

LONDON BOROUGH OF BARNET

LOCAL PLANNING AUTHORITY STATEMENT OF CASE

APPEAL REFERENCE: APP/N5090/W/24/3346789

**APPLICATION SITE: LAND NW OF MAYS LANE, ARKLEY,
BARNET**

LOCAL PLANNING AUTHORITY REFERENCE: 23/3816/FUL

All appeal documents can be viewed on request. In the first instance please contact
Stephen.Volley@barnet.gov.uk

1.0 THE APPLICATION THE SUBJECT OF THIS APPEAL

1.1 The application subject of this appeal was validated by the Local Planning Authority on 6th September 2023 and relates to Land on The North West Side Of Mays Lane, Arkley.

1.2 Measuring approximately 0.81 hectares it is a parcel of undeveloped agricultural land currently in use for the keeping and grazing of horses. The site is located within the Metropolitan Green Belt, with a Flood Zone 1 designation. Whittings Hill open space is located directly to the north. There are numerous TPO oak trees on the site boundaries, particularly along the north and eastern boundaries. A total of seven ponds are located within 500m of the site including one adjacent to the site that is connected to the site by suitable terrestrial habitats for great crested newts. The site is not located within a conservation area and no listed buildings are located within or in close proximity to the site.

1.3 The application sought planning permission for the following development:

'A material change of use for stationing of caravans for residential use with hardstanding and dayrooms ancillary to that use'.

1.4 The following plans and other documents were submitted with the application and considered by the Local Planning Authority:

Site Location Plan

002 PO1 - Existing site and block plan

003 PO3 - Proposed site plan

005 PO2 - Proposed dayroom

006 PO1 - Proposed refuse store

Preliminary Ecological Appraisal dated 14/11/2023

Planning statement dated August 2023

1.5 Permission was refused by the Local Planning Authority under Officer delegated powers on 21 December 2023.

1.6 The application was refused for the following reasons:

1 The development proposed is inappropriate development in the Green Belt and would result in material harm to openness. The very special circumstances advanced by the applicant(s) do not clearly outweigh the inappropriateness of the development and its potential harm to the Green Belt. As such the proposal is contrary to the National Planning Policy Framework (2023), Policy G2 of London Plan (2021), Policy CS7 of Barnet's Adopted Core Strategy (2012), and Policy DM15 of the Local Plan Development Management Policies DPD (2012).

2 The local planning authority does not consider based on the information provided with the application that the intended occupants of the site come within the definition of gypsies and travellers as set out in Annex 1: Glossary of the Planning Policy for Traveller Sites August, 2015, or that the personal circumstances of any of these intended occupants establishes very special circumstances that would outweigh harm to the Green Belt. As such the proposal is contrary to the National Planning Policy Framework (2023), policy G2 of London Plan (2021), policy CS7 of Barnet's Adopted Core Strategy (2012), and Policy DM15 of the Local Plan Development Management Policies DPD (2012).

3 The proposed development will result in an increase in built form on a site that has not been previously developed and will result in a use of greater intensity. Such a use is at odds with the prevailing characteristics of the immediate and wider area and would result in harm to the character and appearance of this site contrary to the National Planning Policy Framework (2023), policies D1, D4 and D5 of London Plan (2021), Policies CS4 and CS5 of Barnet's Adopted Core Strategy (2012), Policy DM01 of the Local Plan Development Management Policies DPD (2012) and emerging local plan policy HOU07.

4 In the absence of eDNA testing (and potentially further traditional GCN surveys) it has not been demonstrated that the proposed development would mitigate against the disturbance of great crested newts and their

foraging/sheltering habitats within 500 metres of the application site contrary to the National Planning Policy Framework (2023), Policy G6 of the London Plan (2021), Policies DM01 and DM16 of the Local Plan Development Management Policies DPD (2012) and emerging local plan policy HOU07.

5 In the absence of detailed tree protection measures indicating site levels and the protection and enhancement of existing protected trees in and around the application site it has not been demonstrated that the trees would be protected during the course of the proposed development. Therefore, the proposal is not considered to safeguard the health of existing tree(s) which provide significant public amenity and are integral to the character of the Green Belt and Barnet's urban fringe contrary to the National Planning Policy Framework (2023), Policy G7 of the London Plan (2021), Policies CS4, CS5 and CS7 of Barnet's Adopted Core Strategy (2012), Policy DM01 of the Local Plan Development Management Policies DPD (2012) and emerging local plan policy HOU07.

6 In the absence of a flood risk assessment and surface water drainage strategy it has not been demonstrated that this highly vulnerable form of development would be protected from potential sources including but not limited to surface water, groundwater, sewer, and artificial sources. The strategy also needs to confirm the appropriateness of the proposed soakaway in relation to adversely affecting surface water runoff and potential flood risk. In the absence of such, the proposal is contrary to the National Planning Policy Framework (2023), Policies SI 12 and SI 13 of the London Plan (2021), Policy CS13 of Barnet's Adopted Core Strategy (2012), Policy DM01 of the Local Plan Development Management Policies DPD (2012) and emerging local plan policy HOU07.

7 In the absence of a transport statement, including swept path analysis and highway mitigation measures, it has not been demonstrated that vehicles can safely access and egress the application site without causing detrimental harm to highway and pedestrian safety and the free-flow of traffic along Mays Lane, contrary to Policies CS4 and CS9 of the Local Plan Core Strategy DPD (2012), Policy DM17 of the Local Plan Development Management Policies DPD (2012) and emerging local plan policy HOU07.

2.0 PLANNING POLICY

2.1 National Planning Policy Framework & National Planning Practice Guidance

The 2023 National Planning Policy Framework replaces the previous version of the NPPF published in July 2021.

The NPPF at paragraph 11 sets out a presumption in favour of sustainable development while Section 9 promotes sustainable transport. Paragraphs 137 to 151 of the NPPF refer to Green Belts. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is outweighed by other considerations. Paragraph 150 of the NPPF provides some material changes of use of land which are not inappropriate development provided they preserve its openness and do not conflict with the purposes of including land within it.

Paragraph 4 states that the Framework should be read in conjunction with the Government's Planning Policy for Traveller Sites. When preparing plans or making decisions on applications for these types of development, regard should also be had to the policies in this Framework, where relevant.

The Council is aware of the proposed changes to the NPPF which are currently subject to consultation. It does not consider that they have any material bearing on this appeal. The land is not previously developed land and is not 'poor quality grey belt land'.

2.2 The Mayor's London Plan 2021

The London Plan which sets out the Mayor's overarching strategic planning framework for the next 20 to 25 years was adopted on the 2nd March 2021 and supersedes the previous Plan. The London Plan is legally part of each of

London's Local Planning Authorities' Development Plan and must be taken into account when planning decisions are taken in any part of Greater London. Planning applications should be determined in accordance with it, unless there are sound planning reasons (other material considerations) which indicate otherwise.

Relevant London Plan Policies – GG1, D1, D2, D3, D4, D5, D6, D12, D14, H1, H2, H14, S1, S2, S3, S4, G1, G2, G5, G6, G7, SI1, SI2, SI12, SI13, T1, T5, T6, T6.1.

2.3 Barnet's Local Plan (2012)

Barnet's Local Plan is made up of a suite of documents including the Core Strategy and Development Management Policies Development Plan Documents. Both were adopted in September 2012.

Relevant Core Strategy Policies: CS NPPF, CS1, CS4, CS5, CS7, CS9, CS10, CS11, CS13.

Relevant Development Management Policies: DM01, DM02, DM03, DM04, DM08, DM15, DM16, DM17

Barnet's Emerging Local Plan

Since planning permission was refused in December 2023, Modifications to the emerging local plan were approved by Cabinet on March 12th and then subject to a period of formal public consultation between May 7th and June 18th 2024. Below is the current status.

Barnet's Draft Local Plan - Reg 24: The Reg 22 version of the draft new Local Plan was approved by the Council on 19th October 2021 for submission to the Secretary of State. Following submission, the Local Plan underwent an Examination in Public (Reg 24). The Reg 22 document sets out the Council's

draft planning policy framework together with draft development proposals for 65 sites.

In order to address issues of legal compliance and deficiencies in soundness, the Council has produced Main Modifications (MM's) to the draft Local Plan. These Main Modifications were approved by Cabinet on March 12th and were subject to a period of formal public consultation between May 7th and June 18th 2024. Whilst the Council moves forward to formal adoption of the Local Plan (subject to the outcome of the public consultation and the Inspectors Report) the MM's shall be considered, in the interim, a relevant material consideration in the Council's decision making on planning applications. Formal adoption is anticipated by early 2025.

The main relevant emerging policy referred to in the decision notice dated 6th September 2023 is Policy HOU07, which provides the framework for determining applications for gypsy and traveller sites. Subsequently, as part of the MMs process approved by cabinet in March 2024, certain policy numbers have been reordered with Policy HOU07 now referred to as Policy HOU06. Prior to public consultation, the policy and its supporting text was made more robust to ensure a sustainable, safe and acceptable potential living environment for future occupiers of a site. Following public consultation there has been no objections received and as such the policy and supporting text is expected to remain as set out in the MMs document when the Plan is adopted. On this basis, significant weight can be afforded to the policy objectives.

There are other relevant emerging policies which are set out in the officer's report on p. 6: Policies GSS01, CDH01, CDH02, ECC02A, ECC05, ECC06, CHW02. All the policies referred to above have received comments during the public consultation process, which are currently being reviewed.

The Local Plan 2012 remains the statutory development plan for Barnet until such stage as the replacement plan is adopted and as such applications should continue to be determined in accordance with the 2012 Local Plan, while noting

that account needs to be taken of the policies and site proposals in the draft Local Plan and the stage that it has reached.

2.4 Supplementary Planning Documents

Sustainable Design and Construction SPD (adopted October 2016)

- Provides detailed guidance that supplements policies in the adopted Local Plan, and sets out how sustainable development will be delivered in Barnet.

3.0 PLANNING HISTORY RELATING TO THE APPEAL SITE

3.1 None relevant to this site. It is agreed that planning permission was granted on appeal in 1994 for the erection of a single storey building to provide a meeting room (place of worship) on adjacent land occupied by the Islamic Centre on the same side of the road.

4.0 THE CASE FOR THE LOCAL PLANNING AUTHORITY (LPA)

4.1 The LPA's response to the Appellant's grounds of appeal (including additional evidence not previously seen by the LPA) is as follows.

Inappropriate Development in the Green Belt (Reason for Refusal 1)

4.2 There is no dispute that the development proposed is inappropriate development in the Green Belt and would result in material harm to openness. This position is agreed although it should be stressed that the word 'normally' relied on by the Appellant does not appear in the PPTS which states categorically that gypsy and traveller sites are inappropriate development in the Green Belt.

- 4.3 The Appellant's assertion that 'impact on openness is directly related to the *'quantum of development and not to the visibility of the site'*, does not capture the fundamental aim of national and local plan green belt policy to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The site is undeveloped and the development beyond the site is farming and leisure activities rather than urban. The site thus marks a transition between the settlement and the more rural types of development beyond. Developing the site would result in urban sprawl and encroachment into the countryside, conflicting with that Green Belt purpose. The harm to this purpose would not be modest, as the Appellant suggests. The Council's position is that it would be moderate to substantial. The development is not just caravans and mobile homes which might be argued to have a transient effect but also involves substantial buildings including two utility day rooms under a clay tile roof plus hardstanding and a soakaway and treatment plant. Furthermore, the proposed use of the site would be significantly more intense than the existing use for grazing and equestrian activity. Taken collectively with the buildings, the comings and goings of the activity and the vehicles, the Council's position is that the impact on openness would be moderate to substantial.
- 4.4 National policy in the NPPF, Core strategy Policy CS7 and Development Management Policy DM15 seek to resist inappropriate development in the Green Belt and protect openness. Policy E of the PPTS provides that traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Both the NPPF and development plan policy provide that development proposals involving inappropriate development in the Green Belt will only be permitted where very special circumstances exist, to the extent that other considerations clearly outweigh any potential harm to the Green Belt by reason of inappropriateness and any other harm.

4.5 Other non-Green Belt Harms

Impact on Character and Appearance (Reason for Refusal 3)

- 4.6 The appellant readily accepts that 'there will be public viewpoints from Mays Lane and Whitting Hill Open Space Park'. It is also accepted that '*There are designated public rights of way immediately to the north of the site within the Whitting Hill Open Space Park that could provide some views into the site*'. They also appear to accept to some degree that views of the site can be achieved from walkers and cyclists on Mays Lane, suggesting that '*these would be screened by intervening hedgerows and heavy landscaping*'.
- 4.7 The case for the Appellant relies on the fact that existing development surrounds the proposal to the East, South and West borders of the site, and that existing and proposed landscaping could mitigate against any visual harm to the character and appearance of the locality. It should be noted that nothing is said about how the proposed development seeks to assimilate and respond to its immediate neighbours in terms of scale and design.
- 4.8 The appeal site is located in the Underhill ward on the north side of Mays Lane being some 200 metres south west of Shelford Road, which defines the main settlement boundary of Arkley with Ducks Island and Dollis Valley; housing characterised in the main by post war two storey family dwellings. Measuring approximately 0.81 hectares it is a parcel of undeveloped agricultural land currently in use for the keeping and grazing of horses. The site boundaries are defined by mature trees, bramble, and hedging with open countryside including Whittings Hill open space to the north. The site has a gated frontage onto Mays Lane providing access for agricultural vehicles only. To the east of the application site is Brethren's Meeting Room Place of Public Religious Worship, including a large car park to the rear. A livery yard known as Chesterfield is located to the west. This comprises a cluster of buildings and manège for the keeping, training and grazing of horses. Further equestrian uses are noted opposite the application site at Vale Farm Livery stables and Greengates Stables. Duck Island provides the nearest facilities to the application site including Whittings Hill Primary School and Quinta Convenience Store. Mature oak trees located sporadically along the site boundaries are protected

by tree preservation orders due to their vigour and high visual amenity value. Whitings Hill open space to the north of the application site covers an area of approximately 2.05 hectares. The grassy hill dominates the space giving views over the surrounding area.

- 4.9 Whilst the site is bounded by mature trees and hedging and some native hedge and tree planting is proposed directly around the pitches and hardsurfacing areas, it would not completely obscure views of the site. Glimpses of the site can be gained during the autumn / winter months from users of the footpaths running parallel with the northern boundary and from longer views within Whitings Hill Open Space where the land begins to rise above the application site. Although the Brethren's Meeting Room Place of Public Religious Worship car park is bounded by an evergreen hedge along its western boundary the rooftops of the utility day rooms will be seen. Although the built up area of the site will not be readily apparent from Mays Lane or from the neighbouring livery yard known as Chesterfield, almost the full extent of the access track to be formed from loose bound hardstanding will be clearly apparent, including the comings and goings of vehicles and caravans.
- 4.10 The proposal will result in an increase in built form and hard standing on a site that has not been previously developed and will result in a use of greater intensity. Moreover, it would effectively interrupt the sporadic form of existing development surrounding the application site on both sides of Mays Lane. The structures proposed to facilitate the use and the use itself is completely at odds with the prevailing characteristics of the immediate and wider area and would result in visual harm to the prevailing character and appearance of the area . The proposal does include some additional planting surrounding the built up area of the site but this will not completely obscure the development from public views. There will thus be moderate to significant harm to the character and appearance of the site contrary to the policies set out in Reason for Refusal 3.

Ecology - disturbance of great crested newts (Reason for Refusal 4)

- 4.11 The LPA's position is that the Appellant still has not provided adequate survey information to demonstrate that the proposed development would mitigate

against the disturbance of great crested newts and their foraging/sheltering habitats within 500 metres of the application site.

- 4.12 The appellant instructed RSKBiocensus to conduct a Great Crested Newts eDNA survey on 2nd May 2024. This assessment had not been previously seen by the LPA. It is understood that Access was gained for 5 out of 7 of the ponds in the vicinity. Access was not granted from the two neighbours owning pond numbers 2 and 4 due to the landowners objecting to the proposal.
- 4.13 The submissions made by RSKBiocensus have been fully reviewed by the LPA Senior Ecology Officer with the conclusion being that due to the requirement for further surveys and mitigation following the submission of the eDNA Survey Report (Biocensus, June 2024), we still have insufficient survey information to remove ecology as a reason for refusal. In the absence of the required traditional GCN surveys to establish the population size of the great crested newts within the ponds nearest the site by means the of required traditional survey (which include six survey visits using methods such as egg search, netting, bottle trapping, and/or torching, to be carried out between mid-March to mid-June) and the submission of appropriate mitigation in relation to the development the LPA would fail in its duty under section 40 of the Natural Environment and Rural Communities Act 2006; Clause 9.3 and Annex D6.1 of the BS420202:2013, and Paragraph 98 ODPM Circular 06/2005 and NPPF 2024 paragraph 186.A which states “When determining planning applications, local planning authorities should apply the following principles: (a) 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 supporting eDNA Survey Report (Biocensus, June 2024) confirms that Pond 1 (closest to the site) and pond 6 had confirmed GCN eDNA, however, no further traditional surveys were undertaken given the late time in the GCN breeding season. The eDNA report concluded that:

“Areas of horse grazed grassland will be cleared as part of the proposed development. This is sub-optimal habitat for GCN because it is short and horse-grazed so there is little cover for newts. However, if newts are in the area then

they will cross these areas and may use them on occasion. The hedgerows and scattered scrub are suitable habitat for sheltering newts, and they are likely to be found in these areas. According to the HSI assessment, P1 had 'Poor' suitability (HSI score 0.38) for GCN, owing to the lack of aquatic vegetation, grassy base, and because it is likely to dry annually during summer. Despite this, the eDNA result for this pond was positive (see Appendix C) showing that GCN are using the pond. Some areas of grassland will be cleared within 100m of P1, and these are likely to be used by newts as they cross from terrestrial to aquatic habitat. The hedgerows and scrub habitat at the edges of the grassland are likely used for foraging and sheltering by GCN.

- 4.14 The report goes on to confirm the need for Natural England EPS mitigation licence which would need to be informed by additional surveys:

“Any GCN habitat is legally protected and so any clearance of vegetation could cause an offence under current legislation (e.g. killing, injuring, disturbance or habitat destruction) if carried out without mitigation and under a licence. P6 is c.280m from the site and the eDNA result was positive for GCN despite the HSI assessment of 'Poor' suitability for GCN. The pond is ecologically well-connected to the site by woodland and lines of trees, all of which are suitable for newts. It is possible that breeding GCN from P6 would disperse into terrestrial Habitat on the site as newts are known to travel up to 500 m from their breeding ponds. The results of eDNA surveys at P3, P5, and P7.1 were all GCN negative. Although access was not made for P2 and P4, it is reasonable to assume that GCN are likely to be present in the wider area. A review of Ordnance Survey (OS) maps indicate that there are no significant barriers to newt movement (i.e. large roads, built-up areas, fast-flowing streams) between the site and ponds within 500m. As GCN are present in P1 and P6, any work to terrestrial habitat on the site will require a licence from Natural England, and mitigation measures to be put in place.”

European Protected Species Mitigation Licence (EPSML) - The licence application would need to be submitted to Natural England informed by further surveys to estimate GCN population size within P1, in line with methods

specified within the Great Crested Newt Conservation Handbook (Langton et al., 2001). This would consist of six survey visits using methods such as egg search, netting, bottle trapping, and/or torching, to be carried out between mid-March to mid-June. Mitigation and avoidance measures are likely to include clearing vegetation in a way that avoids harming newts, enhancing remaining areas of habitat, and possibly fencing and trapping any newts to remove them to safety.”

- 4.15 The consultant ecologist has not provided any evidence to the contrary that the works could feasibly be undertaken in a manner that would not negatively impact the favourable conservation status of the great crested newts. The LPA’s position is that, were the proposed development to be permitted in the absence of the required Natural England EPS licence (supported by further traditional surveys and mitigation strategy), then a likely offence under section 43 of the Conservation of Habitats and Species Regulation 2017 and Section 5 of the Wildlife and Countryside Act 1981 (as amended) would occur.
- 4.16 The Council simply does not have the information to know to what extent the development is likely to impact the Favourable Conservation Status of the species. The surveys which have been carried out would be inadequate to inform a licence application to Natural England as they do not show the full population surveys. Without the full suite of information as to the population assessment in these ponds to inform appropriate mitigation, it is impossible to form any view as to whether Natural England would be unlikely to grant a licence or not. As set out in Natural England’s Explanatory Note for LPAs on Clause 9.3 and Annex D6.1 of BS42020: 2013 Planning Conditions and European Protected Species Licenses (February 2020) para 1: “Before granting planning permission, the local planning authority should satisfy itself that the impacts of the proposed development on European protected species (EPS) have been addressed and that if a protected species derogation licence is required, the licensing tests can be met and a licence is likely to be granted by Natural England”.
- 4.17 Without the further traditional surveys (x 6 between Mid March to Mid June inclusive) to inform the GCN mitigation strategy (to support the licence

application) we do not have certainty that the development would meet the “Three Tests” as per Regulation 53(2)(e) of the Conservation of Habitats and Species Regulation 1994 (as amended) necessary to grant planning permission in relation to the works likely to impact on European Protected Species and its resting/sheltering/breeding place.

- 4.18 The LPA refutes the assertions made in the Appeal Statement that “*This is a matter that can be dealt with by condition, as such the LPA are requested to review this reason for refusal as a matter of priority and to confirm that subject to condition, they no longer pursue the fourth reason for refusal*” as the presence and protection of European Protected Species is of material consideration for planning, as the LPA and Natural England require that such information relevant to protected species must be present prior to determination and not by means of planning condition. In the absence of the required traditional GCN surveys to establish the population size of great crested newts within the ponds nearest the site, which include six survey visits using methods such as egg search, netting, bottle trapping, and/or torching between mid-March to mid-June, and without appropriate mitigation in relation to the development, the Local Planning Authority (LPA) would fail in its duty under section 40 of the Natural Environment and Rural Communities Act 2006, Clause 9.3 and Annex D6.1 of BS42020:2013, and Paragraph 98 of ODPM Circular 06/2005 and NPPF 2024 paragraph 186.A. This states that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or compensated for, then planning permission should be refused. Given that the proposed development does not fall under any exemption from being required to undertake population assessments, the LPA would be negligent in its duty under the aforementioned legislation if it were to grant planning permission without understanding the material impact on a European Protected Species. eDNA testing indicates likely presence within the two respective ponds but does not provide sufficient details on population size, necessary for appropriate mitigation to meet the 'Three Tests' under Regulation 53(2)(e) of the Conservation of Habitats and Species Regulations 1994 (as amended). The LPA believes Natural England would be unlikely to grant an EPS mitigation licence for a development granted" planning permission without

a full understanding of the favourable conservation status of a European Protected Species and is awaiting a response from Natural England's Discretionary Advice service.

4.19 Given that the proposed development does not fall under any exemption from being required to undertake the population assessments the LPA would be negligent in their duty under the above mentioned legislation were it to grant planning permission to the development site and condition further surveys and licencing without understanding the material impact to a European Protected Species. The eDNA testing as it stands indicates likely presence within the two respective ponds but does not provide the appellant, LPA or Natural England (as the statutory conservation body) with sufficient details on the population size and thereby any indication as to the appropriate level of mitigation that would meet the 'Three Tests' as per Regulation 53(2)(e) of the Conservation of Habitats and Species Regulation 1994 (as amended). The LPA of the opinion that Natural England would be unlikely to grant a EPS mitigation licence to an application for a development that has been granted planning permission without the full understanding of the favourable conservation status of a European Protected Species, The LPA is awaiting response from Natural England's Discretionary Advice service..

4.20 The Planning Inspector (appellant cc'd) was notified by email on 07/08/2024 that the 'further traditional surveys' can only be carried out at the earliest in April 2025, being some three months after the inquiry has been held in January 2025. Both the LPA and Natural England require that such information relevant to protected species must be present prior to determination. The Planning Inspector noted these comments by Email on 08/08/2024. No response was received from the Appellant's agent.

Impact on Trees (Reason for Refusal 5)

4.21 The Council now considers that the impact on trees can be adequately mitigated by suitably worded planning conditions. The Council's proposed wording is as follows:

Levels

a) No development shall take place until details of the levels of the building(s), road(s) and footpath(s) in relation to the adjoining land and highway(s) and any other changes proposed in the levels of the site have been submitted to and approved in writing by the Local Planning Authority.

b) The development shall thereafter be implemented in accordance with the details as approved under this condition and retained as such thereafter.

Landscaping

a) A scheme of hard and soft landscaping, including details of existing trees to be retained and size, species, planting heights, densities and positions of any soft landscaping, shall be submitted to and agreed in writing by the Local Planning Authority prior to the occupation of the hereby approved development.

b) All work comprised in the approved scheme of landscaping shall be carried out before the end of the first planting and seeding season following occupation of any part of the buildings or completion of the development, whichever is sooner, or commencement of the use.

c) Any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of the completion of development shall be replaced with trees or shrubs of appropriate size and species in the next planting season.

Excavations

a) No development shall take place until details of the location, extent and depth of all excavations for services (including but not limited to electricity, gas, water, drainage and telecommunications) in relation to trees on and adjacent to the site have been submitted to and approved in writing by the Local Planning Authority.

b) The development shall thereafter be implemented in accordance with details approved under this condition.

Tree Protection

a) No site works or development (including any temporary enabling works, site clearance and demolition) shall take place until a dimensioned tree protection plan in accordance with Section 5.5 and a method statement detailing precautions to minimise damage to trees in accordance with Section 6.1 of British Standard BS5837: 2012 (Trees in relation to design, demolition and construction - Recommendations) have been submitted to and approved in writing by the Local Planning Authority.

b) No site works (including any temporary enabling works, site clearance and demolition) or development shall take place until the temporary tree protection shown on the tree protection plan approved under this condition has been erected around existing trees on site. This protection shall remain in position until after the development works are completed and no material or soil shall be stored within these fenced areas at any time. The development shall be implemented in accordance with the protection plan and method statement as approved under this condition.

Green Roof

a) Prior to the first occupation of the hereby approved development, details of the proposed green roof have been submitted to and approved in writing by the Local Planning Authority.

b) The green roof shall be implemented in accordance with the details approved this condition prior to the commencement of the use or first occupation of the development and retained as such thereafter. Should part of the approved green roof be removed, die, become severely damaged or diseased within five years of the completion of development, it shall be replaced in accordance with the details approved by this condition.

Landscape Management Plan

a) Prior to the occupation of the hereby approved development, details of a Landscape Management Plan for all landscaped areas for a minimum period of

25 years have been submitted to and approved in writing by the Local Planning Authority.

b) The Landscape Management Plan shall include details of long term design objectives, management responsibilities, maintenance schedules and replacement planting provisions for existing retained trees and any new soft landscaping to be planted as part of the approved landscaping scheme.

c) The approved Landscape Management Plan shall be implemented in full in accordance with details approved under this condition.

Enclosures

Prior to occupation of the land the following details of enclosure shall be, submitted and approved by the Local Planning Authority and installed. a) details of the gateway to Mays Lane and entrance to the hard standing, that will prevent livestock from escaping. b) Details of internal fencing along the driveway and around the hardstanding areas.

4.22 The above conditions would be required, pursuant to section 197 of the Town and Country Planning Act 1990 in accordance with local planning policy DM01. Policies CS5 and CS7 of the Local Plan Core Strategy DPD (adopted September 2012) and Policy G6 and G7 of the London Plan 2021.

4.23 Reason for Refusal 5 is thus withdrawn subject to those conditions, and as a result of the Appellant providing the Arbtech Tree Survey Report and Impact Assessment which were completed on 30 April 2024 and not previously seen by the LPA.

Potential flooding (Reason for Refusal 6)

4.24 The LPA assert that in the absence of a flood risk assessment and surface water drainage strategy at the application stage it had not been demonstrated that this highly vulnerable form of development would be protected from potential sources including but not limited to surface water, groundwater, sewer, and artificial sources. The strategy also needs to confirm the appropriateness of the proposed soakaway in relation to adversely affecting surface water runoff and potential flood risk.

Flood Risk Assessment (FRA)

4.25 The technical evidence in relation to Flood risk is dealt with in the Flood Risk Assessment (FRA) which was completed by GeoSmart on 5th April 2024. This assessment has not been previously seen by the LPA.

4.26 The FRA concludes:

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

4.27 The FRA states that '*As the area proposed for development is not identified as being at risk of pluvial flooding, standard mitigation measures are not required*'. However, it is recommended to move the proposed touring caravan located in the northeast corner of the Site further south / south-east to further reduce the risk of any flooding. The Council's position is that the potential flooding would be more significant if this recommendation were followed as that area is more at risk and it would change the whole proposal and require a complete re-assessment of impact on viewpoints, access, ecology. It certainly would not be a minor amendment. All caravans should remain tethered to the ground (where practical) as a precaution, in the unlikely event of a significant flood in the northeast of the site. It is also envisaged that regular maintenance of any drains and culverts surrounding/on the Site under the riparian ownership of the developer should be undertaken to reduce the flood risk.

Sustainable Drainage Assessment (SuDS)

4.28 GeoSmart also carried out a Sustainable Drainage Assessment (SuDS) on 4th April 2024 to address any drainage concerns. This assessment had not been previously seen by the LPA.

4.29 The SUDS concludes:

4.30 GeoSmart conclude that the SuDS strategy 'is comprised of rainwater harvesting and permeable paving to attenuate surface water runoff during the 1 in 100 plus 40% climate change event. Surface water will discharge via Dollis Brook to the west of the Site, following confirmation from the relevant authority.' Following the above, the site is located in FZ1 and is at Very Low to Low risk. Any risks can be mitigated through conditions at set out above.

4.31 The submissions made by RSKBiocensus have been fully reviewed by the LPA Flood Officer with the conclusion being that the flood risk objection still stands for the following reasons:

- A fully labelled SuDS network diagram showing pipes, manholes, SuDS features with reference numbers, etc., should be provided;
- Whilst details of peak discharge rates, total discharge volumes, critical storm duration and volume requirements have been provided for a range of return periods. Evidence of hydraulic modelling in an industry standard software should be provided. The calculations should model the entire proposed drainage network, including all SuDS features. Storm durations should be simulated up to and including 1440 minutes (1 day) for the 1 in 1 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus an allowance for climate change. Urban creep should also be considered;
- Whilst a SuDS maintenance schedule has been provided, this lacks sufficient detail. Details of the minimum required maintenance of SuDS features can be found in the CIRIA SuDS manual;
- Whilst exceedance flow routes have been detailed on the proposed SuDS scheme, this is insufficient. Topographic levels at the site should be provided to verify the flows would travel in the directions indicated;
- Standard design details should be provided for all proposed SuDS features; and,

- Evidence of approval from the LLFA confirming they approve the discharge into Dollis Brook should be provided.

4.32 This is a highly vulnerable form of development that needs to be protected from potential sources including but not limited to surface water, groundwater, sewer, and artificial sources. The development thus conflicts with the objectives of the National Planning Policy Framework (2023), Policies SI 12 and SI 13 of the London Plan (2021), Policy CS13 of Barnet's Adopted Core Strategy (2012), Policy DM01 of the Local Plan Development Management Policies DPD (2012) and emerging local plan policy HOU06.

Highway Safety Implications (Reason for Refusal 7)

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

4.34 The appellant is critical of the officer's report which states at the outset that no objections have been raised by Highways Officers. It is accepted by the LPA that this was made in error; with the relevant highway section of the report explaining in detail the concerns for highway safety along Mays Lane.

4.35 The appellant has since instructed Mr Jeremy Hurlstone from the Hurlstone Partnership to complete a statement on Highways matters covering the concerns raised by the LPA. This assessment has not been previously seen by the LPA. The statement (which includes reference to a traffic survey) concludes that subject to *'cutting back some of the hedgerow on either side of the access site to improve visibility splays'* the *'highway impact of the proposed development is acceptable'*.

4.36 The submissions made Mr Jeremy Hurlstone have been fully reviewed by the LPA's Senior Highway Officer with the conclusion being that additional information is required before an informed decision can be made. In this regard

the Officer is seeking the following details and has communicated as such to the Appellant's agent:

- Separate swept path diagrams using AutoCAD
- Visibility splay drawings with X and Y distances marked on the drawing (any loss of vegetation to be noted)
- Passing place on the access road
- Set back the gate to allow for a car and trailer to be able to wait within the site and not obstruct the highway
- A defined access that meets Borough standards
- Agreement to enter into a s184 (This can be conditioned)
- Public highway boundary and responsibility for boundary hedges.

4.37 Until these details are forthcoming and are satisfactory, it is not possible to conclude that the highway impacts will be acceptable. Notwithstanding that the Appellant has purported to provide a Highway Statement, there is still inadequate information and Reason for Refusal 7 stands. Unless and until the Appellant can show that adequate visibility splays can be provided to allow access and egress from the site, including by vehicles towing a caravan, the safety of the public, both drivers and pedestrians, remains at risk. If / when such information is forthcoming, the Council will review the position based on the Council's policies for safeguarding highway safety. It should be noted that any revised design may also have unintended knock on effects for other interests, such as ecology.

4.38 **Conclusions on Harm**

4.39 The LPA refutes the appellant's conclusions on harm. For the reasons set out above and as fully explored in the officers report the proposal will have a moderate to significant impact on the openness of the Green Belt and on the character and appearance of the area. At the time of writing this report, it is accepted that planning conditions can be imposed to overcome the Aboricultural reasons for refusal, however, matters relating to ecology, highways and potential for flooding still remain reasons that the Council argues should result in the refusal of planning permission.

Alleged Very Special Circumstances

4.40 Need (Reason for Refusal 1)

4.41 As set out in the accompanying Policy Note, the Council has an up-to-date Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (October 2018 and updated in July 2021) which forms part of the evidence base for its emerging Local Plan. This Assessment does not identify any need for gypsy and traveller pitches within the Borough. As such, no allocations are proposed in the context of the emerging Local Plan. This has been examined by the Local Plan Inspector and no objections were raised. There is a review process as part of the Local Plan process, and so this issue can be re-visited after adoption if it proves necessary so the Council has a mechanism in place to provide for pitches in the future if a future assessment identifies they are needed (for example following the GLA's London Gypsy Traveller Accommodation Needs Assessment draft document which was produced in April 2024 and which, once finalised, will feed into the first review of the new Local Plan).

4.42 The plan process is therefore up-to-date and robust. There is no 'failure of policy' or lack of 5 year supply of sites or unmet need as suggested by the Appellant. It should be noted that, historically, the Council has never before received a planning application for this type of development in the Borough. This application has been assessed on its own merits but this is not a situation of a Council facing a repeated demand for pitches in the Borough which is going unmet. There are other locations within the Borough where the criteria based approach in policy would result in a more appropriate development of this type, outside the Green Belt.

Alleged Very Species Circumstances

4.43 Personal (Reasons for Refusal 1 and 2)

4.44 The case of very special circumstances made out at the application stage relates to the personal circumstances of the two families, including their

educational and health needs. These sensitive matters are addressed in detail in a separate confidential LPA report with the conclusion being that the Council cannot conclude with any certainty that the either household has gypsy/traveller status to meet the definition of gypsy and traveller in Annex 1: Glossary to the PPTS. Having reviewed the position in light of further contact with the agent, the Council accepts that it is not in a position positively to challenge the assertions put forward that the families are of a nomadic habit of life and therefore is prepared to proceed on the basis for the purposes of this appeal (subject to any further information coming to light) that they meet the Annex 1 definition. Reason for Refusal 2 is therefore withdrawn.

4.45 On the basis that gypsy/traveller status is agreed (since the Council has no evidence of its own to contradict the Appellant's assertions that they meet the definition), the need for a site with good connections to local services can be met elsewhere without resorting to roadside encampments or causing unnecessary harm to the Green Belt. The established pitches within the administrative boundaries of Harrow, Brent and Hertsmere (being the closest neighbouring authorities to the application site), are referred to in the officer's report. There is no evidence that the Appellant's families have ever been on a waiting list for a pitch elsewhere.

4.46 The school-age children referred to by the Appellants are unknown to the Council's Admissions Teams Manager and School Place officer on the latest school census (May 2024). The Council does not see how the occupation of the site in this location is necessary in the best interests of the children. Accordingly, it is the view of the Council that the need for a site and the educational and health requirements of the two families can be met elsewhere without resorting to roadside encampments or causing unnecessary harm to the green belt.

4.47 **Very Special Circumstances Balance**

4.48 The Council's position is that there is no unmet need and no failure of policy and the personal circumstances are insufficient in this case to amount to very

special circumstances sufficient to outweigh the agreed harm to openness to this part of the Metropolitan Green Belt and other harm.

5.0 **Human Rights Article 8 considerations (para 280 – 292)**

5.1 The obligations upon the LPA and referred to by the appellant are noted.

5.2 A key matter in this type of application is the European Convention on Human Rights as applied by the Human Rights Act 1998 along with the Council's requirement to act in accordance with the Equality Act 2010. In terms of Equalities legislation, Gypsies and Travellers have a protected status that must be considered in all decisions made by Public Authorities. The Council needs to coherently apply the PPTS, as described above, which itself has been subject to Equality Impact Assessment (EqIA) by the Government. Specifically, the Council in the exercise of its statutory functions (in this case the determination of planning applications) has a clear duty to have due regard to particular needs and lifestyles when making decisions. The Public Sector Equality Duty is set out at Section 149 of the Equality Act 2010. It imposes a duty on all public authorities that they must, in the exercise of their functions, have due regard to the need to: -eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; -foster good relations between persons who share a relevant protected characteristic and persons who do not share it. This is a duty that applies to Local Planning Authorities, the Planning Inspectorate and the Secretary of State.

5.3 The key point is that whilst the duty is not a lone justification to grant planning permission or to not take enforcement action, decision makers must have regard to it when considering Traveller cases. For example, it is necessary for consideration to be given as to whether refusing planning permission (which could potentially mean that the applicants would have to resort to roadside encampments) would be an action which would "foster good relations" between the settled community and Travellers (where such status has been evidenced).

This is a matter to which the decision maker must give due regard to in the consideration of this case, and one that the Planning Inspectorate will have regard to in determining any subsequent appeal lodged in the event that planning permission is refused and enforcement action commenced.

5.4 The application was determined in accordance with these key principles.

6.0 **Temporary Consent**

6.1 The PPTS para 27 provides that *“If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. The exception is where the proposal is on land designated as Green Belt.”* In this case, not only is the site in the Green Belt but the Council also is not in the position of not having a 5 year supply of deliverable sites for the reasons set out above (i.e. no assessed need for pitches in the Borough). Therefore, there is no policy basis for allowing a temporary consent on the grounds of needing to give an opportunity for allocated sites to come forward.

6.2 There is also no persuasive personal basis put forward. The Appellant may well have a ‘desire’ to live on the site, but that does not equate to a ‘need’. Limited information has been provided about historical ties to the Borough and where the families have been living up until now. As set out above, the school-aged children do not appear to be enrolled in local schools. No basis has been given for why a 5 year period would be appropriate in any event. Should the Inspector disagree, any temporary consent, if granted, should be conditioned to these particular occupants.

7.0 **Planning Conditions**

7.1 The suggested planning conditions will be agreed through the statement of common ground.