The Planning Inspectorate

Appeal Decisions

Inquiry Held on 9 May 2023; 26, 27 and 28 September 2023; 26, 27 and 28 November 2024 and 6 December 2024

Site visits made on 28 September 2023 and 29 November 2024.

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 January 2025

Appeal A Ref: APP/V3120/C/21/3273724
Land known as Maleficent Meadows, Baulking Lane, Baulking, Oxfordshire SN7 8NR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Riley Pidgley against an enforcement notice issued by Vale of White Horse District Council.
- The enforcement notice, titled Enforcement Notice A, was issued on 29 March 2021.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of a former mineral working site which has since been restored to a condition suitable for agriculture, to a mixed use, namely i) the stationing of a mobile home for residential use; and ii) the keeping and breeding of cats and dogs for the purpose of sale.
- The requirements of the notice are:
  (i) Stop using the Land for residential purposes and the keeping and breeding of cats and dogs for the purpose of sale.
  (ii) Permanently remove from the Land the mobile home.
  (iii) Permanently remove from the Land all cats and dogs kept and bred for the purpose of sale.
  (iv) Permanently remove from the Land all chattels and paraphernalia related to the use of the Land for residential purposes and/or the keeping and breeding of cats and dogs for the purpose of sale.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.

Appeal B Ref: APP/V3120/C/21/3273725
Land known as Maleficent Meadows, Baulking Lane, Baulking, Oxfordshire SN7 8NR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Riley Pidgley against an enforcement notice issued by Vale of White Horse District Council.
- The enforcement notice, titled Enforcement Notice B, was issued on 29 March 2021.
- The breach of planning control as alleged in the notice is, without planning permission the undertaking of building, engineering and other operations on the Land comprising: i) earthworks to dig up, move, deposit and store soil on the Land (ii) the obstruction of an existing drainage ditch adjacent to the western boundary of the Land by the depositing and storage of soil; (iii) the laying of a hardcore driveway and hardstanding

area; iv) the laying of a concrete mobile home base and hardstanding building bases; v) the installation of a septic tank; and vi) the erection of sheds, animal pens and enclosures.

- The requirements of the notice are:
  (i) Break up the concrete mobile home base and all concrete building bases.
  (ii) Dig up the hardcore driveway and hardstanding area.
  (iii) Dig up the septic tank.
  (iv) Demolish or dismantle (as the case may be) all sheds, animal pens and enclosures including their hardstanding bases.
  (v) Permanently remove from the Land all materials resulting from steps (i),(ii),(iii) and (iv) above.
  (vi) Dig up and remove all of the deposited and stored soil referred to in section 3 above in a manner that does not damage the roots of existing hedge plants adjacent to the western boundary of the Land.
  (vii) Reinstate the drainage ditch adjacent to the western boundary of the Land to a profile, levels and fall commensurate with immediately adjoining lands forming part of the same contiguous and undisturbed drainage ditch.
  (viii) Deposit the soil, as a result of step (vi) above, on areas of the Land disturbed as a result of steps (i),(ii),(iii),(iv) and (v) above and grade the deposited soil to levels and a fall commensurate with immediately adjoining undisturbed lands.
  (ix) Sow all areas of the Land disturbed as a result of steps (vi), (vii) and (viii) above with an MG5 meadow grass mix.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.

Appeal C Ref: APP/V3120/W/21/3273729
Maleficent Meadows, Baulking Lane, Baulking, Faringdon SN7 8NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Riley Pidgley against the decision of Vale of White Horse District Council.
- The application Ref P20/V2556/FUL, dated 25 September 2020, was refused by notice dated 28 January 2021.
- The development proposed is the change of use of former mineral workings land to a combined pedigree dog and cat breeding facility including the stationing of a temporary dwelling and associated development including, installing a Klargester tank and hardstanding, for use by Traveller family.

Summary Decisions

Appeal A is dismissed and the enforcement notice is upheld with variations

Appeal B is dismissed and the enforcement notice is upheld with a correction and a variation

Appeal C is dismissed

Application for costs

1. At the Inquiry an application for costs was made by Mr Riley Pidgley against Vale of White Horse District Council. This application is the subject of a separate Decision.

Procedural matters

2. The Inquiry was in connection with a total of three appeals: against an Enforcement Notice alleging a material change of use of the land (Notice A); against an Enforcement Notice alleging operational development on the land (Notice B): and against the refusal of planning permission. In this situation, it is the convention that the enforcement appeals are taken as the lead appeals. I will therefore refer to the appeal against Notice A as Appeal A, the appeal against Notice B as Appeal B, and the appeal the against the refusal of planning permission as Appeal C.

3. The Inquiry was held over a total of three sessions, albeit the first one-day session (as it turned out) was largely confined to procedural matters. I made a total of three site visits in connection with these appeals. The first was an unaccompanied a site visit made on 17 May 2023. This site visit was primarily in relation to an appeal on an adjoining plot known as Lakeview, but the opportunity was also taken to take an initial view of the current appeal site, including from the public footpaths in the area, to familiarise myself with the site and surroundings. I also walked from the entrance of the appeal site on Baulking Lane to the settlement of Uffington, specifically to the convenience store and primary school there.

4. I made an accompanied site visit on 28 September 2023. As indicated at that site visit, I then went on to make an unaccompanied site visit on which I viewed the appeal site and surroundings from various public footpaths in the area. This included every location referred to in the Landscape and Visual Consultation Report submitted as part of the Council's evidence. As I had previously (May 2023) walked from the entrance of the appeal site in Baulking Lane to Uffington and back I connection with other appeal, I did not perceive a need to walk it again specifically in connection with these appeals.

5. Both of those site visits took place in the summer months. I therefore took the opportunity to make a further unaccompanied site visit on 29 November 2024, primarily to view the site and surroundings during the winter months.

6. As part of that site visit, I noted that an additional static caravan had been stationed in the south-east corner of site, together with two other structures. I was assured at the Inquiry that this was used only for the storage of materials used in connection with the dog-breeding business, and was not used as residential accommodation. It also transpired that one of the structures that I had observed on that site could have been a horse box.

7. I had previously requested that an accurate plan be provided of the caravan(s) and structures that existed on the date on which the enforcement notices were issued. I have used the plan provided (Drawing No. 20_1134_002) as the basis of my determination of these appeals. Specifically, I have disregarded from my considerations any effect that the additional static caravan observed on my site visit on 29 November 2024 may have had on the relevant issues.

8. On 22 November 2023, all designated Areas of Outstanding Natural Beauty (AONBs) in England and Wales became "National Landscapes". This was a re-branding in name only and has no effect on the policy in relation to those areas as set out in the National Planning Policy Framework (Framework) and elsewhere.

9. The effect of the development on the area of National Landscape to the south and south-west of the appeal site formed no part of the reasons for issuing the enforcement notices (Appeals A and B) or the reason for refusing planning permission (Appeal C). As the appellant points out, there was no reference to this landscape being a valued landscape in the Enforcement Notices, the Expediency Report, the Decision Notice and Officer's Report relevant to the section 78 appeal.

10. The issue was, however, raised by the Council in a Landscape and Visual Consultation Report attached to Mr Jupp's Proof of Evidence. Given that the point is closely associated with the character and appearance of the area, an issue that did form part of the reasons for issuing the enforcement notices and the refusal of planning permission, it was incumbent upon me to accept that evidence. The appellant's representative, Mr Green, was afforded the opportunity to re-visit the site to specifically consider that point following the first adjournment in May 2023, and subsequently gave evidence on that matter. I am satisfied that both parties had a fair opportunity to fully express their views on this point and that no injustice was caused.

11. The revised Framework and the revised PPTS were both published on 12 December 2024, shortly after the Inquiry closed. I invited the appellant and the Council to comment on the changes made in these two documents in writing. I have taken any comments made into account. Any reference to these documents in my Decision should be taken to be in relation to the 2024 version of these documents, unless specifically stated.

12. In any event, there is no dispute that the appellant and other occupiers of the land follow a nomadic habit of life and meet the definition of Gypsies and Travellers used in the PPTS.

Appeals A and B: the Enforcement Notices

13. In relation to Enforcement Notice A, it was agreed at the Inquiry that requirement (i) should be amended to more closely reflect the breach of planning control that is alleged. The suggested wording is to "*Stop using the Land for the stationing of a mobile home for residential use and the keeping and breeding of cats and dogs for the purposes of sale*". I will vary Notice A accordingly. This addresses the appellant's appeal on ground (f) on Appeal A, which succeeds to that extent.

14. Also in relation to Enforcement Notice A the requirements at paragraphs 5(ii), 5(iii) and 5(iv) all include the word 'permanently'. The requirement at paragraph 5(v) of Enforcement Notice B is similarly phrased. Having regard to the provisions of Section 181(1) of the Town and Country Planning Act 1990 (the 1990 Act), which states that compliance with an enforcement notice shall not discharge that notice, the word 'permanently' is unnecessary and inappropriate. I shall therefore delete it from the above paragraphs in the notices.

Appeal B: the appeal on ground (b)

15. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred.

16. Enforcement Notice B alleges, amongst other things, engineering operations comprising earthworks to dig up, move, deposit and *store soil* on the Land (emphasis added). The appellant accepts that engineering operations have taken place, insofar as earth scraped from elsewhere on the site has been used to form a landscape bund along the western boundary of the site. However, the appellant is adamant that soil is not being stored on the site, either for use on the site or elsewhere. As the appellant points out, the storage of soil would be a use of the land and not operational development.

17. The appellant's evidence is clear on this point, and I accept that the storage of soil has not occurred. Furthermore, it seems to me that the same point applies to the deposit and movement of soil, as also alleged in the notice. I will therefore correct and vary the notice in these respects. I am satisfied that no injustice would be caused by so doing. The appeal on ground (b) succeeds to that extent.

18. It was Mr Jupp's evidence that the appellant's dog-breeding business was "more of a hobby" and only needed a license due to the number of dogs being kept. If that was correct, then the appellant's dog-breeding business would be ancillary to the stationing of the mobile home for residential use. It would then follow that the breach of planning control alleged in the notice, in summary the material change of use of to a *mixed use* comprising i) the stationing of a mobile home for residential use; and ii) the keeping and breeding of cats and dogs for the purpose of sale, would not have occurred (emphasis added). In that scenario, the appeal on ground (b) in relation to Appeal A would succeed and the enforcement notice would be quashed.

19. I have great difficulty in reconciling Mr Jupp's evidence in this respect with the Council's substantive case and with the other evidence before me. In respect of the latter, the appellant's business 'Maleficent Meadows' was incorporated on 26 October 2020 and the appellant's business 'Supreme Silver' was incorporated on 4 May 2021, albeit dissolved on 25 July 2023. Those businesses would not have been incorporated if the breeding of dogs was simply the appellant's hobby. I have also been provided with some sales receipts for puppies and kittens reared on the appeal site, albeit limited in number, which demonstrate that there was at least some commercial activity taking place.

20. Taken in the round, the evidence before me indicates that the breeding of cats and dogs did take place alongside the stationing of a mobile home for residential use. Moreover, it was no part of the appellant's original case on ground (b) that the mixed use alleged in the notice has not occurred. I therefore conclude that, on the balance of probabilities, the mixed use alleged in the enforcement notice have occurred. I can only interpret Mr Jupp's comments as implying that the scale of the appellant's business is more akin to a hobby rather than it is not a business activity.

Appeals A and B: the appeals on ground (a) and the deemed planning applications, and Appeal C

21. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated substantive reasons for issuing the enforcement notices, from which the following main issues are raised:

- whether the stationing of caravans for residential use is appropriate in this location
- the effect of the development, if any, on the character and appearance of the area
- whether the development would have a harmful effect on ecology, resulting in a net loss of biodiversity

Appeal C raises the same main issues.

22. However, before considering these main issues, it is helpful to set out the Council's spatial strategy for the District as a whole, since this will be relevant to all the reasons for issuing the enforcement notices (Appeals A and B) and the refusal of planning permission (Appeal C).

The Councils' spatial strategy

23. The introductory text to The Vale of White Horse Local Plan 2031 (Local Plan Part 1) sets out three strands to the spatial strategy: (1) focusing growth in the science vale area (2) reinforcing service centre roles of main settlements, and (3) promoting thriving villages and rural communities whilst safeguarding the countryside and village character. The Local Plan Part 1 is clear that "*The landscape of the district is central to the rural character of the Vale*". The protection of that landscape and rural character underpins the entire policy approach adopted in Local Plan Part 1.

24. Core Policy 3 of the Local Plan Part 1 sets out the settlement hierarchy, central to which is the direction of new facilities, homes and jobs in accordance with a clear strategy which places market towns at the top of the hierarchy, followed by local service centres, larger villages and then smaller villages.

25. Core Policy 3 of the Local Plan Part 1 places the open countryside at the very bottom of the hierarchy for any new development, stating that:

"***Open Countryside***
Development in open countryside will not be appropriate unless specifically supported by other relevant policies as set out in the Development Plan or national policy."

26. The operation of Core Policy 3 therefore requires the decision maker to ascertain as the starting point where a site sits in the settlement hierarchy for the District, including whether the site is in the open countryside for the purposes of Core Policy 3.

27. The Oxford English Dictionary (OED) defines a 'settlement' as "a place where people establish a community". The appeal site is situated to the north of Baulking Lane, immediately to the east of Baulking Lake. If the ordinary meaning of a 'settlement' is adopted, as defined in the OED, then the nearest settlement is Baulking. Although there is a church, there are no shops or services in Baulking itself: it essentially comprises of a ribbon of residential properties and a farmstead. It is therefore more properly described as a hamlet. Nevertheless, in normal parlance the residential properties in that hamlet collectively form a community, and therefore comprise a settlement.

28. However, for purposes of Core Policy 3 a 'settlement' is specifically defined as those included within the list of Market Towns, Local Service Centres, Larger Villages and Smaller Villages specifically identified in that policy. It is a closed list. Baulking is not on that list. Core Policy 3 itself indicates that those villages not included within the categories described are considered to form part of the open countryside. Consequently, for the purposes of Core Policy 3 (and indeed all other policies in the development plan), Baulking must be regarded as forming part of the open countryside.

29. In any event, the hamlet of Baulking is separated from the appeal site by Baulking Lake and, to the west of that, by an area of woodland and open fields. The separation distance is approximately 1 km. There is no visual or functional connection between Baulking and the appeal site. Baulking is therefore spatially separate from the appeal site.

30. Moreover, prior to the breach of planning of control taking place, the appeal site was a grass meadow devoid of trees and built structures. There is a group of trees immediately to the west but the appeal site is not surrounded by trees. Beyond the trees is Baulking Lake, which in itself is an extensive area of open water, and for a considerable distance to the north, south and east are open fields. Prior to the development taking place, the appeal site was therefore 'open' in every sense of the word. Consequently, whichever definition of a settlement is used, the appeal site must be considered to be within the open countryside.

31. The appellant has referred me to an appeal decision in relation to a site in Langlebury, Hertfordshire, where the Inspector accepted that there was "*a level of ambiguity as "open countryside" is not defined*" (APP/P1940/C/11/2164949 & APP/P1940/A/11/2160486). It is clear from that passage of the Decision that the Inspector is referring there to what was then paragraph 23 (now paragraph 26) of the PPTS. There is no such ambiguity in this case: Core Policy 3 of the Local Plan Part 1 is very clear as to what is meant by "*open countryside*" and "*settlement*".

32. The construction of Core Policy 3 reflects the particular settlement hierarchy of the Vale of White Horse District. This settlement hierarchy may not be the same in other Districts and Boroughs. Paragraph 17 of the Framework indicates that the development plan must include strategic policies to address each local planning authority's priorities for the development and use of land in its area. Core Policy 3 is entirely consistent with that approach.

33. On the other hand, the PPTS is national policy and applies to every local planning authority, irrespective of the settlement hierarchy in those areas. I recognise that paragraph 26 of the PPTS must therefore be read differently to Core Policy 3 in this respect. However, in the Langlebury Decision, the Inspector found that the appeal site was not in the open countryside because it was surrounded by woodland. The Inspector specifically distinguished it as being "not open countryside such as an area of open fields".

34. I have reached a different conclusion on the facts in relation to the current appeal site. The appeal site was previously an open field and is surrounded in every direction, and for a considerable distance, by open fields and/or open water. The appeal site is therefore in the open countryside both for the purposes the development plan and the PPTS.

35. The Local Plan Part 1 has been subject to a Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012 (the Regulations), as required by paragraph 33 of the National Planning Policy Framework (Framework). I take the appellant's point that there is an element of 'marking one's own homework' in that process, but that is an inherent part of the legal requirement for all local plans under the Regulations. In any event, this review was not challenged and has found all other material policies to be generally consistent with the Framework and therefore up to date. This includes the spatial strategy set out in Core Policy 3 which, the Regulation 10A review notes, takes local circumstances into account to guide development towards sustainable locations, avoiding isolated homes and maintaining the vitality of rural communities. I concur with that assessment.

36. It is the Council's case that the development subject of this appeal represents the very antithesis of the principle that development should be genuinely plan led, as set out in Section 38(6) of the Planning and Compulsory Purchase Act 2004 and as required by the Framework. The gravamen of policy within the development plan, which reflects the particular characteristics of the Vale of White Horse District, is that new development should avoid adverse impacts on landscape and ecology, and should be directed to sustainable locations. It is the Council's case that to allow these appeals would entail a failure to respect the primacy of the development plan and would distort or displace the statutory scheme.

37. A range of development plan policies are cited in the reasons for issuing the enforcement notices and in the refusal of planning permission. Some of those policies are tangential to the main issues raised by these appeals and consequently I do not consider them in detail. In my view, the main policies relevant to these appeals are Core Policies 3, 4, 27, 28, 37, 44 and 46 of the Local Plan Part 1: Development Policies D1 and DP6 Local Plan Part 2: and Policies H2B and H3 of the Uffington and Baulking Neighbourhood Plan (Neighbourhood Plan).

38. Because of the way that the Council's spatial strategy is framed and some the key policies within development plan are constructed, it is necessary to first reach some firm conclusions on certain matters (such as the effect, if any, on the character and appearance of the area and the effect on ecology) so that those findings can be fed into consideration of those policies. It is convenient to start with considerations relating to the character and appearance of the area.

Character and Appearance

39. The appeal site falls within the Upper Thames Clay Vales National Character Area (NCA), as defined in the National Character Assessment produced by Natural England. In this NCA, fields are regular and hedged with the Vale of White Horse made distinct by large arable fields. Woodland cover is low. Gravel extraction has left a legacy of geological exposures, including numerous waterbodies. Settlement is sparse on flood plains.

40. At the local level, the appeal site is situated within the Upper Vale Farmland landscape character type (LCT) within the Bourton to Garford Upper Vale Farmland landscape character area (LCA), as defined in the Vale of White Horse Landscape Character Assessment 2017 (Character Assessment).

41. The Character Assessment describes the key characteristic of this LCT as including a patchwork of small to medium sized arable fields, interspersed with occasional areas of pasture and small blocks of woodland. A number of small, nucleated settlements and scattered farmsteads are linked by rural lanes and a network of Public Rights of Way. The nearby Corallian Limestone Ridge and North Wessex Downs form backdrops to the north and south, aiding the sense of containment associated with the Upper Vale location.

42. The Character Assessment describes the key characteristic of this LCT as including predominantly well maintained farmland, with a pattern of varying size arable fields, and areas of grazed pasture. The area is lightly settled generally, but includes an even spread of scattered settlements, with scattered farmsteads elsewhere. Tree cover provides enclosure and aids the sense of peace and tranquillity in some parts of the area.

43. The appeal site and its setting are strongly representative of the NCA, the LCT and the LCA. In particular, the area is lightly settled and comprises generally well-maintained farmland. Built development is relatively scarce, and where it does occur is typically in form of isolated farmsteads and associated agricultural buildings. Caravans, in any form, do not form an established part of the character of the area. The presence of Baulking Lake is unusual in the wider landscape but, as well as being an attractive feature in its own right, provides a sense of distinctiveness to the locality. The isolated position of the appeal site provides a strong sense of peace and tranquillity.

44. The Character Assessment identifies the West Coast Main Line as a key characteristic of both the LCT and the LCA. In that context, the West Coast Main Line, which runs to the south of the appeal site and which is a prominent feature from Baulking Lane, is not visible from the appeal site itself. It therefore makes no contribution to the character and appearance of the appeal site or its setting.

45. The appeal site has a long history of the working of minerals dating back to the mid 1970's. The working of land for minerals ceased in or around December 2000 and the land was subsequently restored to a condition suitable for agriculture. Aerial photographs taken between 2004 and 2015, and the sales brochure for the site produced in 2018, show that the appeal site was successfully restored to open semi-improved grassland as part of a wider site pastoral field. There were no defined boundaries to the rest of the field and there were no internal features within the site. I have taken the condition of the site at that time, and the contribution that it made to the wider landscape, as the baseline for my assessment of this issue.

46. The appellant points out that significant quantities of gravel have been deposited on adjacent land to create an access road to the fishing lake (Baulking Lake) and permanent fishing locations since the development on the appeal site took place. The appellant considers that these have changed the character of the area particularly for those users of the footpath running in-between the lake and the appeal site. I also noted the fence that has been positioned around the fishing lake.

47. The gravel has deposited at ground level in the context of an outdoor recreational activity. The fence, whilst to some extent an urbanising feature, is mostly open wire mish with widely spaced supports. As such, it allows views through it and across the lake beyond. The gravel and fence that have been

deposited/erected on/at the fishing lake are therefore not directly comparable with the development that has taken place on the appeal site itself in terms of their scale, nature or the effect on the landscape. For that reason, the deposition of this gravel/erection of the fence does not significantly affect the baseline position.

48. I note that on 28 October 2024 planning permission was refused for the change of use of Baulking Lake from a lake created by mineral extraction to a coarse fishing (leisure) venue, including associated development to provide swims, fencing, tracks, car park and wc (Council Ref:P23/V2021/FUL). Permission was refused solely for reasons relating to the effect on birdlife and aquatic life on and in the lake resulting from the change of use. The effect of the operational development associated with that use on the character and appearance of the area formed no part of the reason for refusal.

49. As part of its evidence for these appeals, the Council commissioned a Landscape and Visual Consultation Report (Landscape Report). In summary, the Landscape Report assesses the effect of the development in both landscape and visual terms, having regard to the sensitivity of the landscape and its value[1]. The Visual Significance of Effect is then assessed on a scale between No Change and High. The appellant does not challenge the methodology employed in producing this report. It is convenient to consider the effects on landscape as a receptor in the first instance.

50. The development on the appeal site has effectively resulted in the loss of the semi-restored grassland (the baseline position). As part of a wider area of semi-restored grassland, the site made an important contribution to the LCA and the LCT. I concur with the assessment of the Landscape Report that the overall sensitivity of this receptor is High, and that the value of this receptor is also High. The magnitude of change is High, and I concur with the overall finding of the Landscape Report that there is an adverse impact of Major significance upon this receptor. For the same reasons, I concur with the Landscape Report that the development on the appeal site has an adverse impact of Major significance on Overall Character of the site.

51. For the reasons set out in the Landscape Report, I concur that the development on the appeal site has a Major/Moderate adverse impact on the open character of the appeal site and its relationship with the surrounding clay vale. For the same reasons, I concur with the Landscape Report that the development on the appeal site has an adverse impact of Major/Moderate significance on Overall Character of the setting of the site.

52. The elevated escarpment of the North Wessex Downs escarpment forms a strong topographical backdrop to the site. Prior to the development subject to these appeals, the semi-restored grassland contributed to the contrast between the level, agricultural landscape of the LCA and the raised escarpment of the North Wessex Downs to the south. The development that has taken place on the appeal site appears in the foreground of views of views towards the North Wessex Downs in views towards the south.

53. For the reasons set out in the Landscape Report, the susceptibility of this receptor is High. The value is also High. The Landscape Report assesses the magnitude of change on this receptor to be High. The Landscape Report goes

[1] The full methodology is set out in the Appendix to the Landscape Report.

on to conclude that the development has resulted in an adverse impact of Major/Moderate significance upon this receptor. In my view, if anything, given that the North Wessex Downs form such an important backdrop in views to the south and in part defines the character and distinctiveness of the vale itself, in my view that assessment is on the conservative side. I would place the impact in landscape terms squarely within the Major category.

54. In terms of visual receptors, only limited views of the site are possible from Baulking Lane, albeit limited views would be possible from those riding a horse. The site is therefore principally viewed from the extensive network of Public Rights of Way around the appeal site. In assessing the impact of the development on all these views, it is a relevant consideration that people walking these footpaths or using the bridleways are generally doing so for recreation and specifically to enjoy the surrounding countryside. For that reason, the sensitivity of those receptors is likely to be increased.

55. Public Footpaths 122/13 and 122/14 pass to the west of the site, linking Baulking Lane with Public Footpath 122/5 to the north. For receptors using these footpaths from south to north, the development on the appeal site is first encountered shortly after leaving Baulking Lane, at the point where the footpath meets the access to the fishing lake. At the time of my site visit in September 2023, there was some vegetation in the foreground of views of the development on the appeal site. This was still present in November 2024.

56. Nevertheless, by reason of the bulk of the mobile home and the stark appearance of the close-boarded fence, the development is both visually intrusive and incongruous in this setting. In no small part, this is due to urbanising effect of the close-boarded fence on the southern boundary of the site, which is wholly out of character with this rural location. These effects are exacerbated by the close proximity of the development to the footpath and the absence of any effective screening.

57. Walking northwards along Public Footpaths 122/13 and 122/14, the development is glimpsed through the intervening boundary vegetation. This was the case at the time of my site visit in September, and even more so in November 2024. In these views, the buildings on the site are apparent and appear as unexpected in the wider setting. The activity taking place on the site is also perceived visually and, again, is unexpected and intrusive.

58. The Landscape Report assesses the susceptibility of this receptor as High. The magnitude of change on this receptor is also assessed to be High. The Landscape Report goes on to conclude that the development has resulted in an adverse impact of Major significance upon this receptor. For the reasons given above, I concur fully with that assessment.

59. From Public Bridleway 122/7 as it ascends the west slope of Baulking Hill, views towards the appeal site are only possible through one gap in the intervening trees and hedges. The development on the adjoining site known as Lakeview is clearly visible from that position and this does draw the eye in this view. However, in views from this position the development on the appeal site sits behind and slightly further west of Lakeview, closer to the group of trees behind. In my judgment, the current appeal site is not discernible in those views.

60. The Landscape Report assesses the susceptibility of this receptor as High. The magnitude of change on this receptor is assessed as Medium. The Landscape Report goes on to conclude that the development has resulted in an adverse impact of Major/Moderate significance upon this receptor. However, I suspect that the Landscape Report has mistaken the development on Lakeview for that on the current appeal site. Given that (in my judgment) the development on this site cannot be readily discerned in this view, that clearly places the significance upon this receptor too high. The significance upon this receptor is No Change.

61. The development on the appeal site is visible in long-distance views from Public Footpath 1222/11 from positions in the vicinity of Oldfield Farm. In those distant views, only the upper parts of the structures are visible. Nonetheless, they appear incongruous in the wider countryside setting that is largely devoid of structures or buildings.

62. The Landscape Report assesses the susceptibility of this receptor as High but, given the distance at which the structures are viewed, the magnitude of change on this receptor is assessed to be Low. The Landscape Report concludes that there is an adverse impact of Moderate significance upon this receptor. I concur with that assessment.

63. When travelling in a westerly direction from Oldfield Farm, users of Public Footpath 122/5 are suddenly presented with views of the site as they crest a gentle incline in the terrain. Views of the development on the appeal site are therefore unexpected and for that reason are all the more intrusive. In these views, the development on the appeal site is clearly visible at relatively close quarters and appears as an anomalous use in an otherwise rural setting. Moreover, this view is particularly important because the development is prominent in the foreground against the backdrop of the North Wessex Downs National Landscape. The development on the appeal site is an incongruous element in the landscape that significantly detracts from this view of the National Landscape, and therefore its setting.

64. The Landscape Report assesses the susceptibility of this receptor as High. The magnitude of change on this receptor is also assessed to be High. The Landscape Report goes on to conclude that the development has resulted in an adverse impact of Major significance upon this receptor. For the reasons given above, I concur fully with that assessment.

65. The view from this position is significant in terms of planning policy and guidance. Insofar as the view is from a public footpath towards a National Landscape, it is an important view. Paragraph 189 of the Framework indicates that development within the setting of a National Landscape should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas. The Planning Practice Guidance (PPG) explains that land within the setting of these areas often makes an important contribution to maintaining their natural beauty, and where poorly located or designed development can do significant harm. The PPG indicates that this is especially the case where long views from or to the designated landscape are identified as important, or where the landscape character of the land within and adjoining the designated area is complementary. The PPG goes on to advise that development within the settings of these areas will need sensitive handling that takes these potential impacts into account.

66. The development on the appeal site is prominent in the foreground of long views towards the North Wessex Downs Natural Landscape. It is both poorly designed and poorly located in relation to the National Landscape. The development on the site detracts from those important views and for that reason causes significant harm. The development therefore fails to accord with the Framework and the PPG in this respect. The North Wessex Downs Area of Outstanding Natural Beauty – Management Plan 2019-2024 identifies the need to protect the setting of historic landscapes as one of its prime objectives. The Vale of White Horse Sub-Area Strategy for the Western Vale similarly confirms that the setting of the North Wessex Downs AONB (as it then was) will continue to be protected.

67. In addition to vehicular traffic, users of Baulking Lane include pedestrians, cyclists and those riding a horse. Glimpsed views of the development on the appeal site are possible from the public highway, but it is necessary to approach the entrance gates and/or the hedgerow before clear views are possible.

68. The Landscape Report assesses the susceptibility of this receptor as Medium. The magnitude of change on this receptor is also assessed to be Medium. The Landscape Report goes on to conclude that the development has resulted in an adverse impact of Moderate significance upon this receptor. Notwithstanding that visibility from vehicles and cycles on the public highway itself is limited, people passing the entrance to the site on foot would do so more slowly and therefore have the opportunity to view towards the appeal site. In views from the public highway, the close-boarded fencing on the southern boundary is particularly prominent and incongruous. Those viewing the site from an elevated position on horseback would have an even better view towards the appeal site. I therefore also assess the adverse impact upon this receptor to Medium.

69. To summarise, I find that the development that has taken place on the appeal site (Appeals A & B), and the development proposed (Appeal C), has had an adverse impact on all but one receptor in both landscape and visual terms. The magnitude of that adverse impact varies from Low to High, but nonetheless is/would be adverse in every case (other than the one receptor where the impact would be No Change). The overall impact is significantly harmful to character and appearance of the surrounding area (Appeals A & B). The same would apply to the development proposed in Appeal C.

70. On behalf of the appellant, Mr Green takes a different approach to the assessment of any impact the landscape. Mr Green has not produced his own LVIA and does not follow any of the steps set out in GLVIA3. Instead, Mr Green maintains that his assessment was carried out "implicitly". However, I am mindful of the comments made by the Inspector in relation to an appeal at Loddington in Northamptonshire (APP/L2820/C/19/3240989 and APP/L2820/W/20/3249281). Comparing the evidence before him concerning the effect on the character and appearance of the landscape, the Inspector found the more detailed, methodical, and rigorous analysis of two landscape architects, in line with the transparent criteria from the GLVIA, more compelling than the evidence of an experienced town planner who had not gone through that process.

71. I take the same view in relation to the evidence before me in this appeal. It is clear to me that Mr Dudley, the Chartered Landscape Architect who produced the Council's evidence on this matter, fully understands this landscape and the wider role that this landscape plays in the character of the District as a whole. He had methodically analysed and rigorously assessed the impact of the development on this landscape in accordance with the best practice guidance in GLVIA3 and TGN 02/21. Overall, I found his evidence to be compelling.

72. Not the so the evidence on this matter produced by Mr Green on behalf of the appellant. His evidence was absent any methodology and was not robust, there being no real analysis of the landscape and/or its sensitivity to change. Accordingly, the Council's evidence is to be preferred.

73. On behalf of the appellant, Mr Green makes the point that the visual impact of the development would be acceptable subject to the provision of adequate landscaping. The provision of landscaping must in this case be assessed against the key characteristics of the LCT and LCA within which the appeal site is located. Landscaping adequate to completely screen the appeal site from view would itself form an incongruous feature in this LCT/LCA. Landscaping intended to soften the appearance of the development would not be effective in overcoming the harms that I have identified. In any event, given that any planting may subsequently die back, not flourish or not take hold at all, it is not prudent to rely on landscaping to mitigate the impacts of a development which, as in this case, is intrinsically harmful to the landscape. Consequently, I consider that the imposition of conditions could not overcome the harm to the landscape that I have identified above.

74. The area surrounding the appeal site comprises attractive countryside, with a network of public footpaths criss-crossing the area and Baulking Lake providing a distinctive feature. The latter has been designated as the Baulking Quarry Local Wildlife Site (LWS) for the presence of priority habitats and its ornithological interest. The evidence before me is that Baulking Lake is popular with anglers. The footpaths and bridleways in the area are evidently well used, and I encountered several walkers (including dog walkers) and horse riders during my site visits.

75. Different landscapes are valued by different people for different reasons. The landscape surrounding the appeal site clearly has recreational value and perceptual value in terms of tranquillity. But, in my opinion, the outstanding contribution made by this landscape is that it is definitive of the Vale of White Horse. In no small part, this is due to the presence of the escarpment of the North Wessex Downs. This forms a strong topographical backdrop to this landscape and which, in combination with the nearby Corallian Limestone Ridge, provides the sense of containment associated with the Upper Vale. This landscape is therefore outstanding in relation to recognised factors such as scenic quality, rarity and representativeness.

76. For those reasons, I concur with the Council that the landscape has qualities which take it out of the ordinary and elevate it above being more than mere countryside. I therefore conclude that this landscape should be regarded as a valued landscape for the purposes of Paragraph 187 of the Framework. In reaching that conclusion, I have had regard to the guidance in the Technical Guidance Note 02-21: Assessing Landscape Value Outside National Designations.

77. In this context, the Council refers to an appeal decision relating to a site at Shrivenham, Oxfordshire, in which the Inspector found *this same landscape* to be a valued landscape for the purposes the Framework (APP/V3120/W/17/3181653). In reaching that conclusion, the Inspector noted that the site was not in a nationally designated landscape and that the Lowland Vale Farmland landscape type (which is contiguous with the Upper Vale Farmland landscape type) is a locally designated landscape description. Furthermore, the Inspector reached that conclusion without any reference to the North Wessex Downs escarpment, the relationship with which I have found to be major factor in my conclusion that this is a valued landscape.

78. I conclude that the development unacceptably harms/would harm the character and appearance of the area. I therefore conclude that the development is/would be contrary to Core Policies CP37 and CP44 of the Local Plan Part 1, as well as Development Policy D1 of the Neighbourhood Plan. These policies seek to ensure, amongst other things, that all new development responds positively to the site and its surroundings, respect the character of the area and that the key features that contribute to the nature and quality of the Vale of White Horse District's landscape will be protected from harmful development.

79. For the reasons set out above, the development fails to accord/would fail to accord with the Framework, which indicates that development should contribute to and enhance the natural environment, and should protect and enhance valued landscapes.

Whether the development would have a harmful effect on ecology, resulting in a net loss of biodiversity

80. The starting point for consideration of this issue is proximity of the appeal site to the Baulking Quarry Local Wildlife Site (LWS). The citation by the Thames Valley Environmental Records Centre (TVERC), produced in March 2021, confirms the formal status of Baulking Quarry as an LWS. It confirms that the LWS is of ornithological value and supports breeding and wintering bird species, with six species of birds identified in Annex 1 of European Commission Directive 2009/147/EC (the Birds Directive) being recorded as being present. The citation confirms that the lake itself is a priority habitat.

81. The concerns in relation to ecology are in two respects: the effect of noise on wildlife, specifically birds, and the impact of contaminants on the water quality. Both of these concerns relate only to the use of the site as kennels and a cattery. In addition, there is the issue as to whether the development provides a Biodiversity Net Gain.

Noise

82. As his evidence base, Mr Church produces a number of technical papers and scientific studies in relation to how the presence of dogs impacts the behaviour of birds. On my reading, the most relevant of these studies are:

- "Dogs, Access, and Nature Conservation", English Nature (now Natural England) (2005). This study looked at dogs and their implications for nature conservation. The study confirms that dogs disturb birds, and this disturbance can reduce breeding success, increase rates of predation, and contribute to birds vacating sites. Breeding and wintering birds are most susceptible to disturbance by dogs.

- "Disturbances by dog barking increase vigilance in coots *Fulica atra",* Randler (2006). This study looked at whether the sound of dog barking specifically had the ability to disturb birds. Recordings of dog barking and a non-threatening sound (Chaffinch call) were played to study birds. Birds exposed to dog barking sounds exhibited significantly more vigilance behaviour, when compared to the non-threatening sound played at the same volume. Audible dog barking specifically caused the detrimental behavioural change. The author recommended that the detrimental effects of acoustic pollution from barking dogs should be considered, and buffer zones placed around sensitive areas.

- "Four-legged friend or foe?", Banks and Bryant (2007). This study measured the effects of disturbance from dogs on bird populations in areas which had previously allowed dog walking and areas which had prohibited it. The study found that dog walking has significant adverse effects on the diversity and abundance of bird populations. The results showed that the adverse effect seen in areas where dog walking had previously been prohibited was replicated in areas where dog walking had previously been allowed.

- "Dogs as agents of disturbance", Weston and Stankowich (2014). This paper confirmed that the presence of a threatening stimulus ('disturbance') can disrupt normal behavioural activities of animals and result in adverse sublethal effects. The study found that disturbance facilitates the release of stress hormones and increased heart rate in affected species. The study found that disturbance can have population-level effects, lower habitat quality and reduce the carrying capacity of sites.

- "The assessment of dog barking noise from boarding kennels", Brosnan and Pritchard (2016). This study was published in the Institute of Acoustics bulletin as a technical contribution, looking at the need for standard guidance for assessing the noise impacts of dog kennels. It reports that dog barking can be audible and give rise to nuisance at distances up to 500 metres from the source.

83. It seems to me that these technical papers and scientific studies collectively constitute a considerable body of evidence to show that the presence of dogs can have an adverse effect on birds, in terms of population levels and the capacity of sites to host birds. I also note that these studies indicate that breeding and wintering birds are particularly susceptible to disturbance by dogs which, given the reasons why Baulking Quarry was designated as an LWS as set out in the citation, appears to me to be a highly relevant factor. As technical papers produced by specialists in their respective fields, I attach significant weight to the findings and views expressed in these studies.

84. In relation to these appeals, the issue is whether bird using Baulking Quarry LWS are disturbed by the barking of dogs in the kennels and when being exercised outside of the kennels. This in turn distilled into two areas of dispute; whether the sound of barking dogs is audible to birds on the lake and, if so, whether those birds become habituated to the sound of barking dogs.

Whether the sound of barking dogs is audible to birds on the lake

85. Neither the appellant nor the Council produced any noise surveys to substantiate their respective positions in this respect. On behalf of the

appellants, Mr Green adduced some evidence on this matter in the form of a series of figures purporting to demonstrate how noise reduces over distance. The starting point for Mr Green's evidence was that if the noise from dogs barking at a distance of 1m from the kennels was at a level of 95DB, then even before the sound reached the nearest lake edge it had fallen to the level of ordinary human conversation (60DB). This was without the effect of a normal close boarded fence which would reduce the levels by 10-15DB. Specialist acoustic fencing could reduce levels by around 25DB. This evidence was not relied upon by Mr Davies in his own evidence, but neither was the principle involved seriously challenged by the Council.

86. I have great difficulty reconciling this evidence with the actual experiences of Mr Church and Mr Jupp, both of whom confirmed in evidence that the dog barking from the appeal site was clearly audible to them from the footpath on the far side of the lake. Indeed, that was also the evidence of Mr Davies.

87. Furthermore, the owner of the field immediately to the south of Baulking Lake confirms in his written representation that he has experienced loud and prolonged barking from dogs within pens or enclosures on the appeal site. In their written representation, the Baulking Parish Meeting explain that the noise of the dogs barking and howling is audible throughout the village and its surroundings. This is approximately 1 km from the appeal site. The evidence in both these written representations is untested but, insofar as it correlates with other evidence that is before me, I am inclined to attach weight to it.

88. The above corresponds with my own experience. I clearly heard dogs barking from the kennels on the appeal site from a position on the far side of the lake during my site visit on 17 May 2023. One of the purposes of my unaccompanied site visit on 29 November 2024 was to test the evidence given by Mr Green the previous day. On that occasion, I did not hear any dogs barking from positions on the far side of the lake (the north-western corner) but distinctly heard dogs barking on the appeal site from a position on Public Footpath 122/5 mid-way along the north bank of lake. The noise was not loud at that position and there was a strong northerly breeze across the lake at the time that could have carried the sound downwind from the appeal site more than on other days. Nonetheless, the sound was distinct and unmistakable.

89. My experience and those of Mr Church, Mr Davies, Mr Jupp, the owner of the adjoining land and the residents of Baulking are all consistent with the findings in the study by Brosnan and Pritchard, which reported that dog barking can be audible and *give rise to nuisance* at distances up to 500 metres from the source (emphasis added). The fact that dog barking can cause nuisance at distances of up to 500 metres from the source strongly implies that the sound can be heard at distances well in excess of that. This is pertinent given that dog barking was clearly audible to me from a position on the far side of the lake and from Public Footpath 122/5 on the north bank of the LWS. That position is some 340 metres away from the appeal site and therefore well within the distance stated in the study at which dog barking can cause a nuisance. The distance of 500 metres at which dog barking can give rise to a nuisance (according to the study by Brosnan and Pritchard) would also encompass the far end of the lake (the north-western corner), consistent with the evidence of Mr Church, Mr Davies, Mr Jupp and the owner of the adjoining land, as well as my own experience.

90. The other point that arises from the evidence of Mr Green is the volume at which dog barking is perceived by the birds (as distinct from humans). I do not know if any studies have been undertaken in this respect and neither party has produced any evidence on this particular point. The only evidence that might be relevant being that from the Randler study, and the way in which the birds reacted to the sound of a predator broadcast at 75DB.

91. However, it is reasonable to conclude that the volume of the dog barking would not have to loud to invoke a reaction. Irrespective of the loudness of dog barking, the individual bird would then have to make a dynamic assessment of the level of threat based on the volume of that noise. But even if the volume was low and the bird dismissed the threat as not being immediate, the bird would still have to interrupt its feeding/preening to assess that threat. In the absence of any technical evidence on the point, it seems to me that even dog barking at relatively low volumes could cause a disruption to the normal behaviour of that bird. I therefore cannot discount the possibility that disturbance to birds could arise where the noise of dogs barking was not loud but was distinctive and unmistakable, as experienced by myself and others.

92. I am also mindful that the ornithological interest of the LWS is not just limited to lake itself, but extends to other habitats within the LWS which surround the lake. The value of woodland and scrub habitats is acknowledged in the LWS citation, and it also seems to me likely that the reeds and lake margins provide suitable habitat for birds using the lake. Some of these areas are considerably closer to the appeal site than the 500 metres stated in the study by Brosnan and Pritchard.

93. Having regard to all the evidence before me, I conclude that the sound of dogs barking on the appeal site is audible to humans right across the lake. It also occurs to me that birds may have more sensitive hearing than humans, or possibly are able to better detect sounds that might be a threat to them. I have no evidence before me in that regard. In the absence of that evidence, I am reluctant to adopt and rely solely upon the principles that apply to the ability of humans to hear noises.

94. This brings me back to question of whether a fence would reduce the noise levels to an acceptable level, whether that be a standard close-boarded fence or an acoustic fence. The first difficulty is that no acoustic modelling has been submitted to show what effect this might have on reducing noise levels. Given that the standard formula for the reduction of noise over distance outlined by Mr Green has in practice been shown by my own experience and that of others not to reflect the actual position on site, that is a significant omission. It follows that simply subtracting 10-25DB as appropriate cannot be relied upon in this case. In this context, I come back to the question as to whether birds experience noise in the same way as humans do and the volumes at which dog barking disturbs the normal behaviour of birds.

95. The second point is that I have already found the existing close-boarded fencing on the appeal site is an urbanising feature that significantly harms the character and appearance of the area. Erecting additional fencing for the purposes of noise mitigation would only serve to exacerbate that harm. Even allowing for screening by landscaping, this is likely to be more harmful if an acoustic fence was proposed.

96. For these reasons, I conclude that a fence (whether it by close-boarded or an acoustic fence) would not overcome the harms that the scientific studies and technical papers produced by Mr Church have identified but would introduce additional harm to the character and appearance of the area.

Habituation

97. In his Rebuttal Proof, Mr Church accepts that the LWS was likely to have been subject to some dog walking prior to development occurring, but considers that the level of use of the LWS by dog walkers was likely very low and for only for very short periods when passing through the LWS. As such, in his view any visual or noise disturbance on birds within the LWS as a result of dog walkers was likely at a very low level and transient. By comparison, Mr Church considers that the appeal scheme represents a very substantial increase in the intensity of audible barking within LWS (groups of dogs barking at the same time), with a much greater frequency of barking events throughout the day.

98. On behalf of the appellant, Mr Davies counters this evidence with the view that a key component of the disturbance caused by dog walking is the *visual* disturbance associated both with the dog and with the human walking with it: the "*seeing is believing*" principle. Mr Davies points out that this is not the situation in this case, where it is only the barking of the dogs at the breeding facility that is the issue. In this situation, the birds on the lake would not see the dogs, such that the threat would not be verified.

99. On my reading, this is the very point was addressed in the study by Randler. The experiment on which the study is based provoked a reaction in birds simply from the playing of a sound recording of barking dogs. In that experiment, the birds did not have sight of the dog(s) and therefore could not have associated the noise with the sight of the predator. This would suggest that birds on the LWS could be disturbed by the noise of the dogs barking in the kennels on the appeal site, even though they could not see those dogs to verify the threat.

100. The studies provided by Mr Church collectively suggest that the visual presence of dogs is not necessary to disturb birds, but anxiety amongst the bird population is heightened by the sight of the dog(s). The study by Banks and Bryant found that the abundance and diversity of bird populations was significantly reduced in study areas subject to disturbance from dogs, both in areas which previously allowed dog walking and areas which prohibited it. As Mr Davies accepted in cross-examination, the study found that humans walking alone induced some wildlife disturbance, but this represented less than half of that induced by dogs, and that the effects of dogs occurred even where dog walking was frequent suggests that local wildlife does not become habituated to continued disturbance.

101. To my mind, the latter would be the logical response of a bird to a threat from potential predator. It would not appear evolutionary prudent for a wild bird to be become habituated to the presence of a predator, irrespective of whether that predator was visible to the bird or not. Indeed, it seems logical to me that the potential presence of a predator that was heard but not seen is a good reason to increase vigilance rather than reduce it in order for the bird to verify whether the threat was real or not.

102. There is another consideration in this respect. The Baulking Quarry LWS was designated because of its ornithological value in terms of supporting breeding and wintering bird species. The arrival of wintering birds at the LWS is likely include a percentage of individuals which had not visited the site previously. Even if birds do become habituated to the sound of barking dogs, which I consider unlikely, the newly arrived individuals would have to go through the process of becoming habituated.

103. In answer to my questions, Mr Church explained that if any habituation did occur to dogs barking, it could only be specific to the individual animal experiencing the barking. It follows that every time a new animal visited the LWS and heard the barking it would experience the increased vigilance associated with the dog barking, impacting its mutually exclusive feeding, sleeping and preening behaviour. Mr Church expressly confirmed that such an occurrence would be particularly harmful to arriving wintering birds, for which the LWS has identified value, as those individuals would have incurred the energetic costs and physical stress of migration journeys. That cycle would then be repeated every year.

104. Having regard to the above, and in particular to the study by Banks and Bryant, am not persuaded that the birds using the LWS would ever become habituated to the sound of dogs barking emanating from the kennels on the appeal site. It follows that the adverse effects on bird populations identified in the studies produced by Mr Church in terms of population levels and the capacity of sites to host birds would occur as a result of the development on the appeal site. Given the reasons why Baulking Quarry LWS was designated, this would cause substantial harm to this priority habitat.

Water

105. As his evidence base, Mr Church again sets out a series of technical papers and scientific studies. On my reading, the most relevant of these studies are:

- "Impact of fipronil, a new generation pesticide, on avian development and health", Kitulagodage (2011). This study looked at the toxicity of fipronil in birds in Australia. The study found that Galliformes (landfowl) and Passeriformes (perching songbirds) were susceptible to fipronil toxicity. Reductions in feeding behaviour were noted. Maternal transfer from mother to the yolks of laid eggs was also observed, as fipronil is lipophilic (highly fat soluble). Chicks exposed to fipronil, in ovo, showed behavioural and developmental abnormalities, and lower hatching rates. The study found that sensitivity to fipronil toxicity in birds is species specific.

- "A review of the direct and indirect effects of neonicotinoids and fipronil on vertebrate wildlife", Gibbons *et al* (2015). This study looked at existing evidence regarding the direct and indirect effects of parasiticides on non-target vertebrate wildlife. Reduction in insect prey is an identified indirect impact. Direct effects are species-specific and depend on the level of exposure to parasiticide. Impacts ranged from lethal to sub-lethal, including reduced growth and reproductive output.

- "Effects of neonicotinoids and fipronil on non-target invertebrates", Pisa *et al*. (2015). This study brings together current understanding about the toxicity of parasiticides, including fipronil and imidacloprid, on invertebrates which are not the intended target of treatment. It is confirmed that

exposure to these parasiticides can cause lethal and sub-lethal impacts on invertebrates, which can both have important impacts on ecosystem function. It is also confirmed that fipronil and imidacloprid are highly persistent, water soluble and have high potential for run off and leaching to both surface water and groundwater. Aquatic invertebrates are identified as being particularly vulnerable as they cannot escape exposure. Imidacloprid killed 50% of a test population of Chironomus midges at a concentration of 0.91 parts per billion.

- "Eutrophic Standings Waters Priority Habitat Description", Joint Nature Conservation Committee (2016). This paper confirms that, due to abundant nutrients and high productivity, these habitats can support high levels of biodiversity. Pollution of these habitats is identified as a particular threat.

- "Potential role of veterinary flea products in widespread pesticide contamination of English rivers", Perkins *et al* (2020). This recent study found that common parasiticides, fipronil and imidacloprid, were found in all rivers sampled by researchers. Fipronil and its degradates were found in concentrations known to be damaging to aquatic life. As both fipronil and imidacloprid are widely banned for agricultural use, domestic pet parasiticide products are identified as the likely source. It is considered that the bathing of treated animals, washing bedding, rainfall wash off from animals directly, and surfaces with shed hair/dander, are all pathways for fipronil and imidacloprid entering the water environment. Fipronil and imidacloprid are persistent in contaminated water and cannot be removed by wastewater treatments plants.

- "European Commission: Factsheets of the substances for the 4th Watch List under the Water Framework Directive. Annex II", Cortes (2022). This paper identified the parasiticide fipronil as a substance that required including in the fourth iteration of the Water Framework Directive's 'Watch List'. The 'Watch List' mechanism collects information on substances of greatest concern to the water environment. In the technical factsheet, fipronil is identified as being toxic, not readily degradable, and very persistent. Fipronil has the following description in this factsheet: "It is very toxic to aquatic life with long lasting effects".

- "Phenylpyrazole (Fipronil) Toxicosis in Animals", Gupta and Doss (2023). This paper reports on the impacts of fipronil toxicity in mammals. It is confirmed that once fipronil is applied to the skin of a mammal, the parasiticide is absorbed into the skin, fur, and fatty tissues. Fipronil is excreted through faeces and urine.

- "Are urban areas hotspots for pollution from pet parasiticides?, Preston-Allen *et al* (2023). This very recent paper builds upon existing knowledge regarding the risk that pet parasiticides pose to the environment and is highly relevant to this appeal. It is again confirmed that wastewater treatment plants, processing foul water, cannot remove these persistent chemical parasiticides. Multiple pathways for parasiticides to enter the water environment, once applied to dogs and cats, are identified. Impacts on invertebrates through parasiticide pollution could have wider impacts on whole ecosystems. It is reported that, in theory, one single monthly dose of parasiticide is toxic enough kill 25 million bees.

106. It seems to me that these technical papers and scientific studies collectively constitute a considerable body of evidence to show that neonicotinoids and in particular fipronil can have a harmful and lasting effect on vertebrates and invertebrates, even in very low concentrations. In particular, I note the views expressed on the pathways for fipronil and other parasiticides to enter the water environment which, it seems to me, are directly relevant to this appeal. As technical papers produced by specialists in their respective fields, I again attach significant weight to the findings and views expressed in these studies.

107. The Council's concerns relate to parasiticides making their way into the groundwater. The appellant's response is that the real issue was that these dangerous "forever chemicals" were being used by farmers applying neonicotinoids widely across the landscape apparently with little or no sanction. However, the study by Perkins et al in 2020 makes it clear that in Europe the use of both imidacloprid and fipronil have been banned. Agricultural use of imidacloprid ended in the United Kingdom in 2016 and agricultural use of fipronil ended in 2015 (other than in the extremely limited scenario where a specific exemption is requested and granted by the Government for a targeted use). This means that the current use in agriculture is properly described as "*negligible*".

108. This contrasts strongly with the widespread use of these chemicals in topical veterinary ectoparasiticide products. Accordingly, there is a widespread concern, as discussed in the study by *Perkins et al*, that environmentally significant quantities of these pesticides from flea treatments may be entering the environment from pets including from rainfall, wash off from treated pets and shedding of hair and dander. In cross examination, Mr Davies accepted that the study be *Pisa et al* particularly warned of the dangers to aquatic invertebrates of neonicotinoids reaching surface waters through seepage of contaminated groundwater.

109. It is a legal requirement for a licensed dog and cat breeding business to implement regular preventative treatment. There is evidence before me that the appellant is using a product called Frontline as pet treatment. Frontline contains Fipronil.

110. Once applied the chemicals spread across the skin and fur of treated animals and are released gradually into their environments and ultimately into the water. The study by *Pisa et al* points out that miniscule concentrations of imidacloprid (0.9 parts per billion) have been shown to be lethal to freshwater invertebrates. Fipronil, as used by the appellant, is even more toxic. As the study by *Cortes* shows, Fipronil is fatal to Chironomous at concentrations as low as 0.12 ppb.

111. Research is now showing that birds are sensitive to these chemicals as they are lipophilic and readily transfer from female birds to yolk of their eggs (*Kitulagodage, 2011)* and that these chemicals can be harmful to the reproductive biology of birds (*Gibbons et al*, 2015).

112. The appellant accepts that if those chemicals got into the lake they would be harmful. In that scenario, there would be a polluter and a receptor. However, the appellant considers that there is no credible pathway for chemicals to get to the lake. It was Mr Green's evidence that a substantial body of water, such as the lake, will create a pressure preventing groundwater entering the lake.

Without a credible pathway, it is Mr Green's view that there cannot be a risk to the receptor (the lake) from the pollutant chemicals.

113. My difficulty with the evidence given by Mr Green is that it is not supported by technical evidence from a suitably qualified hydrologist. On every occasion on which I visited the lake (summer and winter) it was "brimmed full". For that to be the case, it seems to be that there must be equitable pressure of water within the lake and the surrounding groundwater. This status quo (absent a pressure differential) would allow for the movement of chemicals from the appeal site to the LWS through groundwater seepage and percolation of contaminated water (rainfall, run off, etc) through the ground into the porous rocks of the underlying aquifer.

114. As explained by Mr Church, the appeal site and the LWS share the same underlying aquifer within a high groundwater vulnerability zone (GVZ). The British Geological Survey: Hydrogeological Map (March 2023) shows that the extent of the underlying aquifer which the appeal site and LWS share is constrained in this particular location, meaning that groundwater cannot move to the south and can only move a short distance to the east and southeast. Baulking Quarry Local Wildlife Site was created in 2004, following cessation of quarrying activities in or around 2000. Groundwater vulnerability zones ("GVZ") were only established in 2017. Consequently, the presence of a GVZ was not known when reinstatement of the lake was taking place. I therefore concur with Mr Church that this suggests that the LWS has no lining.

115. The LWS is immediately contiguous with the appeal site to the west and northwest. I therefore conclude that, on the evidence before me, there is a very real risk that chemicals (including Fipronil) could enter the LWS as a result of the pet treatments being applied as part of the appellant's dog breeding business. The studies which Mr Church has provided and to which I refer above indicate that the effects on the food chain within the LWS could be catastrophic should this occur. This would cause significant harm to the population of breeding and wintering birds that use the lake.

116. I am of course mindful that the dog breeding use has been taking place for some four years now and that, throughout that time, pet treatments such as Frontline have been used. This raises the obvious question that, if chemicals such as Fipronil are entering the groundwater as a result of that use, why has that not manifested itself in a noticeable degradation of the bird population using the lake?

117. There is no evidence before me on that point, in terms of whether there has been a measurable reduction in the number of birds visiting the lake. However, the fact that there might not have been a noticeable reduction in the population until now does not necessarily mean that chemicals such as Fipronil entering the groundwater will not have deleterious effect at some point. There is, for example, no evidence before me concerning percolation rates in the soil or in the underlying geology. It is therefore not possible to estimate the period time that chemicals such as Fipronil might take to enter the LWS via the groundwater.

118. Should chemicals such as Fipronil get into underlying aquifer and then into the lake, the evidence set out in the studies provided by Mr Church indicate that this would nothing less than catastrophic on the abundant populations of freshwater invertebrates in this eutrophic standing water, and in turn throughout the

food chain. Given that Baulking Quarry LWS is a priority habitat, the precautionary principle therefore suggests that it would not be prudent to take the risk of the groundwater becoming contaminated through the use of pet treatments in the dog breeding business taking place on the appeal site.

119. Mr Davies raises the point that the use of the lake for coarse fishing may itself have a deleterious effect on the population of freshwater invertebrates in lake, this caused by anglers depositing copious quantities of bait in the water and the introduction of carp into the lake. A number of points arise from the this.

120. The retrospective planning application to use the lake for coarse fishing venue (Council Ref:P23/V2031/FUL), as amended, limited the number of 'swims' (permanent positions from which anglers fish) to thirteen. The planning application was specifically for a 'specimen carp' venue, such that the site operator is likely to adopt a stocking policy designed to promote a high average size (weight) of individual fish. The Desktop Screening Assessment of Environmental Impact submitted with the application indicated that the stocking density would not exceed the maximum of 20.0 gms/m² set out in current guidance from Natural England, adopted to ensure that stocking densities do not influence water clarity through benthic disturbance, and thus negatively impact on sensitive macrophytes.

121. The Council's Countryside Officer (Mr Church) objected to the proposal, partly on the basis of adverse ecological effects on this priority habitat and the ornithological value of the LWS. In the event, planning permission was refused in October 2024 on the single ground that insufficient information had been provided to demonstrate that birdlife and aquatic life would not be adversely affected by the change of use. As the appellant points out, it is instructive that the Officer report recommending the refusal of planning permission did not include an attendant recommendation to initiate enforcement action against the use.

122. But this misses the point. To my mind, the salient point is that if the use was to continue, any adverse impact arising from that use would be in addition to the harm arising from the dog and cat breeding use on the appeal site. Consequently, irrespective of whether the use as a coarse fishing venue was ultimately found to be acceptable or not, it would make absolutely no difference to the harm caused by the dog and cat breeding use on the appeal site. It would not provide any justification for that use.

Biodiversity Net Gain

123. In relation to these appeals, the requirement for Biodiversity Net Gain (BNG) arises from Core Policy 46 of the Local Plan Part 1 which states, amongst other things, that development that will conserve, restore and enhance biodiversity *in the district* will be permitted and that a net loss of biodiversity will be avoided (emphasis added). The words "in the district" within this policy are important in this case, insofar as they preclude the provision of BNG outside of the District if this could not be achieved on the site itself.

124. The first task in relation to this issue is to determine whether there is, or can be, a BNG on the appeal site itself compared to the baseline position. For that purpose, the baseline must be the condition of the land prior to the commencement of the breach of planning control: otherwise, it would be

possible to undertake works in advance of the development taking place (either intentionally or accidentally) which could have the effect of reducing the ecological value of the site.

125. Prior to the development taking place, the appeal site comprised semi-restored grassland. The difficulty is that no ecological survey of any description was carried out prior to the commencement of development. As a consequence, any opportunity to establish a reliable baseline for the condition of the land at that time was irrevocably lost.

126. There are also a number of errors in the calculation of the BNG in the metric provided on behalf of the appellant. These errors include the omission of temporal factors; heathland and scrub erroneously recorded as "good" where this should have been "moderate"; the omission of the required value for the delay in starting enhancement; and the condition of the reinstated watercourse should be described as poor, not moderate. The appellant accepts that these are errors/omissions.

127. There is then the disputed issue as to the correct identification of some habitats in the metric. The entire basis for any BNG is predicated on treating the appeal site as either heathland and scrub or enhanced grassland. The Council considers that these areas should be classified as "vegetative garden" because, although private gardens can make a positive contribution, ongoing management cannot be secured in the long term. Furthermore, the Council says, any tree planting within such a garden should not be included within the post development sheets of the metric.

128. In response, Mr Green makes the valid point that caravans for residential occupation by Gypsies and Travellers do not have gardens: they are stationed on pitches. This is a use of land as opposed to the curtilage of a dwellinghouse. This then leaves heathland and scrub or enhanced grassland as the closest habitat type for the calculation of BNG.

129. The principles and practice behind BNG are still evolving, and this is a situation that has not been specifically addressed at this time. It appears to me, however, that a Gypsy and Traveller pitch can perform many functions associated with the residential occupation of the caravan. One of those functions is that the pitch serves as a garden area for the occupiers of the caravan. It is an outdoor space where the occupiers of the caravan can relax, children can play, washing hung out to dry and plants can be tended. In that sense, a Gypsy and Traveller pitch is akin to a private garden in a dwellinghouse. This is fundamentally different to what the guidance envisages as heathland or grassland.

130. I recognise that the use of the pitch also includes the dog-breeding business and the cattery. Nevertheless, the space is also capable of being used for the same purposes as a domestic garden and at the same time. I therefore consider that the most appropriate habitat for use in the metric is "vegetative garden".

131. There is, however, a more fundamental defect with the appellant's BNG calculations. The metric guidance confirms that the three types of biodiversity unit generated by the Metric (that is, the area, hedgerow and watercourse modules) cannot be summed, traded or converted between modules. This is expressed as a rule. This was accepted by Mr Davies in cross-examination.

132. In this case, irrespective of any defects in relation to the calculation of the area units, Mr Davies expressly accepted that the appellant cannot satisfy the requirement for BNG in watercourse units. I recognise that the planning permission (including through the deemed applications) is not sought for the filling of the ditch. But that is irrelevant: the calculation of BNG derives in part from the condition of the land prior to the development taking place. In this case, that includes the watercourse (the ditch). This in turn brings the condition of the watercourse squarely within the ambit of the BNG calculations to support the resulting planning applications, notwithstanding that the work to infill the ditch has subsequently been undone.

133. Given that the appellant cannot satisfy the requirement for BNG in watercourse units, the appellant is unable to demonstrate a BNG for the development as a whole within the site itself. This is irrespective of whether the proposed planting of hedgerows would on its own secure a substantial net gain in biodiversity. The BNG rules are very clear: the three types of module cannot be summed, traded or converted between modules.

134. Since February 2024 it has been possible to secure BNG by delivering off-site biodiversity gains on other landholdings or purchase biodiversity units on the open market. There is a statutory habitat bank operational within the Vale of White Horse, operated by the Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust (the Trust). This scheme requires the use of the statutory biodiversity metric.

135. The planning applications arising from these appeals predates the statutory scheme. I am therefore not convinced that the appellant could make use of the scheme operated by the Trust. Moreover, even if this was possible, purchase of off-site units would only demonstrate compliance with the development plan policy if the provision was within the Vale of White Horse District.

136. There is also no evidence before me that the broader conservation objectives of the Trust would be met by the provision of off-site BNG or that they would agree to sell units to the appellant given the harm that I have found to the LWS. There is no proof of purchase of any such site. There is no evidence before me that the Trust or any other landowner have even been approached with a request to purchase land to provide BNG relating to the appeal site. Moreover, there is also no evidence before me that any such site would be within the Vale of White Horse District, a prerequisite of securing compliance with Core Policy 46.

137. The appellant's case is that BNG can be secured through the imposition of a suitably worded condition. I have severe reservations about that approach in this case. The evidence base to support that approach is simply not there. The appellant cannot show that BNG can be achieved on site. There is no evidence that BNG could be secured off-site. Conditions are usually imposed to secure benefits or mitigation provided as part of the application. I fully recognise that a condition can be worded in such a way that the use must cease if not complied with. But, in the absence of an evidence base to even suggest that there is any prospect of BNG being secured in the District, I have no confidence that BNG can be secured in compliance with the development plan through the imposition of a condition.

138. For these reasons, I conclude that the appellant is not able to secure BNG in relation to the development that has taken place/is proposed and is not able to show that this provision can be provided off-site. Accordingly, the appellant has not shown that a net loss of biodiversity can be avoided.

Conclusions on this main issue

139. I conclude that the development that has taken place and is proposed causes significant harm to ecology on the LWS, a priority habitat. The appellant has not shown that these harmful effects can be mitigated, including to the extent that any such mitigation would itself cause harm in other respects. The appellant has not demonstrated that the use resulting in that likely harm (the dog-breeding) could not be located on another site. The appellant is unable to show that a net loss of biodiversity can be avoided.

140. I therefore conclude that the development is contrary the Core Policy 46 of the Local Plan Part 1. This policy states, amongst other things, that development likely to result in the loss, deterioration or harm to habitats or species of importance to biodiversity, either directly or indirectly, will not be permitted unless the need for, and benefits of, the development in the proposed location outweighs the adverse effect on the relevant biodiversity interest; it can be demonstrated that it could not reasonably be located on an alternative site that would result in less or no harm to the biodiversity interests; and that measures can be provided (and are secured through planning conditions or legal agreements), that would avoid, mitigate against or, as a last resort, compensate for, the adverse effects likely to result from development.

141. Paragraph 193 of the Framework indicates if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. The development fails to accord with the Framework in that respect.

Whether the stationing of caravans for residential use is appropriate in this location

142. There are three elements to this main issue. It is first necessary to consider whether the dog breeding business/cattery provides justification for the residential use in this location. Only if it does not is it necessary to considers whether the appeal site provides adequate accessibility to services by foot, by cycle or by public transport, and whether the appeal site is isolated.

Employment justification

143. In rural areas such as this, Core Policy 28 provides that the re-use of, conversion or adaption of suitable existing buildings for employment use will be supported subject to certain criteria. The supporting text to this policy links this back to the spatial strategy by explaining that this is so that employment activities can be accommodated with least impact on the landscape.

144. There was much debate at the Inquiry as to what is meant by 'new employment development' for the purposes of Core Policy 28. This is defined in the policy itself as Use Classes B1 (now Class E), B2 or B8. However, there is no need for me to go there. The employment use on the appeal site does not involve the re-use, conversion or adaptation of a suitable existing building.

The development cannot comply with Core Policy 28 for this reason alone, irrespective of whether the use taking place on the appeal site falls within any of the Use Classes set out in that policy, any other Use Class or is a *sui generis* use. Moreover, the use does not promote sustainable modes of transport and contributes to the harm that I found to the character and appearance of the area. Accordingly, the development additionally fails to comply with criteria (ii) and (iii) of this policy.

145. Development Policy DP6 of the Local Plan Part 2 "Rural Workers' Dwellings" indicates that a rural worker dwelling in the open countryside will be permitted subject to a number of criteria set out in that policy. The first of these criteria is that the dwelling is (a) essential and (b) it can be demonstrated that there is an existing need for one or more permanent full-time workers to be readily available at all times for the rural enterprise to operate viably.

146. In her evidence, Mrs Pidgley explained that the need to live on the site is derived from the "DEFRA regulations": these being The animal welfare (licencing of activities involving animals) (England) Regulations 2018. She currently operates under a 3 star licence for the purposes of those regulations. A higher standard is required to gain a 4 or 5 star rating. It is only the higher 5 star standard that requires an overnight inspection, and even then a single inspection between 18:00 and 08:00 is all that is required.

147. It follows that there is no requirement even to carry out a single inspection between 18:00 and 08:00 unless and until a higher standard achieved. Even if a higher standard was secured, this would not mean that it was "essential" to live on the site. Any functional need could be met by a single visit between the hours of 18:00 and 08:00. A single inspection between those hours would not necessitate a permanent presence on the site. Whilst it would undoubtedly be less convenient, there is no practical reason why Mrs Pidgley could not live elsewhere in the locality and travel to the site to carry out the single daily visit (not necessarily by private car).

148. Neither would the business require a full-time worker to live on site for it to operate viably. There is no evidence before me that the dogs or cats routinely require round-the-clock observation or care. I understand that the appellant's have suffered one break-in. However, there is no evidence before me to show that a full-time presence on site is essential for security reasons.

149. The development fails to comply with Development Policy DP6 in other respects too. No financial appraisal has been submitted to demonstrate that the business will be viable for the foreseeable future. It is settled case law (*Hunter v SSLUHC and Buckinghamshire [2023] EWHC 1068 (Admin)* that accounts are usually submitted to verify the current financial status of an enterprise to ensure that an enterprise is capable of achieving financial viability and sustainability in its own right rather than relying on monies from elsewhere. No such accounts have been submitted.

150. Indeed, the totality of the evidence of sales for business was the 2 kittens and 4 puppies, totalling £2590. No future projections for the initial three-year temporary period contemplated by DP6 are provided. No allowance has been made for labour costs. No allowance has been made for depreciation of assets, repair of buildings, construction of buildings, car or fuel costs. No breakdown of any costs has been provided. Neither have receipts been provided to verify the accuracy of any start-up costs, albeit Mrs Pidgley acknowledged that her

start-up costs did not include the purchase of the land or the cost of the mobile home. In short, there is no evidence whatsoever that this is a viable business.

151. Finally, consistent with the overall spatial strategy, Development Policy DP6 requires that development respects the landscape setting and local character. I found that this is not the case.

152. The corollary is that the appellant cannot rely on either Core Policy 28 or Development Policy DP6 as a gateway to allowing the residential use associated with that business. I therefore turn to other policies in the development plan, the Framework and the PPTS.

Whether the appeal site provides adequate accessibility to services by foot, by cycle or by public transport

153. The appeal site is situated approximately 0.7mile (1.13km) away from the small rural hamlet of Baulking, whether by car or on foot. The hamlet of Baulking provides no services or facilities. There is a bus stop there, but I understand that it is not currently served by any bus routes.

154. The closest settlement to the appeal site that does provide facilities is Uffington, which is defined as a Larger Village in Policy C3 of the Local Plan Part 1 and which is approximately 1.9miles (3.0km) from the appeal site by car or on foot. The facilities provided in Uffington are a school (2.19 miles, or 3.52km), a post office and a general store. There is no public transport connection from the village to a wider range of services such as doctors, dentists or secondary schools.

155. The document 'Providing for Journeys on Foot' published by the Chartered Institute of Highway and Transport sets out desirable, acceptable and preferred maximum distances for walking. The appeal site falls within the 'Elsewhere' category for the purposes of that document. The desirable, acceptable and preferred maximum walking distances for locations in the 'Elsewhere' category are 400m, 800m and 1,200m respectively. The distances to the nearest services at Uffington are therefore considerably beyond the desirable, acceptable and preferred maximum walking distances, as outlined in 'Providing for Journeys on Foot'. I recognise that the document was published in 2000 and is therefore more than 20 years old now. Nevertheless, the physical characteristics of walking have not changed in that period and I therefore attach considerable weight to that document in terms of the walking distances advocated.

156. The deterrent to walking posed by the distance to the nearest facilities is exacerbated by the pedestrian environment encountered. The road to Uffington is unlit with no footways. There is a pinch point on the bridge crossing the railway line and the road has a 60mph speed limit. These factors combine to make an unattractive and indeed inhospitable pedestrian environment, particularly at night, in inclement weather, when carrying heavy shopping, when pushing a pushchair or wheelchair and when accompanied by young children. This was reinforced by my unaccompanied site visit which, even though in daylight, in good weather and unencumbered by escorting young children or carrying heavy shopping, nevertheless revealed the reality of walking along that road over that distance.

157. There are public footpaths which offer a safer and more attractive alternative to walking along the main road, but these are unsurfaced cross-country routes. These footpaths would therefore be difficult to traverse in the winter months and during the hours of darkness. Consequently, in my view, relying on walking to the services available in Uffington is not a viable option on a day-to-day basis. Similarly, whilst the distance would less of an obstacle on bicycle, that mode of transport would encounter similar issues and would also not be a viable option on a day-to-day basis, particularly when carrying a large amount of shopping or escorting very young children.

158. The next nearest settlement offering services is Stanford-in-the-Vale which, at approximately 2.6 miles (4.18km) by car or on foot, is further away from the appeal site than Uffington. Stanford-in-the-Vale is defined as a Larger Village in Policy C3 of the Local Plan Part 1. That village has the benefit of being served by a bus, but this offers only a limited service to Wantage or Faringdon. To reach the doctors surgery in either of those places from the appeal site first requires a walk of some of 2.48 miles (3.99km) with 0.84 miles (1.35km) of the walk along the A417. In my view, this is not within a comfortable walking distance from the appeal site.

159. I therefore consider it highly unlikely that the appellant or his family would walk or cycle to either Uffington or Stanford-in the Vale on a regular basis for day-to-day activities. There is no option to use public transport. The appellant accepts this but considers that, although occupants of the appeal site are likely to be reliant on the use of private motor vehicles, they would have reasonable access to a wide range of facilities within a short travelling distance. The appellant also points out that Gypsy and Traveller sites will inevitably be located away from settlements, and that the appellant's nomadic lifestyle involves travelling for both economic and other purposes in any event.

160. The PPTS considers sustainability in the round. Paragraph 13 of the PPTS indicates that local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally, having regard to a range of factors (a to h inclusive) set out in that paragraph.

(a) is to promote peaceful and integrated co-existence between the site and the local community. The appeal site is in a remote location far removed from the local community. Accordingly, there is little opportunity for the appellant and his family to co-exist and become integrated into the local community.

(b) is to promote, in collaboration with commissioners of health services, access to appropriate health services. The nearest settlements providing medical facilities are Uffington and Stanford-in the Vale, at distances of 3km and 4.18km respectively. The appeal site therefore does facilitate access to appropriate health services, albeit they are some distance away.

(c) is to ensure that children can attend school on a regular basis. The appellant's child is not yet of school age. The closest school is in Uffington which would provide any children living on the site the opportunity to attend school on a regular basis, albeit the distance and route to that school offers several challenges and would in all probability require the use of a private car.

(d) is to provide a settled base that reduces both the need for long-distance travelling and possible environmental damage caused by unauthorised encampment. In this particular case, the development is a mixed use that

includes a dog-breeding business. As I understand it, Mr Pidgley travels for work as a landscape gardener, whereas Mrs Pidgley remains at home to run the dog-breeding business and car for their child. Consequently, whilst the appeal site would have the advantage of providing a settled base from which to travel, it seems to me that the personal circumstances of the family at this time would largely preclude much long-distance. Any benefit gained by avoiding environmental damage caused by unauthorised encampment needs to be balanced against the environmental harm caused by the development itself (see below).

(e) to provide for proper consideration of the effect of local environmental quality (such as noise and air quality) on the health and well-being of any travellers that may locate there or on others as a result of new development. I have no doubt that the quality of the local environment has a beneficial effect on the health and well-being of the appellant and his family, not only in terms of noise and air quality, but also the attractiveness of the surroundings. For the reasons that I set out below, the effect on environmental quality for others as a result of new development is less than beneficial and is in my view harmful.

(f) to avoid placing undue pressure on local infrastructure and services. There is no evidence before me to suggest that the development that has taken places undue pressure on local infrastructure and services.

(g) to not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans. The appeal site is not at risk of flooding.

(h) to reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability. Operating the dog-breeding business from the site omits the need for Mrs Pidgley to travel for work and to that extent does contribute to the sustainability of the development that has taken place on the site.

However, that development does itself generate vehicular traffic, specifically the movements associated with the keeping and breeding of cats and dogs for the purpose of sale. This is an integral component of the mixed use alleged in Enforcement Notice A. In giving her evidence, Mrs Pidgley confirmed that customers would generally collect the dog or cat purchased from the site itself. The invoices for the sale of these animals submitted as part of Mrs Pidgley's evidence indicated that some of new owners travelled a not inconsiderable distance to collect their purchases: for example, from Holme-upon-Spalding Moor in Yorkshire and from Pulborough in West Sussex. It is axiomatic that customers purchasing puppies and kittens would wish to collect them in person. Consequently, given the location of the site and the absence of public transport close by, it is more than likely than not that those journeys were made using a car or other vehicle.

161. I am satisfied that the location of the appeal site meets criteria (b), (c), (f) and (g) as set out in Paragraph 13 of the PPTS, albeit that the school and doctor's surgery are not close by. The salient point, however, is that in order to reach those facilities, and also to meet other day-of-day needs, it is more likely than not that the occupiers of the appeal site would require the use of a car. That is a consideration that needs to be weighed in the overall balance,

together the harm caused by the development to environmental quality and the absence of any opportunity for occupiers of the appeal site to integrate with the local community.

162. On balance, I conclude that the development on the appeal site does not accord with Paragraph 13 of the PPTS when looked at the round. I further conclude that the appeal site does not provide adequate accessibility to services by foot, by cycle or by public transport.

163. In this context, the appellant considers that Criterion vii of Core Policy 27 of the Local Plan Part 1 is inconsistent with the Framework and the PPTS insofar as it requires development to be within a reasonable walking distance of a primary school, a local shop and a public transport service. The appellant points out that very few sites in the country would conform to this requirement and that there is no such requirement in either the PPTS or the Framework, which both clearly allow for sites to be located further away from such services.

164. The Local Plan Part 1 was adopted in December 2016, at which time versions of both the Framework and the PPTS were part of national planning policy. The Local Plan Part 1 was found on examination to be sound when assessed against national planning policy at that time. More recently, Core Policy 27 was found to be generally consistent with both the Framework and the PPTS in the Regulation 10A review of the Local Plan Part 1. The salient point is again that Core Policy 27, including the reference to a reasonable walking distance, is tailored to the specific circumstances of the Vale of White Horse District. For all these reasons, I attach full weight to this aspect of Core Policy 27.

165. More generally, Core Policy 27 of the Local Plan Part 1 indicates that proposals to meet the identified need for Gypsy and Traveller sites will be permitted where it has been demonstrated that a number of criteria have been met. Criteria v. is that the development will not harm the Area of Outstanding Natural Beauty (now National Landscapes), areas of high landscape or ecological value and their setting. Criteria vi requires, amongst other things, that development will not have an adverse impact on the character of the area. Both of these criteria reflect the overall spatial strategy for the District.

166. I have already found that the development on the appeal site harms the setting of the North Wessex Downs National Landscape and harms the valued landscape in which it sits. Consequently, the development has an adverse impact on the character of the area. The development also harms the ecological value of the LWS. The development therefore does not meet criteria v, and vi. of this policy.

167. The site is not within the Oxford Green Belt, does not have an adverse of impact on highway or pedestrian safety, and has no impact on the amenities of any residential properties. It therefore accords with criteria iv. and, in part, criteria vi. of the policy. There are no issues with any of the range of matters set out in criteria viii. of the policy. Nonetheless, taken as a whole, I consider that the development on the appeal site does not comply with Core Policy 27 of the Local Plan Part 1.

Whether the appeal site is isolated

168. Paragraph 84 of the Framework) indicates that the development of isolated homes in the countryside should be avoided unless one or more of the

circumstances set out in that paragraph apply. I am satisfied that none of circumstances set out in that paragraph apply in this case.

169. The word 'isolated' is not defined in the Framework. However, the courts have held that "isolated" should be given its ordinary objective meaning of "far away from other places, buildings or people; remote" (OED). The courts also found that the immediate context is the distinction in the Framework between "rural communities", "settlements" and "villages" on the one hand, and "the countryside" on the other. This suggests that "isolated homes in the countryside" are not in communities and settlements and so the distinction between the two is primarily spatial/physically.

170. In this case, as indicated above, the nearest settlement is the rural hamlet of Baulking. This is approximately 0.7mile (1.13km) away from the appeal site, and is separated from it by a lake and open fields. The separation from the appeal site is therefore both spatial and physical. I have already found that the appeal site is in open countryside.

171. I therefore conclude that as a matter of fact and degree the appeal site is isolated for the purposes of Paragraph 84 of the Framework. It is accordingly in a location in which new homes should be avoided.

Conclusion on this main issue

172. I find that the appeal site is in a location that does not provide adequate accessibility to services and is in an isolated location for the purposes of Paragraph 84 of the Framework. Moreover, the appeal site is in open countryside. Paragraph 26 of the PPTS clearly states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan.

173. I conclude overall that the stationing of caravans for residential use is not appropriate in this location. I therefore conclude that the development is contrary to Policies CP3 and CP27 of the of the Local Plan Part 1; Policy DP6 of the Vale of White Horse Local Plan 2031 - Part 2 (Local Plan Part 2) and Policies H2B and H3 of the Uffington and Baulking Neighbourhood Plan (Neighbourhood Plan). These polies seek to ensure, amongst other things, that the majority of new housing development is focused on the existing hierarchy of settlements, where there is better access to services and public transport links, and that Gypsy and Traveller sites are within a reasonable walking distance of key local services and public transport.

Conclusion in relation to the Council's spatial strategy

174. In the wider context, the development that has taken place on the appeal site is a relatively small-scale incursion into the open countryside. Nevertheless, I have found that the development has incurred some significantly harmful effects. The underlying point is that, irrespective of the scale of the harm caused, the development does not accord with the spatial strategy for District as whole, as set out in the development plan.

175. In summary, the Council's spatial strategy puts the rural character of the Vale front and centre. The policies in the development plan seek to protect that rural character by safeguarding the landscape and directing development

to where it would cause the least harm. Generally, this means restricting development to within the hierarchy of settlements set out in Core Policy 3.

176. The appeal site is within the open countryside. It does not accord with any exceptions that might allow development in the countryside as set in the development plan. In short, it is not in accordance with the Council's spatial strategy. I therefore take the point made by the Council in closing submissions that this puts the development squarely at odds with its development strategy and the core principle that planning should be genuinely plan led. That, in itself, is a matter to which I attach substantial weight.

Other considerations

177. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the development subject to these appeals fails to accord with the development plan in the above respects. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

Intentional Unauthorised Development

178. In a letter dated 21 August 2015, the Chief Planning Officer at the (then) Department for Communities and Local Government in England issued a planning policy statement which included the following:

179. "The government is concerned about the harm that is caused where the development of land has been undertaken in advance of obtaining planning permission. In such cases there is no opportunity to appropriately limit or mitigate the harm that has already taken place. Such cases can involve local planning authorities having to take expensive and time-consuming enforcement action.

For these reasons, this statement introduces a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals. The policy applies to all new planning applications and appeals received from 31 August 2015".

180. The statement indicated that the situation would be reviewed after six months but this review did not take place. The statement was repeated in a Written Ministerial Statement (WMS) dated 17 December 2015. The WMS was not time-limited and, whilst not being incorporated into the Framework, it has not been formally withdrawn. The WMS therefore remains a material planning consideration.

181. In the present case, the owners commenced development in or around July 2020. The site was visited by the Council's Development Management Team Leader (Enforcement) on 24 July 2020. In an email dated 27 July 2020, the officer confirmed the discussion that had taken place on the site with Mrs Pidgley. In summary, Mrs Pidgley agreed to stop any further development on the land until any necessary planning permission had been granted and agreed to remove the close board fencing that had been erected. In addition, Mrs

Pidgley agreed to remove the bund of topsoil that had been scraped off the land.

182. A retrospective planning application for the development was submitted in September 2020 (Council Ref P20/V2556/FUL, now the subject of Appeal C). Planning permission was refused by notice dated 28 January 2021. It follows that the initial development of the site was undertaken without planning permission.

183. Furthermore, notwithstanding the undertaken given by Mrs Pidgley to stop any further development on the land until any necessary planning permission had been granted, a series of photographs taken between 24 July 2020 and 28 April 2021 show that development continued on the site even as the Council's enforcement investigations continued. This included the stationing of the mobile home, the erection of related buildings and structures, laying of larger areas of hardstanding and the mixed use of the site. Even after planning permission was refused on 28 January 2021, the laying of further hardstanding areas continued.

184. It is axiomatic that in order for any person to carry out intentional unauthorised development that person must (a) know that planning permission was required for the use and/or operations and (b) intentionally carry out that development in that knowledge. I am prepared to give the appellant the benefit of the doubt by accepting that he was not aware that the initial works undertaken in preparation for the stationing of the static caravan on the land required planning permission.

185. Thereafter, it is common ground that the appellant's blatant (some might argue cynical) disregard for planning controls clearly constitutes intentional unauthorised development for the purposes of the WMS. This includes reneging on assurances to the Council that no further work would be undertaken and carrying on work in full knowledge that a Stop Notice had been placed on the land intended to prevent further works.

186. I understand that prior to moving onto the appeal site the appellant lived with his wife in a caravan stationed on the drive of the house occupied by his wife's parents. I can also understand that the appellant and his wife wanted their own pitch and that the opportunity to purchase this site presented itself. However, the works undertaken went far beyond what is necessary to establish a temporary home pending the submission of a planning application/appeal. For the same reason, moving on to the site during Covid pandemic because it was necessary for families to separate from other families as much as possible provides no justification. The works undertaken far exceeded what would be necessary to provide safe separation from other family members. The works were clearly intended to be permanent and no attempt was made to return to their previous location when the Covid pandemic had eased.

187. The development subject to these appeals is a prime example of the harm envisaged in the WMS where the development of land has been undertaken in advance of obtaining planning permission. In addition to the unmitigated visual harm that has resulted to a valued landscape, including to the setting a National Landscape, the keeping and breeding of cats and dogs for the purpose of sale has caused significant harm to the biodiversity of the adjoining LWS. There has been no opportunity to appropriately limit or mitigate the harm that has already taken place: for example, through the provision of BNG. Nowhere

are the difficulties arising from the carrying out of this development before obtaining the necessary planning permission more evident than in attempting to assess the impact on the LWS, a priority habitat.

188. In his evidence, Mr Green argues that it is clear from the WMS that the reason was to avoid irreversible harm. I do not agree. The words "be appropriately limited or mitigated" in the WMS suggest that harm can be made acceptable by limiting and/or mitigating that harm. In any event, a permanent planning permission (which is sought here in the first instance) would in effect be irreversible or at the very least long-standing. On my reading of the WMS, the primary concern is that any permanent harm arising from development without planning permission cannot not always be appropriately limited or mitigated. That is exactly what has happened here.

189. There is a direct parallel between this case and the appeals in relation to a site at Loddington, in Northamptonshire, to which the Council drew my attention (APP/L2820/C/19/3240989, APP/L2820/C/19/3249281). In that case, the appeal site was neither in the Green Belt nor a National Landscape, albeit the Inspector found that it was a valued landscape for the purposes of the Framework. The works carried out in that case included the formation of hardstanding and engineering works before planning permission was obtained and in defiance of a Stop Notice. Notwithstanding that the site was not in the Green Belt, the Inspector in that case attached significant weight to his conclusion that the works constituted Intentional Unauthorised Development.

190. Having regard to the harm to setting of the National Landscape, that the site is within a valued landscape for purposes of the Framework and the harm caused to the priority habitat of the LWS, and that the development is wholly contrary to the plan-led spatial strategy for the District, the Intentional Unauthorised Development that has occurred in this case is a step up from that in the Loddington appeals. Accordingly, it is a material consideration to which I attach substantial weight.

191. It was held in *Chapman v UK 33* EHRR 399 that:

"where a dwelling has been established without the planning permission which is needed under the national law, there is a conflict of interest between the right of the individual under Article 8 of the Convention to respect for his or her home and the right of others in the community to environmental protection. When considering whether a requirement that the individual leave his or her home is proportionate to the legitimate aim pursued, it is highly relevant whether or not the home was established unlawfully. If the home was lawfully established, this factor would self-evidently be something which would weigh against the legitimacy of requiring the individual to move. Conversely, if the establishment of a home in a particular place was unlawful, the position of the individual objecting to an order to move is less strong. The Court will be slow to grant protection to those who, in conscious defiance of the prohibitions of the law, establish a home on an environmentally protected site. For the Court to do otherwise would be to encourage illegal action to the detriment of the protection of the environmental rights of other people in the community."

192. The development was undertaken without the benefit of planning permission and therefore unlawful, such that in *Chapman* terms the appellants' position in

objecting to the order to move is "less strong". In *Chapman* terms, that is a "highly relevant" consideration.

193. The judgement in *Chapman* goes onto state that a further relevant consideration to be taken into account is that "….if no alternative accommodation is available the interference is more serious then where such accommodation is available. The more suitable the alternative accommodation is, the less serious the interference constituted by moving the applicant from his or her home." I return to this matter below.

194. These are material considerations that I have factored into the overall planning balance.

Cumulative Impact

195. In *Wychavon DC v SoSCLG and Butler* [2008] EWCA Civ692, the Court of Appeal made it clear that the legal and policy framework leaves significant discretion to inspectors at both general and specific levels. The court held that the mere fact that one tribunal had reached what may seem an unusually generous view of the facts of a particular case it does not create any precedent, so as to limit the Secretary of State's right to argue for a more restrictive approach on a similar case in the future. Although expressed in relation to an asylum case, the Court of Appeal applied that principle to planning decisions. Nevertheless, the Council considers that this a paradigm case in which it would be acceptable to take into account cumulative impact – the so called "Poundstretcher principle".

196. This principle has been applied by the High Court in the case of *R on the application of Tracey Holland and Jim Smith v SSCLG and Taunton Deane BC* [2009] EWHC 2161 (Admin), the ratio of the judgement being that where precedent is relied upon there must be "*evidence in one form or another*", "*mere fear or generalised concern is not enough*". The examples given in the *Poundstretcher* case are rear extensions in a row of buildings and "*sporadic development in the countryside*", which is described as "*a clear example*". I take cumulative impact to be a different principle to that considered in the higher court.

197. In *Holland* pitches had been laid out and applications had already made. Those applications were for the same development with no differences. There is some similarity with the circumstances in this case, insofar as Maleficent Meadows is one of a row of five similarly sized plots accessed from the same road/track. Planning applications have already been made in respect of at least two those sites.

198. But that is where the similarity ends. The application made in relation to the plot known as Lakeview is materially different to that in this case. Some of the material considerations are the same in each case, albeit the circumstances in which those considerations are assessed is different: for example, the extent to which the development is visible from the network of public footpaths in the area. Other material considerations are completely different: for example, in relation to Maleficent Meadows, the effect on the LWS caused by the dog-breeding business is a main issue, but does not apply to Lakeview. The effect on the supplies of the mineral Fullers Earth is a consideration in relation to Lakeview, not so in relation to Maleficent Meadows. The personal circumstances of the occupiers of the two sites are also very different.

199. There is also another consideration here. In November 2022, the Council sought an Injunction in relation to three of the five plots referred to above. The High Court issued that Injunction, thereby making it an offence, amongst other things, to bring a caravan onto the land for the purposes of human habitation. This would effectively prevent the equivalent of the situation in *Holland* arising here. Nevertheless, the Council evidently had genuine and realistic concerns about the cumulative impact on development on these plots. The Council also must have had "*evidence in one form or another*" sufficient to persuade the High Court that an Injunction should be made.

200. Given all that has gone on in relation to this row of plots, necessitating the Council to seek the Injunction, the concerns of the Council are more than "*mere fear or generalised concern*". However, I go back to the fundamental principle of planning control that each case must be considered on its own merits. When that is done, it is entirely possible that a different answer might be arrived at having regard to the specific circumstances of the site and the occupiers of that site. For that reason, I afford the Council's concerns in this respect only limited weight.

Conditions

201. A condition has been put forward requiring the submission of a Site Development Scheme, a Habitat Management and Monitoring Plan, a Surface Water Drainage Scheme and a Foul Water Drainage Scheme. This condition is in the standard form whereby, in the event that the condition was ultimately not complied with, the use would cease and all mobile homes/caravans and operational development would be removed and the land restored to its former condition. This condition would be necessary to make the development in planning terms, and would be enforceable.

202. The fact that a condition has been presented in this form underlines the difficulties associated with carrying out development without the benefit of planning permission, as envisaged in the WMS. Particularly so in a sensitive environment such as this. The details to be submitted pursuant to this condition are all fundamental matters that ought properly to have been part of a planning application to assess the acceptability or otherwise of the development. Relying on this type of condition at this time constitutes a hostage to fortune, not least for the appellant who, should it transpire that the condition could not be complied in respect of one of these matters, again faces the prospect of having to move off the site having initially gained relief through the granting of that planning permission.

203. A condition limiting the use of the site to a single pitch is necessary in order to prevent further harm to the character and appearance of the area. For the same reason, a condition limiting the number and size of vehicles that may be parked or stored on the site is also necessary, as is a condition requiring that no commercial activities shall take place on the land.

204. If I am to afford weight to the personal circumstances of the appellant and his family, then a condition limiting occupation specifically to them is necessary, as is a condition requiring that the land is fully restored should the named occupiers vacate the site. Such a condition would prevent occupation of the site by anyone other than those named therein, and in that scenario a further condition restricting occupation of the site by other people of a nomadic

habit of life would not be necessary. In the event that a temporary permission is granted, a condition requiring the restoration of the site at the end of that period would be necessary.

The need for gypsy and traveller sites

205. Policy B of the PPTS states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. The Gypsy and Traveller Accommodation Assessment (GTAA) produced by Opinion Research Services (ORS) for the Council was published in June 2017. The baseline data for the GTAA was gathered in March 2015. The GTAA is therefore some seven years old at this time and is based on data even older than that. In that context, I am mindful that Policy A of the PPTS refers to the need for a robust evidence base to establish accommodation needs. In my view, the 2017 GTAA now falls a long way short of providing that robust evidence base.

206. On behalf of the appellants, Mr Green relies on the judgement in *Reigate and Banstead Council v SSLUHC* (CO/4463/2022) as authority for the proposition that, where need has increased since the adoption of a Local Plan found sound at examination, the allocations may no longer be sufficient to meet current need. The Council considers this reliance to be misplaced, given that a Regulation 10A Review of the Local Plan has been completed by the Council. This review included consideration of Core Policy CP27, was not challenged and, the Council contends, has been the subject of consideration in the recent appeal decision in relation to a site at Grove, in Oxfordshire (APP/V3120/W/22/3310788). The Council considers that this decision confirmed that the strategy in the Local Plan Part 1 continues to provide a suitable strategy for development in the Vale in overall conformity with National Policy.

207. However, the Inspector in the Grove decision was considering the housing requirement for the District in the context Policy CP4 of the Local Plan Part 1. Unsurprisingly, given that the case before him related to the provision of general housing need, the Inspector's decision is entirely silent in respect of Core Policy CP27. Consequently, whilst the Inspector concluded that the Council could show a five-year supply of deliverable housing land in the District measured against Local Housing Need, this decision may therefore be distinguished on its facts from the situation in this appeal.

208. Whilst the Regulation 10A Review concluded that Core Policy 27 is generally consistent with the Framework, it caveated this by indicating that the emerging Joint Local Plan will consider the approach to Gypsies and Travellers (amongst others) to 2041 with policies appropriately supported by robust and up-to-date evidence. In my view, that can only be interpreted as a tacit acceptance that the 2017 GTAA is out of date.

209. This is borne out by the evidence before me. The Council's evidence is based upon actual data gathered as a result of inquiries and interviews. Whilst robust in terms of its methodology, the evidence is based on or extrapolated from information that is now some seven years old. The appellant's evidence, which principally comprises interpreting aerial photographs of three sites in the District (East Challow, Redbridge Hollow and Windmill View) is little more than unsubstantiated guesswork. That evidence cannot be independently verified. Accordingly, I place very little credence on that evidence.

210. Both sides make a series of assumptions about the number of gypsies living in bricks & mortar accommodation, the formation of new households and the need arising from concealed and doubled-up households. Although the Council's evidence has the advantage in being founded on interviews and research, and is therefore more reliable in that sense, the inescapable fact is that this evidence base is now more than seven years old. I cannot place much reliance on either set of evidence at this time.

211. Overarching all the above are two changes to the definition of gypsies and travellers made after the GTAA was published in 2017.

212. The first of these changes arose from the Court of Appeal judgment in *Smith v SSLUHC & Others* [2022] EWCA Civ 1391. The PPTS was revised in December 2023 so that the planning policy definition of 'gypsies and travellers' set out in Annex 1 accorded with that judgement. This revision was carried forward into the 2024 version of the PPTS. The corollary is that the definition employed in the 2017 GTAA is not the definition in the PPTS now.

213. The Council considers this to be irrelevant, pointing out that from those households that were found not to meet the 2015 PPTS planning definition in the GTAA, only 1 household did not meet the definition due to disability or old age. That may be so, but that was seven years ago now. It cannot be assumed that this is still the situation at this time.

214. The second change is that made in the 2024 version of the PPTS which further amended the definition of gypsies and travellers to include "all other persons with a cultural tradition of nomadism or of living in a caravan". This amendment potentially casts the net even further and for obvious reasons was not factored into the 2017 version of the GTAA.

215. When the amendments arising from the *Lisa Smith* judgement and the 2024 version of the PPTS are both taken into account there is the potential (and I put it no higher than that) for a significant increase in the number people that would now qualify as gypsies and travellers now but who would not have done so when the fieldwork was carried out for the 2017 GTAA in or around 2015. Taking into account also the age of the 2017 GTAA, I therefore hesitate to place any reliance upon it.

216. I conclude that, on the balance of probability, the Council cannot demonstrate an up-to-date 5 year supply of deliverable sites at this time. The *Equality Analysis for MHCLG December 2024 government response to consultation* acknowledges the Governments' clear intention to improve the provision of housing, and recognises that this could result in greater difficulty for Gypsies and Travellers in terms of availability of suitable land. Accordingly, the consultation response puts a greater emphasis on the need for Councils to ensure that they have a robust and up-to-date needs assessment and make sufficient allocations.

217. The inability of the Council to demonstrate an up-to-date 5 year supply of deliverable sites is therefore a material consideration to which I attach significant weight.

218. The PPTS states that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, the provisions in paragraph 11(d) of the Framework apply. For decision making, this means granting permission

unless (i) the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

219. Footnote 7 to the Framework confirms that the policies referred to are those in the Framework (rather than those in development plans) relating to, amongst other things, a National Landscape. Paragraph 189 of the Framework indicates that development within the setting of a National Landscape should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas. I have found that the development causes significant harm to the setting of the North Wessex Downs Natural Landscape. In my view, that provides a strong reason for refusing the development that has been carried out and which is proposed. The provision in paragraph 11(d) of the Framework is therefore disapplied in this case on the basis of the proviso in (i) alone.

220. It follows that there is strictly no need for me to go on to consider the proviso in (ii) of paragraph 11(d) of the Framework. Nevertheless, for the sake of completeness, I will do so briefly here.

221. Paragraph 8 of the Framework indicates that achieving sustainable development means that the planning system has three overarching objectives: an economic objective, a social objective and an environmental objective. My reasoning in relation to those objectives is set out elsewhere in this Decision, albeit not under those headings. The following is therefore a 'headline' balancing exercise based on that detailed reasoning.

222. In terms of the economic objective, the development that has been carried out contributes very little to the local economy in terms of re-spend and/or re-investment into that economy. In terms of the social objective, the development does provide a home for the appellant and his family, and there would be social consequences should the appeals not succeed. In terms of the environmental objective, the development constitutes a new home in an isolated location, causes significant harm to the setting of a National Landscape and causes significant harm to the biodiversity value of a priority habitat.

223. In balancing those objectives, I conclude that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations.

Alternative sites

224. It was held in *Angela Smith v Doncaster MBC* [2007] EWHC 1034 (Admin) that alternative sites must be available, affordable, acceptable and suitable. The Council cannot point to any alternative accommodation options for the appellants and their families that meet the criteria set out in *Angela Smith*.

225. I do not accept, however, that the corollary is that the dismissal of these appeals would necessarily result in the appellant and his family having to resort to an unlawful roadside existence, with all of the attendant implications. In the particular circumstances of this case, the appellant was previously living in his caravan stationed on the drive of the house occupied by Mrs Pidgley's parents. The appellant has provided no convincing explanation to show that returning to that situation would not be a possibility at this time.

226. I recognise that there may be issues regarding the lawfulness of that in planning terms, but I can envisage a scenario in which stationing of a caravan within the curtilage of a dwellinghouse would typically be regarded as not requiring planning permission. That scenario could apply to the appellant and his family. I also recognise that this would not be the ideal solution but it would at the very least provide a temporary solution whilst the appellant found his own site and/or pitch.

227. For that reason, this is a material consideration to which I attach moderate weight.

Failure of Policy

228. It is clear that there is a potential shortfall of sites provided compared to the need for pitches identified in the 2017 GTAA and the amended definition for gypsies and travellers in the 2024 version of the PPTS. This is due in no small part to the age of the 2017 GTAA. National policy requires local planning authorities to accurately assess the need for gypsy and traveller accommodation in their area, and to provide a five-year supply of specific, deliverable sites for that identified need. The Council has not done so. In that respect, the development plan is currently not meeting the needs of the travelling community.

229. In considering this issue, it is necessary to consider the background and context. The key element of the background is that large parts of the District are within the Green Belt and/or in a National Landscape. The Vale of White Horse is essentially a rural District, such that much of it constitutes open countryside (including for PPTS purposes).

230. It is National policy that traveller sites in the Green Belt are inappropriate development. Paragraph 189 of the Framework indicates that the scale and extent of development within National Landscapes should be limited. It is also National policy that new traveller sites in open countryside should be very strictly limited in open countryside that is away from existing settlements or outside areas allocated in the development plan. These restrictions on development therefore collectively apply to much of the District and limit the locations in which the provision of gypsy and traveller sites would be policy compliant. That sets the context for planning policy for the District.

231. Looked at in the round and even taking into account all the constraints imposed by the Green Belt/National Landscapes in this rural District, it is fair to say that the Council's policy towards gypsies and travellers has not worked out in practice. In that sense, there has a been a failure of policy. However, there must be more to policy failure than merely giving a different name to any existing unmet need or shortfall on a five-year supply of sites or pitches. I have already found that there is a potential shortfall in the supply of gypsy and traveller pitches when compared to identified need. The extent of that

potential shortfall is not known but is already compounded by the planning restrictions across the District as a whole. Affording weight to the failure of policy would introduce a form of double counting in which cause and effect are added together. Accordingly, I attach only limited weight to this as a material consideration.

Personal circumstances of the appellant and his family

232. The appeal site is occupied by Mr Riley Pidgley and his wife, and their infant child. Mr Pidgley is a landscape gardener and travels for work, staying in a touring caravan when he does so. Mrs Pidgley runs the cat and dog breeding business from the appeal site. The personal circumstances of the appellant and her family were set out in detail at the Inquiry. Those circumstances included sensitive information and for that reason I do not propose to rehearse those details here. It is sufficient to record here that it would be in the best interests of all those residing on the site to remain there as a stable base from which medical facilities can be accessed.

Human Rights and the Public Sector Equality Duty

233. Paragraph 3 of the PPTS states 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 for travellers while respecting the interests of the settled community. In that regard, interference with rights held under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA), is a key consideration. In this case, there is interference with rights under Article 8 (right for respect for private and family life, home and correspondence). That is a qualified right, and interference with it may be justified where it is in accordance with the law and it is necessary in a democratic society.

234. In this case, the interference with the appellant's Article 8 rights arises from an enforcement notice issued under section 171 of the 1990 Act. The potential interference with the appellant's Article 8 rights would therefore be lawful.

235. I am also mindful that the breach of planning control alleged in the notice is an example of intentional unauthorised development. In this context, the aforementioned passage from the judgement in *Chapman* relating to whether or not the home was lawfully established is a relevant consideration in this case.

236. Whilst not itself on an environmentally protected site, in this case the development has a harmful effect on the LWS and definitely on setting of the North Wessex Downs National Landscape. I draw a parallel with the findings of the ECHR in *Chapman*, and accordingly consider the position of the appellant to be less strong in this respect.

237. The protection of the countryside, preventing a net loss of biodiversity and promoting sustainable forms of development are legitimate and well-established planning policy aims. Indeed, promoting sustainable development is an overarching aim of national planning policy, as set out in the Framework.

238. For all the reasons set out above, I consider that the appeal site is not in an appropriate location for the stationing of caravans for residential purposes. In total, I consider that the harm resulting from the development, proposed and

existing, to be substantial. Upholding the enforcement notices and refusing planning permission would therefore be in the public interest.

239. Against this harm, the Council cannot point to a five-year supply of sites. There are no suitable alternative sites available. It was held in *Chapman* that if there is no alternative accommodation available the interference is more serious than if such accommodation is available. Upholding the notice would result in the appellant and her family losing their home, albeit I am not convinced that would necessarily oblige the appellant to resort to a roadside existence, with all the implications associated with that. I am mindful of the personal circumstances of the appellant and his family.

240. I also have the best interests of the child residing on the site at the forefront of my mind. In this case, the child is not yet of school age. The best interests of this child are consistent with those of his parents and would be to remain on the appeal site, where the child could receive care in a stable environment. Upholding the enforcement notice/refusing planning permission would not be in the best interests of that child.

241. Balancing all these factors, including the best interests of the child residing on the site, I consider that the interference with the Article 8 rights held by the appellant and his family would be significant but would be necessary and proportionate in these circumstances. In reaching that conclusion, I am satisfied that the policy objectives could not be achieved by means that interfere less with the appellant's rights.

242. The appellant and his family share the protected characteristic of race for the purposes of the Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010. Upholding the notice or refusing to grant a permanent permission would impact negatively on the appellant's way of life and would reduce the opportunities available to him and his family.

Third Party Representations

243. In a detailed representation dated 22 July 2021, Baulking Parish Meeting object to the development that has taken place and urge that the enforcement notices are upheld. The substance of that representation is covered above and I do not rehearse those points in detail here. However, in summary the Baulking Parish Meeting comments that the development has already caused irreversible harm to biodiversity. The Parish Meeting also considers that the dog and cat-breeding is not a 'rural business' and that there is no local business need for it. The Parish Meeting considers the dog and cat-breeding business has already had a significant negative impact on the area, with the noise of generators running and dogs barking and howling at all hours being audible throughout the village and its surroundings.

244. A representation has also been made by the owner of land close to the appeal site, supporting the Council in issuing the enforcement notice(s). The author of that representation complains that activities at the Maleficent Meadows site have adversely affected him and others working on his behalf including through, in his opinion, harm to the character and appearance of the area.

245. The author of that representation also points out that most of the 50 protected and notable bird species that have been recorded on the LWS are

dependent not only on the lake itself but also on there being favourable habitat in the immediately surrounding area. In his view, all of those species are potentially put at risk by excessive noise or disturbance by people and domestic animals close to the site. In his view, noise generated by potential predator species, such as dogs, is a particular concern.

246. The author of that representation states that he has experienced loud and prolonged barking from dogs, both those within pens or enclosures on the appeal site as well as from free-roaming dogs associated with the appeal site, but which regularly range quite widely across the surrounding area. The author of the representation considers that it would be reckless on biodiversity grounds to permit a development such as this so close to the LWS. Given that the author of that representation is one of the Conservation Officers with the Oxford Ornithological Society, I attach significant weight to his views in this respect.

Planning balance on the appeals on ground (a)

247. I conclude that, overall, the mixed use for the stationing of a mobile home for residential use and the keeping and breeding of cats and dogs for the purpose of sale is not appropriate in this location. The development unacceptably harms the character and appearance of a valued landscape, including the setting of the North Wessex Downs Natural Landscape. The appellant has failed to demonstrate that the development has not resulted in a net loss of biodiversity. The harm in the latter two respects is clearly perceived by the local community (as expressed by the Baulking Parish Meeting) and by a local landowner.

248. Furthermore, the development on the appeal site is the very antithesis of the Council's spatial strategy and results in an isolated home in the open countryside. The PPTS is similarly very clear that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements.

249. These harms are intrinsic to the development that has taken place and could not be overcome by the imposition of suitably worded conditions, or by landscaping. Put another way, the appeal site is simply in the wrong location for the development as existing and proposed. It is also a material consideration that the development subject to these appeals is an example of intentional unauthorised development, and as such is a prime example of the harm envisaged in the WMS.

250. Against that, a permanent permission would provide a stable base from which the appellant could travel for work. This would be an economic benefit for the appellant and his family, and would facilitate the continuation of his nomadic habit of life. A permanent permission would also enable the appellant to run and build the cat and dog breeding business, and to secure income from that source.

251. A permanent permission would provide a stable base from which the whole family could access health facilities and, in the not too distant the future, from which the child residing on the site could access education. A permanent permission would completely negate the possibility of the appellant having to resort to a roadside existence, with all the implications that would bring. It follows that a permanent permission would be in the best interest of all those

residing on the site, including the appellant's infant child. The provision of one single pitch gypsy traveller site would contribute towards meeting the overall need identified in the GTAA, albeit that contribution would only be modest.

252. On balance, I conclude that the permanent use of the land as a traveller site would be contrary to policies in the development plan when read as whole. It would also not accord with the Framework or the PPTS when read as a whole. I have not been advised of any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan. Having regard to the cumulative severity of the harm caused by this development, I am satisfied the interference with the appellant's Article 8 rights would be necessary and proportionate, and that the policy objectives could not be achieved by means that interfere less with the appellant's rights. In reaching this conclusion, I have also taken into account my responsibilities under the PSED.

253. Accordingly, I conclude that planning permission ought not be granted for the mixed use of the site as alleged in notice and for which planning permission is sought under appeal C.

Planning permission for part of the matters stated in the notice

254. Section 177(1)(a) of the 1990 Act provides that, on determination of an appeal under Section 174, the Secretary of State may grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole *or any part of those matters* or in relation *to any part of the land* to which the notice relates (emphasis added). However, it is first necessary to consider the precise breach of planning control alleged in the notice, specifically a mixed use for the stationing of a mobile home for residential use and the keeping and breeding of cats and dogs for the purpose of sale.

255. It was held in *R (oao) East Sussex CC v SSCLG* [2009] EWHC 3841 (Admin) that, where there is a single mixed use, it is not open to a planning authority to decouple elements of it: the use is a single mixed use with all its component activities. In *East Sussex*, the issue before the High Court was whether it was open to a County planning authority to decouple elements of a mixed use that were considered to fall within the jurisdiction of another planning (District) authority. Specifically, the court held that the alleged breach of planning control ought to comply with section 173(1)(a) and section 173(2)of the 1990 Act. I am satisfied that Notice A (as I propose to vary it) complies with those sections of the 1990 Act, such that the issues central to the judgement in *East Sussex* do not arise here.

256. The power to make a split decision under section 177(1) is not limited to operational development. The two components of the single mixed use alleged in the notice, the cat/dog breeding business and the stationing of the caravan for residential use, are physically and functionally severable. De-coupling the residential element from the keeping and breeding of cats and dogs would amount to the whole of the site being used for the stationing of a mobile home for residential use. That would constitute the carrying out of a different use with different planning impacts. It would be a different use to that alleged in the notice.

257. Nevertheless, it would still constitute 'part of the matters' alleged in the notice. This is an obvious alternative to dismissing the appeal on ground (a) in relation to the mixed use and is therefore open to me to consider this alternative pursuant to section 177(1) of the 1990 Act. The appellant and the Council have both submitted evidence in relation to that aspect of the mixed use as part of their respective cases on the mixed use. I am therefore satisfied that I can consider whether planning permission should be granted for the stationing of a mobile home for residential use without causing injustice to the appellant and/or the Council.

258. My starting point is the layout plan showing the mixed-use development for which planning permission was sought (Drawing No 20_1134-002) but absent all the structures associated with the dog and cat breeding business. For this purpose, I have assumed that the development would comprise one static caravan and one touring caravan, and that the landscaping scheme would be broadly on the same lines as that shown on Drawing No 20_1134-002.

259. In assessing this alternative development, the key difference would clearly be that all the harm to the LWS that I have identified in relation to the dog and cat breeding business would fall away. With that, many of the objections expressed in third party representations would also fall away. The economic benefits accruing to the local economy from that business are negligible, such that the loss of those benefits would not weigh against the proposal. The position in relation to the supply of Gypsy and Traveller sites, the availability of alternative sites and the failure of policy would remain unchanged.

260. Nevertheless, the harms arising from the development would still be substantial. The development would still be contrary to the Council's spatial strategy. The development would still result in an isolated home in the open countryside, where it is national policy that new traveller site development should very strictly limited. The development would still harm the setting of the North Wessex Downs National Landscape. It would still not provide BNG. It would still constitute Intentional Unauthorised Development. In terms of cumulative impact, the situation would remain unchanged. The personal circumstances of the appellant would be unchanged, as are the considerations around the HRA and the PSED.

261. In weighing the balance, I conclude that the benefits arising from the proposal would not outweigh the harms that I have identified. The development would be contrary to the development plan when read as a whole. It would not comply with Framework or the PPTS when read as a whole. There are no material considerations to suggest that determination should be otherwise than in accordance with the plan. Accordingly, I conclude that planning permission ought not be granted for the stationing of a mobile home for residential use.

262. Neither would the harms identified above be overcome by moving the mixed use to another part of the site, or by confining it to one part of the site. The site is simply too small for that to be effective. Irrespective of where on the site the structures were placed, they would still be out of character with the LCT and the LCA, and would be still be visible in views against the backdrop of the North Wessex Downs National Landscape. Similarly, moving the keeping and breeding of cats and dogs to another part of the site would not overcome the harm to LWS.

Temporary permission

263. The balance does shift to some extent when a temporary planning permission is considered. In those circumstances, the harms identified above, although no less severe, would only be for a temporary period. The site would be required to be restored at the end of that temporary period, thereby also repairing the harm to the character and appearance of the surrounding area.

264. A temporary planning permission would retain a settled base from which the appellant and his family to access medical facilities. It would avoid any possibility of the appellant and his family resorting to a roadside existence, with all the disbenefits that would bring, until such time as a suitable alternative site was found. In the meantime, the appellant and his family could continue their nomadic habit of life from a stable base. A temporary planning permission would be in the best interests of those residing on the site, including the infant child.

265. However, a temporary planning permission for the mixed use, of any duration, would still cause harm to the LWS. This is a priority habitat. Given the importance of the LWS in terms of biodiversity, it would not be appropriate to allow that harm to continue to be present, even for a short temporary period. In particular, I am mindful of the catastrophic effects that could result should chemicals (including Fipronil) enter the LWS as a result of the pet treatments being applied as part of the appellant's dog breeding business. The longer the cat and dog breeding business is allowed to remain on the site, the greater is the risk that this could happen. For the reasons that I set out above, the fact that this has not happened in the four years or so that the cat and dog breeding business has been operating is no guarantee that it would not happen in the near future.

266. The appellant requests a temporary period of five years, primarily in order that alternative sites might be identified and made available through the development plan process. I can see the logic in that insofar that there would be no point in a temporary period that expired before a suitable alternative site became available. However, I am persuaded by the evidence produced by Mr Church that the risk of chemicals such as Fipronil entering the LWS as a result of the appellants cat and dog breeding business is real, omnipresent and potentially catastrophic. Moreover, throughout the time that use is taking place, there would be ongoing harm to the bird population of the LWS caused by disturbance resulting from dog barking.

267. I have also considered whether a temporary planning permission should be granted for just the stationing of a mobile home for residential use. In this scenario, the imperative to cease the harm to the LWS resulting from the dog and cat breeding business would be removed. There would be merit in allowing the appellant to remain on the site until such time as alternative pitches were made available through the development plan process.

268. Against that, there can be no guarantee when the development plan process might deliver any additional sites or pitches. Allowing for any slippage, a temporary consent of either three or five years would therefore appear to be necessary. Throughout that time, there would be substantial harm to a valued landscape and to the setting of the North Wessex Downs National Landscape. The severity of the harm in these respects would be readily apparent from the

public domain, the development being unacceptably intrusive when viewed from public footpaths primarily used for recreational purposes.

269. Furthermore, the occupation of the site in an isolated location would be taking place throughout that time. The personal circumstances of the appellant and his family are not overriding to the extent that they outweigh these harms, even taking into account the best interests of the child residing on the site and other considerations relating to the HRA and the PSED. In this respect, I am mindful that there is very little risk that the appellant and his family would be obliged to resort to a roadside existence.

270. For these reasons, I conclude that a temporary permission of any duration would not be appropriate in the particular circumstances of this case. I am satisfied that refusing to grant a temporary permission is both reasonable and proportionate in these circumstances.

Conclusion on the appeals on ground (a) and the deemed planning application

271. For all the reasons set out above, I conclude that planning permission ought not to be granted for the breach of planning control alleged in the notices (Appeals A and B), either in whole or in part. I further conclude that planning permission should be refused on the application subject to Appeal C.

Appeal B: the appeal on ground (f)

272. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice include to stop using the Land for residential purposes and the keeping and breeding of cats and dogs for the purpose of sale (Appeal A) and to break up the concrete mobile home base, all concrete building bases, the hardcore driveway and the hardstanding area (Appeal B). The purpose of the notices must in each case therefore be to remedy the breach of planning control that has occurred.

273. Requirement ix of Notice B is to sow all areas of the Land disturbed as a result of steps (vi), (vii) and (viii) above with an "MG5 meadow grass mix". That particular mix of grass would not accurately reflect the grass mix that was present on the site before the breach of planning control took place. Requiring that particular mix of grass mix to be used would be excessive. I will vary Notice B to simply require the land to be restored to its condition prior to the breach of planning control taking place.

274. The appeal on ground (f) succeeds to that extent.

Appeal A and Appeal B: the appeals on ground (g)

275. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in both Notice A and Notice B is twelve months. The appellant seeks a compliance period of two years in relation to both Appeal A and Appeal B.

276. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with the enforcement notice against the private interest bound up in the development subject to the notice. In so doing, I must assume that the use of the land subject to the enforcement notice for the stationing of a mobile home for residential use and the keeping and breeding of cats and dogs for the purposes of sale does cause the harm alleged in the reasons for issuing the notice.

277. For the reasons set out above, the risk of chemicals such as Fipronil entering the LWS as a result of the appellants cat and dog breeding business is both real and potentially catastrophic. Moreover, throughout that time the use is taking place, there would be ongoing harm to the bird population of the LWS caused by disturbance resulting from dog barking. Throughout that time, the presence of the development would also be causing harm to a valued landscape, including to the setting of North Wessex Downs National Landscape when viewed from public footpaths used primarily for the purpose of recreation. Consequently, it is very much in the public interest to secure the expeditious compliance with the enforcement notice.

278. Against this, the caravan stationed on the appeal site is the appellant's home. It provides a stable base from which he and his family can access a range of facilities, including health facilities. The appellant's cat and dog breeding business is not of a size or scale which would prevent relocation to a much smaller site. Moreover, given that the business operates under a 3 star licence, there is no reason why it could not be relocated to a separate site to the residential use. I recognise that it may take longer to find an available site and/or pitch for the stationing of the caravan/mobile home but, given that the appellant has a fallback available in the form using the drive Mrs Pidgley's parents property, this would not necessarily result in the appellant being forced to adopt a roadside existence.

279. In weighing these competing factors, I conclude that the public interest in securing expeditious compliance with the enforcement notice outweighs the private interest bound up in the development subject to the notice. The period of compliance specified in the notice(s) is therefore a reasonable and proportionate response to the breach of planning control that has occurred.

280. Accordingly, the appeals on ground (g) fail.

Conclusion

281. For the reasons given above, I conclude that Appeals A and B should not succeed. I shall uphold the enforcement notices with corrections and variations, and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

282. For the reasons given above, I conclude that Appeal C should not succeed.

Formal Decisions

Appeal A Ref: APP/V3120/C/21/3273724

283. It is directed that the enforcement notice is varied by:

- in paragraph 5(i) of the notice, deleting the words 'Stop using the Land for residential purposes and the keeping and breeding of cats and dogs

for the purpose of sale.' and substituting there the words 'Stop using the Land for the stationing of a mobile home for residential use and the keeping and breeding of cats and dogs for the purposes of sale.'

- in paragraphs 5(ii), 5(iii) and 5(iv) of the notice, deleting the word 'permanently'

284. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/V3120/C/21/3273725

285. It is directed that the enforcement notice is corrected by:

- in paragraph 3 of the notice, deleting the words 'to dig up, move, deposit and store soil on the Land'

286. It is directed that the enforcement notice is varied by:

- in paragraph 5(v) of the notice, deleting the word 'permanently.'
- deleting paragraph 5(vi) of the notice in its entirety
- in paragraph 5(viii) of the notice, deleting the words 'Deposit the soil, as a result of step (vi) above, on areas of the Land disturbed as a result of steps (i),(ii),(iii),(iv) and (v) above and grade the deposited soil to levels and a fall commensurate with immediately adjoining undisturbed lands' and substitute there the words 'On areas of the Land disturbed as a result of steps (i),(ii), (iv) and (v) above, grade the land to levels and a fall commensurate with immediately adjoining undisturbed lands'
- deleting paragraph 5(ix) in its entirety and substituting there the words 'Restore all areas of the Land disturbed as a result of steps (vi), (vii) and (viii) above to their condition prior to the breach of planning control taking place'.

287. Subject to that correction and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C Ref: APP/V3120/W/21/3273729

288. The appeal is dismissed.

Paul Freer
INSPECTOR

APPEARANCES

On behalf of the appellant:

Mr Matthew Green, appearing as both advocate and witness

He called:

Mrs Emy Pidgley	
Mr Jon Davies BSc (Hons) MSc CEcol CEnv FCIEEM	RSK Group (UK)

On behalf of the Local Planning Authority

Mr David Lintott	Of Counsel

He called:

Mr Steve Jarman BSc Dip TP	Head of Traveller Assessments, Opinion Research Services
Mr Edward Church BSc (Hons) MSc ACIEEM	
Mr Stephen Jupp BA (Hons) LLM MRTPI	

DOCUMENTS SUBMITTED AT THE INQUIRY

1/ Opening submissions on behalf of the local planning authority

2/Small Sites Biodiversity Metric

3/Signed and dated Witness Statement of Emy Pidgley.

4/Vale of White Horse District Council: Sub Area Strategies

5/ Appeal Decision APP/L2820/C/20/3262337 in relation to a site at Braybrooke Road, Braybrooke.

6/ Extract from the Planning Practice Guidance reciting the statutory duties of local planning authorities in relation Areas of National Beauty

7/ Extracts from the Uffington and Baulking Landscape Capacity Study

8/ Plan showing the position of the operational works on the appeal site at the time of the Council's enforcement investigation.

9/Copy of the judgment of the High Court in *Stroud District Council and the Secretary of State for Communities and Local Government* [2015] EWHC 488 (Admin)

10/Biodiversity Metrics

11/ North Wessex Downs Area of Outstanding Natural Beauty – Management Plan 2019-2024

12/ Plan showing the development for which planning permission is sought (Drawing No 20_1134-002)

13/Documents relating to the planning application by Embryo Angling Habitats for the change of use of Baulking Lake to a coarse fishing (leisure) venue (Council Ref: P23/V2021/FUL).

14/Closing submissions on behalf of the Local Planning Authority

15/ Closing submissions on behalf of the appellant.

16/Applications for costs on behalf of the appellant.

DOCUMENTS SUBMITTED AFTER THE INQUIRY

1/ Response of the Council to the application for costs made by the appellant.

2/ Final comments of the appellant on the costs application.

3/ Comments of the Local Planning Authority on 2024 versions of the Framework and the PPTS.

4/ Comments on behalf of the appellant on 2024 versions of the Framework and the PPTS.