

**TOWN AND COUNTRY PLANNING ACT 1990**

**SECTION 174**

**APPEAL BY MR PATRICK GAVIN AGAINST THE DECISION OF KETTERING BOROUGH  
COUNCIL TO SERVE AN ENFORCEMENT NOTICE**

**AT LAND SITUATED AT PLOT 24B, GREENFIELDS, BRAYBROOKE ROAD,  
BRAYBROOKE, MARKET HARBOROUGH  
IN THE COUNTY OF NORTHAMPTONSHIRE**

**STATEMENT OF CASE**

**PREPARED ON BEHALF OF KETTERING BOROUGH COUNCIL BY  
THE LOCAL PLANNING AUTHORITY**

**11th MARCH 2021**

**Planning Inspectorate Reference: APP/L2820/C/20/3262337**

**Local Planning Authority Reference: ENFO/2020/00013**

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## **A. Introduction**

1. This Statement of Case ('Statement') has been prepared in response to appeal APP/L2820/C/20/3262337, which was submitted by Mr Patrick Gavin ('Appellant') against the Council's Enforcement Notice dated 2 October 2020 in regard to a plot of land previously occupied by the Appellant and his wife and children.
2. The Council's investigations show that the Appellant and his family appear to have abandoned the plot of land on or prior to 16 December 2020 [**Addendum E**]. The Council therefore deems that the Appellant no longer resides at the plot of land as his principal home, and has commenced compliance with one requirement of the Enforcement Notice, namely to "*cease the use of the land as a residential caravan site*".
3. The appeal will be determined at a hearing. Accordingly, this Statement has been prepared pursuant to the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682 in England and the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684 in England.
4. The Council has also had regard to the Planning Inspectorates Guidance 'Procedural Guide Enforcement notice appeals - England' (November 2020).
5. A copy of the Enforcement Notice - which describes the land to which the notice relates, the matters which appear to constitute breach of planning control, the reasons for issuing the notice, the steps required to rectify the breach, the period and date on which compliance with the requirements of the notice is due, and the date on which the notice becomes effective - is appended to this Statement at **Exhibit 4**.
6. A copy of the inspector's decision regarding the Appellant's 2015 planning application is appended to this Statement at **Appendix A**.
7. Save where otherwise indicated, all references to sections and schedules refer to sections and schedules of the Town and Country Planning Act 1990.

## **B. Site Description**

8. The relevant site is known as Plot 24b ('Site'), located in an area known as Greenfields, which is situated off Braybrooke Road, Braybrooke, Market Harborough LE16 9LX. Greenfields is a block of about 15 Ha (37 acres) of agricultural land in the open countryside. Much of the Site has been sub-divided up as individual gypsy and traveller plots [**Appendix D**] The Site is in the northernmost half, beyond the gate and dividing hedge line.
9. Seven plots in the southernmost half of the Greenfields also received temporary consents in 2017 for named traveller occupation but all these have now lapsed on these pitches, and as of December 2020, only one unauthorised pitch remains occupied.
10. The Site is located in attractive, open, gently rolling countryside with dispersed isolated farms and few settlements and is some distance away from the nearest settlement. One of the distinct characteristics of this area is that isolated dwellings or buildings are set within the open countryside. West of the Site is a farm/dog kennels, and to the northwest another property, Riches Lodge Farm.
11. Although the Site is not within any national landscape designation it is locally defined as *West Northamptonshire Uplands* within the Northamptonshire Environmental Character Assessment [**Appendix G**]. Amongst the characteristics of this landscape are the regular field patterns and distant views of rolling hills. Towards the top of Greenfields especially there are clear views from the Site which can be seen from more distant fields and open spaces within the landscape particularly on the facing valley slopes and ridge. It is a relatively exposed area being on higher parts of the undulating landscape, the highest 150m above ordnance datum (AOD) contour crosses Greenfields at the southern end.
12. Since 2017 Greenfields has shown a large amount of fly tipping, rubble and domestic waste disposal, both on and under the land, throughout several plots of land, of which two are enforced. Horses are on other parts of the land not connected to the landowners, and other plots are deemed evident to be in commercial use as a scrap yard and other commercial activities, some without the landowner's permission as of December 2020.

13. There is only one access in and out of Greenfields. One has to pass the illegal fly tipping and unauthorised disposal of waste, and the operational use of the plant digger [**Exhibit 5**]. The Council does not consider that any landowners who live at Greenfields would not notice or know of the activities occurring daily on the Site.

**C. Planning History**

14. In 2011 an enforcement notice was served regarding the siting of caravans in respect of the Site (ENFO/2011/00239). Compliance was met via the then landowner leaving the site and the land restored to green pasture.
15. In May 2015 it came to light that new caravans for residential occupation were at the Site.
16. On 15 June 2015 a planning application (reference KET/2015/0500) ('Planning Application') was made for the Site by the Appellant.
- 17.
18. The Planning Application was refused. The Appellant appealed.
19. On 13 February 2017 the inspector determining the appeal (reference APP/L2820/W/15/3139293) upheld the Appellant's appeal against the Council's decision to refuse planning permission (reference KET/2015/0500), and granted planning permission for '*the change of use of land as a residential caravan site for one gypsy family with two caravans, including the laying of hardstanding and erection of amenity building*'.

20. A schedule of Conditions marked A were set by the Inspector as below [**Appendix A**], providing as follows:

1. *The development hereby permitted shall be for a limited period being the period of 3 years from the date of this decision. At the end of this period the use hereby permitted shall cease, all caravans, buildings, structures, materials and equipment brought on to, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place in accordance with a restoration scheme submitted to the local planning authority within 28 days of the date of this decision and subsequently approved in writing.*
2. *The occupation of the site hereby permitted shall be carried out only by the following: Mr Patrick Gavin, Mrs Anne Gavin and their resident dependents.*
3. *The amenity building hereby permitted shall only be carried out in accordance with Site Layout Plan Scale 1:500 and Elevations Plan Scale 1:100 unnumbered but submitted with the planning application and dated as received by the local planning authority on 19 June 2015.*
4. *No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.*
5. *No commercial activities shall take place on the site including the storage of materials.*
6. *No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.*
7. *The construction of the amenity building hereby permitted shall not commence until samples of the materials to be used in the construction of the external surfaces of the building have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.*
  1. *There shall be no external lighting on the site at any time other than in accordance with a detailed scheme which shall first have been submitted to and approved in writing by the local planning authority.*
  2. *Within 28 days of the date of this decision, details of foul drainage shall be submitted to the local planning authority. The details shall be implemented within 3 months of the approval of the details by the local planning authority in writing. The development shall not be carried out other than in accordance with the approved details and retained thereafter.*

21. The location plan showed a red line that included an access track. However, the ownership of this access track was not in the name of the Appellant.
22. Since the determination of the 2017 appeal the Council's housing team have not received any responses from the Appellant in regard to his need for a permanent public gypsy & traveller pitch.
23. On 19 January 2018 Condition 1 was discharged in respect of site restoration at the end of the temporary period. Conditions 7, 8 and 9 were also discharged. [**Appendix B**].
24. On 4 February 2020 a letter was sent by recorded delivery to the appellant advising of the impending Expiry Date of the Temporary Permission ('Reminder Letter') [**Exhibit 1**]. The Reminder Letter advised the Appellant that non-compliance with Condition 1 would mean that the land remains in breach of planning control and that it may be considered for enforcement action as a result. The Council also informed the Appellant that it may visit the Site in person or use a drone soon after the Expiry Date to clarify that compliance has been met under section 196A.
25. The Reminder Letter also noted that an unauthorised hardstanding access track from the middle gate to the Appellant's land had been installed in breach of planning control and that, therefore, the Council would be seeking to remedy this matter by serving an enforcement notice to remove the hardstanding.
26. The Appellant did not respond to the Council's Reminder Letter.
27. Various site visits established that no works in accordance with Condition 1 had been carried out at the Site on or after the Expiry Date.
28. On 14 February 2020 an enforcement notice (reference ENFO/2019/00144) [**Appendix C**] was served upon the landowners of the top field 'access track' ('Track EN') together with a Location Plan showing the access track [see **Appendix C, page 6**]. The access track is used by the Appellant, and other plot users, through a right of way. The Track EN stated that the following matters appeared to constitute breaches of planning control:



“Without planning permission, within the land edged in Red (for identification purposes only) the carrying out of operations on the land title NN235509, resulting in the provision of a hard-surfaced access track, as shown approximately hatched in Green to the Northern end of the Hedgerow marked XY within the last 4 years.”

29. The Track EN has not been complied with. The Council are considering legal action to remedy the matter. No further legal action has been taken as the Council intends to secure compliance with the enforcement notice (see paragraph 34 below) first to prevent any unnecessary hardship in removing the caravans and materials from the land.
30. On 24 February 2020 a letter dated 20 February 2020 written by the Council’s Housing Officer was hand delivered by a processing agent [**Exhibit 2 with addendum**] (‘Register Letter’). The Register Letter advised the Appellant that he was still on the Council’s Gypsy and Travel Site Pitch Register following a previous application, and that he should respond to the Council upon receipt of the letter to confirm whether he wished to be considered for a pitch when a vacancy arises. The Register Letter also made it clear that the Appellant’s previous application for a pitch would remain on hold until a response was received, and that the Council would remove the Appellant from the register if no response was received by 27 March 2020.
31. The Appellant had not made contact with the Council since the Register Letter was delivered.
32. On 10 June 2020, just under four months after the Expiry Date, the Appellant submitted an application under section 73 to remove Condition 1 of the Temporary Permission (‘Application’). For the reasons set out in the Council’s First Statement of Case, the Council did not validate the application, and the Appellant appealed (appeal reference APP/L2820/W/20/3262332). Further details as well as the Council’s case on the “Non-Determination” issue, as it has been referred to by the Planning Inspectorate, are set out in the Council’s First Statement of Case, Section C, pp. 9-11).
33. On 22 September 2020 a letter was sent to the Appellant by recorded delivery advising of impending enforcement action [**Exhibit 3**]. No response was received.

34. On 2 October 2020 the Council issued and duly served on the Appellant an enforcement notice ('EN') together with a letter by the Council dated 2 October 2020, an annex with explanatory notes and a plan of the Site, pursuant to section 172 [Exhibit 4; Exhibit 4A].

35. The EN stated as follows:

*"On the 13<sup>th</sup> February 2015<sup>1</sup> temporary planning permission was granted for the material change of use to a residential caravan site for one gypsy family with two caravans, including the laying on hardstanding and erection of an amenity building. The development does not accord with that planning permission KET/2020/0500<sup>2</sup> and condition No.1 and condition AOC/0500/1501 restoration scheme in that:*

*(1) At variance with condition No1, that at the end of its period, the 'use permitted shall cease, all caravans, buildings, structures, materials and equipment brought on to, erected on the land, works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place in accordance with its restoration scheme approved by the local planning authority **has not been complied with.***

*(2) At variance with discharged restoration scheme Condition 1 AOC/0500/1501 the steps below **have not been complied with:***

*(a) Removal from the land:*

- 1. all hardcore/ other stone or base material and all concrete bases laid; (resulting debris to be properly disposed of to an authorised waste site);*
- 2. all domestic paraphernalia/ or other objects,*
- 3. all caravans/vehicles*
- 4. all structures including the amenity building, the lights, the Klargester or other apparatus including fixings and supporting bases, pipes or wires etc;*
- 5. all fencing shall have been removed from the land*
- 6. the site to be returned to its natural state as a grassed field, ie bare ground to be re seeded with grass or new turf once the ground has been cleared.*

#### **4. REASONS FOR ISSUING THE NOTICE**

*It appears to the Council that the above breach of planning control has occurred within the last 10 years.*

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<sup>1</sup> This was a typo. The correct date is 13 February 2017.

<sup>2</sup> This reference was incorrect/a typo. The correct reference is KET/2015/0500.

*This site lies within a valued landscape and is within an area of the Northamptonshire Environmental Character Assessment locally defined as 'The West Northamptonshire Uplands'. The gypsy and traveller caravan site results in an alien feature into part of this landscape and is so untypical to cause substantial harm to the landscape area.*

*North Northamptonshire Joint Core Strategy (NNJCS) Policy 3 requires development to be located and designed in a way that is sensitive to its landscape setting, retaining where possible, enhancing the distinctive qualities of the landscape area which it would affect. Furthermore, development should conserve and where possible enhance the character and qualities of the local landscape through appropriate design and management. NNJCS Policy 31 criterion (h) states that development should not have a significant adverse impact on the character of the landscape and should take account of the Landscape Character Assessment of the area.*

*Therefore, Policies 1, 3 and 31 of the North Northamptonshire Joint Core Strategy are relevant to proposed new development in the open countryside requiring development to be sustainable and require the landscape character to be conserved and enhanced. Saved Local Plan Policies 7 and RA5 have a similar intent.*

*The Planning Policy for Traveller Sites 2015 (PPTS) states that Local Planning Authorities should strictly limit new traveller sites in the open countryside.*

*For the above reasons the breach of condition No.1 and its approved restoration scheme AOC/0500/5101 is considered to result in significant harm to the landscape character and appearance having regard to the nature and extent of the views from the public footpath. It also causes some harm to the valued landscape as referred to in the Development Plan by the introduction of an alien feature and is therefore contrary to the above policies and the PPTS*

*The Council does not consider planning permission should be granted because planning conditions could not overcome these objections.*

## **5. WHAT YOU ARE REQUIRED TO DO**

*Within the area outlined in RED on the attached plan and to meet compliance with condition no. 1 and AOC/0500/1501:*

- 1. In accordance with condition no. 1 cease the use of the land as a residential caravan site.*
- 2. In accordance with the approved restoration scheme AOC/0500/1501 remove from the land:*
  - 1. all hardcore/ other stone or base material and all concrete bases laid;*
  - 2. (resulting debris to be properly disposed of to an authorised waste site);*
  - 3. all domestic paraphernalia/ or other objects,*
  - 4. all caravans/vehicles*

5. *all structures including the amenity building, the lights, the Klargesten or other apparatus including fixings and supporting bases, pipes or wires etc;*
6. *all fencing shall have been removed from the land*
7. *the site to be returned to its natural state as a grassed field, ie bare ground to be re seeded with grass or new turf once the ground has been cleared.*

**6. COMPLIANCE PERIOD**

*5 months after this notice takes effect – full compliance by 2<sup>nd</sup> April 2021”*

36. On 30 October 2020 the Appellant appealed against the EN, relying on grounds (a), (b), (f) and (g) under section 174(2).

#### **D. Preliminary Issue**

37. In the EN Appeal Form the Appellant raises the following “Preliminary Issue”:

*“Disclosure of the expediency report from the Council was sought by way of email dated 5th October 2020. By way of email dated 8th October 2020 the Council declined this request. Disclosure of that report is still required to enable the Appellant to fully consider the Council’s case. In the event that the Council maintain their refusal to disclose the expediency report, this will form part of an application for costs based on their unreasonable behaviour.”*

38. The expediency report and its summary addendum were sent to the Appellant, in accordance with regulation 6 of the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, on the 20<sup>th</sup> January 2021, via email.

## **E. Planning Policy Framework**

39. Section 38(1) of the Planning and Compulsory Purchase Act 2004, read together with section 70(2), requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
40. Relevant to this appeal the statutory development plan comprises the following:

### **Saved Local Plan Policies**

- Policy 7: Protection of the Open Countryside
- Policy RA5: Housing in the Open Countryside

### **North Northamptonshire Joint Core Strategy (adopted 2016)**

- Policy 1 Sustainable development
- Policy 11 The Network of Urban and Rural Areas
- Policy 3: Landscape Character
- Policy 31: Gypsy and Travellers and Travelling Show People

41. The National Planning Policy Framework ('NPPF'), last revised in 2019, sets out the Government's planning policies for England and how they should be applied; it is a material consideration for decision-taking purposes though it makes clear that it cannot displace the statutory primacy of the development plan. The NPPF is supported and complemented by the national Planning Practice Guidance ('PPG').
42. The Government has published 'Planning policy for traveller sites' (August 2015) ('PPTS'). Applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the NPPF and the PPTS.
43. Local Planning Authorities ('LPAs') should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:
- a) The existing level of local provision and need for sites
  - b) The availability (or lack) of alternative accommodation for the applicants
  - c) Other personal circumstances of the applicant

- d) That the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites
  - e) That they should determine applications for sites from any travellers and not just those with local connections (PPTS, paragraph 24).
44. Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances (PPTS, paragraph 24).
45. LPAs should very strictly limit new traveller site development in the open countryside that is away from existing settlements or outside areas allocated in the development plan. They should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing undue pressure on the local infrastructure (PPTS, paragraph 25).
46. When considering applications, LPAs should attach weight to the following matters:
- a) Effective use of previously developed, untidy or derelict land
  - b) Sites being well planned or soft landscaped in such a way to positively enhance the environment and increase its openness
  - c) Promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children
  - d) Not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community (PPTS, paragraph 26).
47. If an LPA cannot demonstrate an up to date 5-year supply of deliverable sites, this should be a significant material consideration in any subsequent decision when considering applications for the grant of temporary planning permission (PPTS, paragraph 27). However, the PPTS does not contain a presumption in favour of granting planning permission for traveller sites: *Swale Borough Council v Secretary of State for HCLG v Mr S Maughan and Others* [2018] EWHC 3402 Admin), para [22].
48. That said, there is no presumption that a temporary grant of permission should be granted permanently (PPTS, paragraph 27, footnote 9).

## **F. The Council's Case**

### *Ground A*

49. The Council considers the following to be the key issues for the determination of this ground:
- i. Principle of Development
  - ii. The Council's Five Year Site Provision
  - iii. Landscape and Visual impact
  - iv. Sustainability – Location, Accessibility and Access to Services and Facilities
  - v. Planning Balance
  - vi. Human Rights Matters

### **(i) Principle of development**

50. Policy 31 of the North Northamptonshire Joint Core Strategy (NNJCS) refers specifically to sites for gypsies and travellers (and travelling show people). It sets out a list of criteria, all of which should be satisfied in the consideration of a planning application:
- a) The site is closely linked to an existing settlement with an adequate range of services and facilities.
  - b) The site, or the cumulative impact of the site, in combination with existing or planned sites, will not have an unacceptable impact on local infrastructure.
  - c) The site provides a suitable level of residential amenity for the proposed residents.
  - d) The site is served (or can be served) by an adequate water supply and appropriate means of sewage disposal.
  - e) There is satisfactory access and adequate space for operational needs including the parking, turning and servicing of vehicles.
  - f) The health and well-being of occupants is not put at risk including through unsafe access to the site, poor air quality and unacceptable noise or unacceptable flood risk and contaminated land.



g) The size and number of pitches does not dominate the nearest settled community.

h) The proposed development does not have a significant adverse impact on the character of the landscape and takes account of the Landscape Character Assessment of the area. Appropriate landscaping and treatment to boundaries shall be provided to mitigate impact.

51. Development plan policy seeks to protect the open countryside and focus development in sustainable appropriate locations. Policy 3 of the NNJCS relates to the provision of accommodation for gypsies and travellers. It lists a number of criteria all of which need to be satisfied. It is considered that the appeal site is not closely related to an existing settlement with a good range of facilities. It is located approximately 2.4km from the village of Braybrooke by road which has a lack of services and amenities. Therefore it is the Council's view that the site is isolated and not closely related to an existing settlement with a good range of facilities and is contrary to Policy 3a) of the NNJCS. This discussed in detail in section iv below.

52. Policy 3h) states that the development should not have a significant adverse impact on the character of the landscape. The Council contend that the proposal would cause harm to prevailing rural character of the area which constitutes large fields on open slopes edged by established hedgerows. The proposal introduces discordant features such as smaller field boundaries, fencing hard standing and domestic paraphernalia. The proposal would be a discordant and highly intrusive feature in the landscape which significantly erodes the rural character contrary to Policy 3h) of the NNJCS. This is discussed further in Section iii)

53. Saved Policy 7 of the Local Plan for Kettering states that planning permission for development within the open countryside will not be granted except where otherwise provided for in this plan. Policy RA5 (saved) of the Local Plan for Kettering relates to the provision of housing in the open countryside and states that planning permission will not normally be granted, exceptions made include:

**i. development essential for the purposes of agriculture or forestry, which:**

a. by the design, materials and siting, would be sympathetic to the character of the surrounding countryside; and

b. is not normally more than 180 square metres in total floor space except where there are particular personal, family or business reasons for justifying a larger floor area and provided that in all circumstances it is appropriate to the character of the surrounding countryside;

**ii reuse/conversion, retention and/or reinstatement of a suitable rural building (see Policy RA14)**

**iii the provision of housing to meet local need in accordance with Policy RA7;**

iv a proposal in accordance with Policy RA2 (new village);

v the replacement of an existing dwelling (see Policy 48); and

vi gypsy sites (see Policy 119).

54. With regard to the saved Local Plan policies, the gypsy and traveller policy has not been saved (policy 119). Policy 7 states that planning permission will not be granted for housing in the open countryside except where provided for in the Local Plan. Policy RA5 states planning permission will not be for residential development in the open countryside subject to 6 exceptions. The proposal does not accord with any of the exceptions and is therefore contrary to local plan policy.
55. Saved Local Plan Policy 7 seeks to protect the countryside from unjustified development, it does not impose a blanket ban on all development in such areas and therefore is consistent with the NPPF. The Inspector in the 2017 Appeal (APP/L2820/W/15/3139293 Appendix A) attached limited weight to the two policies 7 and RA5. However, full weight was attached to the NNJCS as Policy 31 is consistent with the NPPF and he concluded that there would be a significant adverse effect on the character of a valued landscape. This situation has not changed and the Council considers that the policies in the NNJCS are the most relevant, up to date and in line with Government guidance.

### **(ii) The Council's Five Year Site Provision**

56. The Council's position is included in full in a statement by Steve Jarman (Opinion Research Services) and is attached as **Appendix J**.
57. Supply must be viewed in the context of supply gypsy & traveller sites. The PPTS is supplementary to the NPPF. Where the PPTS makes specific provision for traveller

sites, in aspects of policy which are also addressed by the NPPF, then the PPTS will take priority, thus avoiding duplication or conflict: *Wenman v Secretary of State for Communities and Local Government* [2015] EWHC 925 (Admin), para [37], per Lang J. (see **Appendix K**).

58. As such, paragraph 27 PPTS provides:

*“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 a temporary planning permission”* (emphasis added)

59. Two features of that formulation are particularly noticeable: *Swale Borough Council*, para [23] [**Appendix F**], namely:

*“...the existence of a shortfall is itself classified a “significant material consideration”: this might be taken to exclude a characterisation of the shortfall as of, for example, “limited” relevance. No doubt a balance has to be struck, but, in contrast to the process under the 2012 NPPF, where the lack of a deliverable five-year housing land supply operates, as Lord Carnwath said in *Hopkins Homes Ltd v SSCLG* [2017] UKSC 37 at [44], as a trigger to the operation of the tilted balance under paragraph 14, the balance mechanism under PPTS remains the same throughout, and the purpose of paragraph 27 gives an indication of the weight of the factor in the balance, without applying a presumption.”*

and

*“The second feature of paragraph 27 PPTS is that it is expressed specifically to go to a decision on temporary planning permission. As a footnote somewhat deftly provides “there is no presumption that a temporary grant of planning permission should be granted permanently”. The intention evidently is that the response to a shortfall in the required five-year supply of deliverable sites may, in an appropriate case, be the granting of planning permission for a temporary period during which, it may be surmised, the Local Planning Authority will make efforts to address the shortfall and meet its obligations under paragraph 10 to ensure a five-year supply of deliverable sites.”*

60. The Council contends in the statement by Steve Jarman (**Appendix J**) that there is currently a deliverable 5-year housing supply of Gypsy and Traveller sites, and the current appeal should be determined in accordance with Development Plan policy.

61. The adopted North Northamptonshire Joint Core Strategy identified a need for 13 pitches in Kettering for the period 2011-22. These figures were identified in the 2011 North Northamptonshire Gypsy and Traveller Accommodation Assessment ('GTAA'). A new GTAA was published for North Northamptonshire in 2019. This covered the period between 2018-2033, and superseded the outcomes of the previous GTAA with a new baseline date of July 2018.
62. The current period to be assessed in terms of 5-year supply is between 2020-21 and 2024-25. This is illustrated in the table overleaf (highlighted in green). This demonstrates that the Council needs to deliver **15 pitches** over this 5-year period, based on a residual current need for 14 pitches and a future need for 1 pitch identified in the 2019 GTAA.
63. Based on sites that have been granted planning permission that have not yet been delivered there is a **5-year supply of 18 pitches** for this period. This is sufficient to meet all of the 5-year need identified in the 2019 GTAA, as well as some of the future need beyond the current 5-year period.
64. The total supply of pitches that have been implemented but not completed are 18 (Land at Stoke Albany Road, 10, and Woodside, 8).
65. If pitches on developed sites that have been granted planning permission but are not currently occupied by Travellers are also taken into consideration, there is a **5-year supply of 39 pitches** which would cover all the outstanding need identified in the GTAA for households that met the planning definition (22); and all of the need identified from undetermined households (4). This leaves a surplus of 13 pitches in supply over the entire GTAA period to 2033.
- There are 5 occupied pitches that have been granted planning permission at The Old Willows site that are not currently occupied by Travellers and could be subject to enforcement action to make them available. The GTAA also identified a further 9 pitches at the A43 Old Northampton Road site and a further 7 pitches at Animal Corner that were not occupied by Travellers.

	2011-16					2016-21				2021-26					2026-31				2031-33			
Year	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19 <sup>1</sup>	19-20	20-21	21-22	22-23	23-24	24-25	25-26	26-27	27-28	28-29	29-30	30-31	31-32	32-33
GTAA Requirement	3 <sup>2</sup>					10 <sup>3</sup>				1 <sup>4</sup>	15 <sup>5</sup>					2 <sup>6</sup>				5 <sup>7</sup>		
By Year																						
Supply	2 <sup>8</sup>	0	2 <sup>9</sup>	0	3 <sup>10</sup>	3 <sup>11</sup>	2 <sup>12</sup>	0 <sup>13</sup>	1 <sup>14</sup>	6 <sup>15</sup> / 2 <sup>16</sup> / 10 <sup>17</sup>												

1. New baseline established by the 2019 GTAA Report.
  2. From 2011 GTAA Report
  3. From 2011 GTAA Report
  4. From 2019 GTAA Report
  5. From 2019 GTAA Report
  6. From 2019 GTAA Report
  7. From 2019 GTAA Report
  8. 2 pitches at The Old Willows – KET/2011/0363 - delivered
  9. 1 pitch at Springfields – KET/2013/0679 and 1 pitch at Woodcroft – KET/2014/0028 - delivered
  10. 3 pitches at The Old Willows – KET/2015/0613 - delivered
  11. 3 pitches at The Black Paddock – KET/2015/0065 - delivered
  12. 2 pitches at The Black Paddock – KET/2018/0022 - delivered
  13. Whilst 1 pitch with 5 mobiles was granted planning permission at The Gateway – KET/2018/0309, this was included in the GTAA -delivered and 2 pitches at Woodside – KET/2018/0531 – Not delivered yet
  14. 1 pitch at Woodside – KET/2019/0562 – delivered
  15. 6 pitches at Woodside – KET/2014/0532- not delivered yet
  16. 5 pitches at The Gateway – KET/2018/0309 (delivered); and 2 pitches at Woodside – KET/2018/0531 – Not delivered yet
  17. 10 pitches at Land at Stoke Albany - KET/2009/0155 – Not delivered yet and subject of current CPO
66. In conclusion, the Council can demonstrate a 5-year supply of gypsy and traveller pitches.

**(iii) Landscape and Visual impact**

67. Policy 31 NNJCS sets out criteria that new site allocations and applications for planning permission should satisfy. Criteria (h) of this policy states:

*“Proposed development does not have a significant adverse impact on the character of the landscape and takes account of the Landscape Character Assessment of the area. Appropriate landscaping and treatment to boundaries shall be provided to mitigate impact”.*

68. Policy 3 NNJCS relates to Landscape Character and states that development should be located and designed in a way which is sensitive to its landscape setting. It sets out a number of criteria developments should adhere to, including conservation and where possible enhancement of the local landscape, retention of features of landscape importance and safeguarding important views and vistas.
69. Paragraph 170 NPPF states that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. It also states that planning should recognise the intrinsic character and beauty of the countryside. “Valued landscape” is not defined in the NPPF. Case law has defined it as a landscape that is more than 'mere countryside'; it is a landscape that has physical attributes which take it 'out of the ordinary': *Stroud District Council v Secretary of State for Communities and Local Government* [2015] EWHC 488 (Admin) (**Appendix L**); *Forest of Dean District Council v Secretary of State for Communities and Local Government* [2016] EWHC 2429 (Admin).
70. The Site is not subject to a national landscape designation, and the Local Plan does not provide for the designation of landscapes at a local level.
71. Having considered the landscape evidence presented at the 2016 Hearing for the Site, however, the Inspector in the most recent appeal ref: APP/L2820/W/15/3139293 [**Appendix A**], concluded at paragraph 17, that:

*“...the landscape has distinctive qualities which amount to a valued landscape and the appeal site forms part of the valued landscape.”*

The Inspector further concluded at paragraph 23 of his Decision that:

*“...the proposal would result in significant harm to the landscape character and appearance having regard to the nature and extent of the views from the public footpath.”*

72. In terms of published landscape character, Natural England’s National Character

Assessment places the Site within the Northamptonshire Vales National Character Area. This is broadly identified as an area of gently rolling, limestone hills and valleys capped by ironstone-bearing sandstone and clay Lias, with many long, low ridgelines. It is identified as being the source of several major rivers, being described as the main watershed of Middle England.

73. At a more local level, the Northamptonshire Current Landscape Character Assessment places the Site within the Geddington Chase Character Area, associated with the Wooded Clay Plateau Landscape Type. The key characteristics of this landscape include its extensive views and sense of exposure, and a deeply rural quality. The overall published strategy for this landscape is as follows:

*“New development, change and land management should be controlled to conserve and enhance the boldness of this historic wooded landscape, but at the same time emphasise local variations and the richness of the landscape. New elements introduced into the landscape, such as the creation of characteristic woodland habitats, or extension to or replanting of the existing woodlands, should take account of and be drawn from the limited palette of characteristics of this area. In respect of new built development, reference should be made to the locality for particular details of local vernacular building styles, materials, layout and arrangement of features in the landscape. Of particular significance is the intrinsic sense of remoteness and tranquillity, and change should seek to retain and enhance these qualities wherever possible.*

*The contrast between open, bold landscapes of agricultural fields contained within wooded skylines and commanding long distance views, and the more intimate and intricate landscapes along valleys should also be emphasised.”*

74. It is clear from this published assessment and strategy that this is a sensitive rural landscape in which development and other forms of change should be carefully controlled.
75. Evidence on landscape and visual matters (**Appendix H**) was submitted to the 2016 hearing, and this included a Landscape and Visual Impact Assessment (LVIA), undertaken by a landscape architect. This found the Site to be located in the contained landscape of the River Jordan valley, on undulating north-facing slopes and with expansive outward views across the rural valley landscape.
76. This LVIA determined the key landscape receptors of the Site and its setting to be as follows:

- Exposed location on the upper slopes of a pastoral valley;
- Small, improved and semi-improved pastoral fields with well-managed hedgerows;
- Deeply rural landscape quality with settlement concentrated on lower valley slopes;
- Prominent church spires; and
- Presence of overhead power lines and main line railway.

77. Having considered the submitted planning application, which reflects the development that is the subject of this appeal, the LVIA found that the first three receptors would experience significant adverse impacts of Major/Moderate significance. The remaining receptors would experience Negligible impacts.

78. The LVIA further determined that the nature of the Site and proposals was such that the significance of the impacts could not be reduced by further mitigation, and therefore that the proposed development is unsuitable on landscape grounds.

79. The visual impact assessment within the LVIA identified the following visual receptors who would perceive the proposed development:

- Users of Midshires Way Long Distance Recreational Route;
- Users of Macmillan Way and Jurassic Way Long Distance Recreational Routes;
- Users of Public Footpath GC7;
- Users of Dingley Road; and
- Residents of Ritches Lodge Farm.

80. The assessment concluded that the users of Public Footpath GC7 and the residents of Ritches Lodge Farm would experience Major adverse impacts, the users of Midshires Way, Macmillan Way and Jurassic Way Long Distance Recreational Routes would experience Major/Moderate adverse impacts and the users of Dingley Road would experience Moderate adverse impacts.

81. The LVIA further determined that the sloping nature of the Site and its exposed nature means that it is unlikely that the proposed development can be effectively screened by new planting that would not in itself add an incongruous element to the existing views and impede existing views across the valley from Public Footpath GC7. It therefore concluded that the proposed development is unsuitable on visual grounds.

82. Since the production of the landscape and visual evidence for the 2016 Hearing, there



have been no material changes to the landscape setting and visual environment of the Site, and therefore the results of the LVIA are still considered to be current and valid.

83. It is therefore the Council's case that the proposed development would result in significant landscape and visual harm contrary to NNJCS Policy 31(h). In doing this it fails to protect and enhance a valued landscape and to recognise the intrinsic character and beauty of the countryside contrary to paragraph 170 of the NPPF. Furthermore, it is not located and designed in a way sensitive to its landscape setting, and it fails to conserve and enhance the local landscape character and safeguard important views of this rural valley landscape contrary to NNJCS Policy 3.
84. In the grounds of both their Ground (a) and Section 78 appeals, the Appellant's Agent makes reference to the appeal decision of Creaney v Kettering Borough Council APP/L2820/W/16/3144399 (and others), in which Inspector Hellier did not consider the Site to fall within a 'valued landscape'. It is important to consider paragraph 25 of Inspector Hellier's decision, in which he recognises that he differs from Inspector Parsons in the 2016 appeal relating to Plot 24B.
85. It is the Council's case that the opinion of Inspector Parsons should take precedence in this matter, because he considered the specific Site that is the subject of this Appeal, which sits approximately 215m north-east of the sites considered by Inspector Hellier, in a more prominent and remote position on the convex valley side and more disassociated from Dingley Road. It is also noted that in his consideration of the character of the area, Inspector Hellier has not considered the deeply rural quality of the landscape as set out in the landscape character assessment that forms part of the evidence base for the Development Plan, and which was included as a key receptor by the Council's landscape witness.
86. It should also be considered that in spite of his opinions regarding the valued landscape matter, Inspector Hellier went on to state at paragraphs 25 and 26 of his decision that in any case, the intrinsic character and beauty of the countryside should be recognised, and that the developments before him were would have "*a significant adverse landscape effect*".

87. Inspector Hellier then went on to conclude the following at paragraph 28 of his decision:

*“Overall there would be a significant detriment to the character and appearance of the surrounding area contrary to the provisions of CS Policy 31(h). In failing to respect the positive qualities of the local landscape the proposals would also conflict with CS Policy 3.”*

88. The Appellant’s Grounds of Appeal goes on to state that the existence of mobile homes is an established characteristic of the area. The Council disagrees with this point, on the basis that none of the mobile homes within the Greenfields site currently have planning permission, and it is not correct to consider unauthorised uses as a valid baseline condition. Rather, the baseline condition of the Site should be its current authorised use, which is a grassed field as required by Condition 1 of the lapsed temporary permission.

**(iv) Sustainability – Location, Accessibility and Access to Services and Facilities**

89. The Site is located outside the settlement boundaries contained in the Local Plan, in an area of open countryside. Development Plan policy and the PPTS strictly control development in this type of location:

- a. Criteria (a) of Policy 31 NNJCS specifically states that sites should be closely linked to an existing settlement with an adequate range of services and facilities.
- b. Paragraph 25 PPTS states that LPAs should very strictly limit new traveller site development in the open countryside that is away from existing settlements or outside areas allocated in the Development Plan.

90. The nearest settlement to the Site is Braybrooke, which is approximately 1.5 miles (by road) from the Site. The role of Braybrooke in the NNJCS is that of a rural area or village, where development is limited to meeting local needs. In principle, development in rural areas will be limited to that required to support a prosperous rural economy or to meet a local arising need, which cannot be met more sustainably at a nearby larger settlement.

91. Braybrooke has very limited services and facilities. It has a village hall, a church and a public house available to the local community. There are no shop or schools, meaning that occupants need to travel to Desborough for the majority of their day-to-day needs, though in reality some of the occupiers may go further for basic needs. Desborough, which is approximately 4km away, has a number of services and facilities, including a medical centre, primary schools, shops, library, and leisure centre.
92. There is a public right of way which runs across Greenfields (North-West to South-East) connecting the Site to Braybrooke. However, given the limited facilities and services in the village, this footpath is unlikely to be used. There are no footpaths along the rural lanes which link the Site to the Braybrooke or Desborough. The narrow nature of the roads, the surface and the lack of lighting mean that these rural lanes are unlikely to be used regularly to access services and facilities on foot. There is an hourly bus service (no.18), Monday to Saturday that serves the Braybrooke providing a connection to Kettering and Market Harborough. However, the remote location of the site away from Braybrooke without safe and usable footpaths means that the bus is unlikely to be used on a regular basis.
93. In distance and accessibility terms the Site relates to Braybrooke rather than Desborough. This itself causes an element of separation between the settled and travelling community and promotes social exclusion. Furthermore, Greenfields feels very remote from the village which exacerbates the lack of social inclusion.
94. In summary, in planning terms, the Site is unsustainable with regard to its location and relationship to facilities and services. The proposed development is contrary to the Development Plan and the PPTS.

#### **(v) Planning Balance**

95. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications under the Planning Acts be determined in accordance with the development plan unless material considerations indicate otherwise. Accordingly, the development plan is the starting point for the determination of this appeal.
96. The mere age of policies does not cause them to cease to be part of the development plan or render them “out of date” (see paragraph 213 NPPF). Even if policies are

considered to be out of date, that does not make them irrelevant: their weight is not fixed, and there will be many cases where restrictive policies are given sufficient weight to justify refusal despite their not being up to date.

97. Paragraph 11 NPPF states that planning decisions should apply a presumption in favour of sustainable development. The presumption directs for development that accords with an up-to-date development plan to be approved without delay. The corollary has to be that where a proposed development does not accord with an up-to-date development plan there should be a presumption towards the refusal of permission, unless there are compelling material considerations to the contrary, as paragraph 12 NPPF reiterates. Relatedly, unless the relevant policies for the determination of the appeal are out-of-date, an appeal should fall to be determined and dismissed in accordance with the development plan.
98. The Council considers that the appeal should be determined in accordance with the development plan and that the harm outweighs the benefits.
99. The landscape evidence presented above demonstrates that the proposed development would result in significant adverse landscape and visual impacts, within a valued landscape. These should be attributed substantial weight in the planning balance.
100. The location of the site is unsustainable with regard to location and relationship with services and amenities and it would result in an isolated development which promotes social exclusion. This is contrary to Policy 31 of the NNJCS and weighs against the development.
101. One of the key factors that led to the inspector in 2017 to grant temporary planning permission was there he found “there [was] an unmet need and an absence of a five year supply for gypsies and travellers” to which he attached “significant weight by reason of the extent of identified deficiencies”. That factor has now fallen away. The Council is able to demonstrate a 5-year supply of gypsy and traveller sites so this appeal can purely be considered in terms of land use matters and the primacy of the development plan.

102. Notwithstanding the above, should the Inspector be minded to allow this appeal the local planning authority recommends the attachment of conditions listed in **Appendix I**. The LPA may update this list in light of discussions at the Hearing.
103. In 2017 the inspector also ascribed modest weight to the personal circumstances of the Appellant and in particular his and his family's accommodation needs, and the health and well-being needs of the Appellant's son, who was 18 months old at the time. In terms of a permanent permission, the inspector thought that the adverse impacts outweighed the benefits and that other considerations did not outweigh the conflict with the development plan. However, in terms of temporary permission, given the weight attributed to the general unmet need for sites, the inspector was satisfied that the balance tipped in favour of the grant of a temporary planning permission.
104. The Appellant is now seeking a permanent permission through this Appeal but, importantly, in the context of a robust supply, a "met need", of Gypsy and Traveller sites.
105. The best interests of the Appellants family and particularly his son has been fully considered as part of the Enforcement proceedings. The Inspector in his findings in the 2017 appeal (**Appendix A**) raised concerns about the impact of a roadside or transit lifestyle would have on a young child if planning permission was refused for the mobile home. The grant of a temporary consent provided an opportunity to obtain a more suitable and permanent location. However, recent site visits by the Officers have shown that that the site has been uninhabited and no effort been made to engage with the Council regarding housing provision, or seeking a lawfully approved site (**Exhibit 2 with addendum**). The circumstances of the Appellant and family needs are a material consideration but do not outweigh the significant harm to the rural landscape from the development and the unsustainable location of the Site.
106. In summary, The Council contends that there is a conflict between the development proposal and the development plan, and that the appeal ought to be dismissed.

**(vi) Article 8 ECHR: Human Rights Implications**

107. The Appellant's human rights, including their right to respect for private and family life, have been considered and weighed against all other considerations.

108. The Council considers that any interference with his human rights is outweighed by the significant harmful impacts of the development. There is demonstrable harm caused by the development and serving the EN was a proportionate response. The opportunity to challenge the EN by way of an appeal provides adequate safeguards in accordance with the Human Rights Act 1998, which incorporates the European Human Rights Convention.
109. The Council reiterates that the Appellant is not homeless, and that he refused to seek alternative options via the housing list for a public pitch.

*Ground B*

110. The Council note that a typographical error to the start date of the temporary planning permission has occurred; it should read 13th February 2017. This can be corrected without injustice to either party and it is clear from the remainder of the EN what permission is being referred to.
111. The Council further note that a typographical error to the appealed application reference number has occurred; it should read KET/2015/0500. This can also be corrected without causing injustice to either party.
112. The red line on the OS map indicates the land owned by Mr and Mrs Gavin as shown on the Land Registry Title as one planning unit and the breach of planning control sits within the Red line.
113. The Council contends that the Appellant's appeal on ground (b) should not succeed.

*Ground F*

114. The required steps match the conditions as stated by the discharged restoration scheme, and are therefore not excessive. They do not extend beyond the restoration scheme as alleged by the appellant.
115. The Council contends that the Appellants appeal on ground (f) should not succeed.

### *Ground G*

116. The Appellant was previously granted temporary planning permission to prevent a permanent site and restore the land. The Council considers that two years is excessive and contradicts what the temporary permission sought to accomplish.
117. The Council reiterates that the Appellant has not attempted to retain his place on the waiting list for a pitch or contacted the Housing department to discuss the matter before the appeal was submitted. This has led to the appellant not moving up the list over the 3-year period to enable a permanent pitch.
118. The Council contends that the Appellants appeal on ground (g) should not succeed.

### **Conclusion**

119. For the reasons submitted in this Statement of Case, the Appeal ought to be dismissed in its entirety.