
Appeal Decisions

Inquiry Held on 14-15 September 2021

Site visit made on 15 September 2021

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 24 November 2021

Appeal A: APP/Z3825/C/20/3262469

Land at Pear Tree Farm, Furners Lane, Woodmancote, West Sussex, BN5 9HX.

- 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 Tracey Tingey against an enforcement notice issued by Horsham District Council.
 - The enforcement notice, numbered EN/18/0018, was issued on 22 September 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission the excavation of the land and consolidation of imported material to form a hardstanding and creation of an earth bund.
 - The requirements of the notice are: 1. Break up and remove from the land the material forming the hardstanding in the approximate position shown hatched green on the attached plan; and 2. Remove from the land the earth bund shown in the approximate position shown hatched in blue on the attached plan; and 3. Following steps 1. And 2. Above, restore the land to its former condition by re-seeding with grass and removing the resultant debris from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) 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.
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Appeal B: APP/Z3825/C/20/3262470

Land at Pear Tree Farm, Furners Lane, Woodmancote, West Sussex, BN5 9HX.

- 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 Tracey Tingey against an enforcement notice issued by Horsham District Council.
- The enforcement notice, numbered EN/18/0018, was issued on 22 September 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, change of use of the land from agriculture and equestrian to Class B8 Use which includes the stationing of metal containers used for storage purposes and the storage of rubber tyres and building materials for distribution in connection with the unauthorised B8 use.
- The requirements of the notice are: (i) Permanently cease the use of the Land for storage of tyres, building materials, and for the stationing of metal storage containers which are used for storage purposes; and (ii) Permanently remove from the Land the metal storage containers, rubber tyres and building materials.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) 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.

Appeal C: APP/Z3825/C/20/3262473

Land at Pear Tree Farm, Furners Lane, Woodmancote, West Sussex, BN5 9HX.

- 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 Tracey Tingey against an enforcement notice issued by Horsham District Council.
 - The enforcement notice, numbered EN/18/0018, was issued on 22 September 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, change of use of the land from agriculture and equestrian grazing to a mixed use comprising the stationing of caravans for the purposes of human habitation and storage of caravans and the laying of an associated hardstanding.
 - The requirements of the notice are: (i) Permanently cease the use of the Land for the stationing of caravans for the purpose of human habitation; (ii) Permanently remove from the Land the mobile homes, caravans and all domestic paraphernalia associated with the use of the mobile homes and caravans for the use of human habitation including gas bottles, washing lines and bins; (iii) Permanently cease the use of Land for the storage of touring caravans; (iv) Remove from the Land the touring caravans stored on the site; (v) Break up and remove from the land the associated hardstanding in the position shown hatched blue on the attached plan; and (vi) Following (v) above, re-seed with grass and remove the resulting debris from the Land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), and (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.
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Decisions

Appeal A

1. It is directed that the plan annexed to this decision at Annex A be substituted for the plan attached to the enforcement notice. Subject to this amendment, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. It is directed that the plan annexed to this decision at Annex B be substituted for the plan attached to the enforcement notice. Subject to this amendment, the enforcement notice is quashed.

Appeal C

3. It is directed that the plan annexed to this decision at Annex C be substituted for the plan attached to the enforcement notice. Subject to this amendment, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background and preliminary matters

4. Pear Tree Farm is a block of land in the countryside a short distance east of Henfield, with access from Furners Lane, which is single track for much of its length. It extends to the north of Furners Lane and has a lawful development

certificate (LDC) for external tyre storage on part of the land abutting Furners Lane, from which the appellant runs a used tyre sales business. Planning permission has recently been granted for the replacement of barns adjoining the tyre storage area with 3 detached dwellings and revised site access. Planning permission was also granted in 2020 on appeal¹ for 3 gypsy/traveller pitches and associated utility buildings towards the rear of the site on land the subject of Appeals B and C.

Planning units

5. The “*planning unit*” is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of changes of use. Where the alleged breach of planning control in an enforcement notice is one of material change of use, the correct planning unit must be identified. The case of *Burdle*² sets out the approach to be taken. The starting point is the unit of occupation. Within that it is only possible to identify a separate planning unit where there is a functional or physical separation of activity. Where two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes, each ought to be considered as a separate planning unit.
6. The Council consider that each of the areas the subject of the notices comprises a separate planning unit, whereas the appellant argues that the holding as a whole comprises the appropriate planning unit. In respect of the Appeal A area it is not strictly necessary to identify the planning unit since the breach enforced against is operational development, but I consider in any case that it quite clearly comprises a single separate planning unit, being occupied by businesses unconnected with the holding as a whole and for entirely unrelated purposes. It is both physically and functionally separate.
7. The same cannot be said however of the area subject to Appeal B. At the time the notice was issued it seems quite clear to me that the former stable yard was being used mainly for the same purposes as the LDC yard, that is as part and parcel of the used tyre business. Indeed the tyre business appeared to have extended well outside of the certified area, including occupying some of the paddock land between the LDC yard and the stable yard for both vehicle parking and tyre storage. On the evidence available I consider that there was not sufficient separation of activity for the Appeal B land to comprise a separate planning unit in its own right.
8. The Appeal C land by contrast is, and clearly was when the notice was issued, a physically separate area in use for an entirely separate activity, again unrelated to the uses of the rest of the holding. It is a clearly a separate planning unit.
9. It is not strictly necessary for the area the subject of a notice to itself be a planning unit, but in the case of Appeal B the consequence of mis-identifying the planning unit when framing the notice is that the actual use, quite likely a mixed use, may not be properly characterised, which has implications for the grounds of appeal and the arguments put forward in respect of them. Although I have powers of correction, this can only be exercised where there would be no injustice to the parties, and in this case I consider that there is a risk that the appellant’s case would be prejudiced by my bringing the notice into order.

¹ APP/Z3825/W/18/3198550

² *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207

The appropriate action in this circumstance is to quash the notice as invalid. This does not prevent the Council from taking further³ enforcement action.

Plans

10. In respect of Appeals B and C, it was agreed at the Inquiry that the enforcement notice plans should not extend into the tract of Ancient Woodland along the eastern side of the sites. It was also agreed that the Appeal A notice plan covered a wider area than the development enforced against. Agreed revised site plans have subsequently been submitted and I shall correct the notices by substituting these. No injustice arises.

Post-Inquiry

11. After the Inquiry closed Natural England issued a Position Statement concerning new development in the Sussex North Water Supply Zone, which includes the appeal sites. Briefly, it advised that future development would need to demonstrate water neutrality, and that decisions on planning applications that might have an impact on water supply in the Zone should await the completion of a water neutrality strategy. The Council and the appellant were given the opportunity to comment, but my decisions on these appeals will have no detrimental impact on water supply.

Appeal A

Ground (d)

12. Appeal A concerns land at the north-west corner of Pear Tree Farm. It is laid to hardstanding and is enclosed by bunds to the south and east, and by the property boundaries to the west and north. At present it is used as a depot or yard by a fencing company and a building company, for overnight parking and the storage of equipment and materials, uses unconnected with any other use of the holding.
13. The bund on its southern edge, which is included in the alleged breach of planning control, is recently constructed, but the appellant claims⁴ that the land has been laid to hardstanding since about the mid-1980's, its origin apparently being a large concrete portal-framed barn that was demolished elsewhere on the farm and then buried. It is claimed that since then the hardstanding has been topped up and maintained with road planings and soil to maintain the sub-base so as to ensure that it has always been firm enough to store plant and machinery on it as required. The appellant's son gave evidence that they have always used it for 'putting stuff there' and that planings are put down occasionally.
14. However, in a Planning Contravention Notice response dated 12 May 2020 the appellant stated that the hardstanding was substantially completed as an engineering operation in 2018, noting that "it actually is repair to overgrown hardstanding from 1980s." This version of events tallies with a series of aerial photography images captured between 2001 and 2018⁵ which shows the land as part of, and indistinguishable from, a large area of pasture land on the western side of the holding. None of the images show anything stationed on

³ s171B(4) of the 1990 Act¹⁰⁴

⁴ Statutory Declaration dated 8 July 2021

⁵ Hawks PoE Appendix A

the land, or indicate that it may have been used for purposes other than grazing.

15. A small hole dug in the hard-surfacing shows the presence now of broken up concrete just below the surface, and it may well be that planings were occasionally spread and greened over quickly, as claimed. It may also be the case that plant and machinery were occasionally placed there, but there is no evidence as to when this may have occurred or for how long, and there are no indications of a sustained use for that purpose in the aerial images.
16. An appeal on ground (d) is that it is too late to take enforcement action, and for that to succeed the onus is on the appellant to show, on the balance of probability, that the engineering operation the subject of the notice was substantially completed four years or more before the notice was issued. If, as is claimed now, a hardstanding was constructed in the 1980s by burying concrete waste, and then occasionally topped with planings since then, the evidence strongly indicates that between such occasions, if they occurred, it was subsumed back into the landscape, such that no enforcement action could be taken against it. Even then, you would expect some indication to be present in the aerial images, such as even slight vegetation differences, but there are none that I could discern. In my view the appellant's evidence falls well short of showing, on the balance of probability, that the hardstanding enforced against was substantially completed more than four years before the date of issue of the enforcement notice. As such the appeal on this ground cannot succeed.

Ground (a)

17. This ground is that planning permission should be granted for the formation of the hardstanding and the earth bund along its southern edge. The main issues are whether the development is an appropriate form of development in the location and the effect on the character and appearance of the area.
18. The development plan for the district includes the Horsham District Planning Framework (HDPF), adopted in November 2015. HDPF Policy 25 aims to protect the Natural Environment and the landscape character of the district against inappropriate development, while HDPF Policy 26 seeks to ensure that, outside of the built-up areas, the rural character and undeveloped nature of the countryside is protected against inappropriate development. This policy expects proposals to be essential to its countryside location, and, among other things, not lead, either individually or cumulatively, to a significant increase in the overall level of activity in the countryside.
19. I heard no evidence that the current users of the hardstanding require a countryside location to enable them to operate their businesses, and there can be little doubt that their use of the site increases the overall level of activity in the countryside. Nor is there any evidence that the hardstanding is needed for agricultural use, there appearing to be no such use of Pear Tree Farm at present, or indeed that the hardstanding facilitates in any way the sustainable development of rural areas.
20. In terms of character and appearance, while the site cannot be seen from public vantage points, its presence is a detracting feature in the pastoral rural landscape that is characteristic of the Henfield and Small Dole Farmlands Landscape Character Area in which it falls. There are numerous other

detracting features on the eastern and southern parts of the wider holding, including bunds and hardstanding, but their presence does not justify further harm to local character and the intrinsic value of the countryside.

21. Overall, the development comprising hardstanding and bund clearly conflicts with HDPF Policies 25 and 26, and there are no policies that pull in the opposite direction. It is therefore contrary to the development plan read as a whole, and there are not other considerations to outweigh that conflict. The appeal on ground (a) fails accordingly and planning permission is therefore refused on the deemed application.

Appeal C

Ground (d)

22. The appeal on ground (d) relates solely to the storage of caravans. In a statutory declaration, a Mr Bantock claims that he stored up to 3 caravans on the Appeal C site for in excess of 10 years before the date the notice was issued, though no particular start date is given. He claims that the caravan or caravans would typically be stored there from late autumn to early spring when not in use, but also when not travelling throughout the summer. Mr Bantock identified his caravan or caravans on aerial photographs apparently dating from 2018 and 2020, but explains the absence of them in earlier photographs by those photographs having been taken mainly in the summer months, notwithstanding that the 2018 and 2020 photographs appear to be around that period also. Charley Tingey also recalled caravans being stored.
23. Mr Bantock's evidence is vague and could not be tested in cross-examination, and it was clear that Mr Tingey's recollection was non-specific. Set against this is the aerial photography which shows the land as being clearly in use for livestock grazing of some kind up to 2013, which is hardly compatible with caravan storage, even seasonally, though Mr Bantock stated that he would store caravans there whenever he was not using them for travelling, which it appears could be any time of the year. Taking the evidence as a whole, the appellant's evidence falls well short of demonstrating, on the balance of probability, that the land was being used for seasonal caravan storage for a period of 10 years before the notice was issued. But in any case there has clearly been another material change of use within the period claimed, that of the establishment of a separate planning unit for the purposes stated in the notice. The effect of that is that for a component of that use to be lawful on the basis claimed, caravan storage in this case, it would have to have gained immunity from enforcement before the current mixed use commenced, and there is no cogent evidence to that effect.
24. The burden of proof falls on the appellant, and it has fallen well short, so the appeal on ground (d) must fail.

Ground (a)

25. Under this ground planning permission is sought for the use of the land for the stationing of caravans for the purposes of human habitation and storage of caravans. The hardstanding the subject of the notice has been removed and the notice complied with so far as that is concerned. Further hardstanding is not sought, though there is other hardstanding on the site, roughly in the area for which planning permission has been granted for 3 gypsy/traveller pitches. It

was not considered expedient to require its removal, but this does not in my view mean that the site should be considered to be previously developed land. When the notice was issued there were 4 mobile homes on the site, apparently being used as accommodation by workers employed on an infrastructure project in the area. At present there are numerous other touring caravans on the site, also apparently in use as worker accommodation.

26. Again, the main issues are whether the development is an appropriate form of development in the location and the effect on the character and appearance of the area.
27. HDPF Policy 3 is a strategic policy that seeks to direct most new development to the built-up areas, and while HDPF Policy 19 is supportive of residential caravan site proposals that meet a local housing need, new residential caravan site development is not among the types of new development considered by HDPF Policy 26 as being essential to a countryside location. On the face of it, the appeal development conflicts with Policies 3 and 26. In the absence of any evidence of a local need for this type of housing, Policy 19 provides little weight in support of the development.
28. The extant permission for a 3-pitch traveller site is a material consideration. This would see up to 6 caravans stationed on the site, 3 of which would be mobile homes, along with utility buildings. However, substantially different policy considerations arise when considering the suitability of locations for traveller sites, and Planning Policy for Traveller Sites (PPTS), acknowledges that rural locations may be suitable for such development in certain circumstances. Whatever support may be drawn from the extant permission is somewhat reduced in any case by the HDPF Policy 22 expectation that existing traveller sites be safeguarded. While the permission has yet to be commenced, the appellant was adamant that it would be implemented as an alternative to the appeal development, so I consider that the potential loss of traveller accommodation weighs against the appeal on this ground.
29. It has also been suggested that the development could be made the subject of a condition restricting occupancy to travellers as defined by PPTS, essentially treating the deemed planning application as one for a traveller site. However, the provision of traveller sites must be considered in planning policy context that is different in many ways to that of ordinary residential caravan sites, and to effectively change the deemed planning application to one for a new traveller site cannot fairly be done without opportunities for public consultation and without having heard any evidence on the current traveller site situation in the District or the application of the relevant policies. I consider that it is not open to me to treat the deemed planning application in that way.
30. Turning to the effect on character and appearance, the development occupies land that was previously open pasture adjoining undeveloped open land to the north and west, and Ancient Woodland to the east. The substantial change that has come about with the appeal development has had a negative effect on the still prevailing rural character of the area, and amounts to intrusion into the countryside. Notwithstanding the lack of public visibility, it detracts from the intrinsic character of the local countryside.
31. I acknowledge that the Inspector granting the extant traveller site permission considered that there would not be a material adverse effect on the character and appearance of the surrounding area, with the proviso that it be laid out

and landscaped as required. But that scheme was also different in many respects. While the appeal development would be for the same general type of development, a caravan site, there are substantial practical differences between this and the extant traveller site permission, not least that the stable buildings⁶ on the Appeal B site would be removed. The traveller site would also occupy much of the Appeal B site, thus in all likelihood also displacing the current activities there, which I would characterise currently as a works depot, and so potentially reducing overall activity on the wider site. While I could secure landscaping and layout by condition that might enable the site to better integrate into its surroundings, I consider that the harm to the character and appearance of the area over and above that of the permitted traveller site would nonetheless place the development in conflict with HDPF Policies 25 and 26.

32. Overall, I consider that the development is contrary to the HDPF.
33. The District Council is unable to demonstrate a 5-year supply of housing, having a shortfall of some 0.7 years supply at the time of the Inquiry. The tilted balance set out in National Planning Policy Framework (NPPF) paragraph 11(d) applies. However, this is conditioned in this case by NPPF paragraph 14 since the Henfield Neighbourhood Plan 2017-2031 (HNP), which contains policies and allocations to meet its identified housing requirement, was formally made on 23 June 2021 and now forms part of the development plan. HNP Policy 1 expects development proposal outside of the built-up boundary to accord with the provisions of the HDPF, hence the development conflicts with the HNP.
34. The benefits of the development are the provision of housing, in the form of caravans, there being no specific benefit attributed to storage, and this must be weighed against the adverse impact. Between 4 and 6 residential caravans have been proposed, but even at its most developed the site would only make a very small contribution to meeting the housing shortfall, in purely numerical terms, and I have heard no evidence on the need for residential caravan site accommodation. Set against this is the harm due to the inappropriate location of the development and the character of the area. I am satisfied in this case that the harm significantly and demonstrably outweighs the benefits.
35. I find that the development conflicts with the development plan read as a whole, and there are not material considerations to indicate that the development should be permitted despite not according with the development plan. The appeal on this ground is therefore dismissed and planning permission is refused.

Ground (g)

36. A compliance period of 12-18 months is sought for 2 reasons, to provide accommodation for workers engaged on the construction of the 3 dwellings recently granted planning permission on another part of the holding and to allow adequate time for the current occupants of the caravans to make alternative accommodation arrangements. These reasons do not appear to me to be particularly compatible, but in any case, while there is no evidence whatsoever that caravan accommodation would be required for workers

⁶ The stable building on the eastern side of the Appeal B site was recently destroyed by fire, but subsequently replaced by a large steel building which I understand is currently unauthorised.

engaged in the construction of the dwellings, I do not consider that making provision for the possible re-use of the site for another purpose to be a reasonable premise on which to base an argument for extending the compliance period.

37. Given what I understand to be the relatively temporary employment-based nature of the current occupancy I consider the 6 month period allowed for compliance provides reasonable time for those now living on the site to look for alternative accommodation. The appeal on this ground fails accordingly.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Whale

He called

Charles Tingey	Appellant's son
Phil Rowe	Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Emmaline Lambert Of Counsel

She called

Reginald Hawks Horsham District Council

DOCUMENTS SUBMITTED AT THE INQUIRY

- | | |
|---|---|
| 1 | Statement of Common Ground |
| 2 | Planning Contravention Notice 2017 (Hawks POE Appendix K) |
| 3 | Appellant's opening submissions |
| 4 | Council's opening submissions |
| 5 | Copy of withdrawn notice issued 29 March 2018 |
| 6 | Officer's report for application ref. DC/21/1379 |
| 7 | Site Plan for application ref. DC/21/1379 |
| 8 | Council's closing submissions |
| 9 | Appellant's closing submissions |

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- 1 Amended Enforcement Notice plans.

ANNEX A

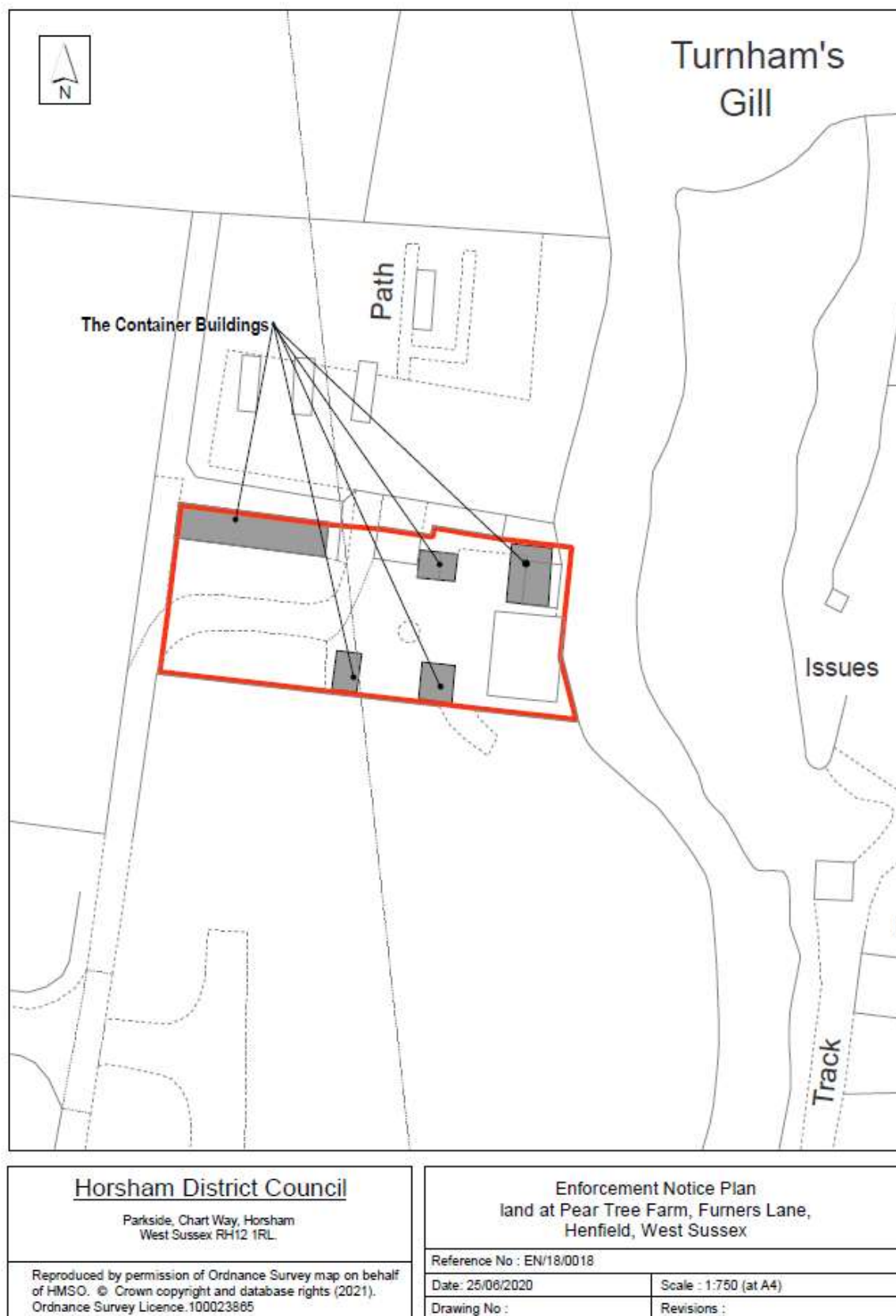
Appeal A: APP/Z3825/C/20/3262469 Amended Enforcement Notice Plan



Horsham District Council Parkside, Chart Way, Horsham West Sussex RH12 1RL	Enforcement Notice Plan land at Pear Tree Farm, Furners Lane, Henfield, West Sussex	
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	Date: 24/06/2020	Scale : 1: 1,000 (at A4)
	Drawing No :	Revisions : 14/09/2021

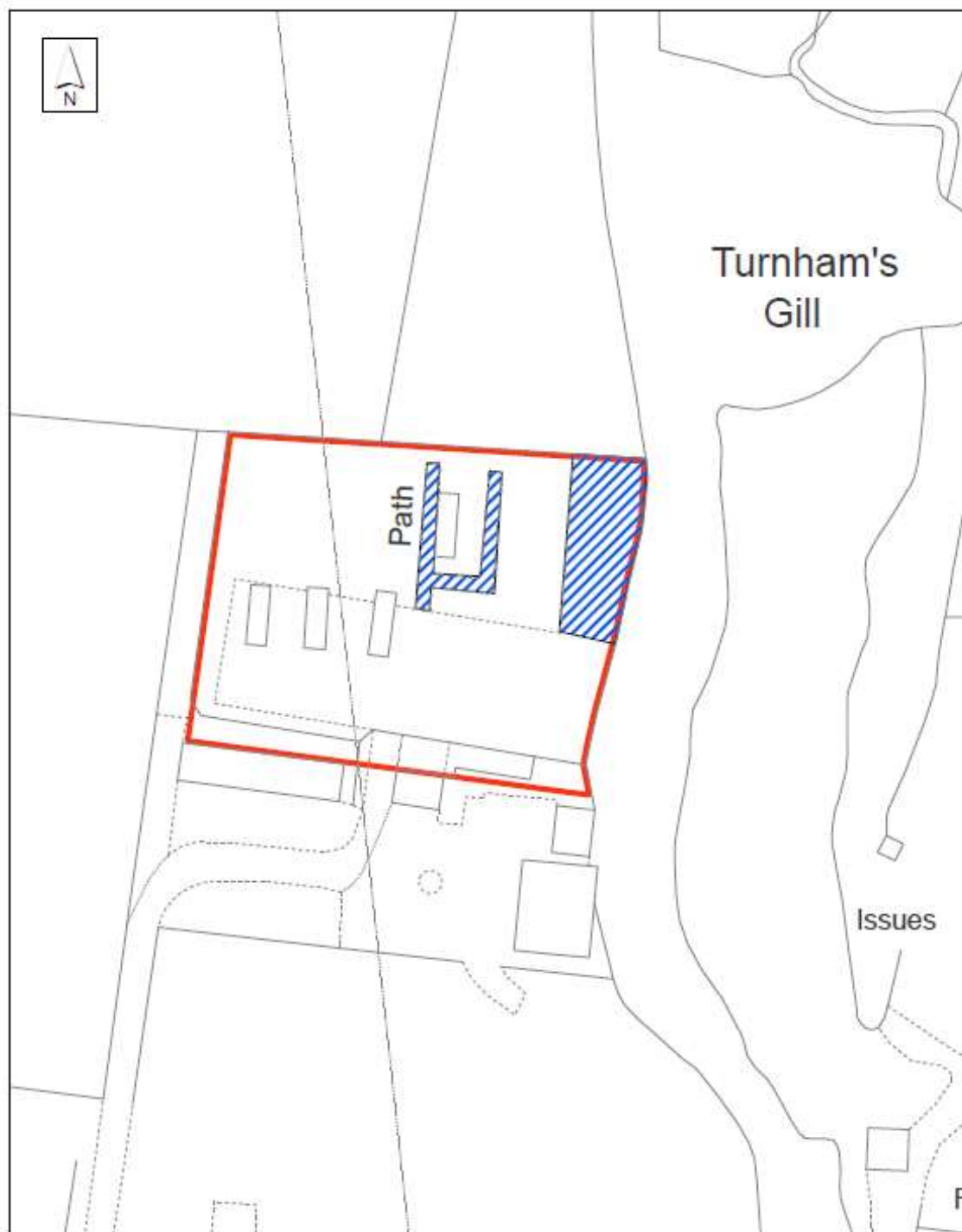
ANNEX B

Appeal B: APP/Z3825/C/20/3262470 Amended Enforcement Notice Plan



ANNEX C

Appeal C: APP/Z3825/C/20/3262473 Amended Enforcement Notice Plan



Horsham District Council Parkside, Chart Way, Horsham West Sussex RH12 1RL	Enforcement Notice Plan land at Pear Tree Farm, Furners Lane, Henfield, West Sussex	
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