



Department for  
Communities and  
Local Government

Philip Brown  
Phillip Brown Associates  
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Rugby  
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Our Ref: APP/M2325/V/14/2216556  
Your ref: The Old Builders Yard

12 January 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 77)**  
**APPLICATION BY ISSAC MCDONOUGH, THE OLD BUILDERS YARD, THAMES**  
**STREET, NEWTON WITH SCALES, PRESTON, LANCASHIRE PR4 3RH**  
**APPLICATION REF: 12/0118**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mark Dakeyne BA (Hons) MRTPI, who held a public inquiry on various dates between 2 December 2014 and 2 February 2015 into the planning application made by your client to Fylde Borough Council (Application Ref. 12/0118) for:

The change of use of land to use as a residential caravan site for 4 gypsy families each with 2 caravans, together with erection of amenity block and alteration to site access or the change of use of land to use as a residential caravan site for 3 gypsy families each with 2 caravans, together with erection of amenity block and alteration to site access

on land at the Old Builders Yard, Thames Street, Newton with Scales, Preston, Lancashire PR4 3RH.

2. On 28 April 2014, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority – Fylde Borough Council.

**Inspector's recommendation**

3. The Inspector recommended that planning permission be granted but on the basis of a 3 pitch scheme. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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## **Procedural Matters**

4. The Secretary of State has noted the Inspector's remarks and actions at IR1-4.
5. On the 19 June 2015, the Secretary of State wrote to all parties to seek their views on the implications, if any, of the Judgments in *Mark Wenman v SSCLG & Waverley Borough Council* [2015] EWHC 925 (Admin) and *Woodcock Holdings Limited v SSCLG & Mid-Sussex District Council* [2015] EWHC 1173 (Admin) on their case. The only response received was from the Council.
6. The Council considered the Woodcock Holdings decision to have no bearing on the outcome of the current application. Turning to Wenman, the Council state the only Local Plan policy affected by the absence of a 5 year housing supply is policy SP2, which restricts development in the countryside save in certain circumstances. However, the Council considers that policy SP2 is a general policy relating to all types of development and should be read in the light of policy HL8, which is specific to Gypsy and Traveller accommodation and expressly contemplates development outside of settlement limits provided that the location is suitable and sustainable.
7. On 22 July 2015, following the judgment in Wenman, the Secretary of State issued a Written Ministerial Statement. However, given the circumstances of this case, it was not considered necessary to reference back to the parties for comments.
8. On the 21 September 2015, following the publication of the new Planning policy for traveller sites (PPTS, 2015), the Secretary of State wrote to all parties to seek their views on any additional implications, if any, of the new policy. Two responses were received, one from the Council and one from the Newton Residents' Association.
9. The Council provided some comments but stated that it did not consider the new policy to have any implications for their case as previously set out while the Association continued to object and considered the proposal to contravene paragraph 25 of the PPTS, 2015 which states local planning authorities should very strictly limit new traveller site development in the open countryside that is away from existing settlements. They also referred to the new PPTS definition but noted that no personal circumstances were advanced in relation to the application. In coming to his decision, the Secretary of State has carefully considered the impact of the new Planning policy for traveller sites on this application. As the above correspondence was copied to the parties to this case the Secretary of State does not consider it necessary to reproduce it here. Copies may be obtained on request to the address at the foot of the first page of this letter.

## **Policy Considerations**

10. In deciding this application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the adopted development plan comprises the Fylde Borough Local Plan (FBLP), an amalgamation of two documents, the FBLP 1996 adopted in 2003 and the FBLP Alterations Review 2004-2016, adopted in 2005. The Secretary of State agrees that the most relevant

policies for this case are those set out by the Inspector at IR19–20, namely Policy SP2 and HL8 of the FBLP.

11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (“the Framework”) Planning policy for traveller sites (PPTS, 2015) and the planning practice guidance published 6 March 2014.

## **Main issues**

12. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR203-204.

## **Sustainability**

### *(i) Previous Use*

13. For the reasons given at IR210-211, the Secretary of State agrees with the Inspector that the site falls within the definition of previously developed land (Annex 2 of the Framework) and that paragraph 17 of the Framework and paragraph 24 of the PPTS, 2012 (now paragraph 26 of the PPTS, 2015) which encourages the effective use of land by reusing land that has previously been developed apply.

### *(ii) General Location*

14. The Secretary of State has given careful consideration to the Inspector’s analysis (IR212-213). The Secretary of State agrees with the Inspector (IR213) that the proposal would accord with the locational criteria of Policy HL8. The Secretary of State notes that the Inspector considers that Policy HL8 is consistent with paragraph 23 of the PPTS, 2012. However, that paragraph was amended by way of the PPTS, 2015. Paragraph 25 of PPTS, 2015 now states that it very strictly limits new traveller site development in open countryside that is away from existing settlements. While the site is in the open countryside, it is not away from existing settlements.
15. The Secretary of State agrees with the Inspector that in relation to Policy SP2 the proposed development would fall into the category of use appropriate to a rural area provided for by other policies of the plan, in this case Policy HL8 and while Gypsy and Traveller sites are not referred to in Policy SP2 (or its explanation) the policy would not be breached.

### *(iii) Accessibility*

16. The Secretary of State has carefully considered the Inspector’s findings and conclusions on the accessibility of the proposed development (IR214-216). The site is well located in relation to accessibility of services and Criterion 5 of Policy HL8 would be met, would allow access to health services and for children to attend school in accordance with paragraph 11 of the PPTS, 2012 (now paragraph 13 of the PPTS, 2015). There is no evidence that the proposal would place undue pressure on local infrastructure and/or local services.

## **Character and Appearance**

17. The Secretary of State has given careful consideration to the Inspector's analysis at IR217-230. He agrees with the Inspector that the character of the surrounding area is mixed and of variable quality and not particularly sensitive to change. He further agrees that these characteristics are a reflection of the mix of development within this transitional zone (IR217-219).
18. For the reasons given at IR226-229 the Secretary of State agrees with the Inspector that the 4 pitch proposal is dominated by hard landscaping treatment and lacks opportunity for soft landscaping. This would not represent positive enhancement of the environment and increase the site's openness – matters to which weight should be attached in accordance with paragraph 24 of the PPTS, 2012 (now paragraph 26 of the PPTS, 2015). He also agrees that the site would be capable of accommodating the 3 pitch scheme without having a significant effect on the character and appearance of the area so as to provide compliance with FBLP Policy HL8, EP10, and EP28.
19. The Secretary of State agrees with the Inspector that the design requirements of FBLP Policy EP11 and paragraph 56 of the Framework are met by a 3 pitch scheme on this previously developed site and that the impacts would be within acceptable bounds (IR230).

## **Setting of Listed Buildings**

20. For the reasons given at IR231-235, the Secretary of State agrees that the settings of the listed buildings do not extend beyond their curtilages in the direction of the application site. He agrees with the Inspector's conclusion at IR236 that the proposal would not affect the settings of the listed buildings and as a result would do the settings no harm. FBLP Policy EP4 and the Framework Tests within paragraphs 132 and 134 do not apply.

## **Highway Safety**

21. The Secretary of State has taken account of the Inspector's remarks in relation to highway safety and given the difficulties of getting mobile homes onto the site agrees (IR240) it is appropriate that the site should be limited to touring caravans only (IR237 – 245). He agrees with the Inspector that based on the actual dimensions of the site that the 4 pitch site would not provide adequate parking and turning space. Further agreeing with the Inspector, the Secretary of State views the 3 pitch layout as providing sufficient space for parking, turning, amenity and landscaping.
22. The Secretary of State agrees with the Inspector's conclusions (IR246) that the effects of the 3 pitch proposal on highway safety would be acceptable subject to the carrying out of off-site highway works to meet FBLP Policy HL8. Adequate parking would be provided. The proposal would achieve a safe and suitable access to the site and not result in severe residual cumulative impacts. It would meet the tests in paragraph 32 of the Framework.

## **Environmental Quality**

### *(i) Layout*

23. The Secretary of State has given careful consideration to the Inspector's findings regarding the layout of the proposed development (IR247-252). He agrees with the Inspector regarding the lack of space and unacceptable environmental quality regarding the 4 pitch proposal. He agrees that the proposed 3 pitch scheme would be of acceptable environmental quality in terms of its layout and further agrees that the 3 pitch scheme would provide a good standard of amenity in accordance with one of the core planning principles of paragraph 17 of the Framework. There would also be adequate play space for children promoting healthy lifestyles as referenced in paragraph 26 of the PPTS, 2015.

### *(ii) Contamination*

24. The Secretary of State agrees with the Inspector's findings and conclusion at IR253-257 that subject to any necessary remediation the site would be of acceptable environmental quality for the proposed residential use.

### *(iii) Flood Risk*

25. The Secretary of State has carefully considered the Inspector's findings and conclusion at IR258-265 and agrees that the development would not be in an area at highest risk from flooding so would be in accordance with the Framework and PPTS. He also agrees that the site would be of acceptable environmental quality in terms of the risks posed by flooding. He further agrees that there would be compliance with Policy EP30 of the FBLP and that satisfactory surface water drainage facilities can be provided in accordance with criterion 10 of Policy HL8 of the FBLP.

## **Local Environment**

### *(i) Foul Drainage*

26. The Secretary of State has had regard to the Inspector's comments at IR266-270 and agrees that policy EP25 and criterion 10 of the FBLP would be met as satisfactory sewerage treatment facilities can be secured by condition.

### *(ii) Noise*

27. The Secretary of State has had regard to the Inspector's comments at IR271-274 and agrees that the effects on the local environment, with particular reference to noise, would be acceptable and that criterion 3 and 6 of Policy HL8 and Policy EP27 of the FBLP would be met.

## **Protected Species**

28. The Secretary of State also agrees with the Inspector (IR275-277) that protected species would not be adversely affected by the proposed development and there would be no conflict with Policy EP19 of the FBLP.

## **The Need for and Provision of Gypsy and Traveller Sites**

29. The Secretary of State has noted the publication in September 2014 of the Gypsy and Traveller Accommodation Assessment (GTAA) and that none of the main parties dispute the significant local need. He further notes that no provision has been made recently and none is proposed or planned other than the application site. The Secretary of State has carefully considered that the proposed 3 pitch development would contribute about 18% of the short term need and agrees with the Inspector that the development plan's failure to provide sites (including a 5 year supply) represents a failure of policy (IR281).
30. The Secretary of State agrees that occupation of the site can be controlled by condition so that it becomes a permanent site occupied by Gypsies and Travellers and that criterion 1, 2 and 4 of Policy HL8 of the FBLP are met (IR281).

## **Other Matters**

31. The Secretary of State has carefully considered the Inspector's findings at IR282-289 and notes his conclusions.

## **Overall conclusions**

32. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. The Secretary of State has had very careful regard to the Inspector's balancing of considerations at IR 297-306 and decides the application for a 3 pitch scheme is in accordance with the development plan.
33. The Secretary of State finds the use of previously-developed land, the location adjacent to a settlement and its relatively good accessibility to services are factors that weigh in favour of the development. He gives considerable weight to the unmet need for Gypsy sites in the Borough and wider area. He adds further weight to the lack of a 5 year supply and the consequent failure of policy. He considers that while there are no specific personal circumstances advanced in this case, he finds that granting a planning permission will likely have benefits in terms of Human Rights and the best interests of children, through providing a settled base, access to education and health care and improved well being. The Secretary of State weighs this in favour of both proposals.
34. The Secretary of State is though not satisfied that the 4 pitch scheme would be acceptable for reasons relating to impact on character and appearance, lack of parking and turning space and the environmental quality. The 4 pitch scheme would not accord with either the Framework or the PPTS.
35. However, in favour of the 3 pitch scheme the Secretary of State has found the use of the land as a small scale self-contained Gypsy site would be sustainable with particular reference to previous use/current status, general location and accessibility. He has also found such use to be favourable with regard to not affecting the settings of nearby listed buildings, as having acceptable impacts on highway safety, being of acceptable environmental quality in terms of the risks posed by contamination and flooding, having no adverse effects on the local environment, in particular to foul drainage and noise and not adversely affecting

protected species. It would accord with development plan policies, the PPTS and meet Framework tests.

36. The Secretary of State has further found a 3 pitch scheme capable of acceptable impacts on character and appearance, provision of adequate space for parking and turning, capacity to ensure provision of a suitable layout so that environmental quality would be assured and have less impact on the highway network than a 4 pitch scheme. The 3 pitch scheme would accord with development plan policies, the PPTS and the Framework.
37. Weighing against the 3 pitch scheme the Secretary of State gives some weight to the impact on the character and appearance of the area and the possible use of the least sustainable drainage option. However, the benefits of the 3 pitch scheme would still significantly outweigh the harm.

### **Public Sector Equality Duty**

38. In making his decision, the Secretary of State has had due regard to the requirements of the Public Sector Equality Duty, in particular the need to eliminate discrimination, advance equality of opportunity and foster good relations between those with protected characteristics and those who do not. The application is made on behalf of gypsies for a change of use of land to a residential caravan site for gypsy families. As such, the outcome of this application is likely to have an impact on the identified racial group of Gypsies and Travellers. The impacts are likely to be on Article 8 rights. In this regard and in coming to his decision he has considered the following impact on the protected group: the provision of and need for sites, the lack of alternative sites and human rights considerations. The Secretary of State recognises that granting this application would likely result in some Gypsy families having pitches on which to live in circumstances where there is significant local need and an absence of alternative sites and that this would help facilitate the Gypsy way of life. He also recognises that granting this application may also benefit some children and/or the elderly (age being a protected characteristic).
39. In the circumstances of the case, the Secretary of State has very carefully considered the Inspector's remarks at IR 297-306 and is mindful of potential equality impacts and is of the view that his decision to grant permission for a 3 pitch scheme is proportionate and justified in the circumstances.

### **Conditions**

40. The Secretary of State has considered the Inspector's comments at IR290-296 and his recommended conditions at **Appendix C – Recommended Conditions**, as well as national policy as set out in the Framework and the planning guidance. The Secretary of State is satisfied that the proposed conditions are reasonable and necessary and would meet the test of paragraph 206 of the Framework. However, he considers that condition 3 should be amended to refer to the PPTS, 2015 rather than PPTS March 2012.

## **Formal Decision**

41. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants planning permission for the change of use of land to use as a residential caravan site for 3 gypsy families each with 2 caravans, together with erection of amenity block and alteration to site access.

## **Right to challenge the decision**

42. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
43. A copy of this letter has been sent to Fylde Borough Council, and a notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Phil Barber*

**PHIL BARBER**

Authorised by the Secretary of State to sign in that behalf



## Appendix – Recommended Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (Scale 1:1250), Proposed Side Elevations of Amenity Block, Proposed Front and Rear Elevations and Floor Plan of Amenity Block (all Scale 1:100).
- 3) The site shall only be occupied as permanent accommodation and not as a transit site and only by “gypsies and travellers” as defined in Annex 1 Glossary of the Planning Policy for Traveller Sites March 2015 (or any policy guidance amending or adding thereto).
- 4) There shall be no more than 3 pitches on the site and on each of the 3 pitches hereby approved no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed at any time.
- 5) Any caravans positioned on the site shall be touring caravans and shall be capable of being lawfully moved on the public highway, without division into separate parts, and shall not exceed 7m in length (excluding tow bar).
- 6) No more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted, and each vehicle shall not exceed a maximum gross weight of 3.5 tonnes.
- 7) No commercial activities shall take place on the land, including the storage of materials.
- 8) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the amenity block and details of the finished floor levels of the amenity block hereby permitted have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) No electrical generator shall be used on the site unless it has been sited and enclosed in accordance with details which shall have been previously submitted to, and approved in writing by, the local planning authority.
- 10) No development shall take place until a site development scheme, based on a detailed site survey, has been submitted to, and approved in writing by, the local planning authority to include:
  - (i) a landscaping scheme to include: surfacing materials for all hard standings; screening to the refuse and recycling area; fencing and gates; the layout of amenity areas; and planting plans (including cultivation and other operations associated with plant and grass establishment; schedules of plants, noting species, plant sizes and proposed numbers/densities);
  - (ii) details of the layout and surfacing of the internal access road and parking and turning areas;
  - (iii) provision for refuse and recycling facilities and gas bottle storage; and,
  - (iv) external lighting.The site development scheme shall include a programme of implementation. The development shall be carried out in accordance with the approved details

and programme. No surfacing, fencing, gates or lighting shall be carried out or erected on the site other than that approved pursuant to this condition.

- 11) Any trees or plants included within the landscaping scheme required by condition 10 which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 12) No development shall commence until a scheme for the disposal of foul drainage from the site (including details of the future management and maintenance of the scheme) has been submitted to, and approved in writing by, the local planning authority. The site shall not be occupied for residential purposes until the foul drainage works have been completed in accordance with the approved scheme. Thereafter, the approved foul drainage shall be managed and maintained in accordance with the approved details for the lifetime of this development.
- 13) No development shall commence until a scheme for the surface water drainage of the site (including details of the future management and maintenance of the scheme) has been submitted to and approved in writing by the local planning authority. The site shall not be occupied for residential purposes until surface water drainage works have been completed in accordance with the approved scheme. Thereafter, the approved surface water drainage shall be managed and maintained in accordance with the approved details for the lifetime of this development.
- 14) Prior to the commencement of the development an investigation and risk assessment report of any contamination on the site shall be completed in accordance with a scheme that shall have been submitted to, and approved in writing by, the local planning authority. If the report indicates that remediation is necessary, details of a remediation scheme shall be submitted to, and approved in writing by, the local planning authority. The remediation scheme shall include all works to be undertaken, remediation objectives and remediation criteria, a timetable of works and site management procedures and shall be carried out in accordance with the approved details and timetable of works. Written notification of the commencement of the remediation scheme shall be given to the local planning authority at least 2 weeks before the start of the remediation works and a validation report that demonstrates the effectiveness of the remediation carried out shall be submitted to, and approved in writing by, the local planning authority prior to the first occupation of any of the development hereby permitted. If during the course of the development contamination not previously identified is found to be present at the site, no further development shall be carried out until an amendment to the remediation scheme giving details of how to deal with this contamination has been submitted to, and approved in writing by, the local planning authority. The remediation measures shall thereafter be carried out in accordance with the approved amended details.
- 15) No part of the development hereby permitted shall commence until a scheme for the construction of the site access and off-site highway works has been submitted to, and approved in writing by, the local planning authority. The site access works shall include a hard surface using tarmac, concrete or block

paving for a minimum of 5m from the highway into the site. The off-site works shall include measures to fill and surface potholes and provide street lighting columns on the un-surfaced section of Thames Street which runs in an east-west direction. The street lighting shall be designed to take into account the impact of lighting on bat activity in the vicinity. The site shall not be occupied until the site access and the off-site highway works have been completed in accordance with the approved details.

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# Report to the Secretary of State for Communities and Local Government

by Mark Dakeyne BA (Hons) MRTPI

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

Date: 30 March 2015

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TOWN AND COUNTRY PLANNING ACT 1990

PLANNING APPLICATION MADE BY

MR ISAAC MCDONOUGH

TO

FYLDE BOROUGH COUNCIL

Inquiry opened on 2 December 2014

The Old Builders Yard, Thames Street, Newton with Scales, Preston, Lancashire PR4 3RH

File Ref: APP/M2325/V/14/2216556

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**File Ref: APP/M2325/V/14/2216556**

**The Old Builders Yard, Thames Street, Newton with Scales, Preston, Lancashire PR4 3RH**

- The application was called in for decision by the Secretary of State by a direction, made under Section 77 of the Town and Country Planning Act 1990, on 28 March 2014.
- The application is made by Mr Isaac McDonough to Fylde Borough Council.
- The application Ref 12/0118 is dated 20 February 2014.
- The development proposed is the change of use of land to use as a residential caravan site for 4 gypsy families each with 2 caravans, together with erection of amenity block.
- The reason given for making the direction was, in view of the proposed development's relationship with national policies on important matters set out below, the Secretary of State is of the opinion that the application raises issues of more than local importance which he ought to decide himself.
- On the information available at the time of making the direction, the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application are the proposal's consistency with the Fylde Borough Local Plan as adopted (October 2005) for the area; its conformity with policies contained in the National Planning Policy for Traveller Sites and the National Planning Policy Framework; and any other matters that the Inspector considers are relevant.

**Summary of Recommendation: That planning permission should be granted.**

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**Introductory and Procedural Matters**

1. The inquiry sat for six days (2-5 and 9 December 2014 and 2 February 2015), closing on 2 February. I undertook an accompanied visit to the site and its surroundings on the morning of 10 December.
2. The application was considered by the Development Management Committee of Fylde Borough Council (the Council) on 18 December 2013 when it was resolved to grant planning permission subject to the Secretary of State (SoS) not calling in the application for his own determination. The application was called in on 28 March 2014. At the inquiry both the Council and the applicant gave evidence in support of the application whereas the Newton Residents Association (NRA), given Rule 6 status, opposed the application.
3. The application considered by the Council related to the change of use of the land for 4 gypsy pitches. Towards the end of the inquiry the applicant submitted a revised site layout showing 3 pitches<sup>1</sup> and asked that I consider this amended proposal in my report in addition to the original layout for 4 pitches. I deal with the implications of considering alternative schemes in my conclusions.
4. This report contains a description of the site and surroundings and its planning history, an explanation of the proposal, identification of the relevant planning policies, the cases of the parties and my conclusions and recommendation. Lists of appearances, inquiry documents and recommended conditions are appended.

**The Site and Surroundings**

5. The rectangular application site lies to the north of Thames Street and is about 47m wide and between 29m and 32m deep with an area of about 0.15 hectares. The land is relatively level, albeit with a slight rise of about 0.5m from front to

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<sup>1</sup> See APP4

back, and is partly surfaced with a concrete hardstanding and hardcore/ash. Three trial pits have been dug on the site and there were some paving slabs stored towards the south-east corner. A French Drain has been laid close to the western boundary.

6. The site boundaries are marked by close boarded fences with concrete posts and bases, although the wooden panels have been removed from the enclosure along the site frontage. The fence to the rear boundary is on top of a small bank beyond which is a hedge. The base to the frontage fence is marginally above the level of Thames Street and is splayed at the point of access where there is a 2m high wooden framed and green mesh double gate.
7. Thames Street, where it passes the application site, is an unmade single track lane containing potholes. The carriageway width is between 3.3m and 4m. There are uneven grass verges but no lighting or footways along this stretch. Some 40m to both the west and east of the site, Thames Street turns north and rises up to meet Grange Lane. Both of these 100m sections of Thames Street are hard surfaced but still of single vehicle width and unlit. There are soft verges for most of these lengths but a pavement runs along a 45m section of the eastern limb between Grange Lane and the entrance to Harts Farm. Grange Lane itself has a 20mph speed limit, contains footways on both sides and lighting columns at regular intervals, including one at its junction with Thames Street East. There are no formal passing places along the three sections of Thames Street but a few access points and the wider sections at the bottom of Thames Street East and West provide opportunities for vehicles to pass each other.
8. To the north side of Thames Street, either side of the application site, are the southern end of the long plots of properties which front Grange Lane. These plots have a mixed character. The adjacent plot to the west contains some scrub and unimproved marshy grassland beyond which are access gates and the foot of the well maintained garden to Dixon's Farmhouse. To the east the plots are enclosed by fencing onto Thames Street and comprise a small parcel used for parking beyond which are some dilapidated sheds. To the north of the site are the sloping back gardens of houses on Grange Lane. The gardens are dotted with small trees. There are two modern detached houses 'fronting' Thames Street West and East, Autumn Fold to the west and Harts Farm to the east. There is also a long single storey outbuilding along the eastern boundary of Dixon's Farmhouse with Dagger Cottage.
9. South of Thames Street is a line of tall conifers with low slung poultry sheds and outbuildings. To the south-east is a timber clad single storey dwelling known as Pine Lodge. An L-shaped stable block lies beyond Thames Street West. Otherwise the area to the south of Thames Street comprises low lying fields crossed by a network of ditches which eventually drain to the River Ribble. Part of this area comprises the Newton Marsh Site of Scientific Interest (SSSI). There are farm tracks which cross this area from the foot of Thames Street West and East. That to the west is also a public footpath whilst the track to the east serves as a bridleway.
10. Grange Lane lies appreciably above the application site and is fronted by a mix of close knit properties, including historic buildings such as Dixon's Farmhouse and Dagger Cottage, both listed buildings, and modern semi-detached houses. The

development alongside Grange Lane forms the south-west extremity of the built up area of the village of Newton with Scales.

11. The village has a small convenience store/post office and hairdressers on Bryning Lane and a primary school along School Lane. These facilities are between about 400m and 800m from the application site by foot. There are footways and street lighting along both roads. There is also a public house at the intersection of Bryning Lane with Blackpool Road, the A583. There are bus stops on Bryning Lane, School Lane and Blackpool Road with a regular daytime service to Preston, Kirkham, Blackpool and Fleetwood (Mondays to Saturdays)<sup>2</sup> with a reduced service on Sundays.
12. The town of Kirkham lies some 2 miles to the north-west, linked by the A583, and provides a secondary school and a range of shops and other facilities, including a supermarket and health services.

### **Planning History**

13. Aerial photographs and documentary evidence<sup>3</sup> suggest that the site was used for a period between the 1960's and 1980's for the storage of building materials. Prior to that use it appears to have been marshy grassland. The site was not used for a time from the 1990's onwards when concrete became grassed over. The grass covering was scraped away to expose the concrete around 2007 and some further building material storage took place. A Lawful Development Certificate (LDC) was granted on 29 August 2008 certifying that the lawful use of the site was for the storage of building contractor's materials<sup>4</sup>.
14. The applicant acquired the site in 2010. In September/October 2010 works took place on the site comprising the erection of the close boarded fencing, the enlargement of the earth mound, the provision of splays to the access, the laying of some additional hardcore and the installation of the land drain<sup>5</sup>.

### **The Proposals**

15. The planning application proposes the change of use of the land to a residential caravan site for 4 gypsy families. No business use is proposed, other than the ancillary parking of work vehicles. The proposal, as shown on the site layout plan, also includes the erection of a single storey amenity block close to the southern boundary, providing a kitchen/dining area, bathroom and laundry; screen fencing to the boundaries; and a landscaped mound to the rear boundary. The site layout plan accompanying the application shows 8 caravan bases and 7 parking spaces<sup>6</sup>. A package sewage treatment plant is shown to be sited to the south-west corner of the site. A brochure for a package sewage treatment plant was provided with the application<sup>7</sup>. Subsequently, in response to requests from the Council, a Phase 1 Environmental Report was provided<sup>8</sup>, it was confirmed that an alteration to the site access forms part of the proposal and it was

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<sup>2</sup> Stated as an hourly service in SOCG1

<sup>3</sup> See CD30, CD35 and NRA10

<sup>4</sup> See CD16

<sup>5</sup> See NRA10

<sup>6</sup> See CD18

<sup>7</sup> See APP3

<sup>8</sup> See CD35

indicated that the site would only be used by touring caravans. Some of these elements were added to the description of development by the Council when the application was reported to the Development Management Committee of the Council.

16. The site layout plan for 3 pitches (paragraph 3 refers) shows the amenity block and package sewage treatment plant in a similar position to the original plan. The plan indicates that there would be bases for 6 caravans and 8 parking spaces. A hedgerow is proposed between the front boundary fence and Thames Street. The splay to the access is shallower, providing additional space within the site behind the fence and any gates.
17. The applicant's agent indicated at the inquiry that the plans had been drawn up on the basis that the site was about 52m wide by 30m deep. These measurements differ from those shown on the site survey carried out on behalf of the NRA and confirmed at the site visit. In particular the actual width of the site is some 47m.

### **Planning Policy and Guidance**

18. The development plan, so far as it is relevant to this application, comprises the *Fylde Borough Local Plan*<sup>9</sup> (FBLP) which is an amalgamation of two documents, the FBLP 1996 adopted in 2003 and the FBLP Alterations Review 2004-2016, adopted in 2005. The Proposals Map<sup>10</sup> accompanying the FBLP shows the application site lying outside the settlement boundary of Newton in an area designated as open countryside. The settlement boundary of Newton runs to the rear of the dwellings on the south side of Grange Lane which I judge to be between 40m and 50m from the northern boundary of the application site.
19. Policy SP2 of the FBLP only allows development to be permitted in the countryside outside settlement limits in certain circumstances - in connection with agriculture or other uses appropriate to a rural area; in respect of the re-use of existing buildings and large developed sites; minor extensions to existing buildings; and development needed for the continuation of an existing enterprise which does not harm the character of the countryside. The criterion referring to uses appropriate to a rural area includes reference to uses provided for by other policies of the plan. Sites for gypsies and travellers are not referred to in the policy or its explanation.
20. However, Policy HL8 of the FBLP does deal with applications for caravan sites for gypsies and indicates that such proposals will be permitted where all of ten criteria are met. The criteria relate to identified need; that the application is made on behalf of gypsies; the type of site sought is clear (residential or mixed residential/business); the site size is appropriate to meet need, the site type and provide structural landscaping; the site is within or close to a settlement which can provide a primary school, public transport, shops and other community facilities; the site location would not give rise to nuisance; there is safe vehicular and pedestrian access and adequate parking; there would be no significant harmful effect on the landscape character of the area; any buildings are appropriately designed; and satisfactory drainage facilities are provided. The

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<sup>9</sup> See CD2

<sup>10</sup> See CD49



policy goes on to say that sites will not be permitted in certain locations, including Green Belts, SSSI and in the open countryside away from settlements.

21. Policies TR1, EP4, EP10, EP11 and EP19 of the FBLP are also relevant as they deal with, amongst other things, safeguarding pedestrian safety, the settings of listed buildings, the landscape character of the Borough and protected species. Policies EP25, EP27, EP28, EP29 and EP30 of the FBLP relate to sewage treatment, noise, lighting, contamination and flooding, all matters which have been raised in evidence.
22. The Council is progressing an emerging plan, the *Fylde Local Plan to 2030* (FLP). A *Part 1 Preferred Options* version of the plan was published for consultation in June 2013<sup>11</sup>. The FLP includes a draft policy, H4, which contains similar criteria to those contained within Policy HL8 of the FBLP, albeit that it does refer to the design of traveller sites according with the DCLG's *Designing Gypsy and Traveller Sites – Good Practice Guide* (GPG).
23. In addition to the existing and emerging plan there is local guidance of relevance, most notably *A Landscape Strategy for Lancashire – Landscape Character Assessment*<sup>12</sup>. The application site lies on the border of two Landscape Character Areas (LCA), the Clifton and Hutton Enclosed Coastal Marsh and the Fylde Coastal Plain.
24. The *National Planning Policy Framework* (the Framework) was published in March 2012 and sets out the Government's policies to achieve sustainable development. The Government's *Planning policy for traveller sites* (PPTS) came into force at the same time as the Framework and is to be read in conjunction with it. The Government's *Planning Practice Guidance* (PPG) was published in March 2014. A document, *Consultation: planning and travellers*, was published by DCLG in September 2014. The intention is to amend PPTS, in due course.
25. Other relevant national guidance includes the GPG of May 2008 and *The Setting of Heritage Assets – English Heritage* dated October 2011.

### **Agreed Facts**

26. I have covered a number of the undisputed facts in the previous paragraphs where I describe the site and surroundings, the planning history of the site, the proposals and the policy context.
27. Two Statements of Common Ground (SOCG) were submitted at the inquiry<sup>13</sup>. The first was agreed between the Council and the applicant. The NRA has suggested changes and does not agree with some elements of SOCG1<sup>14</sup> but these have not been taken on by the other two main parties. The second SOCG is between Lancashire County Council (LCC) (the Highway Authority) and Sanderson Associates on behalf of the NRA.
28. In relation to SOCG1, it is agreed that there is an unmet need for traveller sites in both Fylde Borough and the sub-region. This need has been shown by the

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<sup>11</sup> See CD3

<sup>12</sup> See CD50

<sup>13</sup> See SOCG1 and SOCG2

<sup>14</sup> See NRA12

*Fylde Coast Authorities Gypsy and Traveller Accommodation Assessment (GTAA)*<sup>15</sup>. In terms of Fylde Council area the need is for 26 pitches in the period 2014 to 2031 with 17 pitches required between 2014 and 2019. There is no provision currently planned or proposed and, therefore, the Council is unable to demonstrate a five year supply of deliverable sites. The NRA does not dispute the position in relation to need.

29. The Council and the applicant agree that significant weight should be attached to Policy HL8 of the FBLP as they consider it is consistent with the Framework and PPTS. All agree that little weight can be attached to the emerging FLP and Policy H4 at this early stage.
30. It is agreed by the main parties that the development would be of a scale which would not dominate the village of Newton as a whole and that the site is within walking distance of the village's facilities and bus service.
31. However, the NRA does not agree with the Council and applicant that the development would have an acceptable impact on the character and appearance of the area and the amenities of nearby residential occupiers. The NRA also differs from the other main parties in whether the development lies within the setting of the nearby listed buildings of Dagger Cottage and Dixon's Farmhouse. The NRA also dispute that the development would be acceptable in relation to flooding, drainage and contamination. The NRA refers to the development dominating the locally defined community centred on Grange Lane.
32. Within SOCG2 there is reference to the characteristics of Thames Street and its status as an unclassified adopted highway maintainable by Lancashire County Council (LCC). It is agreed that the proposal for 4 pitches would generate a maximum of 30 trips per day based on 7.5 trips per pitch. SOCG2 records that the matters not agreed are the severity of the impact of additional traffic movements, the accessibility of the site to a range of local facilities and whether the site layout is adequate in terms of parking and turning space.

### **The Case for the Applicant**

*The material points are*<sup>16</sup>:

#### *Introductory Points*

33. The application is for a change of use of land to a gypsy site. The fact that the description includes reference to a 4 pitch site is not material<sup>17</sup>. Any limitation on the number or type of caravans or pitches has to be set out in conditions attached to the planning permission<sup>18</sup>. The formulation of such conditions will be a matter for the decision maker.
34. Much has been made of the site design and the available space for 4 pitches by the NRA. But the applicant is content that any change of use is made subject to the submission of a site development scheme. If the Inspector has any concerns about whether the site is large enough for 4 pitches, the number can be reduced

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<sup>15</sup> See CD6

<sup>16</sup> Summarised from the applicant's closing submissions (APP6) and evidence at the inquiry

<sup>17</sup> I'm Your Man Ltd v SSE 1999 77 P & CR 251

<sup>18</sup> Reed v SoS and Bracknell [2014] EWCA Civ 241

to 3, to which the applicant has no objection and this can be reflected in both the wording of any condition limiting the number of caravans and in the design of the layout. Any reduction in the number of residential pitches proposed would clearly not prejudice anyone and would reduce concerns about traffic and landscaping.

35. The Council carried out a full consultation exercise and took into account all the objections raised, but indicated that they were minded to grant planning permission following careful analysis of the issues. The Council concede that the site complies with local and national policy and that any concerns raised by objectors can be adequately dealt with by conditions. The Council support the application.

### *Sustainability*

#### *(i) Previous Use*

36. The lawful use of the site and the fallback uses are relevant considerations. The site is previously-developed land (PDL) with an existing commercial use, the storage of builder's materials. The development would have the benefit of making use of untidy vacant PDL on the edge of an existing settlement in accordance with paragraph 24 of PPTS. The LDC was issued relatively recently and there are building materials still on site. There is no evidence of abandonment. The operational works that took place in 2010 were not necessarily related to the residential use of the site and are now immune from enforcement action as they took place more than 4 years ago. The burden of proof is on the objectors to show abandonment.

#### *(ii) General Location*

37. Most sites in the Borough will be in the countryside and local and national policy allows for this. The site is not in an area of the Borough where development of gypsy sites will not be permitted such as the Green Belt. Although in designated countryside it does not lie away from a settlement. The locational criteria of Policy HL8 of the FBLP are met. Policy SP2 of the FBLP allows agriculture, horticulture and forestry development or 'other uses appropriate to a rural area, including those provided for in other policies of the plan....' PPTS makes it clear that some sites will be in rural areas and the countryside.
38. The site could not be better located, falling into a wedge of land at the very edge of the settlement which is already dominated by residential dwellings and their gardens. Appeal decisions have referred to sites some 300m from a settlement as not being 'away from a settlement'<sup>19</sup>.

#### *(iii) Accessibility*

39. The site is close to a settlement which provides a primary school, convenience store/post office, public house, church, recreation ground, and a regular and frequent bus service giving access by public transport to the wider range of community services and facilities available in nearby towns. Indeed the bus service is very good compared to most rural areas. The proposed caravan site is within walking distance of the community services and facilities available within Newton, including public transport. Consequently there would be no conflict with

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<sup>19</sup> For example appeal decision ref: APP/Z2830/A/12/2175053 dated 28 February 2013

criterion 5 of Policy HL8, or with the provisions of paragraph 23 of PPTS and paragraph 55 of the Framework.

40. The Council has identified Newton as a settlement where residential development can take place. Newton is clearly regarded as a sustainable location for development. The site is highly sustainable from the point of view of access to services and to transport links and in regard to the wider benefits of sustainability set out in PPTS and the Framework. This is a material consideration in favour of the development.

#### *Character and Appearance*

41. The PPTS does not rule out traveller sites in the countryside and paragraph 24 indicates that sites need not be completely hidden. Whilst soft landscaping may have a role to play, the implication is that some visual impact is likely to be experienced and there is likely to be harm with many traveller sites.
42. The application site is on the fringe of the village, in a position where it is screened from the wider countryside by a conifer hedgerow along the southern side of Thames Street, and by existing trees/hedgerows to the east and west. Even when viewed from Thames Street to the south, the site would be seen against a landscaped background, with built development on higher ground to the north. In these circumstances, the proposed caravan site would not have an unacceptable impact upon the character or appearance of the surrounding area. The lawful and fallback use of the site is also relevant in this regard.
43. All sites in Fylde would be in a LCA of some description. The site is not representative of either character areas referred to and would not affect important characteristics.
44. The site is situated on that side of Thames Street that is already in residential occupation either by dwellings, outbuildings or long gardens. Furthermore, no change of character is apparent on the south side of the road, due to the existence of buildings, including a dwelling, and by the presence of the long and very high residential hedging on that part of the road. The Inspector should prefer the landscape character evidence supplied by the Council and the applicant which was not substantially challenged.
45. The amenity building would be of domestic appearance, would be single storey and would be situated behind a fence. There are similar outbuildings nearby.
46. The applicant is happy that a landscaping condition be attached. The site is in a dip and does not dominate the properties. Views from the residences go over the site into the distance. It is submitted that a well maintained site would be an improvement on its current and past appearance and how it would remain in the future if no permission is granted. The applicant would have no objection to the frontage fencing being replaced by a hedgerow.

#### *Setting of Listed Buildings*

47. The applicant adopts the evidence of the Council. The distance between the site and the buildings, the change in levels and the density of intervening vegetation result in the site not forming part of the setting. In addition it should be emphasised that the setting has changed over time. The listed buildings are now in effect subsumed by the settlement. The setting has been reduced by the

development around the buildings, including recent development when no objections were raised in relation to setting. The listed buildings are primarily appreciated from Grange Lane onto which the main elevations front. None of the special characteristics of the buildings mentioned in the listing descriptions would be affected. There is no evidence of a historic link between the setting and the application site, indeed the evidence is to the contrary.

### *Highway Safety*

48. The need to improve the road and provide external lighting have been raised as a means to stop the development on the basis that speeds will increase and lighting will be detrimental to one species of bats.
49. There can be no highway objection. Thames Street at this point is a dedicated public highway so in the first instance the responsibility for road maintenance and lighting is on the Highway Authority, who have up to now seen no need to either improve the condition of the road or to illuminate it. The applicant has now offered to do this as part of the grant of planning permission if considered necessary.
50. There is no evidence that any improvement in the surface of the road will affect safety or bring pedestrians into conflict with traffic, indeed the evidence is to the contrary. Simply put the amount of traffic on this road is negligible and the small amount of additional traffic generated by a 3 or 4 pitch gypsy site will not add to this in any meaningful way, whereby safety would be compromised. It would amount at the most to one additional movement every 15 minutes. Traffic speeds will remain low, below 20mph. There are places to pass. The nature and characteristics of Thames Street will remain an environment of shared space between pedestrians, horses, bicycles and vehicles. It will continue to have the characteristics of a 'quiet lane'.
51. The requirement for lighting can be met by condition. Further the amount of lighting the Highway Authority now considers necessary has reduced to about 3 columns, only required to provide ambient background lighting for pedestrians.
52. Nonetheless the applicant says that there is no need for lighting. The evidence already discloses that Thames Street is frequented by dog walkers and other pedestrians at night and that there has been no evidence of difficulty or conflict with road traffic or accidents associated with falling or tripping due to the surface of the road. There have been no relevant accidents, involving cars, horses, cycles or pedestrians. This is because of the level of traffic using the road. It is the type of road where shared use is the norm. Furthermore, the NRA conceded that no danger would be caused by vehicles since they will be using their lights at night, and that the only danger was due to the poor surface of the road. Since the road is to be improved it is difficult to see why this would remain an objection.
53. Furthermore, people walk in the dark on and adjacent to rural roads up and down the country without the assistance or need for lighting. To require all such areas to be illuminated would be impractical, undesirable and unsustainable and would affect night time tranquillity. When considered in that context it is submitted that the logic of the NRA position is untenable. The objection fails this basic test of practicality and sustainability. With the road surface improved to fill in obvious pot holes there is certainly no need for lighting.

54. The applicant has demonstrated that he can access the application site towing a caravan and, although this may necessitate use of the full carriageway width of Grange Lane in order to gain access to Thames Street, the speed limit along Grange Lane is 20 mph, traffic levels are extremely light, and conflict would be unlikely and would not, in any case, be unsafe. In fact, it would be little different to the farm traffic which makes use of Grange Lane and Thames Street.

### *Environmental Quality*

#### *(i) Layout*

55. The proposed layout provides space for each of the 4 families to have up to two caravans in a manner which complies with standard caravan site licensing conditions<sup>20</sup>. These standards include a requirement to have 3m between a caravan and the boundary and 6m between caravans. The hard-standings shown are about 8m by 3m whereas a touring caravan would have a maximum width of 2.4m. There would be a gap of 3m to the road. There would also be space for parking, a communal amenity building and planting.
56. The GPG is not generally applicable to private sites. The emerging policy H4 which refers to the GPG has not been subject to scrutiny and should be afforded little weight. Conditions on public sites are different in that households do not necessarily know their neighbours. There is a need for separate amenity blocks and a play area. In contrast private sites are normally designed to meet the needs of the applicant, in this case his extended family. The larger amenity block would be shared by the extended family and children would play on the hardstanding.

#### *(ii) Contamination*

57. The applicant has complied with the requirement to have an assessment prepared and as a result all parties agree that the site contains asbestos. But it is also agreed that further development of this site can occur subject to a condition with regard to the removal and the treatment of any contamination. The Environment Agency (EA) sees no risk to controlled waters.
58. The ability to deal with contamination and make the site safe through the grant of planning permission is of benefit to the community and is a powerful case for allowing the development.

#### *(iii) Flood Risk*

59. The EA agrees that flooding is not an issue for the proposed caravan site as it lies within Flood Zone 1. A Flood Risk Assessment (FRA) is not required. The site does not flood and any water on the site has been a result of ponding. The site slopes downwards towards Thames Street.
60. Surface water drainage can be satisfactorily controlled through the imposition of a planning condition requiring the submission of a scheme to be agreed by the local planning authority. The site is already hard-surfaced. There is the opportunity to install a sustainable urban drainage system to ensure that run-off does not increase as a result of the development.

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<sup>20</sup> See for example APP5

### *Local Environment*

#### *(i) Foul Drainage*

61. It is not practical to connect to the mains foul drainage system. A package sewage treatment plant is the next best option as proposed. The site could have a sealed cesspit if other means of drainage are not feasible, as used on many traveller sites. Cesspits for traveller pitches are smaller than for bricks and mortar housing. There would be space for an underground tank in the position shown and it could go under the access road and hardstanding. Foul drainage can be satisfactorily controlled through the imposition of a condition which will require the submission of a scheme to be agreed by the local planning authority. This is agreed by the EA, the Council and the applicant.

#### *(ii) Noise*

62. This is a quiet area but 4 residences would not make much difference. No noise or residential amenity concerns were raised by the Council. No expert noise evidence was called. The NRA conceded that no real noise issue existed.

### *Protected Species*

63. There is no evidence that the site or individual trees along Thames Street are used for roosting. Bats flying around in such a location are not unusual. That is all the NRA snapshot survey shows.

64. The applicant agrees that any lighting considered necessary can be made suitable for bats.

### *The Need for and Provision of Gypsy and Traveller Sites*

65. There is a general, Borough and personal need for a site. The Council concede a need exists for additional traveller sites in Fylde Borough (criterion 1 of Policy HL8) as demonstrated by the recent GTAA. The GTAA recognises that the Thames Street site would contribute to meeting the identified need<sup>21</sup>. This need should carry considerable weight in favour of the proposed development.

66. The Council does not have a development plan which sets pitch targets for gypsies and travellers<sup>22</sup> and has not commenced preparing a Gypsy and Traveller Site Allocation Plan to meet the identified need. Consequently, the Council cannot identify a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against a locally set target and will not be able to do so for the foreseeable future. There are no alternative sites available to meet the need in either the Borough or region. The proposal would meet the need for a private site which would be provided at no expense to the public purse. Additional weight should be attributed to these factors.

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<sup>21</sup> See paragraph 8.15 of CD6

<sup>22</sup> See paragraph 8 of PPTS

### *Other Matters*

67. The burden of proof is on the NRA to sustain that the costs put forward are realistic and would prejudice the development going ahead. The figures put forward by the NRA are rejected. Even if the figures are accurate the applicant is prepared to pay. The likely costs split between 3 or 4 families would be affordable.
68. The failure of the Council to meet the need and provide a 5 year supply of sites is in clear breach of policy<sup>23</sup> and statute, including the Housing Act 2004, designed to address the inequality of provision between the settled and travelling communities. This is in the context of continuing failures placing a discriminated and vulnerable minority in an unequal position.
69. Human Rights and the best interests of children are relevant considerations even though the applicant does not rely on the personal circumstances of those who intend to occupy the site. The fact that there is a general identifiable need in the Borough, no sites are available to meet that need and there is a failure of policy and breaches of statute in that regard engages Articles 8<sup>24</sup> and 14<sup>25</sup> of the European Convention on Human Rights (ECHR). Article 8 places a positive obligation to facilitate a gypsy way of life. Article 14 requires the policy maker not to discriminate between the settled and travelling populations. The human rights of those evicted from the Fairfield Road site in the Borough would be affected if no alternative site was available.
70. The failure to apply the requirements of the Planning and Housing Acts equally to the settled and travelling communities would be discriminatory and offend the Equality Act 2010.
71. Article 6 of the ECHR guarantees the right of due process and restricts unlawful intervention by the Executive in judicial procedures such as public inquiries. Such interference is capable of judicial review. Article 1 entitles persons to the peaceful enjoyment of their possessions. The applicant has concerns that this case was called in. As a result there is an infringement of Article 6 and the Equality Duty. The weight of local objection is not a reason for call in as this occurs with most traveller sites, particularly when close to a settlement. The proposal does not give rise to any strategic or regional issues. The applicant has been put to considerable expense by the call in process. Furthermore, if the call in was fair and just it would be difficult to see any justification for interfering with the findings of the appointed person on the merits of the case.

### *Conclusions*

72. Even though the development is generally in accordance with FBLP Policies SP2 and HL8, the development plan is out of date as there is no 5 year supply of deliverable sites. The presumption in favour of sustainable development applies as set out in paragraph 14 of the Framework. Planning permission should be granted unless 'any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this

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<sup>23</sup> See paragraphs 3, 4, 9 and 25 of PPTS

<sup>24</sup> The right for respect for private and family life

<sup>25</sup> Prohibition of discrimination



Framework taken as a whole....' There are no adverse impacts here that significantly and demonstrably outweigh the benefits. There are no specific policies in the Framework which indicate that development should be restricted. It is for opponents to rebut the presumption in favour of sustainable development and this has not been done.

73. The site fulfils the three dimensions of sustainable development. In economic terms the site can be delivered and will not be away from a settlement. The site would meet the social needs of a number of gypsy families and could include some subject to eviction proceedings from the Fairfield Road site. The site raises no environmental issues. Indeed with the use of conditions the natural and built environment can be enhanced.
74. The Council has considered the criteria of Policy HL8 affected by NRA objections and agree that they are met or can be dealt with by condition. The development would comply with all relevant and up-to-date criteria contained within Policy HL8 of the FBLP, the most relevant policy, and, therefore, planning permission should be granted.
75. This is an ideal site which is small scale, totally self-contained and with no room for further expansion. There would be no more than 3 or 4 pitches. The applicant has worked closely with the Council to deal with the concerns of residents. Any concerns that remain are contrived, without merit and reflect a scattergun approach. The objections do not outweigh the clear advantages of the site. It is difficult to see where in the Borough there would be a better site. If permission is not granted it would be an opportunity missed. The overwhelming balance is in favour of granting planning permission.

### **The Case for the Council**

*The material points are<sup>26</sup>:*

#### *Introductory Points*

76. The development plan is at the heart of decision making. There is a statutory presumption that development which complies with the development plan as a whole should be granted planning permission. This presumption is now underpinned by paragraph 14 of the Framework which indicates that development which complies with the development plan should obtain approval without delay.
77. The policies of the FBLP chime remarkably well with the Framework and PPTS. The proper and sensible application of the relevant policies of the FBLP should lead to a conclusion that there is both a statutory and policy presumption in favour of the proposal. None of the evidence of the NRA has come close to dislodging this inevitable conclusion.
78. The impact of the development against the considerations set out by the SoS and Inspector would be less if the scheme is reduced from 4 to 3 pitches but there would be less contribution to need. Procedurally it would be appropriate to

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<sup>26</sup> Summarised from the Council's closing submissions (FBC14) and evidence at the inquiry

accept the plan as an amendment as, applying the Wheatcroft judgement<sup>27</sup>, it would be of lesser scale and would not prejudice any party.

### *Sustainability*

79. Proposals that comply with the development plan are by definition sustainable and they should be permitted without delay. However, it may still be necessary to consider whether a particular proposal is sustainable overall when judged against the 3 elements of sustainable development – social, economic and environmental. A holistic judgement should be reached rather than a tick box exercise. It may be possible for a development to cause environmental harm but be sustainable overall. The answer to whether the development is sustainable cannot be answered effectively until all issues have been considered.

#### *(i) Previous Use*

80. It is unclear as to how the issue of abandonment of the use of the site for the storage of builder's materials has a bearing on the outcome of the application. It is whether the land can be described as 'previously developed' which is relevant, not whether a use has been abandoned, as policy at all levels encourages the redevelopment of PDL. It is one of the core planning principles of the Framework set out in paragraph 17. PPTS indicates that weight should be attached to the effective use of PDL when considering applications for traveller sites<sup>28</sup>.
81. In this case there is clear evidence of fixed surface infrastructure. There is also evidence that buildings were present on the site in the past. The built development has not blended into the landscape in the process of time or been reclaimed by nature. The site is clearly PDL when judged against the definition in the Framework and the proposal would be a sustainable use of that land.

#### *(ii) General Location*

82. In policy terms it is entirely acceptable that the application site falls within the countryside by virtue of it being outside the settlement boundary but that is only part of the picture. There is nothing in national policy that bars traveller sites in the countryside. The only restriction is development 'in open countryside that is away from existing settlements.'<sup>29</sup> In terms of character and appearance the site could not be described as lying within open countryside. It is a small piece of land close to an existing settlement, rather than an isolated plot in an expansive rural landscape. It is adjacent to the settlement of Newton, not away from it.
83. The PPTS policy position is reflected by Policy HL8 of the FBLP which excludes development from a number of locations such as 'open countryside away from settlements'. This mirrors national policy so the same conclusion can be reached. It is important to note that Policy HL8 expressly prevents traveller sites in locations such as the Green Belt and sensitive nature conservation areas. Other than a site within settlement limits where should a Council seek to meet the future needs of travellers other than on a site which is adjacent to an existing settlement?

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<sup>27</sup> Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

<sup>28</sup> Paragraph 24 of PPTS

<sup>29</sup> PPTS paragraph 23

84. Policy SP2 of the FBLP is a generic policy dealing with development in rural areas but makes no reference to traveller sites. In this respect there is a degree of conflict with Policy SP2. But Policy HL8 is more consistent with PPTS. Policy SP2 should be afforded less weight as to give it full weight and interpret it as suggested by the NRA would mean no traveller sites in the countryside.

*(iii) Accessibility*

85. The touchstone for this issue is provided by criterion 5 of Policy HL8 of the FBLP. The proposed site should be 'within or close to a settlement which can provide a primary school, public transport, shops and other community services and facilities'. The site is less sustainable than locations close to a larger settlement. However, the Framework at paragraphs 32 and 34 requires decision makers to consider accessibility having regard to the nature and location of the site and policies for rural areas. Proposals in rural areas such as Thames Street cannot be expected to enjoy the same level of access to services and facilities as those in urban areas. Moreover, no one has suggested that there are any available, suitable and affordable sites that are more sustainably located. It is a normal feature of most traveller sites that they will be located within, or more probably adjacent to, rural settlements.
86. Nonetheless the application site fares well against Criterion 5 of Policy HL8. It is within walking distance of bus stops, convenience store/post office, primary school, public park and public house. There are spaces available at the local primary school and availability in other schools in the catchment, including the nearest secondary school<sup>30</sup>. The site is sufficiently sustainable to meet both local and national policy requirements, in particular criterion 5 of Policy HL8 of the FBLP.

*Character and Appearance*

87. This issue is a matter of judgement but should be informed by the following matters. There is no policy presumption against traveller sites in the countryside. Indeed both PPTS and Policy HL8 of the FBLP appear to direct such development to locations on the edge of settlements, such as the application site. The policy framework therefore anticipates and accepts that there will be some change to the character and appearance of the area. The change may even have an adverse effect. But that cannot be the basis for refusing planning permission otherwise the provision of traveller sites would be stymied.
88. Although the area may be cherished by local residents, it does not have any landscape designation. It is not a 'valued landscape' within the meaning of paragraph 109 of the Framework. The current and longstanding appearance of the site is that of rather unkempt PDL. The baseline against which to judge the caravans and amenity block is not particularly sensitive to change. Any lighting could be designed to avoid an urbanising effect. The fencing would be similar to other boundary treatments along Thames Street.
89. The only building proposed, the amenity block, would be of appropriate design and materials. The blank elevation would be partly screened by the frontage treatment. The materials can be controlled so that they respect the local area

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<sup>30</sup> LCC advise that Newton Primary School has 36 places and the secondary school 144 places

insofar as it is possible to identify a particular vernacular. Thus criterion 9 of Policy HL8 would be satisfied.

90. The development would be seen in the context of the built up edge of Newton and its impact would be influenced by the fact that there is development along a substantial length of Thames Street such as the poultry sheds. There would be a change to the character and appearance of the area and there may be some harm, but it is not at a level which would justify refusal of planning permission. Appropriate landscaping would ensure that 'the proposal would not have a significant harmful effect on the character and amenities of the area' so criterion 8 of Policy HL8 would be met.

### *Setting of Listed Buildings*

91. The critical test is whether there is any effect on the setting of the listed buildings at Dagger Cottage and Dixon's Farmhouse. The Council did not advertise the application as affecting the setting of a listed building. The evidence of the Council should be preferred as it is based on an expert witness with both experience and specific qualifications in the field of heritage assets. Reference is made to an appeal decision from 1994 when a double garage at the rear of Dagger Cottage, fronting onto Thames Street, was adjudged not to affect the setting<sup>31</sup>.
92. The English Heritage guidance (paragraph 24 refers) and the consultation draft guidance of 2014 both explain that the setting of a listed building is generally more extensive than the curtilage. The application site is adjacent to land belonging to Dagger Cottage but is some 56m away from the building itself and some 58m from the nearest part of Dixon's Farmhouse. These distances are a relevant consideration in determining setting. Moreover, the well-established screening and topography of the land means that the setting on a physical basis is not affected. Views of the listed buildings from the site are restricted such that only the roof and chimney of Dagger Cottage are visible.
93. It is important to recognise that setting can change over time<sup>32</sup>. Change has occurred around the listed buildings with the development that has taken place along Thames Street, including the poultry sheds, Autumn Fold and the outbuilding at Dixon's Farmhouse. An informed understanding of the relatively limited extent of the settings of the two listed buildings leads to the conclusion that there would be no physical or visual effect on these settings. As far back as 1937 there did not appear to be a functional relationship between the listed buildings and the application site.
94. If there is any impact on the setting it would be neutral as the amenity block would be sympathetic, the caravans would be temporary and any lighting would be limited. The impacts would be diminished by the distance, topography and screening.
95. If harm is found to the setting there is a strong presumption against development. But if there is no effect on the setting then the presumption does

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<sup>31</sup> Appeal Decision Ref: APP/M2325/A/94/240367 dated 28 October 1994 (See FBC4)

<sup>32</sup> See definition of 'Setting of a heritage asset' in the Framework and the English Heritage 2014 consultation draft guidance

not apply. Even if the presumption does apply the development would cause less than substantial harm to the setting of the heritage assets and the decision maker is entitled to reach a judgement that the public benefits outweigh the harm.

### *Highway Safety*

96. The policy test in the Framework is that refusal of planning permission on highway grounds is only justified where the cumulative residual impact is severe. The development must result in a highway network that is materially more unsafe than the status quo. It is not sufficient to assert that there may be a greater number of cars on the highway network than previously or that there may be an increased risk of pedestrian/vehicle conflict.
97. As the proposal is to use touring caravans only, the residual towing movements would not be expected to be more severe than those associated with agricultural vehicle movements. The number of towed vehicle movements would be small as the touring caravans would normally remain on the site.
98. There are a number of important conclusions based on the interrogation of the evidence. Thames Street is lightly trafficked and would remain so after the development is carried out. There is no evidence of personal injury accidents along Thames Street or at the junctions with Grange Lane. There is no evidence of any conflicts between cars and non-car users such as pedestrians or horse riders. The road surface and its width mean that vehicle speeds are currently low and would remain slow even if part of the road was resurfaced.
99. The worst case scenario, assuming that 10% of the traffic generated by the development appears in the peak hours, would be an extra 3 vehicle movements in each hour. In other words there is the potential for one additional car every 20 minutes. That increase is not material, let alone significant enough to be categorised as having a severe impact on the free flow of traffic or give rise to the potential for a severe impact on highway safety for pedestrians.
100. The geometry of Thames Street means that there is good forward visibility giving both motorists and pedestrians sufficient time to take evasive action. It would be entirely possible for vehicles to pull into the access of the application site and at other locations along the route to allow other users to pass. Any safety concerns about pedestrians can be offset by the provision of street lighting and better surfacing. LCC recommend a condition to that effect. It is anticipated that the requirement would be for a small number of lighting columns and the filling and surfacing of the potholes on Thames Street. Such works would not lead to more than a marginal increase in speeds.
101. In the light of these points it is not tenable to conclude that the limited additional traffic generated by the proposal would have a severe affect on pedestrian safety with is the central tenet of the NRA's case.
102. There were also criticisms that the internal layout would be insufficient to accommodate vehicles towing caravans and parking. However, a vehicle and caravan were witnessed in a demonstration pulling onto the site, turning around and leaving in a forward gear. Refuse vehicles would not need to enter the site but would wait on Thames Street. There would appear to be sufficient space for

parking within the site. The lack of gritting of Thames Street in icy conditions makes it no different to many other rural roads.

103. There are no grounds to conclude that there would be a severe impact on highway safety. Whilst Thames Street is not perfect, the absolute level of traffic generation arising from the development would be low. Given the nature and amount of traffic using Thames Street, it cannot be concluded that the impact of the proposal would be unsafe or severe so criterion 7 of Policy HL8 of the FBLP and the Framework tests are met.

#### *Environmental Quality*

104. The questions of contamination and flood risk have been consulted upon on more than one occasion. At no point in the process has the EA expressed any view that the site would be at an unacceptable risk from flooding or that any contamination on the site is not capable of effective remediation. LCC as Local Lead Flood Authority (LLFA) have more recently concluded that there would not be an unacceptable local flood risk. Thus, the expert statutory consultees are all satisfied that the proposal can proceed. Considerable weight should be given to these views.

##### *(i) Layout*

105. The 3 pitch layout would provide more space for parking, sewage treatment, caravans and landscaping and would, therefore, have advantages, including in relation to visual impact. However, the 4 pitch scheme is still considered acceptable with space for planting around the site boundaries and between caravans.
106. Provision of a play area within the site would be preferable but the park is within walking distance. There would be adequate space for gas bottle storage and recycling facilities.

##### *(ii) Contamination*

107. The presence of contaminants has never been denied. The NRA witness accepted that any concerns could be addressed satisfactorily by the imposition of a fairly standard condition. This is also the position of the EA. The point appears to be about the potential costs of remedial works rather than any in principle objection. That is not a justification for refusing planning permission. There are no grounds to refuse planning permission for reasons relating to contamination of the site.
108. Policy EP29 of the FBLP, read sensibly, allows remediation measures through conditions. It is not possible to appreciate the full extent of remediation necessary until more investigations are carried out.

##### *(iii) Flood Risk*

109. The EA has considered the risk of tidal and fluvial flooding and has concluded that there are no grounds for refusing planning permission or requiring a site specific FRA. This position is confirmed in the EA statement on the called in application<sup>33</sup>. The EA is aware that the site is near Flood Zones 2 and 3 but confirm that the

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<sup>33</sup> See Appendix MA5 to FBC1

site is in a Flood Zone 1 where all development is appropriate. Nothing that the NRA has produced has undermined this position.

110. In terms of more localised flooding there have been incidents close to the site but the photographs taken by the NRA were at a time of a significant rainfall event as demonstrated by the Lancashire and Blackpool Local Flood Risk Management Strategy<sup>34</sup>. That evidence does not represent a 'normal' situation along Thames Street. It is unlikely that the site would become marooned.
111. The discharge of surface water to a French Drain would allow the storage of excess water and then drainage into the surrounding ground over time.
112. There is no evidence or policy basis on which to reject the application for reasons of flood risk.

### *Local Environment*

#### *(i) Foul Drainage*

113. Connection to the public foul sewer is not practicable due to the distance involved. The applicant is proposing the next best alternative, a package sewage treatment plant.
114. Since its inception LCC as LLFA has not raised any objections to the sewage treatment plant. Rather it suggests the type of tests that would be necessary in order to discharge a foul drainage condition. No other consultees such as the EA or the Council's Environmental Protection Department have raised objections. The installation of a package sewage treatment would require approval under the building regulations. If that is not feasible a cesspit would be an alternative, albeit the least sustainable method. There appears to be space for such an installation across the access road. The site can be adequately drained and would comply with criterion 10 of Policy HL8 of the FBLP.

#### *(ii) Noise*

115. This issue is something of a makeweight. The essence of the objection appears to relate to a potential increase in noise levels associated with outdoor living of travellers and the use of generators. The latter point can be addressed by the imposition of a condition preventing generators or requiring a scheme that ensures that any generator is housed in a sound reducing enclosure.
116. As to the former issue the Council has the ability to take action under the Environmental Protection Act should noise become a nuisance. But the noise of outdoor living is not inherently unacceptable. The existing households do not cause unacceptable noise when they have barbeques and carry out other activities in their gardens.
117. There is no tenable evidence that the use of the site would give rise to nuisance to neighbours. Matters such as the operation of plant, machinery and commercial activities can be controlled by condition. Criterion 6 of Policy HL8 of the FBLP would be met.

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<sup>34</sup> See FBC9

### *Protected Species*

118. This has been revealed as a 'non-issue' at the inquiry. The LCC expert ecologist was consulted twice on the application and on neither occasion was any objection raised on any ecological matter. The site is sub-optimal habitat for most species.
119. Whilst the NRA was entitled to raise concerns about the potential impact of street lighting on bats, it was explained that objections could be overcome by the imposition of a condition that required any street lighting to be 'bat friendly'. Both the applicant and the Council are comfortable with such a condition.

### *The Need for, and Provision of, Gypsy and Traveller Sites*

120. There is unmet need at regional, sub-regional and local levels. The evidence on the need for additional traveller sites is uncontested (paragraph 28 refers). This consideration should attract substantial weight, a point accepted by the NRA, and should weigh very heavily in favour of granting planning permission. The provision of additional pitches in an area of acknowledged need renders the proposal socially sustainable. The first criterion of Policy HL8 relating to identified need has been met. The planning permission in February 2013 for a site at Bambers Lane, Westby did not increase the number of pitches in the Borough.
121. The application is made on behalf of gypsies and travellers as defined by PPTS so the second criterion of Policy HL8 is met. This aspect can be controlled by condition. The size of the site is appropriate to meet some of the need – just under a quarter of the 5 year requirement – so would make an important contribution to supply (Criterion 4 of Policy HL8).

### *Other Matters*

122. NRA's concerns about the viability of the scheme are a red herring as one should only refuse to impose a condition where there is no prospect of it being complied with during the lifetime of the permission. That conclusion cannot be reached in the present case given the general nature of the viability evidence produced by NRA.
123. Even if the NRA's position on viability is a good one it does not take them anywhere. If it is not possible to devise a cost effective remediation scheme or satisfactory foul or surface water drainage then the Council would refuse to discharge the relevant conditions or the applicant would not be able to implement the scheme because it would be too expensive. Either way the development would not proceed.

### *Conclusions*

124. The site does not lie within any of the locations where traveller proposals are to be resisted and could not be characterised as being 'in open countryside away from settlements.' As the proposal complies with relevant policies of the development plan and Policy HL8 in particular, the decision maker can conclude that there is a statutory presumption in favour of granting planning permission and permission should be granted without delay.
125. Additionally the decision maker can conclude that the development is socially, economically and environmentally sustainable. The Inspector is asked to



recommend that planning permission is granted and the SoS is requested to follow that recommendation.

## **The Case for the Newton Residents Association**

*The material points are<sup>35</sup>:*

### *Introductory Points*

126. It is obvious that this site is unsuitable for residential development. It became apparent at the site visit that the layout plan is deficient as the site is around 5m narrower than shown on the plan. The decision maker can have little confidence in the accuracy of the plan. What was already a cramped and constrained site is plainly even more so. This elementary error is eloquent of a poorly thought through and prepared planning application by those who act on the applicant's behalf. It also means that there is insufficient room to accommodate the quantum of development proposed. The fact that this error became apparent when the applicant sought to challenge the accuracy of NRA's topographical survey provides a delicious irony. It was a classic example of an own goal by the applicant.
127. The introduction of a revised layout showing a 3 pitch site on the fifth day of the inquiry, after the close of the NRA's case, came as a surprise. NRA did not have an opportunity to comment on the amendment in a meaningful way. The promotion of the revised scheme reflects the weakness of the applicant's case. If the applicant was confident about his case for a 4 pitch site he would not have put forward a proposal for a smaller quantum of development so late in the day. It is symptomatic of the applicant's desperate attempt to salvage some kind of permission on the site.

### *Sustainability*

#### *(i) Previous Use*

128. In terms of the previous use and current status of the land, case law<sup>36</sup> records that there are four factors which should be considered in deciding whether or not a certified use has been abandoned – the physical condition of the land; the period of non-use; whether there has been any other use; and evidence regarding the owner's intentions. The thrust of the evidence suggests that the site has not been used for the storage of builder's materials for a number of years, certainly since 2007. The application confirms that the current use is 'vacant' suggesting that the builder's yard use has been discontinued and is intended to be replaced by either a mixed use or a residential use.
129. The applicant has undertaken some preparatory works, namely the bund to the northern boundary, the excavation of the French Drain, the laying of hardstanding, the erection of perimeter fencing and the set back of the site entrance. These works represent positive steps towards the residential use of the site, a matter agreed by the Council, and are eloquent of the owner's intentions.

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<sup>35</sup> Summarised from the NRA's closing submissions (NRA14) and evidence at the inquiry

<sup>36</sup> Trustees of the Castell-Y Mynach v SoS for Wales & Taff Ely Borough Council [1985] JPL40

130. The evidence suggests that the certified use has been abandoned and the 'base' use reverts to agriculture. It is against this background that the impact of the application should be judged.

*(ii) General Location*

131. It is common ground with the Council that the application site lies in 'open countryside' beyond the settlement boundary of Newton but cannot be reasonably characterised as being 'away from the settlement'. However, Policy SP2 of the FBLP is breached.

*(iii) Accessibility*

132. It is also common ground that the primary school, bus stop and convenience shop within the village are within a reasonably walking distance, when judged purely in arithmetic terms. However, that is not the approach advocated by Manual for Streets (MfS). This guidance makes clear that 'walkable neighbourhoods are typically characterised by having a range of facilities within...800m walking distance of residential areas which residents may access comfortably on foot'<sup>37</sup>. The shortcomings of Thames Street are likely to inhibit the attractiveness of the route to access services (as opposed to the existing, largely recreational use of the lane for dog-walkers, cyclists and horse-riders). There are no health facilities in Newton.

*Character and Appearance*

133. The site occupies a sensitive transitional zone between the landscape character types of coastal plain and coastal marsh. The Council agreed that the application site and environs were reasonably representative of the Clifton and Hutton Enclosed Marsh LCA. The Council stepped back from stating that no harm would be caused by the development to conceding that 'very small material harm' is likely to be caused.
134. The proposal has not been tailored specifically to fit into the character of the area. The creation of a caravan site with 8 caravans, amenity block and domestic paraphernalia would create a discordant and incongruous feature in the landscape, being particularly conspicuous from Thames Street, a sensitive visual receptor. The presence of the poultry sheds, a development of simple functional form, does not justify further harmful proposals. The harm arising from the proposal, in the absence of mitigation, is exacerbated by the position of the only amenity block at a conspicuous location along the perimeter of Thames Street. A blank unattractive elevation faces Thames Street. As it is north facing it would not benefit from solar gain. The building cannot be described as a feature of high quality design or one that reflects the 'local vernacular style' required by FBLP Policy EP11 on the basis of its simple form, pitched roof and gable end. Lighting on the site would increase the impact of the development when seen from the properties above.
135. Given the tight highly constrained layout, little comfort can be derived from a promise of landscaping to soften the impact. The purpose of landscaping is to aid the sympathetic assimilation of the development into the landscape. The applicant promotes a landscaping condition. Such a condition is common-place.

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<sup>37</sup> Paragraph 4.4.1 of MfS

However, for it to be deliverable there must be sufficient space on the site to provide such landscaping. It is clear that there is not enough room on site to accommodate meaningful landscaping. If the applicant thought there was, one would have expected him to have provided an amended plan setting out in broad terms the proposed landscaping. The only landscaping treatment along Thames Street, the conspicuous frontage of the site, is a close-boarded fence. The Council agreed that the fence does not represent a feature of high quality design. The fence would be an unsympathetic element of the landscaping of the site.

136. Regard should also be had to the effect of the development and the proposed conditions on the character of Thames Street itself. At the moment, Thames Street has a quiet and intimate character. The road feels like a country lane, or a 'farm-track'. It is the only country walkway readily accessible by foot from the village. It forms part of the Lund Way, a local footpath route, enhanced by Millennium funding. The highway improvement works, whilst welcome in narrow highway terms, are likely to alter the character of the road. The installation of the street lighting and re-surfacing will alter the tranquil, rural sense of place of what is at the moment an informal country lane unencumbered by street furniture and urbanising influences. Further, infilling the potholes and improving the road surface is likely to attract greater vehicular movements and lead to an attendant increase in conflicts which is likely to increase the over-running of the verges. This must inevitably detract, to some degree, from the character of the road.
137. The Framework 'attaches great importance to the design of the built environment'; requires that planning should 'always seek to secure high quality design...'; and tells us that decision makers should take account of the 'desirability of new development making a positive contribution to local character and distinctiveness'. Permission should be refused for development of poor design that fails to take opportunities available for improving the character and quality of an area and the way it functions. Mediocre design is no longer good enough.
138. The application offends FBLP Policies HL8 and EP11 as, in the absence of meaningful landscaping, the development is likely to give rise to a significant harmful effect on the landscape character and amenities of the area.

#### *Setting of Listed Buildings*

139. The SoS must pay special attention to the desirability of preserving or enhancing the setting of listed buildings. Preserve means 'do no harm'<sup>38</sup>. The proper approach in law is crystal clear - the SoS must not simply give careful consideration but accord 'considerable importance and weight' to the desirability of preserving the setting of heritage assets when the decision maker undertakes his final planning balance.
140. The application site lies within the setting of the Grade II listed buildings of Dagger Cottage and Dixons Farmhouse. The list description for Dagger Cottage refers to a date of 1653. Dixons's Farmhouse is noted as dating from circa 1800 but may well be considerably older. It is plain that the curtilage of Dagger

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<sup>38</sup> East Northants DC, English Heritage and the National Trust v SoS and Barnwell Manor Wind Energy Ltd [2013] EWHC 473 (Admin)

Cottage abuts the application site and extends down to Thames Street. Setting is normally greater than the curtilage. The Council agreed that, although much built development had been undertaken in the village since the 19<sup>th</sup> century, there had been no development between the application site and the two listed buildings. Further, the Council confirmed that it was unable to identify any change in character between the application site and the listed buildings.

141. It is common ground that the 19<sup>th</sup> century Dixon's Farmhouse was one of the principal farmhouses in the village. There is no documentary evidence to settle the historic use and ownership of the application site. However, it is probable that the application site was within the ownership and was farmed from Dixon's Farmhouse in the 19<sup>th</sup> century and, therefore, there was some functional link.
142. The creation of an 8 caravan gypsy site, including amenity block, access road and domestic paraphernalia, together with street lighting along Thames Street, would detract from appreciation of the heritage assets. In accordance with paragraph 134 of the Framework the proposal would cause less than substantial harm.

### *Highway Safety*

143. Thames Street is endowed with a number of characteristics which taken together make it unable to safely accommodate a material increase in traffic. It is unlit; has no separate pedestrian footway; is not gritted in Winter; is of inadequate width as much of the carriageway falls short of the minimum width of 4.1m to allow cars to safely pass one another; has sharp corners which inhibit forward visibility; has a poor road surface with numerous potholes; has limited positive drainage; and has steep gradients on its east and west sections. Thames Street is well used for recreational purposes including by walkers, horse riders, cyclists and children playing. The proposal would generate additional pedestrian movements, including those of children occupying the site.
144. There have been a number of minor road traffic accidents along Thames Street. Longer or towing vehicles clip the wall at the junction of Thames Street West with Grange Lane. Under icy conditions Thames Street is impassable. Residents of Thames Street are forced to park on, and take their wheelie bins up to, Grange Lane as vehicles cannot negotiate the slopes. There is significant on-street parking in Grange Lane, more so in wintry conditions.
145. It is common ground between the NRA and the Council that Thames Street is lightly trafficked with around 30-40 vehicular movements per day. More traffic tends to use Thames Street West as it gives better access to the stables nearby. The number of movements would increase by around 30 per day. This constitutes a near doubling of the number of traffic movements, a material increase. A significant number of the movements could be made by vans and trucks. At times vehicles would be towing caravans. The Council considers that, once disaggregated to 3 additional vehicular movements in the peak hour, the increase can be discounted as unappreciative. It is submitted that this is not a proper and helpful way to view the agreed data set. Whilst the increase in vehicular movements for a 4 pitch gypsy site is relatively modest in absolute terms, against the very low baseline and the specific circumstances of a woefully inadequate single lane road, it is material.
146. There would inevitably be a material increase in conflict between vehicles entering and leaving the site and other road users. The extent of the conflict is

likely to be exacerbated by the lack of parking and turning space within the site. Parking on the internal access road would not be a satisfactory arrangement. This is likely to put pressure on visitors to park up on Thames Street. If this does occur, this would further reduce visibility along the road, block the use of the road for other road users, including emergency vehicles, and obscure the view of pedestrians.

147. The Council agrees that off-site highway works are necessary as otherwise the impact on highway safety would be unacceptable and even with the works there would be material harm but it would not be severe. It is noteworthy that LCC originally recommended refusal based upon a full appraisal of the scheme before them. It is surprising that the Highway Officer now finds himself as the witness for the Council in support of the planning application. He was unable to identify a material change of circumstance (such as a change to guidance or policy) which leads him to reach a different view now. The best he could say was that last year he had misunderstood FBLP Policy HL8. It is not clear why this would lead him to reach a different view on the acceptability of the impact on pedestrians.
148. Even with the benefit of the doubt for the change of heart, at the very least it does tend to suggest that the highways objection to the application has some merit and the overall highways judgment is finely balanced. If the NRA's objection to the proposal was without foundation, one would not have expected LCC to have recommended refusal on highway grounds a year ago.
149. Without the off-site works LCC does not consider that there would be a safe pedestrian access to the site. LCC estimate that the cost of implementing improvement works would be between £20,000 and £30,000.
150. NRA maintain the firm view that the street lighting and resurfacing, although slightly reducing the harm, fall short of addressing the principal source of danger, the inadequate carriageway width. Furthermore, improving the road surface would have the unintended consequence of allowing vehicles to increase their speed. One of the important safety attributes of the road, low vehicle speeds, would not continue post-mitigation.
151. The SoS is invited to find that the proposal offends Policy HL8 of the FBLP and Paragraph 32 of the Framework as it fails to provide a safe vehicular and pedestrian access and adequate parking for vehicles. Notwithstanding the proposed highway works the residual impact on pedestrian safety would be severe.

### *Environmental Quality of the Site*

#### *Site Layout*

152. The Framework requires that planning should always seek a good standard of amenity for all existing and future occupants in addition to the requirements for good design referred to above.
153. The design is deficient and cannot, on any reasonable basis, be characterised as high quality design. The applicant's layout makes no provision for a children's play area, amenity space, gas bottle storage, visitor parking or sheds. Given the cramped nature of the site there would be very little private amenity space and, therefore, the absence of a play area is even more glaring. The Council agreed that it would have been better if the site included a play area.

154. The proposal to provide a single amenity block, rather than provision for each pitch, contravenes the GPG<sup>39</sup>. This minimalist approach would not secure a good standard of amenity for all future occupants.
155. The layout does not accord with the well respected minimum distances between caravans, and between caravans and the perimeter of the site set out in the GPG (6m and 3m respectively). One caravan fails to meet the 3m set back distance with the site boundary. If the sealed cesspit is installed, a 7m minimum set back distance is required by DEFRA and EA guidance between it and habitable structures. There would be limited space for the turning and manoeuvring of vehicles.
156. The applicant has failed to produce a layout to show that the site can accommodate the quantum of development proposed. The site is too small to accommodate 4 pitches and meet the GPG. Policy H4 of the emerging FLP requires that gypsy sites should be designed in accordance with the GPG. Although primarily aimed at public sites, the Council confirmed that it is intended that all sites should be designed in accordance with the GPG. The Framework draws no distinction between public housing and private development. The GPG is an important material consideration in assessing the design quality of the proposal.
157. The applicant indicated that the site is intended to be occupied by a single extended family or a number of families that were known to each other but was not prepared to accept a condition to that effect. A number of features of the design such as the lack of play space and the single amenity block are deemed acceptable by the applicant on the basis that it is a single family site. The applicant could dispose of the site or part of it so the quality of the design is deficient.

*(ii) Contamination*

158. It is common ground that there is likely to be asbestos on the application site. Such a conclusion has been reached by the applicant's own Phase I contamination survey. It sits comfortably with the statutory declaration of the previous site owner who confirmed that he imported asbestos onto the site prior to 2007 when he sold it.
159. Policy EP29 of the FBLP provides that planning permission will only be granted for land which is suspected of being contaminated if 'the applicant can demonstrate the degree of contamination, if any, and where appropriate can identify acceptable measures to remove or treat the sources of contamination'. It is clear that the policy requires that the extent of contamination is known before planning permission is granted.
160. The applicant's Phase I study does not quantify the degree of contamination on the site. The NRA does not attempt the exercise. It is the applicant's case that the degree of contamination on the site can be addressed by way of condition providing for a Phase II study. This post-permission approach runs counter to Policy EP29 which is breached.

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<sup>39</sup> Paragraph 7.17

*(iii) Flood Risk*

161. It is common ground that the EA maps show the application site lying in Flood Zone 1 but very close to land within Flood Zones 2 and 3. But the only access to the site, via Thames Street, passes through Flood Zone 2, including areas to either side of the site entrance. Future occupants cannot be guaranteed a safe and suitable access to the site and, in an extreme flood event, could be marooned on the site.
162. It is also common ground with the Council that the EA maps are only intended to be indicative. They include the bold caveat on their face that they 'are not always up to date, accurate or valid'. The Council agreed that, because the applicant has not undertaken a FRA, it is simply not known with any degree of precision whether the application site really is in Flood Zone 1.
163. NRA requested permission to go onto the land to undertake a levels survey but the applicant refused without good explanation, notwithstanding that the inquiry rules and Planning Inspectorate guidance encourage a constructive approach between parties. The applicant has refused to undertake his own levels survey. The best evidence is the site level survey commissioned by NRA which, the Council conceded, casts doubt on whether the site lies within Flood Zone 1 as it shows some parts of the site to be lower than some areas with Flood Zone 2. A site specific FRA should have been carried out.
164. Anecdotal evidence from local people explained how the site frequently contains standing water. Ponding can occur after anything greater than a light rain shower as the land lies so close to the high water table. The main flooding episodes occur when the dykes overflow, estimated to occur around five times every winter. This flooding also takes place on Thames Street. The local evidence and the site surveys call into question whether the EA maps are accurate and up to date. The NRA would have had no complaint if a site specific FRA had been undertaken but it has not.
165. As caravans are characterised as 'highly vulnerable' it is not a matter which can be lightly set aside. Given that the only access to the site goes through Flood Zone 2, there is a significant flood risk that has not been addressed adequately in evidence. The GPG advises that 'all prospective site locations should be considered carefully before any decision is taken to proceed, to ensure that the health and safety of prospective residents are not at risk'<sup>40</sup>. It cannot be a feature of good planning or sound design to have the ground surface of a residential site covered in standing water.
166. The concerns of the NRA have been vindicated by the late response from the LCC LLFA. After the LLFA had been provided with NRA's evidence to the inquiry, it gave a clear recommendation that a FRA should be undertaken since the site is intended to discharge to watercourses which lie in Flood Zones 2 and 3. The evidence is plainly deficient.
167. If the Phase 2 Contamination Study requires further capping of the application site, this is likely to have the unintended consequence of altering the flood risk of the land. It is a matter of common sense that, if the application site is artificially

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<sup>40</sup> Paragraph 3.3

raised, surface water from the site is likely to run off on to adjoining land. The extent of the impact has not been assessed.

168. The application offends FBLP Policy EP30. In the absence of a FRA, the SoS cannot be satisfied that the application is appropriate in flood risk terms.

### *Local Environment*

#### *(i) Foul Drainage*

169. The foul drainage scheme advanced by the application is unacceptable in principle and is unlikely to work in practice. Guidance is clear that a package sewage treatment plant should not be located in an area which is prone to flooding<sup>41</sup>. The site frequently has standing water on it. The fact that this water egress is not fluvial or tidal and that the site falls within Flood Zone 1 on the EA maps is not significant. The standing water on the land would cause problems as it would seep into the treatment plant and cause untreated foul water to escape.
170. The treatment plant is dependent on the safe discharge of the treated foul water into the dykes or a drainage field. For this to work safely the dykes must be free-running all year round and the drainage field must allow the foul water to percolate away into the soil. This cannot be relied upon. When dry the dykes do not flow, the foul water will simply stagnate like a pond. Conversely in winter the dykes often overflow. The Council's own Flood Risk Manager confirmed that 'the main problem is that when the dykes are full there is nowhere for the water to go'. EA guidelines state that drainage fields will not work in clay soils (as found on the site) as they cannot pass the required percolation test, nor is their space on site to accommodate a drainage field.
171. After the LLFA had been provided with NRA's evidence to the inquiry, it gave a clear recommendation that percolation tests should be carried out on the site to determine the suitability of a sewage treatment plant.
172. The proposal for a treatment plant is not a viable option for the site and would be contrary to Policy EP30 of the FBLP as the development would adversely affect the water environment. It is for these reasons that the EA refused a treatment plant at Autumn Fold.
173. The only option is, therefore, a sealed cesspit which was proposed very late in the day and has not been considered by the LLFA. Whilst technically capable of being delivered on the site, there are a number of problems associated with its installation. It is the least sustainable drainage option and only considered as a last resort. It would take up more room than a treatment plant. For the 4 pitches a volume of about 127 cubic metres would be expected, equating to a length of some 17m. It could only be accommodated on the site if it went across the access road. The set back of at least 7m between the cesspit and habitable buildings/caravans would not be achieved. Based on the site layout it is clear that there would not be enough room to accommodate a cesspit of the proportions required alongside the access road. Cesspits are also extremely expensive with a cost range of between £26,000 and £32,000 and operational costs of £47,000 per annum.

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<sup>41</sup> EA Pollution Prevention Guideline 4



174. It was asserted by the applicant that normal requirements do not apply to gypsy sites with regard to cesspit size and emptying frequency. The NRA contends that such an approach would not accord with EA guidance and the building regulations.
175. Whilst a technical solution for the site may be possible, there is insufficient information before the inquiry to satisfy the decision maker. The proposal contravenes Policy HL8 as the applicant has failed to demonstrate that satisfactory drainage facilities are available. The evidence indicates that an acceptable solution would not be found.

*(ii) Noise*

176. The area and surrounding residential properties experience very little noise. There is infrequent significant noise from aircraft from the BAE Warton site but otherwise noise is typical of a residential area such as children playing in the streets and gardens, lawnmowers and the occasional summer barbeque. Recorded sound levels reflect a typical quiet residential/rural area. The area is particularly quiet at night. The development would lead to noise and disturbance from traffic and site occupants going through their normal routines where there are currently no noise sources.
177. The site has buildings on three sides. The hard non-absorptive properties of the housing would reverberate the sound. If there was a continuous sound such as a radio, generator or machinery the effect would be additive. It has been observed that the lower section of Thames Street has an amphitheatre effect in still, cold conditions which could further impact on the noise environment resulting from the proposal. The use of fencing and landscaping would provide some noise attenuation but would not be fully effective.

*Protected Species*

178. The applicant has failed to undertake any surveys whatsoever. The snap shot bat survey by NRA recorded 21 bats along Thames Street in a single evening. The ditches, trees and hedges along Thames Street would be attractive to bats. It is not known if any of the trees along Thames Street or around the perimeter of the application site provide bat roosts as they have not been surveyed. Nor is the extent to which they are capable of providing a habitat in future known.
179. Natural England's consultation response made clear that the presence of protected species should lead to a request that survey information be obtained from the applicant before determining the application. The Council failed to act upon this advice or make relevant consultees aware of the NRA evidence about bats along Thames Street.
180. Street lighting may disturb the foraging, commuting and feeding patterns of certain species of bats such as myotis. A requirement for bat friendly lighting has not been proven in the absence of details of whether such a scheme would be effective depending on the particular species and the likely cost.

*The Need for and Provision of Gypsy and Traveller Sites*

181. It is common ground that there is a significant unmet need for gypsy traveller pitches in the Borough. This is a significant consideration which properly weighs in favour of the applicant.

### *Other Matters*

182. If the decision maker is satisfied that concerns are capable of being overcome by conditions, the SoS must be satisfied that there is a prospect of the proposal being delivered. It is material to have regard to the likely cost of the proposed conditions. In the normal course of events, the decision maker is not greatly concerned by the likely cost since this is a matter for the successful applicant once they possess their planning permission. However, cost does become relevant when the viability of the scheme is in jeopardy. This is the case here.
183. On a conservative estimate the conditions and site development gives rise to the following costs: connection to main electricity (£5,800); highway improvement works (£20,000-£30,000); Phase 2 Contamination Survey (£12,000-£18,000); sealed cesspit installation (£26,000-£32,000). It is common ground with the Council that the cost of the implementation of the conditions lays in the region of £68,000 - £86,000. This range excludes the extra cost of 'bat-friendly' street lighting which remains unknown, any landscaping scheme which remains the aspiration of the applicant, the cost of a Phase III mains electricity connection of around £15,000 and the cost of remedial decontamination should this be recommended by the Phase II Survey (at a cost of around £100,000). The worst case scenario is that the cost could be in excess of £200,000.
184. These costs are high and are not commensurate with the modest size of the residential development. They must call into question the viability of the site. Given the unusual circumstances of the case and the long shopping list of expensive mitigation measures required to render the site acceptable, one would have expected the applicant to have provided some evidence of the means by which he will deliver the conditions. Unless the applicant has recently won the lottery, there is no prospect that all the conditions will be implemented. If the application is approved, the Council is likely to get drawn into protracted and expensive enforcement action.
185. It is not a good feature of planning to grant planning permission with conditions that result in a disguised refusal as is the case here. If the site cannot be delivered it cannot be said to make a contribution to the identified shortfall in pitches in the Borough.
186. Although reference is made to the site being occupied by the applicant and family members, specific occupants have not been identified so it follows that the personal circumstances of the proposed site occupants are not a material consideration before the decision maker. This is not a case where the human rights of proposed site occupants, the rights of any children and the educational/medical needs of the occupants weigh in the planning balance.

### *Conclusion*

187. The proposal would cause substantial harm which significantly and demonstrably outweighs the benefits of the proposal. It cannot be characterised as sustainable development in the terms sought by the Government. There are adverse impacts on the environmental and social dimensions of sustainable development and a neutral economic effect. The development does not accord with the thrust of the development plan and conflicts with important aspects of the Framework. The application should be refused.

## **The Case for Interested Parties**

*The material points are<sup>42</sup>:*

*Elizabeth Oakes*

188. She attended the Development Management Committee that dealt with the application, acting as a substitute for one of the Councillors who was unable to attend, and voted against the application. At that time the GTAA had not been published so no need for sites in Fylde had been identified. There is disappointment at the level of cooperation with Blackpool and Wyre in finding sites.
189. In relation to flooding the Environment Agency is only concerned with tidal and fluvial flooding not with that which arises from heavy rainfall and ponding. There are concerns about the sewage treatment plant discharging to open dykes. Flooding, sewage and contamination issues remain.
190. The applicant has not demonstrated, through tracking, that the access and egress would be satisfactory. Thames Street is not ideal so there would be a need for improvements which would not be funded by LCC. There is the possibility of the applicant seeking to vary the requirements of conditions as he is not in agreement with the extent of works required and the costs could be prohibitive.
191. The site is not suitable for housing or caravans for the settled population so why should it be suitable for gypsies and travellers.

*Roy Astridge*

192. Newton with Clifton Parish Council was granted Rule 6 status but decided not to present a case. Instead it relies on the case put by the NRA. The Parish Council commends the NRA on its excellent presentation to the inquiry.

## **Written Representations**

193. The Council reports that 185 letters of objection were received to the application as originally submitted with a further 104 letters received following re-consultation. In addition 9 representations have been received in response to the call-in notification. Most of the points made are covered in the evidence of the NRA. Other issues raised are:
  - The address of the site, 'The Old Builders Yard', infers that the site could be used for the whole range of builders' functions, whereas the LDC is only for the storage of materials;
  - There is no proven need for the site;
  - The fences and bund give the impression of isolating the site from the rest of the community;
  - The proposal would cause air pollution;
  - Waste on the site could attract vermin;

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<sup>42</sup> Summarised from representations made at the inquiry

- The site could be left vacant for periods whilst occupants travel, resulting in a lack of supervision to deal with emergencies and maintenance of the sewage treatment plant;
- The area could be used as a transit site which would reduce further the level of maintenance and increase traffic movements;
- There are issues about who will pay for any works required and who will supervise that works are carried out to the required standard;
- Traveller vehicles could obstruct access to farmland and a nearby farmyard, detracting from the viability of the agricultural business;
- Children from the site could have an effect on the performance of local schools.

194. A letter was received by the Council from the MP for Fylde, Mark Menzies. The main points raised are:

- Heavy vehicles would need to pass housing and the local school to access the land;
- There are issues with flooding and sewerage;
- It is understood that the Local Plan contains no obligation to provide permanent accommodation for travellers based on the size of the population in the Borough. There should not be an expectation that Fylde makes allowance for the large number of pitches needed in Blackpool.

### **Conditions**

195. SOCG1 contains a list of conditions agreed between the Council and applicant, save that the applicant does not consider that the condition relating to off-site highway works is necessary. A revised list of conditions<sup>43</sup> was produced during the inquiry to take into account matters raised during the proceedings and this formed the basis for discussions. The NRA accepts that the type of conditions put forward by the Council are necessary but has concerns about their enforceability and deliverability, taking into account the overall costs that would arise in meeting the requirements.
196. The standard condition requiring that development is begun within 3 years was put forward, although the NRA question whether this was appropriate as some development, such as fencing and the French Drain, has already taken place on site so the proposal is partly retrospective. A condition was suggested to list the plans to which the application relates. It was pointed out that reference will need to be made to the relevant site layout plan depending on whether any permission relates to a 3 or 4 pitch site.
197. Conditions were suggested to limit the use of the site to permanent occupation by gypsies and travellers and to control the number of caravans on the site. It was agreed that the caravans should be limited to tourers. In the interests of precision it was suggested that a maximum length of 7m (excluding tow bar) would be appropriate.

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<sup>43</sup> See FBC13

198. Conditions limiting the number and size of commercial vehicles per pitch and preventing commercial activities were put forward. A condition requiring details of the external materials of the amenity block was agreed as necessary. The NRA also suggested that the finished floor levels of the building should be required as there were no details on the plans. Concerns about any electrical generator causing noise could be addressed by a requirement for details of its siting and enclosure to be agreed.
199. Conditions were suggested to require details of lighting and hard and soft landscaping within the site. The potential to deal with such elements, including boundary treatments, parking, internal access roads, amenity space and refuse/recycling storage, through a site development scheme, was discussed. The Council, supported by the NRA, suggested that soft landscaping should be maintained for a period of 10 years whereas the applicant felt that a 5 year period would be satisfactory and follow normal practice.
200. The disposal of foul and surface water drainage would be dealt with by separate conditions. The NRA was concerned that the requirement for 'schemes' may not be sufficiently robust. The requirement for a Phase 2 Environmental Audit to investigate contamination and specify remedial action was agreed as necessary by all parties.
201. There was discussion about the necessity for off-site highway works and the extent of any such works. The applicant was of the view that the case for off-site works had not been proven but was prepared to undertake any reasonable measures. Should the improvements to the surface of Thames Street and lighting extend in both east and west directions? How many street lights would be required? If lighting is to be installed it should be bat friendly.
202. The NRA drew attention to the references within the evidence to the site being occupied by a single extended family and whether this could be controlled by condition in view of their concerns about the density of development on the site. The Council had not come across such a condition and, in the absence of named persons, felt the imposition of such a condition would not be sufficiently precise.

## Conclusions

*The numbers in square brackets [ ] refer back to earlier paragraphs in this report which are relevant to my conclusions.*

### **Main Considerations**

203. Taking into account those matters upon which the Secretary of State particularly wished to be informed and having regard to the evidence, the main considerations in this case are:
- (1) whether the proposal would be sustainable with particular regard to its previous use/current status, general location and accessibility;
  - (2) the effect on the character and appearance of the area;
  - (3) the effect on the setting of nearby listed buildings;
  - (4) the effect on highway safety;
  - (5) whether the site would be of acceptable environmental quality in terms of its layout and the risks posed by contamination and flooding;
  - (6) the effects on the local environment, with particular reference to foul drainage and noise;
  - (7) whether protected species, bats, would be adversely affected by the development; and,
  - 8) the need for, and provision of, gypsy and traveller sites in the area.
204. My report will address each of these considerations in the context of local and national policies and come to an overall conclusion on the proposal's consistency with the FBLP and the extent of its conformity with PPTS and the Framework.

### **Procedural Matters**

205. The description of development on the application form, as set out in the header to this report, should be amended to refer to the alteration to the site access [15]. However, notwithstanding that the Council referred to a more comprehensive description of development in its Committee Report [15], I take the landscaping shown on the site layout plan, including the fencing and mound, to be an indication only of the type of works that could be carried out as it was agreed at the inquiry that a detailed landscaping scheme would be required [199]. There is no certainly that a package sewage treatment plant would be suitable in this location [61, 114]. Therefore, the landscaping and treatment plant should not form part of the description of development. The description for a 4 pitch site should read:
- 'Change of use of land to use as a residential caravan site for 4 gypsy families each with 2 caravans, together with erection of amenity block and alteration to site access.'*
206. The applicant asked that I also consider a 3 pitch scheme as an alternative to the 4 pitch proposal [3]. There are two issues raised by this request – is the 3 pitch proposal materially different and would any party be prejudiced?
207. The application would remain fundamentally the same, a change of use of land to a gypsy site. Court judgements have held that limitations on the number of pitches and caravans need to be set by conditions attached to a planning permission rather than through the description of development [33]. The

substance of the proposal before the SoS, be it for a 3 or 4 pitch scheme, has not changed.

208. The 3 pitch plan was submitted towards the end of the inquiry after the NRA and other objectors had presented their evidence [127]. It was not the scheme that the Council considered. However, there would be no greater impact on any of the issues raised by objectors from a 3 pitch scheme. Indeed in respect of the some of the effects of the proposal, the 3 pitch scheme would cause less harm because it would be of lesser scale [78] and, it could be argued, would respond to some of the concerns of the NRA. Therefore, in accordance with the principles raised by the Wheatcroft judgement [78], no party would be prejudiced by the SoS considering the 3 pitch scheme as well as the 4 pitch scheme.
209. The description for a 3 pitch site should read:

*'Change of use of land to use as a residential caravan site for 3 gypsy families each with 2 caravans, together with erection of amenity block and alteration to site access.'*

### **Sustainability**

#### *(i) Previous Use*

210. The site, by reason of the presence of fixed surface infrastructure, including concrete hardstanding [5], falls within the definition of PDL contained within Annex 2 of the Framework. Based on what I saw the fixed surface infrastructure has not blended into the landscape in the process of time [81]. The core planning principle of encouraging the effective use of land by reusing land that has been previously developed contained within paragraph 17 of the Framework and repeated in paragraph 24 of PPTS applies [36, 80].
211. The existence of the LDC for the storage of builder's materials [13] as a potential fallback position [36] is of some relevance in assessing considerations such as the effect on character and appearance and highway safety. It is not for the decision maker on this application to determine whether the use certified by the LDC has been abandoned. However, in the circumstances and notwithstanding the representations made by the NRA [128], I consider it unlikely that the storage of builder's materials use has been abandoned or that the base use should revert to agriculture [36, 130]. In any event, whether the use has been abandoned or not does not alter the fact that the site is PDL [80].

#### *(ii) General Location*

212. The site is in an area designated by the development plan as open countryside as it lies outside the settlement limits of Newton [18]. However, it is not in an area where traveller sites are restricted such as Green Belt or SSSI [37, 83]. The nearest SSSI is some distance to the south [9]. Given that the site is no more than about 50m from the settlement boundary [18] it cannot be described as 'away from the settlement', a point accepted by all the main parties [131]. Moreover, lying within the rectangular area of plots encompassed by the three limbs of Thames Street and Grange Lane and in close proximity to dwellings and other buildings, the site has a physical relationship with the built-up area of the village [8, 10, 38, 82]. The site cannot be described as isolated either in terms of its distance from the settlement or by reason of the characteristics of the site and

its surroundings [82]. The appeal decision referred to by the applicant demonstrates that sites approaching 300m away from a village have been determined as not being in an isolated location away from an existing settlement [38]. Moreover, the application site compares favourably to most traveller sites that I have come across in terms of its proximity to a settlement and lack of isolation.

213. The proposal would accord with the locational criteria of Policy HL8 of the FBLP by avoiding restrictive designations such as Green Belt and SSSI and not being in 'open countryside away from settlements' [20, 37, 83]. This element of Policy HL8 is consistent with PPTS that strictly limits sites 'in open countryside that is away from existing settlements' [82]. In terms of Policy SP2, the proposal would fall into the category of a use appropriate to a rural area provided for by other policies of the plan, in this case Policy HL8 [19, 37]. Therefore, whilst gypsy and traveller sites are not referred to in Policy SP2 or its explanation, the policy would not be breached by the proposal [84, 131].

### *(iii) Accessibility*

214. The services available in the village and the site's proximity to them are a matter of fact [11]. The services are commensurate with a reasonably sized village. The village has the advantage of being served by a good bus service [39]. The site is within walking distance of the services [30], including the primary school and post office/convenience store. The nature of access for pedestrians and cyclists has some shortcomings [7, 132] but would, from my experience, still not dissuade occupiers of the site from accessing facilities by foot or cycle, particularly if better lit and surfaced. Indeed it would be a pleasant walk in daylight and good weather.
215. Although the site is not in or adjacent to an urban area [85], residential development can take place in Newton reflecting the Council's position that it is a sustainable settlement [40]. Like many villages of its size it does not possess health services [132] but, unlike the requirement for a primary school, there is no specific reference to health facilities in Policy HL8 of the FBLP [20]. Moreover, Kirkham does have a health centre and is accessible by a short bus ride or is a few minutes drive away [12].
216. All in all, the application site is well located in relation to accessibility to services given that it is within a rural area [85]. Criterion 5 of Policy HL8 would be met as the proposed site is within or close to a settlement which can provide a primary school, public transport, shops and other community facilities [20, 39, 85]. The proposal would allow access to appropriate health services and ensure that children can attend school on a regular basis in accordance with paragraph 11 of PPTS. There is no evidence that the proposal would place undue pressure on local infrastructure and services. For example school places are available [86].

### ***Character and Appearance***

217. All sites will be located in one LCA or another. In this case the application site is on the border of two LCAs [23]. The site and the immediate surroundings do not display the main characteristics of either the Fylde Coastal Plain (gently undulating farmland with large fields and blocks of woodland) or the Clifton and Hutton Enclosed Marsh (reclaimed and relatively enclosed marsh with large geometric fields and ditches). It is part of a transitional partially developed zone on the fringe of the village [133] between settlements and farmland on top of the small



escarpment to the north and the extensive low lying coastal marsh to the south [43]. For these reasons I would not describe the 'landscape' of the immediate area as one that is particularly sensitive to change. It is clearly distinguishable from the network of large fields and ditches with 'big skies' to the south of Thames Street [9].

218. The existing site has an unkempt appearance and seems to have done so for some time [88]. The character of the site was not materially altered by the actions of the owner in 2010 [14, 129]. Thus the baseline against which impact needs to be judged is not particularly sensitive [88].
219. The character of the immediate surroundings is mixed. The plots which end at Thames Street have an assortment of characteristics [8] with some visual detractors such as the sheds to the east. The development on the south side of Thames Street is also of variable quality, including the functional poultry sheds [9, 90, 134]. These characteristics are a reflection of the mix of development within this transitional zone [44].
220. The site itself benefits from the screening provided by vegetation and buildings to either side and the conifer trees opposite such that it is not readily visible from large sections of Thames Street, the wider village and the footpaths and bridleway hereabouts. Its location in a natural bowl is a further factor that adds to its lack of prominence [42, 46].
221. That said the development would be seen from various locations, including the sensitive receptor of Thames Street where it passes the site. Here the track functions primarily as a footpath and bridleway, forming part of the Lund Way [136]. The development would also be visible from the rear facing windows and gardens of properties in Grange Lane above, several of which I went to at the site visit. Although the main view from these properties is over the site to the coastal marsh and flood plains of the River Ribble [46], the form that any development takes would affect the degree of harm, particularly when seen close up.
222. Traveller sites are allowed to be located in the countryside, in certain circumstances. In this respect some visual impact and harm is likely to occur [41, 87, 133]. It is a matter of determining whether the impact falls within acceptable bounds.
223. Of the elements of the scheme, the amenity building would be close to Thames Street. However, its scale would be similar to the sheds to the east and the outbuilding in the curtilage of Dixons Farmhouse to the west. Its single storey form and simple design would be characteristic of the type of ancillary outbuilding that would be expected to be located at the foot of a long domestic plot. Although the south elevation would be blank [134], part of the building could be screened by fencing or soft landscaping along the roadside boundary. The materials of red brick and grey tile would be appropriate for the locality [45, 89,].
224. Apart from the building, the site would be occupied by touring caravans, vehicles, including commercial vans, and domestic paraphernalia. Such features are inevitable on a traveller site but would be perceived as a visual detractor [134]. However, the degree of impact that they have on the character and appearance of the surrounding area depends, to an extent, on the density of the development and the ability to soften the scheme with soft landscaping.

225. The site layout plans are very much an illustration of how a site of this size could be developed. They lack detail and do not appear to have been drawn up with particular regard to the character of the area [134]. They are also based on the assumption that the site is actually wider than it is [17].
226. The layout for the 4 pitch scheme as shown is tight as it is, without factoring in the inaccurate measurements. The caravan bases are shown close to the site boundaries and with limited space between them. Taking into account requirements for access, parking and sewage treatment, there would be limited space for any meaningful soft landscaping [135]. The proposed enclosure of all the site boundaries with close-boarded fencing would give the impression of isolation. The mound to the northern boundary, containing rubble, is unsightly when seen close up from neighbouring gardens. The domination of hard landscaping treatment and lack of opportunity for soft landscaping would not represent a positive enhancement of the environment and an opportunity to increase the site's openness, matters to which weight should be attached in accordance with paragraph 24 of PPTS.
227. So far as the 3 pitch layout is concerned, the inclusion of a hedgerow to the front boundary [16, 46], the removal of the reference to fencing and mound and the increased open space that would exist on the site between caravan bases and parking areas, give me the confidence that the lower density layout would allow sufficient scope for soft landscaping and provide the opportunity for the development to be well planned. Any lighting on the site could be low key [88]. A condition could be imposed to require a site development scheme so that all elements of layout and landscaping could be considered together [199]. This would provide an opportunity to enhance the site [46] and not enclose it with too much hard landscaping.
228. There would be some change to the character of Thames Street through surfacing and the provision of lighting, if off-site highway works were required [136]. However, discussion at the inquiry indicated that the extent of such works would be modest, comprising the filling of potholes and the installation of no more than 3 lighting columns which could be designed to have regard to the semi-rural location. As a result the low key highway works would not significantly change the quiet intimate character of Thames Street. Moreover, the relatively small numbers of additional vehicles [32] would not lead to any material increase in overrunning of the grass verges [136].
229. In conclusion the site would be capable of accommodating a small gypsy development comprising 3 pitches without having a significantly harmful effect on the character and appearance of the area, having regard to the characteristics of the site and surroundings. The amenity block would be of appropriate design. There would be space for structural landscaping. Therefore, there would be compliance with criteria 4, 8 and 9 of Policy HL8 of the FBLP. No important landscape features would be harmed so Policy EP10 of the FBLP would not be breached. External lighting can be controlled by condition to ensure compliance with Policy EP28 of the FBLP.
230. The requirements of Policy EP11 of the FBLP and the Framework for a high standard of design cannot be divorced from the reality of locating traveller sites in rural areas. A 3 pitch scheme on this PDL is capable of securing high quality design in the context of what it is [137]. The impact would be within acceptable

bounds. However, for the reasons given above I am not satisfied that the 4 pitch scheme would be acceptable.

### ***Setting of Listed Buildings***

231. The listed buildings of Dixon's Farmhouse and Dagger Cottage are part of the ribbon of close knit development fronting both sides of Grange Lane [10]. This building group is clearly distinguishable from the more loose knit character of development along the bottom of Thames Street. The buildings also sit appreciably above the site, some distance away and there is some intervening screening [92].
232. That said the curtilage of Dagger Cottage runs alongside the western boundary of the site [140]. The roof and chimney of Dagger Cottage are visible from the application site. English Heritage guidance explains that the setting of a listed building normally extends beyond its curtilage [92, 140].
233. The buildings and Dixon's Farmhouse in particular, as one of the principal farmsteads in the village, would have sat more in 'splendid isolation' in the past surrounded by farmland. However, that original setting has much changed over time with the development along Grange Lane, at Autumn Fold and in Dixon's Farmhouse curtilage itself [8, 10] hemming in the buildings to an extent. The part of the Dagger Cottage plot where it abuts the application site, with its scrub and marshy grassland [8], has little relationship with the listed building. Thus, even though there has been no physical development or change in character on the land directly between the application site and the buildings [140], this is a case where the surroundings of the heritage assets have evolved over time [93], in this case contracted.
234. The documentary evidence about the historic use of the application site does not prove any functional link between it and the listed buildings in the past [141]. Indeed records from 1937 indicate that the application site was connected with Newton Lodge Farm [47, 93].
235. The appeal decision referred to by the Council is 20 years old and precedes recent Government and English Heritage advice about setting. However, the conclusion that a building within the curtilage of Dagger Cottage but fronting onto Thames Street did not affect the setting is consistent with the approach that the Council has taken with the current application [91].
236. In conclusion the proposal would not affect the settings of the listed buildings and as a result would do the settings no harm. The settings of the listed buildings do not extend beyond their curtilages in the direction of the application site. The statutory test to pay special attention to the desirability of preserving or enhancing the setting of listed buildings does not apply [95, 139]. Therefore, the Framework tests within paragraphs 132 and 134 [142] and Policy EP4 of the FBLP do not come into play.

### ***Highway Safety***

237. The characteristics of Thames Street and its use for recreational purposes make it unsuitable for accommodating a significant number of vehicle movements [7, 143]. The evidence indicates that there would be a doubling of vehicle movements from a 4 pitch site, albeit less for a 3 pitch site. However, this is from a small base of no more than 40 trips per day [145]. In reality additional

movements would not exceed one additional vehicular movement every 15 to 20 minutes in peak periods [32, 50, 99, 145].

238. In addition the nature of Thames Street means that existing traffic speeds are low at less than 20mph. The main characteristics of Thames Street - its single vehicle width, the stretch of unmade surface and its alignment - would remain after any highway works such as the filling of potholes. So traffic speeds would remain low and below 20mph [50, 98]. Thames Street would continue to have characteristics similar to a quiet lane [50].
239. There is no record of reported accidents or conflict despite evidence of minor damage at the head of Thames Street West [144]. The informal passing places along the access route would remain so that vehicles and other road users could make way for others to pass on the infrequent occasions that users meet [7, 100]. There is good forward visibility along each of the three sections of Thames Street [100]. Even with the increase in vehicle movements, the overall numbers would remain small so conflict between drivers and other users, including cyclists, horse riders, pedestrians and children playing, would be unlikely [54]. It is of relevance that more vehicles currently use Thames Street West [145] whereas the site would be more likely to be accessed via Thames Street East.
240. The increase in vehicles passing through the village and affecting farm activity [193, 194] would be small. Given that it would be very difficult to get mobile homes onto the site it is appropriate that the site should be limited to touring caravans only. Caravans would only be moved off the site when occupiers would be travelling which would not be particularly frequent. Vehicles towing farm machinery and horse boxes already make use of the highway network [54, 97].
241. As traveller sites are often located in rural areas connections to the main highway network can sometimes be on roads which do not meet modern day highway design standards. In this case the site is not far from the nearest main road, the A583.
242. The layout plans show parking and turning space within the site [15, 16]. The applicant was witnessed turning a touring caravan within the site [102]. However, the turning demonstration was undertaken without other caravans and vehicles being on the site so was not realistic as to the position when the site is developed. Moreover, accommodating 4 pitches and adequate parking and turning space, particularly given the actual dimensions of the site, has not been shown to be necessarily achievable by the relevant site layout plan [146].
243. In contrast the 3 pitch layout does free up more space for parking and turning and, in my view, would allow sufficient space for vehicles to park and turn along with the other requirements such as amenity space and landscaping. On this basis there would be unlikely to be a need to park on Thames Street with the 3 pitch layout so the route would not be obstructed for other users, including emergency vehicles [146].
244. It would be unlikely that bin wagons would enter the site to pick up refuse or recycling material. Waiting on Thames Street for a few minutes would be a weekly occurrence, probably outside peak hours, and would not be an unusual situation in a rural area and not inherently unsafe [102]. Similarly the lack of gritting of Thames Street in winter would be a commonplace circumstance for a minor road in an edge of village location [144]. Given that occupiers of the site are likely to

have larger vehicles to allow towing, the gradients and any wintry conditions affecting Thames Street would be less of an obstacle.

245. The applicant puts forward the case that off-site highway works, particularly the lighting, are not necessary [52, 53, 201]. However, most pedestrians who currently use Thames Street do so for recreational purposes so have a choice about when they use the route. In contrast residential occupants of the application site without access to a vehicle would need to walk and cycle along Thames Street to access day to day shopping and educational needs and reach the bus route. To ensure that this route was more comfortable to use, particularly outside daylight hours, and to encourage travel by more sustainable modes than the private vehicle, surfacing and some lighting would be necessary. Works of a limited nature such as the provision of 3 lighting columns and the filling of potholes would improve the route for pedestrians and cyclists commensurate with the scale of the development whilst not materially altering the character of this byway. Based on what I saw and heard I would envisage that lighting columns would be placed at either end and halfway along the unmade section of Thames Street and that potholes would be filled throughout the unmade section. This would allow occupants a choice of route to the village.
246. In conclusion the effect on highway safety, particularly for pedestrians, would be acceptable, subject to the carrying out of off-site highway works. Criterion 7 of Policy HL8 of the FBLP would be met as there would be safe vehicular and pedestrian access [103]. Adequate parking would be provided by the 3 pitch scheme. I see Policy TR1 of the FBLP being primarily aimed at larger scale developments but the provision of better surfacing and lighting would ensure that the proposal would meet the requirement to improve facilities for pedestrians and encourage walking. The proposal, in achieving a safe and suitable access to the site and not resulting in severe residual cumulative impacts, would meet the Framework tests [96, 103].

### ***Environmental Quality***

#### *(i) Layout*

247. The size of site was confirmed at the site visit [17, 126]. Assumptions made by the applicant and the Council about the space available were on the basis of a site with greater dimensions. Even with the 4 pitch layout based on the greater width, some of the measurements caravan to caravan and caravan to site boundary are tight in comparison to the normal standards of 6m and 3m respectively [55]. It is therefore questionable whether the 4 pitch layout would provide the necessary separation to allow the minimum standards to be met [155], notwithstanding that the caravan bases shown are larger than required for a touring caravan [55].
248. In addition the 4 pitch layout would provide little space for other facilities and amenities. I have already addressed the issue of parking and turning space [242]. The layout does not show any amenity space, refuse and gas bottle storage or areas for small sheds [153]. The areas of hardstanding sandwiched between the caravans, parking areas and access road would provide little meaningful space for children to play. The only substantial open areas within the site would be taken up by the access road and parking areas which would not normally be suitable for children's play.

249. In contrast the 3 pitch layout does demonstrate to me that this level of development could be accommodated satisfactorily on the site as it would allow spacing standards to be met, provide more scope for amenity space between and to the side of the caravans and room for the other necessary facilities and amenities. Space for the provision of waste disposal and recycling facilities would combat the issue of vermin [193].
250. So far as meeting the guidance within the GPG is concerned, the document is primarily aimed at the design of public sites [56]. Whilst some of the advice is helpful, paragraph 1.13 recognises that small private sites are designed to meet the individual and personal preferences of the owner. In this case the proposal is for a small private site, probably to be occupied by the applicant's extended family [56]. Hence the provision of a single dayroom rather than an amenity block on each pitch would be acceptable [154].
251. Similarly the provision of a communal play area on a site of this size would not be necessary provided there is private space for children to play as would be the case with the 3 pitch layout [56, 153]. This would be no different to a small group of houses relying on private gardens for play with a public park provided nearby [106]. Although Policy H4 of the emerging FLP refers to the application of the GPG to all gypsy sites [22, 156], little weight can be attached to the Plan at its preferred options stage [22, 29].
252. In conclusion the 3 pitch scheme would be of acceptable environmental quality in terms of its layout and provide a good standard of amenity for future occupants of the land in accordance with one of the core planning principles of the Framework. There would also be adequate play space for children so promoting healthy lifestyles as referred to in paragraph 24 of PPTS. However, I am not satisfied, based on the evidence before me, that a 4 pitch layout would be of acceptable environmental quality.

*(ii) Contamination*

253. A Phase 1 study of potential contamination has been carried out on behalf of the applicant [15, 57, 158]. All parties are aware of the presence of some contaminated material on the site, including asbestos [107, 158]. The issue is whether it is necessary to carry out further investigation before the grant of any planning permission or whether a more intrusive and comprehensive investigation and any necessary remedial action can be dealt with by condition.
254. The nature of the contamination resulting from the importation of asbestos and builder's waste containing ash some time ago and the potential for oil/diesel spills is apparent and would not appear to be complex. The risk to controlled waters is low [57]. PPG indicates that developers should provide proportionate but sufficient site investigation information to determine the existence or otherwise of contamination. In this case the Phase 1 study is a proportionate response. Its recommendations are clear as to the need for a Phase II investigation to include soil sampling and for asbestos to be removed to a suitably licensed tipping location.
255. The NRA expert witness appeared to accept that the imposition of a suitably worded condition would be a satisfactory method of taking the matter forward [107]. The EA is content that a condition would address the issue of contamination [107]. PPG indicates that planning conditions can be used to

address site characterisation, the submission and implementation of a remediation scheme and monitoring.

256. The presence of some contamination will add to the costs of bringing the site forward for residential occupation. But that is a consequence of the effective use of PDL. The proposed development would allow the site to be remediated which would be of benefit to the community as a whole [58].
257. Subject to any necessary remediation I conclude that the site would be of acceptable environmental quality for the proposed residential use in terms of the risks posed by contamination and would not harm human health or the wider environment. There would be compliance with Policy EP29 of the FBLP on the basis of what is known about the site and the detailed measures that can be required through the imposition of a condition [108]. Although Policy EP29 does not specify that conditions can be used to deal with remediation, I consider that the two stage approach is proportionate in the circumstances rather than the interpretation that the further investigation is required pre-permission as advocated by the NRA [159, 160].

*(iii) Flood Risk*

258. The EA maps show that the site is in Flood Zone 1 which is not an area at risk from sources of flooding [161]. The site does not exceed 1ha in size and is not within a critical drainage area. Following PPG advice, based on the EA maps, a FRA is not required [59, 109].
259. Some parts of Thames Street are within Flood Zone 2 and very close to areas within Flood Zone 3 [161]. However, the site is generally slightly above the level of Thames Street and rises marginally from front to back [5, 6, 59,]. That said the survey undertaken on behalf of the NRA does indicate that certain points at the southern extremity of the site are slightly lower than parts of Thames Street to the east which are shown to be in Flood Zone 2 [163]. It is not surprising that this detailed information reveals some discrepancies in the relative heights of areas where two flood zones are in close proximity to each other. This is a reflection of the indicative nature of the EA Maps [162].
260. There is no evidence that the site has been subject to fluvial or tidal flooding, even when Thames Street has flooded when the nearby dykes overflow. The instances when ponding or standing water has occurred on the site appear to be more a result of a combination of existing ground conditions and heavy rainfall [59, 164]. Given the level difference between application site and Thames Street generally, I consider that it is reasonable to assume that the application site is still best defined as being in Flood Zone 1.
261. The two ways into the site along Thames Street pass through areas shown as Flood Zone 2. There have been occasions when Thames Street, in the vicinity of the application site, has flooded [164]. However, this flooding appears to have mainly coincided with significant rainfall events in the sub-region [110]. In normal rainfall conditions there is no evidence that Thames Street floods, albeit that the existing potholes would fill with water.
262. The filling of the potholes which would arise with the off-site highway works would have some benefits for the drainage of Thames Street by diverting water to the soft verges. Occupants of the site would be likely to have access to larger vehicles

than the norm. It is unlikely that residents of the site would be marooned [110, 161].

263. Much of the site is currently hard surfaced. Although a land drain has been installed towards the western boundary [5, 111], no proposals for surface water drainage of the site were before the inquiry. However, there would be an opportunity to provide a sustainable urban drainage system which would be capable of both improving the surface water drainage of the site itself and also ensuring that there would be no increase in run-off from the site [60, 111]. Indeed, through attenuation of surface water, run-off from the site could be reduced to greenfield rates. The details of surface water could appropriately be dealt with by condition. The LLFA would need to be satisfied that surface water run-off would not increase the risk of flooding elsewhere including as a result of any discharge to the dykes within Flood Zones 2 and 3 [166] but, with suitable attenuation, there is no reason why this could not be achieved.
264. There is the possibility that capping would need to take place as part of any site remediation [167]. However, it is unlikely that the site levels would be raised significantly. Any raising of the site would accentuate the difference between it and the nearby Flood Risk Zones 2 and 3. The implications of capping would be taken into account in the formulation of a surface water disposal scheme such that surface water would not run off onto adjoining land.
265. In conclusion the site would be of acceptable environmental quality in terms of the risks posed by flooding. There would be compliance with Policy EP30 of the FBLP as the development would not be subject to an unacceptable risk of flooding, create an unacceptable increase in the risk of flooding elsewhere or adversely affect the water environment as a result of increased surface water run-off. Satisfactory surface water drainage facilities can be provided in accord with criterion 10 of Policy HL8 of the FBLP. The development would not be in an area at highest risk from flooding so would be in accordance with the Framework and PPTS. The decision maker can take comfort from the fact that the EA remain of the view that a FRA is not required as set out in its statement to the inquiry dated 3 November 2014 [109].

### **Local Environment**

#### *(i) Foul Drainage*

266. It would not be feasible to connect to the mains sewerage system. The proposal is for the next best alternative, a package sewage treatment plant [15, 61, 113]. However, there are some doubts as to the suitability of a package sewage treatment plant due to the ground conditions on the site and in the area; the ponding that occurs which means that water could seep into the plant and lead to untreated foul water escaping; and the ability of the local dykes to take discharge in both dry and wet conditions [169, 170]. Based on what I heard at the inquiry I consider that these reservations have some substance, notwithstanding the lack of objections from consultees [114].
267. That said a package treatment plant is not the only option for foul drainage. The possibility of using a sealed cesspit was discussed at the inquiry. This is the least sustainable option and one that is not referred to in that part of the PPG that relates to wastewater infrastructure. But it is a foul drainage solution that is often used for small traveller sites.



268. A sealed cesspit would require emptying at intervals but the traffic movements that would result would not be significant. I see no reason to dispute the evidence from the applicant that the tank would not need to be particularly large for a small site of 3 or 4 pitches. There would be room within the 3 pitch layout to site a tank under the hardstanding and/or access road without interfering with the areas for the caravans themselves [61, 173].
269. The detailed proposals for foul drainage would need to be addressed by a condition [61, 114]. If a package sewage treatment plant was proposed, the Council, advised by relevant consultees such as the LLFA, would need to be satisfied that discharge into ground or a watercourse would be feasible in terms of ground conditions, water quality and flood risk. If not feasible then the applicant would have the option of a sealed cesspit which, in the circumstances, would be a satisfactory alternative [114].
270. Accordingly, the effects on the local environment, with particular reference to foul drainage, would be acceptable subject to the imposition of a condition. Policy EP25 and criterion 10 of Policy HL8 of the FBLP would be met as satisfactory sewage treatment facilities can be secured by condition [114, 175].

*(ii) Noise*

271. The proposal is for a residential use in a residential area [62]. Whilst the locality is generally quiet there is no reason why up to four families living on the site would give rise to noise significantly above what would arise from normal residential occupation. It may be the case that gypsy families spend more time outdoors than the settled community but the noise of children playing or adults talking would not be inherently uncharacteristic or offensive [116]. The vehicle movements arising, calculated to be no more than one additional vehicle per 15 to 20 minutes in the peak, would not generate significant noise or disturbance.
272. There could be an element of reverberation of sounds off surrounding properties and the site is in a dip, described as creating an amphitheatre effect [177]. However, these characteristics are far from unique in siting residential uses near to each other. There is no evidence that the built environment and topography would lead to unacceptable noise levels.
273. Concerns about the use of generators and the carrying out of business activities can be addressed by conditions [115]. If noise were to become a nuisance the Council has the ability to take action [116] but I see no reason why the residential use should generate unacceptable noise.
274. I conclude that the effects on the local environment, with particular reference to noise, would be acceptable. Criterion 3 and 6 of Policy HL8 and Policy EP27 of the FBLP would be met as the site is to be used for residential purposes only and the location of the site would not give rise to nuisance to neighbours or unacceptably result in harm by way of noise [117].

***Protected Species***

275. The site itself does not display any of the features that suggest that it is a habitat of any significance. Indeed its characteristics suggest that it is sub-optimal [118]. Some bat activity has been recorded along Thames Street [178] but I agree with the applicant that such activity would be typical of a quiet semi-rural area with trees, hedges and ditches nearby [63]. There are no trees or other vegetation on

the developable part of the site. No potential roosts would be directly affected by development. Any resurfacing would not affect the verges or ditches. The ditches, trees and hedges along Thames Street would remain [178].

276. The evidence before the inquiry was that some species of bats are attracted to lights whereas others such as the myotis may be disturbed [180]. However, it was agreed that it would be possible to design street lighting, described as 'bat friendly', which took into account those species which could be adversely affected [64, 119].
277. In conclusion protected species, bats, would not be adversely affected by the development provided that any street lighting installed is to be 'bat friendly'. So there would be no conflict with Policy EP19 of the FBLP.

### ***The Need for and Provision of Gypsy and Traveller Sites***

278. In December 2013, when the Development Management Committee considered the application, the 2014 GTAA had not been published [188, 193]. However, the recently produced GTAA does now establish a significant need and this is not disputed by any of the main parties [28, 65, 120, 181]. There has not been any provision recently to meet that need [120]. Nor is there any proposed or planned provision other than the application site. The GTAA recognises that the application site would contribute to meeting the identified need [65].
279. The Council does not currently have a development plan that sets pitch targets. The emerging FLP does not contain targets although that is not to say that a later iteration of the plan will not include some, taking into account the recently published GTAA. The Council suggests that a single local plan will allocate strategic and smaller sites but adoption is not anticipated until March 2017<sup>44</sup> and so the stage when firm allocations are made is some way off.
280. The development plan's failure to provide sites, including a 5 year supply of sites to meet the need for 17 pitches between 2014 and 2019 [28], represents a failure of policy [66]. This failure has statutory implications for the Council in terms of the Housing Act 2004 [68] and the Public Sector Equality Duty under the Equality Act 2010 [70].
281. The applicant is a gypsy. The occupation of the site can be controlled by condition so that it is a permanent site occupied by gypsies and travellers [193]. The proposal would meet some of the need. As a 3 pitch site it would provide about 18% of the short term need identified which is a significant contribution. Criterion 1, 2 and 4 of Policy HL8 are met as a need for gypsy sites has been identified, the application is made on behalf of gypsies and the size of the site is appropriate to meet a part of the identified need [120, 121].

### ***Other Matters***

282. There are a number of potential costs arising from the development and compliance with conditions [182, 183, 190]. The costs associated with the provision of drainage and services such as electricity would apply to many gypsy and traveller sites and would certainly not be out of the ordinary. The costs of remediation are a consequence of taking on PDL and should not be held against

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<sup>44</sup> Website statement by Fylde Borough Council produced on 26 November 2014

the applicant. The highway improvements would be modest and commensurate with a three household development.

283. The applicant suggests that the costs would not be prohibitive when split between 3 or 4 families [67]. It is also of relevance that many gypsies and travellers are experienced in undertaking ground works and the like. Such works would need to reflect the details agreed through conditions. It would be for the Council to ensure compliance [193]. There is insufficient evidence that the costs associated with developing the site would make it unviable.
284. In any event the test for not imposing conditions is when there is no prospect of them being complied with during the lifetime of the permission [122]. This is a high bar which is not reached in this case. Moreover, if the applicant decided that the site was too expensive to develop he could walk away. Alternatively an applicant who sought to cut corners to avoid some of the costs through not complying with conditions would not be able to implement the scheme or, if he did carry out lesser works, could be subject to enforcement action [123, 184]. But there is no evidence to suggest that any of these scenarios would result.
285. I consider that Newton as a whole is the nearest settled community in terms of paragraph 12 of PPTS rather than the cluster of house around Grange Lane. The main parties agree that the development would not dominate the community of the village of Newton [30]. Moreover, even if Grange Lane were judged to be the nearest settled community three or four households could not be said to dominate a group of around 30 dwellings either physically or socially [31]. The scale of the development and the sites proximity to the village should allow the promotion of peaceful and integrated co-existence between the occupants and the settled community in accordance with paragraph 11 of PPTS.
286. Traveller children may not reach the attainment levels of the settled population but this is often a reflection of their lack of a settled based [193]. It is all the more reason for providing more settled bases so that children are able to attend school on a regular basis and integrate with the settled community as promoted by paragraphs 4 and 11 of PPTS. Attainment levels are certainly not a reason to exclude children from what should be an inclusive education system.
287. There is no evidence that the proposed development would cause air pollution [193]. Environmental legislation is able to control nuisance caused by activities such as burning of waste materials. Families occupying the site may travel during certain periods of the year to attend horse fairs or other events. But it is unlikely that the site would be vacant for long periods such that the facilities would not be properly supervised and maintained [193].
288. The application does not include details of any specific occupants so personal circumstances are not a consideration [186]. That said the proposition that the decision would have implications for Human Rights and the best interests of children has some merit as the site would provide a settled base for a number of families who are likely to be without such provision or alternatively free up pitches elsewhere [69]. This is in the context of the need for sites within the Borough and the wider area and the lack of alternative sites.
289. The decision to call in the application and its affect on the right of due process is not a matter upon which I am able to comment [71].

## **Conditions**

290. The conditions put forward and discussed at the inquiry are dealt with at paragraphs 195 to 202 of this report. With regard to the need for a commencement condition, the operational development undertaken in 2010 is now immune from enforcement action and was not necessarily related to the proposed use of the site so it is probable that the development has not commenced [36, 196]. In the circumstances it would be appropriate to apply a 3 year commencement condition. A condition specifying the plans to which the permission applies should be imposed for the avoidance of doubt and in the interests of proper planning. For the reasons given earlier in this report the 3 pitch scheme is the one that should be permitted. That said, as the layout is indicative and consideration has not been given to a scheme of landscaping and other site requirements, then the site layout plan and fencing should not be included in the list of plans [196, 205].
291. It is necessary to limit occupation of the site as the proposal has been considered on the basis of planning policies for gypsies and travellers and taking into account the impact of one that is permanently occupied, not a transit site [121, 197]. Control should be exercised on the number of pitches and caravans to give effect to a 3 pitch site [33, 197]. It is necessary to restrict the use to touring caravans [15, 240] in view of the limitations of the highway network. Specifying a maximum length of the caravans would give precision [197].
292. Limitations on the number and size of commercial vehicles and controls on business activities are needed due to the nature of the highway network and to protect the living conditions of nearby residents [117, 198, 273]. Details of the materials for the amenity block are required so that its appearance would be sympathetic to the area [89, 198]. I also agree that finished floor levels of the dayroom need to be agreed as they have not been provided and it is important that the height of the building close to Thames Street is controlled in the interests of visual impact [198]. The use of any electrical generator needs to be controlled to prevent undue noise emanating from the site [115, 198, 273].
293. On the basis that the site layout plan is indicative [290] and no details of soft and hard landscaping, amenity space, refuse and recycling areas, gas bottle storage and lighting have been submitted, a site development scheme is appropriate to allow all these elements to be considered comprehensively [46, 88, 90, 227]. I do not see any justification for going beyond a 5 year maintenance period for the landscaping as the site is not in a particularly sensitive area and would not be subject to significant structural landscaping [199].
294. There is clear justification for details of foul and surface water drainage to be submitted as further information is needed to demonstrate a method that would be satisfactory taking into account local conditions [60, 61, 114, 175, 263, 269, 270]. It is considered that requirements for schemes to be approved, implemented and managed and maintained would make such conditions sufficiently robust [200]. Similarly the presence of contamination on the site means that a Phase 2 Contamination Report is needed to deal with more intrusive investigations and remediation [57, 107, 200, 257].
295. The access into the site would need to be constructed of bound material. There is a requirement for some limited off-site highway works to ensure that the routes to the village are appropriate for occupants who wish to walk or cycle to local

facilities [100, 147, 214, 245]. The street lighting would need to be bat friendly [64, 119, 276].

296. With regard to controlling occupation of the site to an extended family, without names such a condition would not be sufficiently precise [202]. In reality a small scale 3 pitch private site is highly likely to be occupied by an extended family. Therefore, although the proposal is put forward on the premise that it would be occupied by an extended family group, I do not consider that it is necessary to control this element [157].

### ***Overall Conclusions***

297. In considering the proposed use against the main considerations which I have identified I am not satisfied, based on the evidence, that a 4 pitch scheme would be acceptable for reasons relating to impact on character and appearance [230], lack of parking and turning space [242] and the environmental quality of the layout [252].
298. However, the use of the land as a small scale self-contained residential gypsy site would be sustainable with particular regard to its previous use/current status, general location and accessibility [211, 213, 216]; would not affect the setting of nearby listed buildings [236]; would have an acceptable impact on highway safety [246]; would be of acceptable environmental quality in terms of the risks posed by contamination and flooding [257, 265]; would have no adverse effects on the local environment, with particular reference to foul drainage and noise [270, 274]; and would not adversely affect bats [277]. Conditions would ensure that the potential adverse impacts of the development would be made acceptable.
299. Moreover, a 3 pitch scheme would be capable of being accommodated on the site with an impact on character and appearance which would be within acceptable bounds [229, 230], providing adequate space for parking and turning [243] and ensuring the provision of a suitable layout so that the environmental quality of the proposal would be satisfactory [252]. A 3 pitch scheme would have less impact on the highway network than a 4 pitch scheme.
300. In addition to the lack of any significant adverse impact from a 3 pitch scheme there are benefits that need to be weighed in the balance. Although I would judge that the impact of the proposal on most of the considerations set out above would be neutral, the use of PDL, the location adjacent to a settlement and its relatively good accessibility to services are factors that weigh in favour of the development.
301. In addition, considerable weight should be attached to the unmet need for gypsy sites in the Borough and wider area [65, 120, 181]. Added to the need issue is the lack of a 5 year supply and the consequent failure of policy [280] which also add weight in favour of the proposal, particularly in the context of the Housing Act and Equality Act [280]. Even though specific personal circumstances do not come into play, the proposition that granting planning permission would also have benefits in terms of Human Rights and the best interests of children, through providing a settled base, access to education and health care and improved well being, should weigh in favour of the proposal [288].
302. Even if some harm is ascribed to the impact on the character and appearance of the area [229] and possible use of the least sustainable drainage option [267], the benefits would still significantly outweigh such harm.

303. The 3 pitch proposal would comply with Policy HL8 of the FBLP and its ten criteria [213, 216, 229, 246, 265, 270, 274, 281]. There would be no conflict with Policy SP2 of FBLP [213]. I have found compliance with other relevant policies of the development plan [229, 230, 246, 257, 265, 270, 274, 277], subject to the imposition of suitable conditions.
304. Judged against national policy, in terms of PPTS, the site would be sustainable economically, socially and environmentally (paragraph 11); would meet the need for sites (paragraph 22); would not be away from a settlement and be small scale (paragraph 23); and would make effective use of PDL. As a 3 pitch development it would be capable of being well-planned and soft landscaped, providing sufficient play areas and not being enclosed with too much hard landscaping (paragraph 24).
305. The proposal would contribute to the supply of housing including the 5 year supply. The proposal would achieve social gains in providing a settled base for 3 families and economic gains in allowing some of the occupants to work in the area. The environmental impacts when considered in the round would be beneficial overall. Although policies for the supply of traveller sites should be considered out of date or absent as there is no 5 year supply, those criteria-based and generic policies of the development plan that do exist and have particular relevance to the specific proposal, including Policy HL8, are consistent with the Framework and PPTS and are up to date. This is a case where the proposal accords with the development plan and should be approved without delay in accord with paragraph 14 of the Framework. The presumption in favour of sustainable development applies.
306. In conclusion planning permission should be granted but on the basis of a 3 pitch scheme.

### **Recommendation**

307. I recommend that planning permission be granted for the development described at paragraph 209 of this report subject to the conditions set out in Appendix C.

*Mark Dakeyne*

INSPECTOR

## **APPENDIX A - APPEARANCES**

### **FOR THE NEWTON RESIDENTS ASSOCIATION:**

Jack Smyth of Counsel	Instructed by Tufnell Planning
He called	
Karen Smith MIHE	Sanderson Associates
Cath Retberg	Environment Manager
BSc MIEMA C Env	
Annette Sharkey	Local Resident
Louise Whalley	Environment Manager
BSc (Hons) AEMA	
James Wragg	Geosyntec Consultants Ltd
BSc (Hons) FGS	
Peter Sharkey	Local Resident
Robert McCormick	Local Resident
Michael Gornall	Local Resident
David Thompson CIMA	Senior Management Accountant
Peter Tufnell Dip TP MRTPI	Tufnell Town and Country Planning

### **FOR THE LOCAL PLANNING AUTHORITY:**

Jonathan Easton of Counsel	Instructed by the Council's Legal Services
He called	
Anthony Glenn Robinson	Senior Engineer, Lancashire County Council
HND	
(C Eng)	
Robert Clewes MCD MSc	Planning Officer, Fylde Borough Council
Michael Atherton	Senior Planning Officer, Fylde Borough Council
BA (Hons) BP MRTPI	

### **FOR THE APPELLANT:**

Alan Masters of Counsel	Instructed by Philip Brown Associates Limited
He called	
Philip Brown BA (Hons)	Philip Brown Associates Limited
MRTPI	

### **INTERESTED PERSONS:**

Elizabeth Oakes	Fylde Borough Councillor
Roy Astridge	Newton with Clifton Parish Council

**APPENDIX B – PLANS AND DOCUMENTS**

Reference	Core Documents	Date
CD1	Planning policy for traveller sites DCLG	March 2012
CD2	Fylde Borough Local Plan As Altered	October 2005
CD3	Fylde Borough Local Plan to 2030 Part 1 Preferred Options	2013
CD4	Preferred Options Draft Consultation Comments to H4	
CD5	National Planning Policy Framework DCLG	March 2012
CD6	Fylde Coast Authorities GTAA Final Report	September 2014
CD7	Lancashire Sub Regional GTAA Final Report	May 2007
CD8	Report to Special Meeting of Fylde Council Development Management Committee (DMC)	18 December 2013
CD9	Late Observation Schedule to DMC	18 December 2013
CD10	DMC Minutes	18 December 2013
CD11	Consultation: planning and travellers DCLG	September 2014
CD12	Appeal Decisions Ref: APP/M2325/C/10/2134060-74 and 2134032 Land south of Fairfield Road, Hardhorn, Poulton-Le-Fylde	18 August 2011
CD13	Written Ministerial Statement by Nick Boles MP on local planning	6 March 2014
CD14	The Setting of Heritage Assets English Heritage Guidance	October 2011
CD15	Historic Environment Good Practice Advice: Planning Note 3: The Setting of Heritage Assets (Consultation Draft)	11 July 2014
CD16	Lawful Development Certificate and Plan relating to application site	29 August 2008
CD17	12/0118 Planning Application with covering letter including Design and Access Statement	20 Feb 2012
CD18	Application Plans	Undated
CD19	Extracts from Designing Gypsy and Traveller Sites – Good Practice Guide DCLG	May 2008
CD20	Environment Agency consultation response on planning application	17 April 2012
CD21	Natural England consultation response on planning application	11 April 2012
CD22	United Utilities consultation response on planning application	29 March 2012
CD23	Lancashire County Council (LCC) Ecology consultation response on planning application	30 April 2012
CD24	LCC Highways consultation response on planning application	1 May 2012
CD25	Sanderson Associates Transport Report on planning application on behalf of NRA	16 July 2012
CD26	Sanderson Associates Flood Risk Assessment Screening Study on planning application on behalf	August 2012



	of NRA	
CD27	Newton with Clifton Parish Council consultation response on planning application	3 May 2012
CD28	Letter from Environment Agency on planning application	28 May 2012
CD29	Letter to FBC from Philip Brown Associates Ltd on highway issues	28 August 2012
CD30	Ford Consulting Group Contaminated Land Report on behalf of NRA	6 August 2012
CD31	Preliminary Assessment of a proposed sewage treatment facility by Cath Retberg	June 2012
CD32	Letter to Michael Gornall (NRA) from Environment Agency	9 January 2013
CD33	Letter to FBC from Environment Agency	12 March 2013
CD34	Letter to FBC from Philip Brown Associates Ltd	16 April 2013
CD35	Phase 1 Environmental Audit Report by T J Booth Associates for applicant	January 2013
CD36	Amended application form questions 4 to 8	2 July 2013
CD37	Newton with Clifton Parish Council further consultation responses on planning application	1 and 7 August 2013
CD38	Letter from DCLG (NPCU) directing call-in of planning application	28 March 2014
CD39	United Utilities further consultation response on planning application	13 August 2013
CD40	Environment Agency further consultation response on planning application	15 August 2013
CD41	Extract from Planning (Listed Building and Conservation Area) Regulations 1990 Article 5a	As amended
CD42	Framework Technical Guidance (Flood Risk) pages 2 and 3	March 2012
CD43	LCC Highways further consultation response on planning application	13 September 2013
CD44	LCC Local Transport Plan 2011-2021	May 2011
CD45	LCC Ecology further consultation response on planning application	12 August 2013
CD46	Fylde Coast Strategic Housing Market Assessment	December 2013
CD47	PPG extract– Foul Drainage	March 2014
CD48	Newton with Clifton Parish Council letter about Statement of case	19 May 2014
CD49	Fylde Borough Council Local Plan Proposals Map Extract	October 2005
CD50	A Landscape Strategy for Lancashire – Landscape Character Assessment LCC	December 2000
<b>Reference</b>	<b>Statements of Case</b>	<b>Date</b>
NRA	NRA Statement of Case Ref: T1118	30 April 2014
FBC	FBC Statement of Case Ref: 173/njm	3 June 2014
APP	Applicant's Statement of Case Ref: 14/115	
<b>Reference</b>	<b>Proofs of Evidence/Statements</b>	<b>Date</b>
FBC1	Proof, summary and appendices of Michael Atherton (Planning)	4 November 2014

FBC2	Proof, summary and appendices of Rob Clewes (Setting of Listed Buildings)	4 November 2014
FBC3	Proof, summary and appendices of Anthony Glenn Robinson (LCC Highways)	4 November 2014
APP1	Proof, summary and appendices of Philip Brown	4 November 2014
NRA1	Proof, summary and appendices of Peter Tufnell	4 November 2014
NRA2	Conservation Advisory Note In Relation To Bats and appendices	4 November 2014
NRA3	Proof on Community Amenity and appendix	4 November 2014
NRA4	Proof and appendices of James Wragg	4 November 2014
NRA5	Preliminary Assessment of Sewage Treatment Plant and appendices – Cath Retberg	4 November 2014
NRA6	Estimate of costs incurred to satisfy requirements for development	4 November 2014
NRA7	Proof on flooding issue and appendix	4 November 2014
NRA8	Proof, summary and appendices of Karen Smith	4 November 2014
NRA9	Statement on Noise and General Disturbance - Acoustic Amenity	4 November 2014
NRA10	Statement on timeline and appendix	4 November 2014
NRA11	Assessment of proposed effects on landscape character, residential amenity and visual amenity and appendices	4 November 2014
<b>Reference</b>	<b>Documents submitted at the Inquiry</b>	<b>Date</b>
SOCG1	Statement of Common Ground between applicant and FBC	1 December 2014
SOCG2	Statement of Common Ground between FBC and NRA on highway and transport issues	November 2014
APP2	Appeal decision Ref: APP/T0355/A/2205599 dated 30 October 2014 – Land west of Forest Green Rd, Near Windsor	2 December 2014
APP3	Details of Package Sewage Treatment Plant	2 December 2014
APP4	Revised Site Layout showing 3 pitches	9 December 2014
APP5	Wyre Borough Council Schedule of Standard Conditions for Residential Sites	9 December 2014
APP6	Closing Submissions for the applicant	2 February 2015
FBC4	Appeal decision relating to Land to rear of Dagger Cottage	2 December 2014
FBC5	Opening Statement for the Council	2 December 2014
FBC6	Fylde Borough Local Plan Proposals Map	2 December 2014
FBC7	Lancashire County Council Highways Works Costing	3 December 2014
FBC8	E-mail dated 7 November 2014 from Principal Officer Environmental Protection Team	3 December 2014
FBC9	Extract Lancashire and Blackpool Local Flood Risk Management Strategy 2014-2017	4 December 2014

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FBC10	E-mail dated 12 November 2014 from Consent and Enforcement Officer Flood Risk Management LCC	4 December 2014
FBC11	Extract from NPPG relating to conditions relating to land not in control of applicant	4 December 2014
FBC12	Extract from NPPG relating to land contamination	4 December 2014
FBC13	Revised Draft Conditions	9 December 2014
FBC14	Closing Submissions for the Council	2 February 2015
NRA12	Tracked changes/comments on SOCG1	2 December 2014
NRA13	Specification for Digital Sound Level Meter	4 December 2014
NRA14	Closing Submissions for the NRA	2 February 2015

## **APPENDIX C – Recommended Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (Scale 1:1250), Proposed Side Elevations of Amenity Block, Proposed Front and Rear Elevations and Floor Plan of Amenity Block (all Scale 1:100).
- 3) The site shall only be occupied as permanent accommodation and not as a transit site and only by gypsies and travellers as defined in Annex 1 (Glossary) of Planning Policy for Traveller Sites March 2012 (or any policy guidance amending or adding thereto).
- 4) There shall be no more than 3 pitches on the site and on each of the 3 pitches hereby approved no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed at any time.
- 5) Any caravans positioned on the site shall be touring caravans and shall be capable of being lawfully moved on the public highway, without division into separate parts, and shall not exceed 7m in length (excluding tow bar).
- 6) No more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted, and each vehicle shall not exceed a maximum gross weight of 3.5 tonnes.
- 7) No commercial activities shall take place on the land, including the storage of materials.
- 8) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the amenity block and details of the finished floor levels of the amenity block hereby permitted have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) No electrical generator shall be used on the site unless it has been sited and enclosed in accordance with details which shall have been previously submitted to, and approved in writing by, the local planning authority.
- 10) No development shall take place until a site development scheme, based on a detailed site survey, has been submitted to, and approved in writing by, the local planning authority to include:
  - (i) a landscaping scheme to include: surfacing materials for all hard standings; screening to the refuse and recycling area; fencing and gates; the layout of amenity areas; and planting plans (including cultivation and other operations associated with plant and grass establishment; schedules of plants, noting species, plant sizes and proposed numbers/densities);
  - (ii) details of the layout and surfacing of the internal access road and parking and turning areas;
  - (iii) provision for refuse and recycling facilities and gas bottle storage; and,
  - (iv) external lighting.The site development scheme shall include a programme of implementation. The development shall be carried out in accordance with the approved details and programme. No surfacing, fencing, gates or

- lighting shall be carried out or erected on the site other than that approved pursuant to this condition.
- 11) Any trees or plants included within the landscaping scheme required by condition 10 which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
  - 12) No development shall commence until a scheme for the disposal of foul drainage from the site (including details of the future management and maintenance of the scheme) has been submitted to, and approved in writing by, the local planning authority. The site shall not be occupied for residential purposes until the foul drainage works have been completed in accordance with the approved scheme. Thereafter, the approved foul drainage shall be managed and maintained in accordance with the approved details for the lifetime of this development.
  - 13) No development shall commence until a scheme for the surface water drainage of the site (including details of the future management and maintenance of the scheme) has been submitted to and approved in writing by the local planning authority. The site shall not be occupied for residential purposes until surface water drainage works have been completed in accordance with the approved scheme. Thereafter, the approved surface water drainage shall be managed and maintained in accordance with the approved details for the lifetime of this development.
  - 14) Prior to the commencement of the development an investigation and risk assessment report of any contamination on the site shall be completed in accordance with a scheme that shall have been submitted to, and approved in writing by, the local planning authority. If the report indicates that remediation is necessary, details of a remediation scheme shall be submitted to, and approved in writing by, the local planning authority. The remediation scheme shall include all works to be undertaken, remediation objectives and remediation criteria, a timetable of works and site management procedures and shall be carried out in accordance with the approved details and timetable of works. Written notification of the commencement of the remediation scheme shall be given to the local planning authority at least 2 weeks before the start of the remediation works and a validation report that demonstrates the effectiveness of the remediation carried out shall be submitted to, and approved in writing by, the local planning authority prior to the first occupation of any of the development hereby permitted. If during the course of the development contamination not previously identified is found to be present at the site, no further development shall be carried out until an amendment to the remediation scheme giving details of how to deal with this contamination has been submitted to, and approved in writing by, the local planning authority. The remediation measures shall thereafter be carried out in accordance with the approved amended details.
  - 15) No part of the development hereby permitted shall commence until a scheme for the construction of the site access and off-site highway works has been submitted to, and approved in writing by, the local planning authority. The site access works shall include a hard surface using tarmac,

concrete or block paving for a minimum of 5m from the highway into the site. The off-site works shall include measures to fill and surface potholes and provide street lighting columns on the un-surfaced section of Thames Street which runs in an east-west direction. The street lighting shall be designed to take into account the impact of lighting on bat activity in the vicinity. The site shall not be occupied until the site access and the off-site highway works have been completed in accordance with the approved details.



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

#### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.