

Appeal Decisions

Hearing Held on 7 February 2018

Site visit made on 26 February 2018

by Wendy McKay LLB Solicitor (Non-practising)

an Inspector appointed by the Secretary of State

Decision date: 16 April 2018

Appeal A Ref: APP/M2270/C/17/3180337

3 Hartleylands, Swattenden Lane, Cranbrook Kent, TN17 3PS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr M Doran against an enforcement notice issued by Tunbridge Wells Borough Council.
- The enforcement notice was issued on 19 June 2017.
- The breach of planning control alleged in the notice is failure to comply with condition No 3 of a planning permission Ref TW/12/03241/FUL granted on 28 May 2013 and without planning permission the occupation of caravans by persons other than Gypsies and Travellers as defined in Planning Policy for Traveller Sites, March 2012.
- The development to which the permission relates is use of the land for the stationing of caravans for residential purposes for 1 No gypsy pitch. The condition in question is No 3 which states that: "No more than two caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be a static caravan or mobile home) shall be stationed on the site at any time". The notice alleges that the condition has not been complied with in that additional caravans have been stationed on the land.
- The requirements of the notice are: i) Cease the occupation of the caravans/mobile homes and use of the land by all persons other than those who are Gypsies and Travellers as defined in Annex 1 of the Department for Communities and Local Government Planning Policy for Traveller Sites 2012; ii) Permanently remove from the land, all caravans/mobile homes shown in their approximate location hatched in black on the attached plan; iii) Reduce the number of touring caravans located on the land to no more than one.
- The period for compliance with the requirements is six calendar months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Appeal B Ref: APP/M2270/W/17/3174257

3 Hartleylands, Swattenden Lane, Cranbrook Kent, TN17 3PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr M Doran against the decision of Tunbridge Wells Borough Council.
- The application Ref 16/503211/FULL, dated 12 April 2016, was refused by notice dated 24 October 2016.
- The application sought planning permission for the use of land for the stationing of

caravans for residential purposes for 1 No gypsy pitch without complying with a condition attached to planning permission Ref 12/03241/FUL, dated 28 May 2013.

- The condition in dispute is No 3 which is set out above for Appeal A.
- The reason given for the condition is: "To prevent further intensification of the use of the land without planning permission in accordance with Policies EN1, EN25 & H4 of the Local Plan".

Summary of Decision: The appeal is dismissed.

Procedural matters

1. At the Hearing, the Appellant clarified the position as regards the scope of the ground (a) appeal and the deemed application. He confirmed that this appeal is made only in respect of the alleged breach of condition 3 which restricts the numbers of caravans to be stationed on the site at any one time. There is no objection raised to condition 2 which restricts the occupancy of the site to those who enjoy Gypsy status for planning purposes. That part of the notice has now been complied with and the caravans are not currently occupied. It is, in effect, an empty site. The Appellant does not therefore seek to rely upon personal circumstances or human rights arguments in support of his appeal.
2. The attention of the parties was drawn to a number of matters regarding the drafting of the enforcement notice and they were invited to comment in writing as to whether the notice required any amendment and, if so, whether the it could be corrected or varied without any injustice being caused to them. These matters are set out in the Planning Inspectorate e-mail dated 13 February 2018 and raise the following issues:
 - The notice heading alleges a 'Material change of use', rather than a 'Breach of condition'. However, in paragraph 3(i) the notice alleges a breach of condition 3 of planning permission TW/12/03241/FUL.
 - In para 3(ii), there is no reference to condition 2 of planning permission TW/12/03241/FUL which is the relevant condition that imposed the Gypsy and Traveller occupancy condition.
 - In paragraph 5, requirement (ii) requires the removal from the land of all the caravans/mobile homes shown in their approximate position hatched in black on the notice plan. Should this more correctly refer to "static caravans or mobile homes"?
 - In paragraph 5, requirement (iii) refers only to a reduction in the number of the touring caravans to no more than one. Should reference also have been made to a reduction to no more than one static caravan or mobile home in this requirement?
3. In response, the Council initially proposed that the notice should be corrected to refer only to a breach of condition; that paragraph 3(ii) should also include reference to condition 2 and that requirement (ii) should refer to statics. The Council's interpretation of requirement (iii) was that only one mobile home (small tourer) could be stationed on the land alongside one approved static caravan.
4. The Appellant's response highlighted the distinction made by s171A(1) of the 1990 Act between breaches of planning control which comprise (a) the carrying out of development without the required planning permission and (b) failing to comply with any condition or limitation subject to which planning permission

has been granted. The Appellant asserted that the amendments proposed by the Council would cause injustice as they were fundamental changes to the wording of the notice.

5. The Council subsequently requested that its initial comments be disregarded and suggested that there had been a material change of use of the land as the number of pitches on the site had been increased which also caused a breach of condition 3. Therefore, both the material change of use and the breach of condition aspects of the notice were appropriate. It also put forward the view that this was a new residential pitch and there were concerns that the occupancy condition would not bite. It regarded everything on the site as meeting the definition of a caravan. It submitted that requirement (iii) could be varied and that any corrections deemed necessary by me could be carried out without any injustice.
6. S172(1) of the 1990 Act requires an enforcement notice to state (a) the matters which appear to the local planning authority to constitute the breach of planning control; and (b) the paragraph of s171A(1) within which, in the opinion of the authority, the breach falls. In this case, the notice is headed "Material change of use" and makes reference to s171A(1)(a). However, the alleged breach of planning control refers to the stationing of additional caravans in breach of condition 3 of planning permission TW/12/03241/FUL. There is no allegation of a material change of use within paragraph 3 of the notice.
7. Since the notice specifies the matter alleged to constitute the breach of planning control and sets out that the alleged breach falls within s171A(1)(a), it complies with s173(1) on its face. I do not regard it as fundamentally defective or a nullity. However, given the discrepancy between the reference to s171A(1)(a) and the nature of the allegation set out in paragraph 3 of the notice, it is necessary to consider whether the notice could be amended to reflect the correct breach of planning control using the powers pursuant to s176(1). The relevant test is whether I am satisfied that the correction or variation would not cause injustice to the parties. It seems to me that the facts of this case clearly support an allegation of a breach of condition and the notice should be corrected to reflect this notwithstanding the Council's revised stance.
8. Whilst the Appellant claims that such an amendment would cause injustice, the planning application the subject of Appeal B relates to a variation of condition 3. The enforcement grounds of appeal request that reference be made to the case set out in that s78 appeal in support of ground (a). Thus, the Appellant has made its case on ground (a) on the basis of a breach of condition 3 and not a material change of use of the land. I do not believe that the Appellant was misled by the Council's drafting error and it was clear on the face of the notice what was alleged to have been done wrong. I consider that this aspect of the notice can be corrected without any injustice being caused.
9. Although paragraph 3(ii) of the notice alleges the occupation of caravans by persons other than Gypsies and Travellers, it does not make specific reference to condition 2 of planning permission TW/12/03241/FUL. Despite the Council's change of position, I consider that paragraph 3(ii) and requirement 5(i) were obviously intended to additionally address a breach of condition 2 and the allegation should correctly make specific reference to that condition. As

indicated above, the Appellant does not seek any variation of condition 2 under the ground (a) appeal and does not oppose the imposition of such a condition on the grant of a new planning permission should that ground of appeal be successful. I am satisfied that the notice could be corrected to include specific reference to condition 2 without causing any injustice to the parties.

10. As regards requirement 5(ii) of the notice, the Council points out that the relevant definition of a 'caravan' can include both static mobile homes and touring caravans. I do not therefore consider that this particular requirement requires amendment in that respect. However, requirement (iii) needs amendment to reflect the wording of condition 3 and the reference therein to there being no more than two caravans at any one time of which no more than one shall be a static caravan or mobile home. I consider that such an amendment would simply serve to clarify and reinforce what must be done to comply with the condition and hence the notice. It would not cause any injustice to the parties to vary the notice in this way.

The Statement of Common Ground

11. The Statement of Common Ground (SCG) confirms that the following matters are agreed: there are no highway objections or safety concerns; the proposed foul water arrangements are adequate to serve the needs and preserve water quality for the occupiers of the proposed pitches; the proposed water surface arrangements are adequate to safeguard the amenities of the residents and there are no ecology issues. The only area of disagreement is identified as being the impact of the development upon the character and appearance of the High Weald Area of Outstanding Natural Beauty (AONB) and the countryside.

Appeals A and B - The appeal on ground (a), the deemed application and the section 78 appeal

The Main Issues

12. The main issues are first, the effect that the additional caravans would have on the scenic beauty and landscape of the AONB and the character and appearance of the surrounding countryside and secondly, whether there is an unmet need for additional Gypsy and Traveller sites.

The Appeal Site

13. The appeal site is located to the south-west of the settlement of Cranbrook within the countryside and the AONB. The primary purpose of the AONB designation is to conserve and enhance natural beauty. The site is surrounded by a mixed area of agriculture, woodland and a few rural dwellings. The site and surrounding land are generally flat, although the land rises gently to the east. The plot is accessed via an unmade roadway from Swattenden Lane which also serves five existing pitches on the Hartleylands residential caravan site, Hartleylands Farm and the property known as Bramfield. There is a Public Right of Way (PROW), WC116, which follows the access way directly past the site and WC115 which crosses WC116 about 100m to the south of the site.

Planning History

14. The area was previously used as a trade and domestic waste tip and was infilled in 1968. It was granted planning permission for use as a two pitch Gypsy and Traveller site in 1993 (93/00065/FUL). The ownership has since

been divided into three separate sites known as Nos 1, 2 and 3 Hartleylands. The appeal site is the southernmost site and lies within the red line area of the original 1993 permission. It was granted permission as a single pitch site in 2012 (12/03241/FUL). The single mobile home was shown to be positioned to the immediate north east of a single storey storage barn in the centre of the site.

The Development Plan and other policies

15. The Development Plan for the area includes the Tunbridge Wells Core Strategy adopted in 2010 and the saved policies of the Tunbridge Wells Borough Local Plan 2006. The relevant Local Plan Policies are LBD1, EN1, EN25 and H4. The relevant Core Strategy policies are Core Policy 1: Delivery of Development, Core Policy 3: Transport Infrastructure, Core Policy 4: Environment, Core Policy 5: Sustainable Design and Construction and Core Policy 14: Development in the Villages and Rural Areas. The High Weald AONB Management Plan sets out the importance of conserving and enhancing the natural beauty of the AONB.
16. The Government issued the National Planning Policy Framework ("the Framework") in March 2012. The Government's planning policy for traveller sites is to be read in conjunction with the Framework and is set out in the 'the Department for Communities and Local Government (DCLG) guidance *'Planning policy for traveller sites' (the "PPTS")*. The aims of the latter guidance include increasing the number of traveller sites in appropriate locations with planning permission, to address under-provision and maintain an appropriate level of supply.
17. PPTS, paragraph 25 states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Paragraph 26 b), explains that when considering applications, local planning authorities should attach weight to sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness. Paragraph 26 d) refers to not enclosing a site with so much hard landscaping, high walls or fences that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.
18. The Framework includes as one of the core planning principles the need to recognise the intrinsic character and beauty of the countryside. It states at paragraph 115, that: *"Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty."*
19. The Framework explains that planning law requires that applications for planning permission must be determined in accordance with the development plan¹ unless material considerations indicate otherwise.

¹ Section 38(1) of the Planning and Compulsory Purchase Act 2004

Reasons

The effect on the scenic beauty and landscape of the AONB and the character and appearance of the surrounding countryside

20. The Appellant seeks a variation of condition 3 to allow for the stationing of an additional two mobile homes and two touring caravans on the site. The variation would enable the maximum number of caravans permitted on the site at any one time to be increased from two to six with no more than three being a static caravan or mobile home. It is intended that they be occupied by Gypsies and Travellers who fulfil the definition of Gypsies and Travellers in Annex 1 of the PPTS.
21. The Local Plan Policy H4 relates to proposals for the establishment of Gypsy sites. It indicates that sites will be permitted provided all of the criteria set out in the policy are satisfied including criteria 3 and 4:
 - “3. The proposal would not be visually intrusive and would be well-screened by existing vegetation and physically contained by landscaping”;
 - “4. Proposals would not be located within an exposed position in the High Weald Area of Outstanding Natural Beauty, or a Special Landscape Area or elsewhere where they would have more than a minimal impact on the rural character of the locality.”
22. The footnote to criterion 3 explains further that:
 - “In view of the need to prevent visual intrusion by additional caravans it may be necessary to condition an application to limit the number of caravans to be accommodated on the site and to remove permitted development rights.”
23. The Borough’s Landscape Character Assessment SPD (LCA) identifies that the site is located within Local Character Area 4: Cranbrook Fruit Belt. The development constraints and character objectives for this area identify key requirements including the retention of the rural ambience of the area with pockets of comparative isolation and the particular vulnerability of the area to further pressures for development which has the potential to erode the area’s essential rural character.
24. The lawful static mobile home on the site is located towards the north-east corner of the plot behind the storage barn and row of conifers that are fairly centrally located within the site. My observations at the time of my site visit confirmed the Council’s evidence that the lawful mobile home is set-back from the adjacent PROW and is generally well-screened from public viewpoints.
25. The Planning Committee Report which considered the 2012 application (12/03241/FUL) states that: *“It is considered that the proposed positioning of the mobile home would result in it being screened from views from the access track or neighbouring land mainly by the existing buildings on site but also from the planting and the fencing, leaving the external appearance of the site unchanged.”* The Council points out that these conclusions remain pertinent to this day in relation to the lawful mobile home.
26. The Appellant’s proposed landscaping scheme is shown on drawing number TDA.2292.02 – Soft landscape & Fencing Strategy. The Appellant submits that the provision of landscaping would mitigate the impact of the additional

- caravans upon the immediate setting and the wider landscape and improve the site's landscape and biodiversity value.
27. The Appellant has carried out a Landscape and Visual Impact Assessment (LVIA). This concludes that provided the proposed landscaping is implemented and becomes established, the development would, amongst other things; conserve the landscape and scenic beauty of the AONB; respect the context of the site and would have minimal impacts upon the amenities and character of the area.
 28. The visual amenity appraisal has selected a number of photo viewpoints to represent the possible impact of the development upon local receptors. The assessment defines viewer sensitivity in Table 1 and the magnitude of the effect on each individual photo viewpoint has been assessed and categorised as high, medium, low or negligible based on professional judgment. The significance of the visual impact upon the photo viewpoints has then been assessed using the 'Significance Matrix' as set out in Table 2 and Table 3 describes the level of significance of 'Environmental Effects'.
 29. The visual impact assessment concludes that, with the exception of photo viewpoint 4, the views of the site from surrounding viewpoints are screened by a combination of existing vegetation, the natural undulating topography of the area, orchard planting and roadside hedgerows with associated trees. Viewpoint 4 is assessed as having a level of significance that is 'minor adverse'. The Appellant submits that post-establishment of the landscape proposals, after two to three years, that visual impact would be reduced to negligible with a minor improvement after five years.
 30. As regards landscape character, the definitions of landscape character sensitivity are set out in Table 4 with the magnitude of landscape change in Table 5 and the significance of effects set out in Table 6. The Appellant's Landscape Statement recognises that the site's landscape setting displays some of the key characteristic features listed within the LCA. However, it identifies that the undulating nature of the wooded farmland combined with the numerous orchards contained within it, limits views of the site from afar.
 31. The landscape character assessment concludes that the sensitivity of the site's immediate setting and surrounding landscape is high. However, the severity or significance of the effect on landscape character is assessed as 'moderate/minor adverse'. Nevertheless, the magnitude of landscape change, in the light of the visual amenity appraisal which revealed no visual impacts experienced from mid or long range public viewpoints, is assessed as being low.
 32. It has been submitted on behalf of local residents that the development would detrimentally impact upon the users of the footpaths and their quiet enjoyment of this part of the countryside, especially as people using footpaths tend to do so for their quality, landscape character and scenic beauty. They contend that the proposed increase in caravans would introduce further incongruous domestic structures, activity and physical items causing harm to the rural character and appearance of the area.
 33. Photo viewpoint 4 is a short range view looking north-east from the Hartleylands access road and the PROW linking Swattenden Lane with Mount Ephraim/Cranbrook. From this viewpoint, the upper parts of the mobile homes

and touring caravans would be clearly visible above the boundary screen. The users of PROW WC116 would experience detriment to their view as they progress from that viewpoint north towards and past the site. When I visited the site I saw that the caravans would also be seen from PROW WC115 from part of that footpath between viewpoints 4 and 5. Therefore, although the additional caravans would only be seen from short range viewpoints that visual harm would be experienced for a relatively long stretch of the public footpath network in the vicinity of the site.

34. The existing permitted Gypsy and Traveller sites are visible and form part of the site's immediate setting. Nevertheless, the five pitches on the plot to the immediate north of the appeal site are particularly well-screened from public viewpoints. In contrast, the proposed additional mobile homes on the appeal site would be in a far more prominent position to the south of the storage barn and row of conifers. Those trees are proposed to be removed as part of the proposed landscaping scheme. I concur with the Council that, particularly from the south, the visual impact of Nos 1 and 2 Hartleylands is far more limited than the appeal development. In contrast, the additional caravans on the appeal site would be readily apparent when approached from that direction along the PROW network notwithstanding the landscaping proposed.
35. The views of the site from the PROWs would be partially restricted by close-boarded fencing and the other proposed boundary treatments and landscaping. The notice does not seek the removal of the close-boarded fencing which would remain in any event. The proposed landscaping scheme includes the provision of a hedgerow immediately to the south of the existing fencing and alongside the access track. The landscaping would serve to give some additional screening and softening of the harsh feature that is provided by the existing close-boarded fence. Nonetheless, the upper parts of the mobile homes would still be apparent and appear as a discordant feature in the rural setting. Moreover, I consider that the proposed boundary treatment would serve to emphasise the enclosure of the site and loss of openness. I believe that it would, itself, appear artificial and at odds with the characteristic features of the surrounding landscape.
36. The Appellant submits that if I disagree with the LVIA categorisation in terms of sensitivity of users of the footpath then using their method the outcome would still be a minor adverse impact. However, I disagree not only as to the sensitivity of users of the PROWS but also as to the significance attributed to the impact of the development upon the short range views that would be obtained. Whilst I concur that existing features limit views of the site from afar, the development would result in a dramatic and adverse change in the visual impact of the site when observed from the PROWs at short range distances. The users of the footpaths are likely to be highly focused on the landscape. In my judgement, the caravans would result in a considerable deterioration to their existing visual experience.
37. The Appellant puts forward by way of a planning gain the retention and reinstatement of the existing equestrian paddock to the south of the site and the removal of existing fly-tipped material/spoil heaps within the adjacent paddock to the south. When I visited the site I saw that the field to the south still has the appearance of a largely grassed paddock area. The Council points out that the removal of fly-tipping is the land owner's responsibility. The

proposed works to improve the condition of the paddock and the removal of the fly-tipping are factors to which I attribute little weight.

38. The Appellant submits that the visual envelope and influence of the development is restricted and, as a consequence, the site is not within a prominent or exposed position in the AONB. That was also the finding of the Appeal B Planning Committee Report² which indicates that the level nature of the site is such that the proposed development is not considered to be located in a highly exposed position in the AONB.
39. Although only short range views would be available, I disagree with the Appellant as to the prominence and degree of visual intrusion that would be caused by the additional caravans. Given that the site would be readily visible and open to public view, I believe that it should be regarded as occupying an exposed position within the AONB. Furthermore, I consider that the proposed increased use of the site would materially detract from the rural ambience of the area. It would consolidate the existing caravan site development with inevitable erosion of the essential rural character of the area. The development would thereby fail to respect those key requirements of the LCA for the area. Since there would be more than a minimal impact on the rural character of the locality, criterion 4 of Policy H4 would not, in any event, be met.
40. I conclude that the introduction of the additional caravans would materially detract from the rural character of the surroundings and the scenic beauty and landscape of the AONB. The new planting and soft landscaping proposed would not satisfactorily overcome that harm. I believe that the condition 3 remains necessary to prevent the visual intrusion that would be caused by the additional caravans, as anticipated by the footnote to criterion 3 of Policy H4. The variation of the condition sought would not be in accordance with Local Plan Policies LBD1, EN1, EN25 and H4 and Core Strategy Policies 4, 5 and 14 or the aims of the Framework in relation to the countryside and the AONB.

Whether there is an unmet need for additional Gypsy and Traveller sites

41. The Council does not dispute that there is a national need for sites, as evidenced by the PPTS. The Appellant has also provided evidence of regional need, as revealed by the Gypsy and Traveller and Travelling Showpeople Accommodation Assessments (GTAA) for other nearby local planning authorities.
42. As regards local need the PPTS, paragraph 24, advises that, amongst other things, local planning authorities should consider the existing level of local provision and need for sites when considering planning applications for traveller sites. The PPTS sets out as a Government aim in respect of traveller sites that local planning authorities should make their own assessment of need for the purposes of planning.
43. A GTAA was carried out in 2005 which found that there was a small level of unmet need for additional sites. However, the Council accepts that it is now out-of-date and little weight can be attached to it. The Council aims to identify Gypsy and Traveller sites through the Local Development Framework (LDF). The new GTAA is unlikely to be completed much before the new plan is published in 2018/19.

² See paragraph 10.18

44. The Council draws support from the latest bi-annual caravan count figures which reveal that at the time of the count there were no unauthorised sites. There were five unauthorised pitches with four being on one authorised site and one on another authorised site. The Council submits that this indicates that there is a very low level of need in the Borough to which little weight should be attached.
45. Whilst the bi-annual count figure provides an indication of need on a particular date, the true level of need within an area is generally not just restricted to unauthorised encampments. Although the latest bi-annual count figures reveal a relatively low level of need in the Borough, this snapshot of caravan numbers cannot replace or have the same authority as the objective assessment of need required by the PPTS.
46. My attention was drawn to an appeal decision dated 31 July 2015 (APP/M2270/W/15/3005034) relating to land adjacent to Holly Cottages, Pearsons Green Road, Brenchley which granted planning permission for the siting of a mobile home for a gypsy family with an associated amenity building. In relation to need, that Inspector commented at paragraph 26, that: *"The acknowledged fact is that the Council has no adopted policy allocating sites for travellers, has not carried out a needs analysis and therefore is not able to demonstrate a five year supply of sites"*. He concluded that: *"In the balance required of this Decision, the benefits of providing a traveller site to address a need, albeit unquantified, significantly outweigh the limited harm identified."*
47. The more recent appeal decision by the same Inspector dated 15 December 2017 (APP/M2270/W/17/3173120) relates to land at Funnels Piece, Lucks Lane, Paddock Wood which granted planning permission for the change of use of land to a mixed-use of private equestrianism and stationing of one mobile and one touring caravan for single gypsy family occupation. In relation to need, the Inspector noted that there was no up-to-date GTAA, nor a five year supply of sites. He stated: *"Consultation on the new Plan is intended to take place in spring 2018 with adoption anticipated in 2019. Although there is no reason to think that the Council will not be able to meet the need, once identified, sites would not be expected to become available for a further year or so after adoption."*
48. The position in terms of the failure on the part of the Council to carry out a needs assessment remains the same as it was at the time of those appeals. There is currently no up-to-date assessment of the accommodation needs of Gypsies and Travellers in the Borough. Furthermore, the Council is unable to demonstrate a five year supply of sites.
49. The PPTS advises that if a local planning authority cannot demonstrate an up-to-date five year supply of deliverable sites, this should be a material consideration in any subsequent planning decision when considering applications for the temporary grant of planning permission. Since an exception is made where the proposal is on land designated as an AONB that does not apply in this instance.
50. However, the lack of an up-to-date assessment of need and the absence of a five year supply of sites represent a clear failure of policy in relation to the provision of Gypsy and Traveller sites in the Borough. Although I concur with the Council that the actual level of need is likely to be low, there is, as yet, an unquantified level of unmet need in the Borough. These are all factors in

support of the appeal to which weight can be attributed in the overall balance of considerations.

Other matters

51. The Appellant points out that the PPTS Policy B, paragraph 13, takes a holistic view of sustainability including economic, social and environmental considerations. The PPTS makes no mention in relation to Gypsy and Traveller site provision of the need to reduce reliance on private car use and there are no specific distances to services cited.
52. Policy H4 requires the location of the proposed site to be appropriate in terms of proximity to essential services such as shops, schools, public transport, medical and social services. The Planning Committee Report for Appeal B refers to two recent appeal decisions³ in the Borough which address the issue. In the light of those decisions, the report considered that the site complied with the locational requirement of Policy H4. I find no reason to disagree with the conclusion reached in relation to locational sustainability given the nature of the development sought and the approach to sustainability advocated by the PPTS
53. The Appellant draws support from the appeal decision⁴ dated 22 February 2016 relating to land to the east of Market Garden (known as Conifers), Clappers Lane, Fulking, West Sussex whereby permission was granted for the change of use of the land to a private gypsy and traveller caravan site consisting of two pitches. That site was permitted within the South Downs National Park. The Inspector concluded that the limited harm to the scenic beauty of the National Park was outweighed by the personal circumstances of the Appellant. However, that appeal relates to a different site within the area of a different planning authority. There were clearly site specific and other material considerations to weigh in the balance, including the personal circumstances of the site occupants and the best interests of the children living on the site. I do not regard the particular facts pertaining to that appeal site to be directly comparable to this case.
54. The appeal site has for many years been covered with a hard surface. The PPTS paragraph 26(a) states that when considering applications, local planning authorities should attach weight to the effective use of previously developed (brownfield) untidy or derelict land. The evidence is unclear as to whether the land actually falls within the Framework definition of 'Previously Developed Land' at Annex 2 but for the purposes of this appeal I shall assume that it does so and treat this as a factor in support.

Overall conclusions

55. I conclude that the variation of condition sought would result in significant harm to the rural character of the surrounding countryside and the scenic beauty and landscape of the AONB. It would not be in accordance with Local Plan Policies LBD1, EN1, EN25 and H4, Core Strategy Policies 4, 5 and 14 and the aims of the Framework in relation to the countryside and the AONB. I attribute substantial weight to the harm identified.

³ APP/M2270/A/13/2199370, and APP/M2270/W/15/3005034

⁴ APP/Y9507/C/15/3062034, 3062035 and 3005938

56. There are various factors which weigh in favour of the grant of permission in this case including the lack of an up-to-date assessment of need, the absence of a five year supply of sites and the unmet need in the Borough. I have also borne in mind that this is an existing permitted Gypsy and Traveller site that is covered with a hard surface that would remain in any event. The development would also meet the locational sustainability criterion of Policy H4.
57. The Planning Committee Report which recommended approval of the Appeal B scheme concludes, amongst other things, that: "*The proposal would amount to exceptional circumstances to outweigh the limited harm to the Area of Outstanding Natural Beauty.*" However, I disagree with that assessment of the overall planning balance in this case. I find that all the factors which support the variation of condition sought are significantly and demonstrably outweighed by the harm to the character of the rural area and the scenic beauty and landscape of the AONB.
58. I have also considered whether it might be appropriate to grant a temporary planning permission. Such a time limited permission may be justified when it is expected that the planning circumstances will change in a particular way at the end of the period. Nonetheless, the material considerations to which regard must be had in granting any permission are not limited or made different by a decision to make the permission a temporary one. The harm resulting from a temporary planning permission would not endure permanently. However, there would still be serious harm to the AONB and the rural character and appearance of the area for the duration of the temporary permissions granted.
59. The emerging Local Plan provides the prospect of planning circumstances changing over the next few years. However, the expected changes to planning circumstances that are likely to occur over the period of the temporary permission do not significantly alter the overall balance in this case. Even for a temporary period, the considerations in support of these appeals are strongly outweighed by the harm identified.

Formal Conclusions

Appeal A

60. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

Appeal B

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

Formal Decisions

Appeal A Ref: APP/M2270/C/17/3180337

62. It is directed that the enforcement notice be corrected by deleting from the notice heading the words "MATERIAL CHANGE OF USE" and substituting therefor the words "BREACH OF CONDITION"; by deleting from paragraph 1 of the notice the brackets and letter "(a)" and substituting therefore the brackets and letter "b"; by inserting after the figures "2012" in paragraph 3 (ii) of the notice the words and figures "in breach of condition 2 imposed upon planning

permission TW/12/03241/FUL which stated that: The site shall not be occupied by persons other than Gypsies and Travellers as defined in Planning Policy for Traveller Sites, March 2012"; and varied by deleting requirement 5 (iii) in its entirety and substituting therefor the words "Reduce the number of caravans stationed on the site at any time to no more than two (of which no more than one shall be a static caravan or mobile home)". Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/M2270/W/17/3174257

63. The appeal is dismissed.

Wendy McKay

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Simon Rushton MRTPI – Planning consultant
Rhodri Crandon BA (Hons), Dip LA – Landscape consultant

FOR THE LOCAL PLANNING AUTHORITY:

James Moysey – Planning Officer, Tunbridge Wells Borough Council
Paul Casey - Planning Investigation Officer, Tunbridge Wells Borough Council

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Attendance List
- 2 Copy site notice for the hearing

PLANS SUBMITTED AT THE HEARING

- A Existing site plan dated July 2016