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## Appeal Decisions

Site visit made on 17 December 2024

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 22 JANUARY 2025

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### Appeal A Ref: APP/R4408/C/24/3344454

#### Jimboy Stables off Mackey Lane, Brierley, Barnsley, S72 9LD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr J Connors against an enforcement notice issued by Barnsley Metropolitan Borough Council.
  - The notice was issued on 3 May 2024.
  - The breach of planning control as alleged in the notice is without planning permission, the carrying out of the following development: (i) Within the curtilage of the blue edged plan "EN2"; the undertaking of Operational Development comprising of the erection of walls (shown edged yellow on Appendix 1) and a gate (etched red on Appendix 1) on the Land the laying of aggregate (shown in the photos in Appendix 2) AND ii) Within the curtilage of the blue edged plan "EN2" the change of use of the land to use for the residential occupation of caravans (shown hatched green approximately on Appendix 1) and the storage of vehicles, a timber hut, and other domestic items association with the residential use of the Land (shown in photographs referenced Appendix 2).
  - The requirements of the notice are: In relation to (i): (i) Remove the aggregate, walls and gate from the Land (ii) Remove from the Land any materials or waste arising from the compliance with paragraph (i) (iii) Restore the Land to its previous condition; in relation to paragraph (ii) (i) Cease the use of the Land from the residential occupation of caravans (ii) Remove the caravans and vehicles from the Land (iii) Remove the timber hut and other domestic items from the Land.
  - The period for compliance with the requirements is 8 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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### Appeal B Ref: APP/R4408/W/24/3344453

#### Jimboy Stables off Mackey Lane, Brierley, Barnsley, S72 9LD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr J Connors against the decision of Barnsley Metropolitan Borough Council.
  - The application ref is 2024/0089.
  - The development proposed is Material Change of Use of the land from former allotments to caravan site for Gypsy Traveller family with associated development including hard standing, boundary wall and gate, and day room (part-retrospective).
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## Decisions

### Appeal A

1. It is directed that the enforcement notice is corrected by:
  - the deletion of the entirety of paragraph 2 and substitution with the words "Land on the north-east side of Mackey Lane, Brierley, Barnsley, S72 9LD otherwise known as 'Jimboy Stables' as shown edged red on the attached Plan (the "Land")";

- the deletion of paragraph 3 in its entirety and substitution with the words “Without planning permission: (i) Operational development on the Land comprising of the erection of walls and a gate, and the laying of aggregate; and (ii) the material change of use of the Land for the siting of caravans for residential use and the associated storage of vehicles, a timber hut and other domestic items; and
  - the substitution of the plan annexed to this decision for Plans EN1 and EN2 attached to the enforcement notice.
2. Subject to the corrections, Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the erection of walls and a gate, and the laying of aggregate, and the material change of use of land for the siting of caravans for residential use and the associated storage of vehicles, a timber hut and other domestic items at land as shown on the plan attached to the notice and subject to the conditions in the attached schedule.

#### Appeal B

3. The appeal is allowed and planning permission is granted for the Material Change of Use of the land from former allotments to caravan site for Gypsy Traveller family with associated development including hard standing, boundary wall and gate, and day room (part retrospective) at JIMBOY STABLES OFF MACKEY LANE, BARNSELEY, S72 9LD in accordance with the terms of the application, Ref 2024/0089, subject to the conditions in the attached schedule.

#### Application for costs

4. The appellant has made an application for costs against the Council in these appeals which is the subject of a separate decision.

#### The notice

5. The appellant raised several problems with the notice in the initial appeal form and statement of case, and the Council has not responded directly to these points despite having several opportunities to do so through the course of the appeals. Taking account of the submitted information and my observations during the site visit, I am satisfied that the plan attached to the notice is incorrect as the development has taken place on a smaller area of land than that shown edged blue on Plan EN2 which was attached as Appendix 1 to the Notice (or indeed the area of land shown edged red on Plan EN1 attached to the Notice). The address has also been corrected to match the postal address.
6. As the correct area of land is smaller than that shown on the notice, the notice can be corrected to substitute the original plans with the plan annexed to this decision without causing injustice to the parties. The use of term ‘curtilage’ is also inappropriate in this context as no building has been identified in the description of the alleged breach or in the plans attached to the notice.
7. The substitution of the plan results in consequential corrections to the alleged breach which can also be made without causing injustice to the parties, as can the correction to match the postal address.

## **Appeal A - Ground (a) and the Deemed Planning Application, and Appeal B**

8. Taking the two appeals together, and as the development is within the Green Belt, the main issues are:
- The effect of the development on the character and appearance of the area;
  - The effect of the development on the living conditions of the occupiers of adjoining properties (with particular reference to disturbance caused by increased comings and goings);
  - The effect of the development on the highway safety of the access road;
  - Whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (2024) (“the Framework”) and any other relevant development plan policies;
  - Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.
  - The effect of the development on green space;
  - The effect of the development on biodiversity; and
  - Whether the development was Intentional Unauthorised Development
9. In addition to the development already carried out, which is the subject of the deemed planning application, Appeal B also seeks permission for the erection of a day room.
10. The Council accepts that the appellant falls within the definition of gypsy and traveller in Annex 1 of the Planning Policy for Traveller Sites (“the PPTS”). The Council did not allege conflict with Policy GT1 which relates to Sites for Travellers and Travelling Showpeople of the Barnsley Local Plan 2019 (“the BLP”) in either appeal, and indeed the development in both appeals is in accordance with its provisions.

### *Character and appearance of area*

11. The appeal site was previously part of a much larger site which has been used as allotments. The planning use of the remainder of the original site has not changed although much of it is no longer being used as such or cultivated so appears generally overgrown. The appeal site is accessed by Mackey Lane, and the boundary adjoins the rear gardens of houses on Mackey Crescent and Barnsley Road. The site boundaries predominantly consist of walls constructed from a light stone, and with a gate and pillars. The plans submitted to support the planning application Appeal B show they are approximately 1.8 meter in height. They do not appear overly high or domineering and it is possible to see into the site from the track and adjoining land. The site is mostly covered by hardstanding with light stones and has some grassed areas with small fruit trees.
12. The site is very neat and well kept, and the mobile home is situated along the rear (adjacent to the northern-eastern boundary). It is at a lower level and with the mobile home at right-angle to the adjoining gardens and houses, and as such there is no direct over-looking from the site. Whilst the light coloured stone is not a

material seen in the immediate vicinity as the adjoining houses and boundary treatments are predominantly red brick, the residential use is in keeping with the character of the area, and the design and materials used in the development are acceptable within the setting. The additional building proposed under Appeal B, to be use as a day room which would be the in same location as the existing shed, is shown faced in brick and with a tiled roof. The design and appropriate materials can be secured by the imposition of a planning condition.

13. The development as built, and the additional day room as proposed, do not cause harm to the character and appearance of the area, and as such are not contrary to the development plan.

#### *Living conditions*

14. The site adjoins the existing houses but there is nothing before me to suggest that adequate spacing standards have not been met. The development is for a residential use to be occupied by the appellant and his immediate family and as such is an appropriate use in this location. Whilst there will be some noise and light associated with the use it is a small site being used by a limited number of people. There is no reason that such a residential use will cause undue disturbance, including through comings and goings to the site, to the occupiers of the adjacent properties.
15. Planning conditions can be imposed to restrict the layout and number of caravans, and external lighting on site to ensure that the use is satisfactorily controlled and no harm is caused to the occupiers of the neighbouring properties.

#### *Highway safety*

16. Concerns have been raised regarding access to the site via Mackey Lane, which is an unadopted track. However, there is no objection from the highways authority and as the development is for the residential use by one family, the vehicular movements associated with it will be limited.
17. Even with the proposed day room, there would be plenty of room on the site for vehicles to park and turn. The track is fairly wide and access along it to the appeal site from the main road is only a short distance so that it is easy to see if anything is coming, and to reverse back into the site if need be. A small number of other properties already use the track, and it has not been shown that the development causes an unacceptable impact on highway safety or that the development causes any harm in highway terms. There is therefore no conflict with Policy T4 of the BLP which relates to highway safety.

#### *Inappropriate Development*

18. Prior to the new version of the Framework which was published on 12 December 2024, the appellant accepted that the development in both appeals was inappropriate in terms of Green Belt policy. However, paragraph 155 of the revised Framework advises:

“The development of homes, commercial and other development in the Green Belt should also not be regarded as inappropriate where:

- a. The development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;
  - b. There is a demonstrable unmet need for the type of development proposed;
  - c. The development would be in a sustainable location; and
  - d. Where applicable the development proposed meets the ‘Golden Rules’ requirements.”
19. Further guidance in the Framework, and in the revised Planning Policy for Traveller Sites (‘the PPTS’)<sup>1</sup> advises that, in cases involving the provision of traveller sites, particular reference should be made to paragraph 13 of the PPTS when considering whether it is in a sustainable location. In addition, the ‘Golden Rules’ do not apply to traveller sites.

### *Grey belt land*

20. It is therefore first necessary to consider whether the appeal site fits within the definition of grey belt land provided in the Framework Glossary. This is land in the Green Belt comprising previously development land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b) or (d) in paragraph 143 of the Framework.<sup>2</sup> On the information before me, the appeal land was previously used as allotments and would not therefore fall within the Framework definition of previously developed land, but this is not key to the definition of grey belt in any event. The appeal site does not strongly contribute to the purposes of Green Belt as set out in paragraph 143 because: the site adjoins the village of Brierley with further allotments and fields beyond and so is not required to check the unrestricted sprawl of large built up areas; it does not prevent neighbouring towns merging into one another; and it is not preserving the setting and special character of historic towns.
21. As the site falls within the Framework definition of grey belt, it is then necessary to consider the requirements of paragraph 155 as to whether the development should be regarded as inappropriate. The appeal site is small when considering the overall size of the Green Belt which covers almost 75% of the Borough, and only takes up 2 of the original 24 allotments on the larger site and which are still available for that use. The development does not therefore fundamentally undermine the purposes of the remaining Green Belt across the area of the plan as it will have very little effect overall, and is not in conflict with paragraph 155(a).

### *Need*

22. The appellant’s case is that there is a demonstrable unmet need for traveller sites but the Council’s position regarding whether they have such an unmet need is unclear from the information submitted in these appeals. The issue of need is not referred to in the notice or Council’s appeal statements, but they have provided copies of the “Barnsley Gypsy and Traveller Five Year “Deliverable” Land Supply Report April 2024 – March 2029” (July 2024) (‘the Land Supply Report’) , and two appeal decisions<sup>3</sup>, albeit with no indication of how these should be taken into

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<sup>1</sup> Also dated 12 December 2024.

<sup>2</sup> And which does not relate to land where the application of areas or assets in FN7 would provide a strong reason for refusing or restricting development which does not apply in this case other than its location in the Green Belt.

<sup>3</sup> References APP/R4408/C/20/3258711 and APP/R4408/W/22/3308862.

account in this case. The appellant has also provided copies of three additional appeal decisions in the Council's area<sup>4</sup> where permissions have been granted for gypsy and traveller sites. I have taken these decisions into account, particularly the sections which concern the need for and supply of pitches, but each case needs to be determined on the specific facts and policy as they relate to that particular site at the date of the appeal.

23. The Council's assessment of need including the Land Supply Report relies on data that was collected between April and July 2015 and is therefore almost 10 years old. This assessment has not been updated, and nor have the Council provided any detailed information regarding what they believe the current position to be. In addition, the Land Supply Report identifies 19 pitches on two sites which were allocated as gypsy and traveller sites in the Local Plan adopted in January 2019 but no information has been submitted to show that any progress has been made to bring forward either of these sites which were now formally allocated 6 years ago.
24. Paragraph 10 of the PPTS provides that local planning authorities should, in producing their Local Plan, identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. The meaning of deliverable in this context is that sites should be in a suitable location for traveller development and there should be a reasonable prospect that the site is available and could be viably developed at the point envisaged. There is no information in these appeals to show that there has been any progress regarding these allocated sites in the last 6 years and no indication that anything will be different in the immediate future. These sites cannot be considered deliverable within the terms set out and it has not been shown that there is a realistic prospect of any such development coming forward within the next 5 years.
25. Also, the change to the definition of gypsy and travellers in the PPTS has been widened by including "and all other persons with a cultural tradition of nomadism or of living in a caravan", and it is not clear from the information before me whether the needs assessment undertaken in 2015 took account of this wider group. This adds further uncertainty regarding the figures.
26. For these reasons, and in the absence of any kind of credible argument being made by the Council, I consider that the Council has not shown an adequate supply of pitches, and as such there is a demonstrable unmet need for gypsy and traveller development as set out in paragraph 155(b). This unmet need is further demonstrated by this appeal, and the other appeals highlighted by the appellant.

### *Sustainability*

27. The appeal site is sustainable economically, socially and environmentally when considering the relevant factors set out in paragraph 13 of the PPTS. It is a small, well-kept site not at high risk of flooding or other poor environmental conditions adjoining the existing settlement of Brierley, which provides a settled base for the appellant and his family who are accessing local education and health services. It therefore also fulfils the grey belt requirement set out in paragraph 155(c).

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<sup>4</sup> References APP/R4408/C/19/3223190, APP/R4408/20/3249575 and APP/R4408/C/23/3336174

28. As the site does not strongly contribute to the purposes in paragraph 143(a) to check the unrestricted sprawl of large built up areas, (b) to prevent neighbouring towns merging into one another or (d) to preserve the setting and special character of historic towns of the Framework, or fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan, it is not causing any harm in this context. The site therefore falls within the definition of grey belt in the Framework.

#### *Green belt policy*

29. Taking all of these factors into account, the development, in both Appeal A and Appeal B, is not inappropriate development in the Green Belt as set out in paragraph 155 of the Framework. Policy GB1 of the BLP is consistent with the Framework as it states that Green Belt will be protected from inappropriate development in accordance with national policy. In addition, Policy GB3 states that change of use in the Green Belt will be allowed where the proposed new use is in keeping with the local character with a high standard of design, have no adverse effect on the amenity of local residents, the visual amenity of the area, or highway safety, all of which is consistent with the Framework. I have dealt with these issues above and found the development in Appeals A and B to be acceptable in relation to these issues. The development is therefore not inappropriate in terms of the Framework, and there is no conflict with Policy GB1.
30. However, Policy GB3 also requires that all such development should preserve the openness of the Green Belt. The siting of caravans, the hardstanding and walls and the erection of the dayroom in Appeal B, and associated use and paraphernalia, does reduce the openness of the site itself, but in view of my finding that this is occurring on land that is “grey belt” I am satisfied that the development will nonetheless preserve the openness of the Green Belt overall.

#### *Green Space*

31. Whilst not a reason in the enforcement notice, loss of green space was included as a reason for refusal in the application in Appeal B. Policy GS1 provides that allotments can be Green Spaces under the Local Plan but the Council have not advised that the appeal site is shown as green space on the Policies Map.
32. The wider allotment site is privately owned by the appellant, and from the information before me, the allotment use had been in decline prior to his acquisition. Policy GS1 allows for proposal which result in the loss of green space where an assessment shows that there is too much of that particular type of green space in the area which it serves and its loss would not affect the existing and potential needs of the borough. Whilst no formal assessment has been submitted, the appellant states that the remaining 22 allotments have always been (and remain) available for use by local residents at no cost but that the use has significantly declined so that only a couple are still cultivated. The loss of the two allotments which now form the appeal site cannot therefore be said to be a loss which affects the existing or potential needs of the borough, and the Council have not requested a contribution towards the green space. I therefore find, that the allotments have been available for use but are generally unused which is an indication that there is not a shortage of that type of green space. In any event the development site is on less than 10% of the overall site and cannot be said to

cause material harm in terms of loss of the allotment use overall. I do not therefore find any conflict with Policy GS1.

#### *Intentional Unauthorised Development*

33. The appellant accepts that the development was unauthorised but states that the particular medical needs of the family mean that adequate space is required to accommodate the required facilities, and this is available on the appeal site. He has subsequently sought to regularise the development by making the planning application and appealing the enforcement notice (and paying the relevant fee). This gives the opportunity for appropriate planning conditions to be imposed to limit and mitigate any harm and I therefore accord this consideration limited weight.

#### *Biodiversity and Nature Improvement Area*

34. Another reason for refusal that was only given on the planning application (and not on the enforcement notice) related to Policy BI01 and the failure to assess the impact of the development on biodiversity particularly given its location within the Dearne Valley Green Heart Nature Improvement Area.
35. Policy BI01 states that development will be expected to conserve and enhance the biodiversity of the borough, and there is no information before me regarding how the development will do this although it has increased the built environment including through the laying of hardstanding across the appeal site. However, the appellant owns the rest of the allotment site and a proper assessment and any necessary provision can be secured by the imposition of a planning condition. I do not therefore find any conflict with Policy BI01.

#### *Interested parties*

36. In addition to some of the points I have dealt with above, further representations have been received from interested parties during the appeals process.
37. Concerns were raised that the appeal site would be extended with an increased residential use or commercial use involving large vehicles. However, the relevant site in Appeal A and Appeal B is the area currently being used (i.e. the site which is the size of approximately two of the former allotments) and any permission granted will only apply in relation to that area and for the residential use. Any material change of use involving additional types of use or a larger site would require planning permission. Each site must be considered on its own merits and depending on the facts of the case, but I have dealt with the issue regarding the need for pitches in the area earlier in my decision.
38. There is no cogent evidence that any issues regarding the disposal of waste and connections to services cannot be satisfactorily resolved, and private interests such as the impact of development on the value of a neighbouring property are not material planning considerations. The statutory framework allows for retrospective planning permission to be granted, and the enforcement provisions are intended to be remedial.

#### *Conclusion*

39. I have not found any harm caused by the development in Appeal A or B which is in conflict with the Barnsley Local Plan and that cannot be overcome by the

imposition of planning conditions. The Appeals are also in accordance with the revised Framework and the PPTS which are material planning considerations. As there are no other material considerations that indicate otherwise, Appeal A and the deemed planning application, and Appeal B succeed.

### *Conditions*

40. The conditions on each appeal limiting the occupiers of the site to only Gypsies & Travellers (as defined in the revised Framework) are required because the grant of permission took account of that status in the assessment of whether there was a demonstrable need for that particular use when considering whether the site is located in the grey belt. The conditions regarding the number of caravans and plans showing the layout of the site and design of the day room as well as the materials, external lighting and landscaping are required to provide certainty and ensure that no harm is caused to the character and appearance of the area.
41. A condition requiring that an assessment and provision of biodiversity enhancements is necessary to ensure that the development conserves and enhances the biodiversity of the borough.

### **Conclusion**

42. For the reasons given above, I conclude that Appeal A succeeds on ground (a) and Appeal B should be allowed. I shall grant planning permission for the development as described in the notice as corrected. The enforcement notice will be corrected and quashed.
43. In these circumstances the appeals on ground (g) does not fall to be considered.

*Zoë Franks*

INSPECTOR

## SCHEDULE OF CONDITIONS

### Appeal A

- 1) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, and all other persons with a cultural tradition of nomadism or of living in a caravan, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 2) There shall be no more than 1 pitch on the site and no more than 2 caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, shall be stationed at any time, of which only 1 caravan shall be a static caravan.
- 3) Unless within 3 months of the date of this decision a scheme for the required biodiversity enhancements, landscaping, external lighting and site layout is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 8 months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 11 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved biodiversity enhancement scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

### Appeal B

- 1) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, and all other persons with a cultural tradition of nomadism or of living in a caravan, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 2) There shall be no more than 1 pitch on the site and no more than 2 caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, shall be stationed at any time, of which only 1 caravan shall be a static caravan(s).

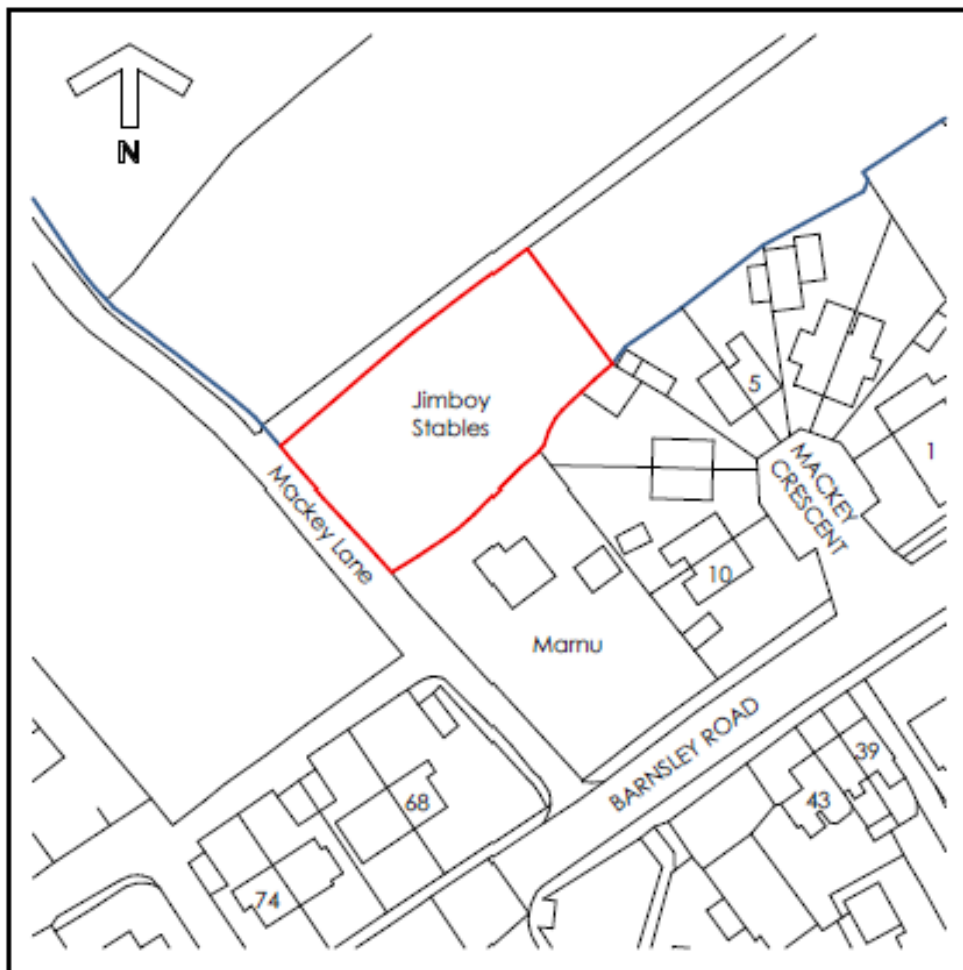
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: Plan 1, Location plan and proposed site plan, Plan 2 Mobile Home Elevations and Floor Plan, Plan 3 Day Room Elevations and Floor Plan.
- 4) No development of the Day Room shown on Plan 3 shall take place until samples of all external facing materials have been submitted to and approved in writing by the local planning authority in writing. The development shall be carried out in accordance with the approved sample details.
- 5) Unless within 3 months of the date of this decision a scheme for the required biodiversity enhancements, landscaping, external lighting and site layout is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 8 months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.
  - a. If no scheme in accordance with this condition is approved within 11 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.
  - b. Upon implementation of the approved biodiversity enhancement scheme specified in this condition, that scheme shall thereafter be retained.
  - c. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.



## Planning Inspectorate

**This is the plan referred to in my decision dated: 22 JANUARY 2025  
by Zoë Franks Solicitor**

**Appeal Refs. APP/R4408/C/24/3344454,  
APP/R4408/W/24/3344453**



Not to scale.