
Appeal Decisions

Hearing Held on 17 & 18 January 2023

Site visit made on 18 January 2023

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 19 May 2023

Land to the east of Little Hatts Recreation Ground, Tickner Close, Botley, Southampton SO30 2SW

Appeal A: APP/W1715/C/19/3231762

- 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 Sonny James against an enforcement notice issued by Eastleigh Borough Council ('Notice A').
- The enforcement notice was issued on 3 June 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from an agricultural use to a mixed use of agriculture, equestrian, the stationing of caravans and non-agricultural business use and storage.
- The requirements of the notice are:
 1. Cease the use of the Land Affected for any non-agricultural use.
 2. Cease the use of the Land Affected for the storage of any non-agricultural equipment, materials chattels, tools or other articles.
 3. Remove the fencing and gate shown in the approximate position marked with a blue line on the Plan from the Land Affected.
 4. Remove the stables shown in the approximate positions numbered 1 and 2 on the Plan [attached to the Notice] from the Land Affected.
 5. Remove the hardstanding shown in the approximate position marked with green hatching on the Plan [attached to the Notice] from the Land Affected (this includes any hardstanding underneath any development to be removed).
 6. Cease the use of the Land Affected for equestrian.
 7. Remove the caravans shown in the approximate positions numbered 3 and 4 on the Plan from the Land Affected.
 8. Cease the use of the Land Affected for the stationing of caravans.
 9. Remove all debris arising from compliance with requirements 1-8 above from the Land Affected.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a)&(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 and is dismissed in part as set out below in the Formal Decision.

Appeal B: APP/W1715/C/19/3231763

- 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 Sonny James against an enforcement notice issued by Eastleigh Borough Council ('Notice B').
- The enforcement notice was issued on 3 June 2019.

- The breach of planning control as alleged in the notice is without planning permission, the erection of a metal framed building and a tree house.
- The requirements of the notice are:
 1. Remove the metal framed building shown in the approximate position numbered 1 on the Plan [attached to the Notice] from the Land Affected.
 2. Remove the tree house shown in the approximate position numbered 2 on the Plan [attached to the Notice].
 3. Remove all debris resulting from compliance with requirements 1 to 2 above from the Land Affected.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a)&(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 dismissed and the enforcement notice is upheld as corrected in the terms set out below in the Formal Decision.

Appeal C: APP/W1715/W/19/3231764

- 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 Sonny James against the decision of Eastleigh Borough Council.
- The application Ref F/17/81707, dated 26 October 2017, was refused by notice dated 27 March 2019.
- The development proposed is described as: 'Change of use from agricultural land to [a] mixed use [of] residential and equestrian, retention of barn, hardstanding, gate, fencing, touring van, stable 1 and stable 2 (retrospective). Siting of one static caravan for gypsy and traveller accommodation, dayroom and addition of stable.'

Summary of Decision: The appeal is allowed in part and dismissed in part as set out below in the Formal Decision.

Preliminary Matters

1. The Hearing was left open and adjourned after the site visit whilst a number of procedural matters were undertaken including further consultation with Natural England on ecological matters. The parties also wished consultation to be undertaken on revised plans submitted in Appeal C (see below).
2. The Hearing was closed in writing on 3 May 2023 following the close of consultation with Natural England.
3. Originally, appeals were brought against Notice A on grounds (a),(b),(c),(d),(f) and (g) and against Notice B on grounds (a),(d) and (g). All appeals were due to be heard at a Public Inquiry so that evidence on the legal grounds (i.e., grounds (b)-(d)) could be taken under oath or affirmation and be subject to cross-examination. On 16 December 2022, the appellant withdrew the legal grounds of appeal and stated that both Appeals A and B would be pursued on grounds (a) and (g) only. At the same time, a request was made by the appellant to convert the event to a Hearing. The Council raised no objection. Given that it was no longer necessary for evidence to be tested under oath/affirmation, the Planning Inspectorate agreed the change of procedure.
4. Botley Parish Council had been granted Rule 6 status for the Inquiry. However, on 23 November 2022, the Parish Council clerk emailed the Planning Inspectorate to say: "*The Parish Council has decided to revert to providing written representations to the Appeal and will not appear at the Inquiry as Rule*

6 Party". Representatives of the Parish Council attended the Hearing and contributed to the discussion.

5. A revised version of the National Planning Policy Framework ('the Framework') was published on 21 July 2021 replacing the previous version of February 2019. It is the latest version which falls to be considered in Appeal C and also in the deemed planning applications arising under ground (a) in Appeals A and B. The parties have had the opportunity to comment on its provisions.
6. In terms of the local development plan, the Eastleigh Borough Local Plan 2022 ('LP') was adopted in April 2022. It replaced saved policies within the previous Local Plan cited in the Council's decision and enforcement notices. The policies contained within the 2022 LP now apply in the consideration of these appeals.

The section 78 appeal (Appeal C)

7. The planning application form gave the site address as 'Little Hats (one 't') Recreation Ground' rather than land to the east thereof. The parties agreed that the correct address is the one in the banner heading above, as appeared in the decision notice and enforcement notices.
8. The Appeal Form indicates that the description of development has not changed from that entered on the application form, but a different description has been used. I have utilised above the amended description of development as it appears in the Council's decision notice and the appellant's Appeal Form. That description was discussed at the Inquiry because a 'touring van' does not constitute a use of land or operations amounting to development for the purposes of section 55 of the 1990 Act.
9. The application and decision also refer to 'retention' of a barn (amongst other things). 'Retention' is similarly not 'development' within the meaning of section 55. By the same token, a change of use only constitutes development requiring planning permission if it is 'material'. The parties agreed a revised description of *'The retrospective material change of use of land from agricultural to a mixed use of residential and equestrian, erection of barn, hardstanding, gate, fencing, stable 1, stable 2 and proposed siting of one static caravan for Gypsy and Traveller accommodation, dayroom and addition of a stable'*.
10. I invited the parties to reflect upon the accuracy of this description as it refers to both a retrospective and prospective residential use. I was subsequently informed that the description should be: *'The retrospective material change of use of land from agricultural to a mixed use of agricultural and equestrian, erection of barn, hardstanding, gate, fencing, stable 1, stable 2 and proposed siting of one static caravan for residential use for Gypsy and Traveller accommodation, dayroom and addition of a stable'*. In effect, the use applied for is a single mixed use of agriculture, equestrian and residential use for Gypsy and Traveller accommodation. The revised description will be applied.
11. It is apparent from the description that the application for planning permission was partly retrospective. Even though the parties disagree on whether a residential use started before 26 October 2017, it is undisputed that an equestrian use had begun, hardstanding was laid, the gate and fencing erected and two of the stables and barn were already built. Section 73A of the 1990 Act allows permission to be granted for development carried out before the date of the application. At the site visit, it emerged that a third stable has now been

built in the gap between the existing stables. The construction largely accords with the plans for the proposed additional stable. Therefore, this part of the application is also retrospective. During my visit, I observed three touring type caravans, one of which appeared to be in residential occupation tying in with the appellant's account that he is already living at the appeal site.

12. There is a difference between the development enforced against in Appeal A and that applied for in Appeal C. The planning application in Appeal C seeks permission for a mixed use of equestrian and residential as Gypsy and Traveller accommodation. The Council found no evidence of an existing residential use at the time of issue of Notice A to engage development plan policies for such a use. Hence, the Council's decision to refuse planning permission relies upon more reasons than those given in Notice A where a single reason is cited. Given the extent of the differences, I shall deal with those appeals separately.
13. Prior to the Hearing, the appellant sought to amend the site location plan which shows the application site edged in red. The amended plan extends the red line area to include the access to the site which connects with the highway in Tickner Close. The access belongs to Botley Parish Council upon whom a revised notice was served with the accompanying plan. A further revision to the site location plan was produced at the Hearing to omit an area from the blue line site denoting other land within the appellant's ownership or control. This was incorrectly shown on the previous versions. If accepted, the Council confirmed that the revised plan would overcome its third reason for refusal concerning the failure of the application to show access to an adopted highway.
14. The Parish Council expressed dissatisfaction that land within its ownership was being incorporated within the application without prior consultation or notice.
15. The planning system entitles anyone to apply for permission to develop any plot of land, irrespective of ownership. An applicant must notify owners of the land in accordance with Article 13 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. When making an application, an applicant is required to sign a certificate confirming the ownership of the land to which the application relates and that the relevant notices have been served. The original site location plan omitted any means of access and showed the appeal site as land locked. The Parish Council objected to the application and highlighted how the track over its land formed the only access. Despite the late revision and notification, the Parish Council took the opportunity to respond to the requested amendment to the site location plan and appeared at the Hearing.
16. Another revised plan (01466/8 Rev 2) was produced with the appellant's Hearing statement showing the elevations for a smaller proposed day room/amenity block. A revised site development scheme plan (01466/4 Rev 3) was also handed in at the Hearing showing the footprint of the dayroom reduced from 12.2 x 6.1 to 8.0 x 5.5.
17. The Council objected to the original proposal due to the size of the building and internal facilities which it considered to be 'over and above what would reasonably be expected for a site of the size proposed.' At the Hearing, the Council confirmed that it feared the dayroom would be used for residential purposes. However, the proposal must be considered for the development as applied for rather than what might occur in future. The use could be controlled by condition in any event. The Council clarified that it should have expressed its concern as the effect of the dayroom building on the character and appearance

of the surrounding countryside, with particular regard to its size. Those concerns would be overcome by the revised plans, if accepted, and the second reason for refusal would fall away.

18. Amended plans can be accepted on appeal and approved through a conditional planning permission, provided there is no substantial difference between what was originally applied for and the amended scheme. That is essentially a matter of planning judgement for the decision-maker (*Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]). The main, but not the only criterion on which that judgement should be exercised, is whether the development is so changed that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation.
19. Accepting the amendments would not deprive anyone of an opportunity for comment. Not only were the plans discussed at the Hearing where the Parish Council was represented, but the Council also subsequently publicised the revised plans for the benefit of the wider public and undertook re-consultation. That consultation period expired on 10 February 2023. Three neighbours responded and three responses received regarding the location of utility apparatus and with advisory information. I am satisfied that the plans are not substantially different and no prejudice arises from their acceptance. I therefore accept the revised plans having taken all comments into account.
20. A Unilateral Undertaking made under section 106 of the 1990 Act ('the planning obligation deed') was completed by the appellant after the two-day Hearing event had taken place. With my prior agreement, the deed dated 24 January 2023 was submitted before the written closure of the Hearing.
21. The planning obligation deed is in the Council's approved form. It makes financial provision to offset ecological impacts of the development upon designated European sites in order to address the Council's fourth reason for refusal. Since the Council's decision was taken, it now requires financial contributions to mitigate the effects of increased recreational pressure from new development on the New Forest. The planning obligation deed also addresses this. On the plan annexed, the site access belonging to Botley Parish Council has been removed so that it does not attract liability for payments.
22. The correct names of the designated European sites mentioned in the fourth and fifth reasons for refusal are The Solent and Southampton Water Special Protection Area and Solent Maritime Special Area of Conservation. There is also an error in the fifth reason where it refers to the 'impact of the use of the cess pit' on protected sites. It should have said 'septic tank' as per the application. As it is, the appellant proposes an amendment to instal a package treatment plant ('PTP') instead. The Council has no objection to a PTP subject to a suitable condition to control the details.
23. An agreed Statement of Common Ground was submitted at the Hearing. It transpired that a scheme for ecological enhancements had not been produced as stated in paragraph 3.8 of that document nor had an Appropriate Assessment been undertaken as stated in paragraph 3.10.
24. Whilst the supporting information stated that the appellant intended that his wife would live with him on the site if planning permission was secured, the appellant made plain that this would no longer be the case. If necessary, he would be content for a permission to be limited to his sole occupancy.

The enforcement notices (Appeals A & B)

Notice A

25. Notice A alleges a material change of use from agriculture to a mixed use of the land. The concept of a mixed use of land is one of two or more primary uses existing within the same planning unit or unit of occupation. One is not ancillary to the other although there may be ancillary uses associated with each primary use. The notice appears to be directed at a mix of five primary uses being agriculture, equestrian, the stationing of caravans (albeit no use is identified), non-agricultural business use and storage.
26. It is important that the allegation is right. That is particularly so where there is a ground (a) appeal because the terms of the deemed planning application arising thereunder are derived from the wording of the allegation.
27. It is not the 'stationing of caravans' that constitutes a use of land, but the use to which they are put. I raised this matter with the parties ahead of the Hearing and queried how the caravans were used at the time of issue of Notice A or whether they were being stored. It was agreed that the allegation should refer to 'the storage of caravans'.
28. Aside from that issue, Notice A also alleges a mixed use including 'non-agricultural business use and storage'. It is a well-established legal principle that a notice should be drafted to tell the recipient fairly, what he has done wrong and what he must do to remedy it. What is meant by a 'non-agricultural business use and storage' is broad and lacks precision. It does not clearly identify the use. The appellant operates a business laying driveways and the appellant's agent stated that it had been understood that the notice was concerned with the use of the access by HGV's associated with that business. The Council clarified that it had meant the movement of HGV's, the deposit and tipping of waste, and storage associated with that business.
29. The parties agreed a revised description of: *'Without planning permission, the material change of use of the land from an agricultural use to a mixed use of agriculture, private equestrian, the storage of caravans and a groundworks, paving and driveway business (with associated storage)'*.
30. Where there is a mixed use, the use of the land is the single mixed use with all its component activities rather than individual uses. The requirements of Notice A are drafted in such a way as to require each separate component of the mixed use to cease. De-coupling the requirements in this way could have unintended consequences. The mixed use may be unlawful but a component use of it might be lawful or could be so when undertaken in connection with the lawful agricultural use. The first requirement is also too wide in prohibiting 'any non-agricultural use'. The notice should be directed at cessation of the unlawful use.
31. As drafted, Notice A would require the permanent cessation of any of the individual components whether lawful or not. The parties agreed that Notice A should be amended to require only the mixed use to cease. That would not prevent the reversion to a lawful agricultural use by reason of section 57(4) of the 1990 Act. It follows that paragraphs 5.6 and 5.8 require deletion with corresponding re-numbering and references thereto. Paragraph 5.2 should be corrected to require removal from the land of unauthorised items associated with the business.

32. Having discussed these matters with the parties, I am satisfied that the corrections can be made without injustice to either the appellant or the Council in accordance with section 176(1).

Notice B

33. Notice B is directed at the erection of a metal framed building and a tree house. In its statement of case, the Council conceded that the metal framed building is not harmful to the character of the landscape. The Council does not consider the countryside location to be inappropriate for such a building used for equestrian purposes. Accordingly, it wishes to withdraw Notice B insofar as it relates to the metal framed building and invited me strike out references to it in the notice.
34. Only the treehouse would then be enforced against. The requirement at paragraph 5.2 to 'remove the tree house...' omits to say that it should be removed 'from the Land Affected'. For clarity, these words should be added.
35. The parties agreed that no injustice would arise from the above amendments, and I am satisfied that is so.
36. At the start of the Hearing, the appellant's agent confirmed that a case was not being pursued in respect of the treehouse. On the basis that the metal framed building is removed from Notice B, the appellant withdrew the remaining grounds of appeal i.e., grounds (a) and (g).
37. I shall direct that Notice B is amended in accordance with the parties' agreement so that it applies to the treehouse only. No further consideration is required of Notice B, the grounds of appeal having been withdrawn.

Appeal A (Notice A)- Ground (a) & the deemed planning application

38. 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 development already carried out, and it raises the same issues as the deemed application for planning permission.
39. The appeal site lies outside any development boundary and is therefore classified as being in the countryside for the purposes of planning policy.
40. The deemed planning application is for the material change of use of the land enforced against, as per the corrected description. The only planning objection identified in Notice A to the mixed use concerns the effect on the character and appearance of the surrounding countryside. Prior to the Hearing the Council additionally raised objections to the suitability of the access, which was an issue flagged up by the Parish Council.
41. The appellant initially stated that he did not seek permission for any business use and the ground (a) appeal was being pursued for the remaining components of the mixed use. When the Council maintained its objection to the storage of caravans, the appellant revised his position further to pursue use of the appeal site for residential and equestrian purposes only. The Council explained that it has no issue with an equestrian use which it considers to be compatible with the key characteristics of the area with some fragmentation of fields into pony paddocks, as identified in its Landscape Character Assessment 2011. Its concern arose from the urbanising effect of caravan storage and the business use,

described by the Council Officer as weakening the visual separation between Hedge End and Botley.

42. The Council stated that its character and appearance objection would be overcome if there were no business or caravan storage use. Similarly, the Council only objects on access grounds if there is storage of caravans and/or the business use, albeit this was not identified in the reasons for issuing the notice. The Parish Council took the same view.
43. I was invited by both parties to make a split decision to grant permission for a mixed use of agriculture and private equestrian only and to refuse permission for caravan storage and the business use (with associated storage).
44. A discussion took place at the Hearing as to whether this could be achieved in circumstances such as this where there is a mixed use across the whole site, being a single planning unit. This is not a situation where permission would be granted for part only over a smaller area, say. The single mixed use taking place is for agriculture, private equestrian, storage of caravans and a business use. To allow part only would be to grant permission for a different mixed use (i.e., agriculture and private equestrian) from the one enforced against.
45. Section 177(1)(a) of the 1990 Act allows the grant of permission in relation to the whole or any part of those matters [*my emphasis*] constituting a breach of planning control.
46. The Council referred me to paragraphs 21 and 22 of the judgment in *Miaris v SSCLG & Bath and North East Somerset Council* [2016] EWCA 1564 (Admin). *Miaris* concerned an enforcement notice alleging a material change of use from a restaurant to a mixed use of restaurant, drinking establishment and nightclub. The appellant argued that the requirement to cease using the premises as a drinking establishment was excessive. In other words, that a restaurant and drinking establishment mixed use should be allowed. The judgment discusses the scope of an Inspector's power under ground (f).
47. At paragraph 22, Lord Justice Lindblom said: "*the inspector was undoubtedly right to conclude that that outcome could not be achieved by means of an appeal on ground (f) in the absence of an appeal on ground (a) and a deemed application for planning permission*". The implication (although strictly *obiter*) is that if there is a ground (a) appeal, it would allow planning permission to be granted as an alternative for a fewer number of the original constituent primary uses in that scenario. However, the situation in *Miaris* was in the context of ground (f) only.
48. It is the wording of section 177 that governs the approach as made plain in *Ioannou v SSCLG & Enfield LBC* [2013] EWHC 3945 (Admin), [2014] EWCA Civ 1432, where it was held that the Inspector was entitled to find that an alternative scheme did not form 'part of those matters'. By virtue of section 177(3), the planning permission that may be granted under subsection (1) is any planning permission that might be granted on an application under Part III of the Act. The 'Wheatcroft principles' do not apply as it is not a test of whether the alternative would be 'substantially different'.
49. The Courts have also cautioned against taking too narrow an approach to interpretation of the Inspector's powers within section 177(1). There is a wide discretion which necessarily involves an element of planning judgement. Plainly,

planning permission can be granted under section 177(1)(a) for part only of a development enforced against or for any part of the land. Whether permission should be granted does depend on the circumstances. No permission is needed for the agricultural use and a private equestrian use is also a primary use forming part of the mixed use. They are components forming 'part of' the matters enforced against. The planning harm identified by the Council arises from the caravan storage and business uses with no concerns expressed over the equestrian element.

50. I also bear in mind that the Council could have chosen to under enforce by attacking, or requiring cessation of, the caravan storage and groundworks business only. By the same token, I see no reason to prevent the grant of permission for part only for the mixed use of agriculture and private equestrian, subject to conditions, when no conflict with the development plan is identified.

Conclusion on ground (a) and the deemed planning application – Appeal A

51. For the reasons 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 insofar as it relates to a mixed use of agriculture and private equestrian, and dismissed for the wider mixed use of agriculture, private equestrian, the storage of caravans and a groundworks, paving and driveway business (with associated storage). A split decision will be issued.
52. The requirements of Notice A relating to the acceptable part of the development (i.e., agriculture and private equestrian) will not be deleted, in order to avoid any grant of unconditional planning permission being made through section 173(11) if the wider mixed use were to continue. The appellant can rely on Notice A ceasing to have effect insofar as it is inconsistent with the planning permission under section 180(1).
53. Reliance can also be placed on section 180(1) for operations facilitating the agricultural and equestrian use that are identified in the requirements only i.e., fencing, gate, stables and hard surfacing. Part of the hard surfacing provides the base for the stables to be considered in Appeal C, which also includes the gate and fencing. Another part of the hard surfacing was used for the storage of caravans, which must cease. Any part of the hard surfacing related to the private equestrian use can be addressed by the site development scheme secured by condition.

Conditions

54. The Council suggested only one condition in this eventuality, which was agreed with the appellant, to restrict the use to agriculture and the keeping of horses for private recreational purposes. The enforcement notice will bite to prohibit the storage of caravans and use as a groundworks business, but the agreed condition is appropriate to ensure no other use takes place besides that approved. With this condition in place, there is no need for a further condition prohibiting commercial activities.
55. Other conditions relating to equestrian use were proposed in Appeal C but not Appeal A. When I queried this with the parties, the Council replied to say that the draft conditions suggested in Appeal C should also be imposed, and the appellant had agreed.

56. Not all conditions suggested in Appeal C are relevant. The parties agreed to a pre-commencement condition for the approval and implementation of a landscaping scheme. Whilst landscaping should reasonably and properly be undertaken and maintained to safeguard the landscape character of the area, the wording provided overlooks the fact that Appeal A is retrospective. It is not possible to have a pre-commencement condition when the development has already begun albeit permission will be granted for part of the mixed use only. In these circumstances, the condition must be worded as a succession of phases so that the use can be required to cease if there is non-compliance with any phase. Such condition will ensure that the development can be enforced against if the requirements are not met.
57. Besides soft landscaping, the site development scheme should also address fencing, gates, hard landscaping (including parking areas), to achieve the same purpose.
58. Again, a phased approach is required to the submission and approval of a scheme for the treatment of effluent from the washdown and manure stores and for surface water management. These measures are needed to minimise the risk of land contamination for public safety and to ensure satisfactory provision of surface water drainage, respectively.
59. Given the site clearance undertaken to facilitate the works, a habitat reinstatement and enhancement plan is required to protect and enhance biodiversity. For the same reason, a condition is necessary to control the storage of materials and deposit of waste. The wording provided in this regard is vague and imprecise with reference also made to unidentified adjacent hedgerow and other land. I will re-word the condition to prevent the storage of materials and deposit of waste from areas other than those identified for such purposes in details submitted and approved by the Council.
60. To prevent light pollution, a condition is needed to restrict external lighting to that approved in writing by the Council.
61. Given the location, it is appropriate to prohibit vehicles over 3.5 tonnes on the site to prevent harm to the character and appearance of the surroundings. Equally, such a condition is in the interests of public safety of users of the adjacent recreation ground from coming into conflict with large vehicles.
62. I am satisfied that all these conditions accord with the tests within Paragraph 56 of the Framework and the national Planning Practice Guidance.

Appeal A (Notice A) - Ground (g)

63. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed. The appellant does not pursue a ground (g) appeal in respect of the caravan storage and business uses. Ground (g) was raised in relation to the equestrian use only to secure extra time to re-locate the horses. As a private equestrian use will be permitted following partial success under ground (a), the ground (g) appeal falls away.

Appeal C

Background and Policy context

64. The Council's reasons for refusal raise no objection to the retrospective operations, being the barn, stables, hardstanding, gate and fencing. The barn is the metal framed building now removed from Notice B. All these structures are connected to the equestrian use to which the Council does not object. In the absence of identified harm, there is no basis to refuse permission for this part of the development which is clearly distinguishable from the remainder. Nor is there reason to dismiss the existing mixed use of agriculture and equestrian, with appropriate conditions, much in the same way as Appeal A.
65. The Council's reasons all relate to use of the appeal site for residential purposes as Gypsy and Traveller accommodation and associated operations. National policy is contained within Planning Policy For Travellers Sites ('PPTS') and the revised Framework, which are material considerations.
66. After further enquiries, the Council is now satisfied that the appellant is an ethnic Romany Gypsy who meets the definition of a Gypsy and Traveller for the purposes of the PPTS, satisfying part of the first reason for refusal. The Council still contests that the Gypsy and Traveller accommodation would accord with the development plan, as per the second part of the reason for refusal. Compliance with Gypsy and Traveller policy provision remains a main issue between the parties albeit updated local and national planning policy considerations apply.
67. As set out above, the second reason for refusal concerning the proposed dayroom is addressed by the revised plans reducing its proposed size.
68. In addition, the revised site layout plan now shows access to an adopted highway as part of the red line application site. It involves use of an existing part gravelled track off Tickner Close extending along the edge of the Recreation Ground and lying within the Parish Council's ownership.
69. When the Council took its decision, no evidence had been supplied that the appellant had a right of access. The Parish Council provided written confirmation in its statement of case (at paragraph 3.2) that *".....the owner of the appeal site inherited a right to pass and repass across the track, for all purposes, when he acquired the appeal land...."*. The Council no longer takes issue with the accessibility of the appeal site as per the third reason for refusal. The Parish Council objected to the proposal as being land locked. That is now established not to be the case following submission of the revised plan.
70. The Parish Council Chairman explained at the Hearing how concerns arose over the use of the access for business purposes. Such use is not part of the development applied for in Appeal C. The Parish Council does not say that the access is unsuitable for the intended use. After issues of anti-social behaviour, the gate at the entrance to the recreation ground is locked at night to prevent vehicular access. The appellant holds a key to the gate. The Parish Council's concern arises over the prospect of the gate being left open. This is a land management issue. The appellant has a right to pass and repass over the track which is already being exercised. It does not pertain to the planning issue raised in the third reason for refusal.
71. The fourth and fifth reasons for refusal concern the effect on ecological interests. The Council is content the impacts are now appropriately mitigated

through the completed planning obligation deed with provision for financial contributions. This also pre-supposes the imposition of a planning condition to secure a PTP as the means of foul water disposal.

72. Nevertheless, as the competent authority under the terms of the Conservation of Habitats and Species Regulations 2017, as amended ('the Habitats Regulations'), I must undertake a Habitats Regulation Assessment ('HRA') to determine whether the appeal development is likely to have a significant effect on protected European sites, proceeding to appropriate assessment where significant effects cannot be ruled out. Thus, these matters remain a main issue.

Main Issues

73. The main issues are:-

- the objectives of the development plan for the provision of Gypsy and Traveller accommodation; and
- the effect on internationally important nature conservation sites.

Reasons

Provision of Gypsy and Traveller Accommodation

74. Paragraph 3 of LP Policy DM31 set outs five criteria, all of which must be met for Gypsy and Traveller development to be permitted. The Council takes no issue with criteria b, c, and e. It disputes the need for the site and the provision of utility services under criteria 3a. and 3d., respectively.
75. The Parish Council did take issue on criterion 3e. which requires a site to have vehicular access to and from a strategic road network adequate to accommodate mobile residential units and any vehicles/machinery associated with residents' working activities. Its concern arose from the revised plan having not been publicised for 21 days to enable the public to have their say. This is a procedural rather than policy objection. As it is, the revised plan has now been publicised showing access from the site to the public highway and so there is no reason to believe this criterion is not met.

Need for and supply of additional pitches

76. Criterion 3a. requires there to be an identified need for the pitch or plot which the proposal helps to meet. Paragraph 1 of DM31 specifies that the Council will meet the need for additional pitches as identified in the Gypsy and Travellers and Travelling Showpeople Accommodation Assessment ('GTAA'). The Council proposes to start work on a new GTAA in the spring of 2023.
77. In accordance with PPTS paragraph 10a), local planning authorities should identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. The last GTAA is dated February 2017. Whilst it is some years old, it was relied upon to inform the 2022 LP to allocate two pitches.
78. Since adoption of the Council's LP, the Court of Appeal has handed down judgment in *Smith v SSLUHC & Ors* [2022] EWCA Civ 1391. This addressed the interpretation of the PPTS to Gypsies and Travellers who have ceased to pursue nomadic lifestyles. The upshot was that the PPTS definition (as amended) was found to be discriminatory and has no legitimate aim. The PPTS itself remains

extant. Both parties made representations in their written submissions on the impact of the *Smith* judgment on the GTAA and likely level of need. This was discussed further at the Hearing.

79. Following the judgment, the need for sites can no longer be calculated based upon the PPTS definition. Account must be taken of all those who are Gypsies and Travellers regardless of whether they have ceased to travel. The GTAA assessed need for both those who meet and do not meet the PPTS definition.
80. The GTAA found a need for 5 additional pitches for those meeting the definition and 6 for those who do not. That part is undisputed. The parties differ on how the figures should/ now be applied for the "11 additional sites" that were identified but an interview was not completed because the households either refused or were not present on the three occasions when assessors visited. The GTAA accounts for these sites as a need for up to 4 additional pitches from a maximum of 11 households. Of those 4, it suggests that only 10% would meet the planning definition if the ORS national average is applied translating to a need of between 0 and 1. From this, the GTAA concludes that there is an unconfirmed need of between 0-4 pitches.
81. The Council submits that the data should be interpreted as a need for between 11-15 pitches, taking the unconfirmed need figure of between 0-4. However, the unconfirmed need cannot be below 4 because the 10% adjustment was applied to reflect the forecast number of households who would meet the planning definition. If the Council's treatment of the additional 11 sites is correct, that would leave a need for 15 pitches in the borough over the plan period 2016-2036.
82. The appellant says the GTAA should be interpreted as there being a need for 22 pitches, based upon 5+6+11. He maintains that the 11 additional sites must be taken as occupied by Gypsies and Travellers whose need must be accounted for. There is some force in this argument because the key findings say that based upon previous GTAAs, and other intelligence from Council Officers, "all households were considered to be ethnic Gypsies and Travellers irrespective of the planning definition".
83. After the base date, one unauthorised pitch was granted planning permission. Two site allocations were removed from the draft LP following their grant of planning permission leaving allocation of two pitches to meet the recognised need for five Gypsy and Traveller households meeting the planning definition, as applicable at that time. After the *Smith* judgment, this would no longer account for all the recognised need.
84. Moreover, it is important to note that the level of need in the GTAA is unconfirmed as sites were surveyed but interviews were not able to be completed, as highlighted in the supporting text to Policy DM31.
85. The Council considers that provision is being made. It refers to the additional grant of permissions for a further 12 pitches since the GTAA base date. Two of these are not in fact permissions but the grant of Lawful Development Certificates for single pitches which had become immune from enforcement action. They nevertheless regularise the position for those two pitches. In 2019 two permissions were granted for a total of 10 pitches.

86. In totality, the Council accounts for 14 pitches but this would still leave a shortfall in meeting the need identified in the GTAA now that the figures can no longer be limited to those meeting the PPTS definition.
87. There are no public sites within the borough and no existing private sites have been identified as suitable for expansion or vacant. The Council refers to an application for 10 pitches currently under consideration in Allington Lane. The appellant's agent was sceptical of an approval any time soon when it had not been progressed since 2021. The Council advised that a site visit was taking place that week and ecology and drainage issues remained outstanding. It acknowledged that the likely outcome is unknown. The position is thus uncertain and, on the information before me, those 10 pitches are not currently available.
88. Interviews to inform the GTAA were conducted in 2016. The appellant's agent is critical of the approach taken at that time when assessors would turn up at a site unannounced and proceed to ask personal questions resulting in only 8 of 33 households speaking to assessors. Given the expiry of time and low response rate, the appellant's agent maintains that the data is out of date and unreliable. Whether or not that is so, for the purposes of policy DM31, consideration of need is by reference to the GTAA.
89. On the information available to me at this time, there is an identified need for at least 1 pitch. The proposal would deliver a single pitch and thereby meet an identified need to satisfy criterion 3.a.

Utility services

90. Criterion 3d. requires the site to either have or can be viably provided with utility services. There is no existing connection to any services. An on-site generator currently provides power, and water is brought onto the site for the horses in bowers. It is intended that foul water drainage be secured by means of a PTP, which the Council is content can be achieved through the imposition of a planning condition.
91. On 8 December 2020 the Parish Council resolved 'to refuse all requests to grant any wayleave/s across the Little Hatts Recreation ground for the purpose/s of providing utility services (i.e., water, drainage, electricity, gas telecoms) to land which lies to the east of the recreation ground and is currently accessed through the recreation ground.' This resolution was reaffirmed at a meeting of the Parish Council on 13 December 2022 under the heading of 'Planning Matters'. It clearly refers to the appeal site.
92. The Parish Council Chairman indicated that the appellant could apply for re-consideration 'when everything else is done'. As things stand, the Parish Council denies access for the purposes of connecting services through its land.
93. The appellant's agent informed the Hearing that his client had only recently become aware of the Parish Council's resolution, which had affected the time available to consider other options. Nevertheless, the appellant is confident that the services can be achieved having approached two other neighbouring landowners. Apparently, Mr Bartlett, whose land is to the north-east of the appeal site, would allow water and electricity connection from his land and a Mrs Burgess (to the north-west) has "no problem" with allowing an electricity connection. These would be less direct than connection via the Parish Council land, but the appellant maintains that they are a viable solution.

94. None of this is available in writing but the Council acknowledged that progress has been made towards overcoming its objection under criterion 3d.
95. Drainage facility can be provided by means of the PTP, for which the manufacturers details have been provided, and secured by a planning condition. The primary concern is electricity and water supply. Notwithstanding the Parish Council's currently stated position, there are other potential options for water and electricity connections. The difficulty I find is that there is nothing before me to confirm that those other possibilities are realistic and thus viable.
96. The parties agreed the wording of a condition to restrict residential occupation until the appellant has provided evidence to demonstrate that electricity and water supply to the development has been fully provided and implemented. As framed, the condition does not work and would be unenforceable because the appellant maintains that he is already living on the site and there is reason to believe that is so. I have considered alternatively worded conditions applicable for retrospective development. To overcome the (partly) retrospective nature of the development, a condition could require the use to cease within a specified timeframe unless electricity and water connections are secured.
97. However, any condition reliant upon the consent of a third party should only be imposed if there is reasonable prospect of consent being obtained and the necessary connections achieved within a reasonable timescale, as imposed. As there is nothing in writing to demonstrate a willingness on either neighbours' part to allow connections via their own supplies, or that those connections are indeed capable of being achieved, it is wholly unclear whether water and electricity connections would be secured. I cannot be satisfied that reasonable prospect exists. That being so, the type of condition required could not be imposed to meet the policy test of reasonableness within paragraph 56 of the Framework, as reiterated within the national Planning Practice Guidance ('PPG').
98. There is simply not enough information for me to reach the view that it is viable for water and electricity services to be secured to meet criterion 3.d. In the circumstances, I cannot be satisfied that the development fulfils LP Policy DM31 for the provision of Gypsy and Traveller development.

Ecological interests and appropriate assessment

99. The appeal site is located within the zone of influence of the Solent and Southampton Water Special Protection Area ('SPA') and Ramsar site, the Solent Maritime Special Area of Conservation ('SAC') and the New Forest SPA, SAC and Ramsar sites. There is potential for likely significant effects in respect of recreational disturbance and nutrient outputs during occupation.

Recreational disturbance – The Solent

100. The appeal site lies within the 5.6km zone of influence of the European sites, collectively known as the 'Solent Special Protection Areas' or 'the Solent complex'. The designations are protected under the Habitats Regulations.
101. The Solent complex is internationally important for its wildlife. The coast provides essential winter feeding and roosting grounds for birds which can be disturbed by recreational activities, including walking. Human disturbance can result in increased bird mortality or a reduction in the amount of food eaten by birds as they become more alert or move away from the disturbance. This can have consequences on a bird's energy reserves, and impact upon the use of

those areas with displacement intensifying the competition for available food in other areas. Birds being unable to migrate due to reduced energy or not in sufficiently good condition to breed, would affect bird population contrary to the conservation objectives of the European sites.

102. The proposal would provide a net increase in residential accommodation. Other recent applications for housing have been permitted in the locality. In consequence, there are likely significant effects on the integrity of the protected sites through increased recreational disturbance, in combination with other plans and projects in the Solent area. Appropriate Assessment is required.
103. The mitigation proposed for recreational disturbance to the Solent is through the Solent Recreation Mitigation Strategy, December 2017, as formally adopted by the Council. It aims to prevent any net increase in bird disturbance as a result of recreational activities arising from new residential-related accommodation through a series of management measures. It provides mitigation for the impact of in-combination recreational visits arising from housing which is planned around the Solent. The Strategy seeks to provide mitigation for the duration of the impact, in perpetuity, in line with the Habitats Regulations. It does not deal with other impacts on the SPAs, such as the effect on water quality, which may require separate mitigation.
104. The Strategy enables developers to make a monetary contribution for the strategic mitigation of recreational pressures that would otherwise occur over a wide area. This approach is now expressly endorsed by LP Policy DM11.
105. Index linked financial contribution towards the Solent Recreation Mitigation Partnership is secured through the completed planning obligation deed.
106. Natural England confirmed it is aware the Council has adopted planning policy to mitigate against adverse effects from recreational disturbance on the Solent SPA sites, as agreed by the Solent Recreation Mitigation Partnership (known as 'Bird Aware Solent'). Provided there is compliance with the policy and the Bird Aware Definitive Strategy, Natural England is satisfied that the appellant has mitigated against the potential adverse effects of the development on the integrity of the Solent SPA sites and has no objection to this aspect of the proposal.
107. The Partnership is composed of the South Hampshire local authorities and other organisations established to implement measures to mitigate cumulative recreational disturbance of birds within the Solent SPAs. As the Council is part of the Partnership, there can be reassurance of its compliance with such aims. The authorities pool contributions received to implement mitigation measures through the Partnership which is set up with a Project Board of senior officers and Steering Group formed of representatives from each partner organisation.

Recreational disturbance – the New Forest

108. The appeal site also lies within the 13.8km buffer zone for the New Forest designated sites. Research from April 2020 commissioned by six local planning authorities (including the Council) together with Natural England and Forestry England, identified a range of potential impacts from the projected increase in visitors to the New Forest arising from planned new development. Given that the LP examination identified over 14,000 new homes forecast to be built within a 20km radius of the New Forest, there is likely significant impacts on the

designations in combination.

109. In furtherance of LP Policy DM11, the Council has developed an interim New Forest Mitigation Strategy ('the Interim Strategy') to use existing and future land acquisitions to provide further sites to mitigate the recreational pressure on the New Forest from an increased numbers of visits from the occupiers of new residential development. The delivery of Suitable Alternative Natural Greenspace ('SANG') to mitigate those recreational impacts is funded through developer contributions. The Council anticipates the projects will be in place by summer 2023 and maintains a record of developments reliant on this strategy and their occupation dates.
110. The planning obligation deed provides for index linked financial contributions towards the New Forest SANG and Ranger, plus associated costs. The appellant has undertaken to pay the contributions within 14 days of the grant of planning permission and not to use the site for the development applied for until such time as all contributions have been made.
111. Whilst acknowledging that the appellant proposes to provide a financial contribution towards the Council's Interim Strategy to address recreational impacts on the New Forest designated sites, Natural England has expressed *"serious concerns with various elements of the interim strategy, including the reduced provision of SANG, the lack of information on increasing visitor capacity at the Itchen Valley Country Park and lack of an accompanying monitoring strategy. This leads to a significant level of uncertainty remaining as to the effectiveness of the proposed in-borough measures."*
112. In conclusion, Natural England does *"not consider the approved interim strategy is precautionary enough and advise it is not currently possible to conclude no adverse effects on the integrity of the New Forest designated sites."*
113. Both parties were afforded opportunity to respond to these comments.
114. The Council advised that it continues to work with Natural England, the Forestry Commission and other wildlife organisations on a strategic approach to address increased recreational impacts from residential development in the long term. Until then, it considers the interim mitigation package provides an appropriate solution in the short term, which is effective, robust and proportionate. The reduced SANG provision responds to research findings from 2020 and 2021 on the pattern of visits to the designated sites, as set out within the Interim Strategy. It addresses the impact of residential development to March 2027.
115. Alongside the creation of new SANGs, the Council refers to the recent grant of planning permission for the provision of new facilities at Itchen Valley Country Park. The Council believes this demonstrates clear and strong intent to increase the recreational capacity so it can function as SANG.
116. The Council further submits that funds have been secured across the Interim Strategy period (2022-2027) for the purposes of monitoring. A proportion of such funds are to be used to monitor visitor levels and other demographics at Itchen Valley Country Park once it is refurbished. In accepting that there will still be residual visits to the New Forest even with mitigation, the Council refers to the proposed ranger role within the Interim Strategy which the New Forest

National Park Authority supports. The Authority will apparently collaborate with the Council to set up a Service Level Agreement for the role.

117. With these mitigation measures in place, the Council maintains that there will be no adverse effect on the integrity of the New Forest SPA, SAC and Ramsar arising from recreational disturbance of the development.
118. Despite the Council's assurances, Natural England remains concerned. It reiterated that the Interim Strategy is not precautionary enough and maintains its advice that it is not currently possible to conclude no adverse effects on the integrity of the New Forest designated sites.
119. If limited to single occupancy, then the recreational impact would be minimised to the lowest possible level for development involving residential use. In isolation, recreational disturbance to protected designations is unlikely to result. It is the combined effect with other development where harm cannot be ruled out. To offset the potential harm, the planning obligation deed secures contributions for recreation mitigation to the New Forest, as contemplated by LP Policy DM11. It is the absence of a fully developed strategy for the use of those contributions that presents concern, as raised by Natural England over the effectiveness of the mitigation.
120. Without firm and clear measures in place, there is not certainty or transparency over the delivery of mitigation in order to ensure that the identified potential for an adverse effect on the integrity of the European sites is not realised. Progress has been made through the Interim Strategy towards implementing a strategic approach, but it is still evolving. The recent grant of permission for facilities at Itchen Valley Country Park may illustrate the Council's intent but that is not the same as delivery of robust measures upon which reliance can be placed. There remain proposals which are yet to be finalised.
121. The delivery of required mitigation should be certain if the Habitats Regulations are to be met. While the appellant has done everything asked of him through the planning obligation deed and the Council asserts that suitable provision for mitigation would be made, I must be satisfied that is so as the competent authority.
122. Given the concerns expressed by Natural England and the seemingly relatively early stages of the Interim Strategy, there is not the level of certainty for me to be satisfied that the required mitigation would be secured.

Conclusions on recreational disturbance

123. The need for the planning obligation deed is established by the development plan. An adopted Strategy has been implemented with management arrangements in place to ensure financial contributions are directed towards mitigation measures to protect the Solent. A binding planning obligation deed is in place that is compliant with regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and meets the policy tests within paragraph 57 of the Framework. As such I can be satisfied, as the competent authority, for the purposes of Regulation 61 of the Habitats Regulations, that the development would not have an adverse effect on the integrity of European protected sites within the Solent complex by reason of recreational disturbance.
124. The same planning obligation deed also provides for contributions towards recreation mitigation for the New Forest. Nevertheless, concerns remain over

the sufficiency of that mitigation as currently provided for the New Forest by the Interim Strategy which has been developed pending agreement and adoption of a full strategy. In light of those concerns, I cannot currently be satisfied, as the competent authority, that adverse effects on the integrity of the New Forest designated sites from recreational disturbance can be ruled out from the development alone or in combination with other plans or projects.

125. Therefore, the development would not be acceptable in the context of the Habitats Regulations. In these circumstances, LP Policy DM11 provides that development 'which is likely to adversely affect the integrity of an international or European conservation site will not be permitted.'

Water environment

126. In June 2020, Natural England issued '*Advice on Achieving Nutrient Neutrality for New Development in the Solent Region*' (version 5). This refers to high levels of nitrogen and phosphorous input to the water environment within the Solent region with sound evidence that these nutrients are causing eutrophication at the Solent SPA, SAC and Ramsar sites. These nutrient inputs partly arise from wastewater discharged from existing housing. They result in dense mats of green algae and other effects on the marine ecology from an excessive presence of nutrients impacting upon the Solent's protected habitats and bird species.
127. Natural England advised that there is uncertainty whether growth will further deteriorate designated sites and one way to address this uncertainty is for new development to achieve nutrient neutrality to ensure compliance with the Habitats Regulations. An updated nutrient budget calculator for the Solent was released by Natural England on 20 April 2022.
128. Inevitably, the introduction of a residential use to the appeal site has wastewater implications from the output of additional nitrates as confirmed by the first nutrient budget produced by the appellant in December 2022. A further nutrient budget based upon single occupancy was submitted by the appellant the day before the Hearing. Unfortunately, there was a small error in the land area on which the calculations were based which was pointed out by the Council's Ecologist at the Hearing. In the circumstances I allowed opportunity for a corrected nutrient budget to be submitted.
129. One corrected version pre-supposes that a condition would be imposed with a restriction for single occupancy. On this basis, the calculated output is a total annual nitrogen load to mitigate of 1.2kg TN/year. This compares with an additional nitrogen load of 1.79kg TN/year in the earlier assessment undertaken in December 2022.
130. On the basis of an average occupancy of 2.4 persons, the total annual mitigating loss is 2.26kg TN/yr.
131. Taking a precautionary approach in light of the uncertainty and having regard to the conservation objectives of the European sites, I consider that likely significant effects on the protected sites in combination with other plans and projects cannot be ruled out. The proposal cannot be screened out of Habitats Regulation Assessment and Appropriate Assessment is required.
132. Natural England was consulted on both the original and further (corrected) nutrient budgets. It confirms that the calculations have been undertaken in line with the updated Nutrient Neutrality Methodology. Provided the competent

authority is assured and satisfied the figures and site areas are correct, and the existing land uses are appropriately precautionary then Natural England raises no concerns with regard to the nutrient budget.

133. The Council has provided an assurance that the figures and site areas are correct. I have no reason to come to a contrary view.
134. Whether limited to single occupancy or 2.4 persons, the development would result in a positive nitrogen budget. The increase in nitrogen load would have a likely significant effect on the Solent designated sites due to the increase in wastewater. A package of avoidance or mitigation measures is thus required in order for the development to be acceptable.

Mitigation - nitrates

135. The appellant intends to purchase nitrate credits from the Council through its strategic nitrogen offset scheme. On 15 October 2021, Natural England provided the Council with a 'letter of comfort' that it's land management plans, "if secured and delivered as described, will deliver effective nutrient mitigation." The mitigation measures generate nitrogen credits which can be used to ensure that new housing is nutrient neutral. The Council has spare credits provided across 238 hectares of its own land. The purchase of credits is secured by condition. Where the Council proposes to use its own land holdings to offset development as mitigation with appropriate land management, the Council commits to the land being secured in perpetuity (i.e., 80 years).
136. Natural England considers that the strategic solution is ecologically sound. If measures (including contributions) are implemented, then Natural England takes the view that they will be effective and reliable in preventing harmful effects on the Habitats sites for the duration of the proposed development. This advice is on the basis that all mitigation measures are secured by planning condition or obligations to ensure strict and timely implementation for the full duration of the development. The Council assures me that the proposed financial contribution rates are proportionate to the identified effects of the proposed development and in line with the Retail Price Index, where relevant.
137. The submitted planning obligation deed does not include provision for the intended purchase of credits for nitrate pollution mitigation. Instead, the parties have agreed a negatively worded draft Grampian type condition preventing occupation of the development until a mitigation package addressing the additional nutrient inputs has been submitted to and approved in writing by the Council. This poses the same issue as before over enforceability when occupation is already taking place. Setting that aside for the moment, the difficulty with the suggested approach is that it can leave room for doubt or uncertainty as to whether, when and by whom the required mitigation will take place and whether sufficient credits are available. For those reasons, it is not generally acceptable. A better option might be a section 106 agreement between the parties with reciprocal obligations on the Council's part.
138. The PPG provides that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes).

139. The draft condition agreed between the parties does not require a planning obligation to be entered but it does require a mitigation package to be agreed before occupation can take place. That said, it does not depend upon the agreement of another party besides the local planning authority with the authority itself being able to deliver the means of mitigation. This is not a complex development, but it could not proceed without the condition as the appellant would not be able to demonstrate nutrient neutrality for adverse impacts on the integrity of European Sites to be avoided.
140. Guidance from the Chief Planning Officer from 21 July 2022 and Written Ministerial Statement announced measures in response to nutrient pollution. The aim is to significantly reduce the mitigation required for new development and making mitigation far easier than before via a Nutrient Mitigation Scheme established and delivered by Natural England and working closely with affected local planning authorities.
141. The letter from the Chief Planning Officer acknowledges that it is for decision-takers to determine, based on the information provided (including any mitigation secured), whether the development will avoid adverse effects, such as through neutrality. It is envisaged that the increased availability of mitigation as a result of the Natural England scheme will enable applications to more easily demonstrate the nutrient neutrality requirement is met. This is expressed in the context of the national scheme.
142. However, the approach in this case is supported in principle by Natural England, subject to caveats over delivery. Following discussion between the parties, the appellant has already completed an expression of interest to acquire credits from the Council who confirms that it has sufficient credits available to the appellant to use its own land to offset the impacts.
143. Those impacts (and associated risks) would be kept to an absolute minimum if restricted to single occupancy, as offered by the appellant, who has emphasised that he is content with the grant of permission for himself alone. From the Council's available credits and assurances, there is high probability that sufficient credits will exist. This is not a case, where it might be some time before the residential use begins.
144. In the individual circumstances of this case, there can be a high level of certainty that sufficient credits will be secured in the very near future to ensure appropriate mitigation which the Council has committed, as a public authority, to deliver in perpetuity. I can be satisfied in these circumstances that the appropriate level of nutrient offsetting can be secured through an appropriately worded condition adapted to set a timetable for action, and a sanction for non-compliance in order to be enforceable. The 'sanction' would be cessation of the use unless the credits are secured within a specified time limit. The Council could only use the monies for the stated purpose.
145. As set out in paragraph 56 of the Framework and the PPG, conditions should only be used when they are necessary, relevant to planning, relevant to the development permitted, enforceable, precise and reasonable in all other respects. Any proposed condition that fails to meet one of the tests should not be used even if there is agreement by the applicant.
146. A condition would be necessary for the development to proceed, and it is clearly relevant. It would be enforceable by preventing continuation of the

residential use unless the mitigation package is put in place. This might not be reasonable in all circumstances, but this development concerns a single occupant of small-scale development where there is reasonable prospect of compliance. The terms can be precise. The condition is reasonable in this case as the means to prevent adverse impacts from nitrates on the integrity of the European sites.

PTP Monitoring and Management Plan

147. NE recommended that a long-term monitoring and maintenance strategy is submitted to satisfy the competent authority that the PTP will operate effectively for the lifetime of the development. This is needed to prevent deterioration of the water environment. The appellant has supplied a copy of the manufacturer's installation guide and the operating and maintenance manual.
148. The PTP would be installed and operated in accordance with the manufacturer's instructions. The appellant also confirms that monitoring and maintenance will be recorded within the maintenance schedule to the maintenance manual. More specific details are contained within the submitted 'package treatment plant monitoring and maintenance programme'. This includes daily checks of the control unit to ensure the unit is running fault-free. There is a recommendation that the tank is fully inspected and tested by a suitably qualified service company every 6 months.
149. The manufacturer's warranty would be invalidated if the regular servicing schedule is not kept although this is no guarantee of compliance. The details can be appropriately secured by way of a planning condition. Provision should be also made to require production of the maintenance records upon demand by the Council to ensure compliance with all requirements.
150. With these measures in place, I can be satisfied that a PTP system should operate effectively for the lifetime of the development.

Conclusion on ecological impacts

151. Subject to the mitigation measures, I am satisfied as competent authority for the purposes of Regulation 61 of the Habitats Regulations that there would be no significant impacts on the integrity of the European protected sites through recreational disturbance to the Solent or from nutrients. In these respects, there would be no conflict with LP Policy DM11 which seeks to protect and enhance international and national sites from direct and indirect effects of development, including recreational disturbance and preserving water quality in the Solent.
152. However, having undertaken an appropriate assessment, I cannot be satisfied that the development (in combination with other plans or projects) would not affect the integrity of the New Forest designated sites from recreational disturbance. Therefore, the development contravenes the aforementioned aims of LP Policy DM11 and Paragraph 174 of the Framework which seeks development that contributes to and enhances the natural environment.

Other considerations

153. Paragraph 24 of PPTS specifies the issues to consider, amongst other relevant factors, when deciding applications for traveller sites. Of relevance here, are a) the existing level of local provision and need for sites, b) the availability or lack of alternative sites and c) other personal circumstances of the appellant.

154. I attach significant weight in favour of the development from the absence of a 5-year supply of deliverable sites and the delivery of a pitch from this scheme against the backdrop of unmet need.
155. There are no other identified available sites within the area, whether Council owned or private, but the Council maintains that the appellant has a residential address elsewhere and would not be homeless.
156. When the planning application was made on 26 October 2017 it was expressed as including a proposed residential use rather than existing use. At the Hearing, the appellant said he had in fact lived on site for 7-8 years, possibly longer. When the appellant responded in April 2016 to a planning contravention notice (issued by the Council under section 171C of the 1990 Act), the appellant gave his address as a residential property. At that time, he described the use of the site as housing horses and storing equipment.
157. The appellant explained to the Hearing that the house is the former marital home where he no longer lives but continues to use as a correspondence address. In any event, the appellant says that living in bricks and mortar is not in accordance with his cultural lifestyle and he would not wish to return.
158. The Council disputes there was any residential use at the time of issue of the enforcement notices on 3 June 2019. Had there been evidence of a residential use prior to issue of the notices then the Council would, in all likelihood, have included it within the enforcement proceedings. Of course, Gypsies and Travellers travel by nature which might provide an explanation. Ultimately, I am satisfied from what I saw and heard that the appellant now lives on the site although he acknowledged that he must go off-site to wash due to the lack of facilities. Quite when his use started is not pivotal to my considerations.
159. The appellant told the Hearing that he would need to live at the side of the road if permission is refused. He has nowhere else to go. A roadside existence is neither conducive to the well-being of the individual or the environment and carries significant weight for the proposal in the absence of reasonable alternatives. The development would facilitate the appellant's traditional way of life as an ethnic Romany Gypsy which weighs in its favour. The appellant explained how his family roots are very local having been born, brought up and schooled 2-3 miles away. He continues to have strong local links with siblings, his children and grandchildren living nearby. The Council accepted that the appellant is 'local'. I attach reasonable weight to these local connections which support the appellant's desire to live in this locality.
160. The appeal site lies at the edge of a settlement where it is close to a housing estate in Botley. The Council described the location as 'technically' in the countryside but 'not open countryside'. The parties agree there is no conflict with paragraph 25 of PPTS which very strictly limits new traveller sites in open countryside that is away from existing settlements or outside areas allocated in the development plan. This is a neutral factor in attributing weight.
161. The appellant draws my attention to some examples of Gypsy and Traveller development allowed on appeal where sites were found to be in a reasonably sustainable location. They are not particularly illuminating given that each appeal will depend on its individual circumstances. As it is, the Council has not taken a particular issue with the sustainability of the location which I gather has access to facilities within walking distance. This carries reasonable weight.

162. Sustainability is viewed broadly within paragraph 13 PPTS. Factors include the provision of a settled base reducing the need to travel, and promotion of peaceful and integrated co-existence with the local community. The scheme offers opportunities against both criteria to which I attach reasonable weight.
163. It is not previously developed land. The site is substantial with scope for improvements on its current condition by the introduction of soft landscaping to positively enhance its appearance. Aside from these matters, paragraph 26 PPTS also advocates not enclosing a site with so much hard landscaping, or high fences that may give the impression that a site and its occupants are deliberately isolated from the rest of the community. It was agreed that these matters can be addressed by a site development scheme secured by condition.
164. Refusing permission would engage Article 8 of the European Convention on Human Rights which provides everyone with a right to respect for his private and family life. Article 8 is a qualified right to be weighed against the wider public interest of protecting the environment from unacceptable forms of development. In applying Article 8, there is a positive obligation to facilitate the gypsy way of life to the extent that the vulnerable position of gypsies as a minority group means that some special consideration should be given to their needs and different lifestyle in the regulatory planning framework and in reaching decisions on particular cases. However, the interference in this case would be in accordance with the law and necessary in the interests of protecting the environment.
165. In determining the appeal, 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. The appellant is a Gypsy who has a shared a protected characteristic for the purposes of the PSED, but it does not follow automatically from the PSED that the appeal should succeed. The provisions of the 2010 Act do not outweigh those of the 1990 Act.

Overall Planning Balance

166. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires development to be in accordance with the development plan unless there are material considerations which indicate otherwise.
167. With the planning obligation deed in place, and subject to the imposition of conditions, I have found no harm to internationally important nature conservation sites in terms of water quality from nitrates or from recreational disturbance to the Solent. The absence of harm weighs neither for nor against the development.
168. There are benefits in favour of the scheme as outlined above. However, this does not alter or negate the fact that it has not been demonstrated that the site can be viably provided with utility services for electricity and water supply to meet the objectives of the development plan for the provision of Gypsy and Traveller accommodation or that the development is not harmful with regard to internationally important nature conservation sites within the New Forest.

169. That harm is not outweighed by any of the other considerations either individually or collectively, including the need for more Gypsy and Traveller sites, or the appellant's personal circumstances, on either a temporary or permanent basis. The development could not be made acceptable through the imposition of planning conditions. I have taken account of all the other matters raised including my duties under the PSED, but none alters these conclusions.
170. Pursuant to Paragraph 182 of the Framework, the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not affect the integrity of the habitats site. My assessment has not reached that conclusion for the exception in Paragraph 182 to apply.
171. Therefore, the appeal fails regarding the proposed siting of one static caravan for residential use for Gypsy and Traveller accommodation and a dayroom.

Conclusion on Appeal C – section 78 appeal

172. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed for the proposed residential use for Gypsy and Traveller accommodation and the dayroom.
173. The appeal succeeds and permission will be granted for the retrospective mixed use of agriculture and equestrian and the retrospective operations (i.e., erection of barn, hardstanding, gate, fencing and the three stables). I will issue a split decision. This is subject to the same conditions, with minor variation, to those arising in Appeal A and for the same reasons identified, to the extent relevant to Appeal C also. As with Appeal A, the equestrian use should be restricted to private recreational purposes as commercial activities could give rise to wider implications (e.g., vehicular movements) warranting specific consideration.
174. There is no need for a standard commencement condition for the operations to begin or compliance with the plans as they are already complete. As before, where works are retrospective a phased approach to approval of details is required so that the development shall be removed if there is non-compliance with the condition. This ensures enforceability.

Overall Conclusions

175. I conclude that Appeal A should succeed in part on ground (a) only, subject to conditions. Notice A shall otherwise be upheld as corrected.
176. As the metal framed building is to be removed from Notice B, this notice concerns the erection of the treehouse only for which Appeal B is withdrawn. Notice B shall be upheld as corrected.
177. Appeal C succeeds in part only and planning permission shall be granted for the existing mixed use of agriculture and equestrian along with the retrospective operations and is dismissed for the remainder of the development applied for.

Formal Decisions

Appeal A

178. It is directed that the enforcement notice be corrected by:

- deleting the allegation in paragraph 3 and substituting: "*Without planning permission, the material change of use of the land from an agricultural use to a mixed use of agriculture, private equestrian, the storage of caravans and a groundworks, paving and driveway business (with associated storage)*".
- deleting the text in paragraph 5.1 and substituting: "*Cease the mixed use of the Land Affected for agriculture, private equestrian, the storage of caravans and a groundworks, paving and driveway business (with associated storage)*."
- deleting the text in paragraph 5.2 and substituting: "*Remove from the Land Affected any equipment, materials, chattels, tools or other articles associated with the groundworks, paving and driveway business.*"
- deleting paragraphs 5.6 and 5.8
- replacing reference to "*requirements 5.1 to 5.8*" within paragraph 5.9 with "*requirements 5.1 to 5.6*"
- re-numbering paragraph 5.7 as 5.6, and paragraph 5.9 as 5.7

179. Subject to these corrections, the appeal is allowed insofar as it relates to the material change of use of the land from an agricultural use to a mixed use of agriculture and private equestrian, and planning permission is granted under s177(5) of the 1990 Act, as amended, for that specified part of the development at land to the east of Little Hatts Recreation Ground, Tickner Close, Botley, Southampton SO30 2SW, subject to the conditions set out in Annex A at the end of these Decisions.

180. The appeal is dismissed, the enforcement notice is upheld as corrected and planning permission is refused 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 from an agricultural use to a mixed use of agriculture, private equestrian, the storage of caravans and a groundworks, paving and driveway business (with associated storage).

Appeal B

181. It is directed that the enforcement notice be corrected by:

- deleting the first bullet point in paragraph 3 containing the words "*A metal framed building*"
- deleting the requirement at paragraph 5.1. and deleting reference to that requirement from paragraph 5.3
- inserting the words "*from the Land Affected*" at the end of paragraph 5.2

182. Subject to these corrections, the appeal is dismissed, and the enforcement notice is upheld.

Appeal C

183. The appeal is allowed, and planning permission is granted insofar as it relates to the retrospective material change of use of land from agricultural to a mixed use of agriculture and equestrian, erection of barn, hardstanding, gate, fencing, stable 1, stable 2 and stable 3 at land to the east of Little Hatts Recreation Ground, Tickner Close, Botley, Southampton SO30 2SW in accordance with the terms of the application Ref: F/17/81707, dated 26 October 2017 (as amended), and drawing numbers: 01466/1B Rev 3 (site location plan); 01466/2 Rev 1 (topography); 01466/3 Rev 1 (existing layout); 01466/4 Rev 3 (site development scheme); 01466/5 Rev 1 (existing barn); 01466/6 Rev 1 (existing stables); and 01466/9/ Rev 1 (proposed new stable), subject to the conditions set out at Annex B at the end of these Decisions.
184. The appeal is dismissed insofar as it relates to the proposed siting of one static caravan for residential use for Gypsy and Traveller accommodation and a dayroom.

KR Seward

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Angus Murdoch	Planning Consultant
Sonny James	Appellant
Charlotte Mitchell	Appellant's friend

FOR THE LOCAL PLANNING AUTHORITY:

Mr Giles Atkinson	of Counsel
Alexandra Webb	Senior Planning Officer
Sarah Boyd	Senior Ecologist
Dawn Heppell	Senior Business Planning Officer (Local Plan)
Phillip Wiseman	Planning Enforcement Team Leader

FOR BOTLEY PARISH COUNCIL:

Tony Charles	Planning Adviser
Dr Colin Mercer	Chairman

INTERESTED PERSONS:

Stuart Wilson	Local resident (joined remotely)
Roy Andrews	Local resident
Stephen Wildin	Local resident

DOCUMENTS submitted at the Hearing

1. Revised site location plan – drawing no. 01466/1B Rev: 3
2. Revised site development scheme plan – drawing no. 01466/4 Rev: 3
3. Agreed Statement of Common Ground
4. Strategic policy S1, Eastleigh Borough Local Plan 2016-2036
5. Policy DM6, Eastleigh Borough Local Plan 2016-2036
6. Draft witness statement of Stuart Wilson
7. Copy invoice from the Council to the appellant for financial contributions arising as planning obligations
8. Copy public consultation responses to the planning application

DOCUMENTS submitted after the Hearing (but before closure)

9. Signed Unilateral Undertaking dated 24.01.2023
10. Package Treatment Plant Specification
11. Nutrient budget for single occupancy
12. Template Habitats Regulation Assessment for a single occupant
13. Nutrient budget for 2.4 people
14. Template Habitats Regulation Assessment for 2.4 people
15. Natural England Letter of comfort on Eastleigh Nitrate Offset scheme dated 15.10.2021
16. New Forest and Nutrient Cabinet Report dated 08.12.2022
17. Eastleigh Borough Council Interim Mitigation Strategy to address recreational impacts on New Forest protected sites dated 24.03.2022
18. Solent Recreation Mitigation Strategy Cabinet Report dated 15.02.2018
19. Appellant's agreement to suggested wording of the pre-commencement condition in relation to the package treatment plant dated 25.01.2023
20. Natural England first response to consultation dated 26 January 2023 and requesting further information
21. Council letter of 15 February 2023 in response to Inspector's note of 6 February 2023 seeking clarification of (i) description of development (ii) revised drawings (iii) draft conditions
22. Council email of 23 February 2023 attaching neighbour representations and consultation responses received following re-consultation on the revised plans
23. Council letter of 2 March 2023 and appellant's agent's email of 5 March 2023 regarding legitimacy of a 'Grampian' condition for a nitrate mitigation scheme
24. Email from Natural England of 6 March 2023 seeking an explanation for two nutrient budgets and the appellant's agent's reply of 8 March 2023

25. Natural England consultation response of 30 March 2023
26. Council letter of 20 April 2023 (with attachments) responding to points raised by Natural England
27. Monitoring and maintenance programme for the package treatment plant, including manufacturer's installation and maintenance manuals
28. Email from Natural England of 2 May 2023 regarding the Interim mitigation strategy

ANNEX A: SCHEDULE OF 5 CONDITIONS

Appeal A:

1. The use hereby approved is restricted to agriculture and the keeping of horses for private recreational purposes and for no other purpose.
2. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
3. Unless within three (3) months of the date of this decision details are submitted in writing to the local planning authority for approval of a site development scheme with a timetable for its implementation, to include:
 - (a) a landscaping scheme that covers soft and hard landscaping, fencing/gates and the re-instatement of the land following the removal of the piles of spoil/waste and the tree house. The scheme shall provide timings for all works and any future maintenance;
 - (b) the treatment of any effluent arising from the use of the stables, washdown and all manure stores;
 - (c) a surface water strategy;
 - (d) a habitat reinstatement enhancement and management plan;
 - (e) any external lighting;
 - (f) identification of any external area to be utilised for the storage of materials and/or deposit of waste incidental to the authorised use;
 - (g) parking area/s.

and, unless the details are implemented as approved within the approved timescale, the use of the site for private equestrian purposes shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as the details are approved and implemented.

If details are not approved in accordance with this condition within six (6) months of the date of this decision, the use of the site for private equestrian purposes shall cease and all equipment and materials brought onto the land

for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved details specified in this condition, each component of the approved scheme shall thereafter be maintained, retained or remain in use, as approved.

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.

4. No external lighting other than that approved under Condition 3 shall be provided without the prior written permission of the local planning authority.
5. No external storage of materials, deposit of waste or parking shall take place other than in any area identified for such purposes within the scheme approved under Condition 3 without the prior written permission of the local planning authority.

ANNEX B: SCHEDULE OF 5 CONDITIONS

Appeal C:

1. The development hereby approved is restricted to agriculture and the keeping of horses for private recreational purposes and for no other purpose.
2. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
3. Notwithstanding the details in the plans hereby approved, unless within three (3) months of the date of this decision details (with a timetable for implementation and any future maintenance) are submitted in writing to the local planning authority for approval of:
 - (a) hard and soft landscaping with timings for all works and any future maintenance;
 - (b) the treatment of any effluent arising from use of the stables, washdown and all manure stores;
 - (c) a surface water strategy;
 - (d) a habitat reinstatement enhancement and management plan;
 - (e) any external lighting;
 - (f) identification of any external area to be utilised for the storage of materials and/or deposit of waste incidental to the use of the approved stables;
 - (g) parking area/s.

and, unless the details are implemented as approved within the approved timescale, the equestrian use hereby approved shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as the details are approved and implemented.

If details are not approved in accordance with this condition within six (6) months of the date of this decision, the private equestrian use shall cease, and the operational development hereby approved shall be demolished and all resultant material and debris removed from the land.

Upon implementation of the approved details specified in this condition, each component of the approved scheme shall thereafter be maintained, retained or remain in use, as approved.

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.

4. No external lighting other than that approved under Condition 3 shall be provided without the prior written permission of the local planning authority.
5. No external storage of materials, deposit of waste or parking shall take place other than in any area identified for such purposes within the details approved under Condition 3 without the prior written permission of the local planning authority.

-END-