The Planning Inspectorate

Appeal Decisions

Inquiry Held on 11,12,13 & 14 May 2021

Site visit made on 14 May 2021

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 07 June 2021

Appeal A: APP/A1910/C/19/3237920
Land to the South West of West Valley Road, Hemel Hempstead (known as land at Featherbed Lane, Hemel Hempstead)

- 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 N Thompson against an enforcement notice issued by Dacorum Borough Council.
- The enforcement notice was issued on 11 September 2019.
- The breach of planning control as alleged in the notice is:
  Relating to the material change of use
  The material change of use of the land outlined red on the plan attached to the notice from agricultural to a mixed use of agriculture and use for the siting of mobile homes/caravans for residential purposes (including provision of residential equipment, paraphernalia and vehicles).
  Relating to the operational development
  - The laying of hard standing consisting of (but not limited to) bricks, rubble and crushed concrete.
  - The erection of close board fencing along the northwest and northern boundaries of the site, and the erection of close board fencing to form a gate at the site access, denoted by black dashed lines on the plan attached to the notice.
  - The erection of post and rail fencing extending south-west to north-east across the site, denoted by black dashed lines on the plan attached to the notice.
- The requirements of the notice are:
  Step 1: Cease the use of the land for the siting of mobile homes/caravans for residential purposes.
  Step 2: Remove from the land all mobile homes/caravans.
  Step 3: Remove from the land all domestic material, equipment and other residential paraphernalia associated with the residential use of the mobile homes/ caravans, including vehicles.
  Step 4: Remove from the land, the hardstanding.
  Step 5: Remove from the land, the close board fencing erected along the northwest and northern boundaries of the site, including the fencing fixed to the 5 bar metal entrance gate.
  Step 6: Remove from the land, the post and rail fence which extends south-west to north-east across the site.
  Step 7: Restore the land to its appearance prior to the breach of planning control taking place.
- The period for compliance with the requirements is: 1 month for steps 1,2 & 3; 2 months for steps 4,5 & 6; 3 months for step 7.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(f)&(g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal is allowed in part on ground (a) and temporary (5 year) planning permission is granted in the terms set out below in the Formal Decision.

Appeal B: APP/A1910/W/19/3237919
Land at Featherbed Lane, Hemel Hempstead HP3 0BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr N Thompson against the decision of Dacorum Borough Council.
- The application Ref 4/01709/19/FUL, dated 16 July 2019, was refused by notice dated 11 September 2019.
- The development proposed is change of use of land to provide 2 Gypsy/Traveller pitches comprising of 2 mobile homes and 2 touring caravans and associated works (existing stables to be retained).

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. There is disparity between the description of development applied for in Appeal B and the Council's decision notice. Whereas the application form includes "2 touring caravans" and the "existing stables to be retained" these references were omitted from the decision to refuse planning permission. No stables actually exist on the land and so the description is clearly incorrect in the application.

2. As part of the overall development of the site, the appellant intends to build a stable block which was granted planning permission in 2018 ('the 2018 permission'). The stable block is shown in the submitted application drawings for Appeal B annotated as 'permitted stable block'. The parties agreed there could be two planning permissions on the same site.[1] The grant of planning permission in Appeal B would not prevent the stable block being built if the 2018 permission is extant. On that basis it was agreed that there is no need for the description to include the words in brackets "existing stables to be retained", which can be deleted. Reference to '2 touring caravans should remain.

3. In consequence, the description of development applied for in Appeal B is: '*the change of use of land to provide 2 Gypsy/Traveller pitches comprising of 2 mobile homes and 2 touring caravans and associated works*.' The appeal proceeds on that basis.

4. Another description was used when the enforcement notice was issued on the same day that planning permission was refused. The notice targeted the same unauthorised use of land i.e. as a caravan site, albeit there were by that time more caravans on the site than those applied for. The material change of use of land is alleged to be to a mixed use of agriculture and use for the siting of mobile homes/caravans for residential purposes.

5. At the Inquiry, the appellant introduced an appeal on ground (b) to argue that those matters alleged in the notice have not occurred. The thrust of the

[1] In this regard, the appellant cites section 57(4) of the 1990 Act which provides that where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development had not been carried out.

appellant's argument is that the lawful use of the site is an equestrian use rather than agriculture. The Council had opportunity to respond to the points raised and so no prejudice arises from my consideration of this new ground.

6. The planning application form indicates that the work or change of use had not already started. However, it was established at the Inquiry that the application for planning permission in Appeal B was retrospective in that the use for a gypsy and traveller site began, and the hardstanding laid, by the time the application was made and determined. Section 73A of the 1990 Act allows permission to be granted retrospectively for development already carried out.

7. The planning application site in Appeal B is a broadly rectangular shaped parcel of land plus access off Featherbed Lane. The enforcement notice plan in Appeal A encompasses a much wider area forming the entirety of the appellant's land holding. References to 'the appeal site' in these decisions means the area as shown in the respective application and enforcement notice.

8. The proposed site block plan was revised prior to determination of the planning application. The Council's decision was based on drawing No. CD03 Rev B and this is the plan I shall consider in Appeal B. On this version there is a longer and re-positioned access with close boarded fencing to the north, north-western and south facing boundaries and a post and rail fence within the site.

9. The fencing applied for tallies with the type and location of fencing enforced against except that the enforcement notice makes no mention of the short section of fencing along the southerly boundary. Another difference is that the notice also attacks a close boarded gate at the site entrance. Having introduced and then withdrawn an argument under ground (c) that the gate was permitted development, the appellant conceded that the gate facilitates the unauthorised use. It was further conceded that the boarded gate is visually unacceptable and should be removed. The appellant does not defend the gates on ground (a).

10. A further difference between Appeal A and B is that the planning application had sought permission to lay a larger area of hardstanding than already exists and has been enforced against.

11. An interim injunction secured by the Council on 23 August 2019 prevented any more caravans and further development taking place on the site, in breach of planning control. By Order of the High Court, the injunction was made final on 11 September 2019. The injunction does not prevent the grant of planning permission in either appeal.

12. The reasons for issuing the enforcement notice cite two additional development plan policies than those relied upon to refuse planning permission. The site enforced against is identified as being located within an Area of Archaeological Significance and in close proximity to a Middle Age settlement. As such, the development is stated to be contrary to Policy CS27 of the Council's Core Strategy 2013 which requires features of known or potential archaeological interest to be surveyed, recorded and wherever possible retained. Also identified is Policy 99 of the saved Dacorum Borough Local Plan 1991-2011 which seeks to preserve trees, hedgerows and woodland. The Council maintains that it has not been possible to assess the impacts with regard to these two policies because development has taken place already. Nevertheless, the Council confirmed that its concerns regarding archaeology and hedgerows are capable of being addressed by planning condition.

13. The emerging Dacorum Local Plan 2020-2038 is at an early stage of preparation. The Green Belt boundaries around the appeal site are not proposed to change. As a pre-submission version of the draft plan is yet to be consulted upon, it could be subject to change and the draft policies carry very little weight at this stage.

14. All evidence to the Inquiry was given on sworn affirmation.

15. At the start of the third day of the Inquiry the Council made an offer of compromise to the appellant. Having heard details in evidence of the appellant's personal circumstances, the Council is now satisfied they outweigh the planning harm to justify a temporary personal permission. The offer was to withdraw the enforcement notice in Appeal A and support the grant of a temporary 4 year planning permission, subject to conditions, on Appeal B.

16. One of the proposed conditions limited occupation of the site to the appellant and his family for a single pitch. Clearly, this contradicted the terms in which planning permission was sought as the application was explicitly for two pitches. A condition cannot remove a benefit granted by a permission to limit its scope in this way. For that reason, the Council suggested that temporary permission be granted instead for a single pitch as part of the caravan site use on the deemed planning application under ground (a) of Appeal A, and Appeal B be dismissed.

17. After adjourning to allow the appellant's team opportunity to consider the offer, it was rejected. This was on the basis that a permanent permission should be granted and any temporary permission should be for 5 years for the two pitches allowing both families identified in the appellant's proof of evidence to occupy the site. The parties agreed that the Council's concession remains a material consideration under ground (a) of Appeal A and Appeal B.

18. The appellant did not attend the arranged site visit at the appointed time. As the entrance gate was unlocked, I was able to access the site to undertake my visit. The Council Officer attended and observed from a position inside the entrance. No discussion on the merits of the case took place during my visit. No objection was raised subsequently to this course of action when the Inquiry resumed.

Appeal A - ground (b)

19. The ground (b) appeal concerns the use of the land only and not the operations.

20. Where there is a mixed use there is a single use of land composed of all the primary uses. In order to succeed on this ground, it would need to be demonstrated that there is not a mixed use of the appeal site comprised of agricultural and caravan site uses, as alleged. There is no dispute over the caravan site use. The appellant contends that there is no longer an agricultural use, but a mixed caravan site and equestrian use following implementation of the 2018 permission. The Council disputes that the approved development was ever begun or that it authorised an equestrian use.

21. The onus of proof rests upon the appellant and the test of evidence is the balance of probabilities.

22. The 2018 permission was granted to the appellant on 12 November 2018 under Council ref: 4/02290/18/FUL for development described as: '*Stable block and access road. Timber post and rail fencing to create 3 separate paddocks'.*

23. Whilst hardstanding has been laid, no part of the stable building has been built. There is no solid base or foundations for the building. For the purposes of the 1990 Act, development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out (section 56(2)). A 'material operation' can, for example, include any work of construction in the course of the erection of a building or it could be any operation in the course of laying out or constructing a road or part of a road.

24. The permission was granted subject to conditions. They included a condition requiring the development to be carried out in accordance with the approved plans/documents. Another condition required the development to be constructed fully in accordance with the materials specified on the approved plans. The approved plans for the 2018 permission relate to the entire landholding (and not just the developed area shown in Appeal B).

25. When Officers visited the site in July 2019 the hardstanding appeared to be newly laid because of the loose nature of the material and loose edges where the hardstanding ended. The area covered is much larger than that approved by the 2018 permission. Instead of an access leading to a stable block with square shaped area of forecourt, there is a wider access which becomes a large expanse of hardstanding. The intended location of the stables, access and forecourt cannot be distinguished from the remainder.

26. It is the Council's view that the hardstanding was clearly laid as one operation rather than as an addition to an existing area laid pursuant to the 2018 permission. That view was borne out by the oral evidence given by the appellant at the Inquiry who explained that the whole area of hardstanding had been laid by a contractor all at the same time. This had taken place after the grant of the 2018 planning permission, but not straight away and not until shortly before the unauthorised residential use began. Whilst the appellant suggested that the hardstanding was laid with the intention of implementing the 2018 permission, what has actually taken place differs appreciably from the approved plans.

27. At present, the hard surfacing is not 40mm loose gravel laid as a decorative surface finish as shown on the approved plans. I accept that the appellant stopped works due to the Injunction, but it is unclear if the works undertaken before then were in the final finished form. Even if it did explain a departure from the approved plans for materials, it does not account for the considerably larger area of hardstanding laid across the site with wider access than that approved. The evidence points firmly to a single operation. As a matter of fact and degree the development which has taken place is so different from that approved by the 2018 permission in terms of the site coverage, the operations cannot reasonably be taken as having initiated that permission.

28. Another strand of the appellant's argument which I address for completeness concerns the annotation of the stables on the plans as a '*2 horse stable block with tack room*'. The appellant's agent argued that a tack room would not be required unless the horses were going to be kept on the land rather than grazed. The tack room was also consistent, he said, with the horses being ridden in the field by the appellant's children. The Council's professional planning witness accepted that the 2018 permission is for the keeping of horses.

29. However, this does not tally with the design and access statement which accompanied the appellant's application. It describes the site as grassland/ paddock and says that the '*addition of a stable block and horses will help manage*

the grassland through grazing by horses. This grazing has been identified in the Landscape Character Guidelines as being a key management tool for managing change on a site of this type.' Thus, the application was not made for a change of use of the land and indeed the supporting information identifies the use as 'grazing' which would remain an agricultural use. This is reinforced in the approved layout plan where the grassed areas are notated as '*Existing paddock area to be retained and managed by grazing horses'*.

30. Even if an equestrian use could be inferred from the grant of the 2018 permission, I am not satisfied on the evidence before me that the development was begun under section 56 of the 1990 Act. Moreover, there was no change of use to an equestrian use at the time of issue of the enforcement notice. Not only were no horses identified as being present, there was no tack room to serve an equestrian use.

31. I find as a matter of fact that those matters as alleged have occurred. The ground (b) appeal fails.

Appeals A & B
The appeal under ground (a), the deemed planning application & Appeal B

32. Ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. This ground is concerned with the planning merits of the case, and it raises the same issues as the deemed application for planning permission in Appeal A. It also raises similar issues on the linked section 78 appeal (Appeal B) albeit there are some differences as already noted.

33. Appeal A is for the development as enforced against at the date of issue of the enforcement notice. Appeal B is also for a caravan site limited to two pitches and includes additional hardstanding yet to be laid. A stable block is shown on the submitted application plans consistent with the 2018 permission. I shall deal with the appeals together unless the context dictates otherwise.

Background and policy context

34. The appeal site lies outside any designated settlement boundary and is therefore in the countryside for the purposes of planning policy. It is also located within the Metropolitan Green Belt.

35. As provided by section 38(6) of the Planning and Compulsory Purchase Act 2004, development should be in accordance with the development plan unless material considerations indicate otherwise.

36. Core Strategy Policy CS5 states that national Green Belt policy will be applied to protect the openness and character of the Green Belt, local distinctiveness and the physical separation of settlements. The policy goes on to say that small-scale development will be permitted in certain prescribed circumstances. They include the redevelopment of previously developed sites, provided that (i) it has no significant impact on the character and appearance of the countryside and (ii) it supports the rural economy and maintenance of the wider countryside. The parties agree that Policy CS5 appears to be largely in accordance with the National Planning Policy Framework[2] ('the Framework').

[2] As revised in February 2019

37. Core Strategy Policy CS22 concerns new accommodation for gypsies and travellers. It provides that new pitches will be set according to the most recent Gypsy and Traveller Needs Assessment agreed by the Council. Priority will be given to the provision of sites which are defined on the Proposals Map. If other proposals come forward, they will be judged on the basis of the need for that provision.

38. National policy within the Planning Policy for Traveller Sites 2015 ('PPTS') says the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community (Paragraph 3). To help achieve this, Paragraph 4.e PPTS promotes more private traveller sites. When considering planning applications for traveller sites Paragraph 24 PPTS makes clear that, amongst other relevant matters, consideration should be given to a) the existing level of local provision and need for sites, b) the availability (or lack of) alternative accommodation for the applicants, c) other personal circumstances

39. Paragraph 25 PPTS goes on to state 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. The Council highlights how the word 'very' did not appear within the corresponding paragraph of the previous 2012 version of PPTS and its insertion placed a greater limitation on sites in the open countryside.

40. The PPTS must be read in conjunction with the Framework both of which are material planning considerations.

41. Under Paragraph 146e) of the Framework material changes in the use of land are not inappropriate development provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

42. Policy E of PPTS confirms that traveller sites (temporary or permanent) in the Green Belt are inappropriate development. The appellant accepts that the use and operations amount to inappropriate development in the Green Belt[3]. I concur. It is undisputed that there is harm to openness of the Green Belt, but the parties disagree on the extent of harm. I shall therefore address this as a main issue.

Gypsy/traveller status

43. The use for which planning permission is sought is the siting of mobile homes/caravans for residential purposes in Appeal A and two gypsy/traveller pitches in Appeal B. In order to establish what policy applies, it is necessary to establish whether the intended occupants have gypsy/traveller status for planning purposes as defined within the PPTS. The definition no longer includes those who have permanently ceased to travel. The 'cultural definition' of gypsy and traveller is wider, in that it includes anyone who has stopped travelling on a permanent basis.

44. The appellant's proof of evidence was prepared on his behalf. The appellant attended the Inquiry and explained that he is a traditional Romany Gypsy. He lives on the site with his partner and three children. His work as a motor vehicle

[3] Mr Woods (for the appellant) corrected an error in his proof of evidence which had stated at paragraph 8.6 that "*The development is not inappropriate as the site is Previously Developed Land….*".

trader takes him all over the country for 4-6 months of the year. The family travel together to various fairs. The appellant is also a horse trader, buying and selling horses. The appellant currently has four breeding mares presently kept at a field rented by his uncle in Stevenage. Based on all I heard, I am satisfied that the appellant and his family are persons of nomadic habit of life who meet the definition within the PPTS. I note the Council arrived at the same conclusion.

45. When the enforcement notice was issued there had been a total of five or six[4] caravans on the site. Aside from two belonging to the appellant, the other caravans were occupied by another family who have since left the site due to the uncertainty of these appeals. The application in Appeal B had included details of that family as intended occupants of one of the two pitches applied for. It is now the appellant's intention (as set out for the first time in his proof of evidence) that the second pitch should be occupied by Ms McCann, an Irish Traveller, who is 'an old family friend' and her adult son. Both have serious medical conditions which have been summarised and supported by some written information in the form of copy medical letters.

46. According to the appellant's proof of evidence Ms McCann and her son live in bricks and mortar. At the Inquiry the appellant said that this was not the case. Ms McCann had once lived in bricks and mortar, but was unable to settle and has been travelling for a while although the appellant could not recall for how long. Ms McCann and her son currently live on a site in Aylesbury occupying the pitch of a Gypsy family who are away travelling. When they return, the appellant stated that Ms McCann and her son would have nowhere else to go.

47. The Council did not take issue with the gypsy and traveller status of Ms McCann and her son on the basis that there was little information to indicate otherwise. However, the onus is upon the appellant to provide enough information to demonstrate that all the intended occupiers meet the PPTS definition and I made this clear in my Pre-Inquiry note to the parties. Whilst some medical details have been provided, the information regarding their way of life is sparse. The appellant thought that Ms McCann has continued to travel with her son but his evidence was vague and generalised. This was perhaps unsurprising as he had no first-hand knowledge.

48. Ms McCann did not attend the Inquiry and did not provide any direct account herself. With such limited and contradictory information, it is difficult to gauge with any level of clarity whether Ms McCann and her son do still lead a nomadic way of life for an economic purpose or if indeed they have ceased to travel permanently for health or other reasons. In the circumstances, I simply cannot be satisfied that Ms McCann and her son meet the PPTS definition. No overriding need as to why the families need to be together was put forward. In fact, the appellant indicated that he was simply looking to help a friend.

49. In consequence, policies aimed at providing for definitional gypsies do not apply to Ms McCann and her son. However, their personal circumstances, including their need for a caravan site, will still be relevant and can be given weight as material considerations.

Reasons

50. The main issues are:

[4] The Council states that there were 6 caravans, the appellant says that there were no more than 5 caravans.

- the effect on the openness and the purposes of including land within the Green Belt;
- the effect on the character and appearance of the surrounding area; and
- whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the development, on either a permanent or temporary basis.

Green Belt Openness and purposes

51. The development in each appeal involves the siting of caravans on part of the hardstanding for residential use. The remainder of the site as shown on the enforcement notice plan and in the 2018 permission is paddocks with post and rail fencing erected for this purpose.

52. In acknowledging that the use is inappropriate development in the Green Belt, the appellant accepts that there is an effect on openness which is not preserved.

53. Paragraph 133 of the Framework makes clear that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and permanence.

54. As set out in the national Planning Practice Guidance, case law establishes that openness of the Green Belt is capable of having both spatial and visual aspects. In other words, the visual impact of the development may be relevant, as could its volume. The appellant’s landholding is reasonably well-contained by boundary foliage but an absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. By the same token, openness does not imply freedom from any form of development. The effect on openness might not be confined solely to permanent physical works.

55. The entire site is shown in the submitted plans for Appeal B as hard surfaced. It includes prospective works. Less hard surfacing is included within the deemed planning application for the area already laid and enforced against in Appeal A. That said, each development includes a considerable amount of hard surfacing.

56. Given the grant of the 2018 permission for a stable block, access and fencing, the site may not have remained totally open and free from development. Nevertheless, the low level stable block building had a relatively small footprint and there was much less hardstanding including the access than in either development now under consideration. Furthermore, the stable block would still be built in Appeal B as it is shown on the application drawings. Indeed, the appellant is clear that the reason it has not been built before now is the fear it might contravene the injunction.

57. Clearly, the appeal site would not be free from development if the 2018 permission was implemented for the stables development which includes an access and hardstanding. Thus, although the caravan site and associated works have introduced development where none existed before, there is an extant planning permission for the site allowing development to take place.

58. Even so, openness has undoubtedly been reduced through the bulk of the caravans, parked vehicles (and a portaloo in Appeal A) together with the expanse

of hardstanding. That loss of openness will be compounded further once the stable block is built.

59. To my mind the loss of openness is significant in both appeals. There is also a failure to assist in safeguarding the countryside from encroachment contrary to one of the Green Belt purposes within paragraph 134c) of the Framework. As such, the development does not accord with Core Strategy Policy CS5.

Character and appearance

60. The appeal site is located next to the A41 bypass. It is approximately 1.2km away from shops and services in Apsley. The road (with bridge over) provides physical and visual separation from the nearest housing development to the east of the A41. Despite the close proximity to a dual carriageway, the surroundings to the west of the A41 are otherwise distinctly rural.

61. Indeed, the site lies within the Landscape Character Area for Bovingdon and Chipperfield Plateau as mentioned in both the reasons for issue of the enforcement notice and the refusal of planning permission. The appellant opposes the production of the Decorum Landscape Character Assessment as not having adopted policy status. It nevertheless provides helpful descriptive material of this Landscape Character Area. Key characteristics include the expansive, gently undulating plateau with mixed arable and pasture farmland and a settlement pattern comprising a number of villages which spread across the plateau in loose organic forms.

62. Immediately adjacent to the north-west boundary of the appeal site is a public right of way (Byway 72) which connects with a public footpath running north along Featherbed Lane. Beyond the byway to the west, there lies cultivated fields with more fields to the south of the appeal site.

63. When the 2018 permission was granted for the stable building and creation of paddocks, the Design and Access Statement which supported the application described the landholding as a grassland/paddock field. According to the Statement, the appearance of the site was 'a rural setting with a mixture of mature and semi-mature native trees and sections of native hedgerow which would be retained'. This corresponds with the appellant's own description that the wider site was all grassed when he acquired the land.

64. The Officer report from 2018 described the application site as 'an isolated field' with the nearest residential property some distance away beyond additional fields. The Officer noted that the stable building would not be visible from outside the site given its concealed position, low level height and the established hedgerow screen to all sides. As such, the impact upon the character and appearance of the countryside and area was acceptable.

65. Clearly, there is a distinction between a low level, timber clad, stable building with black sheet roofing which is compatible with its countryside location than a residential use involving the siting of caravans across a wider area of the site. Invariably a residential use also brings the parking of vehicles and various associated domestic paraphernalia. Although an access for the stables was approved by the 2018 permission, a much larger area of hardstanding has been laid in order to accommodate the unauthorised use. This area would be increased further under Appeal B.

66. Prior to any development taking place, aerial images and photographs reveal the

site to have been an open grassed field bounded by trees and hedgerow apart from a wide metal gate at the entrance next to a post and rail fence. The soft boundaries remain and provide some mitigation against the traffic noise from the A41 albeit a constant drone can still be heard. From that viewpoint, it is not a tranquil setting but that does diminish its visual qualities as part of the wider open countryside.

67. An open field with planning permission for a stable block, access and fencing to enclose the paddocks has become visually dominated by the presence of a large expanse of hardstanding, caravans, and solid high fencing to the frontage and part of the perimeter. The extent of harm in Appeal A is exacerbated by the solid boarded gates which the appellant accepts should be removed.

68. The Campaign to Protect Rural England objected to the planning application which led to Appeal B. Amongst its concerns were the entire site being clearly visible from the nearby bridge across the A41. It described the development as a prominent residential enclave in the open landscape, visible from both Featherbed Lane and the surrounding countryside.

69. On my site visit, I was unable to see any part of the development from the bridge due to the dense boundary foliage. Removal of the boards to the metal farm gate would expose the site to public view from Featherbed Lane. Tops of the caravans and larger vehicles are already visible in places above the high solid fencing from the adjacent public byway through gaps in the hedgerow. Ability to see into the site does not necessarily increase the level of harm. Indeed, PPTS Paragraph 26(d) encourages not enclosing a site with so much hard landscaping, high walls or fences that the impression is given that the site and its occupants are deliberately isolated from the rest of the community. This implies that sites should not be completely hidden and some degree of visibility is to be expected.

70. However, the harsh solid fencing and hardstanding with introduction of caravans and vehicles associated with the residential use is not in keeping with the rural environment prevalent on this side of the A41. I recognise that the development is contained to the area identified in the application plans for Appeal B and the paddocks for horses would help retain a level of use characteristic of the rural locality but it would not offset it by much. Green pasture has been replaced by development far in excess of the stables development and results in a significant loss of countryside to accommodate the residential use.

71. It was suggested that the appellant had tidied the site by clearing away some fly-tipping. This may have achieved a small improvement in the appearance temporarily. There is now another form of untidiness introduced from the loss of a wide area of pasture to hardstanding and introduction of items associated with the residential use, such as children's toys, satellite dish and a skip.

72. The Council highlights the judgment in '*Cawrey*'[5] which confirms that the policy protection within the Framework to recognise the intrinsic character and beauty of the countryside[6] does not only apply to those areas with a designation. As it is, this site is within the Green Belt where countryside protection is at a high level.

73. The appellant has offered to agree and implement a landscaping scheme involving the replacement of the fencing with a boundary treatment more suited

[5] *Cawrey Limited v SSCHLG and Hinckley & Bosworth Borough Council* [2016] EWHC 1198 (Admin)
[6] Previously within Paragraph 17.

to its location. This is capable of being secured by a planning condition. I also acknowledge that the portaloo could be removed if there were appropriate drainage and wheelie bins could replace the need for the builders' skip. Although such measures could help improve the appearance of the site it would not overcome the significant harm arising from the large expanse of hardstanding, presence of caravans and domestication of the land.

74. The level of harm can be mitigated to a limited degree through improved landscaping and layout of the site including removal of harsh boundary treatments. It would not overcome the harm to the character and appearance of this area of countryside which would remain significant. The development therefore conflicts with Policy CS5 insofar as it requires development to have no significant impact on the character and appearance of the countryside. There is also conflict with the provisions of Paragraph 127 of the Framework which seeks development that adds to the overall quality of the area, is visually attractive and sympathetic to local character. It also fails to maintain the intrinsic character and beauty of the countryside as sought by Paragraph 170(b) of the Framework.

Other considerations

The need for and supply of gypsy sites

75. Paragraph 10 of PPTS provides that local planning authorities should, in producing their Local Plan, identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. Footnote 4 makes clear that to be considered deliverable, sites should be available now, offer a suitable location for development, and be achievable with a realistic prospect that development will be delivered on the site within 5 years. The appellant disputes that the Council has a 5-year supply.

76. The Council's Core Strategy was adopted in September 2013. It pre-dates the current definition of gypsies and travellers within the PPTS which was introduced in August 2015. As such, the strategic policy for gypsy and traveller development, CS22, is not drafted in a way to distinguish between definitional and non-definitional gypsy and travellers.

77. The first part of CS22 sets out that the need for pitches will be set according to the most recent Gypsy and Traveller Needs Assessment agreed by the Council. The latest Gypsy and Traveller Accommodation Assessment ('GTAA') undertaken by Opinion Research Services ('ORS') dated March 2019 was compiled after the definitional change. It identified the overall level of additional current and future need for those households who met the PPTS definition of a gypsy or traveller.

78. Whilst there was no requirement for the GTAA to include an assessment of need for households not meeting the PPTS definition, one was completed by ORS and advice provided on how the Council should seek to address those accommodation needs also.

79. Policy CS22 expressly refers back to the latest GTAA and deals with the need identified within it. As is made clear in the GTAA, only the need from those households who met the planning definition and from those of the unknown households who subsequently demonstrate that they meet it should be formally considered as need arising from the GTAA. It follows that the policy target must relate to those gypsy and travellers in need of accommodation who meet the PPTS definition.

80. The GTAA identified the overall level of additional pitch needs for gypsies and travellers from 2017-2036. The current and future need for those households who met the PPTS definition of a gypsy or traveller is for 7 additional pitches over the plan period 2017 to 2031 with 5 of those pitches needed between 2017-2022. The GTAA states that it was not possible to determine the planning status of 12 households. Data collected nationally since the changes to PPTS in 2015 indicates that approximately 25% of households interviewed meet the planning definition. On that basis it is suggested that additional need could rise by up to a further 4 pitches plus any concealed households or 5-year need arising from teenagers in these households, or it could be as few as 1 additional pitch.

81. The GTAA recognises a total need of 80 pitches in the Borough for all gypsies and traveller households, 69 of which are for those not meeting the PPTS definition.

82. The Council's planning witness states that: 'The plan envisages a minimum of 17 pitches coming forward during the plan period to 2031'. The Council has allocated pitches at two strategic sites within its Site Allocations Development Plan Document, both of which were released from the Green Belt policy designation when the DPD was adopted in 2017. Pursuant to those allocations, an outline planning permission was submitted in October 2019 for development including 5 pitches at Marchmont Farm ('LA1'). A hybrid permission was approved in November 2019 for 7 pitches at land west of Hemel Hempstead ('LA3') but the permission has yet to be issued. Those allocations are forecast for delivery within the next 5 and 4 years respectively.

83. The appellant is sceptical that either site will be delivered as forecast and points to the assurances given to a previous Inspector in January 2017 during the 'Bobsleigh' Inquiry[7] for another gypsy and traveller development within the Green Belt in Dacorum. At that time the Site Allocations DPD was emerging but not adopted. The Inspector in 'Bobsleigh' noted that the Local Plan Inspector had concluded that '*sites LA1 and LA3 can come forward immediately and that it would appear that a five-year supply of deliverable gypsy and traveller sites would be provided by these two allocations*'.

84. The Appeal Inspector expressed reservations over whether the land for gypsy and traveller development at LA1 and LA3 would be provided within 5 years as they are '*intrinsically related to wider development of these sites and we have no committed programme. Nevertheless, the relevant tests of a deliverable site set out in Footnote 11 of the Framework include that it is available now and is viable, both of which are supported by the evidence. Further, Footnote 11 refers, not to a prerequisite of certainty, but to a realistic prospect of development, and the evidence submitted satisfies me in that regard.'* The appeal was dismissed.

85. It transpires that the previous Inspector's concerns were well founded. LA3 has been delayed whilst the education provision for a new school within a planning obligation deed[8] is negotiated and secured. Completion of the deed is now pending and the Council confirmed that planning permission is expected to be released within 6 weeks. The gypsy and traveller element is to come forward as one of the earliest phases. The site will have its own access and does not depend upon any other phase. The Council expects delivery within 4 years.

86. The allocation for 5 pitches for LA1 at Marchmont Farm is part of a 350 home

[7] Appeal Decision ref: APP/A1910/W/16/3149793 dated 10 April 2017
[8] To be made under section 106 of the 1990 Act.

scheme for which the Council resolved on 29 April 2021 to grant planning permission, subject to completion of a planning obligation deed. Delivery is anticipated within 5 years.

87. Neither scheme is required to return to Committee. Progress towards delivery of LA3 is now well advanced and there is far greater likelihood that the 7 pitches will be achieved during the next 4 years. The prospect of achieving LA1 also appears much improved given the recent committee resolution.

88. I note that the Inspector in the 'Bobsleigh' appeal recorded how in 2017 there had been a backlog in supply of pitches with none delivered from 2012-2017 which would leave a net shortfall of 3 pitches even if the 12 pitches for LA1 and LA3 were delivered within 5 years. This demonstrates an historic under-supply of pitches and poor track record against delivery. The figures were revised by the 2019 GTAA but the Council is still yet to deliver any pitches.

89. Based on the figures there is an identified need for 7 additional pitches for those meeting the definition and there may be a need for up to 4 more. There are allocations to meet that need over the plan period. No sites have yet been delivered to meet the identified need for 2017-2022 and the Council acknowledged that it is highly unlikely that any will come forward by April 2022. That being so, the need is not currently being met. However, the progress made to achieve LA1 and LA3 indicates that the backlog will be cleared and additional pitches provided to address the identified need within the next 5 years.

90. The appellant suspects that the need within the Borough is in fact greater than identified and that there are those within the GTAA who have been incorrectly identified. Particular concern was raised over the 'unknowns' being a household missed during the fieldwork but who may come within the PPTS definition. In any event, it is argued that the baseline for the assessment is out-of-date because it relies upon an assessment made almost 4 years ago. Indeed, the proposed occupiers were not understood to be resident in Dacorum at the base date.

91. The previous GTAA of 2013 pre-dated the current PPTS and so did not distinguish between those who led a nomadic lifestyle and those who did not. It identified a need for 17 pitches between 2012-2031, with 15 required by 2022. Mr Jarman of ORS attended the Inquiry and indicated that the fourfold increase in identified need across both groups within the area is reflective of the growth pattern among the gypsy and traveller community elsewhere which has typically increased at a higher rate than among the settled community. The GTAA 2013 was replaced with the 2019 report and takes account of the change in gypsy and traveller definition. The pattern across both might suggest that need will have increased even further but that is not known. It is logical that an unknown need is not an identified need.

92. In any event, Policy CS22 goes on to set out the criteria for the provision and management of new sites in order to meet the target. As acknowledged by the Council's planning witness, the criteria for delivery of new sites is not expressed to be limited to those for definitional gypsies and travellers. Under the policy, priority is given to allocated sites. If other proposals come forward, they will be judged on the basis of the need for that provision [my emphasis]. This appears to enable unknown need to be addressed and allow the needs of other ethnic gypsies to be met through windfall sites.

93. The figures in the 2019 GTAA have not been subject to Local Plan examination

but the approach follows the same methodology upheld by Examining Inspectors on a number of occasions. Mr Jarman explained that where the methodology was not accepted in the Local Plan examination for the London Borough of Havering there had not been a high level of engagement unlike the position in Dacorum. Whilst the appellant is critical of the approach taken by ORS, including the timing of research work over the summer travelling season (in July 2017), I have no reason to consider its methodology unsound. Despite the timing, the public sites were full. I found the explanations provided by Mr Jarman to be comprehensive and persuasive. Comparisons cannot in my view properly be drawn with a different scenario arising in one London Borough to undermine the 2019 GTAA.

94. To illustrate the position in other districts, the appellant refers to East Hampshire District Council whose position in March 2020 indicated in excess of 14 years' supply of deliverable land for gypsy and traveller sites. After publication of its GTAA it was found not to have a 5 year supply leading to a 6 monthly position statement revealing only 2 years' worth of sites with a shortfall of 27 pitches as at 30 September 2020.

95. Examples of what has happened elsewhere are not indicative or reliable evidence of the likely position in Dacorum.

96. Latest data of gypsies and travellers on the Council waiting list for a site in Hertfordshire shows there are currently 96 families waiting for all 10 sites across the county. Of those, 31 families are on the waiting list for the site at Three Cherry Trees, in Dacorum. There are also 49 families on the waiting list for the Long Marston site, which is also in Dacorum. There is no double counting as families are given a waiting list number which only appears once. Nonetheless and as Mr Jarman explained, the fact that families are on the waiting list is not necessarily indicative of a need for a pitch and there is no requirement to live in the county to be on the list as long as the family has some connection.

97. Traveller caravan count figures for July 2017-January 2020 provide only a snapshot in time. Moreover, as it is the gypsy way of life to travel, they are not a reliable source of information to demonstrate the level of need for pitches in the area.

98. Clearly, the figures from ORS reveal a high level of need for accommodation for ethnic gypsy households which have not been addressed through the site allocations. Furthermore, a specific criteria-based policy for non-PPTS gypsies and travellers has not yet emerged as recommended by ORS in the GTAA.

99. Notwithstanding that there are those in need who do not meet the definition, section 8 of the Housing Act 1985 requires the local authority to consider the needs of people residing in or resorting to their area in caravans as part of its wider duties to consider the needs of the district with respect to the provision of further housing accommodation.

100. Paragraph 61 of the Framework also specifies that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. This includes the needs of travellers but as explained in the footnote [25], the PPTS sets out how travellers needs should be assessed for those covered by the definition. In other words, the needs of those not meeting the definition must still be assessed and met in accordance with the Framework and those that do meet the definition are addressed under the requirements of the PPTS.

101. The appellant sought to draw parallels between CS22 and the circumstances in the Appeal Decision for 'Land off Chapel Lane'[9] in East Hertfordshire District Council area which was upheld in the High Court[10]. In that appeal, two development plan policies provided a framework for the assessment of any applications for gypsy and traveller sites on non-allocated sites. The Inspector noted that, in reality, the requirements of both policies were the same irrespective of whether the PPTS definition was met. As such, if either policy was met it would be unnecessary to consider other considerations, including the personal circumstances of the individuals for whom the pitches were intended.

102. If the development accords with the development plan taken as a whole then there would be no reason to assess other considerations, in the same way as the Chapel Lane appeal. However, that is not the case here. For a start, there are not separate policies with the same criteria for the assessment of gypsy and traveller sites. Significantly, the appeal site here is within a policy designation for the Green Belt. Even if there were compliance with CS22, the development would still be inappropriate development in the Green Belt and other considerations must be considered in order to identify if very special circumstances exist to outweigh the Green Belt harm.

103. To sum up, there is a current unmet need for sites and a backlog which should, but by the Council's own predictions, will not, be met by 2022. However, there is nothing to suggest that the planning permissions against policy allocations LA1 and LA3 will not be finalised in the short term. There is a very realistic prospect that those developments will be delivered within 5 years to meet the identified need over the next 5 years. On the evidence before me and with reference to Paragraph 10 PPTS and footnote 4, there is a 5 year supply of specific deliverable sites to 2026.

Personal need for a site and availability of alternative sites

104. The appeal site was purchased by the appellant and his partner with the assistance of family funding after searching for an affordable site that met their requirements and having failed to secure planning permission for another site. The appellant had hoped to occupy one of three gypsy pitches for which planning permission was sought in another Borough, but the application was dismissed on appeal in 2016[11]. The Appeal Decision identifies the appellant as an intended occupier of that site and records how he was living at the time on the roadside or on transit sites. Sometimes they were able to double-up on his parents pitch in Aylesbury but circumstances have since changed.

105. Prior to moving onto the Featherbed Lane site in July 2019, the appellant explained how he had continued to travel around without a settled base living beside the road in various counties with his partner and their children.

106. All the appellant's family come from the Hemel Hempstead area and he has relatives still living in Hertfordshire. Under affirmation, the appellant stated that no family members have space to provide accommodation and they have nowhere else to go. The appellant's proof of evidence referred to him having sold land to others but this is incorrect. In evidence, the appellant said that he had never previously owned land.

[9] Appeal ref: APP/J1915/W/19/3234671 dated 4 February 2020
[10] [2020] EWHC 3036 (Admin) with permission to appeal recently refused by the Court of Appeal on 26 March 2021
[11] Appeal Ref: APP/H1705/W/15/3067583 dated 7 September 2016 for land off Dixon Road, Sherfield-on-Loddon

107. From all I heard, the appellant has a clear personal need for a site and his local connections weigh in his favour. The Council accepts that there are no lawful alternative sites currently available to the appellant in the Borough.

108. In terms of Ms McCann and her son, I have been unable to be satisfied that they meet the PPTS definition for gypsies and travellers. Nonetheless, the Council surmised that they have lived for some time at a site in Weston Turville where they remain because the same address appears in medical correspondence from October 2016. The appellant argued that just because the address was used for postal purposes did not mean that they had lived there throughout and were not in need of a site. Ultimately, there is no clear or sufficient information of their need. There are no children involved. For the time being at least they appear to be at another site. The appellant's advocate sought to suggest that Ms McCann was living unlawfully at this Council gypsy and traveller site and she would have to leave, but this was not the direct evidence of the appellant. Put simply, there are too many uncertainties over their circumstances to attribute more than limited weight.

Delivery against local and national policy objectives

109. There has been delay in both the allocated gypsy and traveller sites (LA1 and LA3) coming forward. As things stand, no provision of pitches is being realised through the development plan process and that is 'highly unlikely'[12] to change before April 2022 in order to deliver against the target of 5 pitches by 2022. In this regard there has been a failure of policy.

110. Whilst the mechanism exists through Policy CS22 for other sites to come forward to meet need, including for those not meeting the PPTS definition, this has also not occurred with the figures indicating a high level of need. Policy has therefore failed to deliver against this other need.

Previously developed land/fallback

111. The appellant contends that the landholding is previously developed land following implementation of the 2018 permission, the approved plans for which relate to the entire area (and not just the developed area shown in Appeal B). The use of previously developed land where suitable opportunities exist is encouraged by the Framework (Paragraph 84). When considering applications, PPTS 26 provides that weight should be attached to the effective use of previously developed (brownfield) land.

112. As set out in my consideration of the ground (b) appeal, I have rejected the argument that development authorised by the 2018 permission was begun. In any event, no part of the stable building has been built. The Glossary to the Framework defines 'previously developed land' as *land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure.*

113. The laying of hardstanding represents an engineering operation without creating a 'structure'. The appellant's agent considered the hardstanding to be 'associated fixed surface infrastructure' but that in isolation does not make this previously developed land as defined. When the unauthorised use as a gypsy and traveller site began there was no 'permanent structure' on the land.

[12] As acknowledged by Mr Hughes for the Council

114. This is not previously developed land and no weight attaches to such argument accordingly. There is a fallback position in terms of the 2018 permission but as already noted, the harm arising from the appeal developments applied for is far greater than would occur by building out the stables development.

Suitability of the site

115. The Council acknowledges that the appeal site performs well against some of the criteria identified in Policy CS22 which is applied to judge the suitability of new sites in order to meet its target for new pitches.

116. The site is situated not far from existing development on the opposite side of the A41. In addition, the development of two pitches is modest in scale (the policy refers to sites 'of varying sizes, not normally exceeding a site capacity of 15 pitches') with scope for subsequent growth. The Council's professional planning witness took issue with the appeal site being 'located close to facilities' even though this was accepted in the Officer's delegated report for Appeal B. Proximity to facilities is not given as a reason for refusal or to issue the enforcement notice and it is raised in this policy context only. The appeal site is between 1.2km-2km away from a range of shops in Apsley. Although there is not a footway along the whole route which is partly on an incline, the distance is not far and to my mind it can be considered as relatively close to facilities.

117. However, I agree with the Council that the development does not perform well against the criterion for a high standard of design. A more open frontage could be achieved as offered by the appellant and there is scope for landscaping to be secured by planning condition to improve the setting and standard of design. These improvements would not overcome the harm arising from loss of openness and encroachment of development into the countryside (beyond that approved by the 2018 permission) and domestication of the site which causes harm to the character and appearance of the area. From this viewpoint, it does not represent good design in furtherance of the aims of Policy CS22.

118. Much emphasis was placed by the appellant upon how, historically, the site at Featherbed Lane had been identified in 2005 as one of a number of possible suitable sites for gypsy and traveller development. In common with around five other potential sites it was ranked as '1' in a report commissioned by the Council meaning that it was considered to be at the highest end of suitability. That approach was abandoned by the Council without detailed assessment in 2009 in favour of a different strategy to provide pitches as part of large scale housing developments. The fact the appeal site was under consideration carries little weight given that it was never allocated and strategic policy changed.

119. Just over half of the Borough lies within the Green Belt. It does not automatically follow that gypsy sites will invariably need to be situated within the Green Belt as the appellant suggests. Without particulars to support this assertion with details of alternatives, I give it little weight.

120. Paragraph 13 PPTS identifies a number of matters to ensure that traveller sites are sustainable economically, socially and environmentally.

121. The site is separated from the settled community by the A41 but it is not so far removed as to inhibit integration with the local community. A range of services are quite nearby. Whilst the route may not be conducive to walking especially with young children given the lack of footway (in part), trips by motor

vehicle would be short. Provision of a settled base would facilitate access to healthcare and enable the children to attend school on a regular basis. It would also reduce the need for long-distance travelling and possible environmental damage caused by unauthorised encampment. In those respects, the appeal site is reasonably well placed in sustainability terms.

122. On the other hand, the site is located very close to the extremely busy A41. The impacts on the health and well-being of the occupiers from traffic noise have not been assessed. This is a potential negative factor. Overall, I give moderate weight to the sustainability credentials against the factors in Paragraph 13 PPTS and criteria of CS22.

Personal circumstances and the best interests of the children

123. As established by case law, the best interests of the children are a primary consideration. No other consideration can be inherently more important than the need to safeguard and promote their welfare. It does not mean that the best interest of the children must be the one and only primary consideration. The importance or weight given to the best interests of the children and any other consideration will depend on all of the circumstances in this case. It is possible for their interests to be outweighed by other factors when considered in context.

124. Information has been provided by the appellant regarding ongoing health and educational needs for the future. I have taken these into account.

125. There are no alternative available sites. If the enforcement notice is upheld and the family are required to vacate the site then they would all return to a roadside existence. Not only would that adversely affect the general welfare of the whole Thompson/Price family who would be exposed to health and safety risks associated with living beside the road but it would also impede access to healthcare and education. Two of the children attend the local primary school where they have settled and a third child has a school place from September 2021. A roadside existence would not preclude all access to schooling but, if prolonged, it is likely that education would be disrupted. Ensuring that children can attend school on a regular basis is one of the criteria identified within Paragraph 13 PPTS to ensure that traveller sites are sustainable.

126. Clearly, eviction from this site would not be in the best interests of the children who would benefit from a settled base and ongoing schooling.

127. The position is currently unclear regarding the personal circumstances of Ms McCann and her son. Evidence of medical conditions have been supplied but without clarification it does not suffice to demonstrate why there is a need to reside at this site.

Intentional Unauthorised Development

128. The written ministerial statement issued on 31 August 2015 announced that it is national planning policy that intentional unauthorised development is a material consideration to be weighed in the determination of planning applications and appeals. Although it has not been incorporated within the revised Framework[13], the ministerial statement has not been replaced or revoked and it remains a material consideration.

[13] Of February 2019

129. It is plain from the appellant's proof of evidence that the appeal site was purchased with the intention of setting up home where he says: '*In all honesty, this plot of land was the only land that I had found which was both suitable for my family, and affordable.*'

130. When the appellant applied for the 2018 permission for the stable building and access he was professionally represented and clearly aware of the need for planning permission for development which included the laying of hardstanding. The planning application in Appeal B was dated 16 July 2019. The appellant moved onto the site beforehand contrary to the advice of his professional planning agent. Whilst another family has since left the site, the appellant has continued in occupation in the knowledge that it is without planning permission.

131. Unquestionably the development amounts to intentional unauthorised development in the Green Belt to which I attribute moderate weight against the grant of permission.

Other Matters

132. Both parties have drawn my attention to other Appeal Decisions including those within the Green Belt, some of which have been allowed and others not. Consistency in decision making is important to maintain public confidence in the system, but each and every case must be determined on its own merits. That is all the more so where personal need and other circumstances fall to be considered and in different policy contexts. Having considered all of these decisions, none is on all fours with this case.

133. The Council's Environmental Health department flagged up the potential adverse impact of road traffic noise upon the occupiers of the site and suggested a noise impact assessment. On the basis that a temporary permission only is granted, the Council conceded that a noise impact assessment would be disproportionate and the effect on the living conditions of the occupiers can be addressed through other means.

134. Approximately 215 objections were made to the original application (Appeal B) which have been summarised by the Council. I have taken these into account along with objections to both appeals and the one letter of support.

135. Concerns raised by local residents include disturbance from off road bikes being used in or around the site and other claims of anti-social behaviour including Police involvement. Whilst I do not have full particulars, there are now fewer caravans on the appeal site and only one family. Occupation can be controlled by condition. There are no records before me of recent incidents or any cause to believe that the appellant's family present any risk to the peaceful and integrated co-existence between the site and local community or use of a nearby Scout camp site.

136. There is a connected water supply. Electricity and drainage are capable of being connected. There is no evidence that property prices will be adversely affected by the presence of a gypsy site. The development is not at a scale where there is any risk of it dominating the nearest settled community.

137. The entrance to the appeal site is on a sharp bend along Featherbed Lane where the road is wide enough for two-way traffic. The gates are set back from the carriageway with space for a vehicle to stop before entering although not whilst towing a caravan. Nevertheless, this is an existing access with field gate

which could be used by large vehicles irrespective of this development. Indeed, it could be used with horse boxes and trailers in connection with the approved stable block development. The increased traffic movements along Featherbed Lane generated from up to two family groups would not be significant. No objection was raised on either ground by the local highway authority and I have no reason to come to a contrary view.

Planning Balance

138. Under paragraph 133 of the Framework it is made clear that the Government attaches great importance to Green Belts. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (Paragraph 143).

139. In accordance with Paragraph 144 of the Framework substantial weight should be given to any harm to the Green Belt which arises in this case from inappropriateness, loss of openness and encroachment contrary to one of the Green Belt purposes. Added to that, there is significant harm to the character and appearance of the area and moderate harm from intentional unauthorised development.

140. I attach substantial weight to the best interest of the children. Significant weight attaches to the personal needs of the appellant and his family for a site and also to the lack of any suitable alternative. The appellant's local connections weigh in his favour to a limited degree. The development would make a small contribution to the local supply of pitches, for which there is an immediate need but a contribution of one or two pitches carries limited weight only. There has thus far been no gypsy and traveller pitch provision against identified targets with little or no prospect of this changing in the near future. I attach significant weight to the unmet need and poor record in bringing forward sites.

141. I have some concerns over the proximity of the site to the A41 with associated traffic noise but it otherwise performs reasonably in terms of the suitability of its location to which I attach moderate weight. I am also mindful that the Council has conceded that a personal planning permission should be granted to the appellant for one pitch albeit for a temporary 4 year period, to which I attribute limited weight in my consideration of the justification for a permanent permission. A nearby resident in support suggests that the appellant's presence has deterred fly-tipping along the adjacent byway which had become a frequent problem. I give this little weight.

142. On balance, I consider that the other considerations do not clearly outweigh the totality of harm that I have identified. Consequently, the very special circumstances necessary to justify a permanent permission do not exist. The development conflicts with Local Plan Policies CS5 and CS22 and the development plan taken as a whole together with national policy.

Temporary permission

143. Having found against the appeals for the grant of a permanent permission for a generic gypsy and traveller site, consideration turns to whether there is

justification for a temporary or personal planning permission.

144. It would be less harmful to the Green Belt if the development was of temporary duration. The Council offered a concession to the appellant of a

temporary permission for a 4 year period by which time it expects to have alternative accommodation available through delivery of site allocation LA3. Whilst noting that offer, I am mindful of the delay that has occurred already and overly optimistic forecasts in the past. Realistically, and to allow for slippage I consider 5 years to be more appropriate should a grant of permission be warranted. A change in circumstances can reasonably be expected by the end of that period.

145. For a temporary permission to be granted there would still need to be other circumstances sufficient to clearly outweigh the harm to the Green Belt and any other harm to amount to the very special circumstances needed to justify the development.

146. This case is quite finely balanced. However, the lesser harm which would arise to the Green Belt and character and appearance of the area by making the grant of permission limited in time to 5 years would tip the balance in favour of a grant of personal permission to the appellant. In that scenario, the very special circumstances needed to justify a temporary permission would exist.

147. A case is only made out on the basis of the best interests of the children and thus the personal circumstances of the appellant for one pitch. A case has not been made out to satisfy me that there are sufficient personal circumstances to weigh in the balance to warrant the grant of temporary permission for a second pitch for Ms McCann and her son.

148. As Appeal B is for two pitches, there was consensus that a condition could not restrict the grant of permission to one pitch only for the appellant. This appeal shall be dismissed, accordingly.

149. Temporary planning permission is capable of being granted for the caravan site use in Appeal A. The enforcement notice separates out the operational development which is also enforced against. Under the deemed planning application, the operations for the hardstanding are those that existed at the time of issue of the enforcement notice. These comprise bricks, rubble and crushed concrete which are not acceptable for the location nor is the close board fencing and boarding to the gate. The internal fencing which sub-divides the site should be incorporated within a site development scheme ('SDS') to be approved pursuant to a planning condition for the use of the site.

150. In furtherance of section 177(1) of the 1990 Act, permission may be granted for part only of the development. I shall therefore uphold the enforcement notice in respect of the operations. Of course, caravans will require a base but hard and soft landscaping within the site and boundary treatments are capable of being addressed through a SDS. By upholding this part of the enforcement notice, the Council will be afforded protection in the event that a SDS is not implemented.

Human rights and equalities

151. Under Article 8 of the European Convention on Human Rights, everyone has a right to respect for his private and family life. Upholding the enforcement notice would engage that right of the appellant and his family residing on the site. However, Article 8 is a qualified right to be weighed against the wider public interest of protecting the environment from unacceptable forms of development.

152. There are serious objections to the development, particularly in terms of Green Belt harm the protection of which is an important aim of local and national

policies. The objections can be overcome by conditions on the grant of a planning permission to limit the duration of the development which is only justified on the personal circumstances of the appellant and his family. Hence, a personal permission only would be granted. In taking this approach it would strike a proportionate response to the appellant's Article 8 rights whilst protecting the wider public interest.

153. Ms McCann and her son are not resident at the appeal site and dismissal of the appeals would not make them homeless for Article rights to be engaged.

154. In determining these appeals, I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of The Equality Act 2010. This sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. It does not follow from the PSED that the appeals should succeed. The provisions of The Equality Act do not outweigh those of the Town and Country Planning Act 1990. Dismissing the appeals for a two pitch site is a proportionate response to the circumstances where there has been a lack of clear evidence in favour of a second pitch.

Conclusion on ground (a), the deemed planning applications and Appeal B

155. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should succeed in part for the material change of use, subject to conditions. The appeal shall be dismissed for the operations and I shall issue a split decision.

Appeal A – ground (f)

156. An appeal had been brought on ground (f) to argue that it is excessive to require removal of the entire hardstanding when part could be retained equivalent to the area covered by the access approved by the 2018 permission.

157. A ground (f) appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

158. The notice in this case seeks to remedy the breach of planning control. The appellant has not identified any lesser steps or an obvious alternative to removal of the hardstanding that would remedy the breach. That would not be achieved by allowing part of the hardstanding to remain in place. In any event, the materials do not accord with the approved plans and to leave the surface in its current condition would continue the harm identified. Nothing in the notice prevents the appellant from doing what he is lawfully entitled to do in future following compliance with the requirements of the notice.

159. The requirements of the notice in this case do not exceed what is necessary to remedy the breach. The ground (f) appeal fails.

Appeal A – ground (g)

160. Given that the notice is to be quashed in part and planning permission is to be

granted for the use, there is no need to make any variation to extend the compliance period in that regard. The operations are unacceptable in their current form and must be removed. Time is needed for a revised SDS to be agreed and implemented pursuant to a condition attached to the grant of permission for the use.

161. For that reason, I shall extend the compliance period to 12 months to accommodate that timetable. That period seems to me to strike the right balance between affording sufficient time to implement a SDS and protecting the Green Belt. Should that period not suffice then the Council has discretion under section 173A of the 1990 Act to allow more time in the event of genuine difficulties being encountered.

162. To this limited extent the ground (g) appeal succeeds.

Conditions

163. A series of conditions were discussed and agreed at the Inquiry in this eventuality which I have considered in accordance with tests in Paragraph 55 of the Framework and the national Planning Practice Guidance.

164. Given that permission is justified on the basis of the appellant's personal circumstances then a condition limiting occupation to the appellant and his family is necessary. This would also be for a temporary 5 year period pending the Council's delivery of other gypsy and traveller sites within the Borough as envisaged. At the end of this period the use shall cease and the land be restored in accordance with details submitted to and agreed by the Council. There is no need for a separate condition preventing occupation by anyone else which is already restricted to the named occupants.

165. To contain the impact on the Green Belt and countryside, it is necessary to limit the number of caravans, the size of vehicles, external lighting and storage uses. It is reasonable to prevent business use except to the extent of buying/selling horses which can be part of the gypsy way of life and which the evidence indicates that the appellant undertakes. The parties agreed wording to also include another saving provision for 'other lawful uses associated with the lawful use of the site', but I am not satisfied that this is necessary or clear and would give rise to uncertainty as to its meaning.

166. The development enforced against is incomplete. In order to mitigate the impact of the development upon the Green Belt, it is necessary for details of a SDS to be approved and implemented to address matters such as the site layout, hard and sift landscaping and boundary treatments. To protect archaeology, full details of groundworks should be included within the SDS.

167. There is no need to remove permitted development rights given the requirements of the SDS. Compliance with the condition for the SDS needs to be pursuant to a strict timetable because it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters when development has already taken place. The purpose and effect of the condition is therefore to ensure that the use of the land authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.

Formal Decisions

Appeal A

168. It is directed that the enforcement notice be varied by substituting the period of 12 months as the period for compliance within steps 4-7 of paragraph 5.

169. Subject to that variation, the appeal is allowed and the enforcement notice is quashed insofar as it relates to the material change of use of the land 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 material change of use of the land outlined red on the plan attached to the notice from agricultural to a mixed use of agriculture and use for the siting of mobile homes/caravans for residential purposes (including provision of residential equipment, paraphernalia and vehicles) at Land to the South West of West Valley Road, Hemel Hempstead (known as land at Featherbed Lane, Hemel Hempstead) subject to the conditions set out in Annex A at the end of this Decision.

170. The appeal is dismissed and the enforcement notice is upheld as varied for the operational development identified in the notice, and planning permission is refused in respect of the laying of hardstanding, the erection of close board fencing along the northwest and northern boundaries of the site, the erection of close board fencing to form a gate at the site access and the erection of post and rail fencing extending south-west to north-east across the site, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

171. The appeal is dismissed.

KR Saward

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Alan Masters	Of Counsel, instructed by W S Planning
He called:	
Mr N Thompson	Appellant
Brian Woods	Planning consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Giles Atkinson	Of Counsel, instructed by
He called:	
Steve Jarman	Opinion Research Services Ltd.
Phillip Hughes MRTPI	Planning consultant

DOCUMENTS submitted at the Inquiry

1 Statement in support of appellant from M. Sturgess.

2 Unredacted copy of Appeal Decision ref: APP/H1705/W/15/3067583 for Land off Dixon Road, Sherfield-on-Loddon, dated 7 September 2016.

3 Extract of Appendices to the Appeal Statement for Appeal ref: APP/H1705/W/15/3067583 with personal details of the appellant and his family.

4 Waiting List and Encampment Data for Hertfordshire.

5 Traveller caravan count figures for July 2017- January 2020.

6 Extract of Count of Traveller Caravans as at January 2020 and January 2016 -January 2019 in Table form.

7 Email of 11 May 2021 from the Council regarding occupancy restrictions of Council sites.

8 Appellant's list of draft conditions.

9 Council's list of draft conditions for a permanent permission.

10 Council's list of draft conditions for a temporary permission.

11 Council's revised list of draft conditions for a temporary permission.

12 Email from Council of 13 May 2021 with factual update on release of site allocations LA1 and LA3 from the Green Belt.

13 Council's closing submissions

14 Appellant's closing submissions

ANNEX A: SCHEDULE OF CONDITIONS

Appeal A:

1. The use hereby permitted shall be carried on only by Mr Ned Thompson and/or Ms Fawney Price and their resident dependants, and shall be for a limited period being the period of five (5) years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
2. When the premises cease to be occupied by those named in condition 1. above, or at the end of five (5) years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored in accordance with a scheme and timetable that has been submitted and approved in writing by the Local Planning Authority under condition 4.
3. No more than two caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Site Act 1968 as amended, shall be stationed on the site at any one time, comprising no more than one static and one touring caravan.
4. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place within 28 days 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:

   (a) the internal layout of the site including the extent of the residential pitch, the location of the caravans and vehicle parking and hard standings;

   (b) all boundary treatments and all other means of enclosure (including internal sub-division) and incorporating the retention (and augmentation where necessary) of the existing hedgerow/trees around the entirety of the site;

   (c) full details of all ground works for all services (electricity, water and sewerage);

   (d) details of all external lighting;

   (e) hard and soft landscaping and screen planting including details of species, plant sizes and proposed numbers and densities;

   (f) a scheme for the restoration of the land.

(hereafter referred to as the 'site development scheme') 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 11 months of the date of this decision the local planning authority refuse to approve the site development scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, 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 site development scheme shall have been carried out and completed in accordance with the approved timetable.

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

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

5. No external lighting other than that approved under Condition 4 shall be provided without the prior written permission of the Local Planning Authority.

6. With the exception of the buying and selling of horses and ponies, no other commercial, industrial or business activities shall take place on any part of the site, including the storage of vehicles, materials and goods.

7. No vehicle over 3.5 tonnes shall be stationed, parked, or stored on the site.

-END-