EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (FORMER RAF AIRFIELD WETHERSFIELD) (ACCOMMODATION FOR ASYLUM-SEEKERS ETC.) SPECIAL DEVELOPMENT ORDER 2024

2024 No. 411

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities ("DLUHC") and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Lee Rowley MP, Minister of State (Minister for Housing, Planning and Building Safety) at DLUHC confirms that this Explanatory Memorandum meets the required standard.

2.2 Cathy Frances, Director for Places, Infrastructure and Housing Delivery at DLUHC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Michael Salmon, Head of Planning Response Unit at DLUHC (Telephone: 0303 4440000 or email:PlanningResponseUnitSM@levellingup.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument grants planning permission (subject to conditions) for development on land at the former RAF Airfield Wethersfield in Braintree, Essex ("the Wethersfield site" or "the site"). This is to provide accommodation and other forms of support for up to 1,700 single male asylum-seekers and failed asylum-seekers who are, or are at risk of being, destitute. The instrument also grants planning permission for parking, and for facilities for training and education. The planning permission granted by this instrument is temporary. The development must cease by 10 April 2027, and the land must be restored to its previous condition by 10 October 2027. The beneficiary of the planning permission is the Secretary of State for the Home Department ("SSHD").

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only. More particularly, it applies to part of the former RAF Airfield Wethersfield as specified by reference to a publicly available map.

5. Policy Context

What is being done and why?

5.1 SSHD has a statutory duty to provide accommodation and other support to asylum-seekers and their dependents who would otherwise be destitute. SSHD has a statutory power to provide accommodation for failed asylum-seekers (those who would otherwise be destitute while they await an appeal or removal) and their dependents. An asylum-seeker is someone who has applied for asylum and is awaiting a decision on whether they will be granted refugee status.

5.2 The asylum system has, for several reasons, been under strain in recent years. In September 2023, the number of asylum-seekers being accommodated by SSHD (119,000) was almost two and a half times as many as it had been at 31 March 2020 (48,042). Demand for accommodation has at times temporarily exceeded capacity: in 2022 the lack of onward accommodation saw dangerous levels of overcrowding at the Manston short-term holding facility in Kent. While the number of migrants crossing the English Channel in small boats has recently decreased compared to the previous year, the future pattern of arrivals remains uncertain. Pressures on the availability of asylum accommodation remain, and demand may again exceed current capacity.

5.3 SSHD has made increasing use of hotels, including the 'spot booking' of hotels at short notice pending the provision of more suitable alternatives. The supply of hotel beds is precarious, and their use has been contentious; some local authorities have sought injunctions to prevent their use. In December 2022, the Government announced its intention to end the use of hotels, and to bring forward a range of alternative sites, including former military sites. In March 2023, SSHD confirmed their plans to use the Wethersfield site for accommodating asylum-seekers and failed asylum seekers. This involved material changes in the use of existing buildings and land, and the construction of facilities, which constituted "development" as defined in the Town and Country Planning Act 1990 ("1990 Act"). Such development required planning permission.

What was the previous policy, how is this different?

5.4 On 17 April 2023, SSHD informed the local planning authority of their intended development of part of the Wethersfield site to accommodate asylum-seekers, and that by way of planning permission, they were relying on the right of the Crown to carry out development on Crown land in a situation that was an emergency. Planning permission for such development is granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 ("2015 Order"): see Class Q, Part 19 of Schedule 2 to the 2015 Order. In the SSHD's opinion, immediate steps needed to be taken to prevent the risk of their not being able to fulfil their obligations, and the consequences of not doing so could have resulted in serious damage to human welfare, including a threat of homelessness. This "permitted development right", however, only allows the Government to undertake development for up to 12 months. In February 2024, SSHD asked the Secretary of State for Levelling Up, Housing and Communities ("SSLUHC") to make a Special Development Order ("SDO") under the 1990 Act, granting planning permission for the use of part of the former RAF Airfield Wethersfield to accommodate asylum-seekers, as well as training, education and parking facilities, for three years, with six months reinstatement.

6. Legislative and Legal Context

How has the law changed?

6.1 There is no change in the law as it applies generally. First the instrument is a grant of planning permission through secondary legislation. That legislation only applies to the Wethersfield site. Secondly, it extinguishes most permitted development rights under the 2015 Order (except, for example, development by utility operators) in respect of the Wethersfield site for the duration of planning permission that it grants.

Why was this approach taken to change the law?

6.2 There are several ways of granting planning permission. Some involve legislation, others an administrative application under the 1990 Act. SDO are an established part of the planning system and allow His Majesty's Principal Secretaries of State to grant planning permission by secondary legislation. SSHD needed certainty that planning decisions would be taken before April 2024. The use of an SDO, and change to the law, allows temporary planning permission to be granted in a timely manner (when compared to the other options), in view of the immediate and pressing national need for accommodation for destitute asylum- seekers and failed asylum seekers, while also providing an effective mechanism to make sure the development is appropriate.

7. Consultation

Summary of consultation outcome and methodology

7.1 There is no statutory requirement to consult before making an SDO. SSHD has, however, engaged in three stages with various parties to understand views on their use of the Wethersfield site, starting in early 2023 prior to SSHD's occupation of the site. First a Multi-Agency Forum ("MAF") was established in March 2023 whose membership includes the police, health bodies, and the district and county councils. It has provided, and continues to provide, a structured basis for engagement with these bodies and has met regularly. Second, during the construction and operation of the site between April 2023 and October 2023, in addition to the MAF, public meetings were held, and community newsletters and public Fact Sheets published on-line. Finally, in January 2024 SSHD wrote to several organisations with specific technical expertise (e.g. Historic England and Natural England) to seek their views on the proposal for which SSHD subsequently sought planning permission from SSLUHC.

7.2 The proposed use of the site is contentious. The concerns identified through engagement include whether healthcare would be available to meet the needs of those accommodated on the site (including mental health care to support those who had survived torture) and the prevention and control of infectious disease outbreaks. The potential for increasing pressure on local services was raised, along with fears about crime and safety (both of those accommodated on site and the local community). Some suggested that the rural location of the Wethersfield site isolated and stigmatised asylum-seekers. Questions over whether the clean water and sewage infrastructure could accommodate 1,700 people were raised, as were the risks from contamination as a result of the site's previous military use.

7.3 SSHD has stated, in their planning submission to the SSLUHC, that the site may not be suitable for asylum seekers with physical disabilities or complex health needs or those for whom room sharing is not appropriate, such as those with serious mental health conditions and survivors of torture. Conditions attached to the planning permission require specified services (such as medical care and isolation facilities) to be available to those accommodated and control the development in other ways (for

example by limiting the number of asylum seekers accommodated). Those accommodated will be provided with full board and various onsite facilities (including indoor and outdoor recreation, and multi-faith rooms) and transport to local towns. Conditions attached to the planning permission also require SSHD (with the involvement of the MAF) to take steps to address any adverse impact on local services. The local police force is providing community relations officers to act as a visible deterrent to anti-social and criminal behaviour. Additionally, on site security measures such as mobile CCTV units should deter and identify criminal or anti-social behaviour. Further conditions attached to the planning permission would limit the numbers that can be accommodated at the Wethersfield site until the adequacy of the water infrastructure to accommodate up to 1,700 people has been confirmed and address risks to human health arising from potential contamination.

8. Applicable Guidance

8.1 Not relevant.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 This instrument does not regulate business activity. The Minister took the decision to grant planning permission having first considered the planning merits of the proposed development. He took account of the environmental, social, and economic impact of the development, all relevant regulations (including his public sector equality duties under section 149 of the Equality Act 2010) and relevant material planning considerations. The conditions attached to the grant of planning permission are those necessary to make the development acceptable in planning terms, following consideration of SSHD's planning submission to SSLUHC.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities, or voluntary bodies: the beneficiary of the instrument, and the person to whom the conditions attached to the planning permission apply, is the SSHD. The development is on Crown land.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because of the conditions imposed on SSHD, by the planning permission granted by the instrument, which are necessary, proportionate, and tailored to making sure that the development would proceed in accordance with SSHD's stated intentions.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Monitoring of the impact of the instrument is secured through conditions attached to the planning permission. For example, SSHD must review the operational management of the Wethersfield site at least annually. Officials from DLUHC will arrange periodic spot checks to establish that the activity on the site accords with the provisions of the instrument.

10.2 The instrument does not include a statutory review clause because it makes provision (i.e. grants planning permission) which is to cease to have effect before the end of the period of 5 years beginning with the date on which it comes into force.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").