



## **RULE 6 STATEMENT OF CASE**

### **Town and Country Planning Act 1990 Planning Appeal**

On behalf of:      The Calleva Society

Site:                      Land Adjacent To And Rear Of Culhams Mill, Little London Road, Silchester,  
Hampshire

PINS Ref:                APP/H1705/W/18/3194978

LPA Ref:                 17/00653/RET

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## Contents

	Page
Contents .....	2
1. Introduction .....	3
2. Planning Policy Context .....	7
3. Calleva Society’s Case .....	12
4. List of Documents .....	25

### Appendices

Appendix A – PINS letter dated 10 April 2018

Appendix B – List of Roads

Appendix C - Basingstoke and Deane Borough Council vs Thompson and others [2018] EWHC 0011

Appendix D - Calleva Society objection letter to 17/00653/RET dated 4 September 2017

Appendix E - Calleva Society letter to PINS dated 7 March 2018

Appendix F - Copy of Land Registry Titles HP440155 and HP805553

Appendix G - Highways Asset Search

Appendix H - ‘Crashmap’ Map and Report Data at junction with Little London Road

Appendix I - Wildlife Trust Trail Leaflet and Newsletter

DOCUMENT HISTORY				
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## 1. Introduction

- 1.1 This Statement has been prepared in relation to an appeal lodged by Mr William Connor (‘the Appellant’) under section 78 of the Town and Country Planning Act 1990 against Basingstoke & Deane Borough Council’s (‘the LPA’) non-determination of a full planning application 17/00653/RET for *‘Change of use of land to residential caravan site comprising 13 plots including day rooms and construction of hardstanding and access road’* at Land Adjacent To And Rear Of Culhams Mill, Little London Road, Silchester, Hampshire (‘the site’).
- 1.2 On behalf of the Calleva Society (hereafter referred to as ‘CS’) we have written to the Planning Inspectorate on 28 February 2018 seeking confirmation that the CS will have Rule 6 status. The Planning Inspectorate have confirmed Rule 6 status in their letter dated 10 April 2018 (a copy of this letter is attached as **Appendix A**).
- 1.3 The CS was established in February 2017 as a local community group to lead the community’s response to the intentional unauthorised development at the site. The CS has worked with stakeholders including local residents and Silchester Parish Council to monitor the LPA’s actions in respect of enforcement proceedings, including attendance at the High Court hearings into the Injunction and subsequent Judgement, as well as representations to the LPA in respect of planning application 17/00653/RET. The Society’s objective is of *‘holding the Borough Council to account’* in respect of this case and other future planning matters to ensure effective enforcement to maintain public confidence in the planning system. The CS represents 350 members in Silchester and 70 in Little London. A list of those roads which CS represent is included as **Appendix B** to this Statement.
- 1.4 This Statement confirms CS’s position, which is, due to the substantial adverse impact on the sustainability conditions of the area, that the appeal should be dismissed. The Statement summarises the case that the CS intends to put forward at the Public Inquiry and the documents that CS will refer to in evidence.

## High Court Order

- 1.5 Unauthorised development at the appeal site and adjoining land has been subject to enforcement action by the LPA under case EC/17/00053/UMCU1 and the issuing of an Injunction of the Order of 21 February 2017, extended 19 September 2017 to include adjoining land (**Documents 3.1 and 3.2**). The Appellant’s Statement of Case doesn’t refer to the conclusion of proceedings in the High Court on 12 January 2018 refusing variation of the Injunction. A copy of the High Court Judgement (‘the Judgement’) in the case *Basingstoke and Deane Borough Council vs Thompson and others [2018] EWHC 0011* is included at **Appendix C** and referred to throughout this Statement.
- 1.6 Paragraphs 88 to 110 of the Judgement provide the view of the Judge “*as to whether the prospect of success in an application and in an appeal from any refusal are sufficiently strong to provide a factor of real weight weighting the balance in favour of granting a variation of the injunction...*” In conclusion on this matter, the Judge stated at paragraph 110 that “*I do not consider that it is probable that planning permission will be granted for this site or that an appeal against a refusal will be successful*”. This conclusion on the planning merits stemmed from matters including: (1) full weight being afforded to the Local Plan; (2) substantial adverse impact on the natural environment; (3) failure of the site to be within a reasonable distance of local services; (4) no successful integration between the travelling and settled communities; (5) detrimental to visual amenities; (6) adverse impact on the SSSI; (7) harm to the character and appearance of the countryside; (8) a very substantially incomplete planning application lacking important detail, including surface water drainage impacts; (9) severe highway impacts; (10) the weight against the scheme arising from intentional unauthorised development; and (11) consideration of the requirements of the Planning Policy for Traveller Sites.

## Validity

- 1.7 The CS letter dated 4 September 2017 (**Appendix D**) brought to the LPA’s attention the Applicant’s failure to correctly serve notices and access rights over the private road from the public highway. These matters were thereafter raised by the LPA in writing to the Appellant on 4 October 2017 with no reply forthcoming. Following the submission of the Appeal, the

CS wrote to PINS on 7 March 2018 (**Appendix E**) to bring these errors to the Inspector's attention. The CS await a response and action from the Appellant on these fundamental matters.

### **Application Description, Plans and Details**

- 1.8 As raised by the LPA by email on 6 October 2017, the submitted plans do not form an accurate basis upon which to identify and describe the development. Dimensions taken from the various plans are inconsistent, furthermore the Site Layout plans are not presented on an OS base or topographical survey to identify existing and neighbouring site features. There are also fire distances to be accounted for to ensure minimum distances hence the need for detailed amended plans to aid the Appeal process.
- 1.9 The LPA have also contacted the agent on numerous occasions requesting important details missing from the application in order to address technical matters and consultees. This was referred in the Judgement at paragraph 98 stating *"In making my assessment of whether I should accord the prospect of the defendants successfully obtaining retrospective planning permission real weight, I cannot ignore the fact that this application is very substantially incomplete"* with reference to the *"considerable number of important details missing from the application"* thereafter summarised (i) to (viii). These details have clearly been known to the Appellant for some time and the CS are astonished they are not addressed in the Appellant's Statement of Case.
- 1.10 The Appellant lodged a request with the LPA by email at 14.40 on 1 February 2018 to revise the site layout (Revision C) with reference to a revised description of development (reducing the number of pitches from 13 to 11). The appeal was made to PINS that same day at 17.06 giving the LPA no opportunity to consider their request or consult. The CS would refer the Inspector to paragraph 93 of the Judgement relating to the prospect of a revised plan raising questions about the feasibility of such an approach:

*"93. The current site boundaries in the plan accompanying the planning application does indeed encroach on a SSSI. Mr Woods, for the Defendants, made light of this while accepting that, while the majority of the site lay outside the SSSI there was some*

*encroachment to the North East of the site. He contended that an amended plan reducing the boundaries of the site and allowing a 15 m buffer zone between the site and the SSSI would avoid this being a problem. However, this would mean that the entire plot layout would have to be changed because plots in that corner of the site would, effectively, disappear. Having regard to the evidence of the defendants who said they had paid substantial amounts of money for “their” plots, I cannot simply assume that this would be a simple matter. While Mr Woods said, with confidence “such a scheme can be devised”, none had been devised prior to the hearing. Mr Masters, for the defendants, promised a plan during Mr Woods’ evidence within 7 days. No such plan has yet been submitted despite Mr Masters’ submission to the contrary in his written submission.’*

- 1.11 The CS consider the appeal is therefore premature, particularly in light of the above inadequacies in the application itself in terms of plans and proper notices, and in terms of the lack of detail, discussions and parties expectations arising out of the High Court proceedings.

## 2. Planning Policy Context

- 2.1 This section identifies and summarises the policy background which will be referred to in CS's case against the appeal proposals.
- 2.2 Section 70(2) of the Town and Country Planning Act 1990 (as amended) states that in dealing with an application for planning permission the LPA shall have regard to the provisions of the development plan, so far as material to the application; any local finance considerations, so far as material to the application; and any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 2.3 The Development Plan in terms of Section 70(2) and 38(6) of the Acts comprises the Basingstoke and Deane Adopted Local Plan 2011-2029 (ALP) adopted 26 May 2016.
- 2.4 In respect of other material considerations, the National Planning Policy Framework (the Framework) dated 27 March 2012 sets out the government's planning policies for England and how these are expected to be applied. The Framework is to be read in conjunction with the government's Planning Policy for Traveller Sites (PPTS) dated 31 August 2015 and Planning Practice Guidance (PPG).

### **Development Plan**

- 2.5 Policy SD1 confirms the ALP has been prepared in accordance with the Framework and that the principal purpose of the planning system is to achieve sustainable development that improves the economic, social and environmental conditions in the area. The policies in the ALP define how a positive approach in favour of sustainable development will be achieved.
- 2.6 Section 4 continues to define the overarching accessibility and settlement strategy for the Borough. The village of Silchester is not identified meaning that it does not have a settlement boundary and is accordingly defined as 'countryside' in planning terms. The

nearest identified sustainable settlement is *'Tadley / Baughurst / Pamber Heath'* to the north and west of Pamber Forest.

- 2.7 The ALP includes a specific policy CN5 that relates to the provision of gypsy and traveller sites. It sets out the LPA's intention of providing for their needs with 16 additional pitches and 3 temporary stopping places through the provision of plots and/or pitches as part of greenfield allocations. This need was in response to the Gypsy and Traveller Needs Assessment (GTNA) dated August 2015 (**Document 1.12**). The LPA commissioned an update to the GTNA in September 2016 to take account of the change in definition in PPTS. The updated Gypsy and Traveller and Travelling Showpeople Accommodation Assessment (GTAA) in April 2017 (**Document 1.13**) identified that there remains an unmet need for pitches in the Borough and there is a lack of alternative accommodation available. The total GTAA need calculation is 9 pitches over the Local Plan period, based on the 8 pitches derived from those travellers which meet the definition, and at least 1 from the unknown category.
- 2.8 The Council will meet the identified needs within the August 2015 GTNA, and any updates, through the provision of plots and/or pitches as part of the Greenfield allocations. Policy CN5 continues to state pitches can also be provided on appropriate sites via planning applications only where there is an identified need; there is no adverse impact on local amenity, the natural or historic environment; the site is within a reasonable distance of local services; there is safe and reasonable access to the highway; adequate on-site facilities are provided; the potential for a mix of uses has been demonstrated; and there is potential for successful integration between travelling and settled communities. In determining applications, the LPA will also take into account the suitability of the site, the sustainability of the location and impact on nationally recognised designations.
- 2.9 Transport is the subject of Policy CN9 with promotion of transport choice, and with development seeking to minimise the need to travel; development will be permitted that does not compromise highway safety among other considerations.
- 2.10 Policy EM1 on landscape, as supported by the Landscape and Biodiversity SPD, requires proposals to be sympathetic to the character and visual quality of the area concerned;

respect, enhance and not be detrimental to the character or visual amenity of the landscape likely to be affected, paying particular regard to various criteria.

- 2.11 Policy EM4 relates to biodiversity and nature conservation, providing the basis for conserving and enhancing the borough's existing biodiversity assets while enabling opportunities to achieve a net gain in biodiversity in accordance with the Framework and legislative provisions.
- 2.12 Policy EM7 states development within areas of flood risk from any source of flooding, will only be acceptable if it is clearly demonstrated that it is appropriate at that location, and that there are no suitable available alternative sites at a lower flood risk following the sequential test. Developments are required to provide a Flood Risk Assessment to address criteria, including a requirement for major development to give priority to the use of SuDs.
- 2.13 Policy EM10 seeks high quality design on all development proposals following a criteria-based approach.
- 2.14 Policy EM12 relates to pollution by avoiding development that is detrimental to quality of life, or poses unacceptable risks to health or the natural environment. It continues to provide criteria to assess schemes that are sensitive to pollution.

### **National Planning Policies**

- 2.15 A number of sections from the **Framework** are relevant to the appeal scheme.
- 2.16 Paragraphs 6 to 17 confirm the purpose of the planning system is to contribute to the achievement of sustainable development, including the 12 core land-use planning principles that seek to inter alia '*contribute to conserving and enhancing the natural environment*' and '*recognise the intrinsic character and beauty of the countryside...*' Paragraph 14 defines when the presumption in favour of sustainable development is triggered.
- 2.17 Section 4 relates to promoting sustainable transport, including paragraph 32 bullet point 3 that states '*Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe*'.

- 2.18 The technical adjustment to the Framework paragraph 49 dated 22 July 2015 by Parliamentary Written Statement of Baroness Williams of Trafford (**Document 1.3**) states those persons who fall within the definition of traveller should have the lack of a 5-year supply of deliverable traveller sites considered in accordance with the PPTS.
- 2.19 Paragraphs 93, 94, 99-104 relate to development in locations at risk from flooding, of which we consider that the requirement for *'local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment'* and subsequent tests is relevant to the appeal.
- 2.20 Paragraph 109 states that *'The planning system should contribute to and enhance the natural and local environment by: protecting and enhancing valued landscapes, geological conservation interests and soils...minimising impacts on biodiversity and providing net gains in biodiversity where possible...preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability'*.
- 2.21 Paragraph 118 confirms the principles for how LPAs should aim to conserve and enhance biodiversity, including tests applicable where significant harm cannot be avoided and when development is within or outside a SSSI and is likely to have an adverse effect.
- 2.22 Paragraph 120 states *'To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location...'* as supported by paragraph 123.
- 2.23 The CS will refer to the Silchester Village Design Statement SPG (**Document 1.14**) and the Basingstoke Landscape and Biodiversity SPD (**Document 1.15**).
- 2.24 A number of sections from the **PPG** are considered to be relevant to the appeal scheme.
- 2.25 The **PPTS** is a further document of relevance to the appeal scheme. Paragraph 4 sets out the Government's aims towards ensuring fair and equal treatment for travellers and states *'local planning authorities should make their own assessment of need for the purposes of planning'*

an objective *‘to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply’* to *‘to reduce tensions between settled and traveller communities in plan-making and planning decisions’* that sites should *‘enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure’* and for LPAs *‘to have due regard to the protection of local amenity and local environment’*.

- 2.26 Paragraph 13 states LPAs *‘should ensure that traveller sites are sustainable economically, socially and environmentally’* through the adoption of their policies.
- 2.27 Paragraphs 22-28 provides the policies relevant to the determination of planning applications. Of relevance to this appeal is paragraph 25 that states LPAs *‘should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure.’*
- 2.28 Paragraph 27 sets out that *‘If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission.’* This is qualified by exceptions in designated areas, including SSSIs.
- 2.29 The government’s **Chief Planning Officer’s letter dated 31 August 2015 (Document 1.5)** publishes a planning policy statement to make intentional unauthorised development a material consideration, which would be weighed in the determination of planning applications and appeals.

### **Statutory Duty**

- 2.30 The statutory basis for planning to seek to minimise impacts on biodiversity and provide net gains in biodiversity where possible is set out in section 40 of the Natural Environment and Rural Communities Act 2006.

### 3. Calleva Society's Case

3.1 The Appeal has been made against the non-determination of the planning application as set out in Section 1. The CS are not aware of the full case of the LPA at this time but understand that the LPA would've refused planning permission had they been in the position to do so. The CS support the position of the LPA to object to the planning application as part of the Appeal.

3.2 The LPA has made the Appellant aware of the various substantive objections by consultees as part of the planning application by email on 4 October 2017, 2 November 2017 and 15 November 2017. These outstanding objections were also germane to the High Court proceedings and discussed in the presence of the Appellant and their Agent. The CS is astonished that the Appellant's Statement of Case gives no consideration and evidence to these known objections, except for a reference to an amended plan in respect of the SSSI.

3.3 The CS consider the following key issues relevant to their objection to the Appeal scheme:

- Identified need
- Dominance on nearest settled community
- Impact on the natural environment
- Impact on character and appearance of the area
- Poor accessibility and unsustainability of location
- Highway impact
- Flood risk and drainage
- Impact on residential amenities
- Impact of intentional unauthorised development
- Precedent
- Temporary permission

3.4 A summary of each of the above concerns and the specific matter which CS will address in detail in their evidence is set out below.

## Identified need

- 3.5 The LPA sets out clearly within Policy CN5 how it will meet the identified need as acknowledged within the GTNA dated August 2015, and any updates. This need will be met at the four Greenfield allocations with a criteria-based approach for sites outside, including there is an identified need for the pitch provision. The Dixon Road appeal (**Document 4.2**) confirms this adopted policy framework and continued monitoring accords with paragraph 10 of the PPTS.
- 3.6 The GTNA identified a need for 16 pitches up to 2029 within the Borough, however this was not based on the revised definition of gypsies and travellers, resulting in those who have permanently ceased to travel no longer falling within the PPTS definition. The March 2017 GTAA proposed a reduction to the established need for pitches over the next 15 years from 16 to 9. It recommends the requirement over the next 5 years falls from 10 to 5. However, it is recognised that the need stemming from households whose status cannot be clarified means this pitch requirement may rise, if travellers from those households are able to prove they meet the new definition. Policy CN5 provides the framework to consider such applications.
- 3.7 The Judgement considered the matter of personal circumstances in some detail at paragraphs 111 to 130. The CS notes that no case has been presented by the Appellant as part of their Statement of Case, as required by the PINS Procedural Guidance, concerning the personal circumstances of any of the intended occupiers or their families that will be weighed against other harm in the planning balance. Their Statement of Case at paragraph 4.2 states *“there are no alternative sites for the families to resort to and thus would be homeless if the enforcement notice is upheld”*; however the CS do not accept their statement as paragraphs 135 and 144 of the Judgement confirms this *“would have been the case before the defendants moved onto the site”* as residence commenced after the Injunction and in *“conscious defiance of the injunction”* (Judgement paragraph 140).
- 3.8 The Annual Monitoring Report of December 2017 (**Document 1.16**) confirms the needs based on the GTAA requirement. The unmet need for the next 5 years is reduced to 3 pitches following the 2 pitches being allowed at the Pelican Road appeal post the AMR base-

date as referred to the Appellant's Statement of Case. It is important to note the main issue in the Pelican Road Appeal was the proximity to AWE, meaning this appeal is not directly relevant to this case.

- 3.9 Paragraph 27 of the PPTS states that if a local planning authority cannot demonstrate an up-to-date 5-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. Exclusions apply inter alia where the proposal is on land designated as SSSI, as is the case of this appeal scheme. In any respect the altered balance is relevant only when considering a temporary permission.
- 3.10 The CS will demonstrate that the identified need for additional pitches to address under provision and maintain an appropriate level of supply, on a permanent or temporary basis, must have regard to the appropriateness of the location and the harmful impacts arising. Furthermore, the appeal scheme considerably exceeds the current need for 3 pitches and that the weight afforded to need should be limited in the situation of the appeal scheme.

#### **Dominance on nearest settled community**

- 3.11 Paragraphs 4, 13, 14 and 25 of the PPTS clearly sets out the need to promote peaceful and integrated co-existence between the site and the local community, furthermore that the scale of sites in rural areas and the countryside should not dominate the nearest settled community.
- 3.12 The CS will demonstrate that allowing the appeal scheme within the Civil Parish of Silchester would represent the largest gypsy and traveller site in the Borough, unsustainably located with associated adverse impacts on the settled community and local infrastructure arising from its wholly disproportionate scale. The positive preparation of small gypsy and traveller sites is the sustainable approach for the Borough, which is also justified in terms of management and integration of gypsy and traveller provision with the settled community.

### **Impact on the natural environment**

- 3.13 The application site includes land within the Pamber Forest and Silchester Common SSSI, in close proximity to Ancient Woodland (at Upper Inhams Copse) and is identified, in part, as comprising deciduous woodland priority habitat – which has been destroyed by the Appellant/those involved in the High Court proceedings. The amenity value of the remaining woodland is highlighted by the TPO confirmed 23 November 2017, as provided as part of the LPA's questionnaire. The Framework in paragraph 118 confirms the principles to conserve and enhance biodiversity including the approach to be taken in respect of land within or outside a SSSI.
- 3.14 Given the response of Natural England, the Woodland Trust and the Council's Biodiversity Officer (provided as part of the LPA's Questionnaire) outlining the harm arising from the intentional unauthorised development at the site, and adjoining land, the development has resulted in the loss and deterioration of an irreplaceable habitat. The Appellant has degraded the value of the site, which the Framework seeks to avoid, potentially contaminating the land and surroundings in the process. The harm is serious and ongoing to the site and surroundings with unknown effects arising from the change of the ground and drainage conditions, as well as the unknown impact of importation of unregulated material.
- 3.15 The CS position is that the Appellant has provided no evidence of the ecological, arboricultural and contamination impacts to demonstrate that the proposed 15m buffer (Site Layout Revision C), is sufficient. Furthermore there is no evidence of the benefits and how these clearly outweigh the impacts on the SSSI. With these factors in mind the harm is very significant and has not been avoided. The intentional unauthorised development means it is not possible to mitigate the harm owing to the damage already caused by destroying supporting habitat of the interest features for which the SSSI has been notified and would prevent the future restoration of the area affected leading to a permanent loss to the SSSI.

### **Impact on character and appearance of the area**

- 3.16 The CS will demonstrate that the appeal scheme is not sympathetic to the character and visual quality of the area. The appeal scheme results in considerable harm to the character

and appearance of the area, harming the defining characteristics of a valued landscape and detrimental to the visual amenities of the area.

- 3.17 The site is located within National Character Area (NCA) 129: Thames Basin Heaths (**Document 1.8**), which recognises the value of the natural landscape at Silchester and Pamber as holding an ecological, landscape and heritage significance of national importance, as set out in NCA key statement SEO3:

*“Enhance the sense of history and biodiversity by conserving, restoring and building the resilience of long-established habitats such as heathland, ancient woodland and meadows, and of archaeology such as hill forts. Work at a landscape scale to conserve and restore key attributes of the historic hunting forests (such as [Pamber]) and historic common land. Engage the public in enjoying this heritage.” (SEO3)*

- 3.18 Locally, the Basingstoke Landscape Assessment (2001) (**Document 1.17**) identifies the site within the North Sherborne Landscape Character Area. The area is gently undulating, subtle landform dissected by a network of minor tributary valleys with remnant areas of scarce habitat types including ancient semi-natural woodland, heathland (notably part of the Pamber Forest and Silchester Common SSSI), and neutral/acidic unimproved grassland. Overall, in many areas the landscape has retained a quiet, rural character, with a network of narrow, winding roads. A key issue is localised suburban influence of some built development and roads, including suburban styles of fencing, signage, lighting and planting, and impacts on quiet, rural character in immediate areas.

- 3.19 The more recent Hampshire County Integrated Assessment (2012) (**Document 1.18**) identifies the landscape character as Woodland and Plantation on Heath in Area 1A. It refers to the domination of woodland, including ancient semi natural woodland and amongst the most tranquil areas. It identifies the threat to this landscape from the conflicts on public rights of way, loss of tranquillity and increased suburbanisation

- 3.20 The Silchester Village Design Statement SPG (**Document 1.14**) emphasises the well-defined nature of the transition between settlement and countryside. The countryside within the parish, including the SSSI covering Silchester Common and Pamber Forest is valued as it (1)

provides a natural break between Silchester on the one hand and the larger village of Pamber Heath and the nearby town of Tadley on the other; and (2) villagers make recreational use of the managed woodland and common land within the parish for the purposes (amongst others) of dogwalking, rambling, horse-riding, bird and butterfly watching and jogging.

- 3.21 The site is located on the northern side of the private road, which is Silchester Footpath No.3, meaning that this is a key valued route from which the wider community access the recreational routes within Silchester Common and Pamber Forest, including routes publicised by the Wildlife Trust (**Appendix I**). Originally the site was under grass cover and formed part of the SSSI and its wider setting. The site is physically separate and remote from a settlement and from other dwellings. While there is a commercial depot adjacent at Culham Mill and the Sewage Treatment Works this does not justify otherwise harmful intensification leading to a suburbanisation of the countryside. The use will introduce a formal linear arrangement of pitches similar to a street or cul-de-sac with a variety of features as each plot makes provision for a mobile home, touring caravan, 2 cars, a day room, along with undoubted associated domestic paraphernalia such as washing lines and children's play equipment. The site has also been extensively covered in hardstanding and wholly enclosed by high close boarded fencing. The application introduces harmful urban elements into an isolated location in the open countryside meaning the physical features, activity and use is highly distinctive and alien in the context harming the character and appearance of the surrounding area and the valued landscape.

#### **Poor accessibility and unsustainability of location**

- 3.22 The CS will demonstrate the site is in an unsustainable location in the open countryside without reasonable access to day to day local services with capacity. The site is not as claimed by the Appellant at paragraph 3.3 of their Statement of Case as "*located on the edge of an existing settlement*" as the edge of Silchester is well-defined and the site is isolated from that edge or other dwellings in the meaning of LP Appendix 3 as amended by the Court of Appeal interpretation of Framework paragraph 55 (*Braintree DC v SSCLG [2018] EWCA Civ. 610*) (**Document 5.2**).

- 3.23 The site also lacks the facilities within a reasonable and safe walking distance as the location of main services such as local health, educational, welfare, community and retail facilities mean residents of the site will be reliant on travel by a private motor car. There is no footway along Little London Road from the junction northwards to Silchester. Alternative off-road circuitous routes are significantly rutted and water-logged through the Pamber Forest that would limit the degree these can be considered a reasonable distance as a walking or cycling route. Without a location that has reasonable access to local services, this will also not allow for successful integration between the settled and travelling communities.
- 3.24 Furthermore, it will be demonstrated that the proposed development does not meet the three strands of sustainable development as set out within the NPPF paragraph 7 and PPTS paragraph 13 namely on economic, social and environmental grounds.
- 3.25 The Appellant has not provided any evidence with the original planning application or as part of their statement of case to demonstrate that the application meets the identified economic role of sustainable development. The CS consider the economic role of the appeal scheme has not been met.
- 3.26 In respect of the social role, the first element of need and supply of housing has already been dealt with separately above and is not therefore repeated, but remains applicable to the consideration of the social role of the appeal scheme. The second element of the social role is to ensure the delivery of a high quality built environment with accessible local services that reflect the community's needs and support its health, social and cultural well-being. As has already been stated, the appeal scheme will not result in a high quality environment as it will be out of keeping with the built and natural environment within a valued landscape area that is sensitive to change. Furthermore, it has been stated that the isolated site does not have reasonable access to enable travellers to access education, health, welfare and employment infrastructure. The CS therefore considers that the appeal fails to meet the social role of sustainable development.
- 3.27 The third element of sustainable development relates to the environmental role contributing to protecting and enhancing our natural, built and historic environment, including improvement of biodiversity. The Appellant's statement of case states "*there is no serious*

*harm to the character and appearance of the countryside*” recognising that harm has occurred through the significant amount of hard standing on the site as well as the introduction of essentially urban features within a natural landscape setting. It is the CS position that the significant harm cannot be avoided, the Appellant has made no attempt to outline a reasonable basis upon which to demonstrate harm would be adequately mitigated, or, as a last resort, compensated for including by planning condition as suggested at their Statement of Case.

- 3.28 The environmental role continues to refer to minimising pollution. As set within their original representations, the CS will demonstrate that there is insufficient evidence provided by the Appellant to demonstrate the site is suitable for residential occupation due to the proximity of the noise and emission sensitive residential site to the Silchester Sewage Treatment Works (STW) located to the west and the industrial operations undertaken at GRP Covers by Corporate Engineering Limited to the south. The commercial site benefits from planning permission BDB/36171 as amended by BDB/43799 for *‘manufacture and assembly of fibreglass moulds for the water industry’*. This concern was raised by both the Council’s Environmental Health Officer and Thames Water and in the absence of an Odour Impact Assessment and Noise Impact Assessment the site cannot be assumed by the Appellant to be suitable for residential use without further assessment following the precautionary approach.
- 3.29 On this basis the CS consider that the appeal scheme fails to meet the environmental role of sustainable development.
- 3.30 In conclusion, the Appellant has failed to demonstrate that the application meets the economic, social or environmental role required to constitute sustainable development in the context of the development plan, the Framework and the PPTS.

### **Highway impact**

- 3.31 Whilst planning decisions are not dictated by property matters, highways is an exception, in that the applicant must be able to show adequate access and without any rights of access over the private road, and no public highway to the land, access cannot be demonstrated

and certainly not to the requisite standards for the use applied for. As referred to in representations concerning the validity of the application, the private road leading to the appeal site is not under the control of the Appellants (**Appendix F and G**). Steps should be made by the Appellants to serve notice on the owners and evidence to confirm rights of access exist or can be made available to service the residential use of the land.

- 3.32 Reflecting concerns of the CS at the time of the application, the Council's Highways Development Management Team (see LPA Questionnaire) considered that in the absence of evidence to the contrary by the Appellant, the proposals would a) not successfully integrate into the existing movement networks; b) not provide safe, suitable and convenient access for all potential users; and c) result in unacceptable or "severe" impacts upon highway safety.
- 3.33 CS will demonstrate that the private road access leading to the public highway is of poor construction. The road is unsuitable for intensification of its use by all vehicles associated with the appeal scheme, including towing vehicles and HGVs, due to the length from the public highway, alignment, narrow width and associated conflict with other users of this private road, including as a well-used recreational public footpath (Silchester No.3) providing an entrance to Pamber Forest nature reserves and linking to other routes.
- 3.34 CS will also demonstrate that material increases in the quantum and type of vehicle movements at the junction of the private road with the C90 (Little London Road) would result in severe impacts due to restricted intervisibility and the geometry. The use of this junction cannot be avoided. There is no opportunity to improve matters due to the ownership of the land and geometry of the junction. Evidence was provided by the CS as part of their representations to the planning application concerning vehicle speeds at the junction. Crashmap data is provided at **Appendix H** to confirm the presence of accidents at the junction and environs, including serious accidents and recorded personal injury events.

#### **Flood risk and drainage**

- 3.35 The CS will demonstrate that the Appellant has not adequately addressed the precautionary approach of the Framework by considering the impact of flooding from all sources and that

insufficient information has been provided to show a deliverable sustainable drainage system, including the absence of a Surface Water Drainage Strategy. The appeal site is identified by the Environment Agency to be at mixed risk from surface water flooding whereby the Appellant's FRA concludes the flood risk from this source is moderate to high. The 'blue land' to the west along Silchester Book is not within the control of the Appellant. Both the red and blue land has been subject of the importation of unregulated materials, reprofiling of the land and associated laying of substantial areas impermeable hardstanding that has altered the ground conditions and it is for the Appellant to demonstrate the impact on drainage conditions and that any mitigation scheme would be deliverable.

### **Intentional unauthorised development**

- 3.36 The CS will demonstrate that the intentional unauthorised development is a material consideration, which weights substantially against granting planning permission because of the scale and extent of the intentional development combined with the damage already taken place.
- 3.37 As detailed at paragraphs 21 to 27 of the Judgement, unauthorised development was undertaken without first obtaining the necessary planning permission. The "*carefully planned*" (Judgement paragraph 87) unauthorised development was commenced 18 February 2017 (Saturday) whereby the extent of development as undertaken goes beyond the red edge application site boundary. The development can only be described as intentional as the Applicant must have known the change of use and building / engineering operations were unauthorised, as a planning application was first received by the LPA on 20 February 2017, the next working day. The Appellant's Statement of Case ignores the harm done, a matter clearly known and addressed in the Judgement that concludes the development undertaken was both intentional and unauthorised.
- 3.38 The Policy Statement confirms the government is concerned about the harm caused where development of land is undertaken in advance of obtaining planning permission. It notes that in such cases there is no opportunity for appropriate mitigation of the harm that has already taken place. It also notes that such development can lead to the LPA having to take expensive and time-consuming enforcement action, as has occurred through the injunction

and High Court proceedings. The CS will demonstrate that this intentional unauthorised development by those, summarised at paragraph 138 and 139 of the Judgement, who have “*deliberately tried to steal an unlawful march on the authority*” has reduced the effectiveness of the planning system and has undermined public confidence and trust in its function, leading to the CS applying as a Rule 6 Party.

- 3.39 The CS will also demonstrate that the intentional unauthorised development of land particularly in this sensitive area where those who would apply through the proper channels would be unlikely to gain permission, is highly contentious at the local level and fuels tension between the site occupants and the surrounding community. The Judgement at paragraph 146 summarises the intentional unauthorised development has led to “*very substantial environmental damage*” and the actions are wholly contrary to the PPTS that ensures a fair and equal treatment for travellers in the planning system, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.

### **Precedent**

- 3.40 The CS consider it is of great importance to ask what the consequences for the site and locality will be if permission is granted. While it is accepted that every case should be considered on its merits, the Courts have accepted the principle that even where land may be suitable for the development proposed, planning permission could be refused for that development if to grant it would be likely to lead to reasonable fears of a proliferation of applications for similar development, which the LPA may then find difficult to refuse. Recently the case of *Q (R Cooper) v Ashford Borough Council (2016) EWHC 1525 (Admin)* (**Document 5.3**) reaffirmed that precedent can be a proper and material consideration for planning purposes, but an assessment must be made on a case-by-case basis to establish whether it is material for the purposes of determining the particular application in question.
- 3.41 In this case, the CS consider the consequences of allowing this appeal would encourage similar proposals contemptuous to the planning process, running contrary to PPTS paragraph 4(f) insofar that decision-making would condone a large-scale unauthorised development,

thereby setting an unwelcomed precedent that would not make enforcement more effective and would lead to the planning system being undermined.

3.42 At the site and locality level, the CS consider that granting permission would encourage other similar proposals to expand the site that would then be difficult to resist. With reference to an Appeal at Smithy Fen in Cambridgeshire (**Document 4.1**) it is clear that what started as two approvals to the north and south of a broad ‘square’ site, has led to many appeals and even injunctions to resist the whole site being later infilled in-between. At Silchester, the area within which enforcement action has been taken by the LPA relating to the intentional unauthorised development extends beyond the boundary of the appeal site and it is noted the Appellant provides no strategy to remedy the unauthorised operations on that land and restoration. It is also noteworthy that the known gypsy family (Jade Nolan and Freddy Loverage) identified by the Land Registry as the owners of appeal site, own adjoining land to the east, north and west (**Appendix F**). The CS therefore foresee that, given the actions undertaken without planning permission, there is a real likelihood that intensification of the site is a realistic prospect should permission be granted for this or even a reduced scale of development. These specific circumstances present a situation where there is a very realistic possibility that this would lead to significant pressure to expand and infill the site. Furthermore, the residential use is likely to lead to real pressures for further encroachment into the SSSI as recognised by Natural England. This would lead to a gross cumulative harm on the landscape character of the local area, damage to the SSSI habitat and an even more unbalanced effect on the nearest settled community. Such adverse impacts would conflict with the social sustainability objectives of the PPTS.

#### **Temporary permission**

3.43 Paragraph 4.1 of the Appellant’s Statement of Case refers to *“the only consideration being whether or not permanent or at the very least temporary permission should be granted.”* No period is suggested by the Appellant as to the length of a temporary consent that they deem to be acceptable. The CS will demonstrate a temporary permission still needs to be weighed against the harms identified. In this instance, a temporary consent would not overcome the disproportionate adverse impact concerns associated with the development, as these are

immediate issues that could not be lessened or improved over the period of the temporary consent and would exist for the duration of the residential occupancy of the site. Therefore, a temporary consent for the development is not considered to be appropriate in this instance.

## 4. List of Documents

**Table 1 - Policy Documents**

<b>National Policy</b>	
<b>Reference</b>	<b>Title</b>
1.1	The National Planning Policy Framework (Framework) dated 27 March 2012
1.2	Planning Practice Guidance (online resource)
1.3	Technical adjustment to the Framework dated 22 July 2015
1.4	Planning Policy for Traveller Sites dated 31 August 2015
1.5	Intentional Unauthorised Development Policy Statement dated 31 August 2015
1.6	The draft revised National Planning Policy Framework published 5 March 2018
1.7	HM Government Consultation: Powers for dealing with unauthorised development and encampments dated 5 April 2018
1.8	Natural England - National Character Area 129: Thames Basin Heaths
<b>Local Policy</b>	
<b>Reference</b>	<b>Title</b>
1.9	Basingstoke and Deane Borough Council Adopted Local Plan 2011-2029 dated May 2016
1.10	Basingstoke and Deane Borough Council Adopted Local Plan Inset Map No.35 Silchester (and Key)
1.11	Basingstoke & Deane Borough Council Basingstoke and Deane Local Plan Inspector's Report dated April 2016
1.12	Gypsy and Traveller Need Assessment (GTNA) dated August 2015
1.13	Gypsy and Traveller and Travelling Showpeople Accommodation Assessment (GTAA) dated March 2017
1.14	Silchester Village Design Statement SPG
1.15	Landscape and Biodiversity SPD
1.16	Basingstoke and Deane Borough Council Annual Monitoring Report dated December 2017
1.17	Basingstoke and Deane Landscape Assessment dated July 2001
1.18	Hampshire Integrated Character Assessment dated 2012

**Table 2 – Planning Application Documents**

<b>Reference</b>	<b>Title</b>
2.1	Application form and certificates
2.2	Caravan Elevation
2.3	Day Room Elevation
2.4	Day Room Floor Plan
2.5	Design & Access Statement
2.6	Flood Risk Assessment
2.7	Location Plan
2.8	Mobile Home Elevation
2.9	Plot Layout
2.10	Site Layout

2.11	Site Layout Revision B*
2.12	Site Layout Revision C*
2.13	Consultation Responses (enclosed within LPA's Questionnaire)

\* Document not subject to public consultation by the LPA

**Table 3 – Other Core Documents**

Reference	Title
3.1	High Court Order dated 21 February 2017
3.2	Injunction Areas Plan
3.3	Basingstoke and Deane Borough Council vs Thompson and others [2018] EWHC 0011
3.4	PINS Procedural Guide: Planning Appeals – 31 January 2018

**Table 4 – Appeal Decisions**

Reference	Title
4.1	Appeal Ref: APP/W0530/A/12/2181439 Land at 5-11 Orchard Drive and 14-18 Water Lane, Smithy Fen, Cottenham, Cambridge, CB24 8PN
4.2	Appeal Ref: APP/H1705/W/15/3067583 Land Off Dixon Road, Sherfield-on-Loddon, Hampshire RG27 0SJ

**Table 5 – Court Judgements**

Reference	Title
5.1	Basingstoke and Deane Borough Council vs Thompson and others [2018] EWHC 0011
5.2	Braintree DC v SSCLG [2018] EWCA Civ. 610
5.3	Q (R Cooper) v Ashford Borough Council (2016) EWHC 1525 (Admin)

4.1 CS reserve the right to introduce further material and documentation during the course of the Inquiry if required. This is particularly relevant insofar as to:

- Changes to national planning policy, such as the revision to the Framework expected in 2018.
- Evidence submitted by the Appellant in response to them being aware of the decision that the LPA would have made had they been able to.
- Relevant and up to date appeal decisions in front of an Inspector.

## **Appendix A – PINS Letter dated 10 April 2018**

## **Appendix B – Calleva Society List of Roads**

The roads in Silchester and Little London covered by the Calleva Society are –

Pamber Road  
Soke Road  
Wall Lane  
Ash Lane  
Bramley Road  
Byes Lane  
Church Lane  
Clappers Farm Road  
Dukes Ride  
Early Lands  
Firth Close  
Hartleys  
Holly Lane  
Hydes Platt  
Inhams Way  
Kings Road  
The Barn  
Little London Road  
Lordswood  
Romans Field  
School Lane  
Silchester Road (Little London)  
The Common  
Wall Lane  
Whistlers Lane

## **Appendix C - Basingstoke and Deane Borough Council vs Thompson and others [2018] EWHC 0011**

## **Appendix D - Calleva Society objection letter to 17/00653/RET dated 4 September 2017**

## **Appendix E - Calleva Society letter to PINS dated 7 March 2018**

## **Appendix F - Copy of Land Registry Titles HP440155 and HP805553**

## **Appendix G - Highways Asset Search**

## **Appendix H - 'Crashmap' Map and Report Data at junction with Little London Road**

## **Appendix I - Wildlife Trust Trail Leaflet and Newsletter**