

SCHEDULE B

Applications
determined by other
authorities.

SCHEDULE B

Item No: 16

Between 28/05/2021 and 08/07/2021

Appn Ref No:
19/0905**Applicant:**
Gleeson Homes**Parish:**
Carlisle**Date of Receipt:**
27/11/2019 16:01:18**Agent:**
PFK Land and
Development**Ward:**
Belah & Kingmoor**Location:**
Land at Deer Park (land between Kingmoor
Industrial Estate & Saint Pierre Avenue, Kingmoor
Road), Carlisle**Grid Reference:**
338819 557621**Proposal:** Erection Of 80no. Dwellings

REPORT**Case Officer:** Stephen Daniel**Decision on Appeals:****Appeal Against:** Appeal against refusal of planning perm.**Type of Appeal:** Written Representations**Appeal Decision:** Appeal Allowed with Conditions **Date:** 24/06/2021

A copy of the Notice of the decision of the Planning Inspectorate is printed following this report.



Appeal Decision

Site Visit made on 27 April 2021

by Mr Mark Brooker Inspector

an Inspector appointed by the Secretary of State

Decision date: 24 June 2021

Appeal Ref: APP/E0915/W/21/3266806

Land at Deer Park, Carlisle CA3 9PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Gleeson Homes against the decision of Carlisle City Council.
 - The application Ref 19/0905, dated 25 November 2019, was refused by notice dated 9 December 2020.
 - The development proposed is described as the erection of 80no. dwellings.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 80no. dwellings at Land at Deer Park, Carlisle, CA3 9PS in accordance with the terms of the application, Ref 19/0905, dated 27 November 2019, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs has been made by Gleeson Homes against Carlisle City Council. This application is the subject of a separate decision.

Main Issue

3. The main issue is whether or not the appeal scheme makes adequate education provision for future residents.

Reasons

4. Policy CM2 of the Carlisle District Local Plan (the LP) seeks, amongst other matters, contributions to assist in the delivery of additional school places required as a result of new development.
5. The first consultation response to the application from Cumbria County Council, the education provider in the area, identified that "the proposed development would yield 29 children" and thereby generate a need for 2 infant places and 10 junior places at primary level and 12 secondary school places, resulting in contributions of £213,948 and £294,648 respectively. This is not disputed by the appellant and an executed S106 obligation securing this and other contributions has been submitted in support of the appeal.
6. The Council's Statement of Case refers to a lack of progress being made regarding the provision of a primary school in north Carlisle, the expansion of secondary schools and specifically, ongoing uncertainty regarding the creation of a new school at Crindledyke as part of a phased housing development there.
7. The Council also refers to "the existing problem of a lack of school places". However, the consultation responses from Cumbria County Council clearly

identifies that “there is no current shortage of places” and I have no substantive evidence to the contrary.

8. The second consultation response from Cumbria County Council is entirely unambiguous, while referring to the provision of school place planning in respect of the Story Homes development at Crindledyke, the response states that “...the county council is entirely supportive of sustainable housing development in Carlisle, and would not expect the issue of school place planning to impact on the decision of the Planning Committee on the proposed Deer Park development”.
9. Consequently, on the basis of the evidence before me I am satisfied that the appeal scheme makes adequate education provision for future residents and is not therefore in conflict with the provisions of Policy CM2 of the LP.

Other Matters

10. Consultation with regards the planning application garnered significant public interest and objections to the appeal scheme. The objections referred to various subjects including the principle of development, trees, ecology and highways.
11. The appeal site is allocated for housing development¹ in the LP and the Officer’s report details that this has been the case for the last two iterations of the local plan. As such I am satisfied that the principle of development is acceptable.
12. I saw at the site visit that the site is verdant in character with established trees and open grassed areas, including a number of trees subject of a Tree Preservation Order. In support of the appeal the appellant has submitted a Tree Survey including Root Protection Areas and an Arboriculture Method Statement. The submitted plans show the retention of the key trees on the site with minimal felling. On the basis of the evidence before me I am satisfied that the appeal scheme will not cause unacceptable harm to the trees on the site.
13. With regards Ecology, I note objectors refer to the position of the site between two nature reserves and the existing value of the site to wildlife and local residents. An Extended Phase 1 Habitat Survey of the study area has been undertaken and that, as detailed on the Officer’s report an “Ecological Surveys & Assessments Report was undertaken in March 2020, in relation to bats, red squirrels and great crested newts” (GCN).
14. The submitted reports do not preclude the development of the site and Natural England has been consulted, raising no objection. On the basis of the evidence before me I am satisfied that the proposed development, subject to appropriately worded conditions being placed on any resulting planning permission, would not have an adverse impact on ecology.
15. A number of residents have raised highway safety issues, with particular regards to Kingsmoor Road. The application was accompanied by a Transport Statement that included amongst other matters, a review of the historical collision data which, as detailed in the Officer’s report “demonstrated that there are no existing accident blackspots in the vicinity of the site and no safety concerns related to the operation of a priority controlled junction on this section of Kingmoor Road”. Furthermore, I note that the local Highway

¹ Policy H01 - Site U16, Carlisle District Local Plan 2015-2030

Authority were consulted, and no objection was raised. Therefore, on the basis of the evidence before me I am satisfied that the appeal scheme would not harm highway safety.

Conditions

16. The Statement of Common Ground (SoCG) agreed by the parties details an extensive list of conditions to be attached to any planning permission resulting from the appeal. I have considered the suggested conditions in the context of advice set out in the Planning Practice Guidance.
17. In the interests of clarity and certainty I have included conditions regarding the life of the permission and an extensive list of approved plans agreed between the parties. In the interests of the character and appearance of the area I have included conditions requiring the submission of materials to be used in the exterior of the dwellings, the details of hard and soft landscaping and boundary treatments.
18. In the interest of the environment I have included conditions relating to foul and surface water drainage, the provision of SUDS ponds and the requirement of a management plan for such. Furthermore, in the interests of the environment and clarity I have included conditions in respect of wildlife enhancement measures, relocation of orchids, lighting and tree protection measures.
19. In the interests of the living conditions of occupiers of properties neighbouring the appeal site I have included conditions relating to the existing and proposed ground levels and hours of construction.
20. In the interest of the environment and in accordance with the SoCG I have included a condition requiring the provision of an electric vehicle charging point. To ensure the appropriate remediation of the site in the interests of the environment and future occupiers I have included relevant conditions relating to remediation schemes and the necessary work.
21. I have included a condition requiring a Construction Management Plan in the interests of the environment, highway safety and in the interests of the living conditions of the occupiers of neighbouring properties.
22. In the interests of highway safety I have included conditions relating to the standard of construction of the carriageway, footways, footpaths and cycleways, the pedestrian crossing of Kingmoor Road, pedestrian ramps at road junctions, residential driveways, visibility splays and emergency vehicle access.
23. Turning to Permitted Development (PD) rights, the SoCG agreed a condition removing key Permitted Development Rights from the approved properties. The Framework states that planning conditions should not be used to restrict national PD rights unless there is clear justification to do so. The Planning Practice Guidance also advises that conditions restricting the future exercise of PD rights and conditions restricting future changes of use may not pass the test of reasonableness or necessity.
24. However, if a proposed development would only be acceptable if certain PD rights are not exercised in the future, it may be necessary and reasonable to impose a condition to withdraw those rights. While the parties have not provided any detailed substantive justification specifically for this condition the

appeal plans nonetheless show that the dwellings would occupy substantive proportions of the respective plots and that further extensions and alterations may result in harm to the living conditions of the occupiers of the host property and neighbouring properties. I have therefore included a suitably worded condition removing particular Permitted Development Rights.

25. I have not included a condition relating to the provision of infrastructure for telephone services., broadband, electricity and television because I have no substantive evidence before me to suggest that such a condition is necessary. I have not included conditions relating to use of the approved vehicle access only or the provision of pedestrian footpaths and cycleways because these are ill-defined and as such fail the tests set out Planning Practice Guidance.

Conclusion

26. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed.

Mr M Brooker

INSPECTOR

Schedule of Conditions

1. The development shall be begun not later than the expiration of 3 years beginning with the date of the grant of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 1) Site Location Plan (drawing ref 1732-PL100) received 28th July 2020;
 - 2) Proposed Site Plan (drawing ref 1732-PL212 (Rev M) received 21st September 2020;
 - 3) House Type - 201 (drawing ref 201/1F) received 27th November 2019;
 - 4) House Type - 211 (drawing ref 211/1A) received 27th November 2019;
 - 5) House Type – 301 (drawing ref 301/1G) received 27th November 2019;
 - 6) House Type - 311 (drawing ref 311/1A) received 27th November 2019;
 - 7) House Type – 314 (drawing ref 314/1) received 27th November 2019;
 - 8) House Type - 315 (drawing ref 315/1A) received 27th November 2019;
 - 9) House Type - 403 (drawing ref 403/1H) received 27th November 2019;
 - 10) House Type – 337 (Elevations - Rural 13) (drawing ref 13/337-10 Rev A) received 19th August 2020;
 - 11) House Type – 337 (Floor Plans) (drawing ref 337/1) received 19th August 2020;
 - 12) House Type – 340 (Elevations - Rural 13) (drawing ref 13/340-10) received 19th August 2020;
 - 13) House Type – 340 (Floor Plans) (drawing ref 340/1) received 19th August 2020;
 - 14) House Type – 351 (Elevations - Rural 13) (drawing ref 13/351-9 Rev A) received 19th August 2020;
 - 15) House Type – 351 (Floor Plans) (drawing ref 351/1) received 19th August 2020;
 - 16) House Type – 353 (Elevations - Rural 13) (drawing ref 13/353-9 Rev A) received 19th August 2020;
 - 17) Type – 353 (Floor Plans) (drawing ref 353/1A) received 19th August 2020;
 - 18) House Type – 354 (Elevations - Rural 13) (drawing ref 13/354-10 Rev B) received 19th August 2020;
 - 19) House Type – 354 (Floor Plans) (drawing ref 354/1A) received 19th August 2020;
 - 20) House Type – 357 (Elevations - Rural 13) (drawing ref 13/357-8 Rev A) received 19th August 2020;
 - 21) House Type – 357 (Floor Plans) (drawing ref 357/1A) received 19th August 2020;
 - 22) House Type – 401 (Elevations - Rural 13) (drawing ref 13/401-9 Rev C) received 24th September 2020;
 - 23) House Type – 401 (Floor Plans) (drawing ref 401/1G) received 19th August 2020;
 - 24) House Type – 404 (Elevations - Rural 13) (drawing ref 13/404-9 Rev B) received 19th August 2020;
 - 25) House Type – 404 (Floor Plans) (drawing ref 404/1F) received 19th August 2020;
 - 26) House Type – 436 (Elevations - Rural 13) (drawing ref 13/436-10 Rev A) received 19th August 2020;
 - 27) House Type – 436 (Floor Plans) (drawing ref 436/1) received 19th August 2020;
 - 28) House Type – 450 (Elevations - Rural 13) (drawing ref 13/450-9) received 19th August 2020;
 - 29) House Type – 450 (Floor Plans) (drawing ref 450/1A) received 19th August 2020;
 - 30) Boundary Treatments – 1800mm Timber Fence Details (drawing ref 0282-SD-100 Rev D) received 27th November 2019;
 - 31) Boundary Treatments – Post and Wire Fence Details (drawing ref 0282-SD-103 Rev B) received 27th November 2019;

- 32) Standard Garages - Single (drawing ref 0282-SD700 Rev A) received 27th November 2019;
- 33) Standard Garages - Double (drawing ref 0282- SD701 Rev B) received 27th November 2019;
- 34) Landscape Plan (drawing ref WW/01 Rev A) received 18th September 2020;
- 35) Drainage Details (drawing ref 19004-D701 Rev 1) received 15th January 2020;
- 36) Proposed Engineering Layout 1 of 2 (drawing ref 19004-D001 Rev 1) received 15th January 2020;
- 37) Proposed Engineering Layout of 2 (drawing ref 19004-D002 Rev 1) received 15th January 2020;
- 38) Manhole Schedule (drawing ref 19004-D200 Rev1) received 15th January 2020;
- 39) Flood Routing Plan (drawing ref 19004-D201 Rev 1) received 15th January 2020;
Proposed Impermeable Areas (drawing ref 19004-D202 Rev 1) received 15th January 2020;
- 40) Proposed Road Long Sections 1 of 2 (drawing ref 19004-D300 Rev 1) received 15th January 2020;
- 41) Proposed Long Sections 2 of 2 (drawing ref 19004-D301 Rev 1) received 15th January 2020;
- 42) Kerbs & Surfacing Plan (drawing ref 19004-D500 Rev 1) received 15th January 2020;
- 43) Proposed Highway Construction Details (drawing ref 19004-D700 Rev 1) received 15th January 2020;
- 44) Public Right of Way Proposed Diversion Route (drawing ref 1732-PL214 Rev G) received 21st September 2020;
- 45) Public Open Space Plan as Proposed (drawing ref 1732-PL213 Rev C) received 21st September 2020;
- 46) 3m Wide Footpath Plan as Proposed (drawing ref 1732-PL215 Rev B) received 21st September 2020;
- 47) Boundary Treatments & Enclosures Plan as Proposed (drawing ref 1732-PL216 Rev B) received 21st September 2020;
- 48) Existing Drainage Plan (drawing ref 19004-SK-002 Rev 1) received 27th November 2019;
- 49) Geoenvironmental Appraisal (Report 7049A, April 2019), received 27th November 2019;
- 50) Geotechnical Appraisal Ground Gas Monitoring Addendum received 27th November 2019;
- 51) Archaeological Desk Based Assessment (Report 303 - 20th October 2019) received 27th November 2019;
- 52) Transport Statement/Travel Plan (VN91443 - November 2019) received 27th November 2019;
- 53) Preliminary Ecological Appraisal (Pennine Ecological) received 27th November 2019;
- 54) Tree Survey Report & Plan (Iain Tavendale - 26th April 2019) received 27th November 2019;
- 55) Flood Risk Assessment and Drainage Strategy (Ae/FRADS/19004 November 2019) received 27th November 2019;
- 56) Planning Statement received 27th November 2019;
- 57) Construction Management Plan received 27th November 2019;
- 58) Economic Benefits Report received 27th November 2019;
- 59) Affordable Housing Statement received 27th November 2019
- 60) Design and Access Statement received 27th November 2019;

- 61) Ecological Surveys & Assessment - Pennine Ecological - March 2020 Update in Relation to Bats, Red Squirrels & Great Crested Newts received 16th June 2020;
 - 62) Great Crested New Survey - Pennine Ecological received 16th June 2020;
 - 63) Appendix 1 – Extended Phase 1 Habitat Survey Plan received 15th June 2020;
 - 64) Archaeological Evaluation (Report 312 - 3rd February 2020) received 19th August 2020;
 - 65) Dusk Bat Survey Results - Pennine Ecological received 7th September 2020;
 - 66) Additional Appraisal and Inspection of Trees in Relation to Bats - Pennine Ecological received 7th September 2020;
 - 67) Schedule of Affordable Housing Units received 18th September 2020;
 - 68) Arboriculture Method Statement (Westwood) received 18th September 2020;
 - 69) Paving Details in RPA (drawing ref D/01) received 18th September 2020;
 - 70) House Type - 403 - Plot 80 variation (drawing ref 403) received 18th September 2020;
3. Samples or full details of all materials to be used on the exterior of the dwellings hereby permitted shall be submitted to and approved in writing by the Local Planning Authority before their first use on site. The development shall then be undertaken in strict accordance with these details.
 4. No development shall take place until full details of hard and soft landscape works, including a phased programme of works, have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved prior to the occupation of any part of the development or in accordance with the programme agreed by the Local Planning Authority. Any trees or other plants which die or are removed within the first five years following the implementation of the landscaping scheme shall be replaced during the next planting season.
 5. Prior to the commencement of development, details of the proposed boundary treatment to be erected along the western and southern site boundaries (with the nature reserve and woodland belt) shall be submitted for approval in writing by the Local Planning Authority. The boundary treatment shall then be erected in strict accordance with these details and retained at all times thereafter.
 6. Prior to the SUDS ponds being brought into use, the applicant shall install a fence/railings around the SUDS ponds, the details of which shall have been agreed beforehand in writing by the Local Planning Authority.
 7. Foul and surface water shall be drained on separate systems.
 8. Prior to the commencement of any development, a surface water drainage scheme, based on the hierarchy of drainage options in the National Planning Practice Guidance with evidence of an assessment of the site conditions (inclusive of how the scheme shall be managed after completion) shall be submitted to and approved in writing by the Local Planning Authority.

The surface water drainage scheme must be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March

2015) or any subsequent replacement national standards and unless otherwise agreed in writing by the Local Planning Authority, no surface water shall discharge to the public sewerage system either directly or indirectly.

None of the dwellings hereby approved shall be occupied until the approved surface water drainage scheme has been completed and made operational.

9. Prior to occupation of the development a Sustainable Drainage Management and Maintenance Plan for the lifetime of the development shall be submitted to the Local Planning Authority and agreed in writing. The Sustainable Drainage Management and Maintenance Plan shall include as a minimum:
 - a. Arrangements for adoption by an appropriate public body or statutory undertaker, or, management and maintenance by a resident's management company; and
 - b. Arrangements for inspection and ongoing maintenance of all elements of the sustainable drainage system to secure the operation of the surface water drainage scheme throughout its lifetime.

The development shall subsequently be completed, maintained and managed in accordance with the approved plan.

10. No development shall commence until full details of the wildlife enhancement measures to be undertaken at the site, together with the timing of these works, have been submitted to and approved, in writing, by the Local Planning Authority. The development shall then be carried out in strict accordance with the agreed details.
11. Prior to the commencement of development, a method statement for the relocation of the orchids shall be agreed in writing by the LPA. The orchids shall then be relocated to the areas identified on the Landscape Plan (Dwg ref WW/01 Rev A, received 18th September 2020) in strict accordance with the method statement.
12. Prior to its installation, details of any lighting (including location and specification) to be installed on the dwellings shall be agreed in writing with the LPA. The development shall then be undertaken in strict accordance with these details.
13. Prior to the commencement of development, tree protection fencing shall be installed in accordance with details to be agreed in writing by the Local Planning Authority. The tree protection fencing shall be retained in place at all times until the construction works have been completed.
14. The development shall be undertaken in strict accordance with the Arboriculture Method Statement (dated 16th September 2020), received on 18th September 2020 and the Paving Details RPA Area Plan (Dwg No D/01), received 18th September 2020.
15. Prior to any works being undertaken to the trees located within the Kingmoor Sidings Nature Reserve which overhang the development site, details of the works shall be agreed in writing with the LPA. The

development shall then be undertaken in strict accordance with these details.

16. Details of the relative heights of the existing and proposed ground levels and the height of the proposed finished floor levels of the dwellings and garages shall be submitted to and approved in writing by the Local Planning Authority before any site works commence.
17. No construction work associated with the development hereby approved shall be carried out before 07.30 hours on weekdays and Saturdays nor after 18.00 hours on weekdays and 13.00 hours on Saturdays (nor at any times on Sundays or Bank Holidays).
18. Prior to the occupation of any dwelling, a 32Amp single phase electrical supply shall be installed to allow future occupiers to incorporate an individual electric car charging point for the property. The approved works for any dwelling shall be implemented on site before that unit is first brought into use and retained thereafter for the lifetime of the development.
19. No development other than that required to be carried out as part of an approved scheme of remediation shall be commenced until a detailed remediation scheme to bring the site to a condition suitable for the intended use (by removing unacceptable risks to human health, buildings and other property and the natural and historical environment) has been prepared. This is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation
20. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

21. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Site investigations should follow the guidance in BS10175.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

22. Before the occupancy of any residential unit, noise level measurements must be undertaken in at least two residential units in the development to verify that the noise from the railway line does not result in the internal and external noise levels exceeding World Health Organisation guidelines during the daytime and night time; and the measured noise levels reported to and approved in writing by the Local Planning Authority.

The noise levels are to be measured with windows closed and all ventilators open in the room in which the measurements are carried out. Daytime noise levels are to be measured in living rooms and the night time levels to be measured in bedrooms. The rooms chosen must be orientated towards the noise sources i.e. road.

Before the measurements are undertaken a schedule of the properties and rooms to be used must be submitted in writing to the Local Planning Authority and the work must not be undertaken before the schedule is agreed in writing.

23. Prior to the occupation of each dwelling hereby permitted suitable receptacles shall be provided for the collection of waste and recycling in line with the schemes available in the Carlisle District.
24. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) there shall be no enlargement or external alterations to the dwelling to be erected in accordance with this permission, within the meaning of Schedule 2 Part (1) of these Orders, without the written approval of the Local Planning Authority.
25. The carriageway, footways, footpaths and cycleways shall be designed, constructed, drained and lit to a standard suitable for adoption and in this respect further details, including longitudinal/cross sections, shall be submitted to the Local Planning Authority for approval before work commences on site. No work shall be commenced until a full specification has been approved. These details shall be in accordance with the standards laid down in the current Cumbria Design Guide. Any works so approved shall be constructed before the development is complete.
26. Details of proposed crossing of Kingmoor Road shall be submitted to the Local Planning Authority for approval. The development shall not be commenced until the details have been approved and the crossing has been constructed.
27. Ramps shall be provided on each side of every junction to enable wheelchairs, pushchairs etc. to be safely manoeuvred at kerb lines. Details of all such ramps shall be submitted to the Local Planning Authority for approval before development commences. Any details so approved shall be constructed as part of the development.

28. The access drives for each property shall be surfaced in bituminous or cement bound materials, or otherwise bound and shall be constructed and completed before the development is brought into use.
29. Development shall not commence until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The CMP shall include details of:
- Pre-construction road condition established by a detailed survey for accommodation works within the highways boundary conducted with a Highway Authority representative; with all post repairs carried out to the satisfaction of the Local Highway Authority at the applicants expense;
 - Details of proposed crossings of the highway verge;
 - Retained areas for vehicle parking, manoeuvring, loading and unloading for their specific purpose during the development;
 - Cleaning of site entrances and the adjacent public highway;
 - Details of proposed wheel washing facilities;
 - The sheeting of all HGVs taking spoil to/from the site to prevent spillage or deposit of any materials on the highway;
 - Construction vehicle routing;
 - The management of junctions to and crossings of the public highway and other public rights of way/footway;
 - Details of any proposed temporary access points (vehicular / pedestrian)
 - Surface water management details during the construction phase
 - details of any lighting (including location and specification) to be used on site during the construction phase
 - the proposed location and height of any soil storage areas
 - the provision within the site for the parking, turning and loading and unloading of vehicles visiting the site, including the provision of parking spaces for staff and visitors
30. The development shall not commence until visibility splays providing clear visibility of 60 metres measured 2.4 metres down the centre of the access road and the nearside channel line of the carriageway edge have been provided at the junction of the access road with the county highway. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) relating to permitted development, no structure, vehicle or object of any kind shall be erected, parked or placed and no trees, bushes or other plants shall be planted or be permitted to grow within the visibility splay which obstruct the visibility splays. The visibility splays shall be constructed before general development of the site commences so that construction traffic is safeguarded.
31. No dwelling with direct access onto Kingmoor Road shall be occupied prior to visibility splays providing clear visibility of 43 metres measured 2.4 metres down the centre of its the access and the nearside channel line of the carriageway edge have been provided. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) relating to permitted development, no structure, vehicle or object of any kind shall be erected, parked or placed and no trees, bushes or other plants shall be planted or be permitted to grow within the visibility splay which obstruct

the visibility splays. The visibility splays shall be constructed before general development of the site commences so that construction traffic is safeguarded.

32. The Emergency Vehicle Access shall be provided prior to the construction of the 50th dwelling hereby permitted and shall provide for clear visibility of 43 metres measured 2.4 metres down the centre of its the access and the nearside channel line of the carriageway edge have been provided. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) relating to permitted development, no structure, vehicle or object of any kind shall be erected, parked or placed and no trees, bushes or other plants shall be planted or be permitted to grown within the visibility splay which obstruct the visibility splays. The visibility splays shall be constructed before general development of the site commences so that construction traffic is safeguarded.

End of Schedule

Costs Decision

Site visit made on 27 April 2021

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2021

Costs application in relation to Appeal Ref: APP/E0915/W/21/3266806 Land at Deer Park, Carlisle CA3 9PS

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Gleeson Homes for a full award of costs against Carlisle City Council.
 - The appeal was against the refusal of planning permission for the erection of 80no. dwellings.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. It is the appellants case that the Council behaved unreasonably resulting directly in them incurring unnecessary expense in the appeal process, specifically regarding substantiating the reason for refusal, reference to relevant consultation responses and Policy CM2 of the Development Plan.
4. The consultation responses from Cumbria County Council, submitted by the appellant, are clear and unambiguous. Confirming that there is no current shortage of places and the issue of school place planning is not expected to impact on the decision of the Planning committee on the proposed Deer Park development. No substantive evidence has been presented to the contrary. Furthermore, in determining the appeal it was found that the appeal scheme complied with the provisions of Policy CM2 of the development Plan.
5. As a consequence, the appellant has been faced with unnecessary delay and the expense of lodging the appeal.
6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

7. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that

Carlisle City Council shall pay to Gleeson Homes, the costs of the appeal proceedings described in the heading of this decision.

8. The applicant is now invited to submit to Carlisle City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Mark Brooker

INSPECTOR



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REVISIONS:	
Revision	DESCRIPTION
—	00.00.00



MANNINGELLIOTT
PARTNERSHIP

Chartered Architects &
Designers

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project title:
**Proposed Residential Development
Deer Park
Kingmoor Road, Carlisle**

drawing title:
Location Plan

issue stage:
PLANNING ISSUE

date:	drawn:	scale @ A3:
JUL 20	CS	1:1250

drawing number:	revision:
1732-PL100	-

Item No: 17

Between 28/05/2021 and 08/07/2021

Appn Ref No:

19/0649

Applicant:

Mr Andrew Thomson

Parish:

Irthington

Date of Receipt:

19/08/2019 08:01:32

Agent:Philip Brown Associates
Limited**Ward:**

Longtown & the Border

Location:Field 7449, Land opposite Irthing Mill, Irthington,
Carlisle**Grid Reference:**

350730 562502

Proposal: Change Of Use Of Land For Mixed Use Of 1no. Gypsy Pitch For The Stationing Of 3no. Caravans, Including 1no. Static Caravan, Amenity Building, Laying Of Hardstanding, Erection Of Fence And Access Improvements (Part Retrospective)

REPORT**Case Officer:** Stephen Daniel**Decision on Appeals:****Appeal Against:** Appeal against refusal of planning perm.**Type of Appeal:** Informal Hearing**Appeal Decision:** Appeal Allowed with Conditions**Date:** 02/06/2021

A copy of the Notice of the decision of the Planning Inspectorate is printed following this report.



Appeal Decisions

Hearing Held on 13 April 2021

Site visit made on 14 April 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 June 2021

Appeal A: APP/E0915/C/20/3248752

Field 7449, 'Old Mothers Meadow', Irthington, Carlisle CA6 4NS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Andrew Thomson against an enforcement notice issued by Carlisle City Council.
- The enforcement notice was issued on 19 February 2020.
- The breach of planning control as alleged in the notice is (a) Formation of an unauthorised vehicular access; (b) Formation of an unauthorised hardstanding and fencing; and, (c) Unauthorised formation of gypsy site by the siting of 1 no. static unit, kennels, associated outbuildings and site lighting.
- The requirements of the notice are a) Return the Land back to its pre-development agricultural status by removing all elements referred to in 3 and re-instating the hedgerow and pedestrian gate.
- The period for compliance with the requirements is (a) Formation of an unauthorised vehicular access – by 31st May 2020; (b) Formation of an unauthorised hardstanding and fencing – by 31st May 2020; (c) Unauthorised formation of gypsy site by the siting of no. 1 static unit, kennels, associated outbuildings and site lighting – by 31st March 2020.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B: APP/E0915/W/20/3248748

'Old Mothers Meadow', Land opposite Irthing Mill, Irthington, Carlisle CA6 4NS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Andrew Thomson against the decision of Carlisle City Council.
- The application Ref 19/0649, dated 18 August 2019, was refused by notice dated 24 January 2020.
- The development proposed is material change of use of land to use as a residential caravan site for one Gypsy family with 3 caravans, including no more than 1 static caravan/mobile home, including laying of hardstanding, erection of ancillary amenity building and access improvements.

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

Preliminary Matters

1. It was agreed at the Hearing that the enforcement notice should include reference to the residential use of the site within the alleged breach of planning control; also that ceasing the residential use should be reflected within the requirements of the notice. The parties accepted that I could correct the notice accordingly without causing injustice.
2. The notice includes a requirement to reinstate a pedestrian gate. However at the Hearing the appellant said that no such 'pedestrian' gate was in place at the time the site became occupied. It was agreed by the parties that this point could be resolved by amending the requirement so that it referred to reinstating the gate to its previous condition before the development took place.
3. Following the Council's refusal of planning permission and the appeal being lodged, the site layout plan was altered to reflect proposed vehicular access and egress arrangements for the site and boundary landscaping proposals. The layout plan has been further altered, with highway safety in mind, following the discussion at the Hearing. I am satisfied that I am able to make my decision based on this revised plan, which I consider to be consistent with the scaling of the ordnance survey site location plan, without resulting in injustice to any of the parties.

Appeal A on ground (a) (that planning permission should be granted) and Appeal B

Main Issues

4. The main issues are (i) the effect of the development on the character and appearance of the surrounding area; (ii) highway safety; (iii) whether the site is 'away from' settlements and how local shops and services are likely to be accessed; (iv) the need for and availability of gypsy and traveller sites and (v) the personal circumstances of the appellant.

Reasons

Character and Appearance

5. The appeal site is in a quiet and attractive, rural valley location with open fields and woodland dominating the surroundings. There are, however, residential buildings on the opposite side of the road to the site, at Irthington Mill and Irthing House. The ground level rises relatively steeply towards the south west and the west.
6. The appeal site is essentially rectangular, with timber fenced boundaries, and is surfaced with loose stone. An established mature hedge runs along the outside of the eastern boundary of the site with the adjacent road. Single lines of young conifer trees have been planted on the outside of the other fences.
7. From my visit it was apparent that there are two caravans, including one static caravan, located on the site. There are also a number of outbuildings, including sheds and kennels. The proposed amenity building has not yet been constructed. External lighting has been installed at intervals around the edge of the site.

8. Close range views of the site are generally well screened from the adjacent road, due to the presence of the mature boundary hedge. However because of the increase in ground levels, the site is very prominent in longer distance views looking from the road which turns and rises to the south west; and also from a public right of way, passing through fields to the west, and which eventually connects with the village of Newtown. The appellant suggests that this public right of way is little used. There is no evidence before me to confirm whether this is the case, but the route is nevertheless a key visual receptor and even if little used at present, this may not always be the case.
9. Though I have no reason to question the quality of the static caravan as a unit for residential purposes, in its own right, it is typically rectangular in shape and relatively functional in appearance. Despite its limited scale, the functional form and uncharacteristic light colouring of the structure ensures that it stands out as an incongruous feature in relation both to its open surroundings and the darker construction materials of nearby buildings. Whilst I accept that it would be possible to subdue the presence of boundary fencing through the application of appropriate colouring, the existence of the prominent and extensive loose stone surface serves to exacerbate the visual harm, as would the addition of touring caravans and other domestic paraphernalia.
10. I have taken into account the relatively modest size of the site and that it accommodates a single pitch; that boundary fencing and the amenity building could be finished in suitably treated materials and also the presence of a brightly coloured container on the adjacent agricultural holding. However, notwithstanding these factors, I am in no doubt that the development appears stark and draws the eye. As such it results in harm to the character and appearance of the countryside.
11. I have considered whether this harm could be mitigated by landscaping measures, recognising that there is no expectation within the Planning Policy for Traveller Sites (PPTS) that sites must be adequately landscaped from the outset, and / or through controlling the precise siting of structures. However, because of the degree of visibility of the site from higher ground levels, it seems to me that despite the substantial additional landscaping measures proposed, these would take considerable time to become effective in assimilating the development; also that any benefit from discrete modifications to the siting of structures would be very limited. The visibility of the site would be exacerbated to a degree when external lighting is operational. I do not therefore concur with the appellant's point that the site is not prominent or obtrusive in the wider landscape.
12. Furthermore in order to achieve satisfactory visibility splays at the site access it would be necessary to remove a substantial length of the roadside boundary hedge. Whilst the interior of the site could continue to be substantially screened by fencing, replacement hedge planting would take time to mature, thus resulting in a visually harder and less well integrated site boundary.
13. The appellant raises the point that national policy, in the form of the PPTS, contemplates the development of such sites in rural and semi-rural settings, and that the inevitable consequence of this is that some degree of visual harm must be acceptable. I do not dispute this point and I accept that caravans are seen in the countryside, however equally this is not to say that all such development must be acceptable. I am mindful that the PPTS also recognises

that local planning authorities should have due regard to the protection of local amenity and the environment.

14. To my mind the site does not conform with undisputed guidance in the Cumbria Landscape Character Guidance and Toolkit which states that the visual impact of caravan sites should be minimised, and which seeks to conserve and enhance landscape character. I conclude that the development conflicts with criterion 5 of Policy HO 11 of the Carlisle District Local Plan 2015 – 2030 (LP) which requires sites to be well planned, to be contained within existing landscape features, or capable of being appropriately landscaped to minimise impact. I also find conflict with Policy GI 1 of the LP which requires that all landscapes should be protected for their intrinsic value.

Highway Safety

15. From my visit it was apparent that the vehicular egress arrangement at the site is currently unsatisfactory due to the boundary hedge causing very restricted visibility to the north.
16. The appellant submitted a speed survey in support of the proposal. Whilst there is no dispute regarding the speed survey methodology undertaken, or that the site access would need to be relocated northwards along the site frontage in order to ensure satisfactory visibility, the parties do not agree with regard to the detailed design standard of visibility splay required.
17. The Council's position is that the findings of the survey indicate that a visibility splay to the nearside kerb edge of 51 metres to the north and 49 metres to the south is required. The appellant says that, taking into account guidance in Manual for Streets (MfS) and Manual for Streets 2, there is scope for some flexibility in design, such that the splay does not need to strictly adhere to the kerbside edge in order to accommodate the required distances.
18. I concur with the appellant's view that in terms of visibility to the north, it would be unlikely in this location that south-bound vehicles would seek to cross the centre line of the road, because the bend in the alignment of the road would tend to make this an unsafe manoeuvre. Accordingly I am satisfied that the splay in this direction could be relaxed to the centre line of the road in accordance with the MfS.
19. Similarly given that vehicles approaching from the south would become partially visible away from the kerbside edge and would be travelling at a distance from the kerb line, I accept that this would allow for a degree of adjustment of the corresponding splay. Therefore whilst the position of the site access must be relocated in the interests of safety, a modest relaxation to the overall standard of the splay design would mean less of the boundary hedge along the site frontage needing to be removed than might otherwise be the case.
20. I am satisfied that there would be adequate space within the site for vehicles to turn and, subject to the relocation of the site access and the implementation and retention of visibility splays which could be achieved through the imposition of a planning condition, I consider that the development does not result in harm to highway safety. In this regard it would not therefore be in conflict with criterion 8 of Policy HO 11 of the LP or with the National Planning

Policy Framework (the Framework) which seek adequate access arrangements and the mitigation of any significant impacts on highway safety.

Location and Accessibility

21. The PPTS states that local planning authorities should very strictly limit new traveller site development in the open countryside that is 'away from' existing settlements or outside areas allocated in the development plan. Policy HO 11 of the LP supports the development of sites that allow for integration with, whilst not dominating, the closest settled community; that enable reasonable access to key services and facilities and in relation to which there are opportunities to gain access by public transport, walking or cycling.
22. In terms of the nearest settlement it is common ground that the appeal site is some 900 metres from the village of Irthington and around 2.5 miles from the centre of Brampton, a larger town. Irthington has a primary school, public house and church, and as such it would be necessary to travel to Brampton to reach a wider range of day to day services and facilities. There is an absence of formal footways linking the site with these settlements, no evidence provided of a convenient bus service, and it would be realistic to conclude that for safety, convenience and distance reasons there would be significant reliance on the private car in order to gain access to services and facilities.
23. However, the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Despite the likelihood of a very high degree of reliance on the private car, it seems to me that the length and duration of journeys necessary to access essential services and facilities would be relatively moderate for a rural location. I consider that this weighs significantly in favour of the conclusion that the appeal site should not be regarded as 'away from' existing settlements, and would be commensurate with the findings in previous appeal cases that have been referred to me by the appellant¹. It seems to me that this conclusion would also be consistent with the Council's own views when allowing housing in Newtown, in relation to which I have no evidence that a convenient bus service operates, and from where the need for car travel to nearby settlements would be highly likely.
24. For the aforementioned reasons I consider the site has reasonable access to key services and facilities and whilst use of sustainable means of travel to get there may be unlikely, there would nevertheless be the opportunity to do so by means of cycling or walking.
25. I am mindful that the Framework states that the development of isolated homes in the countryside should, subject to certain limited exceptions be avoided. Whilst the appeal site is physically separate from the nearest settlement of any significant size, I have concluded, in accordance with guidance in the PPTS, that the site would not be 'away from' existing settlements. Furthermore, it is situated in close proximity to two other dwellings. Opportunities for integration with the closest settled community therefore exist which, because of the limited scale of the development in this case, would not dominate or unacceptably harm that community.

¹ Refs APP/L3245/A/14/2215836; APP/R0660/W/15/3137298 & APP/J0405/C/13/2193601

26. The Council has referred in its statement to a previous appeal decision relating to a different site, and in particular to the Inspector's conclusion that the site in question was not a suitable location for gypsy and traveller accommodation². I have not been presented with full details of that case, however notwithstanding this, each case must be dealt with on its individual merits. The specific circumstances of cases will inevitably differ, and in this appeal, for example, I have found the development to be consistent with the likely travel patterns associated with new development in Newtown. It does not therefore automatically follow that the appeal site should be deemed an unsuitable location for gypsy accommodation.
27. Drawing the above considerations together I conclude that the development accords with criteria 1,2 and 3 of Policy HO 11 of the LP insofar as it seeks to achieve integration with the settled community, reasonable access to key services and facilities with the opportunities for access by public transport, walking or cycling.

Need

28. Paragraph 7(b) of the PPTS states that local planning authorities should prepare and maintain an up-to-date understanding of the likely accommodation needs of their areas over the lifespan of the development plan. The Council's most recent Gypsy and Traveller Accommodation Assessment (GTAA) was produced in 2013. When adjusted for the plan period (until 2030), the LP recognised a requirement for some 17 pitches.
29. The PPTS states that local planning authorities should identify a 5-year supply of specific deliverable sites. It was undisputed at the Hearing that 17 pitches have either been delivered or permitted over the plan period to date. The Council's position is that when added to a plan allocation for nine permanent residential pitches adjacent to Low Harker Dene, this amounts to a demonstrable 5-year supply of sites.
30. By contrast the appellant says that the 17-pitch requirement has been taken up within the first half of the plan period, indicating that the requirement is greater than anticipated, based on the rate of sites coming forward. He says that the local plan requires that the need for pitches should be regularly reviewed to determine the extent to which the requirement is changing and that this has not happened, as the GTAA is now some 8 years old and accordingly is out of date.
31. The Council reported that it is in the process of updating its GTAA, the production of which has understandably been delayed due to the ongoing public health emergency. Nevertheless, the fact that a review is underway seems, by its nature, to acknowledge that the existing GTAA is several years old and may possibly lead to different findings regarding need. In addition the Council was unable to satisfactorily respond to the appellant's challenges regarding the nature of assumptions underlying the rate of turnover of sites and the lack of regard for household formation rates. This, the appellant considered, was likely to suppress the true level of need identified by the GTAA.

² Ref APP/Z3825/W/17/3188057

32. Whilst the Council says that it has held discussions with the developer with regard to bringing forward the site at Low Harker Dene for permanent pitches, to date there has not been a planning application for this, and no clear indication as to when the site will be delivered. Furthermore it did not dispute the appellant's points, firstly that whilst pitches may become available at an existing site at Low Harker Dene (Ghyle Bank Park), only touring caravans could be accommodated there, and secondly that whilst a 12-pitch caravan site at Brampton may now be available for permanent occupation, this was not actually a gypsy site.
33. In addition, given the number of caravans proposed, in this case to accommodate the appellant's extended family, I have not been provided with any substantive evidence to contradict the appellant's point that in relation to two further sites at Low Harker (Hawthorns and Atchin Tan) pitches are either unavailable or otherwise unsuitable due to their restricted size.
34. It would appear that the appellant and another resident were evicted from the site where they used to live³ as a result of an on-going dispute between them. I have no reason to doubt this means that the appellant would not be able to return to live at that site. The Council has not drawn my attention to or provided further evidence of specific suitable alternative sites clearly being available, and it seems to me that there would be a high risk of the appellant being made homeless and resorting to living on the roadside in the event of the appeal failing.
35. Reference was made at the Hearing to a number of unauthorised sites being developed in the area. I do not concur with the appellant that this factor, in itself, can be said to clearly demonstrate additional need, without further information regarding the circumstances of these developments.
36. However I do agree that the existing GTAA is now a relatively aged document. Drawing the above considerations together, including the development plan requirement to regularly review need, I am unable to conclude, because of the age of the GTAA, that an up to date 5-year supply of deliverable sites exists. Moreover, I am also unable to conclude, on the basis of evidence before me, that an outstanding / unmet need for gypsy and traveller site provision does not exist. These factors, in particular that the appellant has nowhere else to go, therefore carry significant weight in the overall planning balance.

Personal Circumstances

37. The appellant has set out that he was evicted from a previous site due to a conflict issue. He has three children from a previous relationship who visit and stay with him for a number of nights per week. Apparently, the children were not permitted by their mother to visit at the previous site, due to issues of tension there. The appeal site therefore allows better opportunities for the appellant and his children to see one another.
38. It is also apparent that the appellant's present mother-in-law is in remission regarding throat cancer, also that she is experiencing mental health issues. The appellant's mother-in-law is based some six miles away and daily visits to her need to be made by the appellant's wife, who is her main carer, in order to administer essential physical care procedures. Planning permission would

³ Hadrian's Park

- enable her to move to the site, which would make it easier for the care arrangements to be administered. It would also appear that the appellant's wife has previously received treatment for cancer, and also for anxiety and depression regarding uncertainty about the site.
39. The appellant states that the site would provide a settled base, from which the necessary specialist health care required can be gained and which would enable living together as a traditional extended family group. He says that a settled base would also be in the best interests of the children, as the site would give them the best opportunity for a stable and secure family life with their father and stepmother, with opportunities for play and personal development.
40. Article 8 of the Human Rights Act 1998 states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the protection of the environment and upholding planning policies. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
41. Furthermore in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race. I am mindful that age and disability are also relevant protected characteristics.
42. I have not been provided with documentary evidence to corroborate the aforementioned family and health circumstances. However I note that the Council do not seek to challenge the appellant's claimed personal circumstances regarding children and health issues. Furthermore the appellant is professionally represented by a prominent consultant in the field whose reputation would be at stake, and which in my view gives credibility to the various claims.
43. With regard to the appellant's children I have no reason to doubt that the presence of a settled base at which to visit their father and stepmother would be beneficial to their social development. It would appear that at present the children live a relatively short distance from the site and as such the failure of the appeal could mean that it would be more difficult to meet up in future. This consideration is, however, tempered by the fact that the appeal site does not provide a permanent base for the children, who would not themselves be at risk of homelessness in the event of the appeal failing. There would nevertheless be clear benefits to the children which attracts a moderate degree of weight in the overall planning balance.
44. I recognise that the site would enable different generations of the same family to live together. This would help to facilitate the care arrangements for the appellant's mother-in-law and would be consistent with the Traveller tradition of living in extended family groups for mutual care and support. The loss of

the appeal site would prevent such an arrangement in this location, in addition to which the existing care arrangements might become more strained or difficult to continue. This consideration therefore also attracts moderate weight.

Other Matters

45. The Council states that the intentional unauthorised nature of the development is a material consideration in line with Government policy, that should be given adverse weight. It seems to me that the appellant's unsatisfactory living conditions prior to moving to the appeal site helps to explain the urgency of relocating there. Furthermore I note that not all of the proposed development has been implemented, which so far appears to be largely focussed on securing a habitable environment. There is also some scope to carry out planting that will help to mitigate, although not completely remove, visual harm in the longer term. I am also mindful that the Act makes provision for a grant of retrospective planning permission and planning enforcement that is remedial rather than punitive. In light of these considerations I attach only very limited weight to the intentional unauthorised nature of the development.
46. I have considered the various representations from third parties. As to the appellant's gypsy status, this is not challenged by the Council. The appellant set out at the Hearing that he travels to various locations in the United Kingdom to work, normally in the spring and summer months, though his normal travel patterns had been disrupted by the ongoing pandemic. I have no reason to doubt this.
47. I have been provided with no evidence that, subject to a condition to control surface water drainage, the site would be at risk from flooding. Similarly there is no evidence to persuade me that a water and electricity supply cannot be achieved, or waste from the site managed. As to concerns regarding dog breeding, the appellant denies this has taken place. However in any event this would be covered by a planning condition that could be imposed, preventing commercial activity on the site.
48. Reference is made to the site being close to the Hadrians Wall route. However neither the Council nor Historic England have objected to the development on heritage grounds, and I see no reason to take a contrary view. I consider that the proposed planting of hedgerows and trees would satisfactorily mitigate harm to biodiversity caused by the removal of natural features undertaken to accommodate the development.
49. I have considered the argument that the grant of planning permission would set a precedent for further development and expansion on the wider site. However each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not in itself justify withholding planning permission in this case.

Planning Balance

50. The development results in harm to the character and appearance of the countryside. For the above reasons I give significant weight to this consideration as a reason to resist the development. The unauthorised nature of the development, in itself, in this case attracts only very limited weight.

51. Subject to conditions, the development would cause no unacceptable harm to highway safety and would not be in a location 'away from' a settlement or too remote from services and facilities. These 'absences of harm' do not weigh in favour of the appeal.
52. However, there are considerations which support the appeal. I attach significant weight to the need for and under-supply of traveller sites in the Borough, including the lack of any available, suitable alternative site. I also attach moderate weight to the appellant's personal circumstances.
53. The balance is therefore in favour of granting planning permission. I am mindful that the forthcoming review of the GTAA, together with the possibility of the aforementioned local plan allocation coming to fruition, could potentially alter the weight to be given to need for sites, however the situation is uncertain. Therefore when considering the visual impact of the development, it seems to me that a personal planning permission would be most appropriate in this case. This would recognise the appellant's personal circumstances, allowing the appellant's present mother-in-law to move to the site as a resident dependant, and would allow the appearance of and need for the site to be re-evaluated at such a time when the appellant ceases to live there.
54. In view of the above findings I am satisfied that the development would conform with Policy SP 2 of the LP, insofar as it states that development will be assessed against the need to be in the location specified.

Conditions

55. I have had regard to the conditions suggested by the Council and the appellant. A condition confirming the approved plans is necessary in the interests of certainty. The permission is personal and accordingly a condition restricting occupation to the appellant, his wife and resident dependants is necessary. Conditions requiring the restoration of the site when occupation ceases; the site not to be sub-divided to form additional pitches; limiting the number of caravans stationed and commercial vehicles parked and preventing commercial activity on the site are all required in the interests of helping to safeguard the character and appearance of the area.
56. A condition confirming the loss of the permission unless details are submitted for approval (including a timetable for implementation) concerning foul and surface water drainage, external lighting, boundary treatment, landscaping and the site restoration is required in order to ensure the site is serviced with adequate infrastructure and to help safeguard the character and appearance of the area.
57. Conditions requiring the provision and retention of a suitable visibility splay; the closure of the existing unsuitable access; preventing loose material from being brought onto the highway and controlling the opening of access gates are required in the interests of highway safety.

Conclusion

Appeal A

58. It is clear that the description of the development in the enforcement notice is incorrect in that it should refer to the residential use of the site both in the alleged breach of planning control and the requirements. The appellant and

the local planning authority agreed at the Hearing that it was open to me to correct the allegation and requirements in the notice. I am satisfied that no injustice will be caused by this and I will therefore correct the enforcement notice in those two respects, in order to clarify the terms of the deemed application under section 177(5) of the 1990 Act as amended.

59. For the reasons given above I conclude that the appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation.

60. The appeal on ground (g) does not therefore need to be considered.

Appeal B

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

Formal Decisions

Appeal A

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

Inserting the words "for residential use" immediately after the words "gypsy site" in paragraph 3(c); and

Inserting the words "ceasing the residential use and" immediately after the words "status by" in paragraph 5(a); and

Deleting the words "pedestrian gate" in paragraph 5(a) and substituting the words "gate to their condition before the breach took place" instead.

63. Subject to these corrections the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely (a) Formation of an unauthorised vehicular access; (b) Formation of an unauthorised hardstanding and fencing; and, (c) Unauthorised formation of gypsy site for residential use by the siting of 1 no. static unit, kennels, associated outbuildings and site lighting at Field 7449, 'Old Mothers Meadow', Irthington, Carlisle CA6 4NS as shown on the plan attached to the notice and subject to the conditions below.

Appeal B

64. The appeal is allowed and planning permission is granted for material change of use of land to use as a residential caravan site for one Gypsy family with 3 caravans, including no more than 1 static caravan/mobile home, including laying of hardstanding, erection of ancillary amenity building and access improvements at 'Old Mothers Meadow', Land opposite Irthing Mill, Irthington, Carlisle CA6 4NS in accordance with the terms of the application, ref 19/0649, dated 18 August 2019, subject to the conditions below.

Roy Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1. Site Location Plan, received 19th August 2019; 2. Site Layout Plan (revised following the Hearing and attached to this decision); 3. Floor Plan of Proposed Day Room, received 19th August 2019; 4. Front Elevation of Proposed Day Room, received 19th August 2019; 5. Rear Elevation of Proposed Day Room, received 19th August 2019; 6. Side Elevation of Proposed Day Room, received 19th August 2019; 7. Side Elevation of Proposed Day Room, received 19th August 2019.
- 2) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Mr Andrew Thomson and Mrs Louisa Thomson.
- 3) When the land ceases to be occupied by those named in condition 2 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.
- 4) The development hereby approved shall remain as a single gypsy pitch and shall not be subdivided or occupied independently in any manner.
- 5) No more than three caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, of which no more than one shall be a static caravan, shall be stationed on the site at any time.
- 6) No commercial activities shall take place on the land, including the storage of materials.
- 7) No more than one commercial vehicle shall be kept on the site for use by the occupiers of the caravans hereby permitted and this vehicle shall not exceed 3.5 tonnes in weight.
- 8) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within two months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) within three months of the date of this decision a scheme for the means of foul and surface water drainage of the site; external lighting; boundary treatment; landscaping including tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities; and the restoration of the site in accordance with condition 3 (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation;
 - ii) if within 11 months of the date of this decision the local planning authority refuse to approve the site development scheme or fail to give a decision within the prescribed period, a valid appeal shall have been made to the Secretary of State;

- iii) if an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State;
- iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved site development scheme specified in this condition, that scheme shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 9) Within three months of the granting of this permission the new access shall have been created and visibility splays providing clear visibility of the centre line of the carriageway 51 metres to the north and of the point in the carriageway 1 metre from the nearside kerb edge 49 metres to the south, from the point 2.4 metres along the centre of the access road, back from the carriageway edge of the nearside channel line, shall have been provided at the junction of the access road with the county highway (as shown on the Site Layout Plan attached to this decision). Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) relating to permitted development, no structure, vehicle or object of any kind shall be erected, parked or placed and no trees, bushes or other plants shall be planted or be permitted to be grown which obstruct the visibility splays. The visibility splays shall be constructed before use of the new access commences. The visibility splays shall thereafter be retained.
- 10) The sealed surface of the access road shall extend for at least 10 metres, as measured from the carriageway boundary, shall be provided prior to the access being brought into use and shall be carried out in accordance with details of construction which shall have been previously approved by the local planning authority.
- 11) Access gates, if provided, shall be hung to open inwards only away from the highway, be recessed no less than 4.5m as measured from the carriageway edge of the adjacent highway and shall incorporate 45-degree splays to each side.
- 12) Within 3 months of the granting of this permission the existing vehicular access to the site shall be permanently closed in accordance with details to be previously agreed in writing by the local planning authority.

END OF SCHEDULE OF CONDITIONS

APPEARANCES

FOR THE APPELLANT:

Philip Brown	Agent
Andrew Thomson and Louisa Thomson	Appellant and appellant's wife

FOR THE LOCAL PLANNING AUTHORITY:

Stephen Daniel	Principal Planning Officer
Peter Allan	Flood and Development Management Officer

DOCUMENTS SUBMITTED FOLLOWING THE HEARING

1. Site Layout Plan



Plan

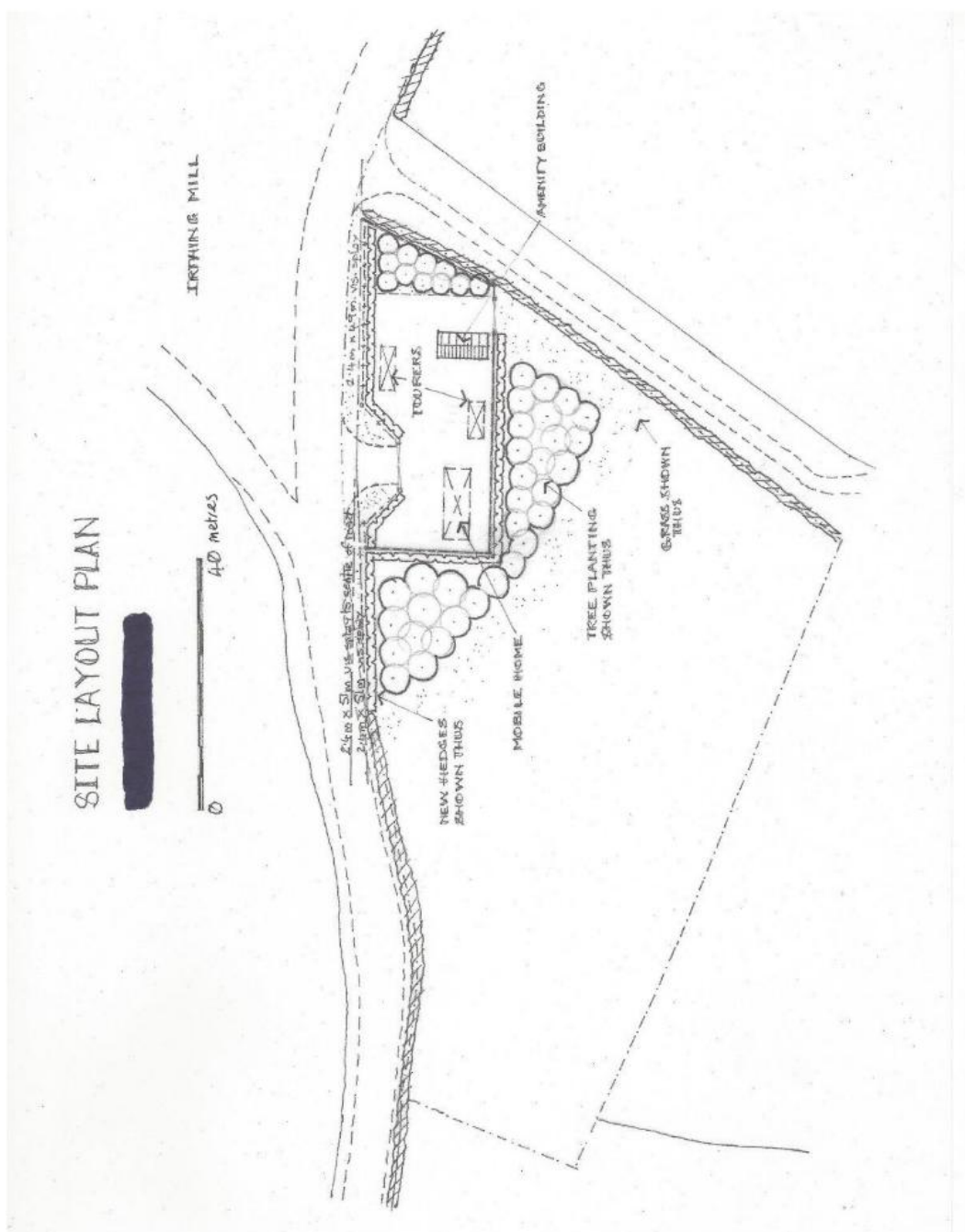
This is the plan referred to in my decision dated: 02 June 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

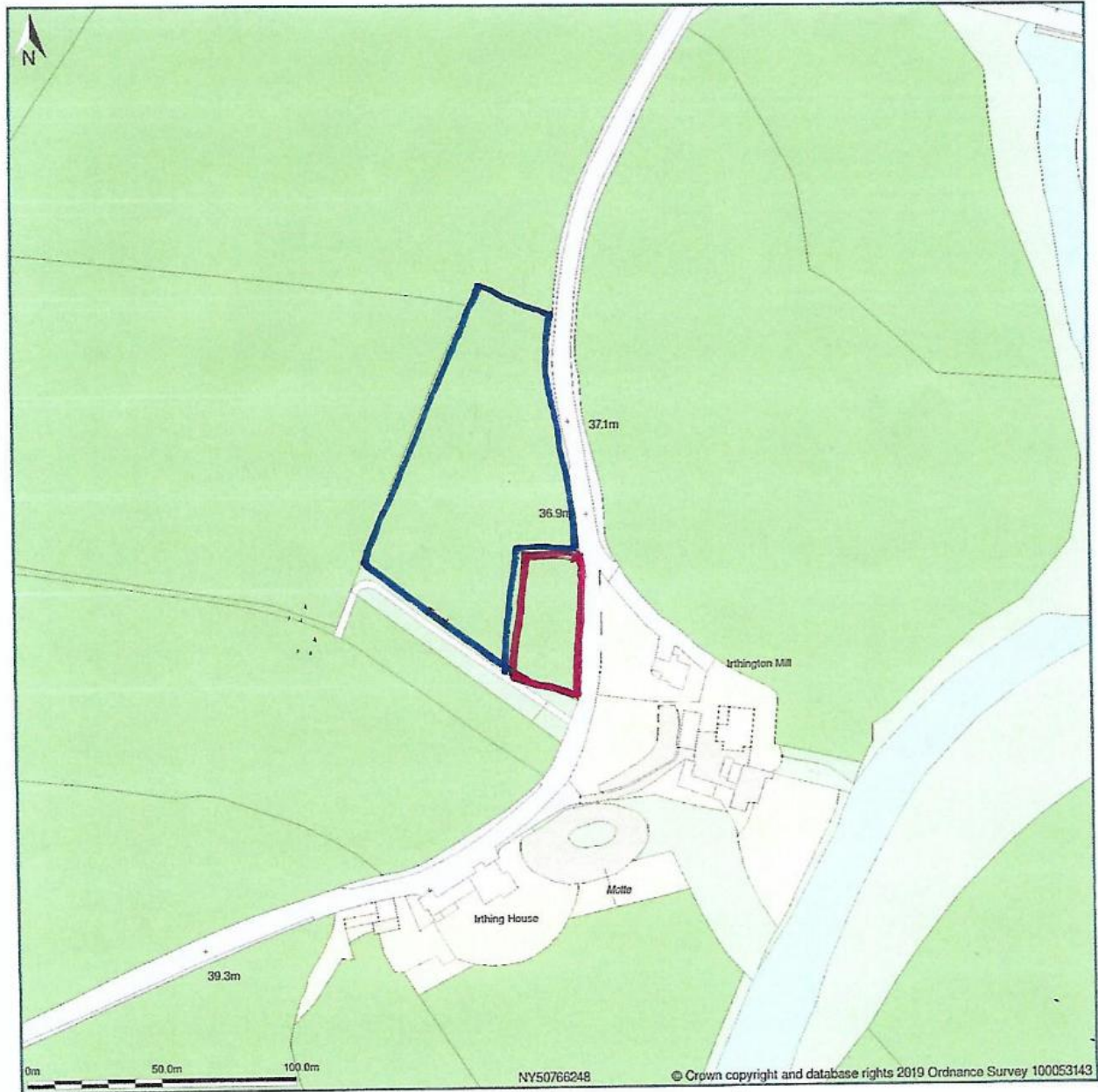
Land at: 'Old Mothers Meadow', Land opposite Irthing Mill, Irthington, Carlisle
CA6 4NS

References: APP/E0915/C/20/3248752 and APP/E0915/W/20/3248748

Scale: Not to Scale



Land west of Irthing Mill, Road Leading From Junction North Of Irthing Mill To Lane End Farm Via Irthington, Irthington, Cumbria, CA6 4NS



Site Plan shows area bounded by: 350550.16, 562282.03 350960.16, 562682.03 (at a scale of 1:2500), OSGridRef: NY50766248. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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