



Appeal Decisions

Inquiry held on 6-9 November 2012, 21-24 January 2013 & 25-26 February 2013
Site visits made on 9 November 2012, 23 January 2013 & 27 February 2013¹

by N P Freeman BA (Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 June 2013

These decisions were issued in accordance with Section 56 (2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersede those issued on 10th May 2013.

Appeal A: APP/P1615/C/12/2173024

Land on the north-east side of Southend Lane, Newent, Gloucs, GL18 1JD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Mr R Jones against an enforcement notice issued by Forest of Dean District Council.
- The notice was issued on 20 February 2012 (Council Ref: EN/NET/02/09).
- The breach of planning control as alleged in the notice is "Without planning permission the change of use of the Land from an agricultural use to use for the siting and stationing of caravans for residential purposes, including the layout of associated hardstandings, access road, and vehicular access to Southend Lane, provision of buildings, structures and sewerage facilities ancillary to the change of use of the Land".
- The requirements of the notice are:
 - a) Cease the use of the Land or any part of the Land for residential purposes;
 - b) Remove the caravans and all related paraphernalia, ancillary buildings, vehicles, electrical and telephone installations, and associated sewerage facilities on the Land;
 - c) Remove all hardstandings, fences and access road and seal up the new vehicular and pedestrian access to Southend Lane by erecting a 1 metre high stock fence and the planting of an indigenous hedge;
 - d) Return the Land to its former condition as grazing land.
- The period for compliance with the requirements is 26 weeks after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal B: APP/P1615/A/12/2175502

Land on the north-east side of Southend Lane, Newent, Gloucs, GL18 1JD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 by Mr R Jones against the decision of Forest of Dean District Council to refuse to grant planning permission.
- The application Ref. No. P0038/12/FUL, dated 13 February 2012, was refused by notice dated 11 April 2012.
- The development proposed is the stationing of caravans for 13 No. family gypsy pitches with utility/day room buildings, propane gas tanks and hard-standing ancillary to that use.²

¹ The site visit on 23 January 2013 was accompanied; the other two visits were unaccompanied

² The wording given on the Council's decision notice is similar but refers to a material change of use and includes reference to access road, landscaping, fencing and drainage facilities as well – the development under consideration is essentially the same but I will use the Council's description as it more comprehensive

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Application for costs

1. At the Inquiry an application for costs was made by the appellant against the Council. This is the subject of a separate Decision.

Preliminary matters

2. The principal parties represented at the inquiry were the appellant, the Council and Residents' Against Inappropriate Development (RAID). The latter is a local resident group, formerly known as 'SLAM', who were afforded Rule 6 status and represented by a planning consultant.
3. The inquiry sat for 10 days in total in 3 periods and the dates are given in the heading details above.
4. A unilateral undertaking pursuant to s106 of the Act was submitted (unsigned) at the inquiry in relation to the construction of a new pond on a paddock to the south-east in same ownership as the appeal sites³. A planning application for the same has been submitted to the Council. The purpose of the pond is to create a new wildlife habitat which would be specifically designed to provide a breeding site for great crested newts. The supporting plan (Dwg.No. 08_205A_003) shows the details. The relevance of this will be considered below when addressing the main issues. In terms of legality, the undertaking is worded (2nd Schedule) to only come into effect should planning permission be granted on Appeal B with the conclusion being that the pond is necessary to mitigate any loss of habitat and on the pre-condition that planning permission is granted for the pond itself, either by the Council or on appeal. A signed version of the undertaking, dated 8 March 2013, has now been submitted and is before me for consideration.

Background and surroundings

5. The appeal sites are located on the north-eastern side of Southend Lane (a no-through road) and comprise land which is in the countryside as so defined but on the outskirts and in close proximity to the settlement boundary of Newent (about 140m to the north-west)⁴. The sites differ in area with the Appeal A land being about 1.18 hectares (ha) in area and the Appeal B land about 1.29 ha in area. The former is the same land area which benefited from a temporary planning permission granted on appeal⁵ (against an earlier enforcement notice) on 6 January 2010 – which expired on 31 January 2012. The latter includes a small part of a paddock to the south-east. The total area of land owned ('red' and 'blue' outlined land) is about 2.26 ha.
6. Appeal A – The land in question is broken up by fencing into 13 pitches, although Nos. 7 and 9 are currently combined. The layout is similar to the 'Current Site' plan (Dwg.No. 08_205_013) submitted with the planning application (s78 appeal) but the number and position of the caravans and outbuildings shown are not accurate given what I observed on my site

³ The present land owners are said to be Alice Jones (the appellant's wife), Albert Evans, Jolene Jodie Frankham & Leanne Jean Small

⁴ The words 'countryside' and 'outskirts' are to be found in paragraph 8 the Statement of Common Ground (SoCG) under the heading 'Description of the Area'

⁵ APP/P1615/C/09/2107067 – Decision of Inspector Baldock

inspection. Vehicular access is derived via an entrance from Southend Lane which passes between some frontage trees and this leads to a driveway which runs up the middle of the site with pitches on either side. The land is bounded by hedges which include mature trees along the length of the eastern boundary, the northern part of the western boundary and the road frontage. The only exception is the south-eastern boundary where it abuts the paddock which is defined by a low timber fence but no hedge or trees.

7. Appeal B – I was provided with the amended layout plan (Dwg.No. 08_205_004/D) which was before the Council when the planning application was determined. The pitch arrangement is similar to what exists at present but with some adjustments. The significant difference from the present situation is that an area of amenity space, which is shown as including a drainage treatment plant and associated soakaway⁶, would be created on the 'extra' land presently within the paddock. This would be enclosed by two new belts of planting on the north-western and south-eastern sides. Plot 1 would be remodelled as a consequence. Substantial planting belts of between 10-15m in depth would be added along the Southend Lane frontage; the hedge on the western boundary would be reinforced with additional planting and areas of landscaping would be introduced within the site. The access drive would be realigned close to Southend Lane to introduce a bend the purpose being to restrict views up the driveway. Each pitch is shown as containing one mobile home, one touring caravan, an utility/day room (2 different sizes) and a propane gas tank. The majority of the site would be covered in gravel/shingle as at present and two different types of fencing would be erected.
8. Surrounding area – The land on the northern side of Southend Lane is characterised by fields (arable and grassland) separated by a network of ancient hedgerows, interspersed with mature trees, and copses and shelter belts. There is also a network of ponds to the east and south, including one (which is identified as two linked ponds in the ecology surveys) abutting the eastern side of the appeal sites. The land on the southern side of Southend Lane comprises a group of Grade II listed buildings (Southernns, Southernns Barn & Southcote Barn) all of which are in residential use and a separate dwelling Southcote. To the north-west of this group is a horticultural nursery used for fruit growing which comprises a substantial range of glasshouses/polytunnels and a bungalow. Beyond this business enterprise to the west is a line of dwellings (houses and bungalows) which form part of the built-up area of Newent, within its settlement boundary.
9. Other features of note are two nearby public footpaths. One (GNE89) crosses the field to the west of the appeal sites on a N/S axis and then continues across another field, which forms part of land that has recently been granted outline planning permission for the development of 120 houses on appeal⁷, on the eastern edge of the town. This housing site comes to within about 50m of the northern apex of the present appeal sites. I consider that this planning permission is an important material consideration and a significant change in the local circumstances from when the last Inspector reached his decision. I will consider the implications below. The other footpath (GNE91) is a continuation of Southend Lane in the nature of a track which runs around the

⁶ Foul drainage at present is either to cess pits or 'portaloos' are used

⁷ APP/P1615/A/12/2177029 – Land off Foley Way, Foley Road, Newent - Appeal allowed and planning permission granted – decision dated 31 December 2012

edge of the appeal site owners' paddock before continuing in a north-easterly direction into the countryside.

Appeal A - Ground (a) / deemed planning application and Appeal B

Main Issues

10. As explained above there are material differences between the proposals that flow from the two appeals. In considering the main issues I will have regard to these differences in reaching my conclusions.
11. The appellant and the Council agree that the site residents are gypsies by status⁸. This is not disputed by RAID and was accepted by the previous Inspector who dealt with the earlier appeal. From the information before me and the detailed evidence given by all but one of the pitch occupants at the inquiry concerning their backgrounds, employment and travelling lifestyles, I am satisfied that they meet the terms of the definition of gypsies and travellers set out in Annex 1: Glossary of the 'Planning policy for traveller sites' (PPTS). Given this finding the policy regime applying to gypsies and travellers is engaged.
12. The appellant and the Council agree that the site is in a sustainable location for a gypsy site⁹ as did the previous Inspector¹⁰. Whilst there are arguments from the Council and RAID that the land in question is in an isolated or deeply rural location there is no dispute that the substantial range of shops and services in Newent are within a reasonable walking distance and no more than 1km away. On this basis, and having regard to my own observations, I agree that the land is in a sustainable location in this sense. I am aware that the concept of sustainability has economic, social and environmental dimensions, and that these considerations go beyond mere distance from services, as is evident from the criteria listed in paragraph 11 of the PPTS. Where compliance with these criteria is contested, such as peaceful co-existence with the local community or infrastructure (e.g. drainage), I will address these matters below under the main issues.
13. With these findings and the above background in mind, I consider that the main issues to consider are as follows:
 - 1) The impact on the landscape character and visual amenities of the countryside and the surrounding area;
 - 2) The effect on the setting of the 3 listed buildings nearby;
 - 3) The impact on biodiversity, in particular the habitat of the great crested newt;
 - 4) Whether the access arrangements, including the use of Southend Lane, would cause harm to highway safety and, if so, whether this could be satisfactorily mitigated by the provision of improvements;
 - 5) The impact on the living conditions of nearby residents;
 - 6) Whether the proposed drainage arrangements are acceptable, and can be properly controlled by condition, and any flooding concerns;

⁸ Paragraph 18 of the SoCG

⁹ Paragraph 20 of the SoCG

¹⁰ Paragraphs 45 & 46 of his decision

- 7) The general need for and supply of gypsy sites in the area and whether there has been a failure of policy in these respects;
- 8) The accommodation needs of the site occupants and their children and whether they have access to any suitable and available alternatives;
- 9) The personal circumstances of the occupants, particularly in terms of their health and their children's education.

Having considered all these issues and carried out the necessary balancing, if the conclusion is that one or both of the appeals should be dismissed, it is then necessary to give separate consideration to the human rights of all the occupants and, if there is interference with those rights, to assess whether that interference is proportionate or would amount to a violation of human rights.

Policy overview

14. There is agreement between the parties that the development plan at present comprises Regional Planning Guidance for the South West (RPG 10) 2001, 'saved' policies from the Gloucestershire County Structure Plan (SP) Second Review, adopted November 1999, and the Forest of Dean Council Core Strategy (CS), adopted February 2012. I will consider the relevant policies from these plans in my reasoning below.
15. In terms of the RPG the Government has made it clear that it intends to revoke all regional plans and strategies using the powers conveyed by s109 of the Localism Act 2011. This has not yet occurred in the South West (SW) region and is pending the outcome of an environmental assessment addressing the implications of doing so. It is evident through court authority that the Secretary of State's (SoS) intention to revoke Regional Spatial Strategy (RSS) is capable of being a material consideration and that the weight to be afforded to this is dependent upon the stage reached in the parliamentary process. I have no information on the stage reached in the SW although in some regions RSS has or is in the process of being revoked. This suggests that the order to revoke in the SW may be laid before parliament within a reasonably short period of time. Whilst RPG 10 still remains part of the development plan I do not consider that the policies relied on by the Council add anything of substance over and above those relied upon from the SP and CS.
16. Policies from the District Local Plan Review were listed in the reasons for issuing the enforcement notice but they are no longer relevant having been superseded by those contained within the CS. An Allocations DPD which will include allocations of land for gypsies and traveller sites is currently in the process of being prepared with a 'call' for sites having already taken place with two sites put forward in Huntley and Churcham¹¹. However, the consultation draft has not yet been published and according to the timetable it is unlikely that it will be adopted until 2014¹².
17. I have also had regard to the Council's Landscape Supplementary Planning Document (SPD), adopted March 2007, and the Landscape Character Assessment (LCA) 2002, which identifies the appeal sites as coming within the

¹¹ Hillier - Appendix 20

¹² Hillier - Appendix 19

Severn Vale (6b) character area¹³. The sites do not come within any nationally or locally designated area of landscape importance¹⁴.

18. At the national level the key policy documents of relevance are the National Planning Policy Framework (the 'Framework') and the PPTS. The latter indicates that the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life while respecting the interests of the settled community. Paragraph 4 sets out a series of bullet points which are intended to help to achieve this aim. The thrust of the advice is that local planning authorities should assess need and make timely provision for it. This is intended, amongst other things, to increase the provision of lawful sites, reduce the number of unauthorised encampments making enforcement action more effective, reduce tensions between the settled and traveller communities and provide travellers with better access to education, health, welfare and employment infrastructure.

Reasons

Landscape character and visual amenities

19. I start by considering the nature and use of the land immediately prior to the development as a gypsy site taking place. There is no dispute that the field in question was down to grass and, whilst there are some claims from local residents that historically cattle have grazed the land, I have no evidence to suggest that it was in use for grazing livestock at that time. I appreciate that what existed in terms of grassland has effectively been replaced by the hardsurfacing but should the appeals fail and the enforcement notice be upheld it will be necessary to restore the site to its former condition as grazing land.
20. I have been provided with two photographs of significance in this respect. The first aerial photograph is contained in the evidence of Dr Wray for the appellant¹⁵. The imagery date given at the bottom of the photograph is 17 April 2005. The appeal field is down to grass, with no stock grazing and the adjoining fields to the east and west appear to contain cereal crops in a ripe condition and the trees are in full leaf. This does cause me to question whether the photograph was taken in April. Be that as it may the appeal field is not cultivated and the appellant said that it was unmanaged pasture when the land was acquired. Dr Wray drew attention to the evidence of furrowing in the surface which she said shows recent ploughing prior to the photograph being taken. I agree that the ridge lines in the surface do suggest earlier ploughing but it is not clear how long ago this occurred.
21. The other photograph supplied by RAID is said to have been taken in April 2005, which would be the same month and year as the aerial photograph if the dates given are correct. This appears to have been taken with the camera close to the ground and shows a profusion of yellow flowers¹⁶ and tall grass.
22. There is some dispute as to whether the grassland that pre-existed was improved or unimproved and whether it was a species rich wild flower meadow, as RAID assert. I have no objective evidence on this matter but I would expect

¹³ The Council's planning witness (Hillier) had identified the site in his proof of evidence as being within the Leadon Vale (6c) character area; this was corrected in oral evidence given at the inquiry

¹⁴ The LCA carried out by the Council provides comprehensive coverage of the District and does not identify a hierarchy of importance in terms of the landscape character areas identified

¹⁵ Paragraph 2.2

¹⁶ Tufnell – evidence-in-chief – said to be "mostly buttercups"

that if it was indeed an unimproved, species rich meadow that it would be likely, at the very least, to have been designated as site of local nature conservation interest. This is not the case and the aerial photograph which appears to indicate earlier evidence of ploughing leads me to concur with the view of Dr Wray that the pre-existing condition was probably species poor, semi-improved grassland, a view which was accepted by the Council's witness on this matter¹⁷. On this basis, and given the hierarchy of importance of grassland identified by Dr Wray, I do not consider that the grassland that has been lost was of any special importance in terms of the rural landscape or ecology.

23. I turn to the particular LCA of relevance that is the Wooded Vale area and the Severn Vale character sub-area. The key characteristics are set out as bullet points in the document¹⁸ and include well maintained hedgerows, copses and shelter belts which contain ageing oak trees. The hedgerows around the appeal land are of this type and include a number of ash trees as well as oak. They remain and there is nothing to suggest that the development that has taken place has led to the felling of any trees of worth or any significant removal of the vegetation other than to create the vehicular access opening.
24. Concerns have been expressed by the Council and RAID that the surfacing that has been laid and the proposed development, which includes day rooms, could cause root damage or the lopping back of the vegetation. I observed that some of the surfacing has been laid under the canopies of some trees and the proposed layout does show the dayrooms quite close to the boundary trees and vegetation, with surfacing encroaching onto the root protection areas (RPA) in some places. However, I consider that in terms of Appeal B it would be possible to impose conditions requiring further details to be provided of the position, design and construction of the day rooms and the surfacing and tree/hedge protection measures. I consider that the land area is of sufficient size to accommodate 13 pitches in a manner which should enable the caravans, day rooms and hardstandings to be located so as to not cause material harm to the vegetation around the perimeter of the land.
25. Given these findings I consider that the landscape features that are identified as being key characteristics in this instance could be safeguarded if planning permission were granted on Appeal B. This conclusion is consistent with the findings in an arboricultural report¹⁹ dated August 2009 compiled for the appellant which demonstrates that most of the trees are in a fair condition, with only a few recommended for felling and only four trees where development activity (hardstanding, soil bund, excavation) is noted in the RPA and needs be addressed.
26. I have considered the point advanced by both the Council and RAID that the appeal land is within a deeply rural landscape setting and as a consequence the retention of the 13 gypsy pitches and the addition of permanent buildings as part of the Appeal B proposal would be harmful. I accept that the words 'deeply rural' are found in the Severn Vale character description but this is a generic term used to describe the whole sub-area. I have no reason to dispute that this is a reasonable description of the total sub-area but it cannot simply be applied to the appeal land without having regard to the specific local

¹⁷ Mr Chapman – evidence-in-chief

¹⁸ Tufnell - Appendix 2

¹⁹ Arboricultural Constraints Assessment and Tree Constraints Plan

characteristics. To do so would be illogical and could result in conclusions being drawn on the basis of broad description without having regard to the particular circumstances. It would also mean that a piece of land which is located say some distance from any other development, in a truly isolated position, is treated in the same way as the appeal land, which is close to both existing development and the settlement boundary of Newent. In my view such an approach would be flawed.

27. As far as the characteristics of the area are concerned, I have already set these out in brief at paragraph 8 above. The land on the southern side of Southend Lane is developed with a line of buildings from the appeal land to the houses to the west which make up the settlement edge of Newent. Whilst there are some gaps the prevailing character is one of buildings in a more or less continuous strip projecting out from the edge of the town. The listed buildings to the south may at one time have had the appearance of an isolated farmstead (or farmsteads) but this is no longer the case. It was suggested that isolation is not just a matter of distance from any other development. I find it hard to understand how it can be viewed any other way. I consider that neither the listed buildings nor the appeal site itself are isolated but in close proximity to other development and only a short distance from the settlement boundary of Newent.
28. It is argued for the Council that the nursery buildings are those that are typically found in rural areas and that horticultural development of this nature is a characteristic of the area and to be expected in rural areas. However, it is apparent from the LCA that horticultural development²⁰ is not identified as a key characteristic of the Severn Vale sub-area. I was provided with a plan showing the origins of these horticultural buildings and the associated bungalow²¹ which cover a substantial land area and include one tall glasshouse close to the road edge, which is especially prominent in the landscape. I accept that planning policies are generally more permissive towards agricultural and horticultural development but that does not alter the fact that the physical presence of the buildings in question has a marked impact on the landscape character of Southend Lane. It is not reasonable to simply disregard their presence because of their use as they are permanent features in the landscape in occupation with nothing to suggest that they will be demolished in the near future.
29. I accept that the appeal development being on the northern side of Southend Lane represented a fresh incursion into the countryside, when it was established in 2009. There are also distinct differences in character between the undeveloped northern side (apart from the gypsy site) and the developed southern side. However, it is also necessary to have regard to the development that is likely to take place on the northern side following the grant of outline permission for 120 houses in Foley Way. I was provided with supplementary proofs by the Council's witnesses who seek to explain why the objection to the gypsy site is maintained in terms of impact on landscape character but not in terms of 120 houses a short distance away within the same LCA.

²⁰ I was provided with the LCA for the 'Low Hills and Orchards' area where extensive areas of covered in glasshouses, vineyards and polytunnels are identified as a key characteristic. This area is to the north-west of Newent and is a separate LCA and not part of the Wooded Vale area

²¹ The buildings date from 1966 with the last permission being granted in 2000 for the polytunnels which are closest to both the appeal land and the listed buildings

30. By way of background the housing application was refused by the Council on housing land supply grounds only. The planning officer who wrote the report had also recommended that the development be opposed due to the significant adverse impact on the landscape but this reason was withdrawn on the basis of Counsel's opinion that this was unlikely to be defensible. As explained above the subsequent appeal has been allowed with planning permission granted. It is therefore likely that the housing development will be constructed within a reasonable time period and this will inevitably have an impact on the landscape and alter the surroundings of the gypsy site, which is only about 50m away.
31. I have considered the arguments for the Council as to why the two developments should be distinguished but find the reasoning to be unconvincing. The gypsy site is on relatively flat ground and has well-defined vegetated field boundaries containing a number of mature trees which assist in screening the development considerably. The housing site will occupy sloping ground, comprising two fields with vegetated boundaries which rise up towards the edge of the town covering a land area of about 4.64 ha – that is about 4 times the area covered by the existing gypsy site. It is likely to be occupied by 2 storey houses which would be visible to public view from Southend Lane and which would be unlikely to be totally screened for many years, if at all, notwithstanding any additional landscape buffer planting proposed.
32. I accept that the housing development will adjoin the settlement boundary to the west and another housing site to the north which is under construction but to conclude that the landscape in the area would be largely unchanged seems to me, at the very least, to be contestable. Mr Chapman says the fields will change in character as a result of the development but the overall character of the market town in the landscape will not. Reliance is placed on the opportunity of requiring a loose grain design but the construction of 120 houses is going to result in an urban extension projecting about 270m from the existing settlement edge. I do not see how a development of this size can occur without altering the character of the landscape on this side of Newent. I would not go so far as to say that this would necessarily be harmful and appreciate that my colleague who dealt with the Foley Way proposal did not come to such a conclusion but was satisfied that assimilation, subject to conditions, was possible²².
33. Nevertheless, I do find it puzzling that no material harm to landscape character is asserted in respect of the substantial housing scheme but demonstrable harm is maintained in respect of the gypsy site. I appreciate that the gypsy site does not abut the settlement boundary but the immediate landscape context is similar – fields surrounded by hedges and trees – in the same LCA – within a short distance of the town edge. I have taken account of Mr Chapman's argument that the housing development needs to be viewed in the context of the total area of land covered by Newent – about 130 ha. This being so I fail to understand why the gypsy site of about a quarter of the size is not approached in the same way given its proximity to the town.
34. I turn on to examine the impact of the gypsy site (both appeals) on the visual amenities and appearance of the countryside. My site visits were undertaken at a time of year when the predominantly deciduous field boundary vegetation had either shed most of its foliage or was not in leaf. This enabled me to appreciate the impact of the existing development when the natural screening

²² Paragraph 46 of the Appeal Decision

was at its least effective. From the footpath to the west (GNE89) it was possible to make out the white bodies of the caravans projecting marginally above the top of the boundary hedge and through the hedge to a point. This is evident from a range of photographs provided by the parties. However, even without being in leaf the hedge, which had recently been pruned and topped on the field side, provides a degree of screening which filters the visual impact. I would expect the screening benefit of the hedge to increase when in leaf, reducing the visibility of the caravans from the footpath.

35. I have taken account of the length of the appeal site and the field boundary that is presented to public view from the west. I accept that this results in the caravans being noticeable for some distance and that the hedge may well be in the farmer's ownership, as the Council claim, which means that its cutting back or a reduction in height is outside the appellant's control. Having said that I consider it highly unlikely that the farmer would wish to remove the hedge given the screening benefits it provides. Nevertheless, I have concerns that the present situation, with the relatively limited boundary hedge with some gaps in places and the absence of any additional supplementary planting along this boundary on the appeal site itself, could result in the caravans (26 on the basis of 2 per pitch) becoming prominent features should parts of the hedge die back or be severely lopped.
36. In this respect, it is necessary to differentiate between the proposals under consideration with each appeal. Appeal A relates to what was in existence when the notice was served. Should the deemed application be allowed in this respect it would be possible to impose conditions regarding new planting but this is made more difficult as the development is already in place. With Appeal B the proposal is supported by a plan which shows the addition of new native tree and hedge planting to supplement the existing hedge on the western boundary.
37. There is criticism from the Council and RAID that there is insufficient space for planting to take place and mature given the position of the caravans, proposed dayrooms and surfacing. The plan shows a width of about 5m available clear of development to the centre line of the hedge. I consider that this should be sufficient to enable the planting proposed to take place and mature providing a good defensible screen. Moreover, further details could be required by condition of a wider strip of planting if this was deemed necessary. Such a condition could also require the repositioning of any buildings and caravans and the cutting back of sections of hardstanding if this was considered to encroach on the required planting strip.
38. I have taken account of the fact that the Appeal B proposal includes the new day rooms which would add to the presence of development on the land. The detailed plans provided show these as being of two sizes. The smaller design on pitches (plots) 11 and 13 would have a ridge height of about 3.9m and an eaves height of around 2.8m. The larger design shown on the other pitches would have a ridge height of 4.5m and an eaves height of 2.6m. The likelihood is that the body of the buildings would be screened by the existing hedge and new planting described above but the roofs of the dayrooms on pitches 2, 4, 6, 8 and 10 are likely to be noticeable from the footpath given their proximity to the boundary. In time with the maturing of the trees and vegetation this impact is likely to diminish.

39. Another important factor to consider when gauging the impact on views from the western footpath is the other features that already have an impact on the visual amenities of the users of the path. In this respect I have discounted the Foley Way housing at this time as it is not in existence. However its presence would have major implications for the footpath which would either need to be diverted or incorporated within the housing area.
40. I undertook a walk from the southern boundary of the proposed housing site, in the vicinity of a dried-up pond, in a northerly direction across the field to the west of the appeal site to Southend Lane. The ground rises up gradually. The most prominent features in view are the buildings that make up the nursery, especially the tall glasshouse close to the road edge which represents a highly visible structure. There is also a backdrop of the houses to the west along Southend Lane, towards Culver Street. Unlike the caravans on the appeal site which can be glimpsed these buildings are not screened to any significant extent. So the users of the footpath approaching from the north are not seeing unblemished countryside as a backdrop but the edge of the town and a range of horticultural buildings. Walking this footpath in the opposite direction from Southend Lane the edge of the town is the most evident feature with the new red brick housing development of The Daffodils, Whitegates and the larger housing site to the north under construction being noticeable features in the landscape.
41. In terms of views from Southend Lane itself the caravans on the appeal site can be glimpsed when coming from Culver Street but with filtered views due the hedge screening. The only place where there are direct views of the caravans from the road is in the vicinity of the access to the site. From here the development is quite striking with the frontage opening enabling views down the site to its northern end. I agree that as it stands this is an unsatisfactory situation in visual terms given the extent of the site. However I have borne in mind that the proposal for Appeal B incorporates considerable enhancements which seek to ameliorate the harm.
42. The first is the introduction of structure planting of 10-15m in depth comprising new native trees and hedges on either side of the access. Whilst they would not completely block views into the site, given the need to retain vehicular access at this point, the substantial areas of landscaping would certainly soften the visual impact and reduce views into the site from this part of the lane. The other measure is the introduction of a kink in the driveway with a block of new planting added close to the entrance to restrict views up the driveway. This would help to limit the visibility of the development from the lane. Mr Chapman for the Council argued that the layout with pitches either side of the drive is too uniform and had asked the appellant for a revised scheme with a more informal arrangement. Given the long, narrow shape of the site it is difficult to see how this could be achieved. Moreover given the mitigation measures put forward I am not convinced that this is necessary in visual terms.
43. I also viewed the development from the eastern footpath (GNE91) which runs along the south-eastern edge of the owners' paddock. From this path for a length of about 50m it is presently possible to see the caravans in places through the thin hedge on the path boundary which contains a number of gaps within it. To address this concern the proposal in Appeal B includes the incorporation of an additional piece of land (currently part of the paddock – see paragraph 7 above) which would include two belts of tree/hedge planting. I

am satisfied that this would in time provide a substantial level of screening from these vantage points on the footpath.

44. There is much criticism from the Council that the appellant has failed to conduct a proper landscape assessment in line with the methodology set out in the Landscape SPD and that what did emerge at the application stage (Appeal B) was an inadequate and limited overview which failed to provide a rigorous assessment and was drawn up after the layout had been designed. The eventual provision of a method statement over a year after the assessment was conducted is also criticised. In defence, the appellant's witness on this issue (Prof. Reed) argued that a 'lighter touch' assessment had been conducted and that the conclusions would have been the same if the SPD methodology had been followed.
45. I consider that the approach of the appellant, assisted by his professional representatives, does not appear robust in terms of the sequence of events. Instead of defining or choosing a methodology, carrying out an assessment in line with that methodology and then designing the scheme accordingly, the reverse of this logical process seems to have been followed. Notwithstanding these failings I am satisfied based on my own assessment, and having regard to the information before me, that it is possible to reach the conclusions on the impact on landscape character and appearance that I have set out above. These conclusions are not based on a formal assessment carried out in accordance with the SPD but I have taken account of the key characteristics of the landscape as advocated in paragraph 3.3.7 of the SPD. These include the topography, built features, land use, field patterns, boundaries, vegetation, public footpaths and vantage points. I have also considered the suggested mitigation measures in line with section 4.7 of the SPD.
46. I have noted the correspondence between the Council and the appellant's planning agent on this issue. The Council wrote on 28 March 2012 stating that the landscape assessment provided (I assume the one dated 26 October 2011) was insufficient and that a plan showing public rights of way and photographs from important locations were needed along with an assessment of the effect of the access, impacts at different seasons and mitigation measures, including changes to forms, designs, layouts and finishes. The response from the agent (Mr Bunn) was that there was a willingness to make amendments and supply a plan showing rights of way with photos taken at different seasons which would be submitted as soon as possible. However, my understanding is that this did not happen and the application was determined as it stood. However these procedural limitations do not alter the conclusions I have reached above.
47. There is a further matter that needs consideration on this issue. Paragraph 12 of the PPTS states that when assessing the suitability of gypsy sites in rural or semi-rural settings, it is necessary to ensure that the scale of such sites does not dominate the nearest settled community. Paragraph 23 of the PPTS includes the same test but also advocates a strict limit on new traveller sites in open countryside away from existing settlements. There is clearly a tension here in that such development should be reasonably close to settlements to benefit from local services but not so close, having regard to scale, to cause domination. The most up-to-date development plan policy concerning gypsy sites is Policy CSP.6 of the CS and this provides a similar framework for considering site allocations. Preference is to be given to locations near or in towns or villages. Allocated and unallocated sites need, amongst other things,

- to minimise impact on the landscape, be compatible with nearby land uses and be reasonably close to or in a settlement with local services and community facilities.
48. I am mindful of the conclusions of my colleague (Insp. Baldock) on the earlier appeal, which includes his view on the meaning of a settled community²³. He asserts that the concept of community is not straightforward or rigid and that there may be overlapping communities in the locality. I consider that in theory this is a sound proposition. He concludes that in terms of the town of Newent as a whole it would not be dominated by the development in question. All parties indicated their agreement with this conclusion and I have no reason to disagree given the scale of the development compared to the size of the town.
49. The Inspector then goes on to consider the relationship to the 4 dwellings (including the 3 listed buildings) at the eastern end of the lane and the occupiers further to the west – which I take to be those occupying the houses on the south side of Southend Lane. It is important to note that he does not conclude that these dwellings form the nearest distinguishable ‘settled community’ as is submitted for the Council. He then comments on the likely impact in terms of noise and disturbance and the size of the development, which he notes is not claimed to be small. He concludes he has concerns about the size of the site in relation to its local setting.
50. I will come on to consider the impact on the setting of the listed buildings and the living conditions of nearby residents below which are separate issues. For the moment the matter to address is whether in landscape terms the development would dominate a definable settled community. It was accepted for the appellant that the development is not small but of moderate size. I take this as a reasonable opinion given the range of size of gypsy sites that exist throughout the Country. It is certainly not small based on the definition set down in planning regulations or in general terms. However, Policy CSP.6 does not require sites to be small but to meet the criteria set down. So a moderate-sized site in this location is not in principle contrary to local or national policy simply because of its size.
51. On the ‘community’ claims, I do not accept that the houses on Southend Lane, including the group at the eastern end, constitute a separate settled community as is asserted by the Council and RAID. It seems to me that this is a contrived argument which lacks substance. My impression is that these houses are either part of the town (within the settlement boundary) or close to its edge. This is not some lesser cohesive community, even if it once was, but part and parcel of the town. The residents living there do not have separate services but rely on those provided in the town. The part of the town they live in has no distinct neighbourhood name or identity as far as I am aware. Consequently I do not accept that there is a settled community, other than Newent, that is affected by the development and as it is agreed that the town as a whole is not dominated I am satisfied that the terms of Policy C (paragraph 12) and Policy H (paragraph 23) of the PPTS are met.
52. A final point to address under this heading is whether, as the Council appear to assert, gypsy sites need to not just preserve but enhance the landscape and countryside. It is true that paragraph 109 of the Framework refers to both conserving and enhancing the natural environment and valued landscapes but

²³ Paragraphs 21-27

this is in the general context of the planning system as a whole and it is not set down as a test for each and every development proposal. It is an unsurprising goal given the overall rationale of the planning system to maintain and improve the environment.

53. I do not accept that this general aim requires the development before me to enhance the environment as to do so would introduce a higher test than the one set down in paragraph 115 of the Framework concerning National Parks and Areas of Outstanding Natural Beauty - where great weight should be given to conserving (*my emphasis*) landscape and scenic beauty. It would be contrary to apply a higher test than is required for development in nationally designated landscapes. Where there are policies relied on by the Council from the RPG and SP which seemingly require both enhancement as well as conservation in the general countryside, I consider that they are not consistent with the emphasis of national policy in the Framework and should be afforded little weight. This approach accords with the advice in paragraph 214 and 215 of Annex 1 of the Framework concerning the weight to afford to policies in plans adopted prior to 2004, which is the case for both the RPG and SP.
54. Bringing these findings together, my conclusion on this issue is that the deemed proposal before me based on Appeal A results in some material harm to the landscape character and visual amenity of the area for the reasons described above. I doubt whether this harm could be satisfactorily ameliorated by the imposition of conditions. These findings are consistent with those of the previous Inspector. Consequently, this proposal is at odds with certain aspects of Policies S.6, NHE.1 and H.10 of the SP and CSP.1 and CSP.6 of the CS.
55. As regards the proposal flowing from Appeal B, I find that subject to the imposition of appropriate conditions, the development would not harm the landscape character or visual amenities of the area and would be compliant with terms of these policies. I appreciate that this is a different conclusion to the one reached by the previous Inspector but his decision did not relate to the present proposal and was arrived at before the granting of outline planning permission for the Foley Way development. I consider that these factors amount to significant and telling changes in circumstances and it is justifiable to reach a different conclusion on this issue in terms of the alternative form of development put forward which is supported by additional mitigation measures.

Setting of the listed buildings

56. The 3 buildings in question (Southernns, Southernns Barn and Southcote Barn) form a close knit group along with another dwelling (Southcote) which is not listed. All three were listed individually on 18 October 1985 and the two barns have subsequently been converted into dwellings by virtue of planning permissions and listed building consents granted in the early 1990s. The land about the buildings, some of which was formerly farmyards, is now in use as private gardens serving the dwellings with associated domestic features and paraphernalia. A detached garage to serve Southernns Barn has been built. This was permitted in 1997 and included the extension of the residential curtilage.
57. The Council's objection on this ground was only introduced following the earlier appeal on the gypsy site and the conclusions reached by Inspector Baldock. The change of opinion is supported by the evidence of their witness. RAID maintains its objection for the reasons which were advanced at the 2009

inquiry and has supplied some detailed historic records and papers on the origins of the buildings. From these documents it is apparent that Southernns (which was known as Southend(s)) is likely to be older than the date (early to mid C18th) given in the listing description²⁴. I consider that this is of limited relevance as the original use as one or more farmsteads with associated barns and outbuildings has long since ceased. The three buildings are in use as dwellings and the two barns have undergone substantial alteration and adaptation to convert them into residential use.

58. The statutory duty on the decision-maker enshrined in s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, is to have special regard to the desirability of preserving the listed buildings or their settings or any features of special architectural or historic interest that they possess. As the development does not alter the physical form of the buildings in any way I am only concerned with the impact on setting. The need to ensure that the setting of the listed buildings is preserved is echoed in Policy NHE.6 of the SP. Policies S.6 of the SP and CSP.1 of the CS seek to safeguard and, where possible enhance, the historic environment and heritage assets.
59. Section 12 of the Framework is concerned with the conservation and enhancement of the historic environment and this has replaced Planning Policy Statement 5: Planning for the Historic Environment, although the associated Practice Guidance remains in force. Policy HE10 of this guidance sets down principles to be applied when considering the impact on the setting of heritage assets. English Heritage has also published a document entitled 'The Setting of Heritage Assets' in October 2011 which provides further detailed guidance on this matter.
60. From these documents the following points can be gleaned concerning the setting of listed buildings:
- The setting will generally be more extensive than the curtilage of the building or buildings;
 - The setting does not have a fixed boundary and cannot be definitively and permanently described as a spatially bounded area or as lying within a set distance of a heritage asset;
 - Views to and from a heritage asset are important but an assessment of impact goes beyond the visual and does not have to rely on public viewpoints; other environmental factors are of relevance as well as character and context;
 - The implications of cumulative changes need to be taken into consideration;
 - A proper assessment of the impact on setting will take into account, and be proportionate to, the significance of the asset and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate it.
61. The previous Inspector concluded that the development that has taken place was detrimental to the character of the setting of the listed buildings. He reached this conclusion notwithstanding his finding that the visual impact on

²⁴ Part of Southernns appears to date from the C16th and to have been a mansion of great significance

- setting could be significantly mitigated by additional planting. Since that decision was reached, an 'Assessment of Significance Statement' has been prepared for the appellant and this supported the planning application under appeal. The appellant's architect (Prof. Reed) was called as the professional witness to deal with this issue and she asserts that the Statement addresses the concerns raised by the previous Inspector in terms of impact on setting.
62. The agent for RAID has produced a plan which illustrates his view on the extent of the curtilages surrounding the listed buildings. This was not disputed but given the guidance set out in the first bullet point above, I consider that the setting of the listed buildings goes beyond these curtilages – which are effectively now the private gardens to the dwellings – encompassing some, if not all, of the gypsy site. This was accepted by Prof. Reed and accords with the conclusion of my colleague. It is reasonable to conclude, based on the above guidance, that hard and fast boundaries of what constitutes the setting cannot be defined. Notwithstanding a finding that the gypsy site comes within the setting of the buildings the critical consideration is whether any demonstrable harm has or would be caused to the settings. In line with the last bullet point above, in carrying out this assessment a proportionate approach is required having regard to significance of the assets and the degree to which developments in question enhance or detract from that significance and the ability to appreciate it.
63. It is asserted for the appellant that there is no indication that the buildings are listed for their cultural value and that they appear to have been listed for their historic and aesthetic value. From the listing descriptions it appears to be latter that is of primary importance although there is some reference to being a group. It is also stressed that the assessment needs to be based on what exists today and not some idealised past situation which no longer exists. I agree as did the Council in submissions. That is not to say that the history of the buildings is of no bearing but that the changes that have occurred to their form, use and surroundings are important material considerations which must to be taken into account.
64. RAID argue that the listed buildings have remaining group value and historic associations with the surrounding fields, including the appeal land, which formed part of the former farm holdings. From the evidence before me I have no reason to dispute this assertion but the historic connection and relationship has long since ceased as the land has been sold off and the listed buildings are in domestic use with no association whatsoever with the surrounding land in terms of ownership and occupation. They also no longer function as a group, if they ever did, but are independent dwellings. Therefore to suggest that the appeal development 'robs' the listed buildings of their historical context is without foundation as separation in this respect has already occurred.
65. Much discussion and debate at the inquiry centred on the implications of the conversion of the two barns to dwellings. It is evident from the documentary evidence supplied by the Council concerning the applications that English Heritage objected to the conversion scheme for Southcote Barn as did most of the conservation bodies that were consulted on the listed building applications and The Society for the Protection of Ancient Monuments also objected to the original proposal for Southernns Barn. The Council argue that amendments were made to both conversion schemes to address these objections and that this rendered the proposals acceptable to English Heritage and the

- conservation bodies. From what is before me, there is nothing to confirm this was the case but it is clear that amended plans were received after the objections were made which could have addressed the concerns raised.
66. Be that as it may, the facts are that the barns have been converted and this involved the demolition of some of the original fabric and considerable intervention, particularly for Southcote Barn, as is clear from various dated photographs that have been supplied. The historic use of the barns for agricultural or other purposes may have ceased a number of years ago prior to listing but the change of use to dwellings with associated operational development was only sanctioned by the Council when they granted the permissions/consents in 1990 and 1991 after the listing date. I accept the point for RAID that despite these changes the buildings have not been de-listed and no application has been made to do so as far as I am aware. However the appearance and character of the buildings has changed significantly and the use of the land around them, with the possible exception of some land attached to Southernns, has altered to domestic gardens. For these reasons, I do not accept the Council's submission that nothing has changed appreciably since the time of listing. There have in fact been significant changes which have impacted on both the appearance and the setting of the buildings.
67. I accept that these findings do not lead to a conclusion that the buildings are no longer worthy of protection or that their settings have been so devalued as to be of little or no importance. However, these are material factors which have affected the character and setting of the buildings and need to be taken into account when applying the required proportionate approach.
68. Turning to the relationship between the buildings and the gypsy site, they are separated by Southend Lane and there is the existing vegetation in their gardens and along the frontage of the appeal land which provides a degree of screening in between at present. I was able to go inside Southernns Barn to assess the visual impact. I consider due to the orientation of the main elevations and window positions and the distance from the gypsy site that there is no material impact from within. I did not go inside Southernns but this is closer and has full height windows at first floor level facing the appeal site. I would expect that views of the caravans and features on the gypsy site would be apparent from certain rooms at first floor level. The closest listed building is Southcote Barn part of which is very close to the lane. The gable end elevation facing the lane contains windows and that at first floor would be close to Plots 1 and 2 and the proposed amenity area.
69. As regards views from the gardens, it is possible to see caravans through gaps in the vegetation especially at points close to Southend Lane. However, the domestication of the land around the buildings has already significantly altered the setting from what existed when they were listed. This has included the erection of a garage and the enlargement of the curtilage of Southernns Barn. It was argued for the appellant that new garden walls have been erected to subdivide the curtilages but I have no clear evidence on this. The public approach to the listed buildings along Southend Lane has also been affected by the presence of the gypsy site although when standing adjacent to their driveways facing the buildings the group can be still be appreciated without any visual encroachment from the development on the appeal site.
70. Another factor to take into account is the effect of the nursery buildings on setting. The history of the construction of the associated buildings provided

reveals that some of these have been permitted and built after listing occurred. In 1986 a substantial range of glasshouses was erected but this is on the western side some distance away. The tall glasshouse on the frontage was built in 1995 and due to its height I consider it has some impact on the setting of the listed buildings. Of even greater impact are the polytunnels built in 2000 which are on the eastern side of the nursery coming to within about 20m of the north-western garden boundary of Southern Barn. I noted that a hedge has been planted close to this boundary to mitigate the visual impact. Nevertheless I consider that the close presence of these polytunnels to the listed buildings in question has had a substantial impact on their setting both in visual terms and by their very physical presence which has altered the character of the lane at this point.

71. In terms of character and context it is helpful to have regard to the aerial photograph supplied by the Council²⁵. This shows the extent of the appeal site and also the area of ground covered by the nursery buildings. Both are within close proximity to the listed buildings covering substantial amounts of land. The photo serves to illustrate how the nursery buildings impinge on the setting of the listed buildings by their sheer physical presence. The previous Inspector noted these buildings but did not comment on how they should be weighed when considering the impact on the settings of the listed buildings. In my opinion the presence of the nursery and the additional buildings added since the date of listing are important material factors which need to be given due weight.
72. Bringing these findings together, I consider that the gypsy site in its present form, without the landscaping and other mitigation measures that are now put forward with Appeal B, has caused material harm to the settings of the listed buildings. I reach this conclusion having regard to the other detrimental changes that are described above and giving consideration to the additional, cumulative harm that has arisen. The development that exists, and is the subject of the deemed application on Appeal A has detracted from the setting of the buildings particularly in terms of its visual impact when viewed from Southern Barn and Southcote Barn and on the approach to all 3 buildings along Southend Lane. This harm weighs against permitting the development the subject of Appeal A as it is in conflict with the requirements of Policies NHE.6 and S.6 of the SP and Policy CSP.1 of the CS and the advice on safeguarding heritage assets contained in Section 12 of the Framework.
73. As regards Appeal B, the proposal incorporates a number of mitigation measures which go beyond what was before the previous Inspector. These, especially the additional landscaping and incorporation of additional land at the south-eastern corner would lessen the impact on the setting of the listed buildings. I do not consider that these measures would completely eradicate the harm in this respect as the presence of the gypsy site would still have an impact on the character of the immediate area even if well-screened, a point made by the previous Inspector. However, I have been provided with a much more detailed assessment with fuller documentary evidence concerning the history of the listed buildings and the adjacent nursery buildings which has enabled me to reach a more informed view of the background and context. The level of harm and conflict with the relevant policies cited above still needs

²⁵ Hillier – Appendix 3

to be taken into consideration and I will do so when carrying out the overall balancing exercise below.

Impact in biodiversity

74. The primary consideration under this heading is whether the development would have a material effect on the great crested newt (GCN), a European Protected Species²⁶. Although there are ponds abutting the appeal land to the east, no ponds have or will be lost due to the developments in question and the potential breeding habitats (the ponds) of this species are therefore not directly affected. RAID also raises a secondary concern regarding the possible disturbance or damage to the habitat of bats – another protected species. This concern is not shared by the Council. However, I will address this matter below.
75. By way of background, I note that the Council did not call evidence on this issue at the previous inquiry and they confirmed that at that time there were no objections on this basis, subject to the imposition of conditions. The Council's position has now changed. This can be summarised, based on the evidence of Mr Chapman – the relevant witness – and submissions made, as applying a precautionary approach requiring a mitigation strategy that demonstrates that the favourable conservation status of the species will not be affected by either proposal before permission is granted. This is deemed as being necessary to meet the legislative tests contained in The Conservation of Habitats and Species Regulations 2010 (the '2010 Regulations') and before a positive determination can be made in accordance with Regulation 53.
76. RAID support the Council's position arguing that the ecology reports supplied for the appellant (produced by 'Just Ecology' - November 2009 and April 2012) are not species surveys, which since the last appeal could and should have been conducted so as to properly assess the presence of GCN in the area, and in the nearby ponds in particular. It is asserted that it is not appropriate to impose conditions in the circumstances where the ability to protect the GCN and their habitat is unknown. RAID has also consulted with the Gloucestershire Amphibian and Reptile Group (GlosARG) who have provided some evidence of GCN found in the area.
77. For the appellant, it is submitted that the legislative requirement is to assess whether there would be any significant risk of disturbance to the GCN or significant harm to its habitat. The test is not to eliminate risk but to minimise risk. It is argued that through the surveys conducted and the evidence of Dr Wray, the only qualified expert witness called by any party, that this has been done and that it has been shown that the impact of the development is not significant. Accordingly it is acceptable to address this issue by the imposition of appropriate conditions. Furthermore, a new pond providing a suitable breeding habitat for GCN is offered as an enhancement should this be deemed necessary. It is also noted that the reasons for issuing the enforcement notice do not refer to ecology or harm to the habitats of GCN and that Mr Chapman acknowledged that any disturbance that might have occurred will have already taken place.

²⁶ GCN are fully protected under Schedule 5 of the Wildlife & Countryside Act 1981, the Bern Convention and the EC Habitats Directive (the 'Directive') 1992. Also a Biodiversity Action Plan (BAP) priority species nationally and locally

78. Before looking at the evidence, it is necessary to understand the legislative framework that is engaged. Extracts from the 2010 Regulations were provided by the Council. Regulation 9 explains the requirement for the appropriate authority (defined as the Secretary of State in England) and the nature conservation bodies is to exercise their functions under the enactments relating to nature conservation so as to secure compliance with the EC Habitats Directive. Article 12 of the Directive concerns the protection of listed species (which includes the GCN) prohibiting direct (capture, killing, destruction of eggs) and indirect (disturbance and deterioration or destruction of breeding sites or resting places) actions.
79. Regulation 41 describes what constitutes an offence and sub-paragraph (2) defines 'disturbance' as (a) – impairing the ability to survive, breed, reproduce or rear/nurture young, or hibernate/migrate or (b) significantly affecting the local distribution or abundance of the species. Regulation 53 concerns the granting of licences where protected species would be materially affected in the manner described in Regulation 41. Sub-paragraph (2) sets down grounds for granting a licence which include where there are imperative reasons of overriding public interest, including those of a social or economic nature. Sub-paragraph (9) stipulates that a licence shall not be granted unless firstly it has been established that there is no satisfactory alternative and secondly, the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
80. Bringing these points together it is important to note that a licence is only needed if an offence, as described in Regulation 41, would be committed – in this case by granting planning permission for the developments. If no offence is committed – and in this case a conclusion can only be reached on the basis of an assessment of likelihood – then no licence is needed and the terms of Regulation 53 are not engaged. The Council's position, having regard to court authority²⁷, is that the likelihood of a licence being issued – the derogation point - cannot be relied upon where Article 12 of the Directive is engaged nor can it be satisfactorily addressed by means of the imposition of a planning condition. This appears to be the case but it pre-supposes that it is likely that the requirements of the Directive cannot be met and that there is likely to be a need for a licence. A conclusion in this respect is dependent upon the examination of the evidence provided.
81. Further guidance on the approach to be adopted when considering planning proposals and the potential effect on protected species is set out in Part IV of Circular 06/2005²⁸. Paragraph 99 explains that an assessment of the presence or otherwise of protected species should be undertaken before planning permission is granted but that surveys should only be required where there is reasonable likelihood of species being present and affected. Paragraph 116 emphasises the need to take full account of the Directive when reaching planning decisions. With this legislative framework in mind, I turn to the evidence.
82. Dr Wray relies on the findings in the two Just Ecology reports, particularly the more recent one dated April 2012. The 2012 Report, which is understood to

²⁷ *Morge v Hampshire CC [2011] UKSC 2* and *Woolley v Cheshire East BC [2009] EWHC 1227 (Admin)*

²⁸ Circular 06/2005 – 'Biodiversity and Geological Conservation – Statutory Obligations and their impact on the planning system'

have been likely to compiled by a Mr Kirby – who did not appear at the inquiry – relies on a desk study of GCN records²⁹ for the area extending 1km from the site and a Habitat Suitability Index (HSI) assessment of 6 nearby ponds, supplemented by netting surveys in Ponds 1 and 2 adjacent to the site. The details of the HSI methodology drawn from two sources³⁰ were supplied at the inquiry.

83. The GCER records used in the 2012 report are the same as those in the 2009 report as no additional records were obtainable. The records revealed the presence of 8 GCN efts (larvae) in a pond which is likely to equate to Pond 6 in the HSI survey and come from netting surveys in 5 ponds in close proximity to the appeal site. From this I take it that no GCN or efts were found in the other 4 ponds surveyed. In 2009 a single juvenile GCN was found under a log in woodland about 120m east of the site. This evidence is sufficient to show that there are GCN in the area and that Pond 6 has been a breeding site for this species.
84. The HSI assessment was carried out on 16 April 2012 in respect of 6 of the 11 ponds within the 500m radius³¹ which were found to contain water in April 2012. It was observed that Pond 6 was practically dry, a significant change since 2009. All 6 ponds were photographed. Netting of Ponds 1 and 2 revealed no GCN or their eggs. Table 4.1 in the report sets out the assessment based on 10 factors which are used to reach an HSI score (geometric mean). It was accepted that the figures for the pond area factor in respect of Ponds 4 and 5 had been transposed and that this would increase the HSI score for 4 and decrease it for 5. This is likely to bring the score for Pond 4 into the 'average' rather than 'below average' category.
85. As regards Pond 6, RAID argues that some of the factor figures are too low and that the likelihood of Pond 6 drying up is exaggerated. The contention, supported by rainfall data, is that the low water level observed in April 2012 was due to an extremely dry period in the months before. The lack of rainfall in the preceding period is evident from the data. However, I would add that I inspected Pond 6 on 9 November 2012 which was after one of the wettest summers/autumns on record as confirmed by the rainfall data supplied. The level observed was similar to that shown in the Just Ecology photograph in April 2012 which is surprising given the abundance of rainfall in the months immediately before. This suggests that Pond 6 is prone to low water levels on occasions. This may be due to water extraction by the farmer or for other reasons but it leads me to conclude that the score attributed in the HSI assessment is a reasonable one.
86. Coming to the HSI scores, Mr Tufnell recalculated this as being 0.73 for Pond 6 which would take it into the 'good' category in terms of habitat suitability. Based on the above comments on water levels I consider this figure is probably an overestimate and that a more realistic conclusion is that it is in the 'average' category. For the appellant it was accepted that a recalculated figure of 0.65 would be appropriate which falls within the 'average' range. Drawing these points together the scores show that in terms of habitat suitability Ponds 2 and 5 are 'poor', Ponds 1 and 3 are 'below average' and Ponds 4 and 6 'average'. I

²⁹ Source: Gloucestershire Centre for Environmental Records (GCER)

³⁰ Sources: 1) Amphibian and Reptile Groups of the UK; 2) National Amphibian and Reptile Recording Scheme - NARRS

³¹ Recognised as a guideline for the foraging range of GCN

accept that this is just a 'snapshot' and is not a substitute for newt surveys. For the appellant it is argued that carrying out netting surveys in Ponds 3-6 would have required the land owners consent but there is nothing to show that this was requested. However the absence of GCN eggs in the two ponds closest to the appeal site at the optimal survey time in terms of breeding leads me to find that these water bodies are unlikely to be attractive to GCN.

87. I have taken account of other evidence. GlosARG's letter of 27 August 2012 to RAID³² mentions the presence of GCN in the area based on records including an April 2009 record of GCER. However the details of location of the particular pond and what was observed is not specified. There is a comment that GlosARG look forward to planning bi-annual visits to conduct surveys in the Southend Lane area but this appears to be an aspiration rather than something that is already taking place.
88. Mrs Grewcock, a resident of Southend Lane also commented that she had gone pond dipping in Pond 6 with Mr Twissell, the County Council ecologist, on a day around May-June 2009 and that they had found the pond teeming with GCN. This evidence is not corroborated by Mr Twissell and was, for some unknown reason, not brought to the attention of the previous Inspector who held the inquiry in December 2009. There is no actual record of numbers although the presence of GCN in Pond 6 accords with Just Ecology's findings based on GCER records obtained. She also referred to carrying out netting in several ponds but did not say which or that any GCN were found in these. The Council and RAID are critical of the appellant for not carrying out netting surveys but they have not undertaken any themselves to support and substantiate the claims they are making. They too could have approached landowners to request access for surveys but they have not done so.
89. The conclusion I draw from all the evidence before me is that Pond 6 has provided a suitable breeding pond for GCN and is likely to continue to do so provided a satisfactory water level is maintained. This is about 200m from the appeal site. For the other ponds, given their present condition, only Pond 4 offers a reasonable potential as a breeding site. Although this is only about 120m from the appeal site it is located to the south of Southend Lane and is separated from it by the group of dwellings centred on Southernns. These circumstances could act as deterrents to migration towards the appeal site.
90. I am mindful of the present condition of the appeal site which has come about through the granting of a temporary planning permission and the hard surfacing of the majority of the area. I consider that in this condition it is unlikely to attract GCN although the potential for foraging along the tree/hedgerow corridors around the site remains. I appreciate that it is also necessary to have regard to the grassland that has been lost and the contribution that this could make to GCN habitats should the enforcement notice be upheld requiring the reinstatement of the grassland. Dr Wray claimed that this loss has only amounted to a fraction of 1% of the terrestrial habitat within the foraging range of the ponds and that being a sub-optimal habitat (improved grassland, species poor) it would not have had a significant ecological impact on GCN. I am inclined to agree. I have no evidence of any GCN on the land itself with the nearest recorded siting 120m away to the east. Mr Tufnell also refers in his evidence to an unattributed siting in the garden of Southernns.

³² Appendix 8 - Tufnell

91. I have given consideration to the likelihood of GCN migrating, foraging or resting on the appeal site if it was returned to grass. The network of ponds surveyed is to the south and east within a short distance of one another. Movement and foraging is likely to be in and around these ponds and Ponds 1 and 2, the closest to the site, are not attractive habitats. The evidence provided in relation to other ponds in the vicinity of the Foley Way housing site (Aspect Ecology reports) is that they have mostly dried up and would therefore not provide any breeding habitats for GCN – a conclusion accepted by the Council when dealing with that application. Consequently, there is no reason why GCN would be attracted from the potential breeding ponds across the appeal site in this north-westerly direction. Moreover, with the bringing forward of the housing development and the loss of two fields about 4 times the size of the appeal site there is even less likelihood of this happening.
92. The Council argue that without a detailed mitigation strategy it is not possible to conclude that the requirements of Article 12 of the Directive would not be breached. There can be no absolute guarantee on this and it is matter of likelihood or level of risk, as asserted for the appellant. No actual breeding sites or eggs would be destroyed or disturbed if permission were granted. Additional works would need to be undertaken if Appeal B was allowed but this would primarily take place within the surfaced areas already created. It would be possible to require a method statement, including inspection prior to any excavation, to ensure that any GCN are not disturbed or destroyed in the process. The vegetated corridors that exist around the site could be protected by the use of suitable fencing (chestnut palings suggested) to keep out predators so ensuring that the wildlife channels for foraging are maintained and these would be enhanced and supplemented by the additional planting envisaged.
93. There is also the matter of the proposed pond. This would be located in the south-eastern corner of the paddock and has been designed to incorporate features that would be particularly attractive to GCN (ledges, damp margins, aquatic plants, fenced off grassland and a bund for foraging/resting) providing a habitat which is likely to be superior to any of those that exist at present with the possible exception of Pond 6. There is no contention that the unilateral undertaking put forward in respect of Appeal B could not ensure its provision and it would add to the network of ponds to the south and east of the appeal site.
94. In terms of the possible impact on bats, I have no objective evidence to show that their habitats, in terms of breeding, feeding and roosting have been disturbed or destroyed, or would be as a consequence of the development remaining or the Appeal B proposal being allowed. The hedgerows, trees and vegetation around the site have not been significantly reduced and so the corridors that may be used by bats are still present. The new planting is likely to add to potential roosting positions and could lead to enhanced habitats. The loss of the former grass field is unlikely to have significantly reduced the bats foraging territory and there is no clear evidence to suggest otherwise.
95. In all of these circumstances I conclude that permitting the development the subject of Appeal B is unlikely to lead to any offence under Article 12 of the Directive or the Regulations. This being the case there would be no need for a licence to be obtained as the terms of Regulation 53 would not be engaged. The imposition of suitable conditions and the provision of new pond, which I

consider is necessary as a mitigation measure, would ensure that the development accords with the terms of Policies CSP.1 and CSP.2 of the CS, Policies S.6(e) and NHE.2 of the SP and paragraphs 117 and 118 of the Framework. Consequently I do not accept that the circumstances are comparable to those encountered in *Morge* and *Woolley*. As regards Appeal A and the deemed application the circumstances are similar but the absence of the full range of mitigation measures means that this is a less beneficial solution in terms of biodiversity. I will return to this in the balancing exercise.

Access and highway safety

96. The Council did not object to the planning application on this basis and it was also not a reason for issuing the enforcement notice. Gloucestershire County Council raised no objection to the proposal (Appeal B) subject to the imposition of conditions requiring the provision of 2 passing bays and a new street light on Southend Lane. Details of the location of possible passing bays and other road improvements to Southend Lane are shown on a plan (Fig.1) which was prepared by the appellant's highway consultant (The Hurlstone Partnership) in September 2009 at the time of the last appeal. It is not clear to me that this was a plan submitted with the application and it shows 5 options for passing places and no indication of a street light. Nevertheless, from the submissions made on behalf of the appellant it is apparent, should the passing bays and light be considered necessary – a point not accepted - that these would be provided if permanent planning permission were granted and this could be achieved by the imposition of a condition.
97. RAID maintains an objection on this ground as was the case at the last inquiry. It is argued that whilst the inadequacies of Southend Lane, especially its width, could be ameliorated by the improvements envisaged, it is questionable whether they would be adequate. It is suggested that more than two passing places are needed and that the mechanism for delivery is not assured. It is further argued that the passing bays and light would harm visual and residential amenity. There is also criticism that the width and geometry of the site access falls short of the necessary standards to provide access for 4x4 vehicles and vans, towing caravans and trailers, and this has led to overrunning and damage to verges by the access and along the lane and could damage or threaten the health of the mature trees either side of the entrance.
98. No technical evidence was brought by any party on this issue at the inquiry but I am mindful of The Hurlstone Partnership report of September 2009 and the conclusions of my colleague on the previous appeal. These can be summarised from paragraphs 7-15 of his decision as follows:
- Objection in principle on highway grounds is not justified given the potential to carry out improvements (this was the view of the Highway Authority at that time and still is);
 - Southend Lane is predominantly a single track, no-through road, without footways, serving about 16 or 17 dwellings, the nursery and the gypsy site;
 - No traffic counts were available but it was estimated that the use of the appeal site for 13 pitches would generate about 78 daily trips (6 per pitch) – an estimated increase of 62% when compared to the existing residential traffic (excluding any traffic generated by the nursery or agricultural use);

- There is a good safety case for the provision of three passing places (PP1, PP2 & PP3) but PP2 could have an adverse effect on the character of the lane in terms of construction works necessary;
- The appellant's reliance on the Quiet Lanes Circular, which allows for the shared usage of rural roads, is not directly relevant as it has a radically different purpose and does not address highway safety;
- On balance, having regard to the tension between improving highway safety and safeguarding amenities, 2 passing places (PP1 & PP3) and a street light would remove significant highway concerns.

99. I have not been presented with any new information which warrants departing from these conclusions, which were soundly reached on the basis of the detailed evidence provided. I did however make my own observations. The lane is relatively straight from the junction with Culver Street to the nursery and then bends slightly to the south. It therefore provides a reasonable level of forward visibility for oncoming vehicles. However on turning into Southend Lane from Culver Street the road is particularly narrow and constricted with evidence of verge damage, as noted by the previous Inspector. The proximity to a junction which has poor visibility when turning into the lane heightens the potential risk of conflict with other drivers and pedestrians. I therefore concur with my colleague that PP1, located close to the junction, is justified due to the number and size of vehicles generated by the appeal development.
100. It was also evident that there is verge damage along the lane up to the appeal site entrance. There is no way of telling that this is definitely due the vehicles operating from the gypsy site and I would expect that others using the lane particularly commercial vehicles coming and going from the nursery are likely contributors. However, it is reasonable to conclude that a significant amount of the wear and tear is due to the passage of the vehicles (4x4, vans and pick-up trucks) emanating from the gypsy site. I therefore agree that creating the passing place at PP3, roughly midway between Culver Street and the site entrance, is justified in order to provide a proper refuge for passing vehicles to use. This is a necessary improvement to safeguard the highway safety of road users. As regards the provision of a new street light I find this is warranted on safety grounds, particularly in order to minimise the risk of conflict between vehicles and pedestrians using the lane.
101. I have considered the concerns raised by RAID about the enforceability of the improvements. I appreciate that the construction of the passing places and the erection of street light would require a separate legal agreement to be entered into with the Highway Authority. However, the Authority is fully aware of what is being suggested having been represented by an officer (Mr Rose) at the last inquiry who was involved in the negotiations with the appellant's highway consultant over the details. There is therefore no reason to believe that what is proposed would be opposed and there is no suggestion that 3rd party private land is required for these improvements to be realised. With these findings in mind, and having regard to advice in paragraphs 39 and 40 of Circular 11/95, I am satisfied that the improvements can be achieved by the imposition of a suitably worded condition. Such a condition should require the submission of a new plan to show the precise details and location of the passing places and the street light and will need to take account of the requirement to obtain a highways agreement before the works can be undertaken.

102. Picking up RAID's additional concerns, I am in agreement with my colleague that the provision of two passing places and the light strikes an appropriate balance and would not lead to any material harm to the character and appearance of the lane or the residential amenities of those living along it. As regards illumination there is already limited street lighting at the western end of the lane and lights from the house windows are noticeable after dark. In this context I do not accept that one extra street light would cause material intrusion. It also needs to be borne in mind that an extra light would be beneficial to the residents in terms of their highway safety.
103. The final matter to consider under this heading is whether the geometry of the site access is acceptable. It is evident that the Highway Authority raises no objection on this basis and the previous Inspector commented in his decision under his 'Conditions' heading that significant improvements to the access would have the considerable disadvantage of resulting in the felling of a tree and are not specified. I have not been presented with any evidence to show that the access arrangements are deficient, despite the claims of RAID.
104. Some limited improvements such as extending the culvert, kerbing and the creation of a bonded surface of 5.5m wide for the first 10m of the drive, back from the carriageway edge were recommended in the previous highway consultant's report and the visibility standards in both directions were considered to be satisfactory. There is no evidence of any accidents involving vehicles turning in to or out of the site and the surface of the entrance apron appears to well compacted. For these reasons, I conclude that the access is acceptable.
105. Concluding on this issue, I consider that the concerns raised regarding highway safety on the lane can be adequately addressed by the imposition of conditions, a finding reached by the last Inspector. On this basis there would be no conflict with the second bullet point of Policy CSP.6 of the CS or any other relevant policy.

Living conditions of nearby residents

106. Objections on this basis are raised by both the Council and RAID. I have had regard to the correspondence submitted, which includes a bundle of e-mails and documents from residents put in at the inquiry, and the evidence of 2 local residents who 'appeared'. The previous Inspector found against the development on this issue but commented that he was doubtful that the use of the site itself would have any material impact beyond the four dwellings at the eastern end of the lane. His chief concern was the potential additional noise generated by the increase in traffic using the lane passing close to dwellings.
107. It is clear from my conclusions at paragraphs 47-51 above that I do not accept that the development would dominate the nearest settled community and that the national advice on this matter in paragraphs 12 and 23 of the PPTS would not be compromised. I will not rehearse the reasoning already given.
108. As to the objections raised, these focus on the extra traffic using the lane and specific incidents concerning a youth on motorbike on the lane, the escape of horses from the appellant's paddock, dogs barking/worrying pedestrians, commercial activity (possible dismantling of gas cylinders on the site) and police visits. There is also a claim that one of the site residents gave a false address (a house in Southend Lane) when being pursued for a fine. This is not

a matter within my jurisdiction. A lot of the residents' e-mail correspondence sent to the Council concerns complaints that conditions attached to the previous temporary planning permission have not been adhered to. This is a separate issue and the Council has powers to ensure that all conditions are complied with.

109. Given the likely increase in traffic generation associated with the use³³, I accept that noise and disturbance due to passing vehicles is likely to have increased since the use commenced, as is asserted by residents. I have no technical assessment of noise that quantifies this but it is reasonable to conclude that this is so given an estimated increase of 62% in traffic movements, including vans and trucks. However, the question to consider is whether the increase has caused unacceptable harm.
110. Southend Lane serves a number of dwellings and a substantial horticultural nursery. A local resident who spoke at the inquiry said that vehicle movements associated with the nursery were small (mini-vans) but given its overall size I find this to be curious and there are no figures of actual movements to back this up. Moreover this is not an isolated rural lane in the depths of the countryside but a road serving residences, some of which fall within the settlement boundary of the town. This is not to discount the views and experiences of residents living on the lane but is part of the overall context which needs to be taken into consideration.
111. As regards the incidents, I appreciate that the riding of a motorcycle at speed up and down the lane could be a source of disturbance but this seems to be a one-off event and something which the appellant indicated would be discouraged. The escape of horses on a number of occasions, which I understood led to them getting into gardens of nearby properties, would certainly be a nuisance but again the appellant is aware of this and is willing to provide more secure gates and fences to address this. Dogs can be a source of noise and this of course applies to other members of the local population that keep them. There are other powers available to deal with any statutory nuisance or threat caused by these animals and from what is before me this does not appear to be a serious or day-to-day problem.
112. I accept that commercial activity on the appeal site, given the proximity to dwellings, could be a source of disturbance but the incident relating to the possible 'breaking' of gas cylinders appears to be an isolated one. The appellant and the site occupiers who gave evidence at the inquiry accepted that commercial use, other than the parking of a van or truck, was not acceptable and indicated a willingness to accept conditions prohibiting such use and limiting the weight of commercial vehicles brought to the site to 3.5 tonnes. I acknowledge that conditions to this effect were imposed on the temporary planning permission granted. They, as with any conditions I impose, would be enforceable and the limited reference to commercial activity since the use commenced in spring 2009 suggests that any breach that may have occurred has been of an infrequent nature.
113. Another concern raised by the Council is the proximity of the proposed amenity space to the dwellings at the eastern end of the lane, especially Southcote Barn. The Council argue that the separation distance from the latter is only about 5m whereas for the appellant the distance advanced is 34m. It seems to

³³ Paragraph 98 above gives indicative figures

me to depend on the extent of the amenity space and the proposed soakaway shown on the land closest to Southcote Barn. I am aware that the Council's policy on amenity space is that an equipped play area should be provided for a gypsy site of this size. However, I consider that this does not have to be positioned adjacent to Southend Lane and that the details of an appropriate location could be conditioned.

114. There was considerable debate about whether the extra planting would mitigate noise emissions. I have no technical data on this and I am inclined to agree with the Council that this, unlike noise attenuation barriers or bunds, would only have a limited benefit in terms of noise reduction. Nevertheless what is proposed with the Appeal B proposal – which includes the extra land and two lines of structure planting - would be advantageous to some degree in this respect and would also help to reduce the visual impact of the development on nearby dwellings.
115. Bringing these findings together, I consider that the development has and would continue to have a noticeable impact on the amenities of nearby residents living on Southend Lane. Nevertheless, I find that with the imposition of appropriate conditions, including one concerning the location and details of the amenity space and any play area/equipment, that the development, with the proposed mitigation measures, would not cause material harm to the living conditions of local residents. As a consequence, I find that the proposed development (Appeal B only) would be compliant with Policy H.10 of the SP and the first and last bullet points of Policy CSP.6 of the CS.

Drainage and flood risk

116. The Council refused the planning application (Reason 5) on the ground that there was insufficient information supplied to properly address the effectiveness of the proposed foul drainage system. This objection was subsequently withdrawn and no evidence was called by the Council on this issue. The SoCG (paragraph 21) states "Drainage matters can now be dealt with by condition in relation to the s78 appeal".
117. RAID object arguing that without percolation tests being conducted, prior to the grant of any planning permission, it has not been demonstrated that the proposed package treatment plant and soakaway would be an acceptable drainage solution. It is claimed that the site and surrounding land are prone to flooding/waterlogging due the clay and shale sub-soils and that this could lead to the conclusion that a drainage proposal relying on filtration and percolation, is unacceptable. For the appellant these claims are refuted on the basis of the lack of any objective evidence of flooding, the location within a Flood Zone 1 (low risk), the fact that shale is a porous material and the option of using sealed units, as on site at present, if the proposed solution is found to be unacceptable.
118. The Environment Agency, the body primarily responsible for advising on such matters, commented at the planning application stage that it was not intending to make formal comments as this was a lower risk proposal which was actually outside Source Protection Zone (SPZ) 1 and that direct consultation in these circumstances was not necessary. Various 'informatives' were added but there is nothing to suggest any concern regarding drainage or flooding. Severn Trent Water also raised no objection subject to the submission of drainage details.

119. RAID mounted similar objections at the last inquiry. The Inspector addressed them finding the claim that the Environment Agency was objecting was erroneous and that the matter was being left with the local planning authority to decide. Whilst he was critical of the Flood Risk Assessment (FRA) he concluded that he was doubtful that the matters likely to arise would constitute objections in principle and that any deficiencies in details would not be grounds for dismissing the appeal.
120. Having regard to the fact that the development is not recognised as coming within an area prone to flooding and given the location outside SPZ1, I consider that there is no conflict with the advice in paragraph 11(g) of the PPTS and the claims of RAID are not substantiated. Some residents assert that the land in the area floods on occasions and some photographs have been provided showing waterlogging in fields. It is argued that the appeal site was a water meadow but again this is a mere assertion and the fact that it is not in a higher risk flood zone renders this assertion questionable. Ponding of water may occur on occasions at times of heavy rainfall (pluvial saturation) but, despite the very wet summer in 2012, there is no evidence to show this has caused a significant flooding problem in the vicinity.
121. The Design and Access Statement (Section 4) explains what is intended to deal with foul drainage and this is supported by the details shown on the proposed layout plan. The information provided remains limited and, as far as I am aware, no porosity test has yet been carried out. However, from what is before me, it appears that the drainage system advanced is at least a possible workable solution. Views on the permeability of the sub-soil differ but the lack of serious flooding incidents suggests to me that a soakaway or filtration bed may be appropriate. As the nearest foul drainage main is in Culver Street it seems likely that there are a number of houses in Southend Lane which are already dependent on alternative drainage solutions and if this was causing problems I would have expected the Council or the Environment Agency to have said so. Moreover, whilst not a desirable solution, sealed units such as cess pits could be installed instead.
122. In all of these circumstances, my conclusion on this issue is that an acceptable foul drainage solution is likely to be achievable and this can be addressed by means of the imposition of a condition. I am also satisfied that there is no proven concern of the site flooding and so there is no material risk to the safety of the site occupants in this respect. For these reasons I consider that the relevant requirements of Policy F.1 of the SP and Policies CSP.1, CSP2 and CSP.6 of the CS would be met, as would the national policy on flood risk set out in Section 10 of the Framework.

The general need for and supply of gypsy sites

123. A number of attempts were made at the inquiry to reach agreement on need figures without much success and fundamental differences remain. However, it is important to set out what was agreed between the appellant and the Council. This comprises two schedules³⁴: one setting out the pitches in existence in Forest of Dean as at January 2007 - the same year as the last available Gypsy and Traveller Accommodation Assessment (GTAA)³⁵ covering the District; the other, the pitches in existence at November 2012.

³⁴ Doc G4

³⁵ GTAA Report for Gloucestershire (October 2007) – compiled by the Ark Consultancy – Appendix 15 (Hillier)

124. For 2007 the figure calculated is 47 pitches and includes sites with permanent and temporary permissions and unauthorised sites. The greatest proportion of pitches contributing to the total are those identified at Woodlands Park, Bromsberrow, adjacent to Junction 2 the M50 motorway. Planning permission was granted on 19 November 2001³⁶ for "Continued use of land as a Gypsy Caravan Site with longer occupational period". I understand that the earlier 1987 and 1991 permissions referred to in Condition (b) related to holiday homes usage. Be that as it may, whilst there is disagreement as to whether Woodlands Park functions as a 'transit' or permanent gypsy site there is no dispute that it is used by gypsies. The decision included condition (k) which stated that no more than 48 caravans shall occupy the site and condition (l) which only allowed continuous occupation for 6 months and no return within 3 months. This latter condition is the root of the argument over whether the site has operated as a transit facility or not.
125. The 'agreed' schedule for 2007 provision, whilst acknowledging that the condition specifies up to 48 caravans Woodlands Park, includes a figure of 28 pitches/households drawn from the GTAA (Appendix 2 – p.8). The Council, notwithstanding the original indication of agreement, challenge this figure on the basis that the use of this site has been for transit use only and should therefore be excluded from the 2007 total for permanent pitches. I appreciate that the GTAA may contain some errors in methodology, as was accepted for the appellant, but I have no reason to dispute the figure calculated by the consultants at the time. The entry of both 28 caravans and 28 pitches is rather unusual given that gypsy pitches often have more than one caravan on them but the Council bring no tangible evidence to rebut the figures.
126. The second schedule for 2012 indicates provision of 59 pitches in total made up of 32 permanent pitches, 3 temporary pitches (Oak Tree Park, Churcham) and 24 unauthorised pitches (Southend Lane and Horsefair Lane, Newent). The 32 permanent pitches include 20 at Woodlands Park which is predicated on a planning permission granted on appeal on 22 September 2011 for this number, plus 15 transit pitches, the latter restricted to 6 months occupation and no return within 6 months thereafter (a variation of the previous condition).
127. Before coming to the differing assessments it is worth noting what other Inspector's have said in recent appeal decisions in the District. The Inspector who dealt with the 2011 appeal for Woodlands Park accepted that 30 pitches were shown as needed in the 2007 GTAA and that since then only 4 new pitches had come forward leaving a shortfall of 26 pitches. This is corroborated by Inspector Baldock who commented³⁷ "It is agreed that the current need is for 26 additional pitches" based on the GTAA figure allowing for the 4 extra pitches permitted since 2007. This outstanding local need he found to be of significant weight and it was unlikely to be met for some time. It seems that the Council have now retracted from the formerly 'agreed' position primarily due to their views on the nature of the use of Woodlands Park and Horsefair Lane – a 'tolerated' site which is argued as being for occasional transit use.
128. In terms of assessment the appellant's witness (Mr Green) provided a schedule, with corrections based on oral evidence, which applies the methodology used in the 2007 GTAA – with the exception of the exclusion of any entry for pitches expected to become vacant. This is reasoned on the

³⁶ Doc C26

³⁷ Paragraph 39 of his decision

basis that if you allow for vacancy due to out migration then a figure should also be included for in migration. It is safer therefore to exclude both. To summarise the figures the total number of families estimated in 2007 is 58, including 28 at Woodlands Park. With only 3 pitches authorised in 2007 at Churcham, the shortfall is calculated at 55. Allowing for household formation from 2007-2012 (3% compound growth) 10 pitches are added giving a total of 68 (58+10) pitches needed by 2012. With 32 permanent pitches with permission (includes 20 at Woodlands) there is a net shortfall of 36 pitches. With a further addition for household growth the shortfall figure is calculated as rising to 46 by 2017.

129. The Council's assessment was explained in oral evidence by Mr Hillier. His approach is to discount altogether those gypsy households that may have been residing at Woodlands Park in 2007. The basis for this is that either it was a non-gypsy caravan site or that if gypsies were using the site it was for transit purposes only. A figure of 11 gypsy households occupying permanent pitches is put forward based on the 3 at Churcham plus 8 at Cinderford – which was a gypsy site owned by the County Council but has now closed. The household demand at 2007 is reduced to 15 by deducting both the Woodlands Park and Horsefair Lane sites – the assumption being that they are 'transit' users. Deducting the 11 pitches in existence and 4 more said to have been permitted at Hillview, Dymock in 2007, the shortfall at that date is claimed to be zero (0). Allowing for household formation and the supply figure of 32 pitches (Woodlands Park and Churcham) it is calculated that there was no shortfall and a surplus of 11 pitches in 2012 and that the surplus would be one pitch in 2017, if no new pitches come forward by that date.
130. I consider that the Council's assessment is unrealistic and at odds with the findings of previous Inspectors. It seems to me to be a manipulation of the figures which relies on the assumption that it is acceptable to simply set aside the pitches at Woodlands Park and Horsefair Lane as elements of need but add in 20 pitches as new permanent pitches at Woodlands Park which contribute to the supply side of the equation. If this were a totally new site which was being created this would be sound but it is not. From the evidence provided by Walter Wilson (co-owner), which I will consider below, and some of the appeal site occupants who have lived there, it is apparent that a number of those residing there have not been fleeting 'transit' visitors passing through but those who have stayed for significant periods of time with many returning year-on-year.
131. In terms of Horsefair Lane, the respective planning witnesses give differing accounts of how it is used and by whom from their discussions with a Mr Kenyon, the County Council gypsy liaison officer. Therefore, nothing conclusive can be drawn from this evidence as he was not called as a witness to clarify his views. However, this site was included in the 2007 GTAA. The Council say it should not have been but bring no evidence which proves that the site is not used for permanent accommodation. The nature of the occupants being new travellers is irrelevant as 'travellers' by definition come within the definition of gypsies and travellers. The Council assert that such travellers like to move freely and have a preference for transit sites. There is no evidence to substantiate this claim and travelling from time to time is typical of all travellers, gypsies or otherwise. Travellers also seek a permanent base to return to and there is nothing before me to demonstrate that those living at Horsefair Lane do not see their site in this manner. Moreover this site has

been in existence for a number of years (former Council depot) which does not suggest that it is something ephemeral that is about to disappear.

132. I carried out my own inspection of this site from public vantage points (the highway and a public footpath to the rear). I observed that it was packed with about 10 touring caravans and 4 lorries or lorry bodies converted to residential units (chimneys installed through the roofs). This would reasonably equate to 11 pitches although there did not appear to be any specific pitch designation. There is one large 'nissen' hut and some other sheds at the rear of the site which could be in use for ancillary purposes. Based on these observations, the site does not have the character of a 'transit' type site but the air of a permanent base for a significant number of traveller families. This view is reinforced by the fact that my observations are made in the winter, when travelling to fairs, shows and festivals is likely to be at a minimum. If the use was genuinely for transit purposes then I would not have expected the site to be so intensively occupied at this time of the year.

133. As regards Woodlands Park, from the evidence of Walter Wilson, the following points can be drawn:

- He bought the site with co-owner (Mr J Baker) in 1992 when it was a holiday park for about 72 touring caravans but has operated it as a gypsy site for about 19 years;
- The condition (l) attached to the 1998 has sometimes been breached with some travellers staying for 9 or 12 month periods;
- Rents (normally weekly or monthly) have been paid by occupiers for pitches even when they have gone away travelling or to comply with the 6 month occupation limit in order to ensure that the opportunity to return is not lost;
- Historically families have returned and two families have been renting for 19 years; some residents have been there for 10 or 12 years with their children in local schools;
- This was a transit site but planning permission was sought for permanent pitches – the 20 now permitted – as there was a demand for these and there still is due to lack of sites;
- At present the 20 permanent pitches are full with only 3 spare transit pitches;
- The site flooded badly in 2007 and this led to evacuation; since then the site has not flooded although there was a 'false alarm' which led to some families moving off in November 2012; improvements have been made to address potential flooding, including the creation of a raised walkway and others are in hand;
- He could not say whether there were 28 caravans on the land in 2007; changes from day-to-day;
- He could not say how many longer term residents there were at present but predicted that when the improvement works are completed all will be occupying on longer term basis.

134. The Council argue that the site is still set up as a transit site and that previous visits by their enforcement officer have not suggested otherwise or that the condition limiting the period of occupation was or is being breached. This officer was not called to give evidence and the claim is at odds with Mr Wilson's evidence that the site has been functioning primarily as a permanent site for many years. I have no evidence of weight to set against that of the co-owner that the demand for permanent pitches is strong and that none are available at present. Mr Wilson accepted that pitches could become available as people come and go. However the overall tenor of his evidence was that demand for permanent pitches is high and unlikely to decline unless further provision is made elsewhere in the locality. Given his experience of operating the site for 19 years I consider it is appropriate to afford his views considerable weight.
135. The Council wonder why an application for permanent planning permission was sought if the site was not operating on a transit basis. The 2001 permission was described as the continuation of a use as a gypsy site with no other qualification in the description. Condition (l) is said by the Council to mean that the use could only be for transit purposes but I agree with the submission for the appellant that this is not necessarily the case. Being able to stay there for 6 months is a substantial period and by staying away for 3 months – possibly during the summer peak travelling period – the condition would have been met. Occupation of the site for 9 months out of 12 does not, in my opinion, correlate to a transit site – which typically is a site to which gypsies tend to resort when travelling through an area. Moreover, whatever the Council may deduce from the wording of the permission, the actual nature of the use described by Mr Wilson has been fundamentally different from the primary use as a transit site.
136. In terms of the more recent 2011 permission for Woodlands Park it is apparent that this only lawfully allows for 20 'permanent' pitches and this would be a reduction from the 28 given in the 2007 GTAA. The other 15 permitted are specified as transit pitches but they can be used for a 6 month continuous period before they must be vacated for 6 months. I accept that if 28 permanent pitches were needed based on demand it is curious that only 20 were sought. However, this may be to allow some flexibility. Conversely the fact that 20 permanent pitches have been provided and are said to be occupied by Mr Wilson leaves little doubt that they are needed for this use.
137. This is not an exact science, but based on the above reasoning regarding Woodlands Park and Horsefair Lane, I consider that the Council's approach is likely to significantly underestimate the need for pitches. Neither Horsefair Lane nor Woodlands Park is likely to provide a significant number of new permanent pitches for gypsies and travellers living in the area who need a base. If Woodlands Park is discounted, the actual number of additional pitches permitted since Inspector Baldock's decision was reached is 5 at Blakeney but this is said to be for the Buckland family. Whilst it might provide for others it still falls well short of the 26 extra pitches agreed as being needed by the Council in 2009 and the higher figure 36 pitches calculated for the appellant.
138. I have had regard to the possibility of new pitches coming forward at Churcham and Huntley as part of the DPD Allocations process. However, they are not pitches which are suitable and available to meet present need, even if they do eventually contribute to supply for the period up to 2017 and beyond.

139. My conclusion on this issue is that there is a significant shortfall in the supply of sites and pitches when assessed against the need requirement set out in the GTAA. This conclusion is consistent with that of my colleagues who have dealt with appeals regarding the Southend Lane site and Woodlands Park. Despite criticisms of the GTAA, I have no other published, objective and up-to-date assessment of need from which to draw conclusions.
140. In policy terms, Paragraph 9 of the PPTS sets out what local planning authorities should be achieving through the Local Plan process. This includes a supply of specific deliverable sites sufficient to provide five years' worth of sites against locally set targets and the identification of a supply of specific, developable sites or broad locations for growth for 6 to 10 years and, where possible, 11 to 15 years. The five year period would now go up to 2018 and from what is before I do not consider that it has been demonstrated that the need that is likely to arise for this period has been met. The Council may be seeking to move towards that position through the DPD process but it has not yet done so. This amounts to a failure of policy which, according to court authority, is a legitimate material consideration which adds weight in favour of allowing the appeals.

Accommodation needs of the site occupants - alternatives

141. I will summarise the facts concerning each occupant based on their witness statements and the evidence given at the inquiry. The only person who did not appear at the inquiry is Sarah Sykes (Plot 6) but she has provided a signed/dated witness statement.

Ricky Jones Snr – the appellant – Plot 1

142. Mr Jones's wife, Alice, is a co-owner of the appeal site³⁸. He has effectively taken the lead role as coordinator and appellant in pursuing the use as a gypsy site. He claims in his statement that the site occupants are "all one big extended family". However, it is clear from his oral evidence that he does not know some of those named to be residents (e.g. Sarah Sykes) and is only related to some. Others are said to be good friends with whom he socialises but some he did not appear to have any day-to-day relationship with and was not able to say when they came to the appeal site. He said that the price paid for the appeal land (site itself and paddock) was about £50,000 with all the occupiers paying a contribution towards this.
143. He explained that he and his wife and two twin children (7 years old) reside partly on the appeal site and partly on a smaller site, he co-owns with his wife, known as the Much Birch site, in Herefordshire³⁹. When I visited the appeal site there were two caravans on Plot 1 but Mr Jones said these were not his but belonged to friends. His children attend a local school near Much Birch, which he and his brother attended, and his wife wishes them to stay there unless permanent permission can be obtained in Newent. If this happened he says they would be transferred to the primary school (Picklenash) in Newent.
144. He was asked to explain why he needed a pitch on the appeal site if he had the option of living on the Much Birch site where he has lived for some time and

³⁸ Owner's names from Land Registry title record are Alice Jones, Albert Evans, Jolene Jodie Frankham and Leanne Jean Small. It is only claimed that Alice Jones currently resides at the appeal site from time to time and that Albert Evans did for a short period after the site was brought into use

³⁹ The official address given in documents is land opposite Oaklands, Hereford Road (A49), Cross Collar, Llandinabo (Much Birch), Herefordshire, HR2 8JA

which he said he bought about 18-20 years ago. He argued that he could not rely on this site being available as there was no planning permission for its use despite repeated and ongoing attempts to obtain permission. The stumbling block is the Highways Agency holding direction that planning permission should not be granted due to objections concerning the access onto the A49 trunk road. I was provided with documentation which confirms that such a direction was made on 6 August 2012, and was renewed on 31 October 2012 (both for 3 month periods). The essence of the objection is set out in a letter dated 6 August 2012 from the Highways Agency to Herefordshire Council commenting on the latest planning application and relates to substandard visibility and access via a lay-by, both of which are said to be in contravention of the relevant requirements in the Design Manual for Roads and Bridges, which imposes standards on access to trunk roads.

145. From what is before me, and notwithstanding the evidence that Mr Jones, his wife and their young children and his older daughter Stephanie and son-in-law Anthony Williams reside at Much Birch for large parts of the year, it cannot be said to be a suitable and available site unless planning permission is granted. Whilst this may happen, should the Highways Agency be persuaded to lift the holding objection as a result of negotiation, it is certainly not guaranteed. I therefore conclude, despite its frequent use, it is not a genuine alternative at this time.
146. Mr Jones was also asked about other land or sites with which he is associated which could provide alternative accommodation. There was reference to land at Leddington, near Dymock. He said he owned this in about 2004-2005 but it was sold and never had planning permission as a gypsy site. On this basis I am satisfied that it is neither suitable nor available as an alternative. He has (or had) an interest in land in Bristol where his younger brother and family live which has a temporary planning permission. However, he said that this was only one pitch and was too small to accommodate his immediate family as well. I have no evidence to gainsay these claims and therefore I find it is not a realistic alternative.
147. There was also a claim by RAID that a suitable site could be found in Wales – this being the address⁴⁰ given on the appeal site Land Registry title and planning application certificate for his wife. Mr Jones said that this was his father's property and that the address used was a 'mailing address'. Whilst it does seem curious that this address has been used regularly by Alice Jones (possibly used as a secure address for important documents) I have nothing before me that indicates that this is a genuine or realistic alternative. Overall, I find that there is significant substance to the claim that at present there is no suitable, available and deliverable alternative for Mr Jones Snr in terms of accommodation.
148. I should also deal with the assertion that Mr Jones is not simply interested in his own needs but is a 'developer' in the sense that he goes around the country seeking to obtain planning permission for other gypsy families. Firstly, I do not see this as objectionable in principle as there is no doubt that there is a general need for more gypsy sites throughout the UK. If he is doing so it is no more than the role performed by many agents and any development would still need to be acceptable having regard to planning policy and other material considerations.

⁴⁰ The New House, Four Crosses, Llandrinio (or Llanymynech) Powys, SY22 5RL – post code corrected to SY22 6RL

149. Secondly, from what is before me there is no strong evidence that this is the case. The fact the he owns or has owned pieces of land in various places which have been bought to meet the needs of his wider family is not surprising or unusual as this is often the case with gypsy families who are seeking to find a site which they can legitimately reside on. It is matter of fact that this quite frequently does not lead to a successful outcome with land being sold on. Thirdly, the fact that he is part of a larger group of gypsy families – some of whom are relatives - wishing to live in the area and who have come together on Southend Lane to support one another is not surprising given my conclusions on general need in the area.

Ricky Jones Jnr – Plot 2

150. His evidence indicates that he has resided for most of his life on the Much Birch site and went to the local school until he was 13 years old. He is intending to marry Sam Lee's (another site resident) daughter and wants to have his own plot rather than sharing at Much Birch. He said he did not want to return there but preferred the Newent site. There is no indication that he has another option and Much Birch is not a genuine, lawful alternative at this time for the reasons given above. It cannot therefore be relied upon to provide suitable accommodation even if it is large enough to accommodate the caravans of his father and sister Stephanie and family as well.

Sam Lee – Plot 3

151. He and his family came to the appeal site in 2009 as one of the original group of occupants. He had previously resided for about 6 years at Woodlands Park but left on 2007 due to fears of flooding. In the intervening period he had resorted to his uncle's site in Swansea where work was available. That site has been occupied for about 30 years has 4 pitches but no planning permission. His early life was spent in South Wales (Cardiff and Swansea areas) but he does not want to return there. His father-in-law, who recently passed away, had a site near Hereford but there was no accommodation there. His oldest son has lived with his wife's family on a site with planning permission for 6 pitches in Staffordshire since August 2012. This is owned by his son's father-in-law but he said it was full and he would not feel good about living there even if a pitch became available. He is a cousin of a number of the appeal site residents, including Rylie Stevens who he travelled around with prior to coming to Newent.

152. His three younger children attended Bromsberrow Primary School when he was on Woodlands Park and when moving from there his children went to Minsterworth School for a time – where his cousin resides. The older daughter is now working in a café in Newent and the son works with Mr Lee. The younger daughter is presently home tutored and has worked in local hairdressers shop.

153. The evidence indicates that Mr Lee has resided in a number of different places and came to the Gloucestershire area from South Wales about 15 years ago. There is no clear evidence that there is a suitable, available alternative pitch at Woodlands Park, or where he previously resided or on the sites mentioned in Staffordshire or Swansea and the latter seemingly does not have planning permission, despite its existence for 30 years. I conclude that it is possible that there may be an alternative but nothing which shows that this is definitely the case. I appreciate that he expressed his desire to stay in the

Gloucestershire area as a preference but given his relationship with a number of the Newent site occupants and the fact that he has been living for large periods of time in this area for the last 15 years this is understandable.

Anthony Williams – Plot 4

154. This plot was occupied by Joleen Frankham, one of the co-owners of the site, for a short period before the last appeal. Mr Williams took it over from her. He is married to Mr Jones Snr's daughter, has a young daughter of his own and has split his time between the Much Birch (registered at doctors' surgery there) and Newent sites since coming into the family. Prior to that he was living with his parents on a pitch in Weston-Super-Mare. One of his siblings has a pitch at Moorland Park (permitted 40 pitch site) which he has 'doubled-up' on in the past but he claimed this site was full.

Billy Williams – Plot 5

155. The uncle of Anthony, he came to the appeal site with his wife as part of the original group. Before that he was living on a site in Staverton for about 2-3 months which has closed down ("asked to leave") and before that at Woodlands Park which he vacated due to flooding (but he was not there when it flooded in 2007). His 4 children (ages 28-32) are all independent with 3 living on sites in the London area and one on a site in Birmingham. This is in contradiction with his witness statement which says they live around the area. He said these sites were all full based in enquiries he made of his children around Christmas 2012. He is registered at a surgery in Newent. There are some inconsistencies in his evidence but no other counter evidence that shows that there is an available alternative pitch he can resort to.

Sarah Sykes – Plot 6

156. There was a touring caravan on this plot when I visited but I was told this did not belong to Ms Sykes. In her statement she claims to live alone (no partner or children) and has lived permanently on the site for about 6 months - and on and off before that. She states she is clinically depressed and is registered temporarily at the Newent surgery. She is not related to any of the other site occupants but considers them to be close friends who help her and that the site provides a stable supportive environment.

157. I have no details of her places of residence prior to coming to the site. No other witness was able to explain her absence from the appeal site or where she might be living and a number seemed to not know who she was or when she came to the site, which calls into question the claims of close friendship. The totality of the evidence causes me to doubt her personal need to reside on the appeal site.

Adam & Ashley Evans - Plots 7 and 9

158. I will deal with these plots together as there is no physical barrier between them at present and the occupants are two brothers whose evidence overlaps. By way of background I understand that their cousin, Albert Evans the co-owner of the appeal land, was occupying Plot 2 but also had Plot 9 and it is through his ownership and financial support that Adam and Ashley have come to the site. An older brother, Billy, was also occupying one of the plots from time to time (probably No.9) but he and Albert are now living on a gypsy site at Shirenewtown.

159. Adam, who is married with a young son, came to appeal site in 2009 from the Shirenewtown site where he grew up and went to primary school, as did Ashley. His mother is still there and his father is away travelling. His brother Ashley came to the appeal site soon after to help with fencing work and was at first living in Adam's caravan but now lives in his own. Prior to that he had been on the Minsterworth site for a few months or with friends and family. Adam is still registered with a doctor in Cardiff.
160. It is evident that the Evans family have strong associations with the Cardiff area and the Shirenewtown site. It is claimed that there is some family relationship with some other site residents – Mr Jones Snr agreed Albert was his nephew on his wife's side of the family and Adam was a first cousin. However, the principle reason for the brothers coming to the appeal site appears to be because of their cousin Albert's original involvement in purchasing the land and not due to any particular association with other gypsy families on this site or due to working connections with the local area. Nevertheless, they claim that the Shirenewtown site is full and that there are no other alternatives other than doubling up or resorting to an unauthorised roadside encampment.

Plot 8 – Tom Birmingham

161. He lives on this plot with his wife and six children, for which he has paid a contribution, and has known Ricky Jones Snr for about 15 years and some of the other site residents. His brother Martin Birmingham Snr was on the site when it was set up. Martin Snr is presently residing on a site at Beausale, Warwickshire but this has no planning permission and is subject to an enforcement notice with the compliance period now expired. Prior to coming to the appeal site Tom lived on Annie-May's site at Over, Nr Gloucester (about 2 months), before that a site at Bulkington, Nr Coventry (about 1 month) and before that Worksop (4-6 months). He left the latter as this was "over-run" with Irish gypsies.
162. He also had an interest in a site at Eckington, Nr Tewkesbury but could not get planning permission and had to vacate as enforcement action was taken and an injunction served. He also unsuccessfully sought planning permission for a site near Cricklade in Wiltshire. Although subsequently permission was obtained on appeal he was no longer involved at that time and the price of the land (£1.5m for 10 pitches) was said to be beyond his means.
163. His two young daughters were attending Picklenash Primary School but one of them did not get on with her teacher and so they are currently being home tutored. However, the preference of the parents is that they go back to school. Tom deals in scrap metal but said that he uses a licensed site elsewhere and does not store or sort materials on the appeal site.
164. This background suggests that Mr T Birmingham has been seeking a lawful site for a number of years but has been unsuccessful or has left sites (Worksop) due to concerns about the safety of his family. From what is before me I cannot be certain that there might not be a possible alternative but the probability is that there is nothing suitable and available at present to meet his family's needs.

Plot 10 – Rylie Stevens

165. He lives on this plot with his wife and two daughters (19 and 16 years old) – his son was also living there but is now in prison. He has lived all his life in Gloucestershire and Herefordshire areas. Before coming to the appeal site he lived on a Council-owned site on the edge of Hereford for about 4 years – which he left due to falling out with another family living there. Before that he was on Woodlands Park but left this when it flooded in 2007. Prior to that he referred to living on another Council-owned site in Tewkesbury where his daughters were schooled. He is a distant relative of Ann-Marie Davies and is close friends with some of the other site residents.
166. This background indicates that he has found accommodation elsewhere on lawful sites in the past but has chosen for personal reasons to vacate. The desire to have his own pitch on a private site is understandable although it is not clear to me whether there would be the opportunity of returning to the Hereford site. He explained that Woodlands Park was full, with no spare pitches, based on a recent visit and conversations with friends residing there. This accords with the evidence of Mr W Wilson. He has been registered with one local estate agent but this has not led to finding anything suitable.

Plot 11 – Anne-Marie Davies

167. She lives on this plot with her 6 children aged from 4 to 15 years and is separated from her husband. Her roots are in South Wales and some of the children attended school in Pyle when she lived on a shared pitch there. She was living for about 5 years (2006-2012) in a house in Bridgend and the family are still registered with a doctor there. She did not like living there as she felt boxed in and did not get on with the neighbours. She also referred to staying for periods on a site in Moreton Valance⁴¹ and Woodlands Park and on her father-in-law's single pitch in Bidford-on-Avon.
168. It seems that she came to Newent on the initiative of her father Thomas Mochan who although not a registered site owner made a financial contribution on her behalf. He knew Ricky Jones who is a relative. Her pitch has been occupied by another person (Thomas Ellis) and possibly her parents since the site was established. Some other site occupants are distant relations. Three of her children are attending schools in Newent and her older daughter is hoping to attend a local college. Ms Davies suffers from depression and has been on anti-depressants and her youngest son (now 7) had a heart operation when he was a baby, still has some breathing problems and needs 6 month check-ups with a doctor.
169. This background shows that Ms Davies does not have a longstanding connection with the Newent area but South Wales and has chosen to come here as a matter of preference with the support of her father. However, there is nothing to show that she has access to another suitable or available pitch and her needs, and those of her young family are considerable. When I visited there were 3 caravans on her Plot 11. She did not say she had an aversion to living in a house as such but it is clear that this is undesirable given her past experience and mental health issues and this suggests to me that this is not a realistic solution. As she is estranged from her husband the Bidford site is not a plausible permanent alternative and it was only said to have one pitch.

⁴¹ Planning permission recently granted there for 20 new pitches

Plot 12 – Tom Wilson

170. He has this plot which he 'bought' from his wife's uncle, Jim Varey, who was occupying previously and has been there for about 2 years. However, he is presently staying in his caravan stationed in his uncle's garden on the outskirts of Lincoln. The reason for this is that his wife has recently had a major eye operation at Nottingham Hospital and needs to see the specialist about 3-4 times a month. He has 3 daughters and they have received some home tutoring, including whilst away in the Lincoln area. He said his younger daughter was registered at Picklenash School still but she is now 12 and therefore would be due to attend secondary school.
171. Mr Wilson's evidence of where he was living prior to coming to the appeal site was vague. At one point he said he last lived on the Over site but then corrected this to The Woodlands site, where he was for 5 months. His statement refers to a history of living around the Gloucestershire area without further details. There is also reference to another gypsy site at Minster Lovell, Oxfordshire where his mother lives. She is in poor health having suffered a stroke and is currently being cared for by an elderly uncle. Mr Wilson would like her to come to the Newent site instead so he can look after her. He is related through his wife to the Birmingham.
172. His evidence was lacking in credibility to a degree due to inconsistencies and it is not clear to me how long he can or intends to stay in the Lincoln/Nottingham area. However, there is no evidence to show he has an alternative permanent pitch in the Gloucestershire area, which is where he has lived historically.

Plot 13 – Martin Birmingham Jnr

173. It is accepted that Martin's father was in occupation of the site originally (Plot 6 and/or Plot 13) before moving off to the Beausale site in Warwickshire and Martin Jnr then remained behind on Plot 13. He is 20 years old and intending to get married later this year. He was living with his family on the Over site for about 6-7 months prior to coming to Newent and before that he was unsure, although he recalled attending primary schools in the Gloucestershire area until the age of 10. He deals in vehicles but claims that this will not result in storing cars on the land except for the occasional vehicle parked over night. Tom Birmingham and Tom Wilson are his uncles.
174. There is nothing to indicate that he has access to another lawful gypsy site. The one in Beausale which his father has an interest in is subject of an enforcement notice. It was asserted that this might lead to his father returning to Southend Lane but Martin Jnr said that his two caravans could not be accommodated on Plot 13 along with his own. Given that this is the smallest pitch this is a reasonable point.

Other sites in the area – possible alternatives

175. The Council's position is that many of the site residents have no long-standing connection with the area and have come to the site as a preference from other locations, particularly South Wales. It is also submitted that only some of them are likely to have been included in the 2007 GTAA whilst others are new 'migrants' who have left previous sites and some have no or only tenuous relationships with other site occupants. It is evident that a number have indeed moved from Wales (the Evans brothers, Lee & Davies) but the majority appear to have strong associations with the Gloucestershire and Herefordshire

area where they have spent large parts of their lives. Moreover, there is no policy test that only requires the needs of those who have always lived in a certain area to be met. Migration does occur and often due to the difficulty in finding a suitable and available pitch.

176. I also consider based on the evidence of the occupants and my own observations that, with the exception of Ms Sykes, they all either reside or desire to reside on the appeal site. The position of Mr T Wilson is somewhat uncertain, given his wife's health, but he did not say that he would not be coming back to Newent. The legitimate questions to therefore pose are where will the site occupants go if they have to vacate the site and what, if any, are the realistic alternatives.
177. The evidence before me, notwithstanding the Council's claims, is that Woodlands Park is either full or offers only minimal opportunity to accommodate a few of the residents. The Council have produced no telling evidence that contradicts Mr W Wilson's claims that there is little or no spare capacity. I accept that a number of the residents of the appeal site lived there previously but they do not any more and if the pitches they had are now occupied by others, as seems likely, this means that they are not able to return. The laying out of the new 20 permanent pitches is no solution if those living there at present take them up as Mr Wilson suggested. Hence, I consider that Woodlands Park is not a genuine alternative to meet the residents' needs.
178. Horsefair Lane appeared to me to be fully occupied and there is no suggestion from the Council that this would provide a realistic alternative. The Council argue that the planning permission granted for 5 additional pitches at Blakeney⁴² which is currently being implemented could provide. This is countered as being a site which is specifically described on the decision notice as being for the Buckland family. This being so, and there is no persuasive evidence to set against it, this expansion of an existing extended family site is unlikely to deliver pitches for others. There is some mention of the Cooks Lane, Redmarley site but I have no details to show that this is genuinely available and not already accounted for in terms of occupation. Even if were it would only provide one pitch (2 caravans limit by condition) and so could not satisfy the overall need. Much Birch is also not 'available' as a lawful site at present for the reasons given above.
179. There is then the suggestion that two sites in Stroud District could meet the need. Whilst I appreciate that there is inevitably some overlap between adjacent local planning authorities in terms of need and supply, the sites in Stroud are essentially there to meet the needs of that District and not those of the Forest of Dean. I am mindful of the correspondence between Mr Hillier and a planning officer (Conrad Moore) at Stroud DC which provides details of the sites at Moreton Valance and Naas Lane, Brookthorpe and the appeal decision⁴³ dated 24 June 2010 concerning the latter.
180. Planning permission has been granted for 20 additional pitches at the Moreton Valance site and I understand that works have commenced. However completion is not anticipated until spring 2014 and so the pitches are not presently available. Moreover, these are likely to be required to fulfil the need identified in the last GTAA, which the Inspector who dealt with the Naas Lane

⁴² Hillier – Appendix 18

⁴³ APP/C1625/A/10/2122339 – Mount View Caravan Site

appeal said may underestimate need and which is now out-of-date. I do not have any new GTAA (a possible start for this in March 2011 was mentioned by the Inspector) and consequently I do not consider it is possible to conclude that the required 5 year supply is met and the pitches at Moreton Valence are surplus to requirements and can accommodate those at Newent.

181. The Naas Lane permission is described by the Inspector as being for the appellant (Mr Buckley) and his family who was proposing to occupy the 3 extra pitches. The correspondence between the planning authorities suggests that this may have changed as only 15 pitches on the whole site are accounted for in ownership terms leaving 4 'spare'. There is a disagreement as to whether spare actually means available to others or whether there are 'occupiers' who might be away travelling. I cannot draw a definitive conclusion on this and it may be that there is some pitch availability there. Nevertheless, it would only provide for a minority of the appeal site residents if genuinely available. Furthermore, I note that this private site is currently "under the control" of the Irish Traveller Community and this could mean that the Newent residents (English gypsies) would not be accepted there even if a pitch was available.
182. I have had regard to other sites outside the Forest of Dean that have been mentioned by residents in evidence as places they have lived, or resided on temporarily. Some of these are a considerable distance away and a number are unlawful or subject to enforcement notices which means that they are not genuine alternatives. I am not in position to conclude categorically that one or more of these could not provide a pitch but I have also been told that a number were already overcrowded ('doubling-up') and at least one site was claimed to be unaffordable. I do not have information to show that there is spare capacity in these local planning authority areas and without such information I am unable to conclude with any certainty that they represent suitable alternatives. Hence, there is no convincing evidence that shows that these sites would satisfy the accommodation needs.
183. Some site residents have commented on approaches to estate agents or enquiries about land but none suggested that they had made concerted efforts to find a pitch before coming to the appeal site. However, having regard to the authority of *South Cambridgeshire DC v SSCLG & Brown [2008] EWCA Civ 1010* there is no requirement to prove that no other sites were available or that the particular needs could not be met from another site. I am aware that when the 'call for sites' was made by the Council as part of the DPD allocation process the appeal site was not put forward. This may have been due to a lack of communication with the agent but as this practise specialises in representing gypsies throughout the country and the site was already in use when the call went out this is surprising. However, the absence from the 'call' list does not mean that planning permission should not be granted.
184. Concluding on this issue, I consider that the particular accommodation needs of the site occupants are considerable and that the likelihood is that few, if any, have access to alternative sites which should be available, affordable, acceptable and suitable⁴⁴. This finding weighs in favour of permitting the development in addition to the weight I afford to general need for sites.

⁴⁴ *Angela Smith v Doncaster MBC [2007] EWNC 1034 (Admin)*

Personal circumstances

185. I have set out the circumstances of the site residents in some detail above. There is the general point that without having a settled base it is difficult for travellers to gain access to doctors or to ensure that children can register at and attend schools. I have taken account of the fact that a number of residents have not chosen to register with the local surgery but are still registered in places where they previously resided. Given the time they have been on the appeal site this is somewhat surprising – although it may be due to the lack of present security at Southend Lane, as claimed by some. However, I have not been presented with any evidence of pressing health needs which can only be met by attending specific health providers in the area. Moreover, the fact that some of the residents are not registered with a local doctor suggests they have no particular health needs at the moment. Most said they had no health issues at present.
186. There is the health concerns regarding Tom Wilson’s wife but she is being treated at a hospital in Nottingham which he said was very good for eyes and where his aunt and uncle have had operations. Consequently this does not provide an argument on health grounds for being on the appeal site. I have taken account of the condition of Jack Jones, the appellant’s son which is said to require visits to Gloucester Hospital. It is not suggested that he has to see a particular consultant there but in terms of continuity I accept that this is advantageous and in line with the advice in paragraph 11(b) of the PPTS. Tom Birmingham mentioned his son Nathan having problems with his kidneys which have got better and Tom is on drugs for high blood pressure – and so requires access to a doctor. Ms Davies and Ms Sykes are said to suffer from clinical depression which necessitates access to a doctor to obtain drugs and Ms Davies’s son requires access to a doctor for bi-annual check-ups.
187. In terms of education some of the children on the site have or are attending the local primary school or have attended other schools when living elsewhere. Others apparently are or were home-tutored. Some residents have expressed a desire for their children to go to primary school although most indicated that this did not extend to sending them to secondary school. Home tutoring was preferred at this age. There is no evidence of any special educational needs although I accept that it is an accepted fact, based on surveys, that gypsy children have some of the poorest levels of educational achievement in the country, primarily due to their absence from school or the lack of consistent teaching due to travelling or no permanent base to resort to. The appeal site offers the opportunity to have such a base and would enable a significant number of children to have access to education facilities. This accords with the objective set out in paragraph 11(c) of the PPTS.
188. A further point is that the site is reasonably close to the range of services and shops in Newent and thus provides opportunities for the residents to find employment. This has led to some of them securing jobs and creates prospects for others. This is consistent with the advice in paragraph 11(a) of the PPTS to promote integrated co-existence between those living on the site and the local community.
189. Concluding on this issue, whilst the personal circumstances of the site residents do not appear to present any pressing needs, the general advantages in terms of convenient access to health and education facilities and employment opportunities are factors which weigh in favour.

Conclusions – balancing exercise – statutory rights - conditions

Appeal A

190. I have found that this development, which flows from the deemed planning application has and would continue to cause some material harm to the landscape character and visual amenity of the area and to the setting of the nearby listed buildings and that this harm could not be satisfactorily ameliorated by the imposition of planning conditions. My findings in this respect are consistent with those of the previous Inspector who dealt with the site. I have also found that although the development is unlikely to have materially harmed the habitat of any protected species, including the great crested newt, the absence of the full range of mitigation measures means that this is a less beneficial solution in terms of biodiversity. In terms of highway safety the proposal under Appeal A does not include the improvements which I consider are necessary, to render the development acceptable. Furthermore the absence of the extra buffer of land that is provided by the Appeal B proposal leads me to conclude that the living conditions of neighbouring residents could be prejudiced.
191. On the plus side, I have found that there is a general need for more gypsy and traveller sites in the Forest of Dean and that there are unlikely to be any genuine alternatives for the site residents in terms of lawful accommodation within the area should they be required to vacate the site. There are also the general advantages in terms of health and education of having a settled base close to surgeries and schools in Newent.
192. Weighing these findings, I consider that the harm is substantial and that the continuation of the use in its present form and layout, even allowing for the possibility of imposing conditions, outweighs the arguments on need and the personal circumstances which weigh in favour. Consequently, planning permission will not be granted for this deemed proposal.

Appeal B

193. I have concluded that the development that forms the subject of the s78 appeal would, subject to appropriate conditions, not cause material harm to the landscape character and visual amenity of the area. As regards the setting of the nearby listed buildings the mitigation measures put forward lessen any harm in this respect but would not completely eradicate this harm. In terms of biodiversity I have found that that the mitigation measures, including the provision of a new pond by way of the unilateral undertaking, would ensure that the development complies with the relevant policies and would be unlikely to lead to any offence under Article 12 of the Directive or the Regulations. The proposal also includes the required improvements to Southend Lane and other measures which can be conditioned to satisfactorily address highway safety and the living conditions of nearby residents.
194. The general need for gypsy sites in the area and the lack of realistic alternatives, along with personal circumstances and health and education requirements are significant. I am aware that the statutory test concerning listed buildings – to have special regard to the desirability of preserving their settings – is a high hurdle but in this instance I have found that the harm to the setting of the particular buildings that would occur with this proposal would be limited, taking account of the additional screening measures. Balancing this

harm against the factors weighing in favour, which are considerable, I conclude that planning permission should be granted, subject to a range of necessary conditions which I will come to below.

195. I have considered whether this should be for a temporary period only. However given the manifest need I have identified and the importance of the various improvements and mitigation measures that are incorporated with this proposal, which can only be fairly and reasonably required if permanent planning permission is granted, given the financial outlay, I conclude that the permission should be granted on a permanent basis.

Human Rights and the Rights of Children

196. In coming to my decisions, I have had regard to the rights conveyed by Article 8 (the right to respect for private and family life) of the European Convention on Human Rights, Article 3 of the United Nations Convention of the Rights of the Child and the Children's Act 2004. The rights of children were of particular importance in the recent authority of *AZ v SSCLG & South Gloucestershire DC [2012] EWHC 3660 (Admin)*.
197. I sought clarification from the appellant's Counsel that it was not being contended that the personal circumstances pertaining in these appeals were comparable to those found in *AZ*. He agreed that this was so although the principle of ensuring that the best interests of children were met was still a statutory duty that had to be discharged. He also agreed in answer to my question that these interests did not necessarily override or trump all other considerations but that it had to be demonstrated that the decision-maker had taken them into account as a primary consideration and that the welfare and well-being of children were safeguarded and promoted.
198. As I intend to allow Appeal B and grant permanent planning permission there would be no interference with the statutory rights set out above in this respect. This accords with the closing submission for the appellant (paragraph 76) that the welfare of the children can only be safeguarded if this is the outcome.
199. In terms of Appeal A, I intend to uphold the notice but having regard to my decision on Appeal B this will enable all the site occupants, including any children, to continue to live on the land in their caravans, subject to compliance with the conditions attached to the permission granted in respect of Appeal B. The powers conveyed by s180 of the Act mean that the notice will cease to have effect in so far as it is inconsistent with that permission. On this basis, I consider that there would be no interference with the said rights.

Planning conditions

200. A draft schedule of conditions for Appeal B⁴⁵ was supplied by the Council and agreement in principle was reached on most of the conditions. Some further conditions were suggested in a round-table discussion between representatives of the three principal parties. As the gypsy site is already in existence, I do not consider that the standard time limit condition for implementation needs to be imposed. Given the general need situation I do not intend imposing a personal condition but the standard condition restricting occupation to gypsies and travellers is needed to safeguard the use for those having this status. The number of pitches needs to be restricted to 13 with no more than 2 caravans

⁴⁵ Hillier - Appendix 21 - Doc C29

per pitch as does the weight (3.5 tonnes) and number of any vehicles parked on the site and commercial activity, in the interests of the living conditions of nearby residents.

201. There is then a raft of matters where further details have to be submitted, notwithstanding what is shown on the application plans, to ensure that the development is acceptable in terms of appearance, amenity space, biodiversity and drainage arrangements. A timetable for implementation should be included. The matters to cover in the condition are the layout of the site, including details of the position of caravans and day rooms and hardsurfacing, soft landscaping, including the details of the width and content of the planting belts and a planting maintenance and management regime, fencing, drainage arrangements, play and amenity areas, a great crested newt mitigation and enhancement strategy and lighting. A clause is also needed to ensure the protection of existing trees and vegetation around the perimeter of the site. I will impose a separate condition regarding the facing materials to be used in the construction of the day rooms.
202. In terms of highway improvements a condition is required to ensure that the two passing bays and the additional street light are provided. Although plans have been provided of the passing bays which accompanied the previous appeal, I consider that the condition should require the submission of details and it needs to be worded to take account of the requirement to obtain the necessary highways agreement for these works.
203. It is appropriate to impose permitted development restrictions on the height of fences, other than those approved, to safeguard the visual amenities of the area. I do not consider for a caravan site that the low carbon energy condition is warranted. I will also attach a condition specifying the approved plans with a caveat that these should be followed subject to any changes approved by virtue of compliance with the other conditions imposed.
204. For the avoidance of doubt, I confirm that the provision of the new pond on land within paddock (blue land) is necessary for mitigation purposes and therefore the terms of the unilateral undertaking submitted are engaged in this respect as set out in Covenant 1 of Second Schedule of the undertaking. It is a matter for the Council as to whether they grant planning permission for this development as it is the subject of a separate application and it is therefore not appropriate to impose a condition in this regard.

Appeal A - Ground (g)

205. The submission for the appellant is that the compliance period should be extended to 2 years if the notice is upheld in order to allow sufficient time for the residents to find alternative accommodation. However, as I am allowing Appeal B and granting planning permission for this development there will be no need to vacate the site subject to compliance with the conditions attached. Consequently there is no success on this ground.

OVERALL CONCLUSIONS:

Appeal A

206. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeal B

207. For the reasons given above I conclude that the appeal should be allowed.

FORMAL DECISIONS:

Appeal A: APP/P1615/C/12/2173024

208. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/P1615/A/12/2175502

209. The appeal is allowed and planning permission is granted for the change of use of the land to 13 No. gypsy pitches with utility/day room buildings, propane gas tanks, hardstandings, access road, landscaping, fencing and drainage facilities all ancillary to that use at Land on the north-east side of Southend Lane, Newent, Gloucestershire, GL18 1JD in accordance with the terms of the application, Ref. No. P0038/12/FUL, dated 13 February 2012, subject to the following conditions:

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of the Communities and Local Government document "Planning policy for traveller sites".
- 2) There shall be no more than 13 pitches/plots on the site and no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended) shall be stationed on each pitch of which no more than one shall be a static caravan or mobile home.
- 3) No more than one commercial vehicle shall be parked on each plot/pitch for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes GLW in weight.
- 4) No commercial activities, including the storage of vehicles, materials, plant or machinery related to those activities, shall take place on the land.
- 5) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision, and notwithstanding any details shown on the application plans, a site development scheme or schemes for the following shall have been submitted for the written approval of the local planning authority and the said scheme(s) shall include a timetable for implementation:
 - a) the internal layout of the site, including the position of the caravans and utility/day rooms and the extent and surface treatment of any hardstandings or hard surfacing;
 - b) the tree, hedge and shrub planting, including details of the width of the landscaping buffers/belts, species, plant sizes and proposed numbers and densities and a maintenance and management regime for the new planting;

- c) a method statement of the measures to be taken to ensure the protection of existing trees and vegetation around the perimeter of the site during construction works and thereafter;
 - d) the fencing around the perimeter of the site and between plots/pitches;
 - e) the means of foul and surface water drainage of the site, including details of porosity tests, the specification of the proposed treatment plant and maintenance arrangements and the precise location of any filtration bed or soakaways or details of other foul drainage discharge provision that is necessary in the alternative;
 - f) the play and amenity areas, including details of their position, size and any play equipment, seating or furniture;
 - g) a great crested newt mitigation and enhancement strategy, including methods of working, construction and long term management;
 - h) the external lighting within the site;
 - ii) within 11 months of the date of this decision the scheme(s) shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme(s) shall have been approved by the Secretary of State.
 - iv) the approved scheme(s) shall have been carried out and completed in accordance with the approved timetable.
- 6) No development of the utility/day rooms hereby permitted shall take place until samples of the materials to be used in the construction of the external surfaces of these buildings have been submitted to and approved in writing by the local planning authority. The buildings shall only be constructed in accordance with the approved details.
- 7) Within 1 month of the date of this decision, full working details of the two proposed passing bays, shown illustratively as PP1 and PP3 on The Hurlstone Partnership Drawing No. Fig 1 (Revision A) dated 15/09/09, and the position and details of the proposed street light, shall be submitted to Forest of Dean District Council and Gloucestershire County Council as Highway Authority for approval. The passing bays and street light shall be constructed and erected in accordance with the approved details and shall be completed within 3 months of obtaining approval of the details or the date of any Highways Agreement necessary to carry out these works, whichever is the later date.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences or gates or walls shall be erected exceeding 1 metre in height, other than those permitted by virtue of Condition 5).

- 9) Subject to any revisions, alterations or amendments that are approved by virtue of compliance with the other conditions set out above, the development hereby permitted shall be carried out in accordance with the following proposed plans:

Location Plan – Drg. No. 08_205_001A;

Proposed Site - Drg. No. 08_205_004D;

Utility/Day Room (small) - Drg. No. 08_205_014A;

Utility/Day Room (large) - Drg. No. 08_205_015A;

N P Freeman

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Rudd of Counsel instructed by Green Planning Solutions (GPS) LLP

He called:

Dr S Wray BSc, PhD, FIEEM	Freelance environmental consultant
Prof. R Reed MA, IBA	Partner in GPS
Mr M Green	Partner in GPS
Mr R Jones Snr	Appellant and site occupier (Plot 1)
Mr R Jones Jnr	Site occupier (Plot 2)
Mr S Lee	Site occupier (Plot 3)
Mr A Williams	Site occupier (Plot 4)
Mr B Williams	Site occupier (Plot 5)
Messrs Adam & Ashley Evans	Site occupiers (Plot 7 & 9)
Mr T Birmingham	Site occupier (Plot 8)
Mr R Stevens	Site occupier (Plot 10)
Ms A-M Davies	Site occupier (Plot 11)
Mr T Wilson	Site occupier (Plot 12)
Mr M Birmingham Jnr	Site occupier (Plot 13)
Mr W Wilson	Co-owner of Woodlands Park, Bromsberrow

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Clover of Counsel Instructed by the Council's Solicitor

She called:

Mr A Chapman MSc, CEnv, MIEEM, MIEMA	Sustainability team leader
Mr M Hillier DipTP, CMS, MRTPI, MCMI	Principal planning officer

FOR RESIDENTS' AGAINST INAPPROPRIATE DEVELOPMENT (RAID):

Mr P Tufnell DipTP, MRTPI Planning consultant

He called: Himself

INTERESTED PERSONS:

Prof. R Hodgson	Local resident
Mrs C Grewcock	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

General:

- G1 Statement of Common Ground (SoCG) – between appellant and Council
- G2 Appeal Decision – Ref. No. APP/P1615/A/12/2177029 – Housing development at Foley Way, Newent – dated 31/12/12
- G3 Enforcement Notice – Much Birch site, Herefordshire – dated 05/05/95
- G4 Schedules of traveller pitches in existence as @ January 2007 & November 2012

Appellant:

- A1 Landscape Assessment Methodology (GPS) dated 05/11/12
- A2 Photographs and accompanying 'position' plan (GPS)
- A3 Correspondence between Nick Bunn (GPS) and Hannah David (English Heritage)
- A4 'Just Ecology' Report – April 2012 – Great created newt assessment
- A5 Planning application dated 21/02/13 for new pond on paddock, with Design and Access Statement and accompanying plans
- A6 Unilateral undertaking in respect of the pond, dated 08/03/13
- A7 Personal circumstance schedule for site residents in 2009
- A8 Ownership and occupation schedule for site November 2012
- A9 Recalculation of GTAA based on pitch details as @ 2007 & 2012 (GPS)
- A10 Appeal Decision – Ref. No. APP/C1625/A/10/2122339 – Mount View Caravan Site, Naas Lane, Brookethorpe, Gloucestershire
- A11 Bundle of signed/dated witness statements for site occupants
- A12 Closing submissions – including AZ & ZH (*Tanzania*) judgment transcripts
- A13 Costs application
- A14 Response to Council's/RAID's closing submissions and counter-response to Council's response to appellant's costs application

Council:

- C1 Opening statement
- C2 Supplementary proof of evidence – Mr Hillier
- C3 Supplementary proof of evidence – Mr Chapman
- C4 Correspondence between the Council and GPS concerning validity of planning application – fees and documents
- C5 Correspondence between the Council and GPS concerning landscape impact
- C6 Extract from LCA – 6b The Severn Vale
- C7 Extract from LCA – 14 Low Hills and Orchards
- C8 Consultation response from Mr Chapman to Mr Hillier on planning application P0038/12/FUL – covers landscape and ecology issues
- C9 Plan showing history details of development of nearby horticultural nursery
- C10 Internal correspondence – re. Foley Way housing scheme – including landscape impact
- C11 Consultation response from Mr Chapman to Mr Pope (case officer) on Foley Way application P0181/12/OUT – covers landscape and ecology issues
- C12 Aspect Ecology – Ecology Assessment for Foley Way application – Jan 2012
- C13 Letter from Aspect Ecology to Council (Pope) dated 04/05/12
- C14 Listing Descriptions for Southernns, Southernns Barn and Southcote Barn
- C15 Southernns Barn conversion – report and minutes of decision – 1989/90

- C16 Southcote Barn conversion – report and minutes of decision – 1991
- C17 Planning permission for detached garage at Southernns Barn – dated 23/12/97
- C18 Extracts from The Conservation of Habitats and Species Regulations 2010
- C19 ARG UK Advice Note 5 – Great Crested Newt Habitat Suitability Index (HSI)
- C20 NARRS - Great Crested Newt (GCN) Habitat Suitability Index (HSI)
- C21 Natural England - Rapid Risk Assessment for GCN
- C22 Environment Agency – Water Situation Report – March 2012
- C23 Site occupancy details schedule, dated 01/02/12, updated by Mr Hillier at the inquiry
- C24 Land Registry title document for the appeal site – edition date 02/01/09
- C25 Revised Appendix 17 (Hillier) – traveller/gypsy encampments July 2012
- C26 Planning permission dated 19/11/01 – Woodlands Park, Bromsberrow
- C27 Correspondence between Mr Hillier and Stroud DC (Mr Moore)
- C28 Highways Agency correspondence and ‘directions’ regarding the Much Birch, Herefordshire gypsy site
- C29 Internal note regarding the service of the enforcement notice
- C30 Recommended planning conditions – Appendix 21 - Hillier
- C31 Closing submissions
- C32 Response to appellants’ costs application

RAID:

- R1 Photograph of appeal site – April 2005
- R2 Plan showing extent of curtilages of listed buildings in relation to appeal site
- R3 GCER records of key wildlife sites in the Newent area
- R4 Meteorological Office records of rainfall in Ross-on-Wye – 2011/12
- R5 Correspondence between Mr Tufnell and GPS regarding site drainage
- R6 Bundle of correspondence from residents concerning the use of the appeal site and Southend Lane – conditions compliance queries
- R7 Closing submissions

Interested persons:

- IP1 Dr Hodgson’s statement
- IP2 Mrs Grewcock’s statement

PLAN SUBMITTED AT THE INQUIRY

Dwg. No. – 08_205_004/D – Proposed Site