could exacerbate the impact after dark.

67. In reaching that conclusion, I have taken account of the fact that, as I walked south in failing light across the dam on footpath GG6, my eye was to some extent drawn to the extensive lighting around Nus Hill Lodge to the southeast of the appeal site, particularly that around the property's access road. Nus Hill Lodge appears on an 1884 Ordnance Survey map and, whilst it is probably largely residential now, it has obvious agricultural origins. That lighting does cause some harm, but Nus Hill Lodge is not on the same valley side as the appeal site, which was previously dark, between the reservoir and Loddington on the ridge.

68. The existence of lighting at Nus Hill Lodge does not justify its introduction at the appeal site location. External lighting could be controlled by condition to some extent, but there would be at least some light spillage from mobile homes, caravans, utility buildings and vehicles.

69. Though some distance from the appeal site, footpath GR5 affords panoramic views across the pastoral valley. It allows a good appreciation of the very attractive, tranquil, and largely undeveloped rural character of the area. Users of the footpath can see the Loddington Grange farm complex nearby to the east, and a barn to the northeast of the appeal site. However, these are expected features a rural setting and are not located in the valley bottom.

70. When I walked footpath GR5, I could see one white shape on the appeal site. However, the deciduous tree and hedge cover was still substantially in leaf. There would probably be more significant views in winter, and when the mobile homes and utility buildings were in place, along with attendant touring caravans and vehicles. This would be so, even if the mobile homes were finished in colours other than white, and even with further suitable planting on site. I am satisfied that the visual impact on this receptor would be moderate/adverse in winter.

71. From Northfield Road[8] too, I could see white shapes on the site, which I knew to be caravans. However, the distance is significantly greater than that from relevant parts of footpath GR5, and the buildings at Nus Hill Lodge are more prominent in the intervening ground. Drivers, and even vehicle passengers, are unlikely to notice the appeal site, given the distance and their probable speed of travel.

72. Furthermore, whilst this rural road may attract walkers, cyclists, and riders, unlike footpath GR5, its function is not primarily recreational walking, so peoples' attention would not be so focused on the landscape and view. Ms Bolger does not assess visual impact from Northfield Road itself and, in all the circumstances, I find that the impact on this receptor would be no more than minor/adverse.

73. For the reasons given, I find that the development would have a moderate/major adverse visual impact on the users of bridleway GR10, Cransley Reservoir and Cransley Road. It would have a moderate adverse impact on the users of footpath GG6 and GR5 and a minor impact on users of Northfield Road. All of these, save perhaps Northfield Road, are important vantage points.

[8] In particular, Mr Dudley's viewpoint 5, at his appendix 7.

Conclusions on the first main issue

74. Any gypsy caravan site is likely to detract from the character and/or appearance of the countryside in some way and it is clear from PPTS that such sites can be acceptable in the countryside. However, I have had regard to the scale, characteristics, and visual impact of this particular development in this specific, deeply rural, and tranquil valley landscape. I have been guided by the transparent assessments made by two highly experienced and qualified landscape architects.

75. Notwithstanding the deficiencies in the initial consultation response to the Council, the assessments now before me have been carried out in accordance with GLVIA. For all the reasons given, I conclude that, having regard to the Landscape Character Assessment of the Area, the proposal would have a significant adverse impact on the character of the landscape, and a significantly detrimental visual impact on the countryside. Neither of these impacts could be adequately mitigated by appropriate landscaping or boundary treatment. The advice in PPTS that traveller sites should not be enclosed with so much hard landscaping, high walls, or fences to create an impression of deliberate isolation does not mean these detrimental impacts should be tolerated.

76. The development therefore conflicts with JCS Policy 31(h), which is the most directly relevant one. However, I need to consider the most relevant policies; not just the single most relevant policy. As found in another recent appeal Ref APP/L28/W/20/3247096 in this Council's area,[9] and as ultimately accepted by Mr Brown in cross examination, JCS Policy 3 is also relevant in conjunction with Policy 31(h). This is so notwithstanding the Council's decision notice did not refer to Policy 3. The scheme also conflicts with that policy, which requires development to be located and designed in a way that is sensitive to its landscape setting, retaining and, where possible, enhancing the distinctive qualities of the landscape character area which it would affect.

77. At paragraph 174(b), the Framework requires decision makers to recognise the intrinsic character and beauty of the countryside. The significant adverse impact in this case means that a grant of planning permission would not recognise that. In addition, whilst the conflict with JCS Policies 31(h) and 3 does not depend on this, as the landscape is worthy of protection anyway, I have also found that the site lies within a valued landscape. Paragraph 174(a) of the Framework indicates that such landscapes should be protected and enhanced. The appeal scheme would fail to do so, and this breach of national policy exacerbates the conflict with the development plan policies.

78. Regardless of whether I am correct to conclude that the site lies within a valued landscape, the harm to the character and appearance of the landscape is significant and carries substantial weight.

Access to services and facilities

79. JCS Policy 31(a) requires gypsy and traveller sites to be closely linked to an existing settlement with an adequate range of services and facilities. The policy does not define "closely linked" or what amounts to an "adequate range of services and facilities." However, I am satisfied that the approach taken by the

[9] Mr Jupp's appendix 15.

Inspector in a recent appeal Ref APP/L2820/W/20/3247096[10] (the Bowd Field appeal) is reasonable.

80. Accordingly, reference can be made to advice in PPTS. Paragraph 25 says new traveller site development should be very strictly limited in the open countryside, away from existing settlements or outside areas allocated in the development plan. Paragraph 13 seeks to promote access to health services and schools and the provision of settled bases to reduce the need for long-distance travel.

81. The appellant contends paragraph 25 is aimed more at limiting encroachment into the open countryside but, like the Inspector in the Bowd Field appeal, I see no reason why it cannot also concern access to services and facilities. Although paragraph 13 is in the plan making section of PPTS, it follows from paragraph 4 in the general introductory section, which sets out the Government's aims in respect of traveller sites. These include enabling the provision of suitable accommodation from which travellers can access education, health, welfare, and employment infrastructure. It is appropriate to consider both the spatial and functional relationship with settlements.

82. Policy 31(a) does not explicitly say that for a site to be closely linked to a settlement, there must be access via sustainable transport modes. However, if access can only realistically be gained through private car journeys, that has a bearing on how close the link is in practice.

83. Furthermore, paragraph 105 of the Framework says significant development should be focussed on locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes. Mr Brown accepted in cross-examination that whether development is significant in this context is a matter of planning judgment. Given the number of pitches and the likely number of residents, this is a significant development in this rural location. That said, paragraph 105 acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be considered in both plan-making and decision-making.

84. The village boundary of Loddington is only about 350m north of the appeal site. However, Cransley Road is subject to the national, 60mph speed limit, and has no footways or lighting. From my own observations, conditions do not make walking an attractive proposition, particularly with young children, for example to get to school, and/or in poor light or weather. Pedestrians are highly likely to encounter cars and, having regard to the highway evidence, 85th percentile speeds are above 40mph. Less confident cyclists may also find this route into the village unattractive. The bridleway offers an alternative walking route but is longer and the surface will be muddy in wet weather. None of the site residents indicated that they use it to walk into Loddington.

85. In any event, Mr Brown accepted in cross-examination that it is the close links to services which count, rather than just the settlement boundary. Loddington offers only a limited range of services, namely a primary school, 1.05km away; a pub at 1.03km; a church, 1.3km away; a children's playground at 1.4km and

[10] Mr Jupp's appendix 15 and Mr Brown's appendix 9.

a village hall, 1.1km away. A post office is run from the village hall for 2 hours on a Monday.[11]

86. Mr Brown's proof indicated that, in the emerging Kettering Site Allocations Part 2 Local Plan, Loddington was among the "Category A" villages, which he described as being the most sustainable locations for small scale development. I am not aware that this categorisation changed when the plan was adopted, but the Local Plan Inspector's report, appended to Mr Brown's evidence, indicated that only infill sites would normally be permitted within the settlement boundaries of Category A villages.

87. Even if the appeal site could be said to be closely linked to Loddington, it is not within the settlement boundary and that village does not provide an adequate range of services and facilities sufficient to satisfy JCS Policy 31(a). The written evidence refers to a bus service and there is a bus stop/shelter in Loddington. However, oral evidence satisfied me the service was discontinued some years ago and I saw no indicators of an active service at the bus stop. There appears to be no bus service to Great Cransley either.

88. The written evidence was that there was a pub at Great Cransley, to the south of the site. However, I was told this has closed, and there are no facilities in Great Cransley, aside from a village hall.

89. Broughton has a primary school, convenience retail, hot food takeaway, village hall and public house. It is also a Category A village but, although it lacks a GP surgery, it might be said to provide an adequate range of services and facilities. Nevertheless, it is 2.9km by road from the site, being separated from it by fields and open countryside, Great Cransley and the A43. It is not a comfortable walk from the appeal site, either in terms of distance or the walking environment along much of the route. Although one site resident said his children cycle to the shops by road, there is no evidence that site residents often do so, and less confident cyclists may also find this route into Broughton unattractive. Other residents told me that they use their cars for shopping, and Mr Brown indicated cars are likely to be used for most journeys.

90. Broughton is not closely linked to the appeal site in spatial terms and access to it is likely to be by private car. Rothwell is categorised as a market town and has a wider range of services and facilities, including a GP surgery. However, it is further from the appeal site, and at 5km, Kettering Town centre is more distant still.

91. I note the Inspector's comments in the 2013 appeal Ref APP/J0405/C/13/2193601[12] (the Willows Park appeal). This concerned a site 800m from the nearest hamlet, 1.5km from the nearest village of Slapton, and 5km from facilities and services essential for day-to-day living. Albeit that the site was served by school buses, the Inspector found that the occupiers would rely on the private car and travel moderate distances to access shops and services. In the context of the Framework and PPTS at the time and, having regard to the fact that gypsies have a travelling way of life, the Inspector concluded that site would not be unacceptably unsustainable. It would be no less sustainable than

[11] Both the Council and R.6 party provide measurements. Where they differ, I have used the shortest measurement.
[12] Mr Brown's appendix 2.

a small housing scheme that the local plan would permit on the edge of Slapton.

92. However, the Willows Park decision concerned an extension to an existing site and was made in a different development plan context and specifically not against the background of any policy like JCS Policy 31(a). Furthermore, whilst the version of PPTS current at the time of the Willows Park appeal decision provided that local planning authorities should "strictly limit new traveller site development in open countryside", the word "very" has now been added. Mr Brown accepted in cross examination that the purpose of this must have been to "beef up" the limitation.

93. By contrast, appeal Ref APP/L2820/W/15/3131916[13] (The Braybrooke appeal) concerned a gypsy site at Braybrooke in this district, and the application of JCS Policy 31. The nearest settlement with an adequate range of services was the town of Desborough, some 3.5km away and the Inspector found that most journeys would be made by private car. In this case, the appellant says Rothwell provides a similar range of services to Desborough and, at 3.4km, it is a very similar distance from the appeal site.

94. However, in the Braybrooke appeal, several children from the site had attended school in Desborough for many years; the appellants were registered with doctors and dentists there; and some of the occupiers were employed in the town. The Inspector concluded that whilst the appeal site maybe physically detached, there were strong established economic and social links between the use of that site for gypsy and traveller purposes and the existing settlement. As a result of the existing patterns of travel and usage, the Inspector considered that the site would satisfy the requirements of Policy 31.

95. Although one resident said his children had made friends with others in the village, there is no evidence to show similar existing patterns and functional links in this case to enable me to identify a close link, in terms of Policy 31(a). Some residents keep horses 8 miles away and others keep them near Leicester, visiting once or twice per week. Some site occupants also make the 70 mile round trip to Leicester to attend their chosen church, 3 times per week. Other spend 4- 5 months of each year in Canada.

96. As a matter of judgment in this case and having regard to the most recent Bowd Field appeal decision, I conclude the appeal site is not closely linked, either spatially or functionally, to an existing settlement with an adequate range of services and facilities. There is therefore conflict in this case with JCS Policy 31(a) and PPTS paragraph 25.

97. I acknowledge that adequate services and facilities can be accessed through relatively short car journeys and sustainable transport solutions are inevitably more limited in rural areas. Nevertheless, there will be rural sites which, notwithstanding their spatial separation, have better access to services and facilities on foot or by other sustainable modes of transport.

98. I also acknowledge that the provision of a settled base could limit journeys for work, as well as to find places to stay, whilst also enabling access to health and education services in line with PPTS 4 and 13. These are material considerations, notwithstanding the conflict with JCS Policy 31(a), paragraph

[13] Mr Brown's appendix 6.

105 of the Framework, and PPTS paragraph 25 and I therefore attach limited weight to the harm arising from the lack of close links to services and facilities.

Highway safety

99. JCS Policy 31(e) and (f) together require, among other things, that gypsy and traveller sites should have satisfactory and safe access. JCS Policy 8(b) similarly seeks to ensure satisfactory access and avoid prejudice to highway safety. These policies are consistent with paragraph 111 of the Framework, which provides that development should be prevented where there would be an unacceptable impact on highway safety.

100. Cransley Road is an unclassified rural distributor road, and in the vicinity of the appeal site, it is subject to the national speed limit of 60mph. There is a slow bend to the south of the site access. In front of the site and to the north, the road is straight, but it rises, creating a crest. That crest restricts visibility to the north, whilst hedges limit it to the south.

101. The key difference between the parties is whether visibility splays should be provided in accordance with the Design Manual for Roads and Bridges (DMRB) or Manual for Streets (MfS or MfS1) and MfS2. I heard a great deal of evidence concerning this question.

102. The appellant's broad starting proposition is that the advice in DMRB is aimed at maintaining constant speed and indeed TD 41/95 said the aim was to ensure emerging traffic did not influence speeds on major roads. However, TD 41/95 has been superseded by CD123 & CD185 and there is no longer any reference to that purpose. I respect Mr Brown's extensive experience as a professional planner but am not persuaded that this fundamental statement of purpose was removed purely to "reduce verbiage", as he suggested. Both expert highway witnesses, namely those for the Council and R.6 party, expressed the view that DMRB advice concerning visibility splays is also aimed at ensuring vehicles can stop safely and that is probably correct.

103. The 'Status and application' section of MfS says:

> "MfS focuses on lightly-trafficked residential streets, but many of its key principles may be applicable to other types of street, for example high streets and lightly-trafficked lanes in rural areas. It is the responsibility of users of MfS to ensure that its application to the design of streets not specifically covered is appropriate. MfS does not apply to the trunk road network. The design requirements for trunk roads are set out in …DMRB."

104. MfS indicates that "streets" are highways which have "important public realm functions beyond the movement of traffic." They should have "a sense of place" and they also provide direct access to the buildings and spaces that line them. In these terms, Cransley Road is not a street and MfS focuses on residential streets. However, as indicated, it also applies to lightly-trafficked lanes in rural areas.

105. An automated traffic count (ATC) commissioned by the Highway Authority in June 2020 indicated 886 daily vehicle movements. For the appellant, Mr Brown drew attention to paragraph 7.9.3 of MfS which refers to "a relatively low limit on traffic flow (300 vehicles per peak hour or some 3,000 vehicles per day)." However, that relates to decisions about whether direct access is appropriate.

Mr Brown accepted it does not provide a definition of lightly trafficked for the purposes of MfS and I do not consider those figures directly relevant.

106. The expert highway witnesses did not consider Cransley Road to be a lightly trafficked rural lane and cautioned that the ATC was conducted during a period of Covid-19 restrictions. Travel restrictions were in place and working from home was encouraged[14]. Accordingly, the ATC will have revealed uncharacteristically low vehicle movements. This was accepted by Mr Brown who, in oral evidence, indicated that a more recent survey had revealed some 1,500 vehicle movements per day.[15]

107. In any event, Cransley Road is a rural distributor road which links Loddington to Great Cransley, Broughton and the A43. Notwithstanding the rural setting and having regard to my own observations and the evidence of a neighbouring resident, I see no reason to disagree with the view of the expert highway witnesses that it is not a lightly trafficked rural lane, in terms of MfS.

108. The 'Status and application' section of MfS2 says:

> "MfS2 builds on the guidance contained in MfS1, exploring in greater detail how and where its key principles can be applied to busier streets and non-trunk roads, thus helping to fill the perceived gap in design guidance between MfS1 and…DMRB.
>
> DMRB is the design standard for Trunk Roads and Motorways … The strict application of DMRB to non-trunk routes is rarely appropriate for highway design in built up areas, regardless of traffic volume."

109. The appeal site is not in a built up area, but para 1.3.2 of MfS2 says MfS should be the designer's starting point for any scheme affecting non-trunk roads. Paragraph 1.3.1 and table 1.1 indicate that key areas of advice, derived from principles contained in MfS can be applied, based on speed limits. Those areas of advice include stopping sight distance (SSD) but where, as here, the speed limit exceeds 40 mph, this is subject to local context.

110. Having regard to the evidence in this appeal, the local context is that there are no public realm features, or significant 'friction' associated with people crossing, children appearing from behind parked cars, or vehicles exiting from side roads. Paragraph 1.3.7 of MfS2 acknowledges that many parts of the highway network in rural areas are subject to the national speed limit but have traffic speeds significantly below 60mph. It provides that, in these situations MfS SSD parameters are recommended.

111. However, the appellant commissioned handheld radar speed surveys at one location to the north of the appeal site access and 1 to the south. These recorded average 85th percentile speeds of 40mph northbound, 41mph southbound and up to 42mph past the site. The Council's ATC survey was conducted at one point 100m to the north of the site access. That survey recorded 85th percentile speeds of 46.2mph southbound and 45.4mph northbound. The Council suggests the ATC results are more reliable as handheld radar guns can affect driver behaviour. There is logic in that position

[14] ID20.
[15] I have not seen that survey, because it was part of expert highway evidence which the appellant had attempted to introduce very late in the proceedings, shortly before resumption in May 2022. Having sought and considered written representations from the parties, I refused to accept that evidence.

and whilst, within DMRB, CA 185 indicates that handheld radar surveys are acceptable, it acknowledges that potential effect.

112. There was extensive debate about whether, when calculating SSDs under MfS it is necessary or appropriate to apply a wet-weather reduction to speeds ascertained through surveys undertaken in dry weather. Whatever the correct position in that context, I see no reason to make such an adjustment when taking account of actual speeds as part of my judgment of whether MfS or DMRB is appropriate.

113. Taken together, the survey evidence indicates that speeds on this section of Cransley Road exceed 40mph. In these circumstances, having regard to MfS2 paragraph 1.3.1 and table 1.1, and given the overall local context described, as a matter of judgement, I am not persuaded that the guidance in MfS is appropriate. I will look instead to DMRB. When applying DMRB, both highway experts confirmed there is no requirement to make a wet-weather adjustment to speeds recorded in dry weather; CA 185 only requires an adjustment from wet to dry.

114. In CD 109 and CD 123, DMRB indicates that visibility splays should be measured using a set back from the carriageway edge ('X distance') of 2m, a driver's eye height of 1.05m and an object height of 0.26m. By contrast, the object height specified in MfS and MfS2 is 0.6m. There was lengthy debate about the reasoning behind that 0.26m object height. Mr Brown said it would represent no more than a person lying in the road and Mr Dudley contended that it could cover a recumbent bike. I favour Mr Brazier's explanation that 0.26m is just a point at which you can see a vehicle travelling along the road; you can see part of a vehicle as it emerges over the crest of a hill. In any event, 0.26m is the height specified in DMRB.

115. For the appellant, Mr Brown only calculated visibility splays in accordance with MfS. For the Council and R.6, Mr Draper and Mr Brazier calculated them in accordance with DMRB. Their approaches differed in that Mr Draper used both the ATC and radar speed survey results. He also extracted different figures from the appellant's survey, which was conducted at two locations; one to the north of the appeal site access and one to the south. It was also conducted for 1 hour in the morning and 1 hour in the afternoon at each location and this enabled Mr Draper to determine both maximum and average 85th percentile figures from those results. To be more generous to the appellant, Mr Brazier relied entirely on the appellant's speed survey results.

116. Mr Draper's proof indicated that, under DMRB, the required visibility splay to the north would be 128-132m, based on the 45-46 mph ATC survey result; or 110m, based on 42mph, being the maximum 85th percentile radar survey speed southbound. He also provided a figure based on the 85th percentile speed in both directions north of the access. However, the relevant speed is that of southbound vehicles, towards the site access.

117. Mr Brazier's proof indicated that the required visibility splay to the north would be 103.2m. This is based on 40mph, being the average of the 85th percentile southbound vehicle speeds, as measured in the morning and afternoon radar surveys.

118. Turning to the required visibility splay to the south, Mr Draper's proof did not cover this, but Mr Brazier's indicated that it should be 108m, based on 41mph,

this being the average of the 85th percentile northbound vehicle speeds, as measured in the morning and afternoon radar surveys. The evidence regarding required visibility splays under DMRB was not challenged by the appellant, who relied on his contention that they should be determined in accordance with MfS, a contention which I have rejected.

119. Various figures were given for achievable splays in written and oral evidence, but it was agreed that these should be assessed on site. Those attending the site visit included Mr Brown for the appellant and Mr Draper for the Council. With their agreement, various measurements were taken and agreed using a measuring wheel. These included those based on the 2m X distance, 1.05m driver's eye height, and the 0.26m object height specified in DMRB.

120. On that basis, the agreed available visibility splay to the north is 81.2m. This is significantly short of even the lower requirement figure of 103.2m, suggested by Mr Brazier, based on the appellant's radar survey.

121. The agreed available visibility splay to the south is 69.9m. This is even further short of the 108m splay requirement identified by Mr Brazier, using the appellant's speed survey results.

122. I note that, leaving aside the possible detrimental impact on character and appearance, visibility to the south could be improved by cutting back the hedge. Furthermore, the 69.9m was measured to the nearside carriageway edge. Whilst there is nothing to stop vehicles crossing the centre line, it is only overtaking vehicles which are likely to be in that carriageway approaching the site access. Visibility of vehicles approaching in the far side carriageway is much better, until the road bends to the right beyond the southern extremity of the site. That said, even under MfS, the appellant's evidence is that a visibility splay of 79.2m would be required to the south. Bearing in mind that MfS recommends an X distance of 2.4m, the available splay measured on site was only 50m to the nearside carriageway edge.

123. I am mindful of the fact that there have been no recorded personal injury accidents on this stretch of road in the past 5 years. However, the current use of the site commenced less than 3 years ago. Before that, use of the site access would have been very limited. Moreover, for much of the time since the appellant's use commenced, traffic on Cransley Road will have been significantly reduced by Covid-19 restrictions. The lack of recorded accidents therefore provides insufficient reassurance.

124. I conclude on the evidence that, because of restricted visibility, there would not be satisfactory and safe access to the site, and there would be an unacceptable impact on highway safety. This concern is exacerbated by the likely frequent need for vehicles to enter and exit the site towing caravans. The possible scope for cutting back vegetation to the south would not overcome this, whilst potentially adding to the harm to character and appearance. For the reasons given, the development would conflict with JCS Policies 31(e) and (f) and 8(b), and with paragraph 111 of the Framework and I attach significant weight to that harm.

Whether the development will result in contaminated runoff impacting on the Cransley Reservoir Local Wildlife Site

125. This issue was considered at an RTS, in which the main participants were Ms Burnham and Mr Jupp for the Council, Mr Brown for the appellant and Mr Hughes for the R.6 party. Ms Burnham is the Senior Flood Water and Water Officer for West Northamptonshire Council, which currently provides Lead Local Flood Authority services to the Council. She was the only witness to give expert evidence on the drainage issue and the R.6 party adopted the Council's position. Comment in Mr Brown's proof was limited to a statement that the site is not located within an area shown on the Environment Agency's flood maps as being at high risk from flooding.

126. Ms Burnham confirmed there are no concerns regarding flooding on the site itself, but there is a risk of flooding from increased runoff from it. Surface vegetation has been removed and hardcore has been deposited across the central and southern parts, formed into terraces, to reduce the natural gradient.

127. Though not covered in their written evidence, two of the site residents said hardcore, comprising large stones, was deposited on site to a depth of about 1m. However, Mr Jupp said he went on site during construction and saw that brick rubble was being used, but with very small pieces and a lot of fines, rather than large lumps. Given the detail, I consider that the best evidence I have on the nature of the hard surface, below the top layer. I have no excavation survey evidence before me, and Mr Brown did not visit during construction.

128. Nevertheless, although this was not covered in his proof, Mr Brown indicated that the hardcore is permeable and said that, from information on the British Geological Survey (BGS) Website, the underlying geology is a weathered Northamptonshire Sand formation. Accordingly, he contended that surface water could discharge to the ground via infiltration. However, Ms Burnham said in her proof and confirmed at the RTS, BGS data indicates the site is likely to be underlain by Whitby Mudstone, which will have limited infiltration potential. Though gravel and sand layers may be present at shallow depths in the southern part of the site, which could allow some infiltration, she says the proximity of the water course and possible high groundwater levels at this location would likely preclude infiltration as an option for discharge of runoff.

129. Furthermore, Ms Burnham said, as the hard surface includes "MOT type 1" material comprising gravel, sand, and silt, this will compact down very hard to form an almost impermeable surface over time, regardless of the underlying geology. Even though water may pass quickly through upper layers of larger stone, and indeed one site resident says water never lies on the surface, this compaction is likely to greatly reduce permeability.

130. Following the conclusion of the RTS on drainage and indeed only at the end of the next RTS on ecology, both of which were on 19 May 2022, Mr Masters sought to submit a percolation test. When I asked why this had not been tendered before, I was told that it had been "set in motion" in January, but the expert had been ill, instructions had only been given in March and the report had only been received on 17 May. So, this exercise was not considered until 2 months after the November 2021 adjournment, and instructions were not

given until around 5 months after proofs were exchanged and more than 2 years after the refusal of planning permission. Mr Jupp also said, in any event, a percolation test should have been carried out carried out over longer period.

131. I was anxious to ensure the appellant had a proper opportunity to present his appeal. However, this evidence was extremely late, with no satisfactory explanation for this, and the drainage RTS had already been concluded without reference to the percolation test, even though the appellant apparently had the results. The other parties would have needed an opportunity to consider and comment on the evidence, necessitating a further, probably lengthy adjournment, given that the programme was already very tight. As the appeal had already been significantly delayed, I declined to accept the evidence, as to do so would not be fair to all parties or consistent with my responsibility to ensure the efficient progress of the inquiry.

132. Mr Masters suggested during the drainage RTS that I could work on the basis that the surface may not be permeable, but conditions could require a percolation test and Sustainable Drainage System (SuDS). On the balance of probabilities, the development, which would also include buildings, mobile homes, and caravans, as well as hard surfacing, would greatly reduce the permeability of the site and increase the volume and rate of runoff.

133. The Council's concern is the increased rate of runoff downhill towards the Cransley Reservoir Local Wildlife Site (LWS) to the south and that this could carry contaminants to that site. In terms of the quality of the runoff, the main concerns for the impact on the reservoir in this case relate to oils from vehicles, detergents, de-icers etc. In addition, there is a concern about contamination from sewage (nitrate, ammonia, and phosphate), given that connection to a main sewer is not feasible, though this aspect was discussed in more detail at the ecology RTS.

134. Mr Brown accepted there would be the potential for contaminated runoff but argued measures on site could delay the progress of water, so it would not exceed the greenfield runoff rate. Furthermore, he said membranes could be used to intercept pollutants before they reach the watercourse. He considers that water would infiltrate to the ground so that there would be no need for formal consent to discharge to the watercourse.

135. However, without a percolation test in line with BRE 365 methodology, I am not persuaded that infiltration is likely to be the solution. There are no surface water or combined sewers within the vicinity of the site to which it could be connected. Therefore, on the evidence before me, it is probable that discharge would be to the watercourse to the south. However, this is on land in separate ownership and there is no evidence that the owner would consent to the installation of the necessary drainage connection.

136. Having regard to the number of amenity buildings, mobile homes, caravans and hard surfacing, Ms Burman indicated in her proof that around 600m^3 of runoff may need to be stored near the southern boundary. Mr Brown advanced a much smaller figure during the RTS. It appears he did not take account of climate change, which undermines his calculation and, more importantly, his reduced figure was based on the view that the hard surface is permeable. I cannot accept that for the reasons already given. As Mr Jupp indicated, even if

the upper surface is permeable, it will not provide storage, as the water will simply run off the impermeable surface below, down towards the watercourse.

137. Ms Burnham's evidence is that 600m^3 of storage could not be accommodated on the southern part of the site. Though none was mentioned in his proof, Mr Brown suggested a range of storage solutions, including permeable paving for the access road, with storage tanks below; platforms for caravans with linear drains to the southern edges; additional linear drains, filled with gravel and lined with membranes to intercept water as it passes down the site and to catch pollutants; below ground storage containers within the pitches themselves, with the tanks releasing water at the greenfield rate; and rainwater harvesting.

138. The Council was not satisfied that such a scheme is capable of being designed for this site and Mr Jupp and Mr Hughes said they would have expected a design to be submitted, even if only during the appeal. Mr Hughes said a strategy is normally submitted with an application, at least to address geology and enable decision makers to be safe in imposing conditions. On the best evidence available to me, I am not satisfied that a solution could be presented to store the likely volumes of water prior to infiltration.

139. It is not uncommon in retrospective or part retrospective cases for conditions to be imposed requiring the submission of schemes for approval, with the ultimate sanction of cessation of the use should one not be approved and implemented. However, though Mr Brown only put these various options to Ms Burnham for the first time at the RTS, she had various concerns. She said filter drains are not considered to be standard practise or appropriate in residential areas in the CIRIA SuDS Manual because of sedimentation and the resulting need for constant maintenance. A secondary system would be required to capture sediment solids and space is needed for the tanks and for maintenance.

140. Ms Burnham explained that, even with tanks within pitches, given that discharge to the ground is unlikely to be the solution, the controlled release of water to the watercourse would need to be via a hydro-brake. It is therefore likely that a piped connection to the watercourse would be required, and there is no evidence of owner consent for this.

141. The evidence before me is insufficient to demonstrate that a system along the broad lines proposed by the appellant could manage the likely quantity of runoff. Moreover, I am not persuaded that the imposition of a condition requiring the submission of a scheme involving the very extensive operations outlined by Mr Brown for the first time at the inquiry would be reasonable. This concern would apply with even greater force to a temporary permission. In any event, any effective scheme would probably depend on consent for a connection to the watercourse, and there is no evidence this would be forthcoming.

142. I conclude on this issue that the development will result in contaminated runoff impacting on the Cransley Reservoir Local Wildlife site. This may include contamination from sewage because, as emphasised by the Council in closing, any sewage system would also rely on infiltration to be effective. Rather than carrying separate weight, this conclusion feeds into and informs consideration of the next main issue.

The effect of the development on ecology, including protected species and the Cransley Reservoir Local Wildlife Site

143. The main participants in the RTS on this issue were Ms Webb for the Council, Mr Sibbett for the R.6 party and Mr Brown for the appellant. Mr Jupp and Mr Hughes also contributed, but expert evidence was given by Ms Webb and Mr Sibbett. In giving evidence for the appellant, Mr Brown relied on a Preliminary Ecological Assessment (PEA) prepared by an ecologist in September 2019 and then revised in January 2020, together with a clarification note dated 6 November 2021. A signed copy of that note was submitted during the inquiry.[16]

144. The appellant's ecologist produced the PEA and revision following a site survey undertaken on 26 September 2019, shortly before the unauthorised works began. Whilst acknowledging that the site abuts the Cransley Reservoir Local Wildlife Site (LWS) to the south, the updated PEA indicated that, apart from the boundary hedgerows, the site would not contain or abut any Biodiversity Action plan priority habitats or other habitats of particular ecological interest. It found no use of the site by protected species other than some use of the hedgerows by badgers, and concluded the site had moderate potential suitability for foraging/commuting bats, with two trees providing low and moderate bat roost potential.

145. Among other things, the PEA recommended as large a buffer as reasonably possible be retained between the construction footprint and the southern site boundary, adjacent to the LWS. It also recommended that the scheme should incorporate sufficient drainage/sewerage to prevent any contamination of the LWS, including the stream corridor.

146. The appellant's ecologist appears to have been very experienced, but both Ms Webb and Mr Sibbett say his PEA and update were seriously substandard. In short, they maintain the reports: were severely deficient in their understanding of the site's ecological features prior to development; contained unachieved and unachievable mitigation measures; and failed to recognise the harm that has already occurred as a result of the development.

147. Mr Sibbett made an official complaint to the Chartered Institute of Ecology and Environmental Management (CIEEM), as the appellant's ecologist was then a member. The Institute's magazine reported that, following a hearing on 20 May 2020, the appellant's ecologist was formally reprimanded with conditions for "having failed to meet the required standard of ecological survey, assessment and reporting."[17] When Mr Sibbett checked in March and October 2021, the ecologist was no longer listed as a member of the CIEEM.

148. The appellant's ecologist's clarification note of 6 November 2021 suggests any criticism of their September 2019 PEA should be disregarded, as it was superseded by the January 2020 revision. However, Mr Sibbett confirmed what was said in his proof, namely that the complaint was made following the second report and related to both. In any event, the hearing was some 4 months after the second report.

149. In closing, Mr Masters emphasised that the appellant's ecologist was the only ecologist to have seen the site prior to the commencement of works and no

[16] ID22
[17] Mr Sibbett's proof paragraph 4.7 and appendix 2.

criticism is made of the fact that no protected species were identified as being on the site. However, the findings of the CIEEM professional conduct panel included failure to meet the required standard of ecological survey. In addition, I have Ms Webb's and Mr Sibbett's criticisms and neither the author, nor any other ecologist attended to support, or enable testing of the contents of the PEA and update. These factors lead me to attach limited weight to them and the clarification note, where their conclusions differ from those of Ms Webb and Mr Sibbett.

150. Ms Webb and Mr Sibbett were able to substantially agree the ecological baseline for the site, having regard to: post development site visits; Google Earth imagery; historical aerial photography; the LWS citation for Cransley Reservoir; Northants Bat Group data; highway accident data concerning collisions with badgers; the appellant's PEA and update, in so far as they assist; and their own professional expert judgement. I am satisfied on the evidence that the baseline is as follows:

- The site comprised semi-improved tussocky grassland, dating back to at least 1945. That continuity is indicative of quality, along with the variety of plant species listed in the LWS citation, on the "small field adjacent to the north-west corner of the reservoir." Mr Brown and Mr Masters sought to cast doubt on whether this was the appeal site, but 'Target note 1' in the revised PEA assumed it was. There is no significant doubt in my mind, and no basis on which to conclude the plant species referred to were restricted to the small undeveloped area at the southern end of the appeal site.

- The grassland would have provided a high quality habitat for reptiles such as grass snake, slow worm, and common lizard. Mr Sibbett said there was a reasonable likelihood that reptiles had been present on the site prior to development, and it was extremely likely that grass snakes at Cransley Reservoir would have used the appeal site for at least part of the year.

- The grassland would have provided a very good foraging area for bats and their boundary hedge would have been a source of flying insects, as well as a physical feature for bats to fly along. Data from the Northants Bat Group indicated that six different species of bat were known to use the reservoir area. Whilst I acknowledge Mr Brown's point that there will be many other areas suitable for foraging, the appeal site lies on a direct route for commuting and foraging between two habitats of great value to bats, namely Cransley Reservoir and Thorpe Malsor Reservoir, less than 1km away.

- Having regard to mammal tracks seen in aerial imagery, accident data indicating badger activity in the vicinity, and Mr Sibbett's finding of a sett nearby in April 2021, there would have been badger activity on the appeal site.

151. Ms Webb sits on the county Local Sites Panel. She said, "with some certainty", that the appeal site would have been designated as a Local Wildlife Site, had it been surveyed before development had taken place. Mr Masters' submitted in closing that, in contrast to the appellant's ecologist, Ms Webb and Mr Sibbett could only "speculate" on what flora and fauna may have been present on the site. This undervalues their professional judgement, informed by the factors referred to above.

152. Turning to the impact of the development:

- Most of the grassland has gone, together with the species growing within it.
- Most of the foraging habitat for bats on the site has gone and their commuting route between reservoirs has been interrupted. Although there was already an access, one of the site residents, Mr Quinn, acknowledged when cross examined that some hedgerow had been removed around the altered site access. Mitigation for this would require establishing a 5m dark corridor. I am not satisfied that this could be accommodated by the site layout and a lighting condition would not control light spill from caravans, vehicles etc on what was a previously dark site. Furthermore, if the development were permitted, highway visibility to the south would need to be improved, probably necessitating further reduction in hedgerow.
- Reptiles were likely killed or injured during the development works, which have also resulted in a large loss of reptile habitat. In the words of Mr Sibbett, there is "no scope whatsoever to provide meaningful habitat" as part of the development.
- Most of the foraging ground for badgers has now been developed.
- As noted above, even the appellant's updated PEA recommended the scheme should incorporate sufficient drainage/sewerage to prevent any contamination of the LWS, including the stream corridor. From consideration of the previous main issue, I am not persuaded that it can. The development is therefore likely to result in contaminated water running off into the Cransley Reservoir, and Mr Sibbett said, "this will end up with plants and aquatic life being damaged."

153. For the avoidance of doubt. Whilst Ms Webb's proof referred to potential impacts on the Loddington Verge Potential Wildlife Site and Protected Wildflower Verge, this is on the opposite side of Cransley Road. It was agreed at the RTS that there would be no significant impact on that.

154. In closing, Mr Master's emphasised the point made in the appellant's ecologist's clarification note that the landowner could have ploughed, mowed, or intensively grazed the site. This would also have degraded it in terms of biodiversity. On dismissal of the s78 appeal, the enforcement notice would only require the removal of the hard surface, caravans, and vehicles, followed by re-seeding with grass. This would not immediately, and might never, result in restoration of a high quality habitat of, semi-improved grassland. It would nevertheless eliminate other harms, including that of contaminated runoff into Cransley Reservoir and disturbance to bats through unavoidable light spillage.

155. In any event, it was agreed that JCS Policy 4 is the most important policy for this issue. Together with the Biodiversity Supplementary Planning Document for Northamptonshire (SPD), adopted August 2015, and consistent with paragraph 174(d) of the Framework, this seeks a net gain in biodiversity. The SPD and paragraph 3.37 of the supporting text of Policy 4 say "where possible." However, and in any event, Policy 4, the SPD, and paragraph 180(a) of the Framework say proposals should be refused where significant harm cannot be avoided, mitigated, or as a last resort, compensated. JCS Policy 5 also requires development to protect and improve the quality of the water environment.

156. I am persuaded by Mr Sibbett's assessment of the harm from this development as substantial in relation to grassland of value; moderate to substantial in respect of protected species (reptiles and bats); and moderate to substantial in relation to Cransley Reservoir.

157. In the absence of detailed proposals, I am not persuaded that there is scope for adequate mitigation by providing buffer zones. This is so, even if the area to the north of the s78 appeal site were utilised for landscaping, and regardless of the scope for requiring the provision of bat and bird boxes, as part of an ecological management plan, along with lighting controls. No compensation is proposed, and I conclude that the development would be harmful to ecology, including protected species, and the Cransley Reservoir LWS, contrary to JCS Policies 4 & 5, the SPD, and the Framework. I attach significant weight to this harm, but some of the harm can be undone if permission is refused.

The need for and supply of Gypsy and traveller pitches

158. Notwithstanding the creation of the new unitary authority, the parties accepted that, in this case, need and supply should be assessed in relation to the Kettering Borough Council area, and the RTS proceeded on that basis. The principal participants in that RTS were Mr Jarman and Mr Jupp for the Council, and Mr Brown for the appellant. The R.6 party was content to rely on the Council's evidence. The discussion followed an agreed agenda, though further comments were made by Mr Brown and Mr Jupp when they later gave formal evidence on planning matters.

159. The latest North Northamptonshire Gypsy and Traveller Accommodation Assessment (the GTAA)[18] was produced by Opinion Research Services (ORS) and published in March 2019. This covered 4 Councils in North Northamptonshire, including Kettering.

160. The appellant suggests the GTAA methodology is not robust. The first concern is that it only assesses need for households that meet the definition of gypsies and travellers in PPTS.

161. Paragraph 62 of the Framework says the size, type and tenure of housing needed for different groups, including travellers, should be assessed, and reflected in planning policies. However, footnote 27 says PPTS "sets out how travellers' housing needs should be assessed for those covered by the definition in Annex 1 of that document."

162. Paragraph 74 of the Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement. However, footnote 38 indicates that, "For the avoidance of doubt, a five year supply of deliverable sites for travellers - as defined in Annex 1 to Planning Policy for Traveller Sites - should be assessed separately, in line with the policy in that document."

163. It will still be necessary to assess the needs of those who do not meet the PPTS definition, and they will also require a suitable supply of caravan sites. However, I agree with the conclusion in another appeal[19] where the Inspector said, "for the purposes of considering whether the Council has a 5 year supply

[18] Mr Brown's appendix 8
[19] Appeal Ref APP/P0240/C/18/3213822 (Mr Jarman's appendix 1), at paragraph 31.

of sites for travellers that meet the PPTS definition… it should be assumed that numbers for 'non-travelling' gypsies will be provided for in other parts of the LP", and that "the criticism of the GTAA in this respect is unfounded."

164. If the Council cannot demonstrate an up-to-date 5 year supply of deliverable sites, PPTS indicates this should be a significant material consideration when assessing an application for temporary planning permission. I am satisfied that it will also be a material consideration in relation to a permanent permission, but I would have to determine the weight.

165. During the RTS there was lengthy discussion of the appellant's various criticisms of the GTAA methodology and assumptions. However, given my later conclusions on the issue of supply, I need not consider that debate in detail.

166. ORS' judgements will not be infallible, and the fact that the GTAA has not been subject to independent scrutiny through a local plan examination in public necessitates caution. However, ORS' general approach has been considered sound by numerous Inspectors[20], and I have seen no evidence of systematic defects. In any event, Mr Jarman's evidence, based on the GTAA, constitutes the best available to me about need. Mr Brown did not put forward an alternative number of pitches needed specifically for those who meet the PPTS definition.

167. The JCS had identified a need for 13 pitches in Kettering for the period 2011 – 2022, from figures identified in the 2011 GTA. For the period 2018 – 2033, the 2019 GTAA identified a need for 23 pitches for households that meet the PPTS definition, plus 4 pitches for undetermined households, who may meet the definition.[21] In his proof, and from the 2019 GTAA, Mr Jarman indicated that, for households that meet the PPTS definition, the Council needs to deliver 15 pitches over the 5-year period 2021/22 – 2015/26, based on a residual current need for 14 pitches and a future need for 1 pitch. During the RTS, he confirmed this had been revised to 16 pitches[22], including the 30% allowance for undetermined households.

168. Ultimately, Mr Brown said he would be happy for me to proceed on the basis that the figures in the GTAA represent the minimum level of those who meet the PPTS definition. I shall work on the basis that there is an identified need for 16 pitches over the relevant 5-year period.

169. Turning to supply, there are no new gypsy and traveller sites allocated in the current development plan. This is to be addressed in a separate Gypsy and Traveller Site Allocations Development Plan Document. However, as of 23 March 2022, the Local Development Scheme anticipated early engagement in June 2023; the production of a draft for internal consultation by April 2023; formal public consultation by September 2023; submission to the Secretary of State in February 2024; and adoption by December 2024.

170. For now, Mr Jarman indicated in his proof that the Council has a 5-year deliverable supply of 18 pitches, based on sites which have planning permission, but have not yet been delivered. At footnote 4, PPTS says:

[20] See Mar Jarman's appendices 1 – 6.
[21] In addition, the GTAA identified a need for 21 pitches for households who do not meet the definition.
[22] This figure is set out in the SOCG, albeit it was not agreed by the appellant.

> "To be considered deliverable, sites should be available now, offer a suitable location for development, and be achievable with a realistic prospect that development will be delivered on the site within five years. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans."

171. The first site relied upon is at Land off Stoke Albany Road, where planning permission was granted for 10 pitches on 1 July 2009[23]. There was no dispute that this permission is still extant. I will come back to what has happened following the grant of that permission but will first consider the implications of a condition on it. The GTAA deals separately with the needs of those who meet the PPTS definition and those who do not, and I have been persuaded that I must consider whether there is a 5 year supply of sites for those who meet that definition. Condition 2 of the Stoke Albany Road decision states:

> "The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006."

As discussed during the RTS, that definition included "…persons who on grounds only of their own or their family's or dependents' educational or health needs or old age have ceased to travel temporarily or permanently…" So, any or all the pitches could be occupied by persons who do not meet the PPTS definition, which now excludes people who have ceased to travel permanently. The relevant part of the current PPTS definition of gypsies and travellers is:

> "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..."

I cannot therefore be satisfied of the site's deliverability as one for gypsies and travellers as defined in PPTS.

172. In addition to the fundamental problem posed by condition 2, the history of the Stoke Albany Road permission is problematic. The site owner made no progress with the development and the Council understood the owner did not intend to bring the site forward for development themselves.[24] So, in September 2020, the Kettering Borough Council authorised, 'in principle', the use of its compulsory purchase order (CPO) powers. Local government reorganisation paused the CPO process, as the new unitary authority would have had to resolve to proceed. New dialogue then started with the landowner in April 2021.

173. In May 2021, the Bowd Field appeal decision, referred to above, was issued following a site visit in April. In that case, the Inspector said:

> "39… The Stoke Albany Road site was approved in July 2009 and the permission is apparently live because a lawful commencement has taken place… but, in this instance, implementation has stalled. The site is still not operational over a decade after being granted permission. It would also seem that a Compulsory Purchase Order is likely to be required to deliver

[23] Planning permission Ref KET/2009/0155 at Mr Jupp's appendix 21 and ID19(e).
[24] Mr Jupp's appendix 22.

this site. If CPO proceedings have commenced, they would be at the very early stages and the outcome cannot be assumed.

40. The fact that the site is not operational more than ten years after being granted permission is clear evidence that the site should not currently be treated as being deliverable. I stress that this is a finding based on the evidence available to me. Moreover, as things stand, I do not consider the site can be considered deliverable until the CPO proceedings have concluded in the Council's favour…."

174. Things have moved on in that, whilst the Council has taken no further steps towards a CPO, Mr Jupp indicated that the landowner has now agreed, in principle, to sell. However, he said they are still at the negotiation stage; contracts have not been exchanged and it would appear no price has been agreed. Mr Jupp said the Council was getting a valuation and suggested it might be possible to provide a letter confirming the position before the inquiry closed. No such letter was forthcoming, and I have seen nothing from the landowner.

175. Although, in terms of PPTS footnote 4, there may not be clear evidence that this 10 pitch scheme will not be implemented within five years, there remains considerable doubt. It is hard to be confident that a CPO will not be required. The position is not so very different to that facing the Bowd Field Inspector, and this adds to the fundamental problem posed by condition 2. In all the circumstances, but primarily because of the terms of condition 2, the Stoke Albany Road site cannot count towards the 5-year supply of deliverable sites for those who meet the PPTS definition.

176. The Council also relies on a site at Woodside, for which they say planning permission was granted for 8 pitches. There are in fact 2 permissions, one granted on 23 January 2015[25], and the other on 20 December 2018.[26] The 2015 permission was in fact for 5 pitches and a single dwelling to replace a mobile home. Condition 5 of that permission states:

"The site shall not be occupied by any persons other than gypsies and travellers defined in paragraph 15 of ODPM Circular 01/2006; the single dwelling hereby approved should not be occupied by any persons other than by gypsies and travellers for the purpose of managing the site."

177. Though this permission is 7 years old, and no pitches have been made available under it, I am told that the concrete base for the dwelling has been laid and I have no reason to believe the permission is not extant. The Council suggested the dwelling was for a household which formed part of the need identified in the GTAA, so it would reduce the need element. However, as the dwelling was to replace a mobile home, and there is no indication this was not lawfully sited and occupied, the occupiers would not previously have been in need. I accept Mr Brown's analysis that the 2015 Woodside permission results in a net gain of just 4 pitches.

178. In any event, condition 5 of the 2015 permission presents the same problem as condition 2 on the Stoke Albany Road permission. I cannot accept that even the 4 new pitches, can be counted as part of the supply of deliverable sites for

[25] Permission Ref KET/2014/0532 (ID19(g)).
[26] Permission Ref KET/2018/0531 (ID19(k)).

those who meet the PPTS definition; any or all of them could be occupied by people who do not meet that definition.

179. Condition 3 of the 2018 permission for Woodside limits occupation to those who meet the definition of gypsies and travellers in the August 2015 PPTS, "or its equivalent replacement in national policy." There appears to be no dispute that the planning permission is extant, and it would be for persons who meet the PPTS definition. However, condition 4 restricts the development to no more than 1 family pitch and no more than 2 traveller caravans.

180. For the reasons given, the Stoke Albany Road and 2015 Woodside permissions cannot be considered to contribute to the 5-year supply of pitches for gypsies and travellers who meet the PPTS definition. The 2018 Woodside permission can contribute to the supply, but it is only for 1 pitch. Even if all these permissions could be counted, they would together only represent 14 pitches against the Council's identified need for 16.

181. The Council contended that I could also take account of 5 pitches at The Old Willows and 9 at The Old Northampton Road, as these are occupied by people who do not meet the PPTS definition and enforcement action could be taken to make them available.[27] Mr Jarman said he believed the pitches were rented to non-travellers and that, on the morning of the RTS, he had discussed with Council staff the service of a Planning Contravention Notice (PCN) to identify those who do not meet the PPTS definition and enable enforcement action. However, I note this issue is addressed in Mr Jupp's proof[28] and despite an Executive Committee resolution in September 2020 to "…support on-going work to identify pitches with non-defined Gypsy and Traveller residents…", no action had been taken by the time of my inquiry.

182. Whether successful enforcement action can be taken to make additional pitches at The Old Willows and The Old Northampton Road available to people who meet the PPTS definition depends on a range of factors, including:

- the terms of the conditions attached to the planning permissions;
- the status of the occupiers;
- whether any breaches of condition have become immune from enforcement action;
- whether it would be expedient to take enforcement action;
- whether planning permission to use the land without complying with the relevant conditions might be forthcoming in any appeals against enforcement action;
- whether the service of a breach of condition notice would secure compliance; and
- whether the court would grant an injunction.

Clearly, I cannot formally determine any of those questions, but I must nevertheless consider some of the issues arising from the first bullet point above.

[27] Mr Jarman's proof, paragraph 59.
[28] Paragraph 5.108 and 5.109 and appendix 24 and 25.

183. Mr Jupp began his evidence in chief on planning matters at the start of 25 May 2022. Immediately before that, Mr Masters said he needed copies of the planning permissions concerning The Old Willows and The Old Northampton Road to cross-examine Mr Jupp. I confirmed I wished to see those permissions. In the event, the Council provided them at the end of 25 May, after Mr Jupp had given his evidence, and the day before Mr Brown gave his planning evidence.

184. Mr Jupp was cross examined on those planning permissions, even though copies were not available to me at the time. I had indicated it might be possible to deal with any further matters arising through submissions, once hard copies of the permissions were available but, if not, I would allow the Council to recall Mr Jupp. The Council did not cross-examine Mr Brown on his evidence relating to those permissions and did not seek to recall Mr Jupp.

185. In closing for the Council, Mr Lintott reiterated the view that enforcement action could be taken in respect of The Old Willows and The Old Northampton Road to make those pitches available to travellers as defined in PPTS. When pressed by me, he said the condition imposed in the past was more onerous and the occupiers do not meet it. Furthermore, he said there is no evidence that any occupiers will have gained immunity, so there is nothing to displace the presumption in footnote 4 of PPTS that sites with planning permission are deliverable.

186. The position is a little confusing because of the different site descriptions used in the various permissions but, regarding the site at The Old Willows, temporary planning permission was initially granted on appeal on 11 July 1994[29]. Condition 2 stated that it would be "restricted to use by no more than 7 families who are gypsies as defined in section 16 of the Caravan Sites Act 1968." Mr Brown explained in evidence that this included persons of a nomadic habit of life but, unlike the current PPTS definition, it did not include people who had ceased to travel temporarily.

187. On 11 March 1997, permanent planning permission[30] was then granted for that site. Condition 2 said that the permission was for "…the provision of a total of 9 units of residential accommodation on the site (in the form of residential caravans or mobile homes)…" and condition 7 also allowed for up to 9 touring caravans. Accordingly, 9 pitches were permitted. Condition 3 said, "The occupation of the residential caravan/mobile home shall be limited to persons defined as gypsies by Section 80 of the Criminal Justice and Public Order Act 1994. Again, that definition included persons of a nomadic habit of life but did not include people who had ceased to travel temporarily. Mr Brown explained people were found not to be gypsies if they ceased to travel for any reason.

188. That condition on the 1997 Old Willows permission was therefore more onerous than a condition linked to the current PPTS definition. Anyone who satisfies that 1997 condition will meet the PPTS definition. On the face of things, 5 of those 9 pitches, which the Council believes are not occupied by people who meet the PPTS definition, could count towards the supply of sites for those who do.

[29] Appeal Ref T/APP/L280/A/93/231264/P2 (ID19(c)).
[30] Permission Ref KE/97/0068 (ID19(d)).

189. I take Mr Brown's point that the onerous nature of this condition makes it more likely that it has been breached during the 25 years since it was imposed. However, I simply cannot tell, and have no jurisdiction to determine in this appeal whether any breach has become immune from enforcement action.

190. Turning to The Old Northampton Road site, which was an extension of The Old Willows site, planning permission was granted for 3 pitches on 20 June 2012[31]. On 3 July 2015, permission was then granted[32] for a total of 6 pitches on that same site. Conditions 1 and 2 on the 2012 and 2015 permissions respectively said, "The site shall not be occupied by persons other than Gypsies and Travellers as defined in Annex 1 of Planning Policy for Traveller Sites (CLG March 2012)." Like the definition in Circular 01/2006, that definition included "…persons who on grounds only of their own or their family's or dependents' educational or health needs or old age have ceased to travel temporarily or permanently…"

191. However, a new permission was then granted for The Old Northampton Road site on 13 April 2018[33]. This was for a total of 8 pitches, namely the 6 previously authorised, plus 2 for named households, subject to a personal condition. All 8 pitches were subject to condition 1, which restricted occupation to persons who meet the current PPTS definition of gypsies and travellers. On the face of things therefore, 6 pitches on The Old Northampton Road could be available to accommodate any persons who meet the current PPTS definition of gypsies and travellers.

192. If the 5 pitches at The Old Willows, alleged to be occupied by people who do not meet the PPTS definition, and the 6 pitches at the Old Northampton Road were added to the 1 pitch I have found available under the 2018 Woodside permission, then the supply would be just 12 pitches against the identified need for 16 pitches.

193. Moreover, leaving aside the terms of the conditions, I cannot form a view on any of the other factors bulleted at paragraph 182 above. Most significantly, that includes the question of the status of the current occupiers; namely whether they meet the current PPTS definition of gypsies and travellers or not. Notwithstanding the confidence of Mr Jarman and Mr Jupp on this point, the Council apparently intends to serve PCNs to clarify the position, which may have changed since they reached that view.

194. Footnote 4 of PPTS creates a presumption that sites with planning permission are deliverable, rebuttable only on clear evidence, that the permission will not be "implemented within five years." This is not apt to deal with cases where a site not only has planning permission, but the development has been implemented, in the sense of carried out, and the pitches are occupied.

195. I cannot pre-empt the outcome of any enforcement proceedings. Even *if* all the current occupiers of the Old Willows and The Old Northampton Road site do not meet the PPTS definition, my experience of planning enforcement proceedings over many years does not leave me confident on the balance of probability that all, or even most of those pitches can be made available to

[31] Permission Ref KE/2011/0363 (ID19(f)).
[32] Permission Ref KE/2014/00695 (ID19(h)).
[33] Permission Ref KET/2017/0980 (ID19(j)).

people who do meet the PPTS definition within 5 years. It is significant that no action had been taken by the time of the inquiry.

196. In all the circumstances and for all the reasons given, I am not satisfied on the balance of probability that the Council can demonstrate it has a five year supply of deliverable sites for travellers, as defined in Annex 1 to PPTS and there has been a failure of policy. In May 2021, the Inspector in the Bowd Field appeal attributed moderate weight to the lack of a five year supply, increasing this from the small amount of weight found in a 2017 appeal, and having regard to the on-going policy failure. In the circumstances of this case, and in view of the further passage of time and on-going policy failure, I attach significant weight to this factor. Like Mr Hughes, I consider significant weight appropriate whether in the context of considering permanent or temporary permission.

The impact of the development on a potential non-designated heritage asset, namely potential below ground archaeology

197. This matter was raised by the R.6 party, not the Council, and Mr Brown did not address it in his proof. Dr Dawson was the only witness to give expert evidence on this subject.

198. JCS Pol 2(d) says: "Proposals should demonstrate an appreciation and understanding of the impact of development on heritage assets and their setting in order to minimise harm to these assets and their setting. Where loss of historic features or archaeological remains is unavoidable and justified, provision should be made for recording and the production of a suitable archive and report."

199. Paragraph 194 of the Framework says: "Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation."

200. Dr Dawson's evidence was that, having regard to the fact that the East Midlands is rich in archaeological remains of the first Millennium BC; the geology and topography of the site and surrounding area; and, most importantly, aerial photographs showing crop marks very near the site and in the surrounding area, the appeal site has the potential to include heritage assets with archaeological interest. Indeed, in answer to questions from me, Dr Dawson said it was more likely than not that the site contained such assets. That evidence was compelling and unchallenged, and I accept it.

201. The planning application was not submitted until after development had commenced and the reasons for refusal did not refer to archaeology. Neither did the reasons for issuing the enforcement notice. I cannot be sure what the Council would have required if this had not been a retrospective case. When cross examined by Mr Masters, Dr Dawson said he would have expected an archaeological investigation in relation to works at nearby Nus Hill Lodge, but it was put to him that one had been required.

202. However, I note that in September 2020, the Northamptonshire County Council Archaeological Advisor[34] said, had this been an application in advance

[34] Dr Dawson's appendix 4.

which included proposals for terracing, they would "definitely have expected some assessment up front and probably trial trenching pre-determination." In retrospective cases where, had there been the opportunity, they would have wanted archaeological work done in advance, they said:

> "I usually ask for some trenching around the area affected to clarify the ground conditions and try to pick up anything which may survive, but obviously that depends on the extent of the works - if a large area has been terraced then it's entirely possible there is nothing left."

203. Whilst Dr Dawson indicated the terracing is likely to have destroyed most of any archaeological assets, he was confident that some fragments will have survived, and it would be possible to carry out investigations to recover the vestiges. If the appeal were allowed, conditions could be imposed to achieve this. It would complicate drainage works, which the appellant suggests would involve further trenches and the installation of underground tanks, but I have already concluded that conditions requiring such works would not be appropriate anyway.

204. Having regard to paragraphs 203 and 205 of the Framework, it is impossible to judge the significance of what would have been discovered. I cannot therefore know what measures would have been appropriate, had an investigation been carried out before development commenced. It might even be that planning permission would have been refused, because of unjustified harm to heritage assets. The carrying out of the works in advance of obtaining permission removed the opportunity for any such assessment.

205. Accepting it was more likely than not that the site contained heritage assets with archaeological interest, JCS Policy 2(d) has been breached. If I find the issue of "intentional unauthorised development" to be material in this appeal, this will influence the weight to be attached to that consideration.

Whether the development constitutes intentional unauthorised development and, if so, the weight to be attached to that.

206. On 31 August 2015 the Chief Planner at the Department for Communities and Local Government wrote to all Chief Planning Officers enclosing a planning policy statement which included the following:

> "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, this statement introduces a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals. This policy applies to all new planning applications and appeals received from 31 August 2015.
>
> The government is particularly concerned about harm that is caused by intentional unauthorised development in the Green Belt.
>
> …

After six months we will review the situation to see whether it is delivering our objective of protecting land from intentional unauthorised development."

207. This was repeated in a Written Ministerial Statement (WMS) on 17 December 2015. Although this issue was not addressed in Mr Brown's proof, or Mr Masters' opening submissions, the SOCG recorded agreement that this development constitutes intentional unauthorised development (IUD).

208. It was nevertheless put to Mr Jupp and Mr Hughes in cross-examination that no weight could be given to the WMS, as the situation had not been reviewed after 6 months and no policy on IUD has been included in the Framework, even though it has been revised since 2015. Mr Jupp had no warning of this point and was unable to comment. In his evidence in chief, Mr Hughes said the WMS has not been withdrawn or amended and Inspectors have continued to treat it as a material consideration, including in a recent gypsy and traveller appeal where Mr Brown acted for the appellant.

209. In his oral evidence, Mr Brown said there was "some doubt" over whether the WMS still applies and that the 1990 Act allows for retrospective applications. He said the WMS was primarily aimed at development in the Green Belt. Moreover, even if it still applies, I must take account of other factors in attributing weight, for example that the alternative was for the site occupants to be on the roadside. When cross-examined, he acknowledged IUD has been treated as a material consideration in recent appeal decisions and it is likely that it still is material.

210. Nonetheless, whilst noting that a further announcement was made through a member's question in the House of Commons in 2019 that the WMS still applied, Mr Masters pressed his point that, as matter of law, it should not be treated as material consideration. In any event he said if it is material, it should carry limited weight.

211. Although the situation should have been reviewed after 6 months and it appears it was not, the WMS was not expressed as applying for 6 months only. It has not been withdrawn and has continued to be treated as material. I am satisfied that it is a material consideration and, whilst there was particular concern about the Green Belt, IUD is relevant in areas outside the Green Belt.

212. The occupiers purchased the site in April 2019. Mr Brown says he was instructed sometime after that, probably in the summer. In August, he advised that a speed survey and PEA were needed to support a planning application. These were done in the last week of September 2019. The planning application was dated 10 October 2019 and marked received on 14 October.

213. The occupation began over the weekend of 12 October 2019. An excavator was delivered to the site on Friday 11 October and, from around 0700 on the Saturday, lorries were delivering large quantities of hardcore. Indeed, a local resident described "hundreds of lorry movements to and from the site, removing earth and delivering hardcore and other materials" and the work continued until later that afternoon, with Cransley Road being awash with mud from the site.[35] By 0900 on the Saturday, several caravans had arrived.

214. The timing of the incursion at the weekend was no doubt intended to make it harder for the Council to react quickly, but a temporary Stop Notice was issued

[35] ID24.

on Saturday 12 October and served on 13 October 2019. This related to the formation of hardstanding and engineering works to level and regrade the land. The Enforcement Notice and Stop Notices were then issued on 15 October. The Stop Notice required cessation of human habitation, removal of all caravans etc and cessation of all works for the formation of hardstanding and excavation.

215. Habitation continued. In addition, by reference to photographs in Mr Hughes' proof, Mr Brown accepted in cross-examination, that excavation and works to form the hardstanding continued into the summer of 2020, notwithstanding the refusal of the planning application on 26 February 2020.

216. Clearly, the appellant knew planning permission was required and this is not a case of a few caravans moving onto a vacant site. Substantial works have been carried out over a significant area to facilitate the occupation, and arguably went well beyond what was necessary to establish a temporary home pending determination of a planning application and appeal. A temporary Stop Notice and subsequent Stop Notice have been ignored. The occupation was planned and executed very quickly over a weekend.

217. Whilst it is true that retrospective planning applications are lawful, and the appellant submitted one, the primary reason for the WMS is the lack of opportunity to appropriately limit or mitigate the harm that has already taken place. I have found that some harm in relation to ecology and archaeology is irreversible. Other harms, though reversible, have endured for some considerable time.

218. I accept that the WMS has not been incorporated into the Framework, but it remains a material consideration. In all the circumstances, including the implications for archaeology, and notwithstanding that the site is not within the Green Belt, I conclude that the fact this was IUD should carry significant weight against the appeal. The lack of alternative accommodation and the likelihood of having to resort to the roadside would carry weight in favour of the appeal on their own account, but I am not convinced this should also reduce the weight attached to IUD, as that would represent double counting.

219. I note that only moderate harm was attributed to IUD in the Bowd Field appeal but, in this case, there is clear harm in relation to ecology and archaeology. Furthermore, "great weight" was attached to a finding of IUD in another recent appeal, to which I was referred.[36]

The availability of alternative accommodation and other personal circumstances of the occupiers, including the best interests of any children, all in the context of Human Rights considerations and the Public Sector Equality Duty (PSED)

220. It is agreed in the SOCG that the site residents fall within the definition of gypsies and travellers in PPTS. There is no evidence that any other suitable sites are available to the occupants or that they could live in bricks and mortar housing. Mr Jupp accepted in evidence that, if evicted, the residents are likely to have to live at the roadside.

221. I heard in evidence that the site residents are a group of close family members. The may "do their own thing" in the summer, but like to stay together in the winter, and it is hard to find a site big enough for all the family.

[36] ID7, at paragraph 48.

They wish to have a site for themselves as a group, so they can provide mutual care and support to each other. They have lived in the area for many years but have never had a settled base.

222. However, I also heard that there are more households on the site than can be accommodated by the permission sought. Mr Brown confirmed that, although the proposed 8 pitches, would still be enough, several would need to accommodate more than 1 household. There could be a need for 12 mobile homes, and 8 tourers, rather than 8 of each, as envisaged in both the application and the conditions suggested during the appeal.

223. All the evidence, for example in relation to landscape and visual impact and drainage[37], was based on the application proposal and the amendment would be too substantial to make by condition.[38] Mr Brown acknowledged that this would need to be the subject of further applications. This reduces the extent to which the appeal proposal would meet the needs of the site residents and the degree to which the personal circumstances of all the existing residents are relevant. Accordingly, the weight carried by those factors is diminished.

224. Article 8 of the European Convention on Human Rights (ECHR) is incorporated into UK law through the Human Rights Act 1998 and provides that everyone has the right to respect for their private and family life, home, and correspondence. The duty to facilitate the gypsy way of life is part of that, and Article 8 must also be considered in the context of Article 3(1) of the United Nations Convention on the Rights of the Child. This states that the best interests of the child shall be a primary consideration. Whilst those interests can be outweighed by other factors, no other consideration can be inherently more important.

225. Dismissing the appeal would give rise to an interference with the occupants' Article 8 rights. Any such interference must be in accordance with the law, necessary in a democratic society in the interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

226. As Irish travellers, the site occupants are in an ethnic minority and have a protected characteristic under the Equality Act 2010. The PSED means I must have due regard to the aims of eliminating discrimination and other prohibited acts; advancing equality of opportunity; and fostering good relations between persons who share a relevant protected characteristic and those who do not. Furthermore, by virtue of Article 14, ECHR rights, including under Article 8, shall be secured without discrimination.

227. There are 21 children on the site, including at least 9 under the age of 5, and I heard that at least one resident is pregnant. None of the children is in school, though that is what the residents would like. Two of the children were previously living with their mother in Leicestershire in a caravan on her grandfather's driveway. They attended school there but, since their parents reunited, they have moved onto the appeal site and no longer go to school.

[37] See in particular Ms Burnham's proof, paragraph 6.15, and appendix B.
[38] Having regard to *Bernard Wheatcroft Ltd v SSE* [1982] JPL 37, to which I referred during the conditions session of the inquiry.

Several of the children were taken to Canada during part of the last academic year.

228. Covid-19 disrupted children's education generally for some time, but schools have been open for the whole of the last academic year and for some time before that. I heard evidence from the residents that school places have not been available locally and that finding places for the children has been made more difficult by the fact that they would like them to be kept together, in the same school. A written statement from one resident says one child with learning difficulties, who was 3 when the statement was submitted in October 2021, has had a place at a local nursery school. That resident's statement said the authorities were helping to find a place for their child at a special school. However, they were unable to attend to give oral evidence, so I am not aware of any success on that score, and the child's time at nursery school is likely to come to an end in the next year or so.

229. Having a settled base would increase the chances of eventually getting the children into school. That would clearly be in their best interests, along with avoiding the general hardships and perils of a roadside existence and reinforcing their cultural traditions within an extended family group. However, having to leave this site would not disrupt any child's education by forcing them to leave a school in which they are settled. Over the years the children have had some home tutoring, and this could continue.

230. Several of the site residents have health problems which, in some cases are quite serious and probably give rise to a protected characteristic under the Equality Act. They have been able to register with local doctors whilst living at the site and a roadside existence would make access to healthcare more difficult for everyone on the site, including the children. However, there is no evidence that a particular medical facility or specialist close to the site is essential to the health of any of the site occupiers.

231. In all the circumstances, I nevertheless attach substantial weight to the fact that no other accommodation is available to the site residents, together with all their other personal circumstances, including the best interests of the children.

Other matters

232. The appellant suggested two fallback positions, namely use of the appeal site for grazing or keeping horses and use as a caravan site in accordance with permitted development (PD) rights. As far as grazing is concerned, there would be a realistic prospect of this, but its impact would not be remotely comparable to the proposed development. In terms of keeping horses, several of the site residents said that if planning permission is refused, they may wish to keep their horses on the site. However, given its size, this would only apply to a small number of horses. There have been stables there in the past but, even if permitted, they would be small-scale, and the impact would not be comparable to the appeal scheme. I attach very little weight to this fallback position.

233. There are PD rights for the use of land as a caravan site for up to 5 caravans, if it is supervised by an exempted organisation, and for meetings organised by exempted organisations and lasting no more than 5 days.[39] However, none of the site residents mentioned this as a possibility and it would

[39] ID21.

conflict with the stated intention of several to keep or graze their horses on the land. I am not persuaded that this is anything more than a theoretical possibility and, even if it were to happen, the impact would be far less than that of the proposal; as I pointed out during the inquiry, the PD rights do not extend to operational development. I attach no significant weight to this fallback position. Indeed, neither fallback position was mentioned by Mr Masters in closing for the appellant.

Planning balance

234. In weighting the various factors, I adopt Mr Hughes' hierarchy, namely substantial, significant, moderate, and limited/little.

235. I find harm in relation to landscape character and appearance to which I attach substantial weight. I identified harm in terms of highway safety, which carries significant weight. The harm caused to ecology also carries significant weight and I attribute significant weight to the fact that this is intentional unauthorised development. This last factor is exacerbated by those elements of harm to ecology and archaeology which are irreversible. I also attach limited weight to the harm arising from the lack of close links to services and facilities. I am not persuaded that these harms could be adequately addressed by any reasonable conditions.

236. As a result of the above, I find the development to be in breach of JCS Policies 2(d), 3, 4, 5, 8(b), 31(a), (e) and (f) and conclude that it conflicts with the development plan as a whole. It also conflicts with the Biodiversity SPD, paragraphs 105, 111 and 174 of the Framework, paragraph 25 of PPTS and the WMS on intentional unauthorised development.

237. Against this, I have determined that the Council cannot demonstrate a five year supply of deliverable sites for travellers, as defined in Annex 1 to PPTS and there has been a failure of policy. Together, these factors this carry significant weight in favour of the appeal, whether in the context of considering permanent or temporary permission.

238. I have found that it would be in the best interests of the children on the site to allow the appeal and this factor carries substantial weight. To this I add the significant weight attached to the site residents' overall personal circumstances and the lack of alternative accommodation, all in the context of human rights considerations and the PSED. On the other hand, I have attached no significant weight to any fallback position.

239. In relation to Article 8 of the ECHR, safeguarding the environment, the countryside and its appearance are relevant to both the economic well-being of the country and the rights and freedoms of others. Under the PSED, eliminating discrimination and advancing equality of opportunity, in terms of providing decent places to live, may often necessitate treating gypsies and travellers more favourably than the settled community. However, the harms associated with the occupation of this site and the objections raised by the Parish Council mean its continued occupation would be unlikely to foster good relations. Human rights and PSED considerations will nevertheless be relevant to my consideration of ground (g) in the enforcement appeal.

240. I conclude that material considerations do not indicate planning permission should be granted, despite the conflict with the development plan and dismissal

of the appeal is a proportionate response, subject to my consideration of ground (g). (For the avoidance of doubt, if a percolation test demonstrated scope for infiltration, this would reduce the harm to ecology from significant to moderate, but that would not change the overall balance).

241. The appellant seeks a permanent permission but, failing that a temporary one. Mr Brown suggested 3 ½ years but, in closing, Mr Masters said for 4 years would be more appropriate.

242. The Planning Practice Guidance indicates that circumstances in which a temporary permission may be appropriate include where a trial run is needed to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. This is not a case where a trial run is needed, but circumstances are expected to change with the adoption of a Traveller Site Allocations Development Plan Document, currently not anticipated until December 2024.

243. Given slippage in the past, I cannot be confident that there will not be further delays in the timetable for adoption. It could also take some time for any allocated site to become available thereafter. On this basis, the appellant's suggestion of 3 ½ to 4 years is not unrealistic.

244. However, in this case in addition to the continuing harm to landscape character and appearance, I have found significant risk to highway safety and ongoing ecological harm. In these circumstances, it would not be appropriate or proportionate to sanction the continuation of that harm for a period of years added to the harm and risk which has already existed since October 2019. Even if conditions could be applied, for example in relation to drainage measures, they would be even more unduly onerous in connection with a temporary permission.

245. I conclude that temporary planning permission should not be granted.

Conclusion on appeal B

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

APPEAL A

Ground (g)

247. This is the only ground of appeal, and it is that the period allowed for compliance with the enforcement notice is unreasonably short. In summary, from the time the notice takes effect, namely the date of this decision, the notice allows 7 days for cessation of the use for human habitation, removal of the caravans and other items and hard standing and 14 days for restoration by re-seeding with grass.

248. Mr Brown suggested a period of 12 months would be appropriate. The Council acknowledges that the periods specified in the notice are too short. In his proof, Mr Jupp merely suggested adding 7 days to the periods for compliance with each requirement except cessation of the use, which he contended should remain at 7 days.[40] However, having reflected on the matter, he said in chief that, where people are settled on a site, a period of 6 months is

[40] Mr Jupp's proof, paragraph 8.4, bearing in mind requirement 4 of the notice is not to be amended.

normally allowed. In his oral evidence, Mr Hughes suggested 3 months for the occupants to leave, with a further 2 months for the remedial works.

249. I acknowledge that the incursion and much of the hard surfacing work occurred very quickly, albeit that it may have been some months in the planning and organising. I also acknowledge that the site has been unlawfully occupied for more than 2 ½ years and I have had due regard to points made by the local resident who gave evidence on their own account.

250. However, the public interest in resolving this matter quickly must be balanced against the interests of the site residents, including 21 children. Though the children are not in school, having to leave a site which has been their home base for so long will involve significant disruption, even for those used to a travelling lifestyle. Whilst the site residents say they have nowhere to go anyway, Mr Brown said a period of 12 months would give them a better chance to make arrangements.

251. Balancing the personal circumstances of the site residents against the public interest in putting an end to on-going harms, requiring the cessation of occupation within 6 months and the completion of remedial works within a further 2 months would be a proportionate response. This has regard to rights under Art 8 of the ECHR, the best interests of the children on the site and the PSED.

252. I will therefore vary the periods for compliance in the notice. Ground (g) succeeds to that extent, but the notice will be upheld.

J A Murray

INSPECTOR

Appendix 1
List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/L2820/C/19/3240989	Mr James Delaney
Appeal B	APP/L2820/W/20/3249281	Mr James Delaney

APPEARANCES

FOR THE APPELLANT: Alan Masters of counsel

He called:

Philip Brown BA(Hons)
Patrick Quinn
Alex White
Michael Collins
Michael White
John White
James Quinn

FOR THE LOCAL PLANNING AUTHORITY: David Lintott of counsel

He called:

Ian Dudley BSc(Hons), MICFor, CEnv, CMLI
Martin Draper BEng(Hons)
Heather Webb BSc(Hons), CEnv Conservation, MSc, MCIEEM
Ruth Burnham MCIWEM C.WEM
Steve Jarman BSc, DipTP, PGCert Sust Leadership
Stephen Jupp BA, LLM, MRTPI

FOR THE LODDINGTON PARISH COUNCIL as RULE 6 PARTY: Edward Grant of counsel

He called:

Michelle Bolger CMLI, Dip.LA, BA, PGCE, BA (Landscape & visual)
Ian Brazier BEng(Hons,) CEng, MICE (Highways)
Nick Sibbett BSc, MSc, CEcol, MCIEEM, CMLI, CEnv
Dr Michael Dawson DPhil, MPhil, BA(Hons), BA (Heritage)
Philip Hughes BA(Hons), MRTPI, FRGS, Dip Man, MCMI (Planning)

INTERESTED PARTIES:

Hannah Reneerkens

DOCUMENTS SUBMITTED DURING THE INQUIRY

1	Guidelines for Landscape & Visual Impact Assessment 3rd Ed (up to page 68)
2	Preliminary Ecological Appraisal – revised January 2020
3	Council's opening submissions
4	R.6 party's opening submissions
5	Pages 69 – 118 of Guidelines for Landscape & Visual Impact Assessment 3rd Ed
6	Saved Local Plan Policy 10 & extract from Proposals Map & key (clearer copy of map substituted on day 2)
7	Appeal Decision APP/J1915/W/19/3234671 re Land at Chapel Lane, Letty Green
8	*Nixon & E Herts DC v SSHCLG & Mahoney* [2020] EWHC 3036 (Admin)
9	Council's suggested conditions
10	Statement of Common Ground dated 11 May 2022
11	Extracts from Manual for Streets 1 & 2
12	Agendas for: (a)Drainage; and (b) Ecology Round Table Sessions
13	Local Highway Authority Standing Advice for Planning Authorities (Domestic Vehicle Accesses Serving 1 to 5 Dwellings) June 2016
14	Extract from TD 42/95
15	Extract from CD 123 Version 2.1.0
16	Photographs 1 – 4 taken by Philip Brown at the site access November 2021
17	Unsigned clarification note in the name of Dr Peter Webb dated 6 November 2021
18	Email from Philip Brown dated 4 November 2021 commenting on his November 2021 photographs (ID 16)
19	Bundle of planning decision notices comprising: (a) KE/91/0526 dated 17 September 1991 Field No 6578, Broughton (b) KE/93/0217 dated 25 March 1993 Land adjacent Northampton Rd/A43, Broughton (c) Appeal decision T/APP/L2820/A/93/231264/P2 dated 11 July 1994 re application KE/93/0217 dated 25 March 1993 Land adjacent Northampton Rd/A43, Broughton (d) KE/97/0068 dated 7 February 1997 The old caravan site, Broughton

	(e) KET/2009/0155 dated 1 July 2009 Land at Stoke Albany Rd, Desborough (f) KET/2011/0363 dated 20 June 2012 The Old Willows, Unit 10, Old Northampton Rd, Broughton (g) KET/2014/0532 dated 23 January 2015 Woodside (NE of) Stoke Albany Rd, Desborough (h) KET/2014/0695 dated 3 July 2015 The Old Willows, 10 Old Northampton Rd, Broughton (i) KET/2016/0847 dated 24 July 2017 The Old Willows, 10 Northampton Rd, Broughton (j) KET/2017/0980 dated 13 April 2018 The Old Willows, 10 Northampton Rd, Broughton (k) KET/2018/0531 dated 20 December 2018 Land adjacent to Woodside, Stoke Albany Rd, Desborough (l) KET/2020/0318 dated 17 February 2021 The Old Willows, 10 Northampton Rd, Broughton
20	Agreed summary of restrictions on travel as of 23 June 2020
21	Mr Brown's note regarding permitted development rights, agreed by all parties (save that the Council indicated it did not fully agree the final paragraph)
22	The appellant's ecologist's clarification note (ID17) as signed by him on 26 May 2022
23	Extracts from the North Northamptonshire Joint Core Strategy 2011 – 2031 including paragraph 3.37 of the supporting text
24	Statement of Hannah Reneerkens
25	Additional suggested conditions
26	R.6 Closing submissions
27	Council's closing submissions
28	Appellant's closing submissions
29	*Smith v FSS & Mid-Bedfordshire DC* [2005] EWCA 859[41]

[41] This was submitted by the appellant by email at 10:45 on 30 May 2022, after the close of the inquiry, by agreement with the Council and R.6 party.