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## Appeal Decisions

Hearing Held on 27 October 2022

Site visit made on 27 October 2022

**by Paul Freer BA (Hons) LLM PhD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 06 February 2023**

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**Appeal A Ref: APP/B3438/C/19/3243774**

**Appeal B Ref: APP/B3438/C/20/3244249**

### **Land at Balls Paddock, Ashbourne Road, Bottomhouse, Leek ST13 7QJ**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr William Arthur Ward (Appeal A) and Miss Sarah Adams (Appeal B) against an enforcement notice issued by Staffordshire Moorlands District Council.
- The enforcement notice, numbered SME/2018/00014, was issued on 26 November 2019.
- The breach of planning control as alleged in the notice is, without planning permission the use of agricultural land as a 'caravan site' to provide a permanent family residence and, in association with that use, to store and use household effects, tools, items and materials; park and store vehicles, trailers and machinery; and keep animals as pets, for pet trade, and as livestock.
- The requirements of the notice are:
  - A) Discontinue the use of "the land" as a caravan site and the associated uses, by ceasing to use it to:
    - i. Station or use caravans for the purpose of human habitation;
    - ii. Store and use household effects, tools, items and materials;
    - iii. Station or use 'lorry backs' and other containers for household storage;
    - iv. Park or store vehicles, trailers and machinery; and
    - v. Keep animals as pets or for pet trade.

AND

- B) Restore "the Land" to its condition before the breach took place by taking the following steps:
  - i) Remove all caravans from "the Land";
  - ii) Remove all household effects, tools, items and materials from "the Land"
  - iii) Remove all 'lorry backs' and containers and all of their contents from "the Land"
  - iv) Empty all of the contents from the shed and remove them from "the Land";
  - v) Remove all vehicles, trailers and machines from "the Land"
  - vi) Remove all animals from the "Land"
  - vii) Dismantle and remove from "the Land" all of the animal shelters and enclosures, and all of the material used to construct them, that are attached to and adjoin the east side of the shed;
  - viii) Take up and remove all hard surfaces, paths and paving slabs from "the Land" and return "the Land" to a grassed surface.

- The period for compliance with the requirements is 9 months.
  - Appeal A is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the 1990 Act. Appeal B is proceeding on the grounds set out in section 174(2)(d) of the 1990 Act.
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**Summary Decisions: Appeal A is dismissed. Appeal B succeeds. The enforcement notice is upheld with a correction and variations as set out in the Formal Decision below.**

### **Procedural matters**

1. Appeal A was initially made on the grounds set out in section 174(2) (a), (f) and (g) of the 1990 Act. However, at the Hearing, the appellant withdrew the appeal on ground (f): namely that the requirements of the notice exceed what is necessary. I have therefore not considered that ground of appeal further in relation to Appeal A as it was originally made.
2. However, in view of my conclusions regarding the breach of planning control alleged in the notice, it occurs to me that a potential appeal under ground (f) arises in relation to the requirements in the notice to remove items and structures from the land that could potentially relate to the agricultural use of the land. I will consider those matters as if made under an appeal on ground (f).
3. Appeal B was made solely on ground (d) as set out in section 174(2) of the 1990 Act: namely that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that *may be constituted by those matters* (emphasis added). The appeal related solely to a track that runs parallel with the northern boundary of the site.
4. The construction of this track forms no part of the breach of planning control alleged in the notice and, as such, forms no part of the 'matters' for the purposes of ground (d). The ground of appeal therefore does not fall to be considered but the point raised by the appellant does constitute an appeal on ground under ground (f). I will therefore consider the appellant's appeal under as if it were made under ground (f).
5. The Council has adopted a new local plan since the enforcement notice subject was issued. The new local plan is the Staffordshire Moorlands Local Plan (Local Plan) which was adopted in September 2020. The Local Plan supersedes the Staffordshire Moorlands Core Strategy, policies from which were cited in the reasons for issuing the enforcement notice. I have considered the appeal on ground (a) of Appeal A only against the policies in the Local Plan.

### **The enforcement notice**

6. The breach of planning control alleged in the notice is, in summary, without planning permission the use of agricultural land as a 'caravan site' to provide a permanent family residence. Several points flow from the breach of planning control as alleged.
7. Firstly, the meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as including the making of any *material* change in the use of any building or other land (my emphasis). It follows that the

allegation in the notice of a change of use, without alleging that it constituted the making of a material change of use, would not constitute development for purposes of Section 55(1) of the 1990 Act. I shall therefore correct the notice to allege a material change in the use of the land.

8. Secondly, the breach of planning control alleges the use of agricultural land as a 'caravan site'. It would in my view be more accurate for the notice to allege the stationing of caravans. I recognise that it is explained in paragraph 3 of the notice that the term 'caravan site' means land on which a caravan is stationed for the purpose of human habitation. Nevertheless, the allegation itself should properly state the stationing of caravans. I shall correct the notice accordingly.
9. Finally, in framing the breach of planning control alleged in the notice, the Council considers that any agricultural activities taking place on the land are incidental or ancillary to the residential use of the caravans. I do not agree. The land subject to the notice is a single unit of occupation. There is no dispute that the lawful use of the land before the breach of planning control took place was for agriculture. There is no physical or functional separation between the land previously used for agriculture and the land on which the mobile home is situated.
10. The agricultural activities taking place on the site may be relatively small scale at this time but are taking place on land on which the lawful use is for agriculture. The stationing of the mobile home introduced a new primary use on the single planning unit, that of the stationing of caravans for residential use. It is therefore my view that, as a matter of fact and degree, the introduction of the mobile home resulted the creation of a mixed use of the single planning unit, comprising a mixed use of agriculture and the stationing of caravans for residential use. I shall therefore correct the notice to allege a material change in the use of the land resulting in the creation of a mixed use.
11. I am satisfied that I can correct the notice in all the above respects without causing injustice.

### **Gypsy and traveller status of the appellant**

12. The appellant maintains that he is from a large gypsy family, is part of the travelling community and follows a nomadic habit of life. The appellant explains that he typically travels for work twice a year, for some two to three weeks each time, including travelling to various places in Kent to help out on farms. He also attends fairs at places such as Appleby and Kenilworth for the purpose of making contacts within the travelling community.
13. The Council disputes this, particularly whether the appellant does follow a nomadic habit of life. The Council expects that, in the four or so years that the appellant has been on the site, he should be able to produce detailed evidence of his nomadic habit of life but has not done so. The Council points out that the appellant made no mention of his gypsy background or a nomadic habit of life in responding to the Planning Contravention Notice (PCN) issued in April 2018, and that the claim of gypsy and traveller status first arose in the appellant's appeal against the enforcement notice.
14. The Council also points out that the appellant made no mention of his gypsy background or a nomadic habit of life in submitting his planning application in

September 2018 to live on the land, with an additional proposal to build a larger barn and to introduce a static style caravan onto the land. The Council considers that the appellant's occupation of the site to be opportunistic and a matter of convenience, and that the use of the caravans is not an indication of cultural heritage or a nomadic way of life.

15. The Council's position is supported by the evidence of the interested persons who attended the Hearing. The occupiers of Pelham Farm consider that the occupation of the site by the appellant gives every appearance of living on the site on a permanent basis. They have observed that the level of comings and goings is minimal, and that the caravans on the site never move. I noted that the appeal site is clearly visible from their property, and that the vehicular access to Pelham Farm goes past the entrance to the appeal site. The occupiers of Pelham Farm are therefore well placed to have obtained an accurate picture of activity on the site and any changes to the occupation of the land.
16. Similarly, the owner of the land that immediately adjoins the land to the west attends her property on a regular, if not daily, basis and therefore is also well placed to observe any changes that may occur. Her evidence is also that the caravans on the site have not moved throughout the whole of the four or so years that the appellant has occupied the site.
17. The appellant seeks to explain this by indicating that he stays with family or friends when travelling to Kent to help out on farms, and that it is therefore not necessary for him to take his own caravan. I found that explanation to be less than compelling, not least because the appellant was not able to produce any documentary evidence in support of that claim but also in view of the contrary evidence of others familiar with daily movements and activities on the site.
18. I am mindful of the appellant's response to the PCN and the absence of any reference to a nomadic habit of life in his planning application submitted in September 2018. In particular, the appellant's response to the PCN specifically describes the caravan as being used as a place to stay whilst care and maintenance of the land is carried out. There is no reference to the caravan being used as stable base from which to travel for work, either using a caravan or not. Moreover, in the PCN response the appellant describes his own employment status as "unemployed" with no reference to travelling for work. The employment status of the appellant's partner is described as a web-based sole trader, an occupation that could be undertaken solely from the appeal site.
19. The appellant explains that he did not declare his gypsy and traveller heritage in the first instance because he was aware of discrimination against the travelling community. In relation to his planning application, the appellant had hoped that is cultural bias to live in a caravan would be satisfied by his (in his view) key worker role.
20. I can understand the appellant's position in this respect. However, the PCN makes it very clear that it is an offence to knowingly provided false or misleading information. By signing the PCN the appellant confirmed that the information was provided is accurate, and the answers in the PCN read as an honest and contemporaneous response to the questions asked. The Council was entitled to rely on the information provided in the PCN in issuing the enforcement notice and, in my view, that information can still be relied upon at this time.

21. The response to the PCN must be read in conjunction with the planning application submitted by the current appellant (albeit under a different name) in September 2018. The development proposed in that application related to an agricultural use of the land and proposed the erection of a permanent structure (a barn) to facilitate that use. The mobile home proposed is specifically described on the application form as being in connection with the agricultural use of the land: there is no indication that the caravan(s) would also be used for travelling.
22. By not mentioning that the proposed agricultural use was intended to supplement a nomadic habit of life (if that was indeed the case) the planning application itself would have been misleading. The planning application was submitted on behalf of the current appellant by the same professional planning agent who represented the appellant at the Hearing. It is therefore reasonable to conclude that the description of the development proposed on the application form was based on his client's instructions, and both accurate and deliberate. This is consistent with the appellant's belief that he would be a key worker in the agricultural business and his need for a permanent dwelling on the site. It is also consistent with the appellant's response to the PCN.
23. I recognise that an agricultural use of the land could be undertaken in addition to, or to supplement, a nomadic habit of life. The appellant holds a qualification in horticulture and in April 2018 the site was allocated both a County Parish Holding number and Single Business Identifier by the Rural Payments Agency. Furthermore, the planning application submitted in September 2018 was clearly intended to facilitate a productive agricultural use of the land. The Business Plan submitted by the appellant at the Hearing clearly envisages a significant scaling up of the agricultural use of the land.
24. When looked at in the round, from all the evidence that I have read and heard I cannot escape the conclusion that the appellant had, and still has, intentions of living and working on the appeal site permanently as a key worker and his primary means of income. It appears to me that the latter is/would be supplemented by the income generated by his partner's home-based business but I am not persuaded that the appellant has any intention to undertake a nomadic habit of life to supplement income from the agricultural business.
25. I do not discount the possibility that the appellant may have led a nomadic habit of life in the past and I do not question that he retains his gypsy heritage. However, the evidence before me indicates that the appellant has now ceased a nomadic habit of life in favour of pursuing an agricultural use of the appeal site.

### **Appeal A: the appeal on ground (a) and the deemed planning application**

26. The ground of appeal 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. The Council has stated two substantive reasons for issuing the enforcement notice, from which the main issues raised are:
  - whether a mixed use of agriculture and the stationing of caravans for residential use is justified in this location, either on a temporary or permanent basis

- the effect of the development on the character and appearance of the area.

*Whether a mixed use of agriculture and the stationing of caravans for residential use is justified in this location*

27. Paragraph 80 of the Framework indicates that planning decisions should avoid the development of isolated homes in the countryside, unless one or more circumstances set out in that paragraph apply. The Courts have held that the word 'isolated' in that paragraph simply connotes a dwelling that is physically separate or remote from a settlement.
28. The appeal site is in open countryside, and is both separate to and remote from the nearest settlement. The closest dwelling is Pelham Farm, which is physically separated from the wider appeal site by a track and is some 200 metres from the mobile home on the appeal site. I therefore conclude that, as a matter of fact and degree, the mobile home on the appeal site is an isolated home in the countryside for the purposes of paragraph 80 of the Framework.
29. One of the circumstances indicated in paragraph 80 of the Framework where an isolated home might be acceptable is where there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside. The appellant considers that he falls into that category.
30. In that context, the appellant has submitted a Business Plan in which he sets out his aspirations for the agricultural use of the land, described as a smallholding and farming enterprises. The proposal is to keep some 50 free range pedigree pigs, plus chickens, turkeys and bees (for honey), and to grow flowers and vegetables. There would be a barn to store equipment and some products would be sold through a farm shop.
31. The Business Plan sets out some predicted costs and profits over an unspecified period, the costs indicated as being set to allow a margin for error. The Business Plan does not, however, set out predicted costs and profits on a year-by-year basis going forward. The Business Plan is vague in relation to some items of expenditure, and in most cases expenditure is unquantified: for example, there is no explanation as to the basis of an estimated expenditure on fuel of £2,500 or the expenditure of £5,000 on the installation of a water/sewage treatment system. There are also some arithmetical errors in the figures stated.
32. For these reasons, the Business Plan does not provide a reliable indication of the potential viability or otherwise of the appellant's business. In the absence of any reliable indication of the viability of the appellant's business, I do not consider that the need for a rural worker in the context of paragraph 80 of the Framework has been demonstrated. Furthermore, given the relatively small size of the land holding and the quantity of livestock indicated in the Business Plan, I am not persuaded that there would be any need for a rural worker to live permanently on the site.
33. I therefore conclude that the mobile home on the appeal site cannot be considered to qualify as a situation when an isolated home is acceptable for the purpose of paragraph 80 of the Framework. In reaching that conclusion, I have considered the possibility of granting a temporary planning permission in

order that the viability of the appellant's business can be tested and verified. However, the Business Plan submitted by the appellant does not provide a sound basis upon which a temporary planning permission can be justified.

34. For the reasons set out above, I conclude that a mixed use of agriculture and the stationing of caravans for residential use is not justified in this location. The breach of planning control is therefore contrary to Policies SS10, H1 and H4 of the Local Plan which state, amongst other things, that development will only be provided which has an essential need to be located in the countryside.
35. The breach of planning control also fails to accord with paragraph 80 of the Framework.

#### *Character and appearance*

36. The appeal site lies within the Gritstone Highland Fringe landscape area type, as defined in the Landscape and Settlement Character Assessment of Staffordshire Moorlands. This landscape type is characterised by large scale, steeply sloping, smooth rolling upland landscape with plateaus and steep slopes and valleys. Skyline ridges offer long distance panoramic views of large rectangular fields, enclosed in the main with gritstone walls.
37. The area surrounding the appeal site displays many of the characteristics of the Gritstone Highland Fringe landscape area type. The appeal site sits in a valley amidst a gently rolling landscape. There is a distinctive slope to the south of the site that provides a panoramic view of the surrounding landscape. The appeal site is surrounded by a patchwork of large fields that are typically enclosed by gritstone walls
38. The breach of planning control, as I propose to correct it, alleges not only the stationing of caravans to provide a permanent family residence but also the storage of household effects, tools, items and materials; and to park and store vehicles, trailers and machinery. I am mindful that the building on the site was already present when the appellant first took occupation and that he has undertaken further alterations to the appeal site since the enforcement notice was issued. I have therefore based my assessment on a combination of my observations at the site visit and the photographs taken by the Council at around the time that the enforcement notice was issued, taking account also of what structures and enclosures may be present in connection with the lawful use of the land for agriculture.
39. The static mobile home and the touring caravans are incongruous features in the landscape. The harm in that respect is exacerbated by the other matters stated in the notice and structures erected in association with the use alleged in the notice, in particular the animal pens and the lean-to structure attached to the pre-existing building erected by the appellant. The latter is constructed of poor-quality materials and, although open-sided, its presence adds to the overall harmful visual impact of the pre-existing building. The storage of various items, machinery and vehicles gives the area surrounding the mobile home an untidy and unkempt appearance, and this adds considerably to the harmful visual impact of the site overall.
40. That harmful impact is apparent from public footpath No 80 that runs diagonally across the appeal site, and from public bridleway No 85 that runs along the eastern boundary of the site. Longer distance views from an

elevated position are obtained from the public footpath on Ipstone Edge, and from the vicinity of the nature reserve at Swineholes Wood. In this context, the breach of planning control is harmful to the long-distance panoramic views that are a characteristic of the Gritstone Highland Fringe landscape area type. As a consequence of the extent to which the appeal site is visible from public vantage points, the breach of planning control is a prominent feature in the landscape.

41. The harm identified above could not be overcome by landscaping or screening. The landscape in which the appeal site is located is relatively open. In my view, the provision of landscaping and/or screening sufficient to visually screen the breach of planning control from public view would result in a form of enclosure that would itself be incongruous in this open landscape.
42. I conclude that the breach of planning control unacceptably harms the character and appearance of the area. I therefore conclude that the breach of planning control is contrary to Policy DC3 of the Local Plan which, amongst other things, seeks to resist development which would lead to prominent intrusion into the countryside.

### ***Other considerations***

43. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the breach of planning control fails to accord with the development plan in the above respects. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

### ***Supply of gypsy and traveller sites***

44. Although the appellant in this case has ceased a nomadic habit of life he nonetheless retains his gypsy heritage and an aversion to bricks & mortar accommodation. It is therefore necessary to consider his housing needs on that basis.
45. Policy H4 of the Local Plan specifically relates to Gypsy and Traveller Sites and Sites for Travelling Showpeople. The supporting text that policy explains that the need for sites for gypsies and travellers within Staffordshire Moorlands has been identified through a joint-Authority Gypsy and Traveller Accommodation Needs Assessment (GTAA) published in 2015. The GTAA identified a requirement for 6 residential and zero transit pitches for the District over the period 2014 – 2019, with an additional 2 residential pitches up to 2034.
46. The GTAA was prepared on the basis of the definition of gypsies and travellers set out in Annex 1 of the PPTS in which those who have ceased to travel permanently were excluded. In the light of the judgment in *Smith*, it is therefore possible that the need for sites is underestimated in the GTAA and as such cannot be relied upon. The appellant considers that there is no reason to assume that the need for sites identified in the GTAA has been met but, equally, provides no cogent evidence to show that it has not. The only evidence provided by the appellant is the last six counts of traveller caravans in

Staffordshire Moorlands, which range between four in July 2018 and none January 2022. However, by itself, that information does not assist in showing progress towards meeting the need identified in the GTAA, irrespective of whether those who have ceased travelling are included or not.

47. On the evidence before me, I am unable to reach any firm conclusions either way on the need for gypsy and traveller sites in the area. In the absence of that evidence, I attach neutral weight to this matter.

*Personal circumstances of the appellant and his family*

48. The appellant lives on the appeal site with his partner and their two children. The appellant currently receives medical care for a physical injury at a facility in Leek, and both the appellant and his partner are receiving assistance with mental health issues. Their eldest child recently began attending a local school. The younger child remains under the supervision of a health visitor.
49. The provision of a residential unit from which the appellant and his family can access health care is a material consideration that clearly weighs in favour of the grant of planning permission. The provision of a stable base from which the eldest child can access education is clearly in the best interest of that child. The best interest of both the appellant's children is a primary consideration, and inherently carries as much weight as any other consideration.

*Human Rights and the Public Sector Equality Duty*

50. The interference with rights held under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA), is a key consideration. In this case, there is interference with rights under Article 8 (right for respect for private and family life, home and correspondence). That is a qualified right, and interference with it may be justified where it is in accordance with the law and it is necessary in a democratic society.
51. In this case, the interference with the appellant's Article 8 rights arises from an enforcement notice issued under section 171 of the 1990 Act. The interference with the appellant's Article 8 rights is therefore lawful. The appropriate location for housing and the protection of the countryside are both legitimate planning policy aims, and are set out in an adopted development plan and in national planning policy. Pursuance of those policy aims is therefore in the public interest. In this case, the stationing of caravans on the appeal site for residential occupation would be contrary to those policy aims, and would be contrary to the development plan for the area and national planning policy.
52. Against this harm, the stationing of caravans on the appeal site for residential occupation would make some, albeit modest, contribution to meeting the supply of gypsy and traveller sites. Upholding the notice would result in the appellant and his family losing their home, and would make accessing medical facilities more difficult. In all likelihood, upholding the notice would oblige the appellant to return to a roadside existence, with all the implications that would bring. I also have the best interests of the children residing on the site at the forefront of my mind.
53. Balancing all these factors, I consider that the interference with the Article 8 rights held by the appellant and his family would be significant, but would be both necessary and proportionate in the event that the notice is upheld. In

reaching that conclusion, I am satisfied the policy objective could not be achieved by means that interfere less with the appellant's rights.

54. Although I have found that the appellant has ceased travelling, he and his family nevertheless share the protected characteristic of race for the purposes of the Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010. Given that I have found that the appellant has already ceased travelling, upholding the notice and refusing to grant permanent permission would not impact negatively on a nomadic habit of life. It would reduce the opportunities available to him and his family in terms of his aspirations for an agricultural use of the appeal site, but would not impact on his ability to return to a nomadic habit of life. It would deny or reduce the opportunities available the appellant and his family to foster good relations with the settled community, including those of their eldest child at her school, but I have no evidence to suggest that the appellant has actively sought to pursue relations with the settled community to date.
55. I am also mindful that, whilst the appellant has ceased travelling, he nevertheless retains his gypsy heritage and has a cultural bias for living in caravans. As part of my responsibilities under PSED, I must therefore consider whether the mobile home on the site should be retained in order that the appellant may continue to live in a caravan solely as his home rather than as part of a mixed use.
56. I have already found that the mobile home on the appeal site is an isolated home in the countryside for the purposes of paragraph 80 of the Framework. The nearest facilities to the appeal site are in the village of Ipstones, some 5km from the appeal site. The village of Ipstones is designated in the Local Plan as one of the Rural Area Larger Villages, which generally have a good local social infrastructure, some employment opportunities and good accessibility to the towns and larger centres. From the appeal site, the most direct pedestrian route to Ipstones is via an unmade public footpath that is unlit, involves negotiating stiles and a relatively steep gradient in both directions. It follows that pedestrian access to Ipstones from the appeal site is not a viable option for most day-to-day requirements, and the facilities at Ipstones are only realistically accessible by car.
57. The nearest town is Leek, which is some 8km from the appeal site. The wider range of facilities available in Leek, including medical facilities, are also only realistically accessible from the appeal site by car.
58. Vehicular access to the appeal site is achieved via a long, narrow track leading from the A523. The access road also serves Pelham Farm and is a public bridleway. The A523 is a major road that links Leek with Ashbourne, and also links to other roads leading to Ipstones, amongst other places. The local highway network is therefore suitable for a residential use and, whilst the access to that highway network is less than ideal, it is acceptable for a single mobile home.
59. In terms of character and appearance, the mobile home is relatively large and is already conspicuous in the open landscape that surrounds the appeal site. The removal of the elements that comprise the mixed use would make the mobile home itself even more conspicuous. There are some examples of mobile homes in the vicinity of the appeal site, but they are not so commonplace as to form an established part of the landscape character. The mobile home is

therefore an incongruous feature in the landscape, and is harmful to the character and appearance of the surrounding area.

60. I therefore consider that the retention of the mobile home on the site in order that the appellant may continue to live in a caravan is not justified.

*Conditions*

61. I have considered whether suitably worded conditions could make the development acceptable in planning terms. However, the imposition of conditions could not alter my conclusion that the appeal site would not provide a suitable site for the mixed use of agriculture and the stationing of caravans. For the reasons set out above, neither would the imposition of conditions overcome the harm to the character and appearance of the area. I am therefore not satisfied that the imposition of conditions could make the development acceptable in planning terms.

***Conclusion on the appeal on ground (a)***

62. For the reasons set out above, the breach of planning control alleged in the notice is contrary to the development plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan.
63. Accordingly, I conclude that planning permission ought not to be granted for the matters stated in the notice.

***Appeal A: the appeal on ground (f)***

64. The breach of planning control as alleged in the notice is, as I intend to correct it, the material change of use of the land from agriculture to a mixed use comprising agriculture and the stationing of caravans for residential use. There is no dispute that the lawful use of the land before the breach of planning control took place is for agriculture.
65. Paragraph 5B of the notice requires, amongst other things, the removal of all animals from the land, together with the dismantling and removal of all animal shelters and enclosures. It is obvious that the lawful use of the land for agriculture could involve the keeping of animals on the land and the erection of shelters/enclosures to house those animals.
66. It is settled case law (*Mansi v Elstree RDC* [1964] 16 P&CR 153387) that the requirements of the enforcement notice must not purport to stop a developer from doing something they are entitled to do without planning permission by relying on existing lawful use rights. The latter includes rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) and the right to carry out anything exempted from the definition of development under section 55(2) of the 1990 Act.
67. The appeal site has an area of some 1.3 hectares. In relation to agricultural land comprised in an agricultural unit of not less than 0.4 hectares but less than 5 hectares in area, Class B, Part 6, Schedule 2, Article 3 of the GPDO provides that certain types of development are permitted where the development *is reasonably necessary for the purposes of agriculture within the unit* (emphasis added). The types of development permitted by Class B include

the extension or alteration of an agricultural building, the installation of additional or replacement plant or machinery and the provision of a hard surface. In addition, Class A, Part 2, Schedule 2, Article 3 of the GPDO permits the erection of a gate, fence, wall or other means of enclosure, subject to conditions.

68. An 'agricultural unit' is defined for the purposes of Part 6 of the GPDO as agricultural land which is occupied as a unit for the purposes of agriculture. The appeal site comprises an enclosed parcel land, the lawful use of which is for agriculture. I am therefore satisfied that appeal the appeal as a whole comprises an agricultural unit for the purposes of Part 6.
69. There is no doubt in my mind that (with the exception of domestic pets) the notice cannot prevent the keeping of animals on the land: the keeping of animals is an intrinsic part of agriculture, and a purpose to which the land could be put as part of its lawful use for agriculture. I will vary the notice by deleting that requirement.
70. There is also no doubt in my mind that the keeping of animals in enclosures can be regarded as being reasonably necessary for the purposes of agriculture within the unit. The low-level enclosures currently on the appeal site fall into that category. These would therefore normally be permitted development for the purposes of Part 6 of the GPDO.
71. The Courts have held that a planning unit in a mixed use of agriculture and other primary uses does not benefit from Part 6 rights. The appellant's use of the land comprises a mixed use comprising agriculture and the stationing of caravans for residential use, such that the structures erected by the appellant do not benefit from a deemed planning permission under Part 6 of the GPDO.
72. Nevertheless, it is in my view excessive to require the removal of these animal shelters and enclosures, given that they are reasonably necessary for the purposes of agriculture within the agricultural unit, the lawful use of that land. I shall therefore vary the notice to exclude the animal shelters and enclosures from the list of those items to be removed.
73. The same cannot be said, however, for the other items and developments that the notice requires to be removed. These include all the 'lorry backs' and containers, and all of their contents. It also includes all vehicles, trailers and machines, together with the taking up and removal all hard surfaces, paths and paving slabs. There is no evidence before me to show that any of these items are reasonably necessary for the purposes of agriculture within the agricultural unit. The removal of those items is therefore necessary to achieve compliance with the notice, and is not excessive.
74. Accordingly, the appeal on ground (f) succeeds to that extent.

#### **Appeal A: the appeal on ground (g)**

75. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is nine months.
76. The appellant's case in this ground of appeal is predicated on his claim that he has a nomadic habit of life and would resume a nomadic lifestyle in the event that the enforcement notice is upheld. The appellant points to an undersupply

of gypsy and traveller sites, both nationally and locally. The appellant therefore considers that a prolonged period of compliance is justified, and seeks a compliance period of three years.

77. A compliance period of three years is tantamount to a temporary planning permission, but without the benefit of any planning conditions to control the use of the site during that period. I have already found that a temporary planning permission is not justified on the basis of a trial period for the appellant's agricultural business. I see no other justification for a temporary planning permission for a period of three years or longer.
78. I have found that the evidence before me does not support the appellant's claim that he undertakes a nomadic habit of life at this time. However, I fully accept that the appellant has a gypsy and traveller heritage, and that he may wish to resume a nomadic habit of life when he vacates the appeal site. I therefore accept that the appellant will require a suitable period of time to find an alternative site to serve as a base from which he could travel for work, and from which the appellant and his family could access the medical facilities that they require. I am also mindful that the appellant's eldest daughter has only recently started attending school, and that it is in her best interest that an alternative site is found from which she can continue her education at that or another school.
79. However, I need to balance the appellant's requirements with the interests of others. At the Hearing, I heard evidence from the occupier of Pelham Farm who had bought her home specifically because of its isolated location. She described the effect that the breach of planning control has had on her well-being, and explained that she is receiving medical treatment for those effects. I recognise that this individual has been experiencing this adverse effect on her well-being since the appellant took occupation of the site in or around 2018, and that extending the period of compliance would exacerbate the effect on her well-being.
80. I also have to take into account the wider public interest in terms of the expeditious remedying of the harm caused to the character and appearance of the area.
81. In weighing that balance, I consider that a period of compliance of twelve months would be a proportionate response to the breach of planning control that has taken place. The Council indicated that it would have no objection to a period of compliance of that duration.
82. Accordingly, the appeal on ground (g) succeeds to that extent.

### **Appeal B: the appeal on ground (f)**

83. It is settled case law that a notice aimed at a material change of use of land can require the removal of operational development that facilitates that use, even where that operational development does not form part of the breach of planning control alleged. In this case, paragraph 5 (viii) of the notice adopts that approach and requires the removal of all hard surfaces, paths and paving slabs from the land and the return of the land to a grassed surface. The track that runs parallel to the northern boundary of the site is a hard surface and would be caught by that requirement as drafted. The Council explains that this is inadvertent and that it was not intended to seek the removal of this track. I

will therefore vary the notice by amending the requirement at paragraph 5 (viii) to make it clear that it does not relate to this track.

84. Accordingly, the appeal succeeds to that extent.

### **Conclusion**

85. For the reasons given above, I conclude that the appeals should succeed in part only. I shall uphold the enforcement notice with a correction and variations, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Formal Decision**

86. It is directed that the enforcement notice is corrected by:

- In paragraph 3 of the notice, after the words "without planning permission" delete the words "the use of agricultural land as a 'caravan site' to provide a permanent family residence" and substitute there the words "the material change of use of the land from agriculture to a mixed use comprising agriculture and the stationing of caravans for residential use".

87. It is directed that the enforcement notice is varied by:

- Delete paragraph 5(vi) in its entirety
- Delete paragraph 5(vii) in its entirety
- In paragraph 5 (viii) of the notice, before the words "take up and remove" insert the words "With the exception of the track that runs parallel with the northern boundary of the site"
- In paragraph 6 of the notice, delete "9 months" and substitute there "12 months"

88. Subject to the correction and variations, 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.

*Paul Freer*  
INSPECTOR

## **APPEARANCES**

### **For the appellants**

#### **Appeal A**

Mr William Arthur Ward

Appellant

Mr Joseph Jones

Planning consultant, BFSGC

#### **Appeal B**

Miss Sarah Adams

Appellant

Mr Darren Hill

### **For the Local Planning Authority**

Mr Benjamin Hurst BSc (Hons) MRTPI

Senior Planning Enforcement  
Officer

### **Interested Persons**

Mr Mark Deaville

Local Resident

Mrs Catherine Deaville

Local resident

Mr Benedict Deaville

Local resident

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Copy of a written representation from Ipstones Parish Council, dated 11 June 2020.
2. Draft Statement of Common Ground, unsigned, submitted by the appellant.
3. Details of the Red Door Caritas Diocese of Salford.
4. Series of letters from the NHS detailing aspects of the medical history of the appellant and Miss Donna Rowley.
5. Table showing count of traveller caravans in Staffordshire Moorlands.
6. Map showing the juxtaposition between the appeal site and Pelham Farm.
7. Appellant's Business Plan.
8. List of conditions favoured by the Council in the event that the appeal was allowed.