

RESPONSE ON BEHALF OF THE APPELLANT, MR BARNEY DOHERTY (APPEAL REFERENCE APP/R3650/W/25/3367393):

**SUBMISSIONS ON BEHALF OF THE APPELLANT IN RESPECT OF THE
ECOLOGY, FLOODING AND LANDSCAPE EVIDENCE, AND THE
OUTSTANDING NEED/SUPPLY AND PLANNING EVIDENCE**

**WAVERLEY BOROUGH COUNCIL STATEMENT RELATING TO APPELLANT'S FLOOD RISK,
LANDSCAPE AND ECOLOGY EVIDENCE [the Council's Statement]**

Summary

Further to the various submissions made by the Council in respect of evidential matters, it is not accepted that the evidence submitted by Mr Quigg, Mr Crandon and/or Mr Coe “*fundamentally changes the details of the applications and ii) the acceptance of which would be prejudicial to one party or to other interested parties*” as alleged at paragraph 3 of the Council's Statement. The Council have failed to properly understand the evidence provided, and are taking an unfair opportunistic approach to seriously disadvantage a legally aided Appellant.

The Council refers to Section 16 of the Inspectorate's Procedural Guide to Planning Appeals, in particular to:

*16.1 The appeal process should not be used to evolve a scheme and there are no provisions within the Rules for amendments to be submitted. It is important that what is considered by the Inspector at appeal is **essentially the same scheme** that was considered by the LPA and by interested parties at the application stage.*

Pausing there: as the Appellant will explain below, the evidence submitted in the Appeal has not “*fundamentally changed the details of the application*” and that it is “*essentially the same scheme.*”

*16.2 Where amendments are proposed during the appeals process despite the general principle outlined above, the Planning Inspectorate will consider whether, **exceptionally**, to accept them.*

If, contrary to the Appellant's primary submission above, the Inspector considers the evidence submitted does amount to amendments to the proposal, then the Appellant will explain why there are **exceptional** reasons to accept them.

The Appellant's response

The Council allege a breach of both the substantive and procedural *Wheatcroft* principles, as detailed in the Procedural Guide:

16.3 As per the judgement in Holborn Studios Ltd v The Council of the London Borough of Hackney (2018), which refined the "Wheatcroft principles" set out in Bernard Wheatcroft v Secretary of State for the Environment (1982), two tests will be considered:

*• Substantive - whether the proposed amendment(s) involves a "substantial difference" or a **"fundamental change"** to the application. If the Planning Inspectorate's judgement is that the amendment(s) would result in a **"different application"**, then it is unlikely that the amendment could be considered as part of the appeal. It is also possible that a series of small incremental amendments to a scheme could result in a "substantial difference" or a "fundamental change"*

The description of the development proposed on Pitch 1 – as agreed by the Council at 3.1 of their SoC and stated at paragraph 6 of their Statement – is for *"the change of use of land to a Travellers caravan site comprising of 1 mobile home, 1 touring caravan and associated development."* That application is not made a *"different application"* or subject to a *"fundamental change"* by the evidence submitted in these Appeals:

- it remains *"a change of use to a Travellers caravan site"*, as expressly agreed between the Parties;
- it remains *"comprising of 1 mobile home, 1 touring caravan **and associated development**"*

The Council's Statement is mostly concerned with Mr Quigg's evidence in relation to flood risk. It is submitted that this evidence falls within the phrase *"associated development"* within the agreed description of the proposal as it relates to surface water drainage matters that can be imposed by way of Planning Conditions.

From paragraph 24 of their Statement the Council argue:

24. Both the proposed new ditch and culvert under the access track would be significant engineering operations which are not included in the description of development and have not been identified until now, 11 months after the application was submitted, and 8 months after the appeal. Equally, the proposed off-site ditches are new works that are not part of the application or included within the site area.

Assessment of these details in relation to Wheatcroft

24. It appears very clear to the Local Planning Authority that these details are not "the same scheme that was considered by the Local Planning Authority and interested parties at application stage." (para 16.1 of the procedure guide).

25. In considering whether to accept these changes, the Local Planning Authority suggest that:-

- These are substantial changes that change the proposed layout of the site and introduce significant new engineering operations which themselves need planning permission and are not included in the description of development.
- accepting these changes now would be procedurally unfair as they represent fundamental changes to the application details, with no time for these to be placed in the public domain, or for consultation with the lead flood authority or other drainage interests. In this context very few details are provided about the works proposed (such as sections or capacity calculations), to provide a proper assessment.
- Regards should be had to para 16.5: **these amendments were not submitted at the outset of the appeal**, nor in response to something that could not have been known about when making the appeal.

The Appellant does not agree that Mr Quigg's evidence "represents fundamental changes to the application details." Mr Quigg has produced a note that explains the way he has approached the matter. For the avoidance of doubt and contrary to what is alleged in the Council's Statement, none of the proposed flooding measures would occur outside the red line of the Appeal site.

Mr Quigg responds to the submission made by the Council as follows:

4. The Flood Risk Assessment considers a different redline plan (figure 1, page 9) to the main application.

Response - Mr Smyth characterises the FRA as assessing a "different scheme" because the red line differs from earlier application drawings. The FRA red line reflects the land relevant to the flood risk assessment of Pitch 1. The access track is not relied upon for flood mitigation and is not required to demonstrate that the pitch itself is safe, and the access track's omission from Figure 1 does not affect the hydraulic conclusions. The layout shown in Figure 2 reduces hardstanding and clarifies the drainage intent. That does not create a new development. It refines the surface treatment and illustrates how surface water is intercepted and conveyed. The partially exposed channel to the front is not a new watercourse - it is the defined routing of existing overland flow. This is ordinary site drainage design. There is no material change of development type or scale arising from these drawings.

5. The FRA includes outputs from a hydraulic flood model, produced using the Truflow software package. This is an industry standard hydraulic modelling software tool. The modelling is discussed on pages 18 and 19 of the FRA.

Response - This confirms that the modelling software is appropriate and accepted industry practice. No criticism is made of the software itself. The issue is therefore not software validity but interpretation of results.

6. On page 21 of the FRA, figure 7, the proposed surface water mitigation scheme is shown. The scheme shown requires significant additional land (approximately by a factor of x10) compared to the land associated with Pitch 1. This is a stark difference in scale of land, and includes other pitches associated with other gypsy and traveller pitches. There is no supporting information about the viability of this other off-site land. There is no other information regarding this off-site flood mitigation, which comprise offsite associate of land raising and flood compensation.

Response - This is a misreading of Figure 7, which shows the full model domain. A 2D surface water model must extend beyond the red line in order to represent governing flow paths and catchment behaviour. That does not mean Pitch 1 depends on land ten times its size for mitigation.

Pitch 1 remains dry because of its raised platform level and local interception measures around its perimeter. Those measures can be delivered wholly within the Pitch 1 boundary. The repetition of similar drainage features elsewhere in the model does not create a dependency on third-party land. No flood compensation scheme requiring separate land agreements is being advanced for the appeal proposal.

7. The scope of my work is limited to the Appeal A site, shown in CD1A.4. This new information includes engineering works and land raising is the surface water flood corridor outside the appeal boundary. This off-site information is outside the scope of this appeal, and no previous information has been presented to show these works and the extent of activity associated with them.

Response - Mr Smyth states that off-site works fall outside the appeal boundary and therefore outside scope. Surface water hydraulics are not constrained by red lines. A model must include the contributing catchment and downstream routing to test whether risk is increased elsewhere. That is standard practice. The planning question before the Inspector is whether Pitch 1 is safe and whether flood risk is increased elsewhere as a result of that development. The model answers that question. Although the model domain includes the broader catchment to represent surface water flow paths, Pitch 1 does not rely on upstream mitigation measures in order to remain dry. The platform level and local interception measures around Pitch 1 are sufficient to prevent flooding of the pitch and to avoid increasing third-party risk. Features shown elsewhere in the model relate to those separate areas and are not a precondition for the safe operation of Pitch 1.

8. Flood modelling work has three fundamental aspects, two of which are the model inputs of hydrology / rainfall and the modelled topography or pre and post development surface levels. The third aspect is the construction of the hydraulic model itself. All these three aspects require careful and appropriate consideration as part of a professional review process.

Response - Mr Smyth sets out general principles of modelling: hydrology, topography and model construction. Those principles are not disputed. They are incorporated within the model used. The model compares:

- A baseline unmanaged scenario derived from LiDAR and national datasets.
- A managed post-development scenario incorporating the raised platform and mitigation.

The comparison directly tests whether the development improves or worsens flood behaviour relative to baseline. Mr Smyth does not identify any specific defect in hydrology, terrain or solver configuration. He simply asserts that review is required.

9. There is insufficient information within the two pages to understand the construction on the hydraulic model, the model operation, sensitivity testing or validation of the model construction and operation. Hydraulic models are incredibly sensitive to operational

parameters and settings and must been tested and validated to ensure satisfactory model stability. It is known an existing piped culvert currently flow through the site; it is unclear what consideration has been given to existing pipe routes in the model. A hydraulic modelling is required which must describe the hydraulic model; no such information or report is provided in the FRA document.

Response - Mr Smyth states that “it is known” that a piped culvert flows through the site. No surveyed invert levels, diameter, alignment or condition data are provided within his submission to substantiate either the presence or hydraulic capacity of such infrastructure. Without verified geometry and level data, its hydraulic behaviour cannot be defined with any precision.

Even if a culvert is present, that does not alter the appeal submission conclusion. The post-development modelling does not rely on assumed culvert performance to demonstrate compliance. The pitch remains dry in the 1 in 100 year plus climate change event because of the platform elevation and local interception and routing of surface water. The scheme does not rely on optimistic pipe capacity assumptions.

Mr Smyth’s analysis relies on national screening maps and simplified capacity checks based on assumed culvert parameters. That describes a possible unmanaged baseline condition. It does not test the managed appeal scheme. The only evidence before the Inspector that models the development itself is the site-specific 2D assessment within the FRA.

This is a planning appeal. The relevant question is whether the development, with mitigation in place, performs acceptably. The modelling demonstrates that it does. No alternative modelling, recalculation or contradicting evidence has been presented by Mr Smyth to show otherwise.

10. Direct rainfall hydrology has been used in the Flume modelling. There are numerous specific modelling parameters necessary to determine the rainfall profile (model input). Such information must be understood to ensure the correct input data is run through the model. It is essential that these parameters are known and understood, different storm durations and

seasons (winter/summer) require consideration to ensure that the critical rainfall profile is used in the modelling. Not using the critical (worse case) rainfall profile will result in overly optimistic outputs which do not adequately assess the design storm event. Insufficient details are provided to assess the hydrology of the input data, and a review cannot currently be considered.

Response - Mr Smyth's criticism again focuses on the unmanaged baseline scenario alongside assumed behaviour of buried culverts, for which he has no surveyed data and no verified parameters. His commentary proceeds on guessed pipe diameters, invert levels and capacity reductions, none of which are evidenced. That is not a hydraulic assessment of the appeal scheme - it is speculation about historic infrastructure.

More importantly, it is not the correct basis for assessing flood risk before the Inspector. The Inspector is not being asked to approve an unmanaged site. The question is whether a suitable scheme can be implemented through a site development plan so that Pitch 1 is safe and third-party flood risk is not increased.

The post-development modelling answers that question. When the raised platform and proportionate surface water mitigation are incorporated, the pitch remains dry in the 1 in 100 year plus climate change event and there is a minor net improvement in off-site flood behaviour compared to the unmanaged baseline.

Whether an assumed buried culvert in an unmanaged scenario operates at one capacity or another is therefore not relevant. The development does not rely on optimistic culvert assumptions. It relies on raising the platform and intercepting and routing surface water in a controlled manner.

Continued focus on the unmitigated case is a distraction. The unmanaged scenario describes an existing problem. The appeal concerns whether the managed scheme resolves it. The modelling demonstrates that it does.

11. The other key input information for modelling is the topography, terrain surface. Some information is provided in figure 5, but it is unclear if this represents the undeveloped original predevelopment scenario, the current unconsented development arrangement or something else. The modelled mitigation scheme surface is not provided in detail, and the extent of land raising is not defined in the information. The report discusses land raising no level information has been provided, nor has any space layout information other than the off-site mitigation work plans shown in figure 7 and figure 8.

Response - The baseline surface reflects LiDAR and national datasets and represents the terrain before the pitches and associated platforms were formed. That is deliberate. It captures the pre-development ground condition which underpins national flood mapping and provides the correct reference point against which the managed post-development scenario is tested.

The post-development model incorporates the raised platform and mitigation geometry. The planning test is whether the managed site performs safely compared to baseline. The modelling shows that it does.

The appeal does not require a formal Environment Agency model audit process. This is a *surface water* planning assessment, not a *fluvial* permit submission. The Inspector's task is to determine whether a suitable scheme can be implemented through planning control. The modelling demonstrates that it can. Detailed parameters and final construction drawings can be secured through an appropriately worded planning condition. That is the normal and proportionate planning approach.

12. The typical approach for hydraulic modelling follows the EA guidelines for hydraulic modelling, and the below extract from Environment Agency document below outlines the process timeline.

Response - Mr Smyth refers to EA hydraulic modelling best practice and 3-4 month review timelines. Those timelines relate to formal EA technical audit processes for complex fluvial modelling submissions.

This appeal concerns a site-specific surface water assessment for a single pitch. There is no policy requirement for a multi-month EA audit before the Inspector can determine whether the development is safe and compliant with policy.

The Inspector must assess the evidence before him. The only evidence that tests the development itself is the site-specific 2D modelling within the FRA. Mr Smyth's material does not model the development, and instead he describes the unmanaged baseline conditions using national screening maps.

Mr Smyth has not shown that the development causes increased flood risk on site or elsewhere. He has not provided competing modelling. He has not shown that Pitch 1 floods in the 1 in 100 year plus climate change event. He has not shown that the scheme increases off-site flood risk.

His comments relate to pre-development conditions derived from national datasets, rather than the post-development scenario as modelled with mitigation in place. The Inspector's assessment must relate to the scheme before him, not to baseline national generalised mapping products.

The response from Mr Quigg makes it clear that the submissions made by the Council in respect of amendments to the scheme and the Wheatcroft Principles are entirely misconceived. Further, in order to address the point that *"these amendments were not submitted at the outset of the appeal"*, to the extent that any substantive amendments have been made, which is not accepted, it is necessary to consider the specific circumstances of the Appellant, Mr Barney Doherty: in our email to PINS of 17th November 2025, we explained that Mr Doherty's personal circumstances were such that he qualified for *Exceptional Case Funding* [ECF] provided by the Legal Aid Agency [LAA]. That funding was granted on 3rd November 2025, following the resolution of the cyber-attack on the LAA that had taken place in May of that year. An application to extend the scope of the ECF Certificate then had to be made, as explained in that email. The Experts were only able to produce their evidence after that funding had been granted and Counsel instructed (Mr Coe visited the Appeal site to undertake his survey work in December 2025, Mr Crandon in January 2026).

The planning application itself had to be prepared on a pro-bono basis. Dr Murdoch personally agreed to submit the planning application on this basis but could not find Flood Risk, Landscape and Ecology Experts willing to produce work on a pro bono basis for the planning application. Dr Murdoch was however able to find an architect to produce site location and layout drawings pro bono which were sufficient to have the application validated and determined.

In the normal run of events, applications should be determined within 8 weeks of validation (here, March 2025). Had the Council determined the application in the usual way, a decision would have been made around May 2025. The Appellant then would have had up to 6 months in which to find and instruct Experts and then submit the Appeal with all the evidence front loaded. However, in this case, the Council did not reach a decision but instead issued an Enforcement Notice on 30th May 2025. The effect of that EN was that it reduced the Appeal deadline from 6 months to just 28 days.

In Planning and Enforcement Appeals funded by the LAA, the fees experts can charge is limited to £50 per hour. There are very few experts in their field who are willing to work for LAA rates but Dr Murdoch found 3 who agreed to do so although they were not able to produce their evidence by 30th June 2025 (28 days from the EN). This is the reason why the Appellant was not able to *submit...[this evidence] at the outset of the appeal.*

Turning to the allegations made in respect of landscape evidence. With regards to Mr Crandon's evidence, the Council suggest:

Assessment in relation to Wheatcroft

30. Of these changes the most significant is the introduction of the proposed ditch along the southern boundary of pitch one. The effect of this is to reduce the general area within the site so that it can no longer accommodate the dayroom which is included in the application. For the same reasons as explained in relation to flooding above, the introduction of this new feature is a fundamental change to the application details.

31. Having regard to the second principle, the details now proposed make a significant change to the landscaping details upon which there has been no consultation, and after the Councils evidence on these issues has been submitted. Introducing these changes now is procedurally unfair.

32. It is noted that these details are consistent with the proposed flooding details (for including the wider ditch on the southern boundary) but exclude the drainage channels included in the flooding assessment, that lie outside the site boundaries.

It is not accepted that re-introduction of the ditch along the southern boundary of Pitch 1 represents *a fundamental change to the application details.*

In terms of landscape details, it is entirely common practice for Decision Letters to impose Site Development Scheme conditions in relation to site layout and landscaping when allowing Appeals, notwithstanding the plans submitted at application stage. In fact, Mr Crandon attached an example of this in his Appendices where Inspector Dakyene imposed the following Conditions:

“3) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan TDA.2352.01 and Site Layout and Detailed Landscape Proposals TDA.2352.03, except where amended by the Site Development Scheme required by condition no 4.

4) 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 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

(i) within 3 months of the date of this decision a scheme (hereafter referred to as the Site Development Scheme) shall have been submitted for the written approval of the local planning authority for:

(a) the internal layout of the site, including the siting of caravans and any ancillary structures and the position of hardstandings and parking areas;

(b) any adjustments to the soft landscaping scheme and siting of the play area shown on Drawing TDA.2352.03;

(c) any external lighting within the site; and,

(d) details of foul and surface water drainage.

No breach of the *Wheatcroft Principles* arose in that case as a result and similarly do not arise here either. The imposition of a landscaping scheme for approval does not offend the *Wheatcroft Principles*.

Finally, the Council have fewer concerns about the Ecology evidence:

Ecology details now submitted

33. The application details remain as for above, but the appeal evidence is provided in a proof from Giles Coe together with a drawing CE 26001.2.3 (Plan 3) showing replacement habitats for 6 pitches but including pitch 1.

34. This plan includes:-

- a new ditch along the western side of the pitch and what is shown as a new hedge, but believed to be an intended ditch along the southern boundary

- a significant area of ‘other woodland broadleaved’ in the southern 1/3 of the site

- a strip of other neutral grassland along the western side (alongside the ditch) and new

hedgerows to the east and north.

35. Details of the proposal are elaborated on in para 2.53.

Assessment in relation to Wheatcroft

36. Here the changes are less significant, but the mitigation now proposed would involve virtually all of the green area on the block plan submitted with the application being used for woodland planting, and the addition of the 'neutral grassland' would leave significantly less space for the siting of the mobile home and day room. The cycle and refuse stores have also been deleted. There may not be space to accommodate these. The two ditches (west and southern boundary) are new proposals.

37. Having regard to the two principles, setting aside the introduction of new ditches (discussed above) these ecology do not fundamentally change the application, but procedurally the introduction of the proposed ditches to the west and southern boundaries and new areas of proposed woodland, does make a significant change to the proposed habitats on site, after the Councils evidence on these issues has been submitted. Hence introducing these changes now is procedurally unfair.

38. When considering para 16.5 of the Inspectorate's guidance, these amendments were not submitted at the outset of the appeal, nor in response to something that could not have been known about when making the appeal.

39. It is noted that some of these details differ from the proposed flooding details (which have a much wider ditch on the southern boundary), so it would be difficult to know which new proposal should be assessed.

The Appellant's Ecologist, Mr Coe has produced a note which explains the appeal scheme. He responds as follows:

Para 34, in correction the drawing illustrates a native hedgerow with trees along part (but not all) of the western boundary and a ditch on the southern boundary.

Para 36, the drawings were done in collaboration with Mr Crandon and allow space for the mobile home and touring caravan, there is one ditch not two. The appellant agreed to sacrifice some of their existing hard-standing area to compensate for the woodland originally lost.

Para 37. This was the logical way forward with my input to the scheme and evidence, it was clear that a compensation scheme would be required. Rather than introduce something new,

the aim is to demonstrate that it is possible to provide robust compensation, to show that the scheme could accord with the NPPF.

Para 39. It should be noted that different approaches have been taken to mapping these proposals, the ecology map uses a representational (rather than actual) approach to illustrating linear habitats, this is the standard in BNG assessments but was used here as illustrating linear habitats on very small sites can cause problems. It would be expected that a final design would be required post planning and that the proposed woodland could be created up to the top of the north embankment, essentially creating a woodland ditch, as is currently found for the ditch sections in land to the west.

However, and fundamentally, it can be shown that adequate ecological mitigation/compensation measures can be provided, and it is not unusual for such matters to be subject to a conditioned post-grant scheme for approval. The Council's concerns, not advanced with any real conviction, are misplaced in any event.

The Council then states:

"Overall

40. For the reasons set out above The Local Planning Authority submits that these new details breach both the principles set out under Wheatcroft:

i) Substantive - by introducing new details that introduce new development and which overall are substantially different to the application as submitted;

ii) Procedural - consideration of these details (in relation to all three sets of details) would be procedurally unfair, with no opportunity for further consultation with professional officers and interested parties so late in the appeal process and after all the Council's evidence on the original application details has been submitted.

iii) Paragraph 16.5 – In any event any proposed amendments should have been submitted at the outset of the appeal, so as not to compromise the efficient running of the appeal. Paragraph 16.5 makes clear that exceptionally, Inspectors may accept amendments later in the process if it is responding to something that could not have been known about at the time of making the appeal and the amendment would adhere to the guidance on the substance of the change and procedural fairness outlined above. Neither limb of the exceptional test is met here as these amendments do not

respond to something that could not have been known about at the time of making the appeal and the guidance on the substance and procedural fairness is not met.

Starting in reserve order: We have explained the **exceptional circumstances** that meant that the evidence on ecology, flood risk and landscape could not be submitted at the time the Appeal was submitted (as the EN issued on 30th May 2025 meant there were only 28 days in which to submit the Appeal, which was not enough time for funding to be approved, experts instructed and their evidence submitted.) Had the Council issued a Decision Notice on 30th May 2025 instead of the EN, then the Appellant would have been able to source the funding, instruct the experts and submit all their evidence at the outset of the Appeals.

We do not agree that either singularly or cumulatively, the submitted evidence represents a fundamental change to the planning application. Accordingly, we do not accept that there has been a breach of the substantive *Wheatcroft* principles.

As there have been no fundamental change to the planning application scheme, it follows that there would be no need to re-consult on the submitted evidence either.

Additionally, the Inquiry has been adjourned from 10th March 2026 to the 15th September 2026, a period of over six months during which time the Council could adequately consider the changes they claim have been made to the Appeal scheme, changes which are largely illusory or not in breach of the *Wheatcroft Principles*. The Appellants had originally sought an adjournment of the Inquiry to allow adequate time to address the very new GTAA and 232 page PDA Appendix (that being the very basis on which the Clegg Appeals were adjourned on 23rd January 2026). In our view, whilst a re-consultation on the claimed new materially different proposals is unnecessary, principally because they are not materially different, there was and indeed still is adequate time for the Council to do so, should they genuinely consider it necessary. Additionally, a further planning application has been made (2026/03392) which includes all of the Appeal evidence in relation to flood risk, landscape character and visual impact and ecology, upon which the Council will have to consult¹. Consequently, there is no prejudice arising to the Council or any other party from the approach taken in ecology, flooding and landscape evidence before the Inspector.

Submissions in Respect of the Outstanding Planning and Need/Supply Evidence.

At this stage the Appellant has not submitted his evidence in respect of need/supply, or his evidence on the planning balance, which can only follow from consideration of the current need/supply issue. As the Inspector will be aware, the Council's evidence on need/supply materially and significantly changed a very short time before the final evidence deadline. That

¹ The Council's acknowledgment of that application is attached.

very same evidence necessitated and justified an adjournment in the Inspector Clegg Appeals to allow the Appellants in those Appeals adequate time to deal with the new evidence in a fair and just manner. Until that need/supply evidence has been considered and addressed, it was not possible for the Appellant to provide his general planning evidence, the planning balance to be applied being largely dependent upon the need/supply position.

By way of assistance, the Appellant sets out below, a chronology of relevant events.

In July 2021, the Appellant Barney Doherty's plot was one of four plots on the same piece of land that were subject to planning application WA/2021/02307. Two of the four plots that were included in application WA/2021/02307 are currently the subject of a Planning Appeal that was to be determined at a Public Inquiry before Inspector Clegg [the Clegg Appeals], which has been subject to a number of adjournments; following one such adjournment on 3 June 2025, the Clegg Appeals were then listed for 10 February 2026. However, they were adjourned again on 23 January 2026 because Inspector Clegg was not satisfied that the Appellants had sufficient time to address the Waverley December 2025 Gypsy and Traveller Accommodation Assessment [GTAA 2025] and 232 page Appendix called the Pitch Deliverability Assessment [PDA] submitted by the Council in the Clegg Appeals on 13 January 2026. In his email of 23 January 2026, Mr Brownjohn, acting for the Appellants in the Clegg Appeals, wrote to PINS as follows:

"At the CMC held on 06 October, the LPA advised that the new GTAA was in preparation and the document would be available in the public domain at least four weeks prior to the Inquiry. The LPA stated it should be available in December but it was not. Whilst the Need figures identified by the report are supportive of the appellants case, however provisionally considered an underestimate, the LPA did not advise that it would include a Pitch Deliverability Assessment and as such one was not expected.

That document asserts that the LPA can demonstrate a five year supply, and as such, even were the appellant to accept, for the purposes of these appeals, the need figure to be correct, the parties would still be at odds over whether that need could be met. The appellant considers the submission of that document to be unreasonable under the timings agreed, and sets out that the appellant cannot possibly respond to its content with the time. The appellant does not accept the conclusions set out within that document, and fundamentally disputes Mr. Jarman's assertions that the sites inferred within that document should be considered components of deliverable supply.

The appellant will be unable to respond to the late evidence in the time available to do so due to existing commitments, and therefore seeks the Inspectors view on the

acceptance of the Pitch Deliverability Assessment given that the only document parties were advised would be produced was a new GTAA.”

Alison Dyson of PINS reply of 23 January 2026 stated:

“It was agreed at the case management conference held on 6 October 2025 that updates in respect of changes of circumstance could be submitted by 13 January 2026, and it was known then that a revision of the GTAA was underway. The new GTAA was submitted on 13 January by the Local Planning Authority (LPA), together with other supplementary documents. This GTAA includes an additional section 9 - Pitch Deliverability Assessment & 5 Year Supply – which was not part of the previous GTAA, published in 2018. The supplementary statement of Mr Jarman concerning the general need for and supply of traveller pitches is, moreover, accompanied by a lengthy appendix providing details of sites considered as part of the pitch deliverability assessment exercise.

*The latest GTAA is a change of circumstance, which the Inspector considers is relevant to the four appeals. As such he has accepted it as part of the LPA’s case. **However, given the change in approach, with the inclusion of the pitch deliverability assessment, he acknowledges that there is insufficient time for the Appellants to respond to this document before the inquiry is scheduled to resume on 10 February 2026.** Updated evidence on general need and supply will, therefore, be heard at later date. As it would be unsatisfactory for the inquiry to resume to deal with other matters alone, **resumption of the inquiry is hereby postponed.** We will contact the main parties to make arrangements for resumption of the inquiry. The LPA is asked to notify parties of this change in arrangements for the inquiry.”*

On the same date as Alison Dyson’s adjournment email, 23 January 2026, the Council forwarded the GTAA 2025 as well as the PDA Appendices to Dr Murdoch and Mr Rowe (2 agents for the Appellants). Although in the Clegg Appeals, those documents had been provided to PINS and the Appellants 10 days prior to that email on 13 January 2026, they were not provided to those representing the Appellants in the current Appeals until 23 January 2026. In fact, they were provided 3 hours after Alison Dyson’s email adjourning the Clegg Appeals. The GTAA is dated December 2025 so it is not unreasonable to assume that the Council were aware at the time of the CMC into these Appeals on 7 January 2026 that the need and supply evidence upon which they were intending to rely contained a substantial and “change of approach, that being the “Pitch Delivery Assessment” [PDA].

Indeed, the “*lengthy Appendix*” referred to by Alison Dyson at PINS above is that described as the PDA appended by the Council’s Witness, Mr Steve Jarman of ORS Supplementary Statement. The PDA alone runs to 232 pages of dense tabulated data which asserts that the overall need for 134 additional residential pitches over the Plan period is reduced by 83% if so-called ‘vacant’ pitches and pitches allegedly occupied by non-Travellers were made available; in terms of the 5-year housing land supply [5YHLS] for Travellers, the PDA asserts that there is more than a 5 year supply based on the same assumptions in the PDA. The length of the PDA of 232 pages contrasts with the length of the GTAA 2025 itself which is only 77 pages long.

It can be seen from the GTAA 2025 that the data collection took place over a 13-month period from June 2024 to August 2025 (3.22). The Appellant had only had a matter of days before settling the Proofs of Evidence to consider this new evidence in the PDA provided on 23 January 2026. At the Case Management Conference on 7 January 2026, the Council did not alert the Inspector or the Appellant that they had commissioned, let alone would be submitting this PDA, even though they had been preparing the GTAA for over a year. Nor was a PDA provided in the previous GTAA for Waverley in 2018. The 5YHLS impacts upon both the need and supply evidence and the overall planning balance. There was simply no prospect that the Appellant could address this new, approach and evidence in the available time. Neither the planning nor the need/supply evidence could be provided by the 10 February 2026 deadline as a result.

With regards to the Franks Principles, in particular that of fairness in these proceedings, the Appellant needed to have sufficient time to interrogate the detailed and substantive data in the PDA before he settled his evidence. This was going to be a substantial and highly time-consuming exercise, and one which the Council had taken over 13 months to carry out. This simply could not be done before the Proofs were required to be filed on 10 February 2026.

This position was entirely unacceptable and, as in the Clegg Appeals, the Appellant had been put at a serious and material disadvantage. The unfairness and prejudice visited on the Appellant was substantial.

The need/supply evidence is not a discrete issue, it is something that links through the entire appeal and is critical to the determination of the planning balance to be applied by the Inspector. The Appellant could not possibly have been in a reasonable position to open the Inquiry on the originally planned date of 10 March 2026.

The Appellant requested that the Inquiry scheduled for 10 March 2026 be adjourned in order to allow the Appellants adequate time to address the very recently provided GTAA and PDA, and for the Inquiry to be conducted in a cohesive, fair and comprehensive way, in one sitting. The matter was then listed for a further CMC to be held on 12 February 2026, in order to address these issues.

On 9 February 2026, Dr Murdoch wrote to PINS regarding the Appellant's evidence and sought confirmation that the evidence would be submitted after the CMC which was to be held on 12 February 2026. Having received a response from PINS and submissions from the Council the following day, Dr Murdoch submitted the proofs for the Appellant, Ecology, Landscape and Flooding on 10 February 2026 and also wrote to PINS with the following: *"I turn now to Mr Bennet's email below: in my view, in Mr Rudd's continuing absence and given the cancellation of today's CMC for entirely understandable reasons, it would not be appropriate to discuss the evidence in relation to need and supply further at this point in time, as these were the very issues that were to be discussed at that CMC."*

As I stated in my email to PINS of 10th February 2026 (attached hereto):

"In Mr Bennet's email sent last night at 18.38 he stated:

*"...the Council is content to proceed on the basis that all Proofs - save for those relating specifically to need and supply - are exchanged on Wednesday 11 February 2026. **In circumstances where the forthcoming CMC is likely to address matters relating to the GTAA and PDA, it is reasonable that any further evidence on need and supply be provided after that discussion....***

....

However, the issues that we will be discussing at the CMC in relation to need and supply in the light of the Mr Jarman's evidence are not discrete material considerations that can be considered in isolation but are fundamental to the Planning Balance that my Proof of Evidence will need to address once all the material considerations have been considered and weighted. Until the CMC concludes on the timetable for the submission of evidence on this matter in the light of the above, I

could not reasonably complete my Proof of Evidence as I have not had sufficient time to address this new evidence.

I am able to state at this point, though, that in common with the contents of Mr Bronwjohn's email of 23rd January 2020 to Alison Dyson in the Clegg Appeals, I do not accept that the LPA has a 5 year supply of Traveller sites and that unmet need is clearly evidenced in the GTAA itself – all of which is contained in my Statement of Case and on which my view remains as stated in that document, notwithstanding the new GTAA. What I can not do in the time provided is to consider and address the PDA and more importantly the 232 page Appendix thereto – the very document that the LPA submitted to PINS on 13th January 2026 in the Clegg Appeals (but not to us) and which caused the adjournment of that Inquiry.

In circumstances where the CMC that was to discuss this evidence today was cancelled - the Agenda to which indicated would also consider our adjournment application that had been made on the basis of the "lengthy [PDA] Appendix" that caused the Clagg Appeals to adjourn - in my view it would be manifestly unfair to the Appellant if his evidence on these matters was to be turned away, as Mr Bennet suggests below."

The CMC listed for 12 February 2026 had to be adjourned and relisted for 23 February. On the morning of 23 February, Dr Murdoch sent a very detailed email to PINS (copying in the Council), which addressed all of the issues raised by the Council to which the Appellant respectfully refers the Inspector for details.

Further to the CMC then held on 23 February 2026, Inspector Board directed that the Appellant for Pitch 1 provide submissions in respect of the evidence and Wheatcroft points raised by the Council, by 12.00 on 25 February 2026, but asked to be made aware if that was going to prove a difficulty.

Unfortunately, despite best efforts, that was not possible. The submissions required a response from the respective witnesses dealing with flooding, ecology and landscape, as the assertions made by the Council are largely factual.

Mr Crandon, the landscape witness was taken ill overnight on 23 February 2026 and was admitted to hospital having suffered a suspected stroke. As a consequence, the Appellant

regrettably could not meet the deadline of 25 February 2026, and requested the deadline be extended until the circumstances of Mr Crandon were known.

Having received an update regarding Mr Crandon's health, the Appellant updated the Inspector: Mr Crandon fell ill overnight on Monday evening (23 February) whilst staying in a hotel prior to attending a hearing in Hertford on Tuesday with Dr Murdoch. *"He was hospitalised during the night and has spent two days and two nights in hospital, consequently not being able to attend planned hearings on Tuesday and Wednesday. Having had MRI and CT scans we understand he has now been released home, but is awaiting further investigation. He remains very unwell, has lost sensation and feeling on the right side of his body and is unable to drive. We understand that he will not be returning to work before the beginning of April, at the earliest.* This had two unfortunate consequences for the appeal. Firstly, the response to the Council's Wheatcroft submissions could not be completed at that time. Mr Crandon was clearly not in a position to address the landscaping element and both the flooding and ecology issues are dependent upon input in respect of the landscaping issue, neither could be addressed in isolation.

Secondly, the Inquiry was due to open on 10 March 2026, with Mr Crandon in attendance for the accompanied site visit, and then to address the landscape evidence on 11 March 2026. For obvious reasons this was not now going to be possible. Equally, the flooding and ecology evidence could not be addressed, regardless of the Wheatcroft issues, in the absence of prior input from Mr Crandon.

The Inquiry was then adjourned and new dates provided to PINS. The Inquiry is now due to open on Tuesday 15 September 2026, over six months after the originally planned date.

This left the two issues outstanding; a response from the Appellant to the Council's submissions on the Wheatcroft Principles, and secondly the outstanding evidence from the Appellant in respect of need and supply and the overall planning balance.

The reasons why the need/supply and planning balance evidence could not be provided earlier have been set out above and can be seen from Dr Murdoch's previous emails to PINS, and it is entirely relevant that the timing of the provision of the new GTAA/PDA evidence caused the 3rd adjournment of the Clegg Appeals. Had it not been for this "change in approach" all the evidence would have been submitted in this appeal on 10 February 2026.

Unlike the Council who have separate experts for need and supply (Mr Jarman) and general planning (Mr Ward), the Appellant only has one expert covering both areas of expertise. This is because Mr Doherty's personal circumstances are such that he has to rely on 'Legal Aid' for representation in this Appeal. In the 20 years CLP have been involved with publicly funded Planning Appeals, we have never known the Legal Aid Agency grant funding for separate experts on those issues and hence planning experts have addressed both in their evidence. Dr Murdoch will do the same in this Appeal.

In terms of the Appellant seeing the Council's evidence in advance of providing his own on need and supply and general planning matters, it needs to be borne in mind that the Council sent the Appellant Mr Jarman's Supplementary Statement, GTAA and PDA Appendix *that were provided for the Clegg Appeals* on 23 January 2026. It is highly unlikely that anything contained in the evidence of Dr Murdoch's will come as a surprise to the Council. Indeed, the Council are in possession of the Appellants need/supply evidence in the Clegg Appeals (dated April 2026) and have provided a substantive response from Mr Jarman in May 2026. In the interests of expediency, Dr Murdoch would anticipate relying upon the need/supply and PDA evidence of the Appellants in the Clegg Appeals, and thus any arguments in respect of unfairness and prejudice being caused to the Council are otiose.

In terms of the Council's other evidence, the appellants in plots 3 and 4 (directly above and adjacent to plots 1 and 2) have had the Council's evidence on flood risk, landscape character and visual impact, need and supply (under the previous GTAA), ecology and general planning matters since 2024 and all of those documents are available online to view. As part of the preparation for this Appeal, Dr Murdoch on behalf of the Appellant has considered that evidence so far as it is relevant to this Appeal.

Consequently, it is not accepted that the Council has been prejudiced in any way as all the other evidence except that where need and supply affect the Appellant's case, has been submitted on time.

In summary:

1. The Inquiry has now been adjourned until September 2026;
2. The submissions made by the Council as to the alleged issues relating to the Wheatcroft Principles arising out of the flooding, ecology and landscaping evidence are illusory, and in any event should the Council feel the need to consult further on those matters they had a period of six months in which to do so and still have three months to do so, either in relation to the evidence to the appeal or the identical evidence submitted as part of the further planning application that is before them;
3. Consequently, there can be no prejudice arising in any event;
4. The Appellant was severely prejudiced by the timing of the provision of the substantive GTAA/PDA Appendix which had the subsequent impact of preventing evidence on the applicable planning balance from being settled;
5. As an unfortunate consequence of the adjourned CMCs and the illness of one of the Appellant's witnesses the discussions on the revised deadline for submission of that evidence have never taken place;

6. The Inspector is respectfully requested to reject the Council's submissions made in respect of the claimed issues arising out of the application of the *Wheatcroft Principles*, to accept the Appellant's evidence on flooding, ecology and landscape, and to issue Directions as to the submission of evidence from the Appellant with regards to need/supply and the general planning balance, in the context where the Appellant intends to rely upon the evidence on need/supply currently before the Clegg Appeals which is dated April 2026 and to which the Council has already provided a substantive response in May 2026;
7. The Appellant is content, for the purposes of expediency, for the issue of need and supply to be addressed by a roundtable session, as requested by the Council; and
8. It was originally agreed that landscape issues would be dealt with as a discrete issue at the beginning of the Inquiry, with the site visit taking place immediately before the evidence. It is requested that the same approach is taken in September 2026 please, in the interests of avoiding legally aided experts from spending more time at, and travelling to and from, the Inquiry than is necessary as well as in the interests of the health of the Appellant's landscape witness, Mr Crandon.

8th June 2026



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Mr B Doherty

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LAND NORTH OF LYDIA PARK
COORDINATES 502359 137819
STOVOLDS HILL
CRANLEIGH

Claire Upton-Brown
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Development

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08/05/2026

Dear Sir/Madam

TOWN AND COUNTRY PLANNING ACT 1990

Reference: EC/2026/03392
Applicant: Mr B Doherty
Proposal as submitted: Change of use of land
Site Address: PITCH 1 LAND NORTH OF LYDIA PARK COORDINATES 502359
137819 STOVOLDS HILL CRANLEIGH

We acknowledge receipt of the above application. We aim to provide a fair and prompt service to all, therefore should we find 3 validation requirements incorrect or missing technicians will stop checking and you will be notified to review ALL docs supplied. Thereafter you will have 1 chance to submit any more detail to ensure an accurate application has been submitted. If all required information is received within time, we will then recheck your application to ensure the application is registerable. That being said, we would like to suggest you double check the submission against our local and national requirements - <https://www.waverley.gov.uk/Services/Planning-and-building/Step-by-step-guide-to%5b1%5dplanning-applications/Step-3-Submit-a-planning-application/Final-check-before-submission%5b1%5dvalidation>

Your application will be registered valid as of the date when the required local or national requirements have been submitted, this will be the start of the determination period.

If your application is correct at the point of checking, we will next contact you to inform you that the application has been registered and entered on to the public planning register.

Yours faithfully

Claire Upton-Brown
Joint Assistant Director of Planning Development