



Appeal Decisions

Inquiry Held on 26 November 2019

Site visit made on 27 November 2019

by J A Murray LLB (Hons), Dip. Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 8th January 2020

Appeal A: APP/C1435/C/18/3196899

Land at Leeland, Monks Lane, Cousley Wood, Wadhurst, East Sussex, TN5 6EW

- 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 Walter Harris against an enforcement notice issued by Wealden District Council.
 - The enforcement notice, referenced 'Leeland resi C/2017/0723/WAD', was issued on 6 February 2018.
 - The breach of planning control as alleged in the notice is without planning permission, change of use of the Land to use for the stationing of mobile homes for residential purposes.
 - The requirements of the notice are:
 - 1) Stop using the land for the stationing of mobile homes for residential purposes;
 - 2) Remove the mobile homes from the land;
 - 3) Break up and remove all concrete hardstandings, and all brick and block piers upon which the mobile homes are sited;
 - 4) Remove all domestic paraphernalia associated with the said unauthorised use from the Land; and
 - 5) Remove from the Land all materials, rubbish, debris, materials [*sic*], tools and equipment arising from compliance with the above requirements.
 - The period for compliance with the requirements is 12 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/C1435/C/18/3196900

- The appeal is made by Ms Ann-Maria Harris¹ under section 174 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, against the enforcement notice referred to in appeal A.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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¹ Referred to in error as Anne-Marie Harris on the appeal form.

Appeal C: APP/C1435/C/18/3196901

- The appeal is made by Mr Ben Stirling under section 174 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, against the enforcement notice referred to in appeal A.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Appeal D: APP/C1435/C/18/3196902

Land at Leeland, Monks Lane, Cousley Wood, Wadhurst, East Sussex, TN5 6EW

- 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 Walter Harris against an enforcement notice issued by Wealden District Council.
 - The enforcement notice, referenced 'Leeland building C/2017/0723/WAD', was issued on 6 February 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a building ("the Building") in the approximate position shown coloured blue on the attached plan².
 - The requirements of the notice are:
 - (i) Demolish, dismantle and remove the Building from the Land;
 - (ii) Break up and remove all foundations and concrete hardstanding areas upon which the Building is sited from the Land;
 - (iii) Remove from the Land all materials, rubbish, debris, materials, tools and equipment arising from compliance with the above requirements.
 - The period for compliance with the requirements is three months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal E: APP/C1435/C/18/3196903

- The appeal is made by Ms Ann-Maria Harris³ under section 174 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, against the enforcement notice referred to in appeal D.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Appeal F: APP/C1435/C/18/3196904

- The appeal is made by Mr Ben Stirling under section 174 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, against the enforcement notice referred to in appeal D.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for

² Namely the plan attached to the notice.

³ Referred to in error as Anne-Marie Harris on the appeal form.

planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Appeal G: APP/C1435/W/18/3195180
Land at Leeland, Monks Lane, Cousley Wood, Wadhurst, East Sussex,
TN5 6EW

- 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 as amended by the Planning and Compensation Act 1991 for the use of land as a private gypsy caravan site for which a previous planning permission was granted for a limited period.
- The appeal is made by Mr Walter Harris against the decision of Wealden District Council.
- The application Ref WD/2017/1245/FA, dated 24 May 2017, was refused by notice dated 21 November 2017.
- The application sought planning permission for the use of the land as a private gypsy caravan site granted planning permission for a limited period on 27 February 2009 on appeal Ref APP/C1435/A/08/2074581 (Council's application Ref WD/2008/0128/FR), as varied on 30 April 2013 under ref WD/2013/0400/FA and further varied on 1 June 2015 under Ref WD/2015/0692/FA.
- The permission was subject to conditions requiring cessation of the use which, as varied, state that:

- 1) The use hereby permitted shall be carried on by Mr Walter Harris and his daughter Miss Ann Marie Harris [*sic*] and her children only, and shall be for a limited period expiring on 30 April 2017, or when the aforementioned occupants vacate the site, whichever is the sooner.

The reason given for that condition is to enable the Local Planning Authority to provide temporary accommodation for the applicant having regard to the special circumstances of the case and to enable the Local Planning Authority to regulate and control the development of the land having regard to Government advice contained within 'Planning Policy for Traveller Sites' 2012, the National Planning Policy Framework 2012, the provisions of saved Policies GD2, EN1, EN6, DC17, DC22 and TR3 of the adopted Wealden Local Plan 1998, together with Policies WCS6, WCS10 and WCS11 of the adopted Wealden Core Strategy Local Plan 2013; and

- 2) When the premises cease to be occupied by the occupants permitted by Condition 1 or at the end of the 30 April 2017, whichever is the sooner, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought onto the premises in connection with the use shall be removed and the land restored to its former condition in accordance with a scheme and timetable which shall first have been submitted to and approved in writing by the Local Planning Authority.

The reason given for that condition is to enable the Local Planning Authority to provide temporary accommodation for the applicant gypsy family having regard to the special circumstances of the case and to enable the Local Planning Authority to regulate and control the development of the land having regard to Government advice contained within 'Planning Policy for Traveller Sites' 2012, the National Planning Policy Framework 2012, the provisions of saved Policies GD2, EN1, EN6, DC17, DC22 and TR3 of the adopted Wealden Local Plan 1998, together with Policies WCS6, WCS10 and WCS11 of the adopted Wealden Core Strategy Local Plan 2013.

Appeal H: APP/C1435/W/18/3193855

Land adjoining Leeland, Monks Lane, Cousley Wood, Wadhurst, East Sussex, TN5 6EW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant retrospective planning permission.
 - The appeal is made by Mr Walter Harris against the decision of Wealden District Council.
 - The application Ref WD/2017/1554/FR, dated 30 June 2017, was refused by notice dated 18 August 2017.
 - The development is the erection of a replacement stable building.
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DECISIONS

Appeal A: APP/C1435/C/18/3196899

1. It is directed that the enforcement notice be corrected:

- i. in section 1 by deleting "section 171A(1)(a)" and substituting "section 171A(1)(b)"; and
- ii. by deleting the allegation in section 3 and substituting:

"On 27 February 2009 planning permission was granted on appeal Ref APP/C1435/A/08/2074581 (Council Ref WD/2008/0128/FR) for the material change of use of the Land to use as a private gypsy caravan site for a single household, subject to conditions. That planning permission was varied on 30 April 2013 under ref WD/2013/0400/FA and further varied on 1 June 2015 under Ref WD/2015/0692/FA.

Condition 1, as varied, stated: "The use hereby permitted shall be carried on by Mr Walter Harris and his daughter Miss Ann Marie Harris [*sic*] and her children only, and shall be for a limited period expiring on 30 April 2017, or when the aforementioned occupants vacate the site, whichever is the sooner.

Condition 2, as varied, stated: When the premises cease to be occupied by the occupants permitted by Condition 1 or at the end of the 30 April 2017, whichever is the sooner, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought onto the premises in connection with the use shall be removed and the land restored to its former condition in accordance with a scheme and timetable which shall first have been submitted to and approved in writing by the Local Planning Authority.

It appears to the Council that conditions 1 and 2 have not been complied with, because the use of the land as a private gypsy caravan site has continued after 30 July 2017 and the caravans, buildings, structures, materials and equipment brought onto the premises in connection with the use have not been removed and the land has not been restored to its former condition."

2. Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have

been made under section 177(5) of the 1990 Act as amended, for the use of the land at Leeland, Monks Lane, Cousley Wood, Wadhurst, East Sussex, TN5 6EW as a residential caravan site, effective from 30 April 2017, subject to the conditions set out in the Schedule of Conditions below.

Appeal B and C: APP/C1435/C/18/3196900 and 3196901

3. As the notice is quashed on appeal A, appeals B and C do not fall to be considered.

Appeal D: APP/C1435/C/18/3196902

4. The appeal 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 a building on land at Leeland, Monks Lane, Cousley Wood, Wadhurst, East Sussex, TN5 6EW referred to in the notice, subject to the following condition:
 - 1) The development hereby permitted shall be for private/domestic equestrian use only.

Appeals E and F: APP/C1435/C/18/3196903 and 3196904

5. As the notice is quashed on appeal D, appeals E and F do not fall to be considered.

Appeal G: APP/C1435/W/18/3195180

6. The appeal is allowed and planning permission is granted for the use of the land at Leeland, Monks Lane, Cousley Wood, Wadhurst, East Sussex, TN5 6EW as a residential caravan site, effective from 30 April 2017, in accordance with application Ref WD/2017/1245/FA dated 24 May 2017, subject to the conditions set out in the Schedule of Conditions below.

Appeal H: APP/C1435/W/18/3193855

7. The appeal is allowed and planning permission is granted for the erection of a replacement stable building on land adjoining Leeland, Monks Lane, Cousley Wood, Wadhurst, East Sussex, TN5 6EW in accordance with the terms of the application, Ref WD/2017/1554/FR, dated 30 June 2017 and the plans submitted with it, subject to the following condition.
 - 1) The development hereby permitted shall be for private/domestic equestrian use only.

Procedural matters

8. These appeals were originally to be determined through the hearings procedure and indeed I opened a hearing on 9 July 2019. However, it became apparent that factual evidence needed testing through cross examination under oath. I therefore aborted the hearing and the procedure was changed to a local inquiry.
9. Much of the written evidence, which was unrelated to the factual matters in dispute, was taken as read during the inquiry and the oral evidence focussed

on those factual matters concerning the appellants' status or otherwise as gypsies and travellers. All evidence was taken under oath or affirmation.

10. The inquiry sat for 2 days and I conducted an accompanied inquiry site visit on 27 November 2019 but, with the agreement of the parties, I returned on the morning of 28 November to walk alternative routes from the appeal site to the nearest bus stop. I had also seen the location of the site and walked along the adjoining roads when I made an unaccompanied visit on 8 July 2019, prior to the abortive hearing.
11. The land the subject of appeals A – C and G lies to the south of and adjoining that the subject of appeals D – F. The site plan submitted with the application the subject of appeal H simply shows the building edged red within the wider combined area edged blue, that blue area being all the land in the appellant's ownership.

Preliminary matter concerning appeals A – C and G

12. In advance of the abortive hearing, I indicated my view that the allegation in the notice was incorrectly drafted. The change to use of the land for the stationing of mobile homes for residential purposes was made with the benefit of planning permission. That use then continued beyond the permitted period. Although, the temporary permission had expired on 30 April 2017, the time limiting condition survived and the continuation of the use amounted to a breach of condition, rather than a further change of use. At the start of the inquiry, the parties agreed that the allegation could be corrected to cite breaches of the relevant conditions. I will make that correction, being satisfied that no injustice will result.
13. Similarly, the application the subject of appeal G should be characterised as for the use of the land for which planning permission was granted for a limited period.

Appeal A (ground (a)/the deemed planning application) and Appeal G (residential use)

Main Issues

14. Given the terms of the application the subject of appeal G and my correction of the allegation in the notice the subject of appeal A, the issues arising on these appeals are the same, namely:
 - i. The effect of the development on the natural beauty and character of the landscape within the High Weald Area of Outstanding Natural Beauty (the AONB)
 - ii. Whether the site occupants accord with the current definition of Gypsies and Travellers

If yes to (ii), additional relevant considerations are

- iii. Whether occupiers of the site have good access to local services and facilities
- iv. The existing level of local provision and need for traveller sites

- v. The weight to be attached to the emerging LP and the progress of applications for sites at Hailsham and Polegate

If no to (ii), additional relevant considerations are

- vi. The 5-year housing land supply position and whether there is a specific need for the residential mobile homes in the countryside, outside any development boundary
- vii. Whether the development amounts to the provision of isolated homes in the countryside
- viii. The effect of the development on the vitality of the rural community

In both instances

- ix. The availability of alternative accommodation for the site occupiers
- x. The personal circumstances and human rights of the occupiers, including the best interests of the child and the implications of the PSED
- xi. Whether there is scope for a further temporary permission

Reasons

Issue (i) – the effect on the AONB

15. In February 2009, a personal and time limited planning permission was granted on appeal⁴ (the 2009 appeal) for Walter Harris to use the land as a private gypsy caravan site for a single household, with 1 mobile home and 1 touring caravan. In that 2009 appeal decision, the Inspector found that, despite the mixed hedgerow and trees on the boundaries of the land, the mobile home and associated fencing were evident at the site access, but also from various locations along both Monks Lane and Newbury Lane. He also noted the hard surfacing and concluded that the elements which made up the site, in particular the mobile home and fencing, seriously detracted from the landscape character of the AONB and harmed its natural beauty.
16. The November 2017 officer's report concerning the application the subject of appeal G⁵, noted that hedges on the boundaries of the appellant's land had grown since 2009. It concluded that mature screening had tempered the impact of the development over many years; the site remained well kempt; and, subject to controls over fencing to prevent pitch subdivision and urbanisation, there would be no adverse impact on the character and appearance of the area. However, when referring to previous applications, that report also said "on each occasion the applicant's personal circumstances and the pressing need for sites has outweighed the landscape harm to the ...AONB."
17. Whilst the April 2013 officer's report⁶ concerning the variation of the time limiting condition on the 2009 permission identified other considerations to outweigh the harm, it acknowledged that the development did not conserve or

⁴ Ref APP/C1435/A/08/2074582.

⁵ Core Document (CD) 5.

⁶ CD3.

enhance the AONB. This was notwithstanding the removal of close boarded fencing from around the mobile home, the replacement of a metal five bar access gate with a timber panel gate and the provision of further planting. The same conclusion in relation to the impact on the AONB was reached in the May 2015 officer's report⁷. That report recommended variation of the condition to allow occupation of the site by Mr Harris' daughter and her "children" and an amended site layout including an additional mobile home.

18. The November 2017 officer's report bore Mr Robins' name as Team Leader, but his evidence to my inquiry emphasised the fact that, prior to occupation and development, the site was a field devoid of buildings, hard surfacing and other features. He stated that the residential use had altered the character and appearance of that field at the junction of Monks and Newbury Lanes and he endorsed the conclusions of the 2009 appeal Inspector regarding the effect on the AONB.
19. I acknowledge that the boundary hedges, which include mature trees on the southern side, may have grown thicker since 2009 but, during my inquiry site visit, the mobile homes could be glimpsed from various points along Monks Lane and Newbury Lane, including at the junction of those roads to the north and across the field through the southern site boundary. There were more significant views into the site in November compared to those I saw in July.
20. The Landscape and Visual Assessment (LVA), prepared by Mr Furse for the appellants, records that hedges around the site are predominantly hazel and holly. From my observations, the hedgerows are largely deciduous and, even at the end of November, there were many leaves still to fall. I have also had regard to photographs taken during late winter and spring⁸ and, at certain times, there are numerous views into the site, albeit heavily filtered by the hedgerows. Furthermore, whilst the hedges may have thickened since 2009 and some internal fencing has been removed, a second mobile home has been added. The hedgerows could be supplemented with additional native planting, including holly, as suggested by the appellant. Additional planting would reduce any harm but would take some time to mature and appropriate hedging would probably never provide a fully effective screen.
21. The appellant's LVA notes the significant number of large properties in the area, with associated recreational facilities, such as swimming pools, tennis courts, ornamental gardens and parkland. Nevertheless, I do not accept the assertion that this skews the landscape character of the area around the site "towards that of a more suburban area of gentrification found on the edge of major conurbations."
22. The 2009 appeal Inspector said: *"This part of the AONB is made up of a patchwork of fields bounded by trees and hedgerows interspersed with wooded areas. Although there are a large number of dwellings along Monks Lane and Newbury Lane the area is predominantly open, undeveloped and has a pleasant rural character."* This remains good and reflects the description of the High Weald character zone set out in the Wealden Design Guide (DG)⁹, which

⁷ CD4.

⁸ CD20.

⁹ CD16.

was adopted after public consultation as a Supplementary Planning Document in November 2008. This is a material consideration which, among other things, emphasises the particular vulnerability of the High Weald landscape to new development on the fringes of settlements which fail to respect local distinctiveness.

23. The High Weald AONB Management Plan (HWMP) 2019 – 2024 is a statutory plan and a material consideration in these appeals. It indicates that the “small, irregular and productive fields, bounded by hedgerows and woods, and typically used for livestock grazing” contribute to the natural beauty of the High Weald. This is consistent with the description in Natural England’s National Character Area profile¹⁰, which also emphasises the sense of remoteness and tranquillity referred to in the Council’s evidence. Among the top 5 issues identified in the HWMP are: increase in greenfield development pressure for housing threatening the character of the AONB; and the erosion of AONB character through suburbanisation, including pressure for residential intensification unrelated to land management outside of towns and villages.
24. Probably because of the further maturation of boundary hedges since the 2009 appeal decision, I consider the detrimental impact on the AONB less serious than that found by the Inspector in that appeal. However, the negative impact is not “de minimis” as claimed in the LVA; this residential development has altered the character of this former field of pasture and there are glimpses of it from the public domain. Albeit to a limited degree, the development erodes the sense of remoteness and tranquillity, which is an essential feature of the AONB, and adds to suburbanisation in a location beyond any recognised development boundary.
25. To conclude on this issue, whilst the actual harm may be limited, the development nevertheless fails to conserve or enhance the natural beauty and character of the landscape within the AONB, contrary to saved Policy EN6 of the Wealden Local Plan (LP), adopted December 1998. To some degree, it also compromises the AONB’s essential features, contrary to Policy WCS11 of the Wealden District (Incorporating Part of the South Downs National Park) Core Strategy Local Plan (CSLP), adopted February 2013. These policies are consistent with The National Planning Policy Framework (the Framework) which, whilst not ruling out non-major development, requires great weight to be given to conserving and enhancing landscape and scenic beauty in AONBs. Such areas have the highest status of protection, along with National Parks and the Broads. This protection was carried forward in Policy EA 5 of the Wealden Local Plan Submission Document, January 2019 (the draft LP). This factor would have added little in terms of weight to the conflict with adopted local policies and national policy, but I am now informed that the Inspector conducting the Examination in Public has concluded that the draft LP cannot be taken forward to adoption anyway.

Issue (ii) – Gypsy and traveller status

26. In the 2009 appeal, it was accepted that Mr Walter Harris fell within the definition of gypsies and travellers in Circular 01/2006.

¹⁰ CD17.

27. The November 2017 officer's report concerning the application the subject of appeal G¹¹ (the 2017 report) had regard to the revised definition in the current (August 2015) Planning policy for traveller sites (PPTS), namely:
- "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, but excluding members of an organised group of travelling showpeople or circus people travelling together as such."*
28. Although it noted that Mr Harris had retired permanently, the 2017 report concluded that he "may hold" gypsy status under the PPTS definition. The circumstances in which someone might cease to travel "temporarily" on grounds of old age are unlikely to be common. However, Mr Jones accepted in closing for the appellants that, as Mr Harris has retired, has a bad back and has no intention of resuming a nomadic habit of life, he is not a gypsy or traveller for the purposes of the current PPTS. That must be correct, though I have no difficulty in accepting Mr Harris' evidence that he is a traditional British Romany Gypsy in the ethnic sense and that he used to be a gypsy in terms of planning policy, as he regularly travelled for work in the past, until early 2005. Having regard to *Wrexham County Borough v The National Assembly of Wales, Michael Berry, Florence Berry* [2003] EWCA Civ 835, this will be a material consideration.
29. I also accept Mr Stirling's evidence that, although his father was in the army, through his mother, he has a traditional ethnic Irish Traveller background. I accept that, for short periods in the past, just before he himself joined the army, aged 15 years and 9 months, and after he left the forces in about 2013, Mr Stirling travelled to undertake groundwork. His evidence was that, on leaving the army, he travelled for work on a "semi-solid" basis for about 6 months and during the following 6 months he continued to travel occasionally, doing "bits and bobs", including dealing in scrap metal and buying and selling cars.
30. However, Mr Stirling now works as a train guard and, whether or not his relatively brief periods of nomadism in the past qualified him as a gypsy in policy terms, it was accepted by Mr Jones in closing for the appellants that Mr Stirling's reason for ceasing to travel did not fall within those allowed for in the current PPTS. This was before his daughter was born and, in Mr Stirling's own words, it was just "hard to get the work." In the circumstances, and notwithstanding Mr Stirling's expressed intention to travel again when his daughter, now aged 4 1/2, leaves school, it was accepted in closing that he does not currently fall within the PPTS definition of gypsies and travellers.
31. Ann-Maria Harris was born in 1982. The 2017 officer's report indicated that, "by dint of birth and culture", she travelled with her parents and that "she may hold the status of Gypsy" under the PPTS definition. Although Ms Harris' mother was not a traveller, through her father, she is a traditional British Romany Gypsy in the ethnic sense.

¹¹ Core Document (CD) 5.

32. A previous agent made various statements to the Council on Ms Harris' behalf. They were not signed by her and Ms Harris says she was not asked to check them before they were submitted. She says those statements contained a number of errors, not least the spelling of her name, which was given as "Anne-Marie". Her birth certificate¹² shows her forenames are "Ann Maria". This was an easy mistake and others have made similar errors. When Ms Harris' mother transferred a flat in St Leonards-on-Sea into their joint names in 2006, the transfer¹³ referred to "Ann Marie Harris" and the same mistake was perpetuated by the architect who submitted the application the subject of the 2015 officer's report. It is difficult to see what benefit Ms Harris could have sought to derive from deliberately acquiring an interest in a property or a planning permission under the wrong name. Overall, I have no reason to doubt her evidence on oath that the previous agent's statements contained genuine errors and I will focus on Ms Harris' own testimony to me.
33. Having regard to Ms Harris' proof and her oral evidence, several key points arise. From birth she lived with her mother, Penelope Hartley, at 6 St Andrews Road, Paddock Wood. Her mother and father were partners, but her father (Walter) travelled for work for many months of the year and, in his proof, Mr Harris said he never lived permanently at 6 St Andrews Road.
34. However, when her parents separated in 1986, initially, Ms Harris lived with her father from Friday to Sunday, but with her mother for the rest of the week. During this time, Ms Harris says she travelled "intermittently" with her father. Then, on leaving school in 1998, she "spent more time" with him at Deanwood, Old Hay, Paddock Wood where, on land owned by his father, Walter had a mobile home with the benefit of a personal planning permission.
35. When her mother fell ill in 2000, Ms Harris, then aged 18, went to live with and care for her at the flat in St Leonards-on-Sea, near Hastings. That property was sold in 2010, but Ms Harris and her mother moved several times in Hastings to find suitable accommodation for her mother. During her time in Hastings, Ms Harris lost touch with her father.
36. From about 2012, Ms Harris lived in flats close to her mother, which were rented by Mr Stirling. After her mother sadly passed away in September 2014, Ms Harris re-established her relationship with her father and she moved onto the appeal site in December 2014, where she now cares for him and from where she works locally as a self-employed cleaner.
37. Against this background, Ms Harris says she and her family "previously travelled for work principally breaking, training and selling horses." She says she is skilled in breaking horses, has a strong background in dealing with them and fully intends to "return to the travelling life" when her daughter is old enough to be independent.
38. Other than some limited comments from Mr Harris, to which I shall return, there is no other evidence to corroborate Ms Harris' claimed involvement in the business of breaking, training and selling horses; 2 photographs of her, as a child, sitting on the same horse, with her father holding the bridle or a halter, fall far short of that. Letters appended to Mr Harris' proof refer to Ms Harris,

¹² CD22

¹³ CD22.

but none makes any reference to her travelling for work breaking, training and selling horses or otherwise. One person refers to travelling for agricultural work with Mr Harris from the 1960's to the 1990's and to Ms Harris playing with their children in the fields. Another man refers to his wife and Ms Harris' mother taking the children fruit and hop picking in Paddock Wood, if they were not at school.

39. When cross examined, Ms Harris said that between the ages of 7 and 16, she had horses when living in Hastings, but she was not working as a traveller. However, she said that, after her mother fell ill in 2000, she "continued buying and selling horses, including going to fairs". Ms Harris said she could get a copy of an advert for a horse she sold, but this was not produced.
40. In his proof, when discussing his family history, Mr Harris said "we also dealt in horses." Later in that proof, he referred to the period when Ann Maria spent Fridays to Sundays with him at Deanwood and he said they "worked together with the horses and went to Traveller horse fairs, including that in Yalding..." However, under cross examination, Mr Harris acknowledged what he said in his earlier supplementary statement, namely that, between 1992 and 2004/05 he "continued to travel for work during the English growing season" and he clarified that he did not earn any money from working with horses. He explained that, when he said, "we also dealt in horses", he meant his father. Mr Harris used to help his father with that, namely by pacifying the horses and breaking them in, but that was when he was in his 20s.
41. So, on Mr Harris' evidence, it was 40 – 50 years ago that he worked in the horse trade, albeit for nothing, to help his father out. Ms Harris told me that she could not remember when her paternal grandfather died, but she knew he was not around by the time she was 4 years old. In all the circumstances, there is little to support Ms Harris' statement that she and her family "previously travelled for work principally breaking, training and selling horses." I do not say that she was deliberately lying about this, but viewed objectively, she was overstating the case.
42. In answer to further questions from me, Ms Harris said that the horses were a "side line" and that her father just used to take her to the horse fairs to "spend some time with (her) and look at horses", at least until they lost touch in 2000, when she was 18. She said that, up to that point, they usually had a pony in the field and if they did, they would not bring another back. They might bring one back every 3 months and "turn it around." Ms Harris described this as "an interest we shared" and said she was confident with horses from a young age.
43. The position is complicated by the fact that, during her childhood, Ms Harris spent some time with her father, who was a traveller, but she lived mostly with her mother, who was not. Her case for establishing gypsy status in policy terms is founded on her involvement with her father in the business of breaking, training and selling horses, but this is not borne out by firm evidence. To the extent that their horse-related activities might have involved a degree of nomadism, I am not persuaded that there was an economic purpose to this.
44. Ms Harris is an ethnic Romany Gypsy. She identifies strongly with Gypsy traditions and culture, of which horses are an important part, and I do not doubt that their activities with and shared interest in horses facilitated a bond

between Ms Harris and her father. I also accept that, assuming she has no further children, Ms Harris intends to adopt a travelling lifestyle perhaps some 13 or 14 years in the future but, as a matter of fact and degree and, on the balance of probabilities, I conclude that she is not a gypsy as defined in PPTS.

45. Given my findings on the status of all the appellants, policies primarily intended to provide for the land use and accommodation requirements of people who need to live in caravans as an integral and necessary part of a nomadic lifestyle do not therefore apply. I will nevertheless consider the weight to be attached to the appellants' ethnic Gypsy status and other personal circumstances later, but I now move on to main issue vi.

Issue (vi) – 5-year housing land supply and the need for residential accommodation in mobile homes

46. The Statement of Common Ground (SOCG) indicates that, as of 1 April 2019, the Council could demonstrate a 3.67-year supply of housing land. Given the site's location within the AONB and the identified harm to that area, the Framework's 'tilted balance' does not apply. However, this is not to say that the lack of a 5-year supply would not be a material consideration to be weighed in the balance.
47. In opening, the Council said that the draft LP demonstrated a 5-year supply and that there was no specific need for residential mobile homes in the countryside, outside any development boundary. At the time of the inquiry, Stage 1 of the examination hearings concerning the draft LP had been completed. The Inspector's report was awaited, but the general election delayed this. Given the stage of preparation reached, I would have attached moderate weight to the draft LP and its apparent demonstration of a 5-year housing land supply. However, now that the draft LP will not proceed to adoption, this factor carries no material weight.
48. In any event, although policies concerning gypsies and travellers who meet the Framework definition do not apply to the appellants in this case, local authorities have a duty under s8 of the Housing Act 1985 to undertake an assessment of the housing needs of their district. This includes the needs of people residing in or resorting to their district who require sites on which caravans can be stationed.
49. The Council's Gypsy and Traveller Accommodation Assessment, November 2016 (GTAA)¹⁴ said: *"Whilst the needs of those households that do not meet the new definition do not need to be included in the GTAA, they will be assessed to provide the Council with components of need to consider as part of the SHMA¹⁵."* Appendix B of the GTAA identifies a level of need for pitches for gypsies and travellers who do not meet the Framework definition. However, subject to what he said about Policy HG6, Mr Webster accepted that no provision has yet been made for such people.
50. There are no relevant land allocations in place. Policy HG6 of the draft LP provided criteria for assessing proposals for sites for gypsies, travellers and travelling showpeople. The draft LP will not proceed to adoption, but by

¹⁴ Core document 13.

¹⁵ Strategic Housing Market Assessment

reference to the glossary that plan, I am satisfied that HG6 only related to those who meet the PPTS definition anyway.

51. In short then, whilst the needs of non-definitional gypsies have been assessed in the GTAA and will be considered in the SHMA, it is not clear how they will be met. This factor carries moderate weight in favour of the appeals.

Issue (vii) - Whether the development amounts to the provision of isolated homes in the countryside

52. The Framework indicates that the development of isolated homes in the countryside should be avoided. However, there is a dwelling immediately opposite the site entrance along with others to the southeast, southwest and north of the site. Indeed, the site is only a short walk from the main body of the small settlement of Cousley Wood to the south. In closing, the Council was content to leave this for me to judge as a matter of fact. In my view, having regard to *Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd* [2018] EWCA Civ 610, the development does not result in isolated new homes in the countryside.

Issue (viii) - The effect on the vitality of the rural community

53. Ms Harris and Mr Stirling's daughter attends a local school, Ms Harris works part time as a cleaner locally and Mr Stirling is in employment. In addition, the appellants will use local shops and other services and the development thus benefits the vitality of the rural community to a modest extent. However, given the scale of the development, this fact carries only limited weight in favour of the appeals.

Issue (ix) - The availability of alternative accommodation

54. For the Council, Mr Whale confirmed in closing that it could not identify any currently available alternative accommodation. This factor must carry at least moderate weight in favour of the appeals.

Issue (x) - Personal circumstances

55. As the Council acknowledged, the best interests of children are a primary consideration which, as a starting point, inherently attract no less weight than any other consideration. Furthermore, the Council accepted it would probably be in the best interests of Ms Harris and Mrs Stirling's 4 ½ year old daughter to continue living in a supportive extended family group. This young child also attends a school located a few kilometres from the appeal site. In principle, there is nothing to say she can only continue at that school if she remains living at the appeal site. However, no currently available alternative accommodation has been identified. There must be a real risk that she will not be able to remain at her school if she leaves the site and this would further disrupt her life.
56. I have a letter from Mr Harris' GP, asking me to take account of the fact that he has suffered from back pain, albeit intermittently, for many years and that this affects his mobility. Just as she looked after her mother when she was ill, Ms Harris wishes to remain living on site with her father, so that she can care for him. This factor must carry at least moderate weight. Added to this,

Ms Harris' daughter is undergoing tests in relation to recent health scares. Given the lack of diagnosis, I cannot attach great weight to this factor, but I acknowledge the importance of maintaining a settled home life and good access to doctors and hospital services and I nevertheless attach great weight to the my finding that remaining on the appeal site would be in the best interests of the child in this case.

57. Whilst none of the site occupants meets the policy definition of gypsies and travellers, they are all ethnic Gypsies. Under Article 8 of the European Convention on Human Rights (ECHR), enshrined in UK law by the Human Rights Act 1998, everyone has the right to respect for his private and family life. As established in *Chapman v UK* [2001] ECHR 43, cited in closing by the appellants, this brings with it a positive obligation to facilitate the Gypsy way of life.
58. The traditional gypsy way of life includes living in caravans and in extended family groups, with younger generations caring for their elders in turn and dismissing the appeals would involve an interference with the appellants' Article 8 rights. In saying this, I do acknowledge that, whilst Mr Harris has lived in caravans for most of his life, Ms Harris and Mr Stirling have not. In Ms Harris' case, this was largely due to her parents' separation and latterly, the need to care for her mother, who was not a traveller. However, both Ms Harris and Mr Stirling have a strong desire to live in a caravan, their daughter has always done so, and they wish to follow a nomadic habit of life when she is independent.
59. In *Wrexham County Borough v The National Assembly of Wales, Michael Berry, Florence Berry* [2003] EWCA Civ 835, Auld LJ said:
- "...the fact that applicants for planning permission may not, on the facts, qualify as gypsies in the statutory and policy sense, does not mean that their traditions and lifestyle and personal circumstances are irrelevant to the planning decision or that they cannot be set and weighed against local plans and policies as section 54A and 70(2) "material considerations"."*
60. Romany Gypsies and Irish Travellers are distinct racial groups and so have a protected characteristic under the Equality Act 2010. Under this Act, the Public Sector Equality Duty (PSED) requires me to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people.
61. Members of the settled community are not free to set up home wherever they choose in an AONB. Clearly, the duty under the Equality Act does not demand a particular result and the appellants' rights under Article 8 of the ECHR are qualified; they must be balanced against the public interest and the legitimate objective of safeguarding the AONB. Nevertheless, as stated above, it is not clear how the Council will meet the needs of Gypsies who do not come within the PPTS definition but who wish to continue living in caravans, rather than bricks and mortar housing. In the absence of any identified available alternative, the appellants would probably have to resort to a roadside existence in order to continue a traditional Gypsy way of life in culturally appropriate accommodation. I attribute significant weight to this factor, which also reinforces my conclusion concerning the best interests of the child.

62. In terms of fostering good relations with others, there is local opposition to the principle of this development. However, Mr Harris has lived on the site since around 2007 and the temporary planning permission was first granted in 2009. Ms Harris has been there since 2014 and Mr Stirling has also lived on the site for some time. The development is modest in terms of the number of caravans; it does not dominate the locality and, as acknowledged in the 2017 officers' report, the site has remained "well kempt." I am not aware that its occupation by these appellants has led to any conflict with neighbouring residents. In all the circumstances, the PSED weighs moderately in favour of the appeals.

Issue (xi) – Scope for a further temporary permission

63. Temporary planning permission was granted on appeal for 4 years from February 2009. The Council then extended this to 4 years from April 2013. In June 2015, that period was not extended, but the Council permitted additional occupation by Ms Harris and her children in a second caravan.
64. The Planning Practice Guidance indicates that temporary permission may be appropriate where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. However, it says a second temporary permission will rarely be justified.
65. The initial temporary permission and the subsequent extension were justified on the basis that this would allow time for the Council to identify additional gypsy sites to meet an acknowledged need. However, this is now irrelevant, as none of the appellants currently meets the policy definition of gypsies and travellers, so they would not be eligible for a pitch on a gypsy and traveller site. Furthermore, there is no indication of when the needs of non-definitional Gypsies might be met and therefore no rational basis for a further temporary period.

The overall planning balance

66. Whilst the actual harm to the AONB is limited, I still attach great weight to this issue, which results in conflict with the development plan and the Framework, as detailed above.
67. However, against this, for all the reasons given it would clearly be in the best interests of a child to remain on the site and this is a primary consideration, carrying inherently no less weight than any other. In my judgement, this factor also carries great weight. In addition, I attach moderate weight to the needs of Mr Harris, who is now retired and in poor health. Remaining on the appeal site, where he has lived for about 12 years (with the benefit of planning permission for much of that time) and where he can be cared for by his daughter would be in his best interests.
68. Furthermore, allowing the appeals would be consistent with the duty to facilitate the traditional gypsy way of life, whereas dismissal would constitute a disproportionate interference with the appellants' human rights in circumstances where the actual harm to the AONB is now limited. For the reasons given, dismissal of the appeals would similarly pay insufficient regard to the PSED, particularly where it is acknowledged that there is no available alternative accommodation, no provision for culturally appropriate

accommodation for non-definitional gypsies and travellers and a where a roadside existence would be a real risk.

69. Notwithstanding the harm to the AONB and the conflict with the development plan and the Framework, I conclude that, provided the identified harm is mitigated by further planting, the other considerations identified indicate that planning permission should be granted for this limited development. For the avoidance of doubt, my conclusion would have been the same even if the draft LP remained on course for adoption.
70. The enforcement notice will be quashed and grounds (f) and (g) of appeal A do not fall to be considered. Appeals B and C do not therefore fall to be considered at all.
71. Whilst the original planning permission granted on appeal was for use as "a private gypsy caravan site", given my conclusions that the appellants do not fall within the PPTS definition of gypsies, the description of the development in appeal G will need to be revised to use "as a residential caravan site."

Conditions

72. It is necessary to limit the scale of development in this countryside location within the AONB. I shall therefore restrict the number of caravans to 2 and the appellants had no objection to this.
73. Given the need to safeguard the character and appearance of this sensitive location, with minor adjustments, I will also impose the suggested restrictions on commercial activities and the installation of external lighting.
74. Similarly, to enable the Council to safeguard the character and appearance of the area, it is necessary to remove permitted development rights in relation to gates, fences, walls and other means of enclosure. As discussed during the inquiry, I will amend the suggested condition to make clear that it will not prevent the retention of the existing gates and fencing at the site access. I shall also delete the reference to buildings, as these do not fall within the class of permitted development referred to in the suggested condition anyway.
75. It is the personal circumstances of these particular appellants that tips the balance in favour of granting planning permission. Accordingly, as suggested in the SOCG, it is necessary and reasonable to impose a condition making the permission personal to them.
76. The Council agreed that, as the development has already been carried out, it is not necessary to impose a condition specifying plans.
77. As indicated, some further planting is necessary to mitigate the harm to the AONB. I shall require a scheme to be submitted for approval and subsequent implementation. As the development has already been undertaken, to ensure the condition will be enforceable, I will require cessation of the use and removal of the mobile homes if the terms of the condition are not met. The time scales set out in the condition were discussed during the inquiry. The Council suggested a period of 28 days to cease the use in default of the requirements and 6 months for the submission of an appeal. I appreciate that breach of this condition would necessitate further enforcement action.

Nevertheless, I consider 3 months a more reasonable and proportionate period within which to cease a residential use. Given that the Council would normally have a further 8 weeks to determine the for approval of the scheme and the appellant would then be able to submit an appeal based on non-determination, a total of 8 months for the submission of a relevant appeal would be reasonable in this case.

78. As also discussed, I shall require replanting if trees die or are removed within 5 years.

Appeal D (ground (a)/the deemed planning application) and Appeal H (the building)

Main issue

79. The enforcement notice referred to "land at Leeland" and the planning application referred to "land adjoining Leeland." However, both appeals relate to the same building and the main issue is the same, namely the effect of the building on the natural beauty and character of the landscape within the AONB, having regard to its siting, scale and design.

Reasons

80. The building lies outside any development boundary and within the AONB. It measures some 9m long, 5.56m wide and 4m high to the ridge. Externally, it is finished in dark green profiled metal cladding to the walls and roof with timber cladding to the doors. The building provides stabling for 2 horses.
81. There was previously a timber structure, which the Council said was discrete and modest and tucked into the corner of the site. The appellants say the previous structure was about 5m long, 3m wide and its flat roof was 3m high. However, though larger, the new building is in substantially the same location. During the accompanied site visit, I saw that the original concrete slab for the old building had been extended by about 2m to the south.
82. As well as being larger than the one it replaced, the new building looks more like a modern, agricultural building, rather than a traditional stable block. However, whilst I saw no similar buildings in the immediate vicinity, where this structure can be glimpsed through the boundary hedges, it does not look out of place, obtrusive or surprising in a rural field. It is modest in scale, sited in a discrete location, near to the western boundary hedge and finished in a suitable colour. The building is close to the residential caravan use which I have permitted and is appropriate for private, domestic stable purposes.
83. I conclude that this development conserves the natural beauty and character of landscape within the AONB. It represents a suitably high standard of design and I find no conflict with saved LP Policies GD2, DC12, EN6, or EN27 or with CSLP Policies SPO1, WCS12 or WCS14. There are no material considerations which indicate that permission should be refused, and I will allow the appeals.
84. The enforcement notice will be quashed and grounds (f) and (g) of appeal D do not fall to be considered. Appeals E and F do not therefore fall to be considered at all.

Conditions

85. To safeguard the amenity and character of the AONB I will impose the suggested condition limiting the use of the building to private/domestic equestrian use.
86. As the building has already been constructed, it is not necessary to impose a condition regarding plans. The Council confirmed that the existing green colour of the building is suitable, and it is not necessary to require painting.

J A Murray

INSPECTOR

SCHEDULE OF CONDITIONS (Appeals A and G only)

- 1) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended) shall be stationed on the site at any one time.
- 2) No commercial activities, including the storage of materials, other than in connection with the agricultural use of the land shall take place on the land.
- 3) Except for the single existing lights on each of the mobile homes and any like for like replacement of these, no floodlighting, security lighting or other external means of illumination of the site shall be provided, installed or operated at the site.
- 4) Notwithstanding the provisions of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no fences, gates, walls or other means of enclosure shall be erected other than the existing gates and fences at and adjacent to the site access.
- 5) The use hereby permitted shall be or carried on only by Walter Harris, Ann-Maria Harris and Ben Stirling and their resident dependants and when the land ceases to be occupied by them, the use shall cease, and the caravans shall be removed from the site.
- 6) The use hereby permitted shall cease and the caravans shall be removed from the site 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 for the planting of trees on the southern site boundary and on the inside edge of the roadside boundaries of the land edged blue on the site plan submitted with application Ref WD/2017/1554/FA shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 8 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, a valid appeal shall have been made to the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

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.

- 7) Any trees planted in accordance with a scheme approved under condition 6 which, within a period of 5 years from carrying out the scheme die, are removed or become seriously damaged or diseased shall

be replaced in the next planting season with others of similar size and species.

APPEARANCES

FOR THE APPELLANT: Timothy Jones of counsel

He called	Walter Harris Ann-Maria Harris Ben Stirling Dr Angus Murdoch BA(Hons) MSC MA PhD MRTPI
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FOR THE LOCAL PLANNING AUTHORITY: Stephen Whale of counsel

He called	James Webster BA(Hons) M Civic Design in T&RP licentiate MRTPI, Senior Planning Officer, Planning Policy Team, Wealden District Council Jerome Curran, local resident Stacey Robins BA USRP Cert TP MRTPI, Development Manager, Wealden District Council
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INTERESTED PERSONS:

Mr J Harriman	Local resident
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DOCUMENTS SUBMITTED TO THE INQUIRY

- 1 Dr Murdoch's summary proof
- 2 Mr Harris' summary proof
- 3 Signed Statement of Common Ground
- 4 Appellants' timetable questionnaire
- 5 Council's timetable questionnaire
- 6 DCLG Consultation: planning and travellers
Equalities statement September 2014
- 7 Public Sector Equality Duty Analysis (June 2015) in respect of
then proposed changes to Planning policy for traveller sites
- 8 Council's opening submissions
- 9 Mr Curran's note of discrepancies in the appellants' case