

### **TO:- Planning Committee**

Councillor Mark Evans , Councillor Bob Cope , Councillor Helen Adams , Councillor Jeff Ashley , Councillor Barry Bond MBE , Councillor Gary Burnett , Councillor Val Chapman , Councillor Philip Davis , Councillor Robert Duncan , Councillor Sam Harper-Wallis , Councillor Rita Heseltine , Councillor Diane Holmes , Councillor Victor Kelly , Councillor Kath Perry MBE , Councillor Robert Reade , Councillor Gregory Spruce , Councillor Christopher Steel , Councillor Wendy Sutton

Notice is hereby given that a meeting of the Planning Committee will be held as detailed below for the purpose of transacting the business set out below.

Date: Tuesday, 16 April 2024

Time: 18:30

Venue: Council Chamber Community Hub, Wolverhampton Road, Codsall, South Staffordshire, WV8 1PX



D. Heywood  
Chief Executive

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## **A G E N D A**

### **Part I – Public Session**

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|----------|--|----------------|
| <b>1</b> | Minutes<br>To approve the minutes of the Planning Committee meeting of 27 February 2024. | <b>1 - 2</b>   |
| <b>2</b> | Apologies<br><br>To receive any apologies for non-attendance.                            |                |
| <b>3</b> | Declarations of Interest<br><br>To receive any declarations of interest.                 |                |
| <b>4</b> | Determination of Planning Applications<br>Report of Development Management Team Manager  | <b>3 - 24</b>  |
| <b>5</b> | Monthly Update Report<br>Report of Lead Planning Manager                                 | <b>25 - 80</b> |

### **RECORDING**

Please note that this meeting will be recorded.

Any person wishing to speak must confirm their intention to speak in writing to Development Management by 5pm on the Thursday before Planning Committee

- E-mail: [SpeakingatPlanningCommittee@sstaffs.gov.uk](mailto:SpeakingatPlanningCommittee@sstaffs.gov.uk)
- Telephone: (01902 696000)
- Write to: Development Management Team  
South Staffordshire Council  
Wolverhampton Road  
Codsall  
WV8 1PX

### **PUBLIC ACCESS TO AGENDA AND REPORTS**

Spare paper copies of committee agenda and reports are no longer available. Therefore should any member of the public wish to view the agenda or report(s) for this meeting, please go to [www.sstaffs.gov.uk/council-democracy](http://www.sstaffs.gov.uk/council-democracy).

Minutes of the meeting of the **Planning Committee** South Staffordshire Council held in the Council Chamber Community Hub, Wolverhampton Road, Codsall, South Staffordshire, WV8 1PX on Tuesday, 27 February 2024 at 18:30

**Present:-**

Councillor Helen Adams, Councillor Gary Burnett, Councillor Val Chapman, Councillor Bob Cope, Councillor Philip Davis, Councillor Robert Duncan, Councillor Mark Evans, Councillor Sam Harper-Wallis, Councillor Rita Heseltine, Councillor Diane Holmes, Councillor Kath Perry, Councillor Robert Reade, Councillor Gregory Spruce, Councillor Christopher Steel, Councillor Wendy Sutton

31      **MINUTES**

**RESOLVED:** that the minutes of the Planning Committee held on 30 January 2024 be approved and signed by the Chairman.

32      **APOLOGIES**

Apologies were received from Councillor B Bond and Councillor V Kelly.

33      **DECLARATIONS OF INTEREST**

Councillor Steel declared a non-pecuniary interest in application 22/00083/FUL and took no part in the debate or vote.

34      **DETERMINATION OF PLANNING APPLICATIONS**

The Committee received the report of the Development Management Manager, together with information and details received after the agenda was prepared.

**22/00023/FUL – PATSULL PARK GOLF HOTEL AND COUNTRY CLUB, PATSULL LANE, BURNHILL GREEN WV6 7HR - APPLICANT – HARLASTON (PACKINGTON) LTD - PARISH – PATTINGHAM, TRYSUL, BOBBINGTON AND LOWER PENN**

Liam Wordley on behalf of Louise McFadzean spoke against the application.

Rob Mercer (applicant) spoke for the application.

Councillor R Reade as Ward Member was sympathetic to the need for farm diversification but did not support the current application as it posed significant harm to a number of designated heritage assets within the park environment.

**RESOLVED:** That the application be **REFUSED**.

**23/00240/FUL - OAK LANE FARM, OAK LANE, CALF HEATH, STAFFS WV10 7DR - APPLICANT – NICK BRASSINGTON - PARISH – HATHERTON**

Nick Brassington (applicant) spoke for the application.

**RESOLVED:** That the application be **APPROVED** subject to the conditions set out in the Planning Officers report and subject to the satisfactory completion of a unilateral undertaking in respect of Cannock Chase SAC.

**23/00887/FUL – SPRING PADDOCK, COMMON LANE, BEDNALL, ST17 0SF – APPLICANT – MR M WARNER - PARISH – ACTON TRUSSELL, BEDNALL AND TEDDESLEY HAY**

Councillor S Harper-Wallis supported the application.

**RESOLVED:** That the application be **APPROVED** subject to the conditions set out in the Planning Officers report and Section 106 Agreement to mitigate its recreational impacts on the SAC.

**23/01060/FUL – OUTDOOR CREATIONS LTD, HINKSFORD GARDEN CENTRE, HINKSFORD LANE, SWINDON, KINGSWINFORD, DY6 0BH – APPLICANT – MR ASHLEY IBBS-GEORGE (OCL KINSWINFORD LTD) – PARISH – SWINDON**

**RESOLVED:** That the application be **APPROVED** subject to the conditions set out in the Planning Officers report.

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**MONTHLY UPDATE REPORT**

The Committee received the report of the Lead Planning Manager informing the committee on key matters including training; changes that impact on National Policy; any recent appeal decisions; relevant planning enforcement cases (quarterly); and latest data produced by the Ministry of Housing Communities and Local Government.

**RESOLVED:** That the Committee note the update report.

The Meeting ended at: 19:47

**CHAIRMAN**

**SOUTH STAFFORDSHIRE COUNCIL****PLANNING COMMITTEE – 16 APRIL 2024****DETERMINATION OF PLANNING APPLICATIONS****REPORT OF DEVELOPMENT MANAGEMENT TEAM MANAGER****PART A – SUMMARY REPORT****1. SUMMARY OF PROPOSALS**

To determine the planning applications as set out in the attached Appendix.

**2. RECOMMENDATIONS**

**2.1** That the planning applications be determined.

**3. SUMMARY IMPACT ASSESSMENT**

POLICY/COMMUNITY IMPACT	Do these proposals contribute to specific Council Plan objectives?	
	Yes	The reasons for the recommendation for each application addresses issued pertaining to the Council's Plan.
	Has an Equality Impact Assessment (EqIA) been completed?	
	No	Determination of individual planning applications so not applicable- see below for equalities comment.
SCRUTINY POWERS APPLICABLE	No	
KEY DECISION	No	
TARGET COMPLETION/ DELIVERY DATE	N/A	
FINANCIAL IMPACT	No	Unless otherwise stated in the Appendix, there are no direct financial implications arising from this report.
LEGAL ISSUES	Yes	Town and Country Planning Act 1990 Planning (Listed Buildings and Conservation Areas) Act 1990 Planning (Consequential Provisions) Act 1990 Planning (Hazardous Substances) Act 1990 Planning and Compensation Act 1991 Planning and Compulsory Purchase Act 2004

OTHER IMPACTS, RISKS & OPPORTUNITIES	Yes	Equality and HRA impacts set out below.
IMPACT ON SPECIFIC WARDS	Yes	As set out in Appendix

## **PART B – ADDITIONAL INFORMATION**

### **4. INFORMATION**

All relevant information is contained within the Appendix.

#### **Advice to Applicants and the Public**

The recommendations and reports of the Development Management Team Manager contained in this schedule may, on occasions, be changed or updated as a result of any additional information received by the Local Planning Authority between the time of its preparation and the appropriate meeting of the Authority.

Where updates have been received before the Planning Committee's meeting, a written summary of these is published generally by 5pm on the day before the Committee Meeting. Please note that verbal updates may still be made at the meeting itself.

With regard to the individual application reports set out in the Appendix then unless otherwise specifically stated in the individual report the following general statements will apply.

Unless otherwise stated any dimensions quoted in the reports on applications are scaled from the submitted plans or Ordnance Survey maps.

#### **Equality Act Duty**

Unless otherwise stated all matters reported are not considered to have any adverse impact on equalities and the public sector equality duty under section 149 of the Equality Act 2010 has been considered. Any impact for an individual application will be addressed as part of the individual officer report on that application.

#### **Human Rights Implications**

If an objection has been received to the application then the proposals set out in this report are considered to be compatible with the Human Rights Act 1998.

The recommendation to approve the application aims to secure the proper planning of the area in the public interest. The potential interference with rights under Article 8 and Article 1 of the First Protocol has been considered and the recommendation is considered to strike an appropriate balance between the interests of the applicant and those of the occupants of neighbouring property and is therefore proportionate. The issues arising have been considered in detail

in the report and it is considered that, on balance, the proposals comply with Core Strategy and are appropriate.

If the application is recommended for refusal then the proposals set out in the report are considered to be compatible with the Human Rights Act 1998. The recommendation to refuse accords with the policies of the Core Strategy and the applicant has the right of appeal against this decision.

### **Consultations Undertaken**

The results of consultations with interested parties, organisations, neighbours and Councillors are reported in each report in the Appendix.

### **CONSULTEES**

CH – County Highways  
CLBO – Conservation Officer  
CPO – County Planning Officer  
CPRE – Campaign to Protect Rural England  
CPSO – County Property Services Officer  
CA – County Archaeologist  
CS – Civic Society  
EA – Environment Agency  
EHGS – Environmental Health Officer  
ENGs – Engineer  
FC – The Forestry Commission  
HA – Highways Agency  
LPM – Landscape Planning Manager  
HENGs – Engineer  
NE – Natural England  
PC – Parish Council  
OSS – Open Space Society  
STW – Severn Trent Water  
SWT – Staffordshire Wildlife Trust

### **5. IMPACT ASSESSMENT – ADDITIONAL INFORMATION**

N/A

### **6. PREVIOUS MINUTES**

Details if issue has been previously considered

### **7. BACKGROUND PAPERS**

Background papers used in compiling the schedule of applications consist of:-

- (i) The individual planning application (which may include supplementary information supplied by or on behalf of the applicant) and representations received from persons or bodies consulted upon the application by the Local Planning Authority, and from members of the public and interested bodies, by the time of preparation of the schedule.
- (ii) The Town and Country Planning Act, 1990, as amended and related Acts, Orders and Regulations, the National Planning Policy Framework (NPPF), the Planning Practice Guidance Notes, any Circulars, Ministerial Statements and Policy Guidance published by or on behalf of the Secretary of State for the Department for Communities and Local Government.
- (iii) The Core Strategy for South Staffordshire adopted in December 2012 and Supplementary Planning Documents
- (iv) Relevant decisions of the Secretary of State in relation to planning appeals and relevant decisions of the courts.

These documents are available for inspection by Members or any member of the public and will remain available for a period of up to 4 years from the date of the meeting, during the normal office hours. Requests to see them should be made to our Customer Services Officers on 01902 696000 and arrangements will be made to comply with the request as soon as practicable. The Core Strategy and the individual planning applications can be viewed on our web site [www.sstaffs.gov.uk](http://www.sstaffs.gov.uk)

Report prepared by: Helen Benbow - Development Management Team Manager



<b>App no</b>	<b>Applicant/Address</b>	<b>Parish and Ward Councillors</b>	<b>Recommendation</b>	<b>Page</b>
23/00862/FUL Minor	Mrs Kamile Gudleike Noka Future Ltd  Goods Yard Goods Station Lane Penkridge ST19 5AU	PENKRIDGE  Cllr Andrew Adams Cllr Samuel Harper-Wallis	APPROVE – Subject to conditions	<b>9-24</b>



**23/00862/FUL**

**Mrs Kamile Gudleike**

**PENKRIDGE**

Councillor Andrew J Adams  
Councillor Samuel G Harper-Wallis

**Goods Yard Goods Station Lane Penkridge ST19 5AU**

**Use of the site for the siting of containers for storage purposes**

Pre-commencement conditions required:	Pre-commencement conditions Agreed	Agreed Extension of Time until
No	N/A	24 May 2024

## **1.0 SITE DESCRIPTION AND APPLICATION DETAILS**

Use of the site for the siting of containers for storage purposes

Date of site visit - 14 November 2023

### **1.1 Site Description**

1.1.1. The application site measures approximately 0.33 hectares and comprises of a long narrow strip of land which is accessed off Station Lane to the south and extends to the north with the railway line running alongside it to the west. Adjacent to the south and east are residential uses and the land to the north is currently open. There is a thick line of cypress trees along the western site boundary, beyond which is the railway line. Further to the west beyond the railway line are open fields in agricultural use. The site is situated on the north-western edge of Penkridge village.

### **1.2 The Proposal**

1.2.0. It is proposed to use the site for the siting of containers for storage purposes. Each container is finished in a dark green colour and measures 6.06m in length, 2.44m in width and 2.26m in height. The plan submitted shows a line of containers extending to approximately 145m therefore the total number of containers would equate to approximately 58. Roughly half of the containers have already been placed on the land.

1.2.1. The units are expected to be rented by various occupiers but the total number of renters is predicted to amount to around 50. The site is proposed to operate 24 hours a day for 7 days per week and would be expected to be used for general domestic purposes/household items and business stock such as plumber's tools, furniture etc. The applicant has confirmed that no hazardous stock would be stored at the site.

### **1.3 SITE HISTORY**

92/00418 Use of Land for Storage of Caravans 10th November 1992

93/00088 Certificate of Lawful Use for Storage Approve Subject to Conditions 1st September 1993

94/00983 Replace Wooden Store with Metal Storage Unit 10th January 1995

### **1.4 POLICY**

### Constraints

Within Penkridge Development Boundary:

Newt - Strategic Opportunity Area Name: West Staffordshire Pondscape (North):

Great Crested Newt Amber Impact Zone:

SAC Zone- 8km Buffer Zone

### Policies

- Core Strategy

Core Policy 1: The Spatial Strategy for South Staffordshire

OC1: Development in the Open Countryside beyond the West Midlands Green Belt

EQ1: Protecting, Enhancing and Expanding Natural Assets

EQ4: Protecting and Enhancing the Character and Appearance of the Landscape

EQ9: Protecting Residential Amenity

EQ10: Hazardous and Environmentally Sensitive Development

EQ11: Wider Design Considerations

Core Policy 7: Employment and Economic Development

EV12: Parking Provision

- NPPF

Chapter 6: Building a Strong Competitive Economy

Chapter 11: Making Effective Use of Land

Chapter 12: Achieving well-designed and beautiful places

### Supplementary Planning Documents

Green Belt and Open Countryside SPD

### 1.5 CONSULTATION RESPONSES

All consultation periods have expired unless noted otherwise, and comments may be summarised.

Site Notice Expires	Press Notice Expires
5 December 2023	N/A

#### Councillor Andrew Adams - Penkridge North & Acton Trussell

No Response Received

#### Councillor Samuel Harper-Wallis-Penkridge North & A Trussell

No Response Received

#### Penkridge Parish Council

19th December 2023

Parish Councillors supported the comments made by both Network Rail and Residents

#### Environmental Health Protection

15th November 2023

Conditions are recommended in order to safeguard the amenity of nearby residential occupiers from undue disturbance.

#### Senior Ecologist - South Staffordshire

6th December 2023

I have reviewed the documents submitted with the application. I note that the majority of the site comprises hardstanding, and therefore it has limited ecological importance. I therefore have no objection to the proposal.

**Arboricultural Officer Consultation**

No Response Received

**Planning Enforcement**

No Response Received

**County Highways**

1st December 2023

Recommendation Summary: Acceptance

The proposed development is situated at the end of an unclassified road, subject to a speed limit of 30 mph. This is a residential road and only a short distance from the main road that runs through Penkridge. Storage of caravans has approval on this site.

**Network Rail**

21<sup>st</sup> February 2024

Following submission of further information, the signed Basic Asset Protection Agreement can be sent to the Council and the works are agreed.

22<sup>nd</sup> November 2023

Objects based on land stability matters and potential impact on the railway line. (Superseded by the above comments)

**NatureSpace Partnership Newt Officer (Staffordshire)**

No Response Received

**Severn Trent Water Ltd**

9th January 2024

No objections subject to conditions to secure foul and drainage plans. NOTE: we would not permit a surface water discharge into the public foul sewer, and recommend the applicant seeks alternative arrangements.

**Contributors (key points)**

Nicky And Mark Eddie **SUPPORTS**

Date Received 13.12.2023

I do not have any concerns regarding the use of containers being stored at the site. I have lived on the land for over twenty years where the containers are being stored, people that use the containers are respectful of others. I see the containers being delivered and it's not an issue.

Angela Selkirk **OBJECTS**

Date Received 05.12.2023

I am very concerned about this as it does not explain the amount of units being placed. What will be in the units and how they will be used i.e. extra traffic using Goods Station Lane. Also affecting the parking when

the activities are on at The Scout Hut. The caravans have been no problem but I think the storage units will cause lots of problems

Steven Field **OBJECTS**

Date Received 07.12.2023

- The applicant has stated the works have not started. This is clearly not true, as we are aware of tradesmen currently renting a container already on the site for painting materials storage.
- There is no indication of the total quantity of containers to cover the whole site. Dozens of containers will inevitably mean a significant increase in traffic from commercial renters. There is also no indication of whether containers will also be stacked vertically with access stairs, compounding traffic problems and view from adjacent residential properties.
- Goods Station Lane is a narrow village lane, and virtually every day is completely full of cars both sides of the road from daily events at the Boy Scouts premises. Large vehicles will have difficulty negotiating this lane, and more importantly, make the junction of Goods Station Lane with Levedale Rd and the A449 unacceptably more busy and more dangerous. Goods Station Lane has very limited visibility because of the green box.
- The considerable addition of vehicles would also contribute to extra air pollution, additional noise and night-time lighting for residents.
- The applicant is not proposing any facility to dispose of waste which could easily cause a contamination risk to neighbouring properties and children playing in the area.
- Because the site for new containers will most likely allow access to renters 24 hours per day, the hours of opening are very relevant to local residents because of night lighting, noise, disruption from traffic at any hour of the day or night.
- The Applicant has stated NO to the storage of hazardous substances. This will be completely untrue if commercial items of unknown toxicity or flammability are stored in the containers. The applicant cannot possibly know what substances will be stored in the containers, and could leak or cause a fire, with catastrophic consequences to local residents.

Colin Evans **OBJECTS**

Date Received 02.12.2023

Object due to increased heavy traffic, unknown contents and industrialising of a peaceful residential area.

Barry James **OBJECTS**

Date Received 02.12.2023

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- There is no indication of the total quantity of containers to cover the whole site. Dozens of containers will inevitably mean a significant increase in traffic from commercial renters. There is also no indication of whether containers will also be stacked vertically with access stairs, compounding traffic problems and view from adjacent residential properties.

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- The considerable addition of vehicles would also contribute to extra air pollution, additional noise and night time lighting for residents.
- The applicant is not proposing any facility to dispose of waste which could easily cause a contamination risk to neighbouring properties and children playing in the area.
- Because the site for new containers will most likely allow access to renters 24 hours per day, the hours of opening are very relevant to local residents because of night lighting, noise, disruption from traffic at any hour of the day or night.
- The Applicant has stated NO to the storage of hazardous substances. This will be completely untrue if commercial items of unknown toxicity or flammability are stored in the containers. The applicant cannot possibly know what substances will be stored in the containers, and could leak or cause a fire, with catastrophic consequences to local residents.

George Elsmore **OBJECTS**

Date Received 04.12.2023

- The change of use has already started. There are more than a dozen containers already on site and some are in use.
- The application states that the hours of opening are not relevant to this application, but with 24-hour access this going to increase the level of disturbance to those of us living in the vicinity.
- The applicant has stated that there will not be hazardous materials stored on site. How will this be guaranteed?
- Nowhere does the application specify the number of containers to be on site. The current caravan storage facility generates some seasonal traffic - mostly at weekends, but general storage can be assumed to generate more frequent traffic which will be affected by the number of units in use.
- Goods Station Lane is already in a very poor state of repair with quite dangerous potholes at the top end near to the railway, which is where any increase in traffic will be concentrated.

Mr G.H. Allman **OBJECTS**

Date Received 08.12.2023

- The container part of the site is much more active than the caravan part, with most of the containers appearing to be occupied by businesses and some appearing to be used as small workshops. This application will effectively create a mini-industrial estate immediately adjacent to a residential area. This will subject local residents to increases in noise, disturbance and light pollution.

- The proposal will result in many more vehicle movements on Goods Station Lane, which will inevitably include vans and commercial vehicles; this is in contrast to the much less frequent use by cars to access the caravan storage. Goods Station Lane is now a residential road and includes access to the local Scout hut, a busy facility used predominantly by children and young people. The junction of Goods Station Lane, Levedale Road and Stafford Road is a complex one and already badly congested; an increase in traffic will make this situation worse and will affect safety at this junction.

**C.P. Corcoren OBJECTS**

Date Received 06.12.2023

There are approximately 13 plus containers already sited in the yard, which have been arriving throughout the summer months. Most of these containers are already being rented out and have been so for the last 4 months or more.

The access road is very narrow and now with the extra vehicular traffic is getting busy. The caravans did have limit times morning and evenings but I have been told this no longer applies. There should be for these containers and the caravans at least limit times mornings and evenings to lessen disruption to ourselves.

**Mr Kevin Williamson OBJECTS**

Date Received 07.12.2023

I wish to object to the planning permission for this site.

Reasons being the increased traffic visiting the site at any time as it states it's open 24 hours. How will this be lit at night? Extra noise with people loading the containers. Which started in the summer. What is being stored in these?

Installing unsightly containers without planning permission.

As the site is on ground higher than gardens the safety of retaining wall with more heavy vehicles using it.

**Martin Ellis OBJECTS**

Date Received 05.12.2023

These premises are directly behind my property. I can tell you from having to listen to the noise coming from behind my house they have been using it for these purposes for quite a long period of time, several months at least. Containers are loud and noisy at the best of times but there are far more things happening than just container storage. On many occasions we've heard noise from 8.00am through until gone 7.00pm, not just containers but other tools and machinery and many different voices including children.

If it was just simple container/caravan storage I wouldn't object as we are used to frequent noise coming from the railway line directly behind the Goods Yard, but the noise from the yard is quite often ridiculous.

**Jane Johnstone OBJECTS**

Date Received 08.12.2023

- National Rail raised concerns about subsidence and the placement of the containers. All of the gardens that back onto the site from Nursery Drive do not have a retaining wall from the road in the goods yard. My garden is 3-4 foot lower than the goods yard and I am very concerned about the weight of these containers and the vehicles delivering them.
- There are currently about 13 containers that have been delivered on site and some are in use already.



The caravans currently stored would be dropped off and collected and didn't lead to too much noise.

- We have been subject to loud noise early in the morning due to banging, sliding and voices, to find men standing on the back of vans unloading and looking straight into my house.
- Vehicles are often left running with petrol and diesel fumes filling the air.
- How will parking be managed if a few people are trying to access containers and having to wait for other to finish before they can gain access.
- I would also like to know how the potential storage of hazardous materials is going to be managed. Will there be checks on containers to assess that these items aren't being stored?
- Will lighting be added to the yard and will the yard be checked regularly for waste?

Colin And June Haywood **OBJECTS**

Date Received 06.12.2023

- The applicant has shown clear intent to by-pass planning rules by already installing a number of storage units on the land.
- The planned units, some installed, are much larger than caravans, so cause loss of light, they are green in colour but the large white lettering are an eyesore and a detriment to the site. The way they are installed reduces light.
- The storage of hazardous chemicals, explosives, inflammables is unsuitable especially within 30 meters of domestic housing.
- The site is raised and overlooks the gardens and in honesty the storage of caravans has caused few problems. But with much larger containers the traffic, overlooking of lorries would be far worse.

Mr And Mrs A Healey **OBJECTS**

Date Received 07.12.2023

The siting of container storage is inappropriate in a residential area. Such a unit would seriously increase the commercial traffic on a narrow residential no through road.

There would be increased noise disturbance should the site not have restricted usage time.

We are concerned about possible inappropriate chemical storage. We are also concerned about the upkeep of the site should such a change take place as boundary between the storage site and the railway has become an eye sore.

## **1.6 APPRAISAL**

- Policy & principle of development
- Layout, design & appearance
- Access, parking & highway safety
- Residential Amenity

- Ecology & biodiversity
- Arboriculture
- Impact on railway line
- Hazardous Substances
- Human Rights

## **1.7 Policy & principle of development**

1.7.1. Section 38 (6) of the Planning and Compulsory Purchase Act (2004) sets out that the determination of applications must be made, in accordance with the Development Plan, unless material considerations indicate otherwise. The Development Plan for South Staffordshire District comprises the Core Strategy (2012-2028) and the Site Allocations Document (2012-2028).

1.7.2. Paragraph 123 of the NPPF advocates that planning decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Core Policy 7 outlines general support for local businesses and measures to sustain and develop the local economy.

### **- Open Countryside**

1.7.3. The site is situated in the Open Countryside which is protected for its own sake, particularly for its landscapes, areas of ecological, historic, archaeological, agricultural and recreational value. In accordance with Policy OC1, development within the Open Countryside will be restricted subject to a number of exceptions. One of the exceptions listed within OC1 is the making of a material change of use of land, where the works or use proposed would have no material effect on the appearance and character of the Open Countryside beyond the Green Belt.

1.7.4. In 1993 a Lawful Development Certificate was granted for the use of this site for storage purposes, and aerial photographs demonstrate that there have been caravans stored on the land consistently since at least 2003. On that basis, this proposal could not be considered to be a 'change of use' even though the size and height of the containers are similar to that of the caravans that were previously stored on the site. The containers proposed are of a permanent nature and are not mounted on wheels unlike the caravans that previously occupied the site (and still do in part). Hence, they must be treated as 'buildings' for the purpose of this application. Policy OC1 sets out a presumption against new buildings within the Open Countryside. Consequently, whilst this proposal would continue a longstanding storage use, the proposal is technically contrary to Policy OC1.

1.7.5. That being said, the longstanding and lawful use of the site for caravan storage is considered to be an important consideration. Whilst the site technically sits within the Open Countryside, it is a narrow strip of hard-surfaced land which sits between residential uses and the railway line. On that basis there is unlikely to be a significant impact on the character and appearance of the landscape. The impact on the landscape is considered further within section 1.8 of this report.

### **- Spatial Strategy**

1.7.6. Core Policy 1 (or 'CP1') aims to direct growth at the most accessible and sustainable locations within the District in accordance with the settlement hierarchy set out in the policy. Penkridge is a Main Service Village and is therefore one of the areas that is intended to be a focus for housing growth and employment development. Whilst the site is within the Open Countryside, the eastern site boundary forms the edge of the Development Boundary and the development sits on a narrow strip of land between

residential uses and the thick line of trees that form the edge of the railway line. The site is on the edge of the village and is close to the highway network. As such, the site is considered to be sustainably located.

## **1.8 Layout, Design and Appearance**

1.8.0. Policy EQ4 states that the rural character and local distinctiveness of the landscape should be maintained and where possible enhanced. The policy goes on to state that new development should not have a detrimental impact on the immediate environment and any important medium and long-distance views. Policy EQ11 requires that designs take into account local character and distinctiveness, including that of the surrounding development and landscape. Development should take every opportunity to create good design that respects and safeguards key views and visual amenity. Paragraph 135 of the NPPF requires that development functions well, adds to the overall quality of the area and is sympathetic to the surrounding built environment and landscape setting.

1.8.1. The containers extend to a height of 2.26m and are positioned in a line along the western site boundary, behind the existing two storey brick building and hedge at the front of the site which screen the development. In the northern portion of the site there are still caravans and motorhomes stationed on the land. There are also four containers situated next to the northern site boundary which appear to have been in-situ for quite some time. There is a substantial line of cypress trees along the western site boundary which screen the development from wider view.

1.8.2. The dwellings immediately to the east are screened by a combination of fencing and hedging. Further north, where the eastern site boundary faces the recent housing development, the boundary is secure but visually open, comprising of a combination of barbed wire, concrete posts and corrugated sheeting. At the site visit the applicant advised that they intend to seek permission to erect a new boundary fence along this edge of the site to improve the appearance of the site.

1.8.3. Although the site sits within the Open Countryside, it is a narrow site physically constrained on one side by housing and the other by the railway line and associated trees. The portacabins that have been installed are lower in height than the caravans they have replaced and are less intrusive visually due to their dark green colour. In addition, the site was already covered over with hardstanding and there has been no loss of vegetation or greenery as a result of the development. Taking into consideration the previous use of the land and the limited visibility of the site from wider view, it is considered that there would be no material harm to the character and appearance of the landscape or the street-scene, thereby complying with policies EQ4 and EQ11.

## **1.9 Access, Parking & Highway Safety**

1.9.0. Policy EV12 sets out the Council's parking requirements. In line with paragraph 115 of the NPPF, development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

1.9.1. Local residents have raised concerns about how much additional traffic would be generated by the use as the road is understood to be congested on days when the Scout hut is in use. The premises would continue to use the existing access off the end of Goods Station Lane and there is ample room on site for parking, both in the front portion of the site and alongside the portacabins therefore there should be no on street-parking as a result. The County Highways Officer notes that the development is situated at the end of an unclassified road which is subject to a speed limit of 30 mph. This is a residential road and only a short distance from the main road that runs through Penkridge. In addition, the site has previously been lawfully used for the storage of caravans. On that basis there are no undue concerns arising in respect of highway safety.

## **2.0 Residential Amenity**

2.0.1. In accordance with Local Plan Policy EQ9, all development proposals should take into account the amenity of any nearby residents, particularly with regard to privacy, security, noise and disturbance, pollution, odours and daylight.

2.0.2. The nearest residential properties are situated in Goods Station Lane and Nursery Drive. The dwellings closest to the front portion of the site face towards the site and share the vehicular access off Goods Station Lane. The dwellings adjacent to the central portion of the site face away from it with their gardens adjoining the western site boundary. The rear elevations of the properties within Nursery Drive are situated at a distance of approximately 11m from the adjoining site boundary. A number of residents have raised concerns regarding noise and disturbance, lighting and contamination risk through the potential storage of hazardous substances.

2.0.3. The applicant has provided additional information regarding the use via email since the original submission. They cannot specify exactly how many people would rent the units as some tenants may rent more than one unit, however they envisage that the 60 No. units could be rented by approximately 50 people and the items to be stored would be mainly household goods and business stock (for example, plumber's tools etc). The Council's Environmental Health Officer has reviewed the application and has raised no objections on the grounds of residential amenity subject to conditions to limit use of the site to certain hours and to prevent burning and use of audible equipment outside of those hours. Despite the operation being proposed for use 24 hours a day, given its location it is considered reasonable and necessary to restrict the hours of operation. This can be successfully achieved by way of appropriately worded planning condition.

2.0.4. Whilst the proposal has the potential to generate more visitation to the site than the caravan use, periods of activity on the site are unlikely to be prolonged as tenants would unload or load stock and then leave the site. Subject to the conditions suggested by the Environmental Health Officer the use would be limited to daytime only, on that basis there is unlikely to be a significantly detrimental impact on residential amenity by way of noise or disturbance during the evening. It is worthy of note also that the railway line sits on the other side of the site which would already generate a regular pattern of noise. Moreover, given the modest height of the containers there would be no harm to neighbouring properties by way of loss of light, overshadowing or loss of outlook. The proposal is therefore considered to comply with Policy EQ9 subject to conditions to restrict operating hours and to prevent the installation of any lighting without consent.

## **2.1 Ecology, Biodiversity and Arboriculture**

2.1.0. Protected Species - The Wildlife and Countryside Act (as amended) 1981 covers the protection of a wide range of protected species and habitats and provides the legislative framework for the designation of Sites of Special Scientific Interest (SSSIs). The Conservation (Natural Habitats, &c.) Regulations 1994 implement two pieces of European law and provide for the designation and protection of 'Special Protection Areas' (SPAs) and 'Special Areas of Conservation' (SACs), together with the designation of 'European Protected Species', which include bats and great crested newts. The Countryside and Rights of Way (CROW) Act 2000 compels all government departments to have regard for biodiversity when carrying out their functions. Finally, The Protection of Badgers Act 1992 consolidated existing legislation on the protection of badgers. This legislation is intended to prevent the persecution of badgers. The act protects both individual badgers and their setts.

2.1.1. Biodiversity - To comply with the guidance contained within Paragraphs 9, 108 and 118 of the NPPF

and the Council's biodiversity duty as defined under section 40 of the NERC Act 2006, new development must demonstrate that it will not result in the loss of any biodiversity value of the site.

2.1.2. Impact on Special Areas of Conservation - Paragraph 188 of the NPPF advises that "The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site".

2.1.3. Paragraph 186 of the NPPF advises that permission should be refused for development resulting in the loss of aged or veteran trees, unless the benefits of the development outweigh the harm. Strategic Objective 3 and 4 seek to protect, conserve and enhance the District's natural environment, whilst Policy EQ4 states that "The intrinsic rural character and local distinctiveness of the South Staffordshire landscape should be maintained and where possible enhanced. Trees, veteran trees, woodland, ancient woodland and hedgerows should be protected from damage and retained, unless it can be demonstrated that removal is necessary and appropriate mitigation can be achieved"

2.1.4. Core Strategy Policy EQ1 states that permission will not be granted for development that would cause significant harm to sites and/or habitats of nature conservation including species that are protected or under threat.

2.1.5. As previously mentioned the site has been covered over with hardstanding for quite some time and there are no trees or hedgerows which would be affected by the development. The Council's Ecologist has reviewed the application and advises that due to the majority of the site comprising of hardstanding it has limited ecological importance, subsequently no objections are raised. NatureSpace have also been consulted who consider that the development is unlikely to have an impact on Great Crested Newts and/or their habitats. Given that the development is within the amber Impact Risk Zone, as modelled by district licence mapping, and there are newt records in the wider area, an informative is recommended. On that basis there are no concerns arising in respect of ecology biodiversity or arboriculture, consequently there is no conflict with Policy EQ1.

## **2.2 Impact on Railway Line**

2.2.1. As previously mentioned the site shares a boundary with the railway line to the west and is separated from the line by a tall line of cypress trees. Network Rail initially lodged an objection to the proposal due to concerns regarding the weight of the containers and any resultant impact on the line. However they have since met with the applicant and are satisfied that the development will have no adverse impact on the railway line. The applicant has provided a copy of the Basic Asset Protection Agreement that has been agreed between Network Rail and the applicant which sets out the terms for protection of the railway line. On this basis there are no objections from Network Rail.

2.2.2. In terms of site levels, a neighbouring occupier has raised concerns regarding potential for land to slip back into their garden, since there is no retaining wall on the adjoining site boundary. The application does not propose any works to the existing hard-surfacing and the containers are situated around 3m away from the boundary with the residential properties.

## **2.3. Hazardous Substances**

2.3.0. A number of residents have raised concerns about the potential storage of hazardous substances in the containers. There is understood to be a separate consent regime for hazardous substances and this would

also be covered by health and safety legislation. However the applicant has confirmed that no hazardous substances would be stored on site. A condition could also be added to prevent any such storage.

## **2.4 Human Rights**

2.4.0. The proposals set out in the report are considered to be compatible with the Human Rights Act 1998. The proposals may interfere with an individual's rights under Article 8 of Schedule 1 to the Human Rights Act, which provides that everyone has the right to respect for their private and family life, home and correspondence. Interference with this right can only be justified if it is in accordance with the law and is necessary in a democratic society. The potential interference here has been fully considered within the report in having regard to the representations received and, on balance, is justified and proportionate in relation to the provisions of the policies of the development plan and national planning policy.

## **2.5 CONCLUSIONS**

2.5.0. The site is located within the Open Countryside, a valued landscape, where there is a presumption against development subject to a number of exceptions. However given the longstanding use of the site for caravan storage, the proposal for the siting of containers is considered to be acceptable in principle. Given the physical constraints immediately surrounding and the hard-surfacing that characterizes the land, the site is not considered to be particularly sensitive in term of landscape value and is well screened from wider view, thereby resulting in no undue harm to the character and appearance of the Open Countryside.

2.5.1. It is considered that there would be no undue harm to neighbouring amenity subject to conditions to limit the site to certain operating hours, to prevent additional lighting being installed and to prevent dust and noise. In addition there would be no adverse effect on the street scene, parking provision or highway safety. The proposal is therefore considered compliant with both national and local planning policy and associated guidance, consequently approval is recommended.

## **RECOMMENDATION - APPROVE Subject to Conditions**

1. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which this permission is granted.
2. The development authorised by this permission shall be carried out in complete accordance with the approved plans and specification, as listed on this decision notice, except insofar as may be otherwise required by other conditions to which this permission is subject.
3. Unless otherwise agreed in writing by the Local Planning Authority, within one month of the date of this decision, drainage plans for the disposal of foul and surface water shall be submitted to and approved by the Local Planning Authority. Thereafter the drainage scheme shall be implemented in accordance with the approved details within 6 months of the date of this decision and maintained for the lifetime of the development.
4. Access to the site for visitors/users of the containers shall only take place between the hours of 8.00am and 6.00pm Monday to Friday; 8.00am to 2.00pm Saturdays and not at all on Sundays or bank holidays.
5. There shall be no burning of materials on site at any time.
6. Any equipment which must be left running outside the allowed working hours as outlined in condition 4 shall be inaudible at the boundary of occupied residential dwellings.

7. The permission hereby granted does not grant any consent for the installation of any means of external lighting on the site or the building.
8. There shall be no stacking of containers or external storage at any time and the containers hereby approved shall only be stored in the area shown in yellow on the submitted site plan numbered TQRQM23282161151638 and dated 9<sup>th</sup> October 2023.
9. There shall be no storage of hazardous substances on site at any time.

#### Reasons

1. The reason for the imposition of these time limits is to comply with the requirements of Section 91 of the Town and Country Planning Act 1990.
2. In order to define the permission and to avoid doubt.
3. To ensure that the development is provided with a satisfactory means of drainage as well as to prevent or to avoid exacerbating any flooding issues and to minimise the risk of pollution in accordance with Policy EQ7.
4. To ensure that the use of the premises does not detract from the reasonable enjoyment of surrounding residential properties in accordance with policy EQ9 of the adopted Core Strategy.
5. To ensure that the use of the premises does not detract from the reasonable enjoyment of surrounding residential properties in accordance with policy EQ9 of the adopted Core Strategy.
6. To ensure that the use of the premises does not detract from the reasonable enjoyment of surrounding residential properties in accordance with policy EQ9 of the adopted Core Strategy.
7. To ensure that the use of the premises does not detract from the reasonable enjoyment of surrounding residential properties in accordance with policy EQ9 of the adopted Core Strategy.
8. The site is within the Open Countryside within which, in accordance with the planning policies in the adopted Local Plan, there is a presumption against development, unless it is essential to the operation of rural activities and must be located in the countryside, limited infilling or the re-use of a rural building in accordance with policy OC1 of the adopted Core Strategy.
9. To ensure that the use of the premises does not detract from the reasonable enjoyment of surrounding residential properties in accordance with policy EQ9 of the adopted Core Strategy.

The applicant is reminded that, under the Conservation of Habitats and Species Regulations 2017 (as amended) and the Wildlife and Countryside Act 1981 (as amended), it is an offence to (amongst other things):

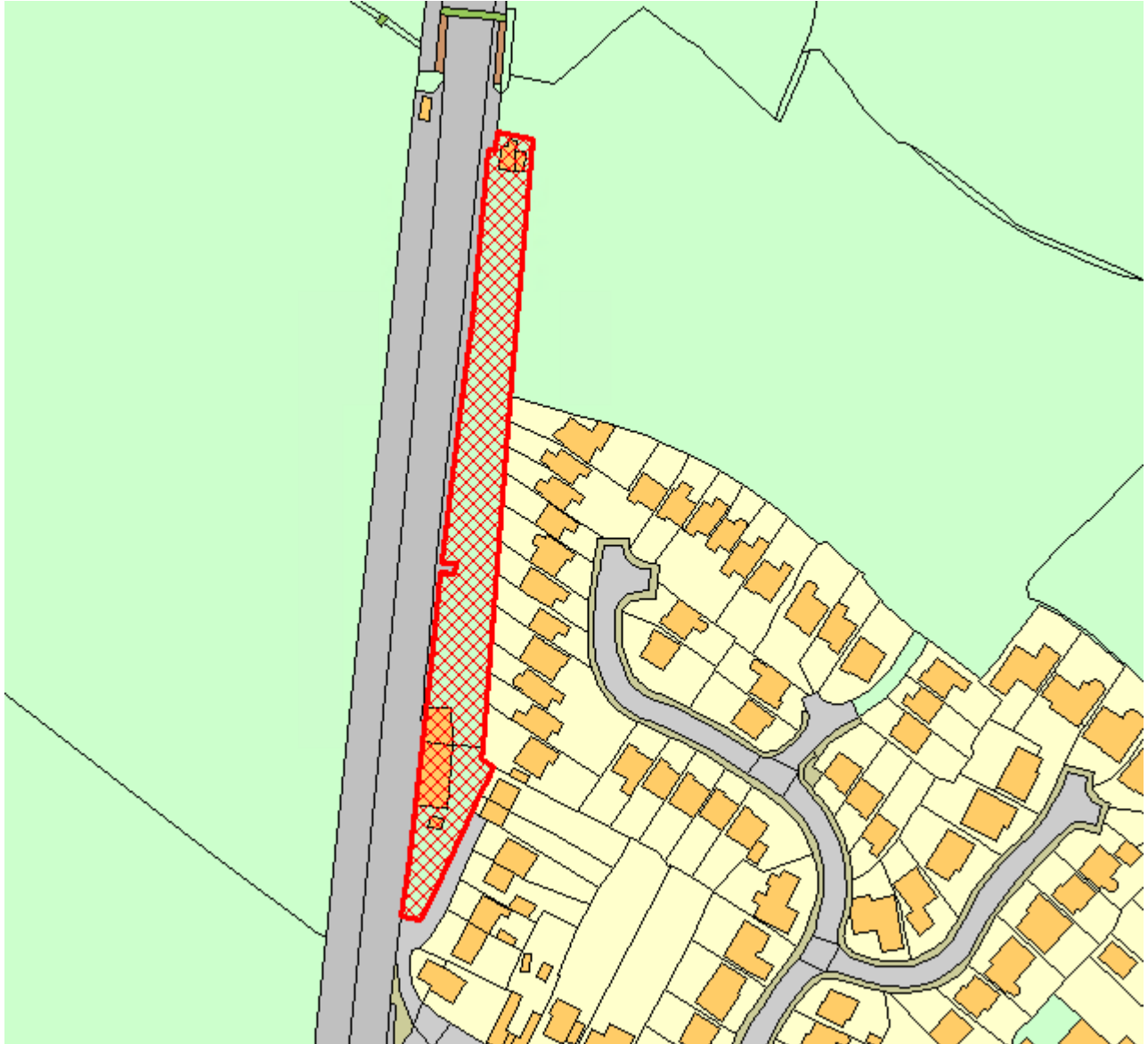
deliberately capture, disturb, injure, or kill great crested newts; damage or destroy a breeding or resting place; intentionally or recklessly obstruct access to a resting or sheltering place. Planning permission for a development does not provide a defence against prosecution under this legislation. Should great crested newts be found at any stage of the development works, then all works should cease, and a professional and/or suitably qualified and experienced ecologist (or Natural England) should be contacted for advice on any special precautions before continuing, including the need for a licence.

Proactive Statement - In dealing with the application, the Local Planning Authority has approached decision making in a positive and creative way, seeking to approve sustainable development where possible, in accordance with paragraph 38 of the National Planning Policy Framework, 2023.

**Plans on which this Assessment is based:**

Plan Type	Reference	Version	Received
Location Plan			9 November 2023
Container Dimensions			30 October 2023
Proposed Site Plan			9 November 2023





Goods Yard, Goods Station Lane, Penkridge ST19 5AU



**SOUTH STAFFORDSHIRE COUNCIL**

**PLANNING COMMITTEE – 16<sup>th</sup> April 2024**

**Planning Performance report**

**REPORT OF THE DEVELOPMENT MANAGEMENT TEAM MANAGER**

**PART A – SUMMARY REPORT**

**1. SUMMARY OF PROPOSALS**

1.1 This report has been updated to be reflective of the current and most relevant issues.

1.2 A monthly report to ensure that the Committee is kept informed on key matters including:

1.3 Monthly Updates on:

- Procedural updates/changes
- Proposed member training
- Monthly application update
- Update on matters relating to Department for Levelling Up, Housing and Communities (DLUHC)
- Any recent Planning Appeal Decisions

1.4 Quarterly Updates on:

- The latest data produced by the Department for Levelling Up, Housing and Communities (DLUHC)

**2. RECOMMENDATION**

2.1 That Committee notes the content of the update report.

**3. SUMMARY IMPACT ASSESSMENT**

POLICY/COMMUNITY IMPACT	Do these proposals contribute to specific Council Plan objectives?	
	Yes	
	Has an Equality Impact Assessment (EqIA) been completed?	
	No	
SCRUTINY POWERS APPLICABLE	Report to Planning Committee	
KEY DECISION	No	

TARGET COMPLETION/ DELIVERY DATE	28 <sup>th</sup> March 2024	
FINANCIAL IMPACT	No	There are no direct financial implications arising from this report.
LEGAL ISSUES	No	Any legal issues are covered in the report.
OTHER IMPACTS, RISKS & OPPORTUNITIES	No	No other significant impacts, risks or opportunities have been identified.
IMPACT ON SPECIFIC WARDS	No	District-wide application.

## **PART B ADDITIONAL INFORMATION**

### **Monthly Updates**

#### **4. Procedure updates/changes**

- 4.1 Progress has been made in the last month with the introduction of a new workflow system within Development Management. This is intended to speed up internal processes and automate simple tasks, removing the need for manual intervention. Work is progressing well.

#### **5. Training Update**

- 5.1 The schedule of both mandatory and optional training has now been completed. It is the intention to undertake training for members on bespoke topics going forward before alternate planning committees (5-6pm) in the Council chamber.
- 5.2 The following training sessions have now been scheduled:
- June 18<sup>th</sup> 2024 Trees and Arboriculture – Delivered by Gavin Pearce
- 5.3 Any area of planning and/or topics members would like guidance on then do let the author of this report know.

#### **6. Monthly Planning Statistics**

February 2024	Decided	In Time	%	With agreed EoT or PPA
<b>Major</b>	3	3	100%	3
<b>Minor</b>	15	15	100%	10
<b>Householder</b>	23	21	91.3%	11
<b>Other</b>	3	3	100%	2

#### **7. Update on matters relating to Department for Levelling Up, Housing and Communities (DLUHC)**

- 7.3 The application for “Digital Planning Improvement” funding was awarded (100K) and meetings with DLUHC have commenced. Discussion around the funding and how to best achieve the improved digital outcomes are ongoing and members will be updated in due course.
- 7.4 A current consultation is underway by DLUHC related to “An accelerated planning system”. Representations from LPA’s due on the 1<sup>st</sup> May and cabinet approval for the submission response will be sought in due course.
- 7.5 The consultation on “Various Changes to Permitted Development Rights” has been agreed by the Council and the representations submitted.

## 8. Appeals

- 8.1 This section provides a summary of appeals decision received since the last report. Appeal decision letters are contained within the relevant appendix.

8.2 **Planning Reference:** 12/00789/FUL and 20/00275/VAR

**Site Address:** Land at Rose Meadow Farm, Wolverhampton Road, Prestwood, Stourbridge DY7 5AJ

**Date of Inspectors Decision:** 16 February 2024

**Decision:** Allowed and notice quashed (Appendix 1)

This is a complex appeal decision related to both planning and enforcement cases. Members are advised to read this in full as a summary would not be appropriate in this case. Any questions or queries can be directed to the author of this report or the Lead Planning Manager

8.3 **Planning Reference:** 21/01290/FUL

**Site Address:** Former Royal British Legion, off Sterrymere Gardens, Kinver DY7 6ER

**Date of Inspectors Decision:** 08 March 2024

**Decision:** Dismissed (Appendix 2)

The development proposed was originally described as completion of demolition of derelict, former social club. Construction of new residential apartment block.

The main issue:

- the effect of the proposal on flood risk, with particular regard to the safety of future occupiers of the development.

The inspector dismissed the appeal noting that “the proposal fails to demonstrate that the residual flood risk could be overcome so as to ensure the safety of future occupiers of the development.” This was due to no agreement being in place with neighbouring landowners for a safe access and escape route in the event of a flood for the future residents of all vulnerabilities.

**8.4 Planning Reference: 23/00325/COU**

**Site Address:** Lanes Farm, Ebstree Road, Seisdon, Staffordshire WV5 7EY

**Date of Inspectors Decision:** 28th February 2024

**Decision:** Allowed (Appendix 3)

The development proposed is described as 'change of use from C2 dwelling to C2 children's home'.

The main issue:

- whether the location of the proposed development is acceptable, having regard to its accessibility to goods and services and sustainable transport modes.

The inspector allowed the appeal and, whilst recognising the properties isolated location, the fallback position of the current residential use of the property was given significant weight. The activity associated with a care facility limited to 3 children was considered akin to that of a busy residential household. The existing access would be utilised and ample parking was available, even during shift change over.

**8.5 Planning Reference: 22/00890/FUL**

**Site Address:** The Nurseries, Bungham Lane, Penkridge, Staffordshire ST19 5NP

**Date of Inspectors Decision:** 11th March 2024

**Decision:** Dismissed (Appendix 4)

The development proposed is the demolition of identified former nursery / garden centre buildings and erection of single dwelling and associated works.

The main issue:

- whether the appeal site is suitable for new housing and whether future occupants of the development would be reliant on private motor vehicles.

The inspector dismissed the appeal based in the sites unsustainable location outside of Penkridge and therefore the likely reliance of future occupiers on private motor vehicles.

**8.6 Planning Reference: 22/00848/FUL**

**Site Address:** The Four Ashes Inn, Station Drive, Four Ashes, Staffordshire WV10 7BU

**Date of Inspectors Decision:** 18th March 2024

**Decision:** Dismissed (Appendix 5)

The development proposed is the demolition of modern extensions to the public house and conversion of its historic elements to two dwellings, erection of seven dwellings, associated parking access, parking and landscaping, and retention of playing fields, play area, pavilion and car park.

The main issue were:

- Whether the proposed development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (The Framework) and any relevant development plan policies and its effect on the openness of the Green Belt;
- whether the proposed use would be in a suitable location with respect to local and national spatial planning policies;
- whether the proposal has demonstrated that the public house is no longer economically viable;
- whether the proposed development would function well, with respect to the design of the scheme and the noise impact from the adjacent highway
- whether the proposed development would affect the integrity of the Cannock Chase Special Area of Conservation (SAC); and
- if the proposal would be inappropriate development, whether any harm is clearly outweighed by other considerations, so as to amount to very special circumstances to justify it.

The inspector dismissed the appeal noting that the development was inappropriate within the Green Belt with no very special circumstances advanced to outweigh the harm, the site is in an unsustainable location and represents a poor layout/design. When considering the heritage issues the inspector considered the benefit of removing the large modern extension but found that other parts of the development “would not function” well and as such improvements to the non-designated heritage asset would be limited. Whilst the loss of the community facility can be supported (as a result of robust data within a marketing report) and the inspector noted that noise matters could be mitigated against, the harm of the proposed development was considered to outweigh any potential benefits. Further, limited weight was given to any potential community benefits given there was no legal mechanism in place to secure these in perpetuity.

#### 8.7 **Planning Reference:** 23/00024/FUL

**Site Address:** Tree Tops, School Lane, Coven, Staffordshire WV9 5AN

**Date of Inspectors Decision:** 15th March 2024

**Decision:** Allowed (Appendix 6)

The development proposed is described as ‘the erection of a single 3 bedroom bungalow style dwelling. The proposed dwelling would include an access that links to the existing entrance to Tree Tops (to form a shared entrance driveway)’

The main issue were:

- whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies; and
- whether the site is a suitable location for the proposed development having regard to the development strategy for the area.

The inspector allowed the appeal determining that the proposed dwelling would be sited within the village and as such would constitute village infill inline with the requirement in the NPPF.

## 9. Quarterly Updates

### 9.1 Planning Statistics from DLUHC

Description	Target	Q1	Q2	Q3	Q4	Cumulative
23 Major	60%	100%	100%	100%	100%	100%
22 Major		75%	100%	100%	89%	91%
21 Major		100%	100%	100%	85%	93%
23 Minor	70%	92%	89%	94%	85%	90%
22 Minor		89%	90%	86%	100%	91%
21 Minor		82%	84%	81%	89%	84%
23 Other	70%	93%	93%	93%	96%	94%
22 Other		93%	96%	96%	96%	95%
21 Other		88%	87%	83%	87%	86%

#### Stats for the rolling 24 month to December 2023

Total (overall) - 93%

Major - 95%

Minor - 91%

Other - 94%

This category includes Adverts/Change of Use/Householder/Listed Buildings.

#### Position in National Performance Tables (24 months to December 2023)

Majors 100<sup>th</sup> from 329 authorities

Non-Major 83<sup>th</sup> from 329 authorities

Report prepared by:

Helen Benbow

Development Management Team Manager





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## Appeal Decisions

Inquiry Held on 28 March 2023, 5-7 September 2023 and 8 December 2023

Site visits made on 29 March 2023 and 7 September 2023

**by R Merrett BSc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 February 2024**

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### **Appeal A: APP/C3430/C/20/3262819**

#### **Land at Rose Meadow Farm, Wolverhampton Road, Prestwood, Stourbridge DY7 5AJ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Billy Joe Timmins against an enforcement notice issued by South Staffordshire Council.
- The enforcement notice was issued on 13 October 2020.
- The breaches of planning control alleged in the notice are (i) failure to comply with condition No 3 of a planning permission Ref 12/00789/FUL, granted by way of an appeal decision Ref APP/C3430/A/13/2205793, on 17 August 2015 and (ii) "Unauthorised Operational Development has taken place consisting of the erection of a raised children's playground area, (shaded green) to the immediate south of the area of development, together with the erection of six 'street lights', (shaded yellow), to both north and south of the development plot."
- The development to which the permission relates is the use of land for the stationing of caravans for residential purposes for 2 gypsy pitches, together with the formation of additional hard standing and utility/dayrooms ancillary to that use. The condition in question is No 3 which states that: "When the land ceases to be occupied by Anthony and Brooke Timmins and their children and Crystal Flute and her partner and their children, or at the end of the specified 4 years, whichever shall first occur, the use hereby permitted shall cease, all materials and equipment brought onto the land in connection with the use, including the dayrooms hereby approved, shall be removed and the land restored to its former condition in accordance with a scheme of work submitted to, and approved in writing by, the local planning authority. The scheme of work for the restoration of the site shall be approved prior to the first occupation of the site." The notice alleges that the condition has not been complied with in that at the end of the specified 4 years, as at 17th August 2019, the use has not ceased and all materials and equipment brought on to the Land in connection with the use, including the dayrooms hereby approved have not been removed from Land and the Land restored to its former condition in accordance with a scheme approved in writing by the local planning authority.
- The requirements of the notice are: i) Permanently cease the use of the Land outlined in red on the attached plan, for the siting of caravans and utility days rooms; ii) Permanently cease the use of the Land outlined in red on the attached plan, for residential use; iii) To ensure the cessation of the unauthorised use of the Land outlined in red on the attached plan, permanently remove the caravans, utility days rooms and all materials and equipment brought on to the Land in connection with that use; iv) Permanently remove the unauthorised operational development consisting of the raised children's playground (shaded green), 'street lights', (shaded yellow) and all materials associated with the unauthorised operational development from the Land outlined in red on the attached plan; v) Restore the Land in accordance with the

scheme of restoration attached to this notice reference 11-426-011 with the removal of all hardstanding in the area hatched red on the restoration scheme reference 11-426-011 and restore the Land to agricultural use.

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

**Summary of decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.**

## **Appeal B: APP/C3430/W/20/3262816**

### **Land at Rose Meadow Farm, Wolverhampton Road, Prestwood, Stourbridge DY7 5AJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Billy Joe Timmins against South Staffordshire Council.
- The application Ref 20/00275/VAR is dated 01 April 2020.
- The application sought planning permission for the use of land for the stationing of caravans for residential purposes for 2 gypsy pitches, together with the formation of additional hard standing and utility/dayrooms ancillary to that use without complying with conditions 2 and 3 attached to planning permission Ref APP/C3430/A/13/2205793, dated 17 August 2015.
- The conditions in dispute are Nos 2 and 3 which state that: 2. "The use hereby permitted shall be carried on only by Anthony and Brooke Timmins and their children and Crystal Flute and her partner and their children, and shall be for a limited period being the period of 4 years from the date of this permission, or the period during which the land is occupied by them whichever is the shorter"; 3. "When the land ceases to be occupied by Anthony and Brooke Timmins and their children and Crystal Flute and her partner and their children, or at the end of the specified 4 years, whichever shall first occur, the use hereby permitted shall cease, all materials and equipment brought onto the land in connection with the use, including the dayrooms hereby approved, shall be removed and the land restored to its former condition in accordance with a scheme of work submitted to, and approved in writing by, the local planning authority. The scheme of work for the restoration of the site shall be approved prior to the first occupation of the site."
- The reasons given for the conditions are 2. Because the justification for planning permission being granted was based on it being for a temporary period only and because of the personal circumstances of the site occupiers; 3. The land needs to be restored to its former condition, once condition 2, could no longer be complied with.

**Summary of decision: The time limit of the temporary planning permission has expired and therefore no further action is taken in relation to this appeal.**

## **Preliminary Matters**

### *Whether Appeal B is validly made?*

1. Appeal B concerns a temporary and personal planning permission that was granted on appeal for, amongst other things, the residential use of the land for two gypsy pitches. The Council's case is that the appeal made, in relation to the application for development subject to Appeal B, is invalid because the

aforementioned temporary permission had expired by the time that application was made<sup>1</sup>.

2. It is noted in relevant case law<sup>2</sup> that the Act is silent as to what happens at the expiry of a temporary planning permission, but since s72(1)(b) provides for the imposition of a time limit and restoration condition, and a planning permission granted subject to such a condition is a planning permission for a limited period, it is implicit that the condition circumscribes the entire authorisation of the use. It appears to me that the condition survives only for the purposes of enforcement action. There is nothing in the legislation or case law which suggests it is possible to determine an application made pursuant to s.73 once the time limit of the permission has expired and only the time limit and restoration condition(s) exist.
3. Section 73A of the Act enables the grant of permission for development already carried out. S.73A(2)(b) is specifically drafted to ensure that development which has been carried out in accordance with planning permission granted for a limited period is "development" for the purposes of the grant of permission in accordance with s.73A. Permission can be granted under s.73A on an application made to an LPA. This includes an application made pursuant to s.62 of the Act (i.e. a full planning application). This is the appropriate application to submit where full consideration of the planning merits is required to determine whether permission should be granted. Having considered the circumstances of this case it seems to me that full consideration of the planning merits of the case is required because the previous permission was authorised on a temporary and personal basis due to the exceptional circumstances existing at the time.
4. To determine whether a continuation of the development is permissible it is necessary to consider the current planning circumstances, including the development plan, national policy and any other material considerations. This requires full consideration of the planning merits of the development.
5. The current use of the site is unauthorised, the time limit of the previous temporary planning permission having expired. Accordingly, I find that the application, made pursuant to s.73, is invalid and the Appeal B cannot proceed. I therefore take no further action in relation to Appeal B.
6. The appellant relies on case law to support the point that an application made under s.73 of the Act may be treated as one under s.73A<sup>3</sup>. However, in that case permission had been sought for development without complying with a condition subject to which planning permission was granted; not, as in the present case, where planning permission had been granted for a limited period. The case law in question does not therefore lead me to a different conclusion.
7. The appellant has referred me to an appeal decision in relation to which the relevant Inspector stated that he was not persuaded that the appellant had no legal right to apply for permission, without compliance with a condition, even though that application was made after the expiry of the temporary period<sup>4</sup>. However, I note that the Inspector had the benefit of Counsel's opinion which

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<sup>1</sup> Condition 2 granted planning permission on 17 August 2015 for a temporary period of 4 years.

<sup>2</sup> *Avon Estates Ltd v the Welsh Ministers & Ceredigion CC [2011] EWCA Civ 553*.

<sup>3</sup> *Lawson Builders Ltd v SSCLG [2015] EWCA Civ 122*.

<sup>4</sup> Appeal refs APP/L2820/C/20/3262337 & APP/L2820/W/20/3262332.

is not before me in this case. Therefore, the conclusion reached in that case, also leads me not to alter my above findings.

*The significance of the actual developed area in relation to the area covered by the temporary permission?*

8. The notice alleges a breach of condition and the construction of unauthorised operational development. With regard to the breach of condition, the parties do not dispute that the permission to which it relates covers a somewhat smaller area compared to that which has been developed on the ground. Specifically, in practice part of one of the mobile homes and adjacent hardstanding area extends further to the west.
9. The question is whether the extended area is caught by the breach of condition element of the notice. The Council's position is that this development is part and parcel of the development subject to the temporary permission and so properly falls within the scope of the notice.
10. However, in this regard I concur with the appellant that the additional area of development, though adjoining that previously permitted, is sufficiently significant in scale to have resulted in a separate material change of use of the land in its own right. Accordingly, the notice fails to 'bite' on this extended area. The deemed planning application, the subject of the ground (a) appeal, insofar as it relates to the use of the site, therefore corresponds to the area that was the subject of the temporary planning permission; and insofar as it relates to the operational developments targeted, as they have been developed on the site. The analysis of the ground (a) related issues is therefore made in this context. I am satisfied that it would be possible to correct the notice requirements and plan to reflect this position, without causing injustice to the main parties.

*The Oath*

11. Evidence to the Inquiry was given on oath.

*The National Planning Policy Framework*

12. A revised version of this document was published on 19 December 2023. The parties were given the opportunity to comment on the significance to this case of any revisions therein.

*Other Preliminary Matters*

13. The appellants presented drawing 11\_426B-015Rev P01 on the final day of the Inquiry. The Council objected to its acceptance, insofar as it purports to show accurately surveyed tree root protection areas, because it had not had the opportunity to verify the position at such short notice. The Council was, however, content with the drawing insofar as it depicted the proposed restoration area, that being the additional area of development outside the scope of the 2015 planning permission, as referred to above. I have sympathy with the Council's reservations and accept the drawing only on the basis of it depicting the proposed restoration area.

### **Appeal A on ground (b)**

14. The appeal on ground (b) is that the breach alleged in the notice has not occurred as a matter of fact. Specifically the appellant's case is that the alleged breach of condition is over an expansive area that is not the area of the planning permission containing condition 3, and as such the breach cannot have occurred over land where the condition does not operate; secondly that the alleged operational development in the form of the children's playground and potentially the 'street lights' are incorrectly marked on the plan.
15. It is undisputed that the notice plan covers a more extensive area than that which was the subject of the temporary permission. However, it seems to me the key point is that the plan includes the area where the condition operates, even if the area has been drawn more extensively than it needed to be in this regard. Other than this the appellant does not say that there has not been a breach of the condition as a matter of fact.
16. With regard to the alleged operational development, the appellant's case is that it has been identified in the wrong place on the notice plan, not that it has not occurred at all, or that it is not within the red line depicted on the notice plan. From all the evidence before me, I am in no doubt that it is understood by the appellant that the notice seeks to target unauthorised operational development comprising the specified playground and 'street lights'.
17. That the operational development extends beyond the area over which the breach of condition could have occurred is immaterial. They are identified as two distinct breaches of planning control, with the deemed planning application in this case applying to both elements. I agree with the appellant that the position of the alleged unauthorised operational development (playground and northern line of lights) has been incorrectly identified on the notice. Indeed this has been accepted by the Council. However, I am firmly of the view that if the position of these features were to be corrected on the plan, what is being alleged cannot be said to surprise or disadvantage the appellant on the basis of any previous uncertainty or ambiguity over what the notice was attacking.
18. In relation to both breaches the appellant has had the opportunity to argue their case fully as part of the appeal proceedings. I am not persuaded that there is injustice in this regard. The ground (b) appeal fails.

### **Appeal A on ground (a)**

#### **Main Issues**

19. The ground (a) appeal is that planning permission should be granted. The main issues are:
  - Whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
  - The effect of the development on the openness of the Green Belt and the purposes of including land within the Green Belt;
  - The effect of the development on the character and appearance of the area;
  - The effect of the development on a veteran tree;

- The effect of the development on highway safety;
- The need for Gypsy and Traveller sites;
- The personal circumstances of the appellant;
- The question of intentional unauthorised development;
- If the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

## **Reasons**

### *Green Belt*

20. Paragraph 142 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 143 notes that the Green Belt has five purposes which include safeguarding the countryside from encroachment; checking the unrestricted sprawl of large built-up areas and preventing neighbouring towns from merging into one another. Paragraph 152 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
21. There is no dispute between the parties that the residential use proposed and the various operational development would amount to inappropriate development. Indeed, with regard to the use, the Government's Planning Policy for Traveller Sites 2015 (PPTS) expressly states that such sites in the Green Belt are inappropriate development.

### *Openness and Green Belt Purposes*

22. The assessment of impact on openness is about considering the presence of the development in the context of national policy which seeks to keep Green Belt land permanently open, thus avoiding urban sprawl. This specific assessment is not about the quality of the development, including the suitability of materials used, in itself, or its effect on the character and appearance of the area.
23. The Court of Appeal has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect<sup>5</sup>. The various caravans (two statics and two touring), buildings and paraphernalia and structures, targeted by the notice, would take up space which was previously free from development.
24. Aside from taking up space, however, it was apparent that because of the site's setting within dense mature woodland surroundings, visual receptors of that occupied space outside the site itself are very limited. In terms of receptors in the public domain, these are where the A449 road crosses the River Stour to the north east of the site, and further south along the same road, closer to the site entrance. Whilst the north elevations of the mobile homes would be seen from these vantage points, the views comprise fleeting glimpses between gaps

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<sup>5</sup> *Turner v SSCLG & East Dorset Council* [2016].



in the highway boundary hedgerow. I do accept that existing lighting arrangements on the site may serve to draw further attention to these structures during hours of darkness. However, it seems to me that the impact of external site lighting could be mitigated by giving consideration to the control of any light spillage, through the imposition of an appropriate planning condition.

25. Similarly views into the site along the access road leading to it would be momentary. Given that by far the predominant receptor of these aforementioned views would be passing motorists, I consider that any perception of visual harm to the openness of the Green Belt would be very minor indeed.
26. Furthermore, from the A449 road, visibility of the play equipment, the southern most line of 'street lights' and a majority of the hardstanding would be screened by the two mobile homes. It seems to me that the visual impact of the northern line of lights would be substantially assimilated against, and therefore even less than that of, the mobile homes. I acknowledge that visibility of the two mobile homes may be increased a little as a result of seasonal leaf fall, however it seems to me that views would remain heavily filtered such that any additional material harm would be unlikely to arise.
27. I also viewed the site, both from part of the grounds, and within one of the rooms, on the eastern side of the Prestwood House Care Home, situated a relatively short distance to the west of the appeal site. From here it was apparent the site is substantially screened by dense vegetation. I have also had regard to a photograph of the outlook, taken within the same room during the winter, whilst also being mindful of the effects of external lighting on the site. Whilst the appeal site development, including the playground equipment, is visible to a degree at this time, due to seasonal leaf fall, visibility remains heavily filtered, and when also taking into consideration the small number of recipients of this view, albeit that such persons may be present in the room for long periods, I am not persuaded that the visual harm to openness is significant.
28. Drawing these considerations together, whilst the development would result in spatial harm, I am not persuaded that it causes any more than limited harm to the openness of the Green Belt, or in terms of encroachment into the countryside. Furthermore, in terms of the other Green Belt purposes, when considering the relatively limited scale of development in this case, the argument that the development is at odds with policies seeking to check the unrestricted sprawl of large built-up areas and preventing neighbouring towns merging into one another is simply not compelling. I draw this conclusion, whilst considering the site not to be so far from the settlement of Stourton to the south, that it may be regarded as 'away from' existing settlements in the context of the PPTS.
29. Policy H6 of the South Staffordshire Core Strategy 2012 (CS) seeks to ensure that Gypsy and Traveller sites in the Green Belt do not have a "demonstrably harmful" impact on openness. I concur with the findings of the previous Inspector that this term is not defined but intended to convey a significant loss of openness, rather than the more limited loss that would result in the present case. Accordingly, I do not find conflict with Policy H6.

### *Character and Appearance*

30. The appeal site occupies a valley location alongside the River Stour. Despite the presence of the busy A449 road, and sporadic buildings, this is essentially a countryside position in which dense mature woodland predominates the immediate setting of the site. However, whilst the amount of nearby built development is limited, it is also not so far removed from the site to give the impression that this is an isolated spot.
31. I have set out above where I consider the key visual receptors for the development to be located. For the reasons set out above the visibility of the site is generally well concealed from the public domain. From where the site is visible the two mobile homes would appear as relatively squat structures against a backdrop of mature woodland. The site is away from and at lower ground level in relation to the adjacent main road, and the mobile homes are finished with a mock natural stone cladding, which serves to soften their appearance. Adherence to the previously approved site boundaries would serve to reduce the apparent scale of residential development, with the possibility of retaining a similar external appearance.
32. For most drivers passing through the area, it seems to me that the development is unlikely to attract attention away from the route of the A449 road. I have set out above that the site would be visible from the Prestwood House Care Home during the winter months. However, the fact that it would appear heavily filtered by woodland planting ensures that the development does not appear incongruous or obtrusive. I am not persuaded that the position and operation of the 'street lights' and playground, when considering the limited scale of development involved, is sufficient to harm landscape character and appearance.
33. I am also mindful that it would be possible to impose a planning condition requiring additional tree planting. I concur with the previous Inspector that this would enable the site to be satisfactorily integrated with its surroundings.
34. Drawing these considerations together I am not persuaded that the development, by its presence, results in a sense of urbanisation or harm to the character and appearance of the landscape. Accordingly in this respect the development would be compliant with Policies EQ4, EQ11 and H6 of the CS insofar as they seek to protect the intrinsic rural character and local distinctiveness.

### *Impact on Veteran Tree*

35. The Council raises the concern that the development, including the mobile homes and hardstanding, are close to, and within the root protection area (RPA) of, a protected veteran Oak tree<sup>6</sup>. The Council says that this is detrimental to the health of the tree, which is showing signs of deterioration including dead wood in the crown, and may result in its early death.
36. The Council has referred to statutory guidance regarding the protection of veteran trees<sup>7</sup>. This notes that veteran trees are recognised for their

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<sup>6</sup> Tree Preservation Order number 75/1985.

<sup>7</sup> Ancient woodland, ancient trees and veteran trees: advice for making planning decisions – Natural England and Forestry Commission January 2022.



exceptional biodiversity, cultural and heritage value and that development can result in loss or deterioration of a tree through damage to roots and because of soil compaction. It is undisputed that the statutory guidance indicates a minimum RPA of some 30 metres should be applied to the tree; also that there would be encroachment within the RPA, irrespective of whether considering the as-built development or the physical limitations to development dictated by the previously approved site area.

37. The appellant however considers that the appropriate time for assessing impact on the tree was when the original planning application and appeal was under consideration, and accordingly that the material change of use previously lawfully undertaken is highly material to the assessment of the issue. However, for the reasons set out above, I find it is possible to give full consideration to the planning merits of the case, including the well-being of the tree.
38. The development, both as built and in terms of the nature and area approved in 2015 by the previous grant of temporary planning permission (as covered by the present appeal), encroaches on the RPA of the tree, as defined by statutory guidance. No evidence has been provided to persuade me that the alleged harm has not occurred and is not continuing to occur. Whilst Policy EQ4 of the CS does not go so far as to require veteran trees to be safeguarded in all circumstances, it does seek their protection unless removal is deemed necessary. I do not deem removal of the tree to be necessary and thus I find conflict with Policy EQ4 in this specific regard. Furthermore, the Framework states that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists. I therefore consider this matter further in the planning balance section of the decision below.

#### *Highway Safety*

39. The site is accessed from the A449 road, a busy north-south route, subject to a 50mph speed limit in the vicinity of the site. The issue between the appellant and the Rule 6 Party (R6 Party) is the extent to which the requisite standard of visibility, that should be available to drivers emerging from the site, is obstructed (or could be potentially obstructed) such that there is a risk to highway safety. The Council raises no objection on highway safety grounds.
40. Visibility splays are expressed in terms of x and y distances, where x is the distance back from the carriageway 'give way' line on the minor arm (or access) and y is the distance that a driver can see to the left and right along the main road.
41. Guidance on appropriate design standards for roads is to be found in Manual for Streets (MfS), Manual for Streets 2 (MfS2) and the Design Manual for Roads and Bridges (DMRB). In strict terms the MfS relates only to lightly trafficked situations where speeds do not exceed 37mph. Similarly though, the DMRB standards are higher than MfS, as they have been specifically developed for the Strategic Road Network and should not necessarily be strictly applied to situations away from motorways and trunk roads.

42. It is not therefore the case that the circumstances of the appeal site, accessed from a 50mph A-road in a rural location should obviously be subject to the guidance in one or the other of the DMRB or the MfS. However, I am mindful of the statement within MfS2 that "most MfS advice can be applied to a highway regardless of speed limit. It is therefore recommended that as a starting point for any scheme affecting non-trunk roads, designers should start with MfS"<sup>8</sup>
43. The R6 Party has undertaken a survey of traffic speed passing the site. Its case, having regard to the results of this survey<sup>9</sup>, and in accordance with guidance in the DMRB and MfS2, is that an x distance of 2.4 metres and y distances of 178 metres to the south and 157 metres to the north are minimum requirements.
44. The R6 Party also relies on a topographic survey depicting physical features, including walls and hedges, which it considers constitute the boundary between the highway and third-party land. This survey, it says, demonstrates that the requisite splay cannot be guaranteed because it necessarily encroaches on land in third party ownership.
45. By contrast the appellant's case is based on the theoretical design speed of 85kph (52.8mph) for this type of road (DMRB), and evidence of the way the access works in practice, rather than a specific survey of actual traffic speeds. Furthermore, whilst acknowledging that a 2.4m x distance is the ideal, the appellant relies on guidance in MfS2 which it says allows standards to be relaxed in certain circumstances. It says that an x distance of 2m and y distance of 160 metres both to the north and south would be deliverable and acceptable in this case, when taking guidance in MfS2 and DMRB into account, and that this can be achieved through trimming back highway boundary vegetation.
46. The appellant also criticises the R6 Party's traffic speed survey for reasons including that its timing coincided with a school holiday period when there would have been less traffic using the road, therefore raising average vehicle speeds, and that it underestimates vehicle deceleration rates.
47. Notwithstanding the survey timing, the vehicle speeds identified exceed by only a relatively small margin the design speed used to inform the 160 metre y distance (having regard to DMRB guidance). Accordingly, I do not consider this provides a compelling reason for insisting that the y distance should be significantly greater than this. Moreover, I am mindful that based on the County Council's own highway guidance, which remains extant, even though it pre-dates MfS2, it would be appropriate to allow for a higher vehicle deceleration rate than was used to inform the R6 Party case<sup>10</sup>. The R6 Party accepts that applying this modification to the formula set out in MfS2, for the determination of stopping sight distances, reduces the y distances to 118m northbound and 112m southbound. Furthermore, it seems to me that site specific circumstances are of key importance.
48. From the evidence before me the precise location of the highway boundary cannot be definitively established. I have considered the R6 Party evidence

<sup>8</sup> Paragraph 1.3.2.

<sup>9</sup> 85<sup>th</sup> percentile speeds of 53.4mph (85.9kph) northbound and 53.3mph (85.8kph) southbound were found.

<sup>10</sup> 0.45g as opposed to 0.25g (the latter standard allowing for the scenario of a snow-covered road).

that the alignment of an historic brick wall and post and rail fence (no longer present) to the south of the site access, and conifer hedge to the front of the neighbouring residential property to the north, both constitute boundary features with the highway<sup>11</sup>. However, I am also mindful the previous Inspector found, at the time, having regard to expert advice, that boundary fencing on both sides of the access probably encroached on the highway verge. Accordingly, I am not persuaded by the R6 Party evidence in respect of the position of post and rail fencing coinciding with the definitive highway boundary.

49. On this basis, and from my observations during the site visit, I concur with the parties that the x distance of 2.4 metres does not appear to be obtainable, as visibility for emerging drivers (at least towards the south) would potentially remain obstructed by features on third party land.
50. However, by contrast, from the evidence submitted, and my site observations, I consider that visibility in excess of the modified y distance to the north would be achievable, if the x distance were reduced to 2 metres. In addition, I am not persuaded, on the balance of probability, that a 2 metre set back would mean that visibility in excess of the aforementioned modified y distance to the south could not be achieved.
51. These findings are subject to any vegetation encroaching within the highway being trimmed back. In saying this I am mindful that it is within the remit of the Highway Authority to remove features, such as overhanging vegetation, that encroach within the highway boundary to the detriment of safety.
52. A 2 metre x distance would necessitate some types of vehicle projecting into the highway to a degree. However, even if drivers seeking to egress the junction were to rely to a degree on edging forward in the vehicle and leaning forward to improve visibility further, then this would not be inherently unsafe. Such compensatory actions are recognised within MfS2, at para. 10.5.8, as potentially appropriate in "some slow-speed situations".
53. In this context, whilst I am not persuaded that this is a slow-speed situation, it appeared to me that forward visibility along the A449 road towards the site entrance was to a high standard in both directions. This means that drivers approaching the junction from both directions would be aware in good time of a vehicle emerging from or edging out of the site access road, and would have sufficient time to slow down gradually or, taking into account the generous width of the road, manoeuvre around it safely. I am also mindful that MfS2 at para. 10.5.9 states that "...unless there is evidence to the contrary, a reduction in visibility below recommended levels will not necessarily lead to a significant problem."; also at para 10.4.2 that there is no evidence that failure to provide visibility at priority junctions in accordance with recommended standards will cause increased risk of injury collisions.
54. I have also had regard to the conclusion drawn by the Inspector in relation to the previous appeal at this site that satisfactory visibility was likely to be achievable on the balance of probability; that the relatively small scale of development means associated traffic movements are unlikely to be high in this case and that the Highway Authority has raised no objection. Furthermore,

<sup>11</sup> Determined in consultation with an unidentified County Council officer.

notwithstanding the views of the R6 Party, the fact that there has not been a record of a personal injury accident having occurred in connection with the junction over the relatively lengthy period since the development took place in 2019 (whilst also having regard to the likely tempering effect on traffic movements of the Covid 19 pandemic) is highly significant in my view.

55. I conclude that the development does not result in harm to highway safety. Accordingly, it does not conflict with Policy H6 of the CS insofar as it seeks to ensure that sites can be safely accessed by vehicles, or with the Framework which seeks to avoid unacceptable impacts on highway safety.

#### *Need for Gypsy and Traveller Sites*

56. Paragraph 7(b) of the PPTS states that local planning authorities should prepare and maintain an up-to-date understanding of the likely accommodation needs of their areas over the lifespan of the development plan. The Council's most recent Gypsy and Traveller Accommodation Assessment (GTAA) was produced in August 2021. This identified a requirement over the period 2021-38 for those households that meet the definition of Gypsies and Travellers in Annex 1 of the PPTS<sup>12</sup>, of some 121 pitches. This figure includes 72 pitches in the initial 5 years 2021-25.
57. The recent change to the definition, cited above, followed in the wake of a Court of Appeal judgment<sup>13</sup>. The thrust of this judgment is that the previous PPTS definition was unlawfully discriminatory against Gypsies and Travellers who have ceased to travel permanently on grounds of age or disability. It indicated that such persons should be included in any assessment of need for site provision, thus potentially increasing the overall level of need.
58. The GTAA identifies a need of some 24 pitches for those Gypsies and Travellers not meeting the previous PPTS definition (17 of which are within years 2021 – 2025). Therefore the effect of including, in the assessment of need for sites in the District, Gypsies and Travellers known not to fall within the previous PPTS definition and who thus might previously have been excluded from consideration in the context of PPTS policies, is to significantly increase the requirement for sites. Although the appellant considers that the GTAA underestimates the true level of need for pitches, the Council at least agrees with the appellant that there is an immediate unmet need for sites<sup>14</sup>.
59. The PPTS states that local planning authorities should identify, and update annually, a 5-year supply of specific deliverable sites against their locally set targets. The Council confirmed by way of written evidence<sup>15</sup> and at the Inquiry that since publication of the GTAA in 2021, planning permission has been granted for seven pitches<sup>16</sup>. It said in its closing submissions that a further 15 pitches identified within its Site Allocations Document (2018) are yet to gain planning permission.
60. The Council said at the Inquiry that it does not anticipate adopting its emerging Local Plan before the winter of 2025 / 26. It confirmed that, whilst it was hoping for more, a total of 37 pitches had so far been allocated in its emerging

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<sup>12</sup> From 19 December 2023 the definition has reverted to that adopted in the 2012 version of the document.

<sup>13</sup> *Lisa Smith v SSLUHC & Ors* [2022] EWCA Civ 1391.

<sup>14</sup> The Council and appellant agree that this equates to some 42 pitches.

<sup>15</sup> See P Turner final proof of evidence, para 5.9.

<sup>16</sup> Including 4no. pitches at Fair Haven.

allocation document. When also taking into account the relatively small number of permissions, as identified above, it is clear that at present the potential supply of sites falls significantly short of the level of need identified, and it is uncertain whether the identified level of need will be met at all. Having regard to the previous Inspector's appeal decision, it seems to me the shortfall in site provision is worse now than when the temporary planning permission was granted in 2015.

61. The Council does not dispute that it is unable to demonstrate a five-year supply of deliverable sites. Furthermore a suitable and available alternative site for the two families currently occupying the appeal site cannot be identified by the Council at this time.
62. I note that when temporary planning permission was previously granted for the development, the Inspector found there to be a shortfall in the supply of sites, and no guarantee that immediate need would be fully addressed through the development plan process. In this context, the present evidence is indicative of an ongoing failure to meet national policy requirements for the delivery of sites against targets.
63. In addition it is undisputed that a large proportion of land in the District, some 80 per cent, lies within the Green Belt. It therefore seems to me likely that there will need to be reliance to a degree on the Green Belt in any event for the provision of pitches going forward.
64. I accept that the level of harm may vary between different Green Belt sites and acknowledge the Council refers to selecting sites where such harm would be less. However, I have found in this case the degree of visual impact on the openness of the Green Belt to be limited<sup>17</sup>. In this context it is significant that there is no evidence to persuade me that Green Belt harm arising from the appeal site would be greater than from any other site that may be allocated. All of these factors weigh positively in favour of the development.

#### *Personal Circumstances*

65. Article 8 of the Human Rights Act 1998 states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the protection of the environment and upholding planning policies. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
66. Furthermore in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity and to foster good relations. The Act recognises that race constitutes a relevant protected

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<sup>17</sup> In contrast, for example, to the Squirrels Rest case – Appeal ref APP/C3430/W/21/3282975.



characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.

67. The site is subdivided into two pitches, occupied by the appellant, his brother and their respective families. Their ethnic status as Romany Gypsies is undisputed; nor that the brothers work together in the building trade and travel to find work. The appellant explained at the Inquiry, and within other representations provided, that between the households there are several children under the age of 18 present. It is also undisputed that his own children are attending a nearby school and that their grandparents live not very far away from the site.
68. It seems to me that if the appeal is not successful, in the absence of an alternative site, the appellants are at risk of being made homeless. There can be no doubt that if the appeal was unsuccessful, it would take away the secure living environment of a settled base for these households, who may potentially need to resort to living on the roadside, which would very likely mean disruption to the children's educational provision as a result. I am mindful that it may be difficult to enrol children in school and /or maintain the children's attendance if they have no fixed address.
69. In the context of the PSED I therefore find that to uphold the notice would be detrimental to the aims of advancing equality of opportunity and fostering good relations between persons with protected characteristics and persons without such characteristics. I also consider that the removal of a secure and settled base is likely to be harmful to the potential for play and interaction and therefore social development of those children; also the ability of the families to live together as a group, where they are able to provide support to one another in furtherance of the Gypsy way of life.
70. The appellants' personal circumstances therefore weigh in favour of the development.

*Intentional Unauthorised development*

71. The case against the appellant in this regard is that he was aware that he was not included within the list of persons to whom occupation of the site was restricted, by virtue of the planning condition. Furthermore, the appellant conceded as much at the Inquiry.
72. Because the enforcement notice alleges a breach of condition, which would not fall within the definition of development, the appellant says that this element of the alleged breach of planning control cannot constitute intentional unauthorised development. However, it is clear that the unauthorised occupation of the site was intentional and, in the context of a time limited planning permission where that time limit has now elapsed, is in my judgment consistent with what national policy seeks to resist.
73. The appellant's evidence was that he previously shared a pitch, relatively nearby with other family members, but wanted to move to live alongside his brother; his previously vacated pitch is no longer available. However, in the context of the substantial need for pitches in the District, I consider this significantly mitigates the impact of the appellant's decision to move to the

appeal site, it being likely that if not the appellant somebody else would have sought to occupy his pitch there.

74. I am also mindful that the Act makes provision for a grant of retrospective planning permission, including the imposition of planning conditions, and planning enforcement that is remedial rather than punitive. A ground (a) appeal was made, the scope of which included development for which planning permission had previously been granted, albeit temporarily. In light of these considerations, whilst also taking into account the relatively limited scale of the operational development subject to the notice, I attach only very limited weight to the intentional unauthorised nature of the development. The R6 Party has referred in its closing submissions to a decision where the Inspector gave moderate adverse weight to intentional unauthorised development<sup>18</sup>. However I have limited information regarding that case, and am not persuaded that the circumstances that prevailed there should lead me to judge the present appeal in the same way.

#### Other Matters

##### *Access covenant*

75. There is no dispute that the appellant enjoys a right of way to the site on foot.
76. The R6 Party raises the concern however, that a covenant is in place which restricts vehicular access to the site to farm vehicles only. Accordingly, it says that vehicular access to the site by the appellant and other site occupiers for residential purposes is unlawful.
77. In terms of the lawfulness of gaining access to the site in a vehicle, it is not within my remit to determine whether such rights exist, or can be secured, for the appellant. That would be a matter for another tribunal. It seems to me however that I am required to consider whether there is at least a realistic prospect of such rights existing. I have had regard to Planning Practice Guidance in relation to factors that can be considered when assessing housing land availability. This refers to there being confidence of no legal impediments to development.
78. In my judgment the term 'farm vehicles' is a vague description. It might reasonably be argued to encompass large agricultural vehicles, but could also reasonably include smaller cars and trucks that are also 'farm vehicles' simply because of their association with the farm. If such smaller vehicles are not excluded from using the access, then I am not persuaded that a logical reason exists to exclude vehicular access to a car or truck owned by the present site occupiers.
79. Therefore, whilst not definitive, I cannot rule out a realistic prospect of a private vehicular right of way to the site being made available to the site occupiers. Accordingly, although the definitive position regarding lawful vehicular access for the benefit of the appellant remains inconclusive, for the above reasons I am not persuaded that a legal impediment exists that cannot be overcome, and I do not consider that this should count against the appellant's case in this appeal.

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<sup>18</sup> Appeal Ref APP/C3430/C/22/3303085.

80. For the above reasons I am not persuaded that enforcement of the covenant, and as such the need to park at an alternative location, would be a likely outcome. However should this occur, the subsequent likelihood of parking on the A449, would in my view be very low because of the risk to the appellant's personal safety and damage to his vehicles from collisions.
81. Reference was made to the use of land on the opposite site of the A449 to the appeal site, which apparently is in the appellant's control and utilised for stables, for parking associated with the appeal site should the covenant be enforced. It was the R6 Party's case that this would be harmful to highway and pedestrian safety due to the regular need to cross the road between sites, and for this reason would also not be in the best interests of the children. However, I concur with the R6 Party that this would be likely to require a separate planning permission. Accordingly, it is a matter likely to be in the Council's control and if a planning application in this regard were not to be successful, on highway safety grounds, I am not persuaded that such an outcome would be conducive to the ongoing residential use of the appeal site in any event, such that the occupation of the site would continue.
82. Ultimately, I conclude that the access covenant issue would be unlikely, on the balance of probability, to result in a highway safety problem. This matter does not therefore attract adverse weight.

### **Green Belt balance**

83. National planning policy attaches great importance to Green Belts. Therefore, when considering any planning application substantial weight should be given to any harm to the Green Belt. The appeal proposal is inappropriate development in the Green Belt. In addition, the residential use and associated paraphernalia, and alleged operational developments, cause a loss of openness and harm to one of the purposes of including land in the Green Belt, namely to assist in safeguarding the countryside from encroachment, albeit I consider harm to openness to be limited in visual terms.
84. I have found that the development, as a whole, poses a threat to the health and long-term survival of the nearby protected veteran Oak tree. It would therefore be necessary to demonstrate that wholly exceptional reasons exist, along with a suitable compensation strategy, to justify the development in order to avoid conflict with Framework policy. I am in no doubt this test presents a high bar to overcome.
85. However, in the context of unmet need for sites, uncertainty as to whether and when that need might be addressed and the lack of an alternative base for the present occupiers they would be faced with losing their homes and the likelihood of an uncertain roadside existence. The development would make a contribution, albeit limited, to reducing the Council's need. Furthermore, a successful deemed application would allow for the restoration of land, nearest to the subject tree, on which part of the development, including hardstanding currently sits. In addition, whilst the Council's evidence is that the early death of the tree is possible, it does not go so far as to say this is inevitable.
86. I am mindful that the play equipment and lighting help to facilitate the justifiable residential use of the site and, in the case of the play equipment, the social development and interaction of the children. Furthermore the



playground area, in itself, covers a relatively small fraction of the overall RPA buffer zone and is undisputed to be outside the maximum RPA set by the advice in the British Standard<sup>19</sup>. Similarly, when considering the collective surface area occupied by the lighting columns (not all of which are within the RPA of the tree in any event) is very small, and associated ground intrusion works are likely to be very limited, I am not persuaded the columns would, in themselves, result in any significant damage to the tree.

87. In view of these factors I consider the first part of the aforementioned test is met. Sufficient land is available to allow for compensatory planting, with a planning condition acting as a suitable strategy to achieve this, and accordingly the development is not in conflict with this specific Framework policy. The Council has referred to case studies where impact on protected trees was a reason for refusal of planning permission<sup>20</sup>. However, it seems to me that the circumstances of those cases are distinguishable from the present appeal.
88. The threat to the veteran tree nevertheless remains a factor which, having regard to case law<sup>21</sup>, attracts great adverse weight, in its own right, in the overall planning balance. For the reasons set out above the intentional unauthorised nature of the development attracts only very limited weight in this case.
89. I have found that the presence of the development, in itself, would not result in harm to the character and appearance of the area or to highway safety. This 'absence of harm' is neutral in the planning balance and does not weigh in favour of the appeal.
90. There are other considerations which support the appeal. I have had regard to advice in the PPTS when considering sites in Green Belt locations. This indicates that in such locations the absence of an up to date 5-year supply of deliverable sites should not amount to the significant material consideration it may otherwise do in a less strictly controlled area, when considering applications for the grant of temporary planning permission. It also states that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.
91. However, an unlikely scenario is distinguishable from one that may never occur. Indeed, it seems to me that the Council's undisputed significant and immediate unmet need for pitches (without taking into account need that is likely to exist over a broader geographical area), as manifested in the lack of available alternative sites and the lack of five-year land supply should be a matter that collectively attracts substantial weight.
92. In addition I give moderate weight to the likelihood that when Gypsy and Traveller sites are allocated, a significant proportion of pitches will be located within the Green Belt in any event. I also attach significant weight to the site occupiers' personal circumstances, when considering, in particular, the benefits of a settled base for the various children present on the site. All of this leads

<sup>19</sup> BS 5837:2012 Trees in relation to design, demolition and construction sets a capped radius RPA at 15 metres, and is thus more flexible than statutory guidance in this regard. The parties did not dispute an annotated aerial photograph submitted at the Inquiry, which showed the playground to be outside the 15m RPA contour.

<sup>20</sup> Planning for Ancient Woodland – Planners' Manual for Ancient Woodland and Veteran Trees – July 2019.

<sup>21</sup> *Shadwell Estates Ltd. v Breckland DC* [2013] EWHC 12 (admin).

me to conclude that such an exception to the probable position, as set out in the PPTS, would be justified in this case.

93. I have balanced the harm to the Green Belt and any other harm, against the other considerations referred to above. Having regard to the PPTS, I find that they clearly outweigh the harm identified. However, I only find this to be the case when taking into consideration the weight that I have afforded the site occupiers' personal circumstances. It therefore seems to me that a personal planning permission would be most appropriate in this case, but I discount that this should only be for a temporary period, given my doubt as to when the level of need for sites will be satisfied.
94. For the avoidance of doubt the Council's apparent policy failure to address the need for sites over many years, including a lack of assurance as to when the position might be addressed, also weighs in favour of the development but does not alter the conclusions already made above, in the overall balance.
95. The very special circumstances necessary to justify the development have therefore been demonstrated. Consequently, the proposal accords with the strategy for the protection of Green Belt land, as set out in the Framework. In this context I do not find conflict with Policy GB1 of the CS which seeks to protect the Green Belt in accordance with national policy. Policy GB1 refers to changes of use of land normally being permitted where there would be no material effect on the openness of the Green Belt, or fulfilment of its purposes. Whilst I did find a material effect on openness and encroachment in this case, albeit limited, the policy does not specifically resist development in such circumstances, whilst also deferring to national planning policy. I do not therefore find Policy GB1 to be inconsistent with national policy in this regard.

## Conclusion

96. Therefore, despite the proposal conflicting with the development plan, material considerations indicate that a decision should be taken otherwise than in accordance with the plan. For the reasons given above, I conclude that Appeal A succeeds on ground (a) and the enforcement notice should be quashed. I shall grant planning permission on the application deemed to have been made i) for the change of use previously permitted and ii) for the operational development, as described in the notice as corrected, subject to the conditions as set out below.
97. The Council has referred to appeal decisions in relation to sites elsewhere in South Staffordshire<sup>22</sup>. However, I have only limited information in relation to those cases, and in any event the decisions pre-date the most recent GTAA and therefore assessment of need for sites. In respect of a more recent unsuccessful appeal, the Inspector in that case attached greater adverse weight to Green Belt harm than I have found necessary in this case as well as considerable weight to landscape harm<sup>23</sup>. The outcome of these appeals do not therefore indicate that I should not grant planning permission. Nor am I persuaded that the circumstances and reasoning in *Sykes*<sup>24</sup> should lead me to a different conclusion than the one I have drawn in this case, with each case needing to be considered on its individual merits.

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<sup>22</sup> Appeal refs APP/C3430/A/13/2210160 & APP/C3430/W/18/3201530.

<sup>23</sup> Appeal ref APP/C3430/C/21/3274332 and others.

<sup>24</sup> *Sykes v SSHCLG & Runnymede BC* [2020] EWHC 112 (Admin).

98. The appeal on grounds (f) and (g) do not fall to be considered.

### **Conditions**

99. The permission is personal and accordingly a condition restricting occupation to the appellant, his brother and their respective partners and resident dependants is necessary. A condition requiring the restoration of the site when occupation ceases is required in the interests of helping to safeguard the Green Belt and the protected veteran tree. A 'plans' condition will be imposed in the interests of clarity.
100. A condition limiting the number of pitches and caravans stationed is needed in order to protect the character and appearance of the area. Conditions preventing commercial activity on the site and restricting the number of commercial vehicles is required in the interests of helping to safeguard the character and appearance of the area and the living conditions of residents.
101. A condition confirming the loss of the permission unless details are submitted for approval (including a timetable for implementation) concerning the site layout, external appearance of the static caravans and utility / dayrooms, boundary treatments, external lighting arrangements, soft landscaping works, including their replacement, if necessary, and restoration of the extended area is required in order to help safeguard the character and appearance of the area and the living conditions of the site occupiers and nearby residents.
102. The form of this condition is imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matters before the development takes place. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

### **Formal Decision**

103. It is directed that the enforcement notice is corrected by the substitution of the plan attached to this decision for the plan, denoted as the "Red Line Plan" attached to the enforcement notice.
104. Subject to this correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely i) the use of land for the stationing of caravans for residential purposes for 2 gypsy pitches, together with the formation of additional hardstanding and utility / dayrooms ancillary to that use and ii) erection of a raised children's playground area (shaded green) to the immediate south of the area of development, together with the erection of six 'street lights', (shaded yellow), to both north and south of the development plot at Land at Rose Meadow Farm, Wolverhampton Road, Prestwood,

Stourbridge DY7 5AJ as shown on the plan attached to the notice and subject to the conditions in the schedule below.

*R. Merrett*

INSPECTOR



The Planning Inspectorate

## Plan

This is the plan referred to in my decision dated: 16 February 2024

by **R Merrett Bsc(Hons) DipTP MRTPI**

**Land at Rose Meadow Farm, Wolverhampton Road, Prestwood, Stourbridge DY7 5AJ**

**Reference: APP/C3430/C/20/3262819**

Scale: Not to Scale



## SCHEDULE OF CONDITIONS

- 1) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants:

Pitch 1: Anthony and Brooke Timmins

Pitch 2: Billy Joe and Laura Timmins

- 2) When the land ceases to be occupied by those named in condition 1 above, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and works undertaken to it in connection with the use, including the playground and 'street lights', shall be removed and the land shall be restored to its condition before the development took place.
- 3) There shall be no more than two pitches on the site. On each of the pitches hereby approved no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than one shall be a static caravan), shall be stationed on the pitch at any time.
- 4) No more than one commercial vehicle per pitch shall be kept on the site for use by the occupiers of the caravans hereby permitted and this vehicle shall not exceed 3.5 tonnes in weight.
- 5) No commercial activities shall take place on the land, including the external storage of materials.
- 6) The residential use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place within **28 days** of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
  - (i) Within **3 months** of the date of this decision a scheme with details for:
    - (a) the internal layout of the site including the extent of the residential pitches, the location of the caravans and vehicle parking, any hardstandings;
    - (b) the external appearance of the static caravans and utility / dayrooms;
    - (c) all boundary treatments and all other means of enclosure (including internal sub-division);
    - (d) proposed and existing external lighting on the boundary of and within the site including the prevention of light spillage;
    - (e) soft landscaping including existing planting, compensatory tree planting, details of species, plant sizes and proposed numbers and densities and details of a schedule of maintenance for a period of 5 years;
    - (f) a scheme of restoration for the area denoted 'Restoration Area' on plan 11\_426B-015 Rev P01(hereafter referred to as the 'site development scheme') shall have been submitted for the written approval of the local planning authority and the site development scheme shall include a timetable for its implementation.
  - ii) If within **11 months** of the date of this decision the local planning authority refuse to approve the site development scheme or fail to give a

decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

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

iv) The approved site development scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

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

- 7) The residential use hereby permitted shall be carried out in accordance with the following approved plans: 11\_426A\_001; 11\_426\_004\_A (excluding reference therein to landscaping and boundary treatments as these matters are covered by condition 6 above).

## **END OF SCHEDULE OF CONDITIONS**



## **APPEARANCES**

FOR THE APPELLANT: Michael Rudd

He called:

Billy-Joe Timmins	Appellant
Matthew Green	Planning Consultant
Jeremy Hurlstone	Transport Consultant

FOR THE LOCAL PLANNING AUTHORITY: Piers Riley-Smith

He called:

Mark Bray	Planning Enforcement Consultant
Steven Dore	Arboricultural Consultant
Paul Turner	Planning Consultant

FOR THE RULE 6 PARTY: Killian Garvey

He called:

Oliver Rider	Planning Consultant
John Lloyd	Transport Consultant

## **DOCUMENTS SUBMITTED AT THE INQUIRY:**

1. Opening Statements from the Parties.
2. Extracts from Design Manual for Roads and Bridges (CD 123, GG 101 and CA 185).
3. Extract from Highways Agency document TA 22/81 -Vehicle Speed Measurement on All Purpose Roads.
4. Drawing nos. 11\_426\_004\_A; 11\_426\_010; 11\_426\_011.
5. Land title documents – Rose Meadow Farm.
6. Appeal Decision references APP/L2820/C/20/3262337 and APP/C3430/W/21/3282975.
7. Witness statement of Billy-Joe Timmins.
8. Potential alternative enforcement notice plans A, B and C.
9. Extract from Guidelines for Landscape and Visual Impact Assessment – Third Edition- Landscape Institute and Institute of Environmental Management and Assessment.



- 10.Extract from PPG – What factors can be considered when assessing availability? – Paragraph 19 Reference ID 3-019-20190722.
- 11.Annotated Appendix 20 of Council's Statement of Case.
- 12.Landscape Consultation responses regarding planning application 12/00789/FUL.
13. Photograph of appeal site from Prestwood Coach House Care Home.
14. Drawing no. 11\_426B-015Rev P01.

**DOCUMENTS SUBMITTED FOLLOWING THE INQUIRY:**

1. Closing Submissions from the Parties.





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## Appeal Decision

Site visit made on 7 February 2024

**by J Moore BA (Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 08 March 2024**

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**Appeal Ref: APP/C3430/W/23/3326619**

**Former Royal British Legion, off Sterrymere Gardens, Kinver DY7 6ER**

- 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 Ian Malyan of FOB D UK Ltd against the decision of South Staffordshire Council.
  - The application Ref 21/01290/FUL, dated 30 November 2021, was refused by notice dated 26 January 2023.
  - The development proposed was originally described as completion of demolition of derelict, former social club. Construction of new residential apartment block.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The Council's decision notice does not refer to any policies of the development plan, only the National Planning Policy Framework (the Framework).
3. In December 2023, a revised version of the Framework was published. The paragraphs most pertinent to this appeal are unchanged, other than their numbering. As such neither party is prejudiced by a lack of consultation on the revised Framework.
4. The Environment Agency (EA) initially objected to the application. From the evidence before me, including a representation from the EA, it is clear that this objection was withdrawn prior to the Council's determination of the application.

### Main Issue

5. The main issue is the effect of the proposal on flood risk, with particular regard to the safety of future occupiers of the development.

### Reasons

6. The appeal site is located close to the River Stour. The proposed apartment block would be within flood risk zone 1, which indicates a low probability of flooding.
7. According to the initial objection by the EA, part of the appeal site is within flood risk zones 2 and 3, which respectively indicate a medium or high probability of river flooding. A Flood Risk Assessment (Revision E, October 2022) (FRA) accompanied the application and sets out that part of the site is within flood risk zone 2.

8. In any event, part of the appeal site is subject to flood risk, and in accordance with the Framework, the proposal would be classified as 'more vulnerable' development.
9. The appeal site was the subject of a previously dismissed scheme (Ref APP/C3430/W/20/3251508). The proposal before me includes an elevated access road and other mitigations to overcome the reasons for dismissal.
10. The EA is satisfied that a finished floor level (FFL) of 48.185m AOD<sup>1</sup> for the ground floor of the proposed apartment block represents a precautionary approach that would ensure no internal flooding in a 1% AEP<sup>2</sup> plus climate change event.
11. Although this FFL is specified in paragraph 9.2 of the FRA, it is inconsistent with that in the concluding section, which is considered to be an error. The EA seek a suitable condition to control this matter, together with a condition requiring cross sections of the elevated access road. The main parties make no objection in this regard, and I find no reason to consider otherwise.
12. The elevated access road would be 47.030m AOD and formed of granular material to allow the flow of flood water through and over the road. Consequently, the appeal scheme is designed to flood, and the proposal would result in residual flood risk.
13. In such circumstances, the provisions of paragraph 173 of the Framework are highly relevant, which sets out that development should only be allowed in areas at risk of flooding where (among other things) it can be demonstrated that any residual risk can be safely managed, and that safe access and escape routes are included where appropriate, as part of an agreed emergency plan.
14. Planning Practice Guidance (PPG) sets out that the ability of residents and users to safely access and exit a building during a design flood and to evacuate before an extreme flood (0.1% annual probability of flooding with allowance for climate change) needs to be considered when assessing whether a development is safe<sup>3</sup>.
15. A Flood Warning and Evacuation Plan (Revision D, dated October 2022) (FWEP) was submitted with the application. However, the FWEP refers to an earlier version of the FRA (Revision B, October 2018), rather than Revision E.
16. The FWEP and updated FRA demonstrate that a 1% AEP +20% climate change flood level would be 47.185m AOD, resulting in a maximum flood level of 0.155m above the elevated access road. When taking account of water velocity, there would be 'Danger for None' if or when flood waters reach 47.185m AOD.
17. However, the updated FRA also addresses a +35% climate change event, which would result in a maximum flood level of 0.25m above the elevated access road, with 'Danger for None' and potential 'Danger for Some', if or when flood waters reach 47.280m AOD. Therefore, safe access and escape routes are required as part of an agreed emergency plan.

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<sup>1</sup> Above Ordnance Datum

<sup>2</sup> Annual Exceedance Probability

<sup>3</sup> Paragraph: 005 Reference ID: 7-005-20220825 - Revision date: 25 08 2022

18. The FWEP refers to the nearby Kinver Sports and Community Centre (the centre) as a place of refuge and states that the centre can accommodate all vulnerabilities. The proposal includes a pedestrian route towards the centre. However, the evidence before me indicates that the centre is now The Edward Marsh Centre (EMC), which is a registered charity. The centre is clearly not within the ownership or control of the appellant.
19. There is no formal agreement or other mechanism before me to demonstrate that the centre could be secured as a safe place of refuge in circumstances of flooding, including extreme flood. Furthermore, a representation from the EMC indicates that no approach has been made by the appellant in this regard, and this position is not contested by the appellant. Therefore, it is by no means certain that an emergency plan to include the centre as a safe refuge can be delivered.
20. There is no substantive information before me to demonstrate the capacity of the centre, or its suitability to accommodate and provide for persons of all vulnerabilities, including those who might be less mobile or have a physical impairment. It is not clear how any such persons would be safely assisted or evacuated during any flooding event, including flooding of the elevated access road or an extreme flood.
21. The FWEP states that future owners of the development and residential units would be responsible for implementation and annual review. Yet, there is a lack of information in the FWEP on other matters including any inspection regime, training or how the emergency plan would be secured over the lifetime of the development.
22. I have considered the appellant's position that an agreed emergency plan could be secured by condition. PPG<sup>4</sup> states that when used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects.
23. I note that during the determination phase, the EA suggested a pre-occupation condition to address an emergency plan. However, this was in conjunction with their recommendation to consult with the Council's emergency planners and emergency services to determine whether the proposals are safe. From the evidence before me, this consultation has not been completed.
24. In any event, for the reasons above, I cannot be certain that safe access and escape routes could be agreed so as to mitigate the adverse effects and enable development to proceed.
25. Having regard to all of the above, I am not satisfied that the proposal could meet the provisions of the Framework and the PPG that I have set out above. In this regard, the proposal before me does not fully overcome the reasons for the dismissal of the previous scheme.
26. I therefore conclude that the proposal fails to demonstrate that the residual flood risk could be overcome so as to ensure the safety of future occupiers of the development. It conflicts with paragraph 173 of the Framework, whose objectives I have referenced above.

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<sup>4</sup> Paragraph: 001 Reference ID: 21a-001-20140306 - Revision date: 06 03 2014

### **Other Matters**

27. A range of other matters have been raised by interested parties. However, as I am dismissing the appeal on the main issue, and consideration of these matters will not alter my decision, it is not necessary for me to address them directly.

### **Conclusion**

28. For the reasons given above, the appeal is dismissed.

*J Moore*

INSPECTOR



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## Appeal Decision

Site visit made on 24 January 2024

**by Rachel Hall BSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28<sup>th</sup> February 2024**

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**Appeal Ref: APP/C3430/W/23/3328097**

**Lanes Farm, Ebstree Road, Seisdon, Staffordshire WV5 7EY**

- 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 Shepherd Zhou of Ubuntu Group against the decision of South Staffordshire District Council.
  - The application Ref 23/00325/COU, dated 13 April 2023, was refused by notice dated 25 May 2023.
  - The development proposed is described as 'change of use from C2 dwelling to C2 children's home'.
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### Decision

1. The appeal is allowed and planning permission is granted for change of use from C3 dwelling to C2 children's home at Lanes Farm, Ebstree Road, Staffordshire WV5 7EY in accordance with the terms of the application, Ref 23/00325/COU, dated 13 April 2023, subject to the following conditions:
  - 1) The development hereby permitted shall not be occupied by more than three children (aged 7 to 16) and three staff at any one time, in addition to the home manager.
  - 2) The development hereby permitted shall not be occupied until parking has been made available on site in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. The parking shall be retained as such thereafter.

### Preliminary Matters

2. A revised National Planning Policy Framework (Framework) was published on 19 December 2023. Insofar as it is relevant to the matters at hand in determining this appeal, the Framework is consistent with the previous iteration. References to the Framework in this decision are to the new paragraph numbers.
3. The description of development in the heading above was taken from the application form. However, in the Decision above it is taken from the appeal form, which is also consistent with the Council's decision notice, and correctly refers to the existing use as a C3 dwelling.
4. The appeal site is located within the Green Belt. The main parties agree that the proposal would not be inappropriate development in the Green Belt. I concur with that position and therefore do not consider it further in this decision.

## **Main Issue**

5. The main issue is whether the location of the proposed development is acceptable, having regard to its accessibility to goods and services and sustainable transport modes.

## **Reasons**

6. The proposed development would accommodate three children who would each be looked after by a member of staff on a one-to-one basis. Staff would rotate every 48 hours. As such the appellant submits that there would be an increase in staff and vehicles on site at changeover time, for a period of approximately half an hour. A home manager would also be present on site during normal weekday working hours.
7. The appeal site is in a rural location where there is a lack of facilities necessary to meet day to day needs that are accessible on foot. Also, the nearest bus stop is said to be 25-30 minutes away with an unfavourable walking route. Furthermore, uncertainty is expressed over the longevity of the only local shop. Consequently, staff would likely need to access the site by car. In addition, it would be necessary for staff to use cars for travel with children to day-to-day facilities, including schools, shops, medical care and activities.
8. Nevertheless, the proposed change of use would remain as a form of residential use and is intended to operate akin to a family unit. Although there would be a peak in vehicle movements at the change over time, this would be for a short period, every other day. Furthermore, the proposed number of occupants would be similar to that which could occupy the property as a dwelling.
9. Moreover, in the event of the appeal being unsuccessful it is likely that the house would be occupied by a single household. Given the number of bedrooms it could reasonably accommodate a large family. Such occupants would be likely to generate private vehicle trips to schools, employment, shops and medical care. As such, it would result in a number of cars coming and going from the appeal site to meet their day-to-day needs. Thus, even taking into account the potential for deliveries and other visits to the appeal scheme from time to time, I find that the number of trips associated with the proposal would be broadly comparable to that of a private household here.
10. Core Policy 1 of the South Staffordshire Core Strategy Development Plan Document (December 2012) (Core Strategy) sets out the settlement hierarchy. This seeks to focus growth on the most sustainable settlements and retain the current settlement pattern. The appeal site is located outside the settlement boundary of Seisdon and therefore in open countryside. Core Policy 1 seeks to protect the Green Belt from inappropriate development and supports sustainable development that accords with the spatial strategy. The proposal would not be inappropriate development. Also, by making use of an existing building would retain the existing settlement pattern which is described as an integral part of the development strategy.
11. Therefore, whilst there is some tension in the policy aspiration for proposals to be sustainably located, I find the proposal would accord with Core Policy 1 as a whole. I nevertheless find some conflict with Policy H5 of the Core Strategy. Whilst supporting the provision of residential care homes, this requires that



they are provided in sustainable locations with suitable access to public transport, facilities and services. Furthermore, the location of the development could not be said to be accessible in respect of paragraph 135.f) of the National Planning Policy Framework.

12. Consequently, the appeal site would not ordinarily be a suitable location for the proposed development, having regard to its accessibility to goods and services and sustainable transport modes. However, in the circumstances of this case the degree of harm would be highly limited due to the residential nature of the existing and proposed uses and the lack of conflict with the settlement pattern. I return to this in the planning balance.

### **Other Matters**

13. I have had regard to the statutory duty to pay special attention to the desirability of preserving the setting of the appeal buildings which are grade II listed. Lanes Farmhouse is a detached former farmhouse dating from 1746 with later additions. The former cartshed and stable immediately west of Lanes Farmhouse is oriented at 90 degrees to the farmhouse. It has arched cart entrances and is included for group value. Insofar as it is relevant to this appeal, the significance of the appeal buildings is primarily derived from their architectural interest, the physical relationship of the two buildings and their historic association with the farmland.
14. The proposal amounts to a change of use, without alteration to the fabric of either building. Furthermore, the proposal would ensure that the farmhouse, the former cartshed and the driveway remain associated with a form of residential use. Therefore, the proposal would preserve the setting and significance of the listed buildings. As such, it would comply with Policy EQ3 of the Core Strategy. This generally seeks to protect the historic environment.
15. I note that an application for a certificate of lawfulness for the change of use of the appeal building to a children's home was refused. I have had regard to the refusal reason including that the proposal would result in greater disturbance than a family home due to the number of vehicles likely on site during shift change over times. It was also considered that the intended use would alter the building's appearance which would be seen as a business premises rather than a family home.
16. However, that decision was on the lawfulness of the proposed use, whereas this appeal must be determined on the planning merits of this case. I note that disturbance to neighbours and impacts on the character and appearance of the site and surroundings did not form reasons for refusal for the appeal scheme. As the appeal building is a detached house with its own drive, the peak in vehicle movements at changeover time would not cause disturbance to nearby occupants to an extent that would be harmful to their living conditions. Also, whether or not it would appear as a business premises, it would not harm the character of its surroundings. No substantive evidence indicates otherwise.
17. I note the range of concerns expressed by the local community about a potential increase in antisocial behaviour and crime carried out by future occupants of the appeal scheme. Seisdon is said to be a quiet area with very low crime and is home mainly to people of middle age and older. Fear of crime can be a material consideration in planning decisions. Also, concerns were raised over the uncertainty of whether the children may have special needs or

severe behavioural issues. Nevertheless, future occupants of the proposal would be looked after on a one-to-one basis. In addition it is said that a home manager would be on site during weekday working hours and contactable 24 hours a day. Therefore, no substantive evidence is before me to indicate that the behaviour of future occupants would be problematic to local residents such that it would justify withholding planning permission.

18. The extent to which future occupants integrate with the local community would vary considerably depending on a range of factors including their individual circumstances and the response of the community. Given the ratio of staff to children, I see no reason to conclude that those children would be deprived of sufficient outside space, activities and facilities to provide for all their physical and emotional needs.
19. I note concerns from third parties in respect of the location of the site access on a blind bend where there are said to have been near misses and which is considered dangerous. However, the proposal makes use of the existing residential site access which could in any event be used by multiple cars. It is located close to a rural village where it would not be unusual for vehicles to need to slow down to allow cars to access driveways, including Ebstree Meadow opposite.
20. Given the ample space for parking within the site the need for vehicles to wait to enter the site would be kept to a minimum. Furthermore, a condition relating to parking provision would ensure sufficient space is retained for parking within the site for the lifetime of the development. Such a condition is necessary to reduce the risk of on-street parking that could otherwise cause disturbance to neighbours or be harmful to highway safety. Moreover, with only three staff arriving at change over times, any waiting in vehicles on the road outside while the gate is opened to allow access would be very limited.
21. Although the local primary school may be oversubscribed, the appeal site relates to an existing residential use where, if occupied by a family, it would necessitate travel further afield for schools in any event. A condition restricting the number of future occupants is necessary in the interests of providing satisfactory living conditions for future occupants of the proposal and ensuring the site can fully accommodate its parking needs. Moreover, any future desire to increase the number of children accommodated here would necessitate a further application to the local planning authority.

#### *Planning Balance*

22. Evidence of a specific local need for the proposal has not been demonstrated. However, the appellant submits that there is considerable need for such accommodation in Staffordshire County. Also, that the County Council are having to consider homes outside of the county to accommodate children's housing needs. No robust evidence is before me to indicate otherwise.
23. Moreover, no robust evidence is before me to indicate the availability of alternative housing that could be occupied as a care home in a more sustainable location to meet that need. In any event, each proposal must be considered on its own merits. I have also had regard to the benefit of providing children's accommodation in a peaceful rural location, for which some evidence of need has been demonstrated.

24. Notwithstanding the constraints to the site's access by sustainable transport modes, the Framework also requires that I take into account the variation in accessibility to sustainable transport between urban and rural areas. Therefore, in the particular circumstances of this case, the benefits of the proposal would be sufficient to outweigh the degree of conflict with Core Strategy Policy H5 and paragraph 130.f) of the Framework.

### **Conclusion**

25. For the above reasons, and having taken account of all other matters raised I conclude that the appeal should be allowed, subject to the conditions specified.

*Rachel Hall*

INSPECTOR





## Appeal Decision

Site visit made on 3 January 2024

**by Samuel Watson BA (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11<sup>th</sup> March 2024**

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**Appeal Ref: APP/C3430/W/23/3324378**

**The Nurseries, Bungham Lane, Penkridge, Staffordshire ST19 5NP**

- 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 Ms Dawn Wright against the decision of South Staffordshire District Council.
  - The application Ref 22/00890/FUL, dated 20 September 2022, was refused by notice dated 31 January 2023.
  - The development proposed is the demolition of identified former nursery / garden centre buildings and erection of single dwelling and associated works.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published on 19 December 2023. I have determined this appeal in the context of the revised Framework.

### Main Issue

3. The main issue is whether the appeal site is suitable for new housing and whether future occupants of the development would be reliant on private motor vehicles.

### Reasons

4. Core Policy 1 of the Core Strategy (December 2012, the CS) sets out the spatial strategy and settlement hierarchy, with Penkridge being a Main Service Village (MSV). Primarily this strategy directs growth to the most accessible and sustainable locations and seeks to make efficient use of land and prioritises previously developed land as part of this. In the countryside outside of service villages, support for growth is more limited, primarily relating to affordable housing, tourism, sport or recreation, and development that would support the local rural economy and rural diversification. An objective of protecting the attractive rural character of the countryside is further sought alongside the accessibility and sustainability aims above.
5. The appeal site is located amongst a small linear group of dwellings, on this side of the road, which are visually and physically detached from the edge of Penkridge. Access to Penkridge is made directly along Bungham Lane which crosses, by bridge, a railway line which effectively presents the edge of the village. There are no pavements or street lighting until the other side of the bridge and the road is covered by the national speed limit for some distance

towards the bridge, it is 30mph thereafter into the village. There are a few notable bends along the road which restrict views along the route, and the hump of the bridge, which is also on a bend, significantly restricts views.

6. By way of being located outside of Penkridge the proposal would not comply with the spatial strategy unless it met with one of the identified exceptions set out above. It has not been demonstrated that the proposal would meet any of the exceptions set out under CS Core Policy 1 and therefore conflicts with the plan-led approach. Although development may be directed towards Penkridge, the appeal site is outside of this targeted area.
7. The appellant has submitted that the proposed dwelling would be close enough to Penkridge for the daily needs of future occupiers to be met. However, whilst the appeal site is at a walkable distance from services and facilities hosted there, there are no pavements or streetlights linking the site to the settlement. Pedestrians would therefore have to walk in the carriageway, which is narrow and somewhat winding, and this could lead to conflict with vehicles. This would be especially so during the hours of darkness or inclement weather. I therefore find the route to be difficult and unsafe for future occupiers, especially vulnerable occupiers, to walk. Given the context above, and although mindful that cyclists often use the carriageway, I find that it would be similarly unsafe for cyclists to use. Pressure would, therefore, be put on future occupiers to use private motor vehicles to reach services and facilities.
8. I understand that Penkridge has a train station and is served by bus routes. These would, therefore, be open for future occupiers to make use of in reaching services, employment or education further afield. However, as it would not be practical for future occupiers to walk or cycle to these links, I find it likely that future occupiers would not make regular use of the rail or bus routes, and instead rely upon private motor vehicles.
9. It is possible that alternative routes to services and facilities within Penkridge may exist. However, none of these have been brought to my attention and, from my site visit, it did not appear that there were any safer routes for pedestrians or cyclists. Although future occupiers may make use of electric or low-emissions vehicles, I do not find these to be so sustainable as to reflect, or comply with, the aims and requirements of the policies as set out above.
10. Whilst the proposal may only result in a small increase in travel to and from the site, it would nevertheless be an increase. Moreover, although the Framework understands that the opportunity for sustainable transport will vary between urban and rural areas, I find that this matter has been taken into account by the local policy and I have been mindful of this in my considerations of the appeal.
11. I note that the location of the proposed dwelling is previously developed land, development upon which is supported by the Council. However, I do not find that this support precludes conflict with other parts of the policy being found.
12. Although the appellant has referred to an employment site to the east of the appeal site, it has not been demonstrated how these two would relate. Moreover, I do not find that site would be likely to meet the daily needs of future occupiers or reduce the need for the use of private motor vehicles.

13. In conclusion, the location of the appeal site is in conflict with the Council's locational strategy, and future occupiers would be reliant upon private motor vehicles. The proposal therefore conflicts with CS Core Policy 1, as set out above, and CS Policy H1 which, amongst other things, seeks to provide sustainable communities. The proposal would also conflict with Section 5 of the Framework with regards a plan-led approach promoting sustainable development.

### **Other Matters**

14. I found harm stemming from the proposed development's conflict with the development plan. As such, the appeal must fail and therefore any potential harm to the Special Area of Conservation would not occur and mitigation would not be required. I therefore do not need to consider the matter further.
15. Although I note the restrictive nature of the wording in CS Core Policy 1. I do not find that this wording is, in so far as it is relevant to this appeal, contrary to the aims of the Framework with regard to the directing of development to more sustainable locations. I therefore afford it only a very modestly reduced weight compared to had it been fully consistent with the Framework. In considering this I have been mindful to appeal decisions<sup>1</sup> raised by the appellant. Although I have been provided with a copy of the Local Plan Review, it is not clear how far along this currently is. However, those policies most relevant to the appeal before me appear to reflect the strategy set out in the CS.
16. I recognise that the former garden centre buildings, are in a poor state of repair, the proposal would likely result in the site being tidied. However, it has not been demonstrated that the proposal would be necessary to achieve this and, as such, I do not find it to be determinative in my considerations.
17. To the north of Penkridge an appeal<sup>2</sup> was allowed for the erection of one dwelling. I have not been provided with all of the relevant information and so I cannot be certain of the overall context and circumstances of the decision. However, it is clear that the location of that scheme was significantly different to that before me. Notably, there was a bus stop nearby, and only a very small section of the route to Penkridge did not have a footpath. I also note that the Council could not, at that time, demonstrate a five-year housing land supply. Therefore, I cannot make any meaningful comparisons to the appeal scheme before me, which I must consider on its own merits.

### **Conclusion**

18. The Government's objective is to significantly boost the supply of housing and the proposal would provide one new dwelling. It would also lead to a small and time-limited economic benefit during the construction phase, as well as some very limited social and economic benefits resulting from future occupiers to the benefit of the rural economy. There may also be the potential for the site to accommodate older people and those seeking a self-build. Given the small scale of the proposal these matters would at most attract modest weight.
19. Whilst the proposal may not result in any harm to character and appearance, this lack of harm is not a benefit in itself. I therefore attach this neutral weight in my consideration.

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<sup>1</sup> Appeal References: APP/C3430/W/18/3213147, APP/C3430/W/20/3258620 and APP/C3430/W/21/3283085

<sup>2</sup> Appeal Reference: APP/C3430/W/18/3216637

20. Conversely, the location of the proposal outside of a settlement, and where future occupiers would be reliant on private motor vehicles, would undermine the Council's plan-led approach to the delivery of housing. These matters attracts moderate weight and outweigh the benefits associated with the proposed development.
21. The proposal would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict. Therefore, for the reasons outlined above, I conclude that the appeal should be dismissed.

*Samuel Watson*

INSPECTOR





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## Appeal Decision

Site visit made on 26 February 2024

**by Ben Plenty BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18<sup>th</sup> March 2024**

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**Appeal Ref: APP/C3430/W/23/3326668**

**The Four Ashes Inn, Station Drive, Four Ashes, Staffordshire WV10 7BU**

- 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 Cordage 41 Limited against the decision of South Staffordshire District Council.
  - The application Ref 22/00848/FUL, dated 2 September 2022, was refused by notice dated 27 January 2023.
  - The development proposed is the demolition of modern extensions to the public house and conversion of its historic elements to two dwellings, erection of seven dwellings, associated parking access, parking and landscaping, and retention of playing fields, play area, pavilion and car park.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The site is located within the influence of the Cannock Chase Special Area of Conservation (SAC) which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Although not an issue raised by the Council in its decision, it is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the SAC. As such, it is necessary to consider this matter as a main issue.

### Main Issues

3. The main issues are:
  - Whether the proposed development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (The Framework) and any relevant development plan policies and its effect on the openness of the Green Belt;
  - whether the proposed use would be in a suitable location with respect to local and national spatial planning policies;
  - whether the proposal has demonstrated that the public house is no longer economically viable;
  - whether the proposed development would function well, with respect to the design of the scheme and the noise impact from the adjacent highway;

- whether the proposed development would affect the integrity of the Cannock Chase Special Area of Conservation (SAC); and
- if the proposal would be inappropriate development, whether any harm is clearly outweighed by other considerations, so as to amount to very special circumstances to justify it.

## Reasons

### *Inappropriate development*

4. The development plan for the district includes the South Staffordshire Core Strategy [2012] (CS). CS Policy GB1 relates to development in the Green Belt. This states that such development will be assessed in accordance with national policy. The CS policy also explains that development that accords with national policy will normally be permitted where it complies with a range of measures including at GB1(A)(c) affordable housing or (d) limited infilling and where a replacement building would not be materially larger than the building it would replace.
5. Paragraph 154, of the Framework, establishes that new development would be inappropriate unless it would meet a listed exception. Paragraph 154(d) supports the replacement of a building, provided it is in the same use and is not materially larger than the one it replaces. The Council's Green Belt and Open Countryside SPD [2014] provides detailed guidance that expands CS policy GB1. In terms of replacement buildings, it identifies that these should be of the same use, should not exceed a size of 20% of the floor space (and sometimes volume) of the previous building, take into account positioning and existing other buildings on site. The guidance explains that each case will be considered on its own merits on a case by case basis.
6. The proposed development would not be in the same use as the existing use of the site. This requirement is not included in CS policy GB1 but is a requirement of the SPD, which is also consistent with paragraph 154 (d) of the Framework. This would lead to some, albeit limited, conflict with the Framework as the proposal includes a change of use that is intrinsically linked to the redevelopment of the entire site. The loss of the existing use and its replacement is dependent on the marketing of the existing public house, an issue dealt with later in this decision.
7. The Appellant has approached this policy objective by suggesting that the existing building could be broken into smaller components without creating a form of development that would be materially larger than the existing building. This approach seems reasonable. However, whilst demolition of the sizeable extensions of the existing public house would take place, the extent of new buildings would result in a disaggregated total increase in floor area of around 121%. As a result, the scale of proposed development would substantially increase the floorspace currently found on site.
8. Although, the Appellant compares the difference between the existing and proposed development in terms of footprint, 'size' should include consideration of floorspace, volume and the characteristics of the site and scheme. The proposal includes the disaggregation of the existing building and development being dispersed over a broad part of the site. Although the parts of the existing building to be removed have a substantial volume, the current building largely

presents a single mass within the Green belt. In contrast, the proposed dwellings would be dispersed throughout the site and consist of a greater volume. Therefore, the net increase of development would be significant and the overall effect of the scheme would demonstrate a size of built form that would be materially larger than the existing building, in conflict with paragraph 154(d).

9. Paragraph 154(g) includes partial or complete redevelopment of previously developed land (PDL) that would not have a greater impact on the openness of the Green Belt. The site consists of a vacant public house and extensive car park to its side. There is no dispute between parties that the building and its associated car park would constitute PDL.
10. The openness of the Green Belt has both spatial and visual dimensions. The proposed development would be located within the open Green Belt, forming a linear pattern of development along Station Drive. The proposed built form would represent a long two-storey range of buildings that would have a substantial visual and spatial effect on the openness of the Green Belt. Although, the frontage hedge would be retained along parts of the boundary, this would only provide partial screening to the site. As such, the proposal would result in a significant intrusion into the openness of the site and the surrounding Green Belt. The proposal would therefore fail to satisfy the provision of paragraph 154(g).
11. As it has not been demonstrated that the proposal would meet any of the exceptions listed in Paragraph 154 of the Framework, it would amount to inappropriate development which is, by definition, harmful to the Green Belt.

#### *Suitability of location*

12. The CS establishes the Council's approach to the distribution of housing across the borough. CS Core Policy 1 seeks to focus housing within its 'Main Service Villages' and in a limited form in its 'Local Service Villages'. Lower tier settlements, listed as 'Small Service Villages' and 'Other Villages and Hamlets', are suitable for only very limited development, such as for affordable housing, where it would clearly support local needs. The appeal site is not within a settlement, and outside the development boundary of the strategic employment site of Four Ashes. Accordingly, the site is deemed to be in the open countryside for policy purposes. Policy 1 of the CS, states that development in the Green Belt and open countryside will be protected from inappropriate development in alignment with the Framework.
13. The site is adjacent to the A449 which is served by a bus service into Stafford. However, the nearest bus stop is reported to be 1.1 miles from the site at Deansfield Close and Penkridge Station is 4.6 miles from the site. These distances demonstrate that the site is not within an easy walking distance of sustainable travel, increasing the chance that occupiers would only travel using the private car. Although the site provides access to some services, these seem to predominantly consist of the playing fields, a public house and café and employment opportunities. This would not deliver the range of services and facilities required by future residential occupiers of the scheme. Further, whilst the existing use would have attracted a high number of customers cars, this does not change the poor sustainable transport character of the site.

14. The Appellant has provided an extract of the Council's Emerging Plan. This illustrates that an area of land to the north of the site is proposed to be allocated for employment use. However, due to the early stage of the plan I afford this allocation limited weight in my consideration. Moreover, this does not readily demonstrate that the site is in a sustainable location for housing development or would enable occupiers to easily access goods and services.
15. Paragraph 69 of the Framework, in seeking a 5-year supply of housing, does not place a ceiling on further housing. Nevertheless, it is appropriate to direct most new growth to larger centres. Therefore, whilst recognising that the appeal site is close to Four Ashes, locational proximity is not a stated requirement of CS core policy 1. Accordingly, in not complying with the Council's locational policies, the site would be an unsuitable location for housing.
16. Consequently, the proposal would conflict with CS core policy 1 and the Framework with respect to matters of location. These seek, among other matters, to direct growth to the most accessible and sustainable locations in accordance with the Council's settlement hierarchy, through limiting the need to travel and offering a genuine choice of transport modes.

### *Viability*

17. CS Policy EV9 seeks to protect Local Community Facilities and Services. The policy seeks at (a) for a proposal to demonstrate that the use is no longer economically viable, with a viability assessment that shows a minimum of 12 months of marketing. Part (c) identifies that the loss could be supported if its service would be adequately supplied by an easily accessible existing facility in the local area.
18. The Appellant's marketing report<sup>1</sup> explains that the public house ceased trading in 2020. It was previously run by a series of tenants who could not make the business work due to costs exceeding trading potential of the property. The Report explains that in the final year of trading the business suffered poor trade, with limited wet trade which was the main element of the business. The kitchen is explained as being small and poor quality, requiring a new operator to invest in a food focussed business with a 'leap of faith' where there would be no assured positive outcome. The property was marketed from August 2022 for 12 months, using a wide range of media, resulting in limited interest. The report found that due to the poor condition of the building, its remote location and the level of capital expenditure required for refurbishment, all interest fell away.
19. The Appellant's Viability Assessment<sup>2</sup> further suggests that the building would require investment of around £750,000 to return the property to modern trading standards. Furthermore, it is anticipated that a further £134,000 (approximate) would be required as start up costs for a potential operator. The trade assessment finds that when considering the running costs of a public house in this location, the business would make only a limited profit or negative returns. In such a circumstance, an operator would be unlikely to make the initial investment required.

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<sup>1</sup> Marketing Report, Savills, July 2023

<sup>2</sup> Viability Assessment, Savills, October 2022

20. In terms of alternative provision, the Viability Assessment identifies that there are 10 public houses within a 3-mile radius of the site. These are deemed to be in more prominent locations, offering better equipped facilities and extensive food offering.
21. Accordingly, in consideration of the submitted evidence, it is clear that the marketing has demonstrated a lack of interest in operating the building as a public house. The Viability Assessment has demonstrated that it would be highly unlikely for an operator to return the business back to good profit due to its condition. The marketing has also failed to find an operator who would be interested in converting the building into another type of community use. Consequently, I conclude that the existing business is no longer economically viable, and its services can be adequately supplied by an existing facility in the local area.
22. Consequently, the local community facility is superfluous, and its loss can be supported. As such, the proposal to convert the building to residential use, would comply with CS policy EV9.

#### *Design and noise*

23. Station Drive consists of scattered rural buildings within an open countryside setting. The small number of buildings locally are of traditional form, being two-storey with pitched roofs, set within spacious plots. Car parking areas are discreet and provided adjacent to the dwellings they serve. The appeal site consists of a vacant public house, car park and associated playing fields conveying strong sense of spaciousness. As such, the site complements the rural character and appearance of the area. The proposal includes detached and semi-detached dwellings, arranged around the adapted retained public house. The new dwellings would be two-storey of traditional form, with pitched roofs and include the use of brick and tile. The form of development and materials proposed would largely complement the retained public house and its surroundings.
24. CS policy EQ11 relates to design considerations. Part D relates to space, with section p) explaining that well designed private and semi-private open space should be incorporated around all buildings and that garden requirements should be achieved. The gardens for plots 1, 3 and 7 are deemed to be small by the Council. The garden of unit 3 is partly compromised due to its association with the existing building. Nonetheless, it would contribute well to the successful reuse of the existing building and provide a reasonable level of external space. Also, the garden of plot 7 seems generous, despite the Council's concerns. The garden of Plot 1 would be relatively large, but partially compromised by the extent of land available to the side of the existing building. Further, with respect to all gardens, private space would be to the rear of the dwellings and would provide rectangular shapes that would be of sufficient size for families to use for normal day-to-day recreational use. As such, based on the evidence submitted, the gardens are of a reasonable size.
25. Furthermore, the proposed layout would include adequate areas of green space, accommodating pockets for new landscaping which would soften the appearance of the development. Accordingly, the layout would not result in a scheme that would be cramped or over-developed.

26. However, the car parking area for unit one is a sizeable distance from the dwelling. This would cause inconvenience and security concerns for future occupiers. Moreover, as communal parking is proposed for most dwellings, most parking spaces would poorly relate to the occupiers that would be assigned these spaces. This configuration prevents frontage parking and potential street clutter, but the Appellant has not demonstrated why parking to the side of dwellings has not been proposed. As such, the communal car parking areas would be dominant and overt in grouped areas. These would not be reflective of the residential character of the area, forming a scheme with an awkward layout with poor design.
27. The site is on the corner of Station Drive and the A449 Stafford Road, which is a busy interchange. Although the Council's Environmental Health Team raised no objection, a Noise Assessment was requested due to the proximity of the highway to the proposed housing. However, the Council has not identified that these roads generate noise levels to an extent that they create harmful noise levels or that noise levels could not be adequately controlled through mitigation.
28. The private gardens of the proposed dwellings are located to the rear of the plots. The built form would act as a sound buffer and suppress noise levels of road traffic and this would be likely to reduce road noise to outside private space to an acceptable level. Also, internal noise levels would be likely to be capable of being reduced to an extent that would achieve required noise mitigation levels with glazing attenuation. I have nothing, within the submitted evidence, that allows me to come to a view that noise levels are of such magnitude that it would jeopardise the principle of residential development on site. As a result, I am satisfied that acoustic matters could have been suitably addressed, through the imposition of a noise attenuation condition, had I been minded to allow the appeal.
29. As a result, the proposal would conflict with CS policy EQ11 and the Framework. These require the design of development to take into account local character and distinctiveness and ensure that development would function well. In contrast, the proposal would accord with CS policy EQ9 which requires development to take account of noise generating uses where potential for harmful noise levels is known to exist.

#### *Cannock Chase Special Area of Conservation*

30. CS Policy EQ2 states that development will only be permitted where it can be demonstrated that it will not be likely to lead directly or indirectly to an adverse effect upon the Cannock Chase SAC. It states that housing development, within the Zone of Influence, should mitigate the anticipated adverse effects of recreation and visitor pressure. The effective avoidance of and/or mitigation for any identified adverse effect on the Cannock Chase SAC must be demonstrated to the 'Competent Authority' and secured prior to giving approval of development.
31. When considering the effect that a proposal may have on a European Site, a decision maker must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage. This responsibility now falls to me within this appeal. Such an assessment is necessary regardless of the status of the policies of the development plan.



32. Had I been minded to allow the appeal, it would have been necessary for me to seek additional information from the parties in order to undertake the AA. The AA is required on a case-by-case basis to determine whether or not the project will adversely affect the integrity of the site. It would also have required a consideration of whether or not any proposed mitigation would be adequate, effective, could be appropriately secured and delivered in a timely manner. However, as I am dismissing the appeal for other reasons, I do not need to consider the matter further as it would not change the outcome of this appeal.

### *Other Considerations*

#### Heritage issues

33. The Appellant's Heritage Assessment identifies that the building dates from the early 19<sup>th</sup> Century. It is recognised that the demolition of the large modern additions would enable the historic parts of the building to be revealed at the rear, enhancing the appearance of the building. The Council finds the building to be a Non-Designated Heritage Asset (NDHA), I see no reason to disagree with this view. The setting of the NDHA has been harmed by the addition of modern extensions, thus the removal of these would improve the appearance of the building. Nonetheless, the Framework requires at paragraph 209 that when weighting applications that affect NDHAs a balanced judgement should be applied having regard to the scale of any harm to its loss of significance.
34. The significance of the NDHA derives partly from it being an example of an early C19 coaching Inn, traditional in form within a rural setting. The proposed demolition of extensions and the replacement of the car park would improve the appearance of the building. Nonetheless, the proposed development would include elements that would not function well, especially with respect to the communal parking areas. These would detract from the overall positive visual benefits of the proposal. As such, the proposed demolition and other works would not materially enhance the setting of the NDHA and such improvements would be of limited weight in support of the proposal.

#### Playing fields

35. The rear of the public house includes land that contains playing fields, a play area, pavilion and playing field car park (accessed through the existing car park). The playing fields have been unused for about 5 years and are in a poor state of repair. The pitches are proposed to be improved with new goal posts, white lining and grass cutting and general maintenance undertaken. Additional parking, as sought by Sport England, is proposed as occasional parking to the east of the existing playing pitch parking area. The Appellant has agreed to lease the pitches to Staffordshire FA and discussions include the possibility of a local football club taking a long lease.
36. The Appellant's evidence includes a letter from Staffordshire FA<sup>3</sup>. This notes that the site contains three full football pitches, changing rooms and parking and seeks to ensure these remain available during construction. The letter also reports that the Appellant has agreed to lease the pitches to the FA at no charge. The second message<sup>4</sup> is an email from Coven United, declaring that the site would be a perfect venue for the club, and they would be keen to secure a long lease to the playing fields from the owner. It is also noted that the

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<sup>3</sup> Appellant's Statement of Case appendix A

<sup>4</sup> Appellant's Statement of Case appendix B

Appellant would accept a condition to ensure that access through the site is available in perpetuity.

37. This element of the proposal would aim to deliver a significant community benefit, and this has been largely supported by Sport England and local football organisations. However, there is no specific schedule detailing how the playing fields would be brought back into active use or a maintenance schedule setting out the frequency of work or its ongoing timeframe. There is also no certainty that Coven United, who have only provided an email of willingness to play there, would become the main long-term users of the pitches to demonstrate a long term community benefit.
38. Accordingly, there is no legal mechanism to secure the use of the facility by the football club and I am unconvinced that such measures could be suitably secured by condition. Therefore, whilst the Appellant states that this initiative will safeguard the playing fields and bring them back into regular use, I am unconvinced that a clear and patent link between the proposal and its stated benefits. Consequently, for the above reasons and having taken all submitted evidence into consideration, the benefits of delivering the reuse of the playing field is of only moderate weight in support of the proposal.

#### Other benefits

39. The proposal would result in the delivery of new housing on a disused brownfield site. However, due to the site's poor accessibility to sustainable transport, the provision of housing attracts only limited weight in the final planning balance.

#### *Whether there would be Very Special Circumstances*

40. Paragraphs 142 and 143 of the Framework set out the general presumption against inappropriate development within the Green Belt. They explain that such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
41. I have concluded that the appeal scheme would be inappropriate development that would, by definition, harm the Green Belt by reducing its openness. The proposal would also place new dwellings on a site that is poorly located to allow future occupiers to access sustainable forms of transport and the scheme would result in poor design, further points of significant weight. Paragraph 153 of the Framework requires substantial weight to be given to any harm to the Green Belt.
42. On the other hand, the other considerations I have identified are of limited to moderate weight in favour of the proposal. As such, the harm to the Green Belt is not clearly outweighed by the other considerations identified and therefore the very special circumstances necessary to justify the development do not exist. Accordingly, the proposal fails to adhere to the local and national Green Belt policies I have already outlined.



## **Other Matters**

43. Support has been given to the proposal from interested parties. This relates largely to the poor appearance of the existing building and its attraction of anti-social behaviour. Support has also been conveyed to the merits of the scheme, especially the retention of the playing fields, the benefits of new housing and the demolition of the modern additions to the building. However, whilst the support is noted this, in itself, is insufficient to justify an exception to national and local policies and does not outweigh the harm I have identified.

## **Conclusion**

44. For these reasons, and having regard to all other matters raised, the proposal does not accord with the development plan and therefore I conclude that the appeal is dismissed.

*Ben Plenty*

INSPECTOR

