

TOWN AND COUNTRY PLANNING ACT

1990

**APPEAL BY PATRICK CASEY AGAINST THE REFUSAL BY
BARNET LONDON BOROUGH COUNCIL OF A PLANNING
APPLICATION FOR 'A MATERIAL CHANGE OF USE FOR THE
STATIONING OF CARAVANS FOR RESIDENTIAL USE WITH
HARDSTANDING AND DAYROOMS ANCILLARY TO THAT
USE.'**

**LAND ON THE NORTHWEST SIDE OF MAYS LANE, ARKLEY,
BARNET, EN5 2AH**

GPS REFERENCE: 23_1285

LPA REFERENCE: 23/3816/FUL

APPEAL STATEMENT

ON BEHALF OF THE APPELLANT

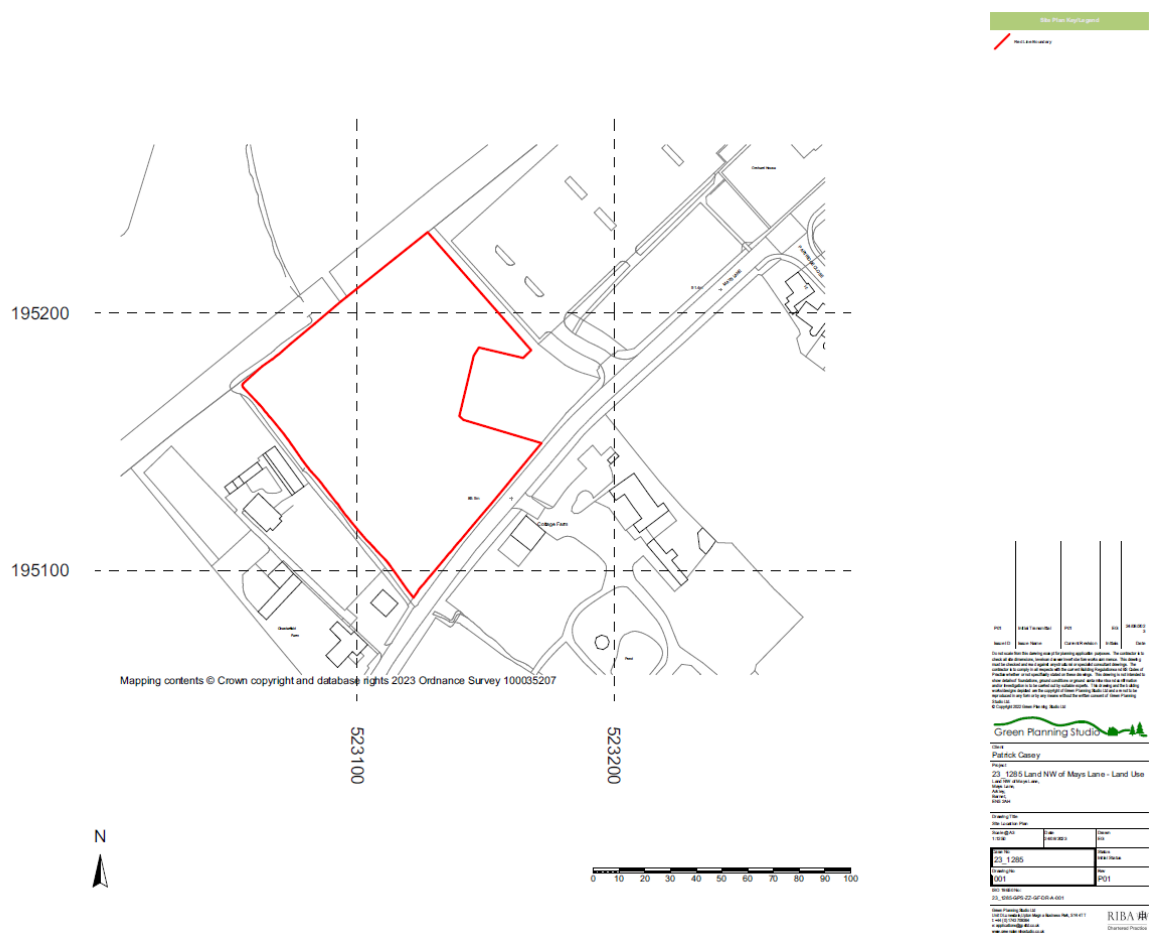
BY GREEN PLANNING STUDIO LTD

The Appeal

1. The appeal is submitted by Green Planning Studio (“**GPS**”) on behalf of Mr Patrick Casey (“**the Appellant**”).
2. Please see Appendix A1 for GPS Director Information.
3. This appeal is a s.78 appeal against a refusal by Barnet London Borough Council (“**the LPA**”) of an application for ‘*a material change of use for stationing of caravans for residential use with hardstanding and dayrooms ancillary to that use.*’
4. The application relates to Land on North West Side of Mays Lane, Arkley, Barnet, EN5 2AH (“**the Site**”) as identified on the 23_1285_001 Site Location Plan P01 (Appendix A2).
5. The application was submitted on the 5th September 2023 (Appendix A2) and refused on the 21st December 2023 (Appendix A3).
6. At the time of making their decision, the LPA had the following plans and documents to rely on (Appendix A2):
 - 23_1285_001 Site Location Plan P01
 - 23_1285_002 Existing Site and Block Plan P01
 - 23_1285_003 Proposed Site Plan P01
 - 23_1285_005 Proposed Dayroom -Plans and Elevations P01
 - 23_1285 Planning Statement P01
 - 23_1285 CIL Form 1

The Site

8. The appeal site is located within a Green Belt setting 650m south-west of Duck Island, measuring 8,138.09 sq. m as shown on '23_1285_001 Site Location Plan' below.
9. The site is an undeveloped plot enclosed by mature hedgerows, located to the north of Mays Lane, approximately 200m from the nearest settlement boundary; High Barnet.
10. Mays Lane forms the site's south-eastern boundary. The Brethren's Meeting Room borders to the north-east, while existing stables border to the south-west. Whittings Hill Open Space extends to the north.
11. The appeal site will be accessed from the northern side of Mays Lane via a central existing gated access.



Approach

12. For clarity where weight is referred to in the statement below it is using the following scale:

Substantial

Considerable

Significant

Moderate

Modest

Limited

Negligible

Relevant Planning History

13. On 11th November 1987 application reference N02627M was refused for '*Erection of building as place of worship, new access roads, car parking provision for 72 cars and layout of grounds for amenity purposes with additional landscaping – outline*'.
14. On 5th September 2023 an application reference 23/3816/FUL was submitted for '*a material change of use for stationing of caravans for residential use with hardstanding and dayrooms ancillary to that use.*' This was refused on the 21st December 2023 and forms the subject of this appeal (Appendix A3).

National Planning Policy

16. **Planning Policy for Traveller Sites (PPTS)** is the current National Policy in relation to provision for gypsy caravan sites. It was published on Monday 26th March 2012 and came into effect on Tuesday 27th March with the publication of the National Planning Policy Framework. The PPTS was amended in August 2015, and most recently in December 2023.
17. The PPTS replaced Circular 01/06 although its intentions are almost identical to the intentions of Circular 01/06. Its policies are essentially similar.
18. Elements of the amended policy with significant relevance to this appeal are:
 - The clear intention of paragraph 4 to increase the number of gypsy sites with planning permission.
 - In Policy A at paragraph 71 the need for a *'robust evidence base to establish accommodation needs'*.
 - In Policy B at paragraph 10(a) the need to maintain a five-year supply of sites.
 - Policy C which deals with traveller sites in rural areas and the countryside.
 - Policy E which deals with traveller sites in the Green Belt.
 - Policy H which deals with determining applications (and therefore appeals). In particular paragraph 23 which refers to the presumption in favour of sustainable development and paragraph 24 which sets down some of the material considerations to be considered by the decision maker.

19. In addition, SSCLG has withdrawn **Designing Gypsy and Traveller Sites – Good Practice Guide (2008)**. However, in the absence of any replacement guide, there is no indication that the government believes that standards lower than previously applied to gypsy and traveller sites should not be applied.

The National Planning Policy Framework

20. The revised **National Planning Policy Framework (NPPF)** was published on 18th December 2023, coming into effect immediately. The NPPF 2023 replaces the previous NPPFs published in 2021, 2019, 2018 and 2012.
21. Key elements of the NPPF relevant to this appeal are:
- Paragraph 8 which sets out the three dimensions to sustainable development.
 - Paragraph 11 which sets down the presumption in favour of sustainable development.
 - Paragraph 31-33 set out how Local Plans should be prepared and reviewed.
 - Paragraph 38 relates to decision-making of Local Planning Authorities and all other levels. It states that decision-takers at every level should seek to approve applications for sustainable development where possible.
 - Paragraph 47 and 48 which set out how weight should be attributed to Development Plan policies.
 - Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

- Paragraph 174 refers to contributing to and enhancing valued landscapes.
- Paragraph 56 states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other aspects.
- Paragraph 60 which seeks to ensure sufficient land is developed to boost the supply of homes including *“that the needs of groups with specific housing requirements are addressed.”* The 2023 NPPF expanded this paragraph and states *‘The overall aim should be to meet as much of an area’s identified housing need as possible, including with an appropriate mix of housing types for the local community.’*
- Paragraph 61 which requires that the needs of travellers must be addressed, both those that meet the definition in the PPTS and those that don’t.
- Paragraph 63 sets out how *“context, size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to...**travellers**...)”*
- Paragraph 115 states that *“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”.*
- Paragraph 135c of the NPPF stipulates that *“planning policies and decisions should ensure that developments are sympathetic to local character”.*
- Paragraph 180 (a) refers to protecting and enhancing valued landscapes.

- Paragraphs 224-229 which set out how weight should be attributed to Development Plan policies going forward.

22. The NPPF makes it clear that development plan policies have to be considered in the light of the publication of the NPPF.

Presumption in favour of sustainable development

23. Paragraph 11(d) confirms that *'plans and decisions should apply a presumption in favour of sustainable development'*:

*'where there are **no relevant development plan policies, or the policies** which are most important for determining the application **are out-of-date**, granting permission unless:*

- i. *the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.'*

24. Footnote 8 further clarifies that:

'This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites...'

25. That said, the combination of NPPF paragraph 11(d) and footnote 8 means that in areas of Green Belt where the development is accepted to be inappropriate development in the Green Belt, as in this case, the weighted balance of NPPF paragraph 11(d) is not the relevant balance to apply, instead the balance to be applied is the very special circumstances balance found at NPPF paragraph 149.

National Planning Practice Guidance

26. The **National Planning Practice Guidance (PPG)** was published on the 6th March 2014 and runs alongside the NPPF in order to make the planning process more accessible.

Local Policy

27. The LPA, within the Decision notice and officer's report refers to the following Policy documents:

- i. London Plan 2021
- ii. Barnet's Adopted Core Strategy 2012
- iii. Local Plan Development Management Policies 2012
- iv. Barnet's Emerging Local Plan

28. The policies referenced in both the Decision notice and officer's report are policies (appendices A5 – A8):

London Plan 2021

- i. G2 – London's Green Belt
- ii. G6 – Biodiversity and access to nature
- iii. D1 – London's form, character and capacity for growth
- iv. D4 – Delivering good design
- v. D5 – Inclusive design

vi. SI 12 – Flood risk management

vii. SI 13 – Sustainable drainage

Barnet's Adopted Core Strategy 2012

viii. CS4 – Providing quality homes and housing choice in Barnet

ix. CS5 – Protecting and enhancing Barnet's character to create high quality places

x. CS7 – Enhancing and protecting Barnet's open spaces

xi. CS9 – Providing safe, effective and efficient travel

xii. CS13 – Ensuring the efficient use of natural resources

Local Plan Development Management Policies 2012

xiii. DM01 – Protecting Barnet's character and amenity

xiv. DM15 – Green Belt and open spaces

xv. DM16 – Biodiversity

xvi. DM17 – Travel impact and parking standards

Barnet's Emerging Local Plan

xvii. HOU07 – Gypsies, Travellers and Travelling Showpeople

29. The NPPF at paragraph 225 states due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer

the policies in this plan to the policies in the framework, the greater the weight that may be given).

30. It must also be considered that policies are to be examined as a whole policy, and therefore if parts of a local planning authority's policy are consistent with the NPPF, but other parts of it are not consistent, then the policy as a whole is incompatible with the NPPF, and if this cannot be shown then as per paragraph 11(d) of the NPPF the policy is rendered out of date. This is the position the Appellant has taken and applied throughout this assessment.
31. It is considered that policies G2, DM15, HOU07 are most relevant to this appeal and policies G6, D1, SI 12, SI 13, CS9, CS13, DM01, DM16 and DM17 has some relevance. However, policies D4, D5, CS4, CS5 and CS7 are considered not to be relevant to the appeal.
32. The policies considered relevant to the appeal have been reviewed below.

London Plan 2021

33. Policy G2 – London's Green Belt:

Policy G2 London's Green Belt

- A The Green Belt should be protected from inappropriate development:
 - 1) development proposals that would harm the Green Belt should be refused except where very special circumstances exist,
 - 2) subject to national planning policy tests, the enhancement of the Green Belt to provide appropriate multi-functional beneficial uses for Londoners should be supported.
- B Exceptional circumstances are required to justify either the extension or de-designation of the Green Belt through the preparation or review of a Local Plan.

- 34. This policy is in line with national policy.
- 35. As set out below, it is accepted that as a matter of principle gypsy sites are normally inappropriate development in the Green Belt, and therefore other considerations sufficient to outweigh the harm by virtue of inappropriateness (and any other harm to the Green Belt) so that very special circumstances exist, are needed. These considerations are set out later in this statement.
- 36. Policy G6 – Biodiversity and access to nature:

Policy G6 Biodiversity and access to nature

- A Sites of Importance for Nature Conservation (SINCs) should be protected.
- B Boroughs, in developing Development Plans, should:
 - 1) use up-to-date information about the natural environment and the relevant procedures to identify SINCs and ecological corridors to identify coherent ecological networks
 - 2) identify areas of deficiency in access to nature (i.e. areas that are more than 1km walking distance from an accessible Metropolitan or Borough SINC) and seek opportunities to address them
 - 3) support the protection and conservation of priority species and habitats that sit outside the SINC network, and promote opportunities for enhancing them using Biodiversity Action Plans
 - 4) seek opportunities to create other habitats, or features such as artificial nest sites, that are of particular relevance and benefit in an urban context

37. This policy is broadly consistent with national policy. The development proposal is in line with Policy G6 as set out below.

38. Policy D1 – London’s form, character and capacity for growth:

Policy D1 London’s form, character and capacity for growth

Defining an area’s character to understand its capacity for growth

- A Boroughs should undertake area assessments to define the characteristics, qualities and value of different places within the plan area to develop an understanding of different areas’ capacity for growth. Area assessments should cover the elements listed below:
- 1) demographic make-up and socio-economic data (such as Indices of Multiple Deprivation, health and wellbeing indicators, population density, employment data, educational qualifications, crime statistics)
 - 2) housing types and tenure
 - 3) urban form and structure (for example townscape, block pattern, urban grain, extent of frontages, building heights and density)
 - 4) existing and planned transport networks (particularly walking and cycling networks) and public transport connectivity
 - 5) air quality and noise levels
 - 6) open space networks, green infrastructure, and water bodies
 - 7) historical evolution and heritage assets (including an assessment of their significance and contribution to local character)
 - 8) topography and hydrology
 - 9) land availability
 - 10) existing and emerging Development Plan designations
 - 11) land uses
 - 12) views and landmarks.

Planning for growth

- B In preparing Development Plans, boroughs should plan to meet borough-wide growth requirements, including their overall housing targets, by:
- 1) using the findings of area assessments (as required in Part A) to identify suitable locations for growth, and the potential scale of that growth (e.g. opportunities for extensive, moderate or limited growth) consistent with the spatial approach set out in this Plan; and

- 2) assessing the capacity of existing and planned physical, environmental and social infrastructure to support the required level of growth and, where necessary, improvements to infrastructure capacity should be planned in infrastructure delivery plans or programmes to support growth; and
- 3) following the design-led approach (set out in Policy D3 Optimising site capacity through the design-led approach) to establish optimised site capacities for site allocations. Boroughs are encouraged to set out acceptable building heights, scale, massing and indicative layouts for allocated sites, and, where appropriate, the amount of floorspace that should be provided for different land uses.

39. The development proposal is in line with the above policy as discussed in detail in the Character and Appearance section of this statement below.

40. Policy SI 12 – Flood risk management:

Policy SI 12 Flood risk management

- A Current and expected flood risk from all sources (as defined in paragraph 9.2.12) across London should be managed in a sustainable and cost-effective way in collaboration with the Environment Agency, the Lead Local Flood Authorities, developers and infrastructure providers.
- B Development Plans should use the Mayor's Regional Flood Risk Appraisal and their Strategic Flood Risk Assessment as well as Local Flood Risk Management Strategies, where necessary, to identify areas where particular and cumulative flood risk issues exist and develop actions and policy approaches aimed at reducing these risks. Boroughs should cooperate and jointly address cross-boundary flood risk issues including with authorities outside London.
- C Development proposals should ensure that flood risk is minimised and mitigated, and that residual risk is addressed. This should include, where possible, making space for water and aiming for development to be set back from the banks of watercourses.
- D Developments Plans and development proposals should contribute to the delivery of the measures set out in Thames Estuary 2100 Plan. The Mayor will work with the Environment Agency and relevant local planning authorities, including authorities outside London, to safeguard an appropriate location for a new Thames Barrier.
- E Development proposals for utility services should be designed to remain operational under flood conditions and buildings should be designed for quick recovery following a flood.

41.

- F Development proposals adjacent to flood defences will be required to protect the integrity of flood defences and allow access for future maintenance and upgrading. Unless exceptional circumstances are demonstrated for not doing so, development proposals should be set back from flood defences to allow for any foreseeable future maintenance and upgrades in a sustainable and cost-effective way.
- G Natural flood management methods should be employed in development proposals due to their multiple benefits including increasing flood storage and creating recreational areas and habitat.

42. The appeal site is located in Flood Zone 1 and is therefore in the lowest band at risk of flooding. An FRA has been carried out to address concerns and ensuring the proposal

is in line with policy SI 12.

43. Policy S1 13 – Sustainable drainage:

Policy SI 13 Sustainable drainage

- A Lead Local Flood Authorities should identify – through their Local Flood Risk Management Strategies and Surface Water Management Plans – areas where there are particular surface water management issues and aim to reduce these risks. Increases in surface water run-off outside these areas also need to be identified and addressed.
- B Development proposals should aim to achieve greenfield run-off rates and ensure that surface water run-off is managed as close to its source as possible. There should also be a preference for green over grey features, in line with the following drainage hierarchy:
- 1) rainwater use as a resource (for example rainwater harvesting, blue roofs for irrigation)
 - 2) rainwater infiltration to ground at or close to source
 - 3) rainwater attenuation in green infrastructure features for gradual release (for example green roofs, rain gardens)

- 4) rainwater discharge direct to a watercourse (unless not appropriate)
- 5) controlled rainwater discharge to a surface water sewer or drain
- 6) controlled rainwater discharge to a combined sewer.

- C Development proposals for impermeable surfacing should normally be resisted unless they can be shown to be unavoidable, including on small surfaces such as front gardens and driveways.
- D Drainage should be designed and implemented in ways that promote multiple benefits including increased water use efficiency, improved water quality, and enhanced biodiversity, urban greening, amenity and recreation.

44. The appeal is consistent with Policy S1 13 as set out below and within the SUDs report conducted on behalf of the appellant.

Local Plan Development Management Policies 2012

45. Policy DM15 – Green Belt and open spaces:

Policy DM15: Green Belt and open spaces

a: Green Belt/Metropolitan Open Land

- i. Development proposals in Green Belt are required to comply with the NPPF (paras 79 to 92). In line with the London Plan the same level of protection given to Green Belt land will be given to Metropolitan Open Land (MOL).
- ii. Except in very special circumstances, the council will refuse any development in the Green Belt or MOL which is not compatible with their purposes and objectives and does not maintain their openness.
- iii. The construction of new buildings within the Green Belt or Metropolitan Open Land, unless there are very special circumstances, will be inappropriate, except for the following purposes:
 - a. Agriculture, horticulture and woodland;
 - b. Nature conservation and wildlife use; or
 - c. Essential facilities for appropriate uses will only be acceptable where they do not have an adverse impact on the openness of Green Belt or MOL.

iv. Extensions to buildings in Green Belt or MOL will only be acceptable where they do not result in a disproportionate addition over and above the size of the original building or an over intensification of the use of the site.

v. The replacement or re-use of buildings will not be permitted where they would have an adverse impact on the openness of the area or the purposes of including land in Green Belt or MOL.

vi. Development adjacent to Green Belt/MOL should not have a detrimental impact on visual amenity and respect the character of its surroundings.

b: Open Spaces

i. Open space will be protected from development. In exceptional circumstances loss of open space will be permitted where the following can be satisfied:

a. The development proposal is a small scale ancillary use which supports the use of the open space or

b. Equivalent or better quality open space provision can be made.

Any exception will need to ensure that it does not create further public open space deficiency and has no significant impact on biodiversity.

ii. In areas which are identified as deficient in public open space, where the development site is appropriate or the opportunity arises the council will expect on site provision in line with the standards set out in the supporting text (para 16.3.6).

46. This policy is broadly consistent with national policy, with the exception of point vi which provides a protection to the Green Belt on visual amenity terms from development adjacent to the Green Belt. This level of protection is not found within national policy.

47. Policy DM16 – Biodiversity:

Policy DM16: Biodiversity

- a. When considering development proposals the council will seek the retention and enhancement, or the creation of biodiversity.
- b. Where development will affect a Site of Importance for Nature Conservation and/or species of importance the council will expect the proposal to meet the requirements of **London Plan Policy 7.19E**.
- c. Development adjacent to or within areas identified as part of the Green Grid Framework will be required to make a contribution to the enhancement of the Green Grid.

48. Policy DM17 – Travel impact and parking standards:

Policy DM17: Travel impact and parking standards

a: Road safety

The council will ensure that the safety of all road users is taken into account when considering development proposals, and will refuse proposals that unacceptably increase conflicting movements on the road network or increase the risk to vulnerable users.

b: Road hierarchy

The council will seek to ensure that roads within the borough are used appropriately according to their status in the defined road hierarchy. In taking into account the function of adjacent roads the council may refuse development proposals which would result in inappropriate road use, or adversely affect the operation of roads in an area.

c: Development, location and accessibility

The council will expect major development proposals with the potential for significant trip generation to be in locations which are, or will be made, highly accessible by a range of transport modes.

Policy DM17: Travel impact and parking standards continued

d: Transport assessment

In considering planning applications for new development, the council will require developers to submit a full Transport Assessment (as defined by Department for Transport threshold) where the proposed development is anticipated to have significant transport implications in order to ensure that these impacts are considered. This assessment should include an analysis of accessibility by all modes of transport.

e: Travel planning

For significant trip generating developments, (defined by Transport for London thresholds), the council will require the occupier to develop, implement and maintain a satisfactory Travel Plan (or plans) to minimise increases in road traffic and meet mode split targets. In order to ensure that they are delivering this the travel plan will need to contain measurable outputs so that they can be monitored.

f: Local infrastructure needs

- i.** Developments should be located and designed to make the use of public transport more attractive for all users by providing improved access to existing facilities, and if necessary the development of new routes and services, including improved and fully accessible interchange facilities.
- ii.** The council will expect development to provide safe and suitable access arrangements for all road users to new developments. Where improvements or changes to the road network are necessary by virtue of an approved development, the council will secure a Legal Agreement from the developer.
- iii.** The council will require appropriate measures to control vehicle movements, servicing and delivery arrangements. Where appropriate the council will require Construction Management and/or Delivery and Servicing Plans.

- iv.** Where appropriate, development will be required to improve cycle and pedestrian facilities in the local catchment area by providing facilities on site and/or funding improvements off site.

g: Parking management

- 1.** The council will expect development to provide parking in accordance with the London Plan standards, except in the case of residential development, where the maximum standards will be:
 - i.** 2 to 1.5 spaces per unit for detached and semi detached houses and flats (4 or more bedrooms);
 - ii.** 1.5 to 1 spaces per unit for terraced houses and flats (2 to 3 bedrooms); and
 - iii.** 1 to less than 1 space per unit for development consisting mainly of flats (1 bedroom).
- 2.** Residential development may be acceptable:
 - i.** with limited or no parking outside a Controlled Parking Zone (CPZ) but only where it can be demonstrated through a survey that there is sufficient on street parking capacity.
 - ii.** with limited or no parking within a CPZ, where it can be demonstrated that there is insufficient capacity on street the applicant will be required to enter into a legal agreement to restrict future occupiers from obtaining on street parking permits. For proposals in close proximity to the edge of a CPZ a survey will also be required to demonstrate that there is sufficient on street parking capacity on streets outside the CPZ.

49. The appellant has instructed a Highways expert; Mr Hurlstone from Hurlstone Partnership, to address concerns regarding Highways and traffic movements.
50. Following Mr Hurlstone's' conclusion as set out in detail below, the proposed development is in line with this policy.

Barnet's Local Plan Core Strategy September 2012

51. Policy CS9 – Providing safe, effective and efficient travel:

Policy CS9: Providing safe, effective and efficient travel

We will promote the delivery of appropriate transport infrastructure in order to support growth, relieve pressure on Barnet's transport network and reduce the impact of travel whilst maintaining freedom and ability to move at will.

We will ensure that new development funds infrastructure (through Community Infrastructure Levy (CIL), Section 106 and other funding mechanisms) that enables Barnet to keep the existing traffic moving and cope with new movements both by all modes of transport.

Ensuring more efficient use of the local road network

- In order to enable traffic to flow more smoothly we will prioritise the reduction of congestion, including through encouraging trips to route according to the road hierarchy, the implementation of development related schemes that also address pinch-points, a review of traffic signals, parking management measures and more efficient freight movements
- We will continue to invest in improvements to the condition of roads and footways in the borough to ensure that the local road network operates efficiently and safely, and seek to improve co-ordination of maintenance and utility works
- We will continue to manage a parking regime which recognises that many Barnet residents will continue to own and travel by car
- We will work with TfL to review and improve the bus network
- We will continue to make travel safer and more attractive by improving street lighting, security coverage and accessibility at transport interchanges and around bus stops as well as delivering, where resources permit, targeted local safety schemes.

Taking a comprehensive approach to tackling the school run

- We will seek to improve the effectiveness of our School Travel Plans to achieve a greater reduction in car based journeys and increase levels in walking and cycling to and from school
- We will implement complementary traffic management schemes outside schools, including preventing pupil parking

Delivery of high quality transport systems in regeneration areas and town centres

We will ensure that development is matched to capacity and promote key transport infrastructure proposals in our town centres and regeneration areas to support Barnet's growth, in particular we will:

- **CS1 (Barnet's place shaping strategy – the Three Strands Approach), CS3 (Distribution of growth in meeting housing aspirations), and CS 6 (Promoting Barnet's town centres)**
- ensure major planning proposals incorporate Transport Assessments, Travel Plans, Delivery and Servicing Plans, mitigation measures and S106 contributions/planning conditions and that adequate capacity and high quality safe transport facilities are delivered in line with demand for schemes that have phased delivery programmes
- deliver with partners
 - high quality public transport improvements along the A5 corridor
 - bus service enhancements as part of regeneration schemes, particularly at BXC and Colindale, including a new state of the art bus station as part of the redevelopment of the Brent Cross Shopping Centre and better bus services connecting these two key areas in Barnet
 - a Rapid Transit Bus Service at BXC – wa dedicated bus service system which will link the key interchanges and destinations in the growth area
- we will promote public transport provision that supports access to health services and is accessible to people with physical or sensory impairment including a new step-free rail station at BXC together with improvements to Brent Cross underground and Cricklewood train stations
- we will promote major improvements to the strategic road network, especially the A406 (North Circular Road) at Staples Corner and the A41 interchanges, and in the long term Golders Green Road and Henly's Corner
- we will promote through Town Centre Frameworks and other planned approaches town centre development opportunities and enhancement programmes to improve the public realm, public transport services, and interchange, short-trip making by walking, parking and servicing controls and accessibility improvements
- we strongly support improvements to rail services in the borough including upgrades to the Thameslink and Northern Line routes.

52. Policy CS9 is broadly consistent with national policy.

53. As set out above, the appellant has addressed Highways and Traffic concerns below.

54. Policy CS13 – Ensuring the efficient use of natural resources:

Policy CS13: Ensuring the efficient use of natural resources

We will seek to minimise Barnet's contribution to climate change and ensure that through the efficient use of natural resources the borough develops in a way which respects environmental limits and improves quality of life.

- We will promote the highest environmental standards for development and through our SPDs on Sustainable Design and Construction and Green Infrastructure we will continue working to deliver exemplary levels of sustainability throughout Barnet in order to mitigate and adapt to the effects of a changing climate.
- We will expect all development to be energy-efficient and seek to minimise any wasted heat or power.
- In line with **London Plan Policy 5.2 – Minimising Carbon Dioxide Emissions** we will expect major development in accordance with the Mayor's energy hierarchy to reduce carbon dioxide emissions beyond the 2010 Building Regulations.
- We will maximise opportunities for implementing new district-wide networks supplied by decentralised energy (including renewable generation) in partnership with key stakeholders in areas of major mixed use growth including town centres. Where feasible we will expect all development to contribute to new and existing frameworks.
- We will support solutions that minimise or avoid harm to a heritage asset's significance while delivering improved energy performance or generation.
- We will make Barnet a water efficient borough and minimise the potential for fluvial and surface flooding by ensuring development does not cause harm to the water environment, water quality and drainage systems. Development should utilise Sustainable Urban Drainage Systems (SUDS) in order to reduce surface water run-off and ensure such run-off is managed as close to its source as possible subject to local geology and ground water levels.
- We will improve air and noise quality by requiring Air Quality Assessments and Noise Impact Assessments from development in line with Barnet's SPD on Sustainable Design and Construction.

55. Policy CS13 is broadly consistent with national policy.

56. The proposed development is in line with this policy as set out in this statement.

Emerging Policy

57. The Council is in the process of preparing a new Local Plan, which will set the strategy for the future development of the borough to 2036. The new Local Plan will replace a number of the adopted policy documents that form the local development plan for the borough.
58. The timetable for preparing the new Local Plan is set out in the Council's Local Development Scheme (LDS) which was adopted on 30th September 2021 (appendix A9).
59. The LDS sets down that the adoption of the new Local Plan is anticipated in early 2023. However, this has not occurred as the new Local Plan is still referred to by the LPA on their website as 'emerging' and has not yet been adopted.
60. According to the Council's website, they are currently at the stage of Public Examination through Hearing Sessions under Regulation 24. Following the below table, the Council are behind on their estimated progress with the new Local Plan as they were scheduled to have reached this stage by Mid 2022.
61. The Inspector, in his interim report on the examination of the local plan review (appendix A10), acknowledges that a further review of the local plan will be required following the publication of the GTANA, demonstrating further that the GTAA is not considered to be up to date.

“The listed changes to the policy set out above, will require, and a commitment that the preparation and publication of findings of a London-wide Gypsy and Traveller accommodation needs assessment, taking account of the 2021 Census, will inform the committed early review of the Plan.”

London Borough of Barnet's Local Development Scheme: Version 8						
With effect from 30th September 2021						
This Local Development Scheme (LDS) sets out Barnet Council's timetable for preparing its Local Plan. It supersedes the LDS 7th version that was published in January 2020. Section 15 of the Planning & Compulsory Purchase Act 2004 (revised by Housing & Planning Act 2016) requires local planning authorities to prepare and maintain a LDS specifying a timetable for preparation and revision of Local Plan documents.						
Local Plan related documents	Regulatory Stages and Timetable					
	Evidence gathering and pre-preparation stage	Reg 18: Preparation of Local Plan and Consultation	Reg 19: Publication of Local Plan	Reg 22: Submission	Reg 24: Examination in Public	Reg 26: Adoption
Documents listed below, together with the Mayor's London Plan, comprise Barnet's local development documents. Development Plan Document (DPD)	(Including consulting on sustainability reports where applicable)	Opportunity for interested parties and statutory consultees to be involved at an early stage.	The Council publishes the draft plan allowing a period of at least 6 weeks to make representations on the draft plan.	The Council submits the Local Plan and supporting evidence to the Secretary of State together with Reg 19 representations received.	Conducted by an independent Planning Inspector	Subject to outcome of examination, the Council formally adopts the plan.
Local Plan for Barnet DPD The new Local Plan for Barnet looks ahead to 2036 and comprises a suite of strategic and development management policies together with site proposals and a Policies Map. The existing AAPs for Mill Hill East and Colindale remain extant. Adoption of the new Local Plan replaces the Core Strategy and Development Management Policies documents (adopted in 2012).	2017-ongoing	2019/20	Mid 2021	Late 2021	Mid 2022	Early 2023

62. Nevertheless, the LPA have referred to emerging Local Plan Policy H0U07 in their refusal notice.

63. Policy H0U07:

Policy HOU 07 Gypsies, Travellers and Travelling Showpeople

The Council can demonstrate that there is no objectively assessed need for pitches and plots for Gypsies and Travellers and Travelling Showpeople households.

Any proposals for such accommodation that do come forward will be considered on the basis of ensuring:

- a) Close proximity to a main road and safe access to the site with adequate space on site to allow for the manoeuvring of vehicles.
- b) Reasonable access to local shops and other community facilities, in particular schools and health care.
- c) Scale of the site is in keeping with local context and character.
- d) Appropriate landscaping and planting to address impact on amenity and enable integration of the site with the surrounding environment.
- e) Any use on the site does not have any unacceptable adverse impacts on neighbouring residents.
- f) Appropriate facilities must be provided on-site, including water and waste disposal.
- g) That flood risk and the impacts of climate change are taken into account when assessing the suitability of sites to ensure that residents on these sites are not highly vulnerable to flooding.

64. The criteria set out within the policy are broadly consistent with National Policy, however Policy HOU07 is based upon an out-of-date evidence base in terms of the need for gypsy and traveller pitches in the District.

Principal Issues

66. The principal issues in this case appear to be:

- Potential adverse impacts (harm) of the development:
 - Green Belt Harm
 - i. Whether the development is inappropriate development in the Green Belt
 - ii. Impact on openness of the Green Belt
 - iii. Conflict with the purposes of including land in the Green Belt
 - Other harm
 - i. Character and Appearance
 - ii. Surface Water Flooding
 - iii. Ecology
 - iv. Impact on Trees
 - v. Highway Safety
- Third Party Comments
- Conclusion on harm
- Material Considerations (benefits) in favour of the development:
 - i. Local, regional and national need
 - ii. The provision of alternative, suitable, acceptable and affordable sites
 - iii. Failure of policy
 - iv. Lack of a five-year supply
 - v. Personal Circumstances
 - a. Gypsy status
 - b. Personal need
 - c. Health
 - d. Education
 - e. Best Interest of the Child
- Permanent or temporary consent
- Green Belt Balancing Exercise
- Human Rights considerations
- Suggested Conditions

67. This statement will set out to address all of these in turn.

Potential adverse impacts (harms) of the development:

Whether the development is inappropriate development in the Green Belt

68. The Decision notice states:

“The development proposed is inappropriate development in the Green Belt and would result in material harm to openness.”

69. The Officer’s report states:

“The change of use of this open and undeveloped site to provide 2no gypsy/traveller pitches with associated hard standing and utility/day rooms would be an inappropriate form of development within the Green Belt.”

70. It is accepted that as a matter of principle gypsy sites are normally inappropriate development in the Green Belt, and therefore other considerations sufficient to outweigh the harm by virtue of inappropriateness (and any other harm to the Green Belt) so that very special circumstances exist, are needed. These considerations are set out later in this statement.

71. As per PPTS Policy E, there is substantial harm by virtue of inappropriateness.

Impact on openness of the Green Belt

72. The most important attribute of Green Belts is their openness. Impact on openness is directly related to the quantum of development and not to the visibility of the site. Therefore, openness is best described as the absence of development.

73. All land situated in the Green Belt is afforded identical levels of protection and value under the relevant NPPF policies, and no segment of Green Belt should be considered as a higher priority unless further protections from policy is applied. Acknowledging this,

the location of the site cannot be deemed to be 'particularly sensitive' or 'particularly valuable' in comparison to other locations situated within the Green Belt.

74. The Supreme Court gave judgment on how 'openness' should be considered in ***Samuel Smith Old Brewery and others v North Yorkshire County Council*** [2020] UKSC 3 (Appendix B1). Holding that 'openness' is commonly equated with the absence of built development, as well confirming that there can be a visual dimension to openness but that it is a matter of planning judgment.
75. From a spatial point of view, the Court of Appeal in ***Turner v SSCLG & East Dorset Council*** (Appendix B2) held that it was not irrational for an Inspector to determine that the impact on openness of a moveable development such as caravans and mobile homes is less than the impact of an equivalent permanent structure.
76. The application is for a two-pitch site and as such it is of a limited scale.
77. The image below demonstrates the immediate surroundings of the Appeal Site.



78. The site is bounded on the South by Mays Lane which connects East Barnet village and Borehamwood and along which are residential, commercial and industrial buildings and uses of varying intensity in their individual plots.
79. The site is bounded to the north-east by a place of worship known as The Brethren's Meeting Rooms which is a reasonably sized development with associated parking.
80. To the East of the appeal site is a residential housing estate just off Mays Lane with approximately 20 houses.
81. To the North of the site lies Whittings Hill Open Space, however in terms of the visual dimension to openness, this area of land contains large areas of woodland connected to Whittings wood further south west of the appeal site, which reduces the openness of the area.
82. Bounding the site on its southern border is Cottage Farm which is a reasonably sized development for residential and agricultural use.
83. Next to Cottage Farm is a commercial unit for a company called Image Landsat.
84. To the west of the site is a further residential plot, with equestrian facilities.
85. Given the presence of existing development and woodland within the close vicinity, the development cannot be said to significantly impact the openness of the Green Belt.
86. The site can be viewed from some public vantage points (which is considered in further detail under the Character and Appearance section of this Statement), but these would be limited as the site is screened by heavy shrubbery and trees.

87. Gypsy sites are not intended to be hidden from view, to suggest otherwise would clearly be a breach of the Equalities Act and any limited impact on appearance from the road could be dealt with by condition.
88. Taking into account the size of the development, the site would cause limited impact on the openness of the Green Belt.

Conflict with the purposes of including land in the Green Belt

89. The Officer's report and decision notices do not specify which purposes of including land in the Green Belt will be conflicted with.
90. It is accepted that the development would result in conflict with the purpose of safeguarding the countryside from encroachment, however given the scale of the development, this would only be to a modest extent.

Weight to be attached to harm to the Green Belt

91. The development causes harm by virtue of its inappropriateness, and impacts on openness to a limited extent, with modest impact on the encroachment into the countryside. Consistent with the NPPF, substantial weight should be attributed to the harm to the Green Belt.

Other non-Green Belt Harms

Character and appearance

92. The Decision notice states at refusal reason 3:

"The proposed development will result in an increase in built form on a site that has not been previously developed and will result in a use of greater intensity. Such a use

is at odds with the prevailing characteristics of the immediate and wider area and would result in harm to the character and appearance of this site...”

93. The Officer’s report states:

“The proposal will significantly alter the appearance of the application site... it will result in an increase in built form and hard standing on a site that has not been previously developed and will result in a use of greater intensity.”

Impact on character

94. In terms of character, all nearby and adjacent land uses and buildings should be considered as part of the character of an area regardless as to whether they are considered positive or not. It should also take into account the pattern of development in the immediate area whether it is visible or not.

95. The Google Earth image below shows the Appeal Site identified with a red marker, and the residential developments to the East, South and West borders of the site.



96. Immediately north-east of the appeal site is The Brethren's Meeting Rooms which are a place of worship with a large area of hardstanding, marked on the above image with a red arrow.
97. The land surrounding the appeal site also has residential development on them, marked on the above image with red arrows.
98. To the north-west of the site is Mays Lane, which there are multiple residential developments along it.
99. The Council have taken a rather simplistic approach in assessing the impact that the development will have on the character of the area, in concluding that there will be harm as a result of the site not being previously developed.
100. It cannot be said that the development would be "*at odds with the prevailing characteristics of the immediate and wider area*", which consists of residential, agricultural and commercial uses.
101. The development would cause limited harm to the character of the area.

Impact on appearance

102. Gypsy sites are not intended to be hidden from view, to suggest otherwise would clearly be a breach of the Equalities Act. Being able to view the development does not equate to harm in any event.
103. Impact on appearance should be assessed from public viewpoints.
104. There will be public viewpoints from Mays Lane and Whitting Hill Open Space Park.

105. There are designated public rights of way immediately to the north of the site within the Whitting Hill Open Space Park that could provide some views into the site.
106. Any views from walkers or cyclists on Mays Lane would be screened by intervening hedgerows and heavy landscaping as shown in the site visit photos taken on 14th July 2023 below and further images contained in A17.











107. Similarly, the views from the park would be screened by intervening hedgerows and landform, and the design of the site will also provide limited viewing from these viewpoints.
108. The site visit carried out by GPS in July 2023 showed dense landscaping from the public walkways at the Open Space park which would obscure views of the site as shown in the below Site Visit photos.





109. The site already benefits from heavy landscaping which will obstruct views for the public from any direction. However, if deemed necessary more landscaping can be agreed through condition.

110. In any event, it is clear from the below proposed site plan (23_1285_003 Proposed Site Plan P03) at the proposed development would be at the top corner of the site tucked behind an already heavily landscaped area. This would therefore limit views from Mays Lane and the Open Space Park even further.

Surface Water Flooding

114. The Decision notice states at reason 6:

“...it has not been demonstrated that this highly vulnerable form of development would be protected from potential sources including but not limited to surface water, groundwater, sewer and artificial sources.”

115. The Sustainable Drainage Officer stated their objections to the development:

“Areas of the site potentially at high risk of flooding from fluvial and surface water sources. Site also shown to be at risk of reservoir failure.”

116. The technical evidence in relation to Flood risk is dealt with in the Flood Risk Assessment (FRA) which was completed by GeoSmart on 5th April 2024.

117. The FRA concludes that:

“Highly vulnerable developments in a Flood Zone 1 are acceptable according to the NPPF and providing the recommended mitigation measures are put in place...it is likely that flood risk to this Site will be reduced to an acceptable level.”

118. The FRA produced by GeoSmart Information Ltd, concludes:

- The Site is located in Flood Zone 1 which equates to a Very Low risk of flooding from rivers and the sea.
- Surface water (pluvial) affects part of the Site, but the flooding risks are reduced to Very Low to Low.
- Groundwater flood risks are negligible.

- Flooding risks from artificial sources (i.e. canals, reservoirs and sewers) are Low.

119. The FRA recommends the following mitigation measures:

- i. As the area proposed for development is not identified as being at risk of pluvial flooding, standard mitigation measures are not required. It would be prudent to move the proposed touring caravan located in the northeast corner of the Site further south / south-east to further reduce the risk of any flooding. All caravans should remain tethered to the ground (where practical) as a precaution, in the unlikely event of a significant flood in the northeast of the Site. In addition, the regular maintenance of any drains and culverts surrounding/on the Site under the riparian ownership of the developer should be undertaken to reduce the flood risk. A surface water drainage (SuDS) strategy has been prepared separately (ref: 81841.01R1) to ensure surface water runoff can be managed effectively over the lifetime of the proposed development. If the touring caravan was located further to the south / south-east and a suitable SuDS strategy were implemented, the risk of flooding from pluvial sources would reduce from Very Low/Low to Very Low.*
- ii. There would be a relatively high rate and onset of flooding associated with a reservoir breach, it is therefore unlikely that safe access could be achieved unless a long warning period was provided. Therefore, occupants should evacuate the Site to the east and contact the emergency services.*
- iii. The risk to the Site has been assessed from all sources of flooding and appropriate mitigation and management measures proposed to keep the users of the development safe over its lifetime. There is however a residual risk of flooding associated with the potential for failure of mitigation measures*

if regular maintenance and upkeep isn't undertaken. If mitigation measures are not implemented or maintained, the risk to the development will remain as the baseline risk.

120. GeoSmart also carried out a Sustainable Drainage Assessment (SuDS) on 4th April 2024 to address any drainage concerns (appendix A11).
121. GeoSmart conclude that the SuDS strategy *'is comprised of rainwater harvesting and permeable paving to attenuate surface water runoff during the 1 in 100 plus 40% climate change event. Surface water will discharge via Dollis Brook to the west of the Site, following confirmation from the relevant authority.'*
122. Following the above, the site is located in FZ1 and is at Very Low to Low risk. Any risks can be mitigated through conditions at set out above.

Ecology

123. The Decision notice states:

“In the absence of eDNA testing (and potentially further traditional GCN surveys) it has not been demonstrated that the proposed development would mitigate against the disturbance of great crested newts and their foraging/sheltering habitats within 500 metres of the application site...”

124. The Officer’s Report states:

“According to the PEA report there are seven ponds within 500m of the site including one adjacent to the site that is connected to the site by suitable terrestrial habitats for great crested newts. Given that the proposed development would result in the potential loss of 0.09ha of habitat within 100m of the potential breeding pond there is a “Amber: offence likely” (Natural England’s great crested newts Triturus cristatus risk assessment tool form WML-A14-2 (Version April 2020) that the proposed development would result in the disturbance of great crested newts and their foraging/sheltering habitats.”

125. The appellant instructed RSKBiocensus to conduct a Great Crested Newts survey on 2nd May 2024 (appendix A12).

126. Access was gained for 5 out of 7 of the ponds in the vicinity. Access was not granted from the two neighbours owning pond numbers 2 and 4. The appellant tried to obtain permission from the two neighbours but was refused on all occasions, the reasons given by the neighbours was that they did not want to assist an application that they did not support.

127. The report concludes that:

“Areas of horse grazed grassland will be cleared as part of the proposed development. This is sub-optimal habitat for GCN because it is short and horse-grazed so there is little cover for newts. However, if newts are in the area then they will cross these areas and may use them on occasion. The hedgerows and scattered scrub are suitable habitat for sheltering newts and they are likely to be found in these areas. According to the HSI assessment, P1 had ‘Poor’ suitability (HSI score 0.38) for GCN, owing to the lack of aquatic vegetation, grassy base, and because it is likely to dry annually during summer. Despite this, the eDNA result for this pond was positive (see Appendix C) showing that GCN are using the pond. Some areas of grassland will be cleared within 100m of P1, and these are likely to be used by newts as they cross from terrestrial to aquatic habitat. The hedgerows and scrub habitat at the edges of the grassland are likely used for foraging and sheltering by GCN. Any GCN habitat is legally protected and so any clearance of vegetation could cause an offence under current legislation (e.g. killing, injuring, disturbance or habitat destruction) if carried out without mitigation and under a licence. P6 is c.280m from the site and the eDNA result was positive for GCN despite the HSI assessment of ‘Poor’ suitability for GCN. The pond is ecologically well-connected to the site by woodland and lines of trees, all of which are suitable for newts. It is possible that breeding GCN from P6 would disperse into terrestrial Habitat on the site as newts are known to travel up to 500 m from their breeding ponds. The results of eDNA surveys at P3, P5, and P7.1 were all GCN negative. Although access was not made for P2 and P4, it is reasonable to assume that GCN are likely to be present in the wider area. A review of Ordnance Survey (OS) maps indicate

that there are no significant barriers to newt movement (i.e. large roads, built-up areas, fast-flowing streams) between the site and ponds within 500m. As GCN are present in P1 and P6, any work to terrestrial habitat on the site will require a licence from Natural England, and mitigation measures to be put in place.”

128. RSKBiocensus recommends two different licensing routes as mitigation strategies:

- i. European Protected Species Mitigation Licence (EPSML) - The licence application would need to be submitted to Natural England informed by further surveys to estimate GCN population size within P1, in line with methods specified within the Great Crested Newt Conservation Handbook (Langton et al., 2001). This would consist of six survey visits using methods such as egg search, netting, bottle trapping, and/or torching, to be carried out between mid-March to mid-June. Mitigation and avoidance measures are likely to include clearing vegetation in a way that avoids harming newts, enhancing remaining areas of habitat, and possibly fencing and trapping any newts to remove them to safety.*
- ii. District Level Licensing (DLL) – A DLL can be applied for even in the absence of any survey data, though negative survey results can reduce the cost. DLL is a strategic mitigation licence for GCN, that allows developers to make a financial contribution to the DLL which then enables them carry out actions to GCN habitat that would otherwise be illegal. Contribution towards the scheme sees more off-site habitat suitable for GCN created than is lost to development. Mitigation measures are largely delivered off-site and so the requirement for on-site measures is reduced.*

129. This is a matter that can be dealt with by condition, as such the LPA are requested to review this reason for refusal as a matter of priority and to confirm that subject to condition, they no longer pursue the fourth reason for refusal.

Impact on Trees

130. The Decision notice states as reason 5:

“In the absence of detailed tree protection measures indicating site levels and the protection and enhancement of existing protected trees in and around the application site it has not been demonstrated that the trees would be protected during the course of the proposed development. Therefore, the proposal is not considered to safeguard the health of existing tree(s) which provide significant public amenity and are integral to the character of the Green Belt and Barnet’s urban fringe...”

131. The appellant instructed Arbtech to complete an Arboricultural survey and Impact Assessment to address this matter which was completed on 30th April 2024 (appendix A13).

132. The survey provides at page 5 that *‘it is likely that arboricultural impacts can be addressed with arboricultural methodology or minor amendments to the proposal.’*

133. Arbtech completed an AIA which is at appendices A13 which recommends in the table the following:

- i. Removal of 1 Category C tree
- ii. Pruning on the crown of the group of trees to the left entrance

Highway Safety

134. The refusal notice states at reason 7 that:

“In the absence of a transport statement, including swept path analysis and highway mitigation measures, it has not been demonstrated that vehicles can safely access and egress the application site without causing detrimental harm to highway and pedestrian safety and the free-flow of traffic along Mays Lane”

135. The Officer’s Report further states:

“Transport Officers have been consulted and based on the limited information submitted (site plan only) they raise significant concerns for highway safety at the proposed access junction with Mays Lane. The proposal presents one way lane vehicle movement only, which could result in safety concerns with vehicles, caravans and emergency vehicles needing to reverse back into Mays Lane to allow for oncoming vehicles. This safety issue is compounded by the fact that potential turning conflict may arise with the existing access located directly opposite, serving Cottage Farm, and the absence of a pedestrian footway on this section of Mays Lane. Although appropriate visibility splays can be secured by condition, the day to day manoeuvring of vehicles cannot be controlled on Mays lane. Although detailed information has not been submitted regarding on site car parking provision (including disabled parking) and cycle parking the extent of the site allows for minimum standards to be met. A planning condition can be imposed to secure such measures. To further ensure highway and pedestrian safety a further condition can be imposed to prevent additional pitches and parking being made available without the express consent of the Local Planning Authority. The storage and collection of waste and recycling at the proposed access can also be controlled by condition. As part of a section 184 application, the speed limit along Mays Lane would be reviewed due to the

safety aspect for pedestrians and potential conflict of traffic movements. However, on balance, the potential for turning conflict at the proposed access is significant and in the absence of supporting information to indicate safe passage the proposal is contrary to the aforementioned policies and cannot be supported.”

136. The above contradicts the statement made earlier in the Officer’s Report claiming that there were no objections raised by Highways Officers. Clarity is required on this.

137. The appellant instructed Mr Jeremy Hurlstone from the Hurlstone Partnership to complete a statement on Highways matters covering the concerns raised by the Council (A14).

138. Mr Hurlstone completed a traffic survey and reviewed visibility at the access which concluded that:

“I conclude that the highway impact of the proposed development is acceptable, and that planning permission should not be refused on highways grounds, as confirmed by national planning policy.”

139. Mr Hurlstone recommends cutting back some of the hedgerow on either side of the access site to improve visibility splays which he describes as ‘*significantly superior to that of the Cottage Farm access*’.

140. Mr Hurlstone further concludes that ‘*...due to the excellent forward visibility for drivers travelling along Mays Lane in either direction, combined with the relatively low traffic flows, I noted whilst walking backwards and forwards along the route undertaking my measurements, that drivers were able to clearly see me and were able to easily pass me whilst I was within the carriageway surface between the Appeal Site access and the start of the footway to the east.*’

Consultee and Third-Party Comments

141. In addition to the points raised above a number of comments have been received in relation to the proposal from third parties and consultees. Where the issues have not been addressed above, or in the accompanying evidence, these are dealt with below.

142. Several comments are discriminatory or based on racist stereotypes.

Environmental Health:

143. Objection - Outdoor cooking and fires in Smoke Control Area.

144. This is not relevant to the proposed development.

Highway Officer

145. No Objection - Subject to conditions.

146. However, a Highways Assessment was completed and is detailed above.

Tree Officer

147. Objection - Impact to Oak trees subject to TPO.

148. This issue has been addressed through an Arboricultural Survey completed by Arbtech and discussed above.

Senior Ecologist

149. Objection - Insufficient ecological information submitted.

150. A Preliminary Ecological Assessment was completed and submitted as part of the application process to address these issues (appendix A2).

151. A Greater Crested Newts eDNA Survey was completed as part of the evidence for this appeal and is discussed above.

Sustainable Drainage Officer

152. Objection - FRA not provided. Areas of the site potentially at high risk of flooding from fluvial and surface water sources. Site also shown to be at risk of reservoir failure.

153. This objection has been addressed above.

Third Parties

Pressure on existing infrastructure & local area

154. These comments are speculative and unsubstantiated.

Cannot afford to lose more green space in this borough

155. These claims are unsubstantiated and have not been raised by the Council.

Effect of the development on the character of the neighbourhood

156. This issue has been addressed in detail above.

Loss of green belt, 'inappropriate development' on the Green Belt

157. This issue has been addressed in detail above.

Creates urban sprawl

158. Addressed above.

Unacceptable high density/over-development of the site

159. This issue has been discussed above.

Material change fails to show any environmental, economic or social benefit

160. This has been addressed above.

Not suitable to have caravans in the green belt with no proper pavements

161. Untrue and unsubstantiated. In a countryside location it is usual for dwellings to not have pedestrian access via public pavements. The same applies to caravans.

Breach of planning policies

162. This has been addressed in the policy section above.

Dangerous precedent for further development

163. All planning applications are determined on their individual merit.

164. There are no precedents in planning and so this comment has no bearing or relevance.

This was confirmed in **Butler** v Secretary of State for Communities and Wychavon District Council (appendix B3).

Traffic congestion and safety concerns, particularly children and increased road traffic

165. Addressed above.

Access by vehicle to the site is already in very poor repair

166. Addressed in detail above.

Adverse impact on wildlife corridor, affecting wildlife and biodiversity

167. A PEA and GCN survey have been completed to address any ecological concerns.

Impact on trees and ecology

168. Addressed in detail above.

Harmful to existing views - Whittings Hill Open Space and surrounding spaces & footpaths

169. Addressed above.

Noise pollution

170. Unsubstantiated and not raised by the LPA.

171. In terms of two pitches proposed, there is nothing to suggest that two additional residential properties would result in unacceptable levels of noise pollution.

172. The NPPF at paragraph 180 requires planning policies and decision to contribute to and enhance the natural and local environment by..."e) *preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.*"

Residential Amenity

173. Unsubstantiated and not raised by the LPA.

174. There is no harm to the residential amenity of existing dwellings.

Mays Lane is frequently flooded after a rain storm

175. Addressed above.

Conclusions on Harm

176. It is accepted that as a matter of principle gypsy sites are normally inappropriate development in the Green Belt, and therefore other considerations sufficient to outweigh the harm by virtue of inappropriateness (and any other harm to the Green Belt) so that very special circumstances exist, are needed.
177. It is considered that there will be a limited impact on the openness of the Green Belt.
178. There will be a limited impact on the character and appearance of the area.
179. Surface water flood risks can be mitigated following the suggestions within the FRA completed by GeoSmart Information Ltd.
180. Impact on existing trees is limited as set out in the Arboricultural Impact Assessment.
181. The Traffic survey showed that the highway impact of the development is acceptable.
182. Any impact on great crested newt habitats can be mitigated through appropriate licensing and protection measures as recommended in the survey completed by RSKBiocensus.

Material Considerations (Benefits) in Favour of the Development

183. There are a number of material considerations in favour of the appeal which in combination are sufficient to clearly outweigh any harm to the Green Belt and any other harm, and therefore, establish that very special circumstances exist.

184. These material considerations are;

- i. Local, regional and national need
- ii. The provision of alternative, suitable, acceptable and affordable sites
- iii. Failure of policy
- iv. Lack of a five-year supply
- v. Likely location of gypsy sites in the district
- vi. Personal Circumstances (Gypsy status, personal need, health, education, and the best interests of the child).
- vii. Extended family unit
- viii. Animal welfare

185. The Inspector's decision in ***Mr. J McDonagh v South Gloucestershire Council*** (Appendix B4), dated 10th February 2016 held that each material consideration is weighted in its own right. The Inspector stated at paragraph 26 that:

"The Council questioned whether it was correct to aggregate unmet need, a lack of a five-year supply and failure of policy, arguing that they amounted to the same thing. Certainly, there are casual links, and one might be said to lead from another,

*but the unmet need is a current failing, the lack of a five-year supply is indicative of failings to meet the need in the future as well, and the failure of policy that has led to the present situation can be traced back at least to 2006. **It would be possible for one or two of these factors to exist without a third and so in the balance, each should be accorded weight where they all occur, as here.*** [GPS Emphasis]

186. It is therefore very clearly the case that the aggregation of unmet need, lack of a five-year supply and failure of policy is correct, and each should be afforded its own separate weighting in favour of the appeal.

Need (Local, Regional and National)

187.

188. The need for gypsy and traveller sites in the district is primarily dealt with in the Need Statement submitted alongside this Hearing Statement on behalf of the Appellant.

189. The most up to date document relating to objectively assessed need for Traveller pitches in the district is the West London Alliance Gypsy, Traveller and Travelling Showpeople Accommodation Assessment dated October 2018. There was an Update report published in July 2021 known as the Update on Gypsy, Traveller and Travelling Showpeople Assessment.

190. The Inspector, in his interim report (Appendix A10) on the examination of the local plan review, acknowledges that a further review of the local plan will be required following the publication of the GTANA, demonstrating further that the GTAA is not considered to be up to date.

“The listed changes to the policy set out above, will require, and a commitment that the preparation and publication of findings of a London-wide Gypsy and Traveller accommodation needs assessment, taking account of the 2021 Census, will inform the committed early review of the Plan.”

191. The GTAA identified no gypsy and traveller households in Barnet (those meeting the PPTS definition, not meeting or unknowns) and as such the GTAA identifies no need for the Council to address. In reaching this conclusion Opinion Research Service (“ORS”) have left themselves and the Council no room for error. If just one household is identified the robustness of the GTAA’s conclusions will be undermined. Put succinctly, if the Inspector accepts that just one household existed in Barnett as at the base date, this establishes a need as against which there is no supply and the Inspector would have to conclude that a five year supply could not be demonstrated. This is demonstrated above, by the identification of just two unauthorised households.
192. It follows that notwithstanding the lack of any authorised sites, the failure to adequately consider those in bricks and mortar and on unauthorised sites will have resulted in the recorded base date figure being too low impacting the calculation of future family growth being too low such that the Council cannot demonstrate a five year supply of pitches.
193. Based on GPS’ figure of three households as at the base date and a supply of 0 pitches. As at the base date there was an immediate need for three pitches.
194. As the Appeal is likely to be heard in 2025, the appropriate five-year period is 2025 – 2030, the number of pitches required by 2030 would be four given the lack of any supply.
195. It is clear from the above assessment that the Council is working to too low a figure in its site allocations, it is Green Planning Studio’s opinion that they will fail to meet the

actual need for sites in the district.

196. This is a material consideration of **significant** weight in favour of the appeal.

Provision of available alternative, acceptable and affordable alternative sites

197. In assessing the possible alternatives, the decision maker should assess not just availability but also affordability, acceptability, and suitability. This is the approach followed by the Inspector in the **Angela Smith v Doncaster MBC** case (Appendix B5) at paragraph 40.
198. The Inspector's decision however is clearly based on the ruling set out in the **Chapman** ECHR Judgement in 2001 (Appendix B6, paragraphs 103 and 104). This formulation of words was subsequently upheld in the High Court.
199. It is established case law (**South Cambs v SSCLG & Brown (appendix B7)**) that there is no burden on an Appellant to prove that there are no alternatives available.
200. In the **Angela Smith v Doncaster MBC** decision (Appendix B5), this was sufficient with need, and lack of progress in identifying sites, to clearly outweigh the combined harm so that very special circumstances existed for permanent permission to be awarded in the green belt.
201. In the **Yvette Jones v South Gloucestershire DC** decision (Appendix B8), need, lack of alternatives and lack of progress in identifying sites sufficiently outweighed the harm to the Green Belt in general that a permanent permission was granted without a personal condition.
202. The Court of Appeal judgement in the case of **Butler v Wychavon** (Appendix B3) which reversed a High Court decision to quash a grant of temporary consent is also significant. The Court upheld the Inspector's judgement that the very substantial weight he attached to the lack of an alternative site could outweigh the combined harm in a green belt case to the extent that a temporary consent could be granted.

203. There are no alternative available sites for the Appellant to move to and from the available information there seems little likelihood that there will be in the immediately foreseeable future.
204. The Secretary of State in the appeal decision, *Mr Roy Amer & ORS* v Mole Valley DC (Appendix B9) gives significant weight after finding that there are 'no identified alternative sites in the Borough for travellers in general'.
205. Therefore, the lack of sufficient supply of alternative sites is a material consideration of **significant weight** in favour of the appeal.

Failure of Policy

206. The importance of failure of policy is ascertaining the likelihood of the Council successfully addressing need in the future; it is not seeking to punish the Council.
207. The best indicator of future performance has to be past performance. Council officers will always say things will be better in the future; they rarely turn out to be so.
208. GPS have identified a number of failings in policy by the Council, these include:
- a. The Council do not have an up-to-date GTAA. As set out above, the 2018 GTAA will be almost 8 years old by the time this inquiry opens in 2025. Given that the Council should be re-assessing their position every five-year period as a minimum, the evidence base and thus any policy or provision based upon it is considerably out of date.
 - b. The GTAA underestimates the level of need in the Borough, and therefore the Council will fail to meet the actual level of need in the Borough. This is a clear failure of policy.
 - c. The Council is not complying with the PPTS requirement to maintain a five-year supply of sites.
 - d. As a result of the above there is no up to date allocations policy for Gypsy and Traveller sites.
 - e. The 2018 GTAA finds 0 households in need of pitches in the area and the 2021 Update of the GTAA upholds this statement. The Council is in the process of preparing a new Local Plan, which will set the strategy for the future development of the District to 2040. This is currently behind schedule.

209. There is currently no evidence that could lead to anyone conclude that the Council will provide the required level of new pitches in the Borough.
210. In the **Crawt v Guildford Borough Council** case (Appendix B10) the Secretary of State sets out at paragraph 21 that *'this failure to progress the delivery of the necessary sites is a matter of considerable weight in favour of the appeal'*.
211. In the **Stanley v St Alban's City and District** case (Appendix B11) the Secretary of State at paragraph 17 states that *'the failure of the development plan to meet the need weigh significantly in favour of the appeal'*.
212. In **Mr Roy Amer & Others v Mole Valley** (Appendix B9) the Inspector attached a significant weight to a lack of alternative sites and the ongoing failure of policy. In that appeal, they had been granted a series of temporary permissions over an extended length of time, in order to allow the Council, the time to bring forward gypsy and traveller accommodation. The Inspector sets out at paragraph 25-26 that:

*"It is accepted by the Council that the Appellants and other occupants of the site have nowhere else to go. It was acknowledged that if this appeal were to be dismissed then the Council would need to decide whether to seek to take enforcement action at the end of the current time limited permission (in June 2020). **Furthermore, it is accepted by the Council that there are no identified alternative sites which are suitable, available, affordable and acceptable.** This is a significant material consideration in favour of the appeal. **It is abundantly clear to me that the Council had been afforded many years in which to seek to resolve the issue of gypsy and traveller site provision. It has significantly failed to do so notwithstanding that planning permission has been granted on occasion. It has in particular failed to implement its policy (CS5) by bringing forward a land allocations development***

plan document. The assurances given in previous public inquiries have not been acted upon in a manner which has provided the necessary site provision. Whilst I accept that the emerging LP is in the past process of bringing forward proposals for consultation, the past performance of the Council amounts to a demonstrable failure of policy. This in itself is a significant consideration in favour of the proposal.”

213. The Inspector in the **Roy Amer** appeal granted permanent planning permission for the following reasons (paragraphs 30 – 31):

*‘Refusal of the proposal would interfere with the Article 8 rights of the site occupants. In this case, because of its particular circumstances, interference would not be proportionate, with particular reference to the best interests of the children. Dismissal of the appeal would result in the site occupiers having no home after a period of many years residing in this location **following a serious failure of policy by the Council.**’*

*‘The balance here is abundantly clear. The harm to the Green Belt carries substantial weight, but the substantial weight to be given to the best interests of the children on site, **together with the failure of policy over many years and the lack of any alternative sites available to the Appellants, carry yet more weight.** Other considerations clearly outweigh the harm by inappropriateness and the minor impact on the character and appearance of the area, and very special circumstances have been established. It follows that I have decided that planning permission should be granted.’*

214. There is a clear ongoing failure of policy by the Council which is set to continue. As a result of the Council’s approach, the Council will fail to provide required pitches in the District. Each failure of policy adds **significant weight** in favour of the appeal.

Lack of a five-year land supply

215. Local Authorities are also required to demonstrate a five-year supply in relation to their Gypsy, Travellers and Travelling show people pitches.

216. Paragraph 77 of the NPPF sets out the requirement on Council's to:

"...identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing"

217. Footnote 41 makes it clear that the requirement also applies to gypsy and traveller pitches.

"For the avoidance of doubt, a five year supply of deliverable sites for travellers – as defined in Annex 1 to Planning Policy for Traveller Sites – should be assessed separately, in line with the policy in that document"

218. Planning Policy for Traveller Sites August 2015 paragraph 10 provides:

i. "Local planning authorities should, in producing their Local Plan a) identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets"

219. The Council are not complying with their duty either in respect of the NPPF or the PPTS. The Council are unable to show a five-year land supply of deliverable land for gypsy and traveller sites which the government required them to do by 27 March 2013.

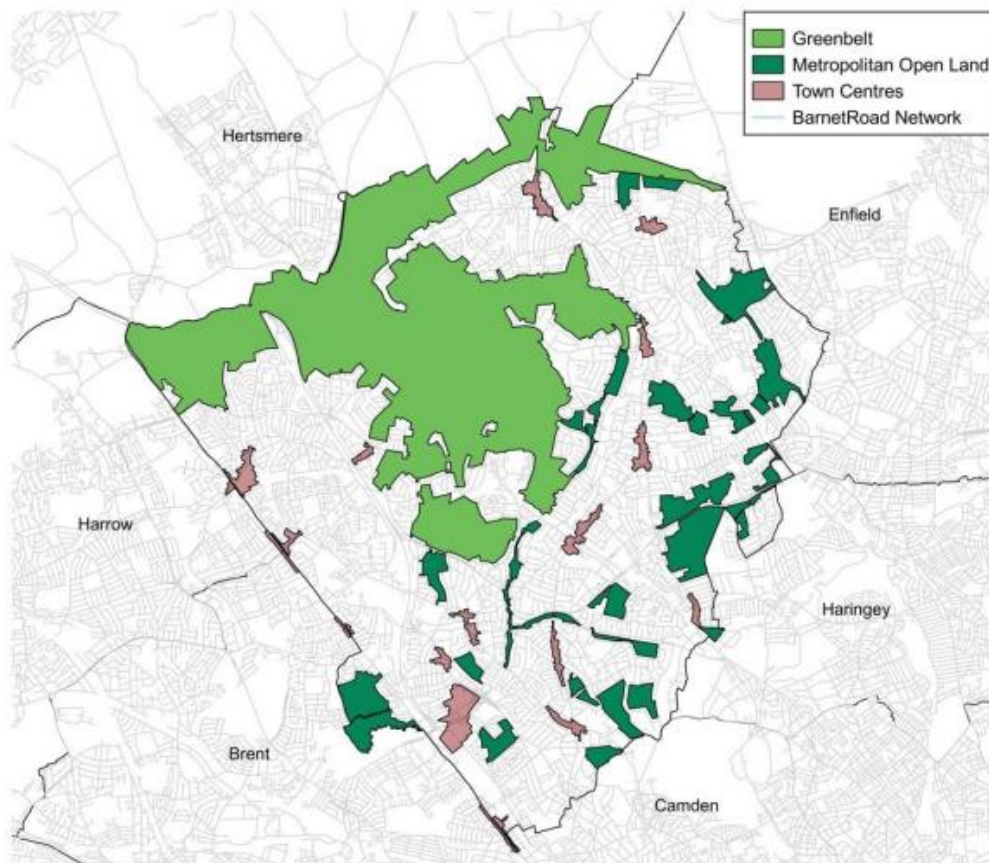
220. The lack of a five-year supply is a matter that should attract significant weight in favour of a grant of planning permission, either on a temporary or a permanent basis. The point that it applies to consideration of both temporary and permanent has been made clear

by the Secretary of State in *Roy Amer & Others v Mole Valley* decision (Appendix B9) at DL20.

221. The Secretary of State gives this lack of a 5-year land supply significant weight in addition to the significant weight afforded to the material failure of policy he finds (DL13), or the separate issues of need and lack of alternative sites, to which he afforded separate weight.
222. The Council currently have no mechanism in place to provide these additional pitches and this does not look set to change for a substantial period.
223. The LPA cannot demonstrate a 5 year land supply as it cannot even demonstrate a need in the District for pitches.
224. As the Appeal is likely to be heard in 2025, the appropriate five-year period is 2025 – 2030, the number of pitches required by 2030 would be 4 given the lack of any supply.
225. The Council currently have no mechanism in place to provide these additional pitches.
226. GPS consider the lack of a five-year land supply a material consideration of **significant weight** in favour of the appeal. This also weighs in favour of the proposed development on the social limb of sustainability.

Likely location of gypsy sites in the district

227. Outside of the significant urban areas in Barnet, approximately 28% of Barnet is Green Belt land and 8% is Metropolitan Open Land as shown on the plan below from the Barnet Green Infrastructure Supplementary Planning Document (October 2017).



Map 1: London Borough of Barnet

228. Given land prices within development boundaries, developable land is too expensive for gypsy sites in general. It is quite clear given the preponderance of Green Belt in the borough, that there is a significant probability that the majority of new gypsy sites will be located in the Green Belt.

229. The Inspector in the **Yvette Jones v South Gloucestershire** case (Appendix B8) appeal decision at paragraph 20 set out that “*There is not the reliable prospect of meeting need on sites outside the Green Belt*”. It is worth noting the weight given to the similar position in *James Sykes v Brentwood BC* (Appendix B23).
230. The Secretary of State in the **Crawt v Guildford Borough Council** (Appendix B10) agreed that most of the alternative sites in the Borough will be within the Green Belt.
231. In the event the proposed occupants are unable to occupy the appeal site it is quite clear given the predominance of the green belt in the borough that there is a significant probability that they would need to occupy another site within the Green Belt.
232. This consideration adds **significant weight** to the Appellant’s case.

Personal Circumstances

233. Personal circumstances only need to be considered if the Inspector finds a departure from policy and/or other harm and then finds that the other material considerations are insufficient to outweigh the identified harm. If necessary, personal circumstances can be added into the pot to clearly and substantially outweigh any harm. These will be set down and appropriate weight indicated below.
234. The proposed site occupants' details are set out within the draft witness statement at Appendix A15 and A16.

Gypsy Status of the Site Occupants

235. The site occupants easily fit the definition of Gypsies and Travellers in Annex 1 of PPTS as shown in the appellant's witness statements at Appendix A15 and A16.
236. The gypsy status of the site occupants is only relevant if the Inspector concludes that it is necessary to include personal circumstances in the balancing exercise.

Personal Need

237. There is a clear personal need for the permanent base for the proposed occupants as set out in the draft witness statements (Appendix A15 and A16).
238. The proposed site occupants do not currently have any suitable site with the benefit of planning permission and as such are in personal need of the permission.
239. In line with other decisions, including the Secretary of State in ***Crawt v Guildford*** (Appendix B10), considerable weight should be given to the family's need for a base.

Health

240. Easy access to GP's and hospitals which this site provides is clearly a very positive advantage, particularly when compared to the realistic alternatives of a roadside existence or doubling up and this is recognised by the Appellant.

241. In **Crawt v Guildford** the Secretary of State at paragraph 23 recognised that weight be attached even when the family were in good health.

242. **Considerable weight** should be given to the health needs of the proposed site occupants.

Education

243. There will be four children living at the appeal site.

244. A stable base allowing for a stable and consistent education will clearly be of benefit to all the children who will be residing at the site.

245. The government clearly wishes children from the gypsy and travelling community to gain the benefits of a settled education.

246. The possibility that the children may not be able to attend school for some considerable time at all if the families are on roadsides must be considered. It is well documented that mobile pupils are often unable to find places in local schools especially if they are short stay pupils.

247. The advantage that a settled base provides for gypsy and traveller children receiving an education is a material consideration of significant weight in favour of the appeal.

248. **Significant weight** should be attached the education of children who are proposed to live on the site.

Best interests of the child

249. The best interests of the children on the site are of paramount consideration and no consideration should be given greater weight than the best interests of the child when considering whether the material considerations outweigh any harm. In the assessment of proportionality there is an explicit requirement to treat the needs of the children on the site as a primary consideration (**UNCRC Article 3**, fully set out at para 80-82 of AZ).
250. Where the best interests of the child clearly favour a certain course, in this case a grant of planning permission, that course should be followed unless countervailing reasons of considerable force displace those interests. There are no countervailing reasons of considerable force that have been relied upon to outweigh the need for the children to have a settled permanent base, which will enable amongst other things, access to education and to healthcare when needed.
251. In the case of *Dear v SSCLG [2015] EWHC 29 (Admin)* (Appendix B12) paragraph 44 is of note in relation to the Secretary of State's acceptance of the weight to be attached to the best interests of the child:

"Mr Whale accepted that inherently the best interests of the children must carry no less weight than other factors and that because this is a Green Belt case, the best interests of the children must start as "substantial". He submitted that if they started as significant that would also be sufficient based on the decision of Lewis J in Connor and Others v Secretary of State for Communities and Local Government [2014] EWHC 2358 (Admin)."

252. Best interests of the children on the site are of paramount consideration and no consideration should be given greater weight than best interest of the child when

considering whether the material considerations outweigh any harm. In the assessment of proportionality there is an explicit requirement to treat the needs of the children on the site as a primary consideration (UNCRC Article 3, fully set out at para 80-82 of AZ) and, in respect of a decision by the LPA to safeguard and promote the welfare and well-being of the children (Children's Act 2004 s.11(1)).

253. As such the best interests of the children in this case must carry substantial weight as a starting position.

254. There will be four children living at the appeal site. The welfare and wellbeing of the children can only be safeguarded by the grant of a permanent planning permission, or in the alternative a temporary permission for a period that should give **certainty** of alternative suitable and lawful accommodation being secured by the LPA through the plan process.

Extended family unit

255. The site will be home to two households, an extended family consisting of two brothers and their immediate families. The families rely and depend on one another.

256. It is also evident that the families wish to continue living together as part of their traditional way of life.

257. The ECHR Chapman judgement at paragraph 96 makes it clear that contracting states have a positive obligation to facilitate the gypsy way of life.

258. This is a consideration of **modest weight**.

Animal Welfare

259. There are 3 horses on the site. By keeping their horses at the site where they live, this will help ensure the welfare of the animals.

260. Inevitably, keeping horses close at hand means it is more likely that medical issues are spotted earlier. This consideration adds limited weight in favour of the appeal development if the personal circumstances of the occupants need to be considered.

Temporary consent

261. If the Inspector concludes that the material considerations outlined above, do not outweigh the harm sufficient to justify a permanent consent then clearly a temporary consent falls to be considered consistent with paragraph 14 (reference ID: 21a-015020140306) of the 'Use of planning conditions' section of the NPPG.
262. It is common sense, as well as case law (**McCarthy v SSCLG & South Cambridgeshire DC** [2016] EWHC 3287) that a temporary consent means the harm is reduced.
263. Indeed, even in Green Belt cases where the Secretary of States sets down in policy that substantial weight to the harm to the Green Belt should be applied, there is a reduction in that weight when considering temporary permissions.
264. In the case of **Moore v SSCLG and London Borough of Bromley** [2013] EWCA Civ 1194 (Appendix B13) the Court of Appeal considered the lawfulness of the planning balance carried out by an Inspector when assessing temporary planning permission. Included in that assessment was an implicit acceptance of the observations of Cox J in the Administrative Court (para 13 of the CoA judgement) that:
- “However, the substantial weight previously attaching to the harm arising from inappropriate development on the Green Belt fell to be reduced, because it would be limited in time...”*
265. In line with paragraph 15 (reference ID: 21a-015-20140306) of the 'Use of planning conditions' PPG, temporary consent should be long enough for where it is expected planning circumstances will change in a particular way at the end of that period. This would be when alternative sites become available, and as yet, this has not occurred.

266. The 2018 GTAA identifies 0 need in the area and only considers the need for those gypsies and travellers who meet the planning definition. As such, the Council have no mechanism to meet the actual level of need in the District as they are not even aware of gypsy and traveller households in need of pitches in their borough.
267. The Local Plan is in the process of public consultation but is behind schedule. It is not realistic to expect the emerging Local Plan to be adopted before 2025.
268. The LPA are awaiting the London-wide Gypsy and Traveller Accommodation Needs Assessment (“GTANA”). The Barnet Local Plan EIP – Revised Note on Gypsies, Travellers and Travelling Showpeople detailed that a final report was anticipated to be provided by Summer 2023. It seems unlikely that this will be published before 2025 and in any event the Council will not have chance to implement any required pitches before the inquiry for this appeal opens.
269. It is widely accepted that once adoption has taken place a period of 12-18 months should be allowed for, to allow applications to be submitted, approved, condition submitted and approved and development to take place.
270. As a result, it is clear that any temporary consent would have to be for a minimum period of five years to give the best possible opportunity for sites to be made available.
271. Clearly an issue can arise if it is considered that circumstances are unlikely to change or unlikely to change sufficiently within a reasonable timeframe. However, in these circumstances rather than a permanent consent being refused, logic suggest that greater weight should be attached to the issue of failure of policy as what will have been determined is that the Council do not have policies in place to meet the need in their area.

272. This is the course followed by the Inspectors at paragraph 45 of **Angela Smith v Doncaster MBC** (Appendix B5), at paragraph 20 in **Yvette Jones v South Gloucestershire DC** (Appendix B8). The first of these decisions was subsequently held in the High Court.
273. The Council currently have no mechanism in place to meet the actual and more realistic level of need in the borough. The time needed for feasible change then, is an issue.
274. Green Planning Studio are aware of a few Inspectors and on one occasion the Secretary of State have followed a different route when considering this issue and have instead concluded that as circumstances are not going to change within say 3-5 years a refusal should follow. Loath as we are to be critical of Inspectors, this disturbing logic as it 'rewards' a Council who have not carried out their duties diligently. This would appear to be a clear abuse of power and is almost certainly merit a sustained challenge. In any event this scenario does not take into account that the Secretary of State can step in where Councils are unduly tardy.
275. Instead, it would be reasonable to conclude that the Council will act, if a s.78 appeal Inspector concludes that they have an unmet need with no mechanism of meeting that need.
276. In light of the above, any temporary consent would need to be for at least five years.

Planning Balance/Green Belt Balance (Very Special Circumstances)

277. The general material considerations set out above in favour of the appeal are the need for additional gypsy and traveller pitches in the district; the lack of available, suitable, acceptable, affordable alternative sites; the lack of a five-year land supply of gypsy and traveller pitches; failure of policy; and likely location of new sites. These material considerations that would apply to any gypsy family occupying this site in combination clearly outweigh the substantial weight given to the harm to the Green Belt such that very special circumstances exist and a permanent consent should be granted. This is the Appellant's **first position.**
278. Personal circumstances only need be considered if the inspector finds that the other material considerations are insufficient to clearly outweigh the identified harm. The Appellant considers this unlikely to be necessary. However, if the Inspector reaches this stage, then the personal circumstances, (taking into account the best interests of the child), are very weighty considerations and if this is what the Inspector considers tips the balance then a personal condition would be necessary.
279. The material considerations within this statement, including the personal circumstances of the site occupants, clearly and significantly outweigh the harm to the Green Belt and any other harm, such that very special circumstances exist. This is the Appellant's **second position.**

Finally, in the event that the Inspector considers that a permanent consent cannot be granted, a temporary consent should be considered. This would need to be for five years. When considering the temporary consent, the weight given to any adverse impacts of the development is reduced, making consent more likely. This is the Appellant's **third position.**

Human Rights Article 8 considerations

280. This is a clear obligation upon the Inspector to ensure that any decision made by a state body accord with the obligations under Article 8 ECHR. Incorporated into that obligation are the obligations set out under the United Nations Convention of the Rights of the Child, and in this case specifically Article 3. This obligation was no crystallised upon in the publication of **AZ v SSCLG and South Gloucestershire District Council [2012] EWHC 3660** (Admin) (Appendix B14) but has existed for a number of years.
281. This has more recently been confirmed in the Court of Appeal judgment **Collins v SSCLG & Fylde Borough Council [2013] EWCA Civ 1193** (Appendix B15) and **Moore v SSCLG and London Borough of Bromley [2013] EWCA Civ 1194** (Appendix B13).
282. The duty upon the Council, and the decision maker is not engaged when Children's Services are contacted or when signed witness statements are made available, but immediately upon the Council or the decision maker becoming aware that a decision they will or have made will impact or is impacting upon the rights of a child. This is an ongoing duty and one which must be kept under constant review.
283. The Article 8 rights of the potential site residents are clearly engaged, the appeal decision will impact upon the ability of those individuals to use land as their home in circumstances where there is no alternative lawful accommodation. Any decision to refuse planning permission must be proportionate, an assessment that is to be carried out after the assessment of the planning balance (para 130 AZ), not as part of the planning balance. However, matters relating to the Children's Act and the Convention, particularly the duty to safeguard welfare and wellbeing of children are no precluded from informing the weight to be given to such matters as personal circumstances and lack of alternative accommodation.

284. In the assessment of proportionality there is an explicit requirement to treat the needs of the children who live on the site as a primary consideration (UNCRC Article 3, fully set out in para 80-82 of **AZ**) and to consider as a primary consideration those needs which amount to a requirement to safeguard and promote the welfare and well-being of children (Children's Act 2004, s.11 (1)).
285. There may be circumstances where the harm caused by a development is not outweighed by the material considerations relied upon such that the planning balance does not fall in favour of a grant of planning permission but in the particular circumstances pertaining to the welfare of children affected by the decision, it would be disproportionate to refuse either a permanent or temporary planning permission. That assessment is additional to a balancing of the planning merits.
286. The decision to refuse permanent planning permission and to maintain that decision impacts upon the Article 8 ECHR rights of those children and there is a statutory duty in these circumstances to keep any decision impacting upon those rights under review (**AZ** para 81).
287. The Article 8 ECHR rights of all of the site occupants are clearly engaged in this case and would be clearly infringed by the appeal being dismissed. In order to maintain the refusal, it must be determined that such an action is proportionate.
288. There will be four children living at the appeal site. It is clearly in the best interests of a child to have a settled base and home life where they are living together with family. It is also in the best interests if a child to have regular and consistent access to education and healthcare. It cannot be in the best interests of a child to deny them of this, which will be a natural consequence of dismissing the appeal.

289. In **AZ** at para 80 and 82 the judgment sets out the current statutory position in relation to the rights of children. Baroness Hale’s judgment in **ZH(Tanzania) v SoS [2011] UKSC 4** (Appendix B16) is referenced but what is not referenced is the judgment of Lord Kerr at para 46 which states:

*“46. It is a universal theme of the various international and domestic instruments to which Lady Hale has referred that, in reaching decisions that will affect a child, a primacy of importance must be accorded to his or her best interests. This is not, it is agreed, a factor of limitless importance in the sense that it will prevail over all considerations. **It is a factor, however, that must rank higher than any other. It is not merely one consideration that weighs in the balance alongside other completing factors. Where the best interest of the child clearly favours a certain course, that course should be followed unless countervailing reasons of considerable force displace them.** [GPS emphasis] It is not necessary to express this in terms of a presumption but the primacy of this consideration needs to be made clear in emphatic terms. **What is determined to be in a child’s best interests should customarily dictate the outcome of cases such as the present, therefore, it will require considerations of substantial moment to permit a different result”.** [GPS emphasis]*

290. In **Zoumbas v SSHD [2013] 1 WLR 3690** (Appendix B17) Lord Hodge in the Supreme Court set out seven relevant principles at paragraph 10:

“...In their written case counsel for Mr Zoumbas set out legal principles which were relevant in this case and which they derived from three decisions of this court, namely ZH (Tanzania) (above), H v Lord Advocate 2012 SC (UKSC) 308 and H (H) v Deputy Prosecutor of the Italian Republic [2013] 1 AC 338. Those principles are not in doubt

and Ms Drummond on behalf of the Secretary of State did not challenge them. We paraphrase them as follows:

(1) The best interests of a child are an integral part of the proportionality assessment under article 8 ECHR;

(2) In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;

(3) Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;

(4) While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interest of a child might be undervalued when other important considerations were in play;

(5) It is important to have a clear idea of a child's circumstances and of what is in the child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations;

(6) To that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an article 8 assessment; and

(7) A child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent..."

291. Further to this, Baroness Hale in ***Makhlouf v SSHD [2016] UKSC 59*** (Appendix B18) at paragraph 46 and 47 held that the rights of children must be considered separately from those of their parents and the public interest; children must be recognised as rights-holders in their own right and not as adjuncts to other people's rights.
292. The welfare and wellbeing of the children can only be safeguarded by the grant of a permanent planning permission.

Suggested Conditions

293. Paragraphs 55 and 56 NPPF 2023 set out:

“55. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

56. Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision-making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.”

294. Clearly given the nature of the appeal, a condition limiting the occupation of the caravans to gypsy and travellers is appropriate.

295. A personal condition can only be appropriate if it is necessary to include personal circumstances as material considerations in order to allow the development to proceed.

296. The issue of a temporary condition is dealt with above, if applied it should be for five years to give the Council the longest possible period to allocate land for alternative pitches.

297. A condition limiting the number of caravans to four, two of which can be mobile homes, would be appropriate.

298. Conditions as suggested in the FRA to mitigate further any flood risk would be appropriate.
299. Conditions relating to the protection of the existing trees on site would be appropriate.
300. Mitigation strategies as suggested by RSKBiocensus would need to be conditioned in any planning permission.
301. Retention of, or additions to, landscaping can be dealt with by way of condition, if considered appropriate.
302. Conditions requiring details of lighting and the foul drainage would be appropriate.

Summary and Conclusion

303. This appeal is a s.78 appeal against a refusal by Barnet London Borough Council (“**the LPA**”) of an application for ‘*a material change of use for stationing of caravans for residential use with hardstanding and dayrooms ancillary to that use.*’
304. The application was submitted on the 5th September 2023 (Appendix A2) and refused on the 21st December 2023.
305. The Decision notice and Officer’s report sought to rely on policies:

London Plan 2021

- i. G2 – London’s Green Belt
- ii. G6 – Biodiversity and access to nature
- iii. D1 – London’s form, character and capacity for growth
- iv. D4 – Delivering good design
- v. D5 – Inclusive design
- vi. SI 12 – Flood risk management
- vii. SI 13 – Sustainable drainage

Barnet’s Adopted Core Strategy 2012

- viii. CS4 – Providing quality homes and housing choice in Barnet
- ix. CS5 – Protecting and enhancing Barnet’s character to create high quality places

- x. CS7 – Enhancing and protecting Barnet’s open spaces
- xi. CS9 – Providing safe, effective and efficient travel
- xii. CS13 – Ensuring the efficient use of natural resources

Local Plan Development Management Policies 2012

- xiii. DM01 – Protecting Barnet’s character and amenity
- xiv. DM15 – Green Belt and open spaces
- xv. DM16 – Biodiversity
- xvi. DM17 – Travel impact and parking standards

Barnet’s Emerging Local Plan

- xvii. HOU07 – Gypsies, Travellers and Travelling Showpeople

306. It is considered that policies G2, DM15, HOU07 are most relevant to this appeal and policies G6, D1, SI 12, SI 13, CS9, CS13, DM01, DM16 and DM17 has some relevance. However, policies D4, D5, CS4, CS5 and CS7 are considered not to be relevant to the appeal.

307. The Council are behind on their plans to adopt a new Local Plan and are currently almost two years behind schedule.

308. It is accepted that as a matter of principle gypsy sites are normally inappropriate development in the Green Belt, and therefore other considerations sufficient to outweigh the harm by virtue of inappropriateness (and any other harm to the Green Belt) so that very special circumstances exist, are needed.

309. The application is for a two-pitch site and as such it is of a limited scale.
310. Taking into account the size of the development, the site would cause limited impact on the openness of the Green Belt.
311. It is accepted that the development would result in conflict with the purpose of safeguarding the countryside from encroachment, however given the scale of the development, this would only be to a modest extent.
312. There will be a limited impact on the character and appearance of the area.
313. Surface water flood risks can be mitigated following the suggestions within the FRA completed by GeoSmart Information Ltd.
314. Any impact on trees can be mitigated through condition.
315. There are no concerns regarding Highways matters.
316. Any impact on great crested newt habitats can be mitigated through appropriate licensing and protection measures as recommended in the survey completed by RSKBiocensus.

Material Considerations

317. There are a number of material considerations in favour of the appeal which in combination are sufficient to clearly outweigh any harm to the Green Belt and any other harm, and therefore, establish that very special circumstances exist.
318. These material considerations are;
- i. Local, regional and national need
 - ii. The provision of alternative, suitable, acceptable and affordable sites

- iii. Failure of policy
- iv. Lack of a five-year supply
- v. Likely location of gypsy sites in the district
- vi. Personal Circumstances (Gypsy status, personal need, health, education, and the best interests of the child).
- vii. Extended family unit
- viii. Animal welfare

319. The GTAA identified no gypsy and traveller households in Barnet (those meeting the PPTS definition, not meeting or unknowns) and as such the GTAA identifies no need for the Council to address. In reaching this conclusion Opinion Research Service (“ORS”) have left themselves and the Council no room for error. If just one household is identified the robustness of the GTAA’s conclusions will be undermined. Put succinctly, if the Inspector accepts that just one household existed in Barnett as at the base date, this establishes a need as against which there is no supply and the Inspector would have to conclude that a five year supply could not be demonstrated. This is demonstrated above, by the identification of just two unauthorised households.

320. It follows that notwithstanding the lack of any authorised sites, the failure to adequately consider those in bricks and mortar and on unauthorised sites will have resulted in the recorded base date figure being too low impacting the calculation of future family growth being too low such that the Council cannot demonstrate a five year supply of pitches.

321. Based on GPS’ figure of three households as at the base date and a supply of 0 pitches. As at the base date there was an immediate need for three pitches.

322. As the Appeal is likely to be heard in 2025, the appropriate five-year period is 2025 – 2030, the number of pitches required by 2030 would be four given the lack of any supply.
323. The Council are working to a non—existent supply in the borough.
324. This is a material consideration of **significant** weight in favour of the appeal.
325. There are no alternative available sites for the Appellant to move to and from the available information there seems little likelihood that there will be in the immediately foreseeable future. Therefore, the lack of sufficient supply of alternative sites is a material consideration of **significant weight** in favour of the appeal.
326. The Council does not have an up-to-date GTAA and as such their evidence base for emerging policies is considerably out of date.
327. The GTAA underestimates the level of need in the Borough, and therefore the Council will fail to meet the actual level of need which is a clear failure of policy and as a result there is no up-to-date allocations policy for Gypsy and Traveller sites so they cannot expect to meet the current need in the Borough.
328. The 2018 GTAA finds 0 households in need of pitches in the area and the 2021 Update of the GTAA upholds this statement. The Council is in the process of preparing a new Local Plan, which will set the strategy for the future development of the borough to 2040. This is currently behind schedule which is a material consideration of **significant weight**.
329. The Council cannot demonstrate a 5 year land supply. GPS consider the lack of a five-year land supply a material consideration of **significant weight** in favour of the appeal.

This also weighs in favour of the proposed development on the social limb of sustainability.

330. The site occupants easily fit the description of Gypsies and Travellers in Annex 1 of the PPTS as shown in their witness statements (A15 & A16).

331. There is a clear personal need for the permanent base for the proposed occupants as set out in the draft witness statements (Appendix A15 and A16).

332. There will be four children living at the appeal site.

333. A stable base allowing for a stable and consistent education will clearly be of benefit to all the children who will be residing at the site.

334. **Significant weight** should be attached the education of children who are proposed to live on the site.

335. The site will be home to two households, an extended family consisting of two brothers and their immediate families. The families rely and depend on one another.

336. There are 3 horses on the site. By keeping their horses at the site where they live, this will help ensure the welfare of the animals. Keeping horses close at hand means it is more likely that medical issues are spotted earlier. This consideration adds limited weight in favour of the appeal development if the personal circumstances of the occupants need to be considered.

337. As the Council do not have any pitches, it is clear that any temporary consent would have to be for a minimum period of five years to give the best possible opportunity for sites to be made available.

338. The general material considerations set out above in favour of the appeal are the need for additional gypsy and traveller pitches in the district; the lack of available, suitable, acceptable, affordable alternative sites; the lack of a five-year land supply of gypsy and traveller pitches; failure of policy; and likely location of new sites. These material considerations that would apply to any gypsy family occupying this site in combination clearly outweigh the substantial weight given to the harm to the Green Belt such that very special circumstances exist and a permanent consent should be granted. This is the Appellant's **first position.**
339. Personal circumstances only need be considered if the inspector finds that the other material considerations are insufficient to clearly outweigh the identified harm. The Appellant considers this unlikely to be necessary. However, if the Inspector reaches this stage, then the personal circumstances, (taking into account the best interests of the child), are very weighty considerations and if this is what the Inspector considers tips the balance then a personal condition would be necessary.
340. The material considerations within this statement, including the personal circumstances of the site occupants, clearly and significantly outweigh the harm to the Green Belt and any other harm, such that very special circumstances exist. This is the Appellant's **second position.**
341. Finally, in the event that the Inspector considers that a permanent consent cannot be granted, a temporary consent should be considered. This would need to be for five years. When considering the temporary consent, the weight given to any adverse impacts of the development is reduced, making consent more likely. This is the Appellant's **third position.**

342. A refusal of this appeal would represent a breach of the Article 8 rights of the proposed site occupants.

343. Additional permanent provision of gypsy sites, particularly where they can be provided by the gypsies themselves, is, and has been since 1994, the clear intention of the government. This site would contribute towards meeting the clear and immediate need for additional permanent privately-owned gypsy and traveller sites in the Borough. Therefore, this appeal should be upheld.

Green Planning Studio Limited

June 2024

Unit D Lunesdale

Upton Magna Business Park,

Shrewsbury SY4 4TT

appeals@gpsltd.co.uk

Appendices A

1. Green Planning Studio Ltd Director Information
2. Planning application documents reference 23/3816/FUL
3. Decision notice reference 23/3816/FUL
4. Officer's report reference 23/3816/FUL
5. The London Plan March 2021 Front cover and policies
6. Barnet's Local Plan Core Strategy September 2012 Front cover and policies
7. Barnet's Local Plan Development Management Policies September 2012 Front cover and policies
8. Barnet's Draft Local Plan (Reg 19) 2021 to 2036 Front cover and policies
9. London Borough of Barnet's Local Development Scheme Version 8 2021
10. Examination of the Barnet Local Plan appendix to Inspectors' letter 2023
11. GeoSmart Flood Risk Assessment and Sustainable Drainage Assessment April 2024
12. RSKBiocensus Great Crested Newts eDNA Report June 2024
13. Arbtech Arboricultural Survey and AIA April 2024
14. The Hurlstone Partnership Highways Statement June 2024
15. Draft Witness Statement of Patrick Casey
16. Draft Witness Statement of James Casey
17. Mr Green Site Visit photos taken 14th July 2023.

Appendices B:

1. Supreme Court Judgment: **Samuel Smith Old Brewery and others** v North Yorkshire County Council [2020] UKSC 3.
2. Court of Appeal Judgement: **Turner** v SSCLG & East Dorset Council [2016] EWCA Civ 466.
3. Court of Appeal Judgment: *Wychavon District Council v SSCLG and Butler* [2008] EWCA Civ 692, dated 23rd June 2008.
4. Appeal Decision: APP/P0119/W/15/3065767, **Mr J McDonagh** v South Gloucestershire Council, dated 10th February 2016.
5. High Court Judgement: **Doncaster MBC** v SoS and Angela Smith, February 19th 2007 and Appeal Decision APP/F4410/A/05/1184850, **Angela Smith** v Doncaster MBC, dated March 6th 2006.
6. ECHR Judgement on the case of **Chapman** v the United Kingdom (Application No. 27238/95), January 18th, 2001.
7. High Court judgment: **South Cambridgeshire District Council** [2008] EWCA Civ 1010
8. Appeal Decision: APP/P0119/C/07/2037529, **Mrs Yvette Jones** v South Gloucestershire DC, dated 16th August 2007.
9. Secretary of State Decision, APP/C3620/A/12/2169062, **Mr Roy Amer & Others** v Mole Valley District Council, dated 10th April 2013 and attached Costs decision.
10. Secretary of State Appeal Decision APP/Y3615/A/10/2131590, **Mr G Crawl** v Guildford Borough Council, dated 24th February 2011.

11. Secretary of State Decision APP/B1930/A/11/2153741/NWF, **Mr N Stanley** v *St Albans City & District Council*, dated 15th December 2011.
12. High Court Judgment: **Dear** v *SoSCLG and Doncaster Metropolitan Borough Council* [2015] EWHC 29 (Admin), dated 19th January 2015.
13. Court of Appeal Judgement: **Moore** v *SSCLG & London Borough of Bromley* [2013] EWCA Civ 1194.
14. High Court Judgement: **AZ (Applicant)** v *Secretary of State for Communities and Local Government and South Gloucestershire District Council* (Respondents) [2012] EWHC 3660 (Admin) dated 20th December 2012.
15. Court of Appeal Judgement: **Collins** v *SSCLG & Fylde Borough Council* [2013] EWCA Civ 1193.
16. Supreme Court Decision: **ZH(Tanzania)** v *Secretary of State for the Home Department* [2011] UKSC 4.
17. Supreme Court Decision: **Zoumbas** v *Secretary of State for the Home Department (Respondent)* [2013] UKSC 74.
18. Supreme Court Decision: **Makhlouf** v *Secretary of State for the Home Department* [2016] UKSC 59.
19. Appeal decision: APP/C3620/W/18/3205739, **Roy Amer and others** v *Mole Valley District Council*, dated 3rd February 2020.

