



Appeal Decisions

Hearing Held on 23 March 2023

Site visit made on 24 March 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2023

Appeal A Ref: APP/C1760/C/21/3278981

Land at the junction of Rownhams Lane and Bracken Road, North Baddesley Hampshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr S Griggs against an enforcement notice issued by Test Valley Borough Council.
- The notice was issued on 21 June 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change in use of the land to use as a residential gypsy caravan site, including:-
 - i. The stationing of a mobile home for residential purposes and the storage of two (2) touring caravans
 - ii. The erection of a stable building
 - iii. The erection of paddock fencing
 - iv. The construction of a culvert bridge over Tanners Brook
 - v. The erection of a double gate entrance and gate posts
 - vi. The erection of fencing on the northern, southern and western boundaries
 - vii. The formation of hard surfacing
 - viii. The siting of a gazebo, four shipping containers and a portable metal cabin
 - ix. The storage of plant, machinery, motor vehicles and trailers, skip, block paving, heras fencing, scrap metal, timber, plastic waste, bags of logs, vehicle tyres and wheels.
- The requirements of the notice are to:
 - a) Permanently cease residential use of the land as a residential gypsy caravan site.
 - b) Disconnect and remove the electric and water supply from the land
 - c) Remove all caravans from the land
 - d) Remove the gazebo, four shipping containers and portable metal cabin from the land
 - e) Demolish the stable building and remove from the land all materials resulting from demolition
 - f) Remove the paddock fencing from the land
 - g) Remove all plant, machinery, moto vehicle and trailers, skip, block paving, heras fencing, scrap metal, timber, plastic waste, bags of logs, vehicles tyres and wheels from the land
 - h) Demolish the culverted bridge and remove all resulting materials from the land
 - i) Remove the double gate entrance and gate posts
 - j) Remove the fencing, including all timber boards, concrete posts and gravel boards at the northern, southern and western boundaries of the land
 - k) Remove all outdoor security lighting from the land
 - l) Remove all aggregate, gravel and road chippings which form hard surfacing (including surface finish, base and sub-base layers) from the land. Where removal of the hard surfacing takes place near a tree, it must be carried out by hand or use of a mechanical excavator fitted with a toothless ditching bucket. The excavator is only permitted to reach over the hard surface dragging the material away from the adjacent tree. The body of the excavator machine must remain at a distance

greater than twelve times the diameter of the adjacent tree trunk. There is to be no trafficking of any wheeled or tracked machine within a distance of twelve times the diameter of the trunk from any tree

- m) Remove all membrane sheeting that was laid beneath the hard surface material from the land
 - n) Lay six (6) inches of loose top soil evenly across the land but only in areas where compliance with steps l) to m) has been required
 - o) Plant to the following specification:
 - i) Plant to a stocking density of not less than 1100 trees per hectare (approximates to a 3m x 3m planting grid).
 - ii) Tree planting, which may include a maximum 20% open glade space (inclusive of any open water and or maintenance access tracks), to be evenly spaced and comprise a mix of 20% Common Alder *Alnus glutinosa*, 10% Birch *Betula pendula*, 5% English Oak *Quercus robur* 10% Field Maple *Acer campestre*, 5% Hawthorn *Crataegus monogyna* and 10% each of native Willows *Salix.alba*, *S.caprea*, *S.cineea*, *S.fragilis*, *S.viminalis*
 - iii) To be planted in species groups of 5-7 individuals as bare root 40-60cm whips, individually protected in staked, 1.2m transparent twin-wall tree shelters into weed-free scrapes of 1m diameter.
 - iv) Aftercare to be provided annually for five years after the planting is completed. This aftercare shall include replacing all failures, re-firming and adjustment to stake and tube, maintaining a 1m diameter weed free disk around each tree.
 - The periods for compliance with the requirements are:
 - i) Steps a) to n) of paragraph 5 to be completed within 6 months from the date this Notice takes effect.
 - ii) (ii) Step o), i) to iii) inclusive of paragraph 5 to be completed within 12 months from the date this Notice takes effect.
 - iii) (iii) Step o), iv) of paragraph 5 to be carried out and completed during the period of five (5) years from the date of final compliance with the requirements of Step o), i) to iii) inclusive of paragraph 5.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/C1760/W/21/3278983

Land East side of Rownhams Lane and South side of Bracken Road, North Baddesley

- 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 S Griggs against the decision of Test Valley Borough Council.
 - The application Ref 20/00124/FULLS, dated 10 January 2020, was refused by notice dated 28 June 2021.
 - The development proposed is described as the "Use of land as a single gypsy pitch for a temporary period of 3 years with new access from Bracken Road."
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Appeal A Decision

1. It is directed that the enforcement notice is corrected and varied by:

- Delete from the time for compliance at '6.1', "6 months" and replace with "12 months";
- Delete from the time for compliance at '6.2', "12 months" and replace with "18 months";
- Delete from the time for compliance at '6.3' the words "from the date of final compliance with the requirements of Step o), i) to iii) inclusive of paragraph 5"; and

- Delete requirement 'n' in its entirety.

Subject to the variations, the appeal is dismissed and the enforcement notice is upheld.

Appeal B Decision

2. The appeal is dismissed.

Preliminary Matters

3. I held the hearing on 23 March however, some matters remained outstanding which were considered by way of written representations. In particular, I considered that it was necessary to undertake a further consultation with Natural England (NE) given matters that have been raised with respect to Appeal B. The response from NE brought up matters that warranted further input from the main parties and further representations have been received. The hearing was then formally closed in writing on 11 July 2023.

Appeal A

4. At the start of the hearing, I asked for confirmation from the Council about the wording of the allegation which they confirmed relates to the material change of use of the land. The bulleted list within the allegation it was confirmed is there for clarity to explain what has been carried out as part and parcel of that material change of use, rather than the notice also alleging any operational development. The Council explained that it was considered with 'Miller-Mead¹' in mind and in particular, the manifestations of the use were described to ensure that the notice tells the recipient fairly what they have done wrong and must do to remedy it.
5. The allegation could be simplified significantly to refer to the material change of use only. However, I can understand that by referring to the physical manifestations of the use can be helpful because they are only there, subject to the consideration of the legal grounds, because of the residential use. I do not consider that there is any defect, error or misdescription that requires any correction.
6. With respect to the requirements of the notice, the appellant has pleaded ground (f) which relates to whether the requirements of the notice exceed what is necessary to achieve the purpose of the notice. However, some of what I heard in relation to that ground of appeal relates more, in my opinion to the validity of the notice. In particular the requirement at '5) o)' which is set out in the header above in its original form. As was discussed at the hearing, it is essential that an enforcement notices tells with reasonable certainty what has been done wrong and what must be done to correct that. Additionally, the time for compliance must relate to those steps.
7. Requirement '5) o)' is complex but on the whole, it is very specific in terms of detailing the required density of planting, the species required to be planted as well as specifying species groups and sizes of specimens. It was explained at the hearing by the Council that these requirements are similar to those used in forestry licences and although technical, they are precise. My main concern is whether the aftercare requirement at 'o) iv)' is also sufficiently understandable.

¹ *Miller Mead v MHLG* [1963] 1 All ER 459

It requires aftercare annually for 5 years, a period which is tied in with the time for compliance at paragraph 6.3. I am also confident that the terms “replacing all failures, re-firming and adjustment to stake and tube, maintaining a 1m diameter weed free disk around each tree” are sufficiently easy to understand particularly by a professional experienced in forestry. Furthermore, if in future non-compliance with these terms is alleged, looking at the requirements, the steps could be adequately explained so that a case, on the criminal standard of proof, could be made.

8. My remaining concern however is that the time for compliance with ‘o)’ ‘iv)’ in effect is not precise because it implies a variable period depending upon when the replanting requirements of ‘o)’ ‘i)’ to ‘iii)’ are finally complied with. This is unsuitable as it is unfixed and so should be corrected to simply require compliance within 5 years. In effect, that is what is intended and so I consider this correction can be undertaken without causing injustice to the Council or the appellant under powers given to me by s176(a) of the Act.

Appeal A ground (a) and Appeal B

9. It was confirmed when I opened the hearing, that the appeal on ground (a) in Appeal A has been formally withdrawn. There is however an appeal against the refusal of planning permission, Appeal B, but that does differ from what would have been the deemed application for Appeal A. The most notable difference between the matters alleged on the enforcement notice and the refused planning application is the extent of the appeal site. Appeal A relates to all of the land within the appellant’s ownership whereas the application site relevant in Appeal B relates just to the land to the west of the stream.
10. At the hearing I accepted additional plans, the Council having had an opportunity to consider them. Drawing ‘3C – proposed site plan’ replaces the original plan and confirms that a connection to the foul sewer is now proposed. Furthermore, a plan ‘Drawing 5 - Visibility splays plan’ confirms the length of splays at the entrance to the site onto Bracken Road. The plans do not change what is proposed to the extent that anyone would be deprived of the need for re-consultation.

Appeal A Ground (b)

11. To succeed on ground (b), it is incumbent on the appellant to demonstrate that the matters which are stated in the allegation have not occurred, as a matter of fact. There is no dispute that the use as alleged has taken place. The dispute relates to whether some of the land included within the red-line on the notice plan is also in that use or whether part of the site is within a separate planning unit and being used for other primary purposes.
12. The planning unit is a concept that has emerged not through legislation but through convention and case law as the most appropriate physical area against which to assess the materiality of changes of use. The appellant has referred to the leading case relating to the consideration of the appropriate planning unit which is ‘Burdle’². The starting point is usually the unit of occupation unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct as well as used for different, unrelated purposes.

² Burdle & Williams v SSE & New Forest DC [1972] 1 WLR 1207

13. The appellant considers that the land on the eastern part of the site was used for equestrian purposes as well as in relation to continued forestry. Whilst there is some separation of an area to the east by fencing including, at the time of my visit, a metal moveable mesh site-fence, the whole of the land can be easily accessed upon entering via the main driveway. The fencing runs along the eastern side of the driveway. The land to the east of the stream is more distinct but even then, there is not complete separation with the bridge across from one side to the other. The bridge with the culvert has been subject to action by the Environment Agency as well as being addressed by the requirements of the notice. There is no dispute that the appellant was responsible for this being constructed. As a consequence, it is very easy to walk around all of the area demarcated by the red-line on the notice with the biggest incumbrance being the boggy nature of the ground on the day I visited.
14. Furthermore, even if the equestrian use was taking place prior to the commencement of the residential occupation of the broader site, it was not a longstanding use. I heard at the hearing that there was only 3 or 4 months at most between the erection of fencing to keep horses in and residential use commencing. Shortly after the appellant took ownership preparations were taking place for the general use of the site with the Council's dated photographs from March 2019 showing the laying of loose surfacing and piles of logged trees with no obvious sign of fencing or equestrian use nor at that time the residential use. By the time of Council site visits in 22 October 2019 some fencing around the southern boundary and some fence posts bisecting the site had been installed. There are no photographs of any equestrian or residential activity at this time although a range of building materials and containers were on site. The temporary stop notice issued on 25 October alleged a storage use and physical developments consistent with those photographs. Photographs from 25 October 2019 show a similar situation albeit with some further progress with the developments.
15. Council dated photographs from 5 August 2020 show fencing and stables are visible through the new entrance and horses on site as well as some separation by fencing. There is no dispute that on 18 September 2020 the mobile home was brought to site and the Council received confirmation that it was being occupied. This is consistent with photographs which are undated but for which there is no dispute were taken on 18 January 2021 and which show the mobile home and stable building close to one another on site with limited separation with a post and rail fence.
16. There is nothing before me or what I heard at the hearing to indicate that the equestrian use is an additional primary use of the land separate from the appellant's occupation. Furthermore, it does not, from the evidence presented, appear to have been commenced very much before the residential occupation of the site, or indeed before preparations were taking place for occupation of the mobile home. From the evidence before me and given the close relationship of the land to the land with the caravan on it, any clear differentiation has been blurred. As a matter of fact and degree, I consider any equestrian use to be ancillary to the residential occupation, both now and when the notice was issued.
17. There is no need to narrow down the site area as shown on the plan that is attached to the notice. Furthermore, I do not consider that a further primary

use of that site has occurred that requires a change to alleged material change of use.

18. The appeal on ground (b) fails.

Appeal A Ground (c)

19. The onus is upon the appellant to demonstrate that the matters as alleged do not constitute a breach of planning control. It is accepted by the appellant that there has been a material change in the use of the land. The Council has confirmed that the physical elements that have been referred to on the notice are for clarification rather than being part of the allegation and if necessary I can return to consider these matters under the appeal on ground (f). That relates to whether the requirements go beyond what is necessary to remedy the breach.

20. Whether or not the stable and fence are a breach of planning control in themselves as operational development, if looked at separately from the material change of use, is not appropriate to consider under this ground of appeal. As I have said above in relation to the appeal under ground (b), any prior use for equestrian purposes took place not very long before occupation of the land and whilst it was being prepared for residential use. It was a matter of a few months when the fencing was erected and the stable put on site. On the basis of the evidence there is no clear distinction of uses nor, in my view, is it probable that the equestrian use was a definitive separate use. On the balance of probabilities this appears to have been a preliminary stage to the occupation of the site in the manner alleged.

21. The appeal on ground (c) fails.

Appeal B – the appeal on planning merits

Main Issues

22. The site is close to a settlement which is defined within the Test Valley Borough Revised Local Plan Development Plan Document, adopted January 2016 (RLP) as a key service centre and is accessible to facilities and services. The occupants are recognised as gypsies and the site helps meet an identified need, a matter which I return to below and the site is of sufficient size to accommodate everything that is required. The requirements of RLP Policy COM13 are therefore complied with and there is no dispute about this between the main parties.

23. At the hearing and in the Statement of Common Ground, the Council has also confirmed that with the additional details provided on the additional plan showing visibility splays onto Bracken Road would make that safe. Furthermore, it was agreed that the existing access onto Rownhams Lane could be closed by imposition of a planning condition. As such the Council no longer considers that the development would cause harm to highway safety and I agree having considered these matters on site. In this respect to the development does not conflict with DPD Policy T1.

24. The main issues are therefore:

- 1) The implications of the development for biodiversity within the site;

- 2) The effect of the development, individually or in combination with other developments, on nutrient outputs and consequently upon the integrity of the Solent and Southampton Water European Designated Site;
- 3) The effect of the development, individually or in combination with other developments, on biodiversity in the area including upon the New Forest Special Protection Area (SPA) and Area of Conservation (SAC);
- 4) Personal circumstances, Gypsy status and best interests of children in occupation; and
- 5) The level of need for gypsy accommodation in the area (how does this affect the weight I give this site in terms of the provision for any unmet need).

1) *Reasons – biodiversity within the site*

25. The site is within the Tanners Brook Site of Importance for Nature Conservation (SINC) which is a priority lowland mixed deciduous woodland habitat. These sites provide an important role in within ecological networks through the area. Prior to the use commencing, the site had been part of that woodland and heathland with no residential development upon it. The appellant also says that part of it was used for equestrian purposes although that was for a fairly short period prior to the residential use taking place, as referred to above.
26. The appellant submitted with the planning application, an Ecological Assessment but that was undertaken after the residential use commenced. That report relates primarily to the application site which is the area of land to the west of Tanners Brook (the enforcement notice covers all of the appellant's land ownership, including the land to the east of the brook). The report acknowledges that the works that have taken place include the siting of the caravan, other buildings, the creation of a hardstanding and clearing of the woodland. At the hearing, we discussed the different ways in which some of the aerial imagery can be interpreted in order to assess what the baseline situation was prior to the commencement of the unauthorised use. However, by using mapping data, the appellant's report explains that the site would have previously been dominated by deciduous woodland and bracken-dominated habitat before being cleared.
27. There are power lines through the site which have affected how the trees have been allowed to grow. Attention in particular was drawn by the appellant to the need for felling or coppicing in order to keep the power lines clear of vegetation. However, the report acknowledges that there has been, as a direct result of the development, degradation of habitats and species of importance to biodiversity. The comparison aerial photographs submitted by the appellant and evidence in the Ecological Assessment indicate that at least 4 mature oaks and 2 birch trees as well as hazel, holly and willow have been removed. A substantial amount of under-growth has also been cleared. There was a substantial amount of greenery on the ground surface shown on the earlier aerial image. The Council's well-documented photographs of the site since the appellant first took ownership in 2019 are compelling evidence to show the degree of clearance of the site and surface changes since March of that year.
28. The appellant's own evidence indicates that these changes to the condition of the site have had significant negative impacts. The site appears to have

previously supported habitats for statutory protected species such as roosting bats, dormice, reptiles, badgers and nesting birds. What remains are degraded and largely removed habitats, although there is a hedgerow intact on the northern boundary as well as some vegetation along the western and southern boundaries. Taking all of the evidence on board including the appellant's own background reports, the site has been substantially cleared and habitats have been lost.

29. At the hearing, a debate took place between all parties including some of the interested third parties in attendance, about the realities of securing mitigation of this harm to habitats via the enforcement notice requirements or alternatively through a planning condition, if I were to grant planning permission. Furthermore, accompanying the application along with the Ecological Assessment, a Habitat Creation and Management Plan (HCMP) was also prepared for the appellant by the same professionals. I was not able to ask questions of the appellant's experts who prepared the Ecological Assessment or the HCMP because they were not present which reduces the weight that I can attach to the findings.
30. If the use of the site were allowed to remain, it would be essential that the remaining habitats are protected to prevent further degradation and that could be achieved by protecting tree root protection areas and other buffers to hedges. Impermeable surfacing on some areas could be provided so that potential contaminants do not leach into the ground water. It would require a substantial amount of control and possibly monitoring to ensure the effectiveness of these measures.
31. Planting could take place in various locations across the site. The HCMP includes a new habitat creation plan although not a detailed planting plan to go with it. The reed-bed which would have provided some opportunities, has now been removed from the proposal due to the proposed connection to mains drainage but it is not clear whether something similar could be incorporated. No proposals are shown to the east of the stream.
32. There are some clear opportunities in-line with the principles of the HCMP to improve the nature conservation attributes of the site from how it is now. For example further habitats could be provided for species such as badgers, bats, nesting birds, dormice, reptiles as well as the provision of grassland, wildflower meadows and woodland. However, the Ecological Assessment and HCMP provide little comfort that even if the detailed improvements and management recommendations are strictly followed, at best the suggestion is that if the biodiversity mitigation is followed, it will go "some way" to improving what was once a site locally important to nature conservation. Even if the developed area were to be restricted within the site the amount of space covered by trees and ground vegetation has been substantially reduced from how it was before the unauthorised development took place.
33. The area to the east of the stream could potentially be incorporated within the mitigation strategy but even so, it would be very difficult to replace what was on site previously whilst the physical structures and surfacing also remain on the appeal site. Ongoing use of the site with the activity associated with the residential use and ancillary activities would also limit the effectiveness of habitat re-establishment and require very careful management of the measures that would protect features from further degradation. It is not clear from the

submitted evidence in any measurable way, even if the rigorous requirements recommend were imposed, that it would be a possible to return the site to ecological qualities equivalent to what it previously possessed.

34. Consequently, it is unlikely that the biodiversity within the site and the effects upon the SINC could be mitigated for within the scope of the planning permission being sought, particularly as the appellant is only seeking a 3 year temporary permission. In order for the site to have the best chance of regenerating, for the ground conditions necessary for habitats to re-establish, it would be preferable for the residential use to cease and the physical manifestations of the use to be removed to enable the managed re-establishment of vegetation.
35. In relation to this main issue, the development has caused significant harm to biodiversity interests on the site. As such, this does not comply with Policy E5 of the RLP which seeks amongst other things, to prevent loss, deterioration or harm to habitats or species of importance. The policy explicitly confirms that the habitats and species of importance to biodiversity include amongst others SINC. This would not therefore comply with the advice in the National Planning Policy Framework (the Framework) which states that if significant harm to biodiversity resulting from a development cannot be avoided, then planning permission should be refused.

2) *Reasons – nutrient outputs*

36. The development has involved residential use of the land. Consequently, that leads to a need to discharge waste and wastewater. It was originally proposed to do so by way of a private package treatment plant with a reed-bed although there is now an intention to connect to main drainage. That would therefore take the waste and wastewater to a treatment works. However, that would still lead to increased nitrogen pollution of the water environment within 5.6km of the Solent and Southampton Water Special Protection Area (SPA), a European Protected Site. That river basin catchment is in unfavourable conservation status and suffers from poor water quality due to nutrient enrichment from elevated nitrogen and phosphorus levels.
37. The additional population that would result from this development would make a small but nevertheless significant increase in nutrient levels in a water catchment that is already subject to unfavourable conservation status. In relation to the main issue, the development harms the integrity of the Solent and Southampton Water SPA, a European Protected Site. Policy E5 states that development likely to result in a significant effect, either alone or in combination, on an international or European nature conservation designation will need to satisfy the requirements of the Habitat Regulations which would be a separate part of this decision and I return to this below.

3) *Reasons – biodiversity in the wider area*

38. The site is within the 13.8km buffer zone of the New Forest SPA and Special Area of Conservation (SAC). This has been designated due to the presence of certain bird species such as the nightjar, Dartford warbler, woodlark, hen harrier, honey buzzard, wood warbler and hobby. Increases in levels of recreation including that from residential development within the buffer zone can add to disturbance of habitats both individually and in combination with other developments. This includes trampling by additional visitors potentially

with pets, using the area. There is no dispute between the parties that these impacts would be harmful to biodiversity interests.

39. In relation to this main issue, the development as it stands has a harmful effect individually and in combination with other developments, upon on biodiversity in the area in including upon the New Forest SPA and SAC. Again, I will address this below.

4) *Status and personal circumstances*

40. There is no dispute as confirmed within an agreed Statement of Common Ground prior to the hearing and verbally at the hearing, that the appellant fulfils the definition of a gypsy and traveller within the Planning Policy for Traveller Sites. As I refer above in setting out the main issues, the Council accepts that he meets the requirements of DPD policy COM13. The occupants of the site would be made homeless upon compliance with the notice if it were upheld and if I do not grant planning permission.
41. These circumstances therefore lead to a potential interference with Article 8 of the Human Rights Act 1998 (HRA) which states that everyone has a right to respect for private and family life, their home and correspondence. This is however a qualified right and interference may be justified in the public interest with the concept of proportionality being crucial. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. Furthermore, in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.
42. The appellant lives on the site with his 17-year-old son who works with him. The appellant's former partner lives nearby in North Baddesley with their 12-year-old child. Dismissal of the appeal would have no implications for the older child's education particularly given my conclusions on the compliance period below with respect to the appeal under ground (g). However, the appellant and their son would be made homeless if planning permission is refused and the notice upheld. Although they both travel for work for much of the year, they also work on site including seasonally selling Christmas trees from the site and so their occupation contributes to their income. These factors are benefits for the appellant and his eldest child. There would be implications for shared parenting responsibilities of the younger child if Mr Griggs returned to the roadside. That younger child's main place of residence and education would not be affected. However, there are clear advantages to having an additional parent and elder sibling nearby on a settled base from where they can maintain regular contact when not travelling and support the needs of that younger child. The appellant although having a cultural aversion to bricks and mortar does wish to be more settled for the stability of the family unit in this way.
43. There would be benefits to the appellant and his family if the appeal were to be allowed and for him to remain in occupation for the temporary period and it

would be in the best interests of the children. Given these circumstances I consider that they would be of moderate weight in favour of the development.

5) Level of need

44. The Council's The Gypsy and Traveller Accommodation Assessment, 2016 (GTAA) sets out that there is a need for three pitches for households that meet the planning definition although the Council consider that this has since risen to 6. The GTAA reports that a further 11 pitches are needed where it is unknown whether the families do or do not meet the definition and at the hearing it was confirmed that this has remained the case even another site has been approved. It was therefore agreed between the main parties that there is an accepted need for around 15 pitches and that these are not planned for. I was told that the emerging Local Plan would help to address this. It is not at all clear when any sites would come to fruition particularly as that plan is only at pre-submission stage and it is unknown what form it will take when adopted.
45. The Council cannot demonstrate a 5-year supply of sites for Gypsy and Travellers. This matter has significant weight in favour of the development as required by the Planning Policy for Traveller Sites at paragraph 27.

Other Considerations - Planning Obligations and Appropriate Assessment

46. Given my conclusions on main issues 2 and 3, if I were to allow the appeal, I would be required, as the competent authority, to undertake an appropriate assessment of the implications of the project for the European sites in view of their conservation objectives. The purpose of that assessment would be to ascertain whether or not the proposal would adversely affect the integrity of the sites as given the significant effects upon the Solent and Southampton Water SPA as well as the New Forest which is designated as a SPA and SAC.
47. A unilateral planning obligation has been prepared by the appellant. This seeks to mitigate for the harm caused to the European sites. Payments are proposed towards the Council's interim strategy for securing nutrient credits. Those credits are planned to be used to pay for an old pig farm to be cleaned-up and returned to a woodland providing an improvement in ground-water quality. If effective, those contributions would only go as far as mitigating harm caused by the development. Similarly, the payments towards the New Forest SPA would mitigate the harm caused in those respects. As such, the planning obligation would off-set the harms that will be caused but would not provide any improvement to those off-site protected areas. As such, these matters have a neutral effect upon the overall planning balance.
48. The loss of some trees and landscaping has opened up the site. The entrance with Bracken Road has been fenced off with solid, stark fencing as has the Rownhams Lane frontage. Along with conifer planting along these frontages the site has a sub-urban appearance but that is not out of keeping with the nearby estates of houses in what is a sub-urban area. Furthermore, these effects could be suitably softened by further landscaping secured through a planning condition. The lack of harm in those respects as well as by overcoming previous highway objections, has a neutral effect on the overall planning balance.

The planning balance

49. Whilst off-site biodiversity can be mitigated for satisfactorily through the

planning obligation, having a neutral effect, the development even if retained only for 3 years has caused and would continue to cause significant harm to biodiversity interests which does not therefore comply with RLP Policy E5. I do not consider that it would be possible to seek a scheme of mitigation through a planning condition to overcome this harm over the course of a 3-year temporary planning permission.

50. The site is in a location close to a settlement and the appellant fulfils the necessary criteria and so the development complies with RLP policy COM13. The Council also cannot demonstrate a 5-year supply of sites for Gypsy and Travellers. In addition, there are benefits to the family of the appellant's children as he would be close by.
51. Due to the site-specific issues relating to the first main issue, the development does not comply with site specific concerns and therefore RLP Policy E5. As such, the development plan when read as a whole is not complied with. The Framework makes it clear that planning permission should not be given where harm to biodiversity cannot be avoided and this also weighs considerably against the development. The alternative of upholding the enforcement notice would provide more favourable conditions for biodiversity and therefore weighs heavily against allowing this appeal. The moderate weight I give with respect to the HRA, PSED and the best interests of the child, personal circumstances of the family and the significant degree of weight due to the provision of a gypsy site, are insufficient to outweigh that conflict.
52. The appeal fails.

Appeal A Ground (f)

53. This ground of appeal is that the steps required exceed what is necessary to achieve the purpose of the notice. The Council confirmed that the notice alleges a material change of use with physical manifestations being specified to aid clarity about what needs to be removed in order attain the purpose of the notice. That purpose is to remedy the breach of planning control.
54. At the outset, it has been acknowledged within Appeal B and the evidence of the appellant's own ecologists that harm has been caused due to the work that has been undertaken on the site. The appellant's expert ecological reports that I have referred to above make it clear that due to the heavy alteration of the site within the recent past it is very difficult to establish which habitats were present prior to any works. The appellant is correct in stating that an enforcement notice should not require an improvement to the condition of the site, however the onus is upon them and not the Council to show what condition the land was in prior to the breach taking place.
55. Since the appellant took ownership in 2019, the record of events as shown on photographs from site visits by Council officers, indicates that work was undertaken quickly. The Council had to use temporary stop notices and issue a Tree Preservation Order in order to bring about a degree of control, slowing-up what had been a rapid degradation of the site. From what I heard at the hearing and from the submitted documents, as a matter of fact and degree I cannot distinguish that any of the work was intended solely for other uses such as pop-up Christmas tree sales or just to fence the land for land ownership reasons. On the balance of probabilities each of the physical manifestations of the use as alleged were undertaken for ancillary purposes to that use. Given

the purpose of the notice is to remedy the breach of planning control, those things need to be undone.

56. Requirement 'l)' attempts to impose a degree of control over how the materials forming the hard surfacing are removed. In relying upon use of terms such as "near a tree" it appears imprecise. However, the term within "12 times the diameter the trunk" provides precision for root protection reasons, making it sufficiently clear and precise, qualifying the term 'near'. This would need careful consideration by measuring the trunk for each tree in order to assess whether it has been complied with but I consider this could be achieved.
57. The Council accepted at the hearing that requirement 'n)' goes too far in requiring the laying of loose top-soil because there was no evidence that top-soil had been removed. I will correct that by deleting that requirement.
58. Regarding requirement 'o)' which comes in 4 sub-steps, as I set-out above, I consider that it is sufficiently precise in its terms. The appellant also considers that it goes too far in what it is trying to achieve and particularly that after-care requirements in effect would achieve an improvement beyond the condition of the site prior to the breach. However, I again return to the onus of proof in these matters being upon the appellant and the evidence that has been presented, shows that the substantial clearing of the site has taken place and significant harm has been caused to biodiversity. Whilst at the hearing we also debated that at times enforcement notices are blunt instruments, it is in the public interest to ensure that those biodiversity interests on the site are given the very best chance of re-establishing. In my judgement, the requirements would at least provide a reasonable chance for trees and other vegetation to become re-established on the site. Even if initial planting is at a higher density than was previously the case, and that is not clearly the case from the appellant's evidence, some planting may fail to establish and planting at a higher density will assist the recovery of habitats. Where there is doubt about these matters, I consider a precautionary approach should be applied and that the benefit of that doubt should be in favour of the re-establishment of a favourable environment on the site for biodiversity recovery.
59. I will therefore allow the ground (f) appeal in part to remove requirement 'n)' for reasons I explain above.
60. The appeal on ground (f) is therefore allowed in part.

Appeal A Ground (g)

61. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The notice has different periods for different requirements. In simple terms, the use would need to cease (requirement 'a)') and the physical manifestations of the use removed [requirements 'b)' to 'm)' with 'n)' being deleted] within 6 months of the notice coming into effect. Requirements 'o)' 'i)' to 'iii)' which relate to new planting are required to be completed within 12 months and the final requirement for aftercare, as I have already corrected it, would apply for 5 years.
62. The appellant requests 12 months for the use to cease as well as other requirements 'b)' to 'm)'. With respect to the planning merits considered in Appeal B, it is clear the complying with RLP policy COM13, the Council cannot demonstrate a 5-year supply of sites for Gypsy and Travellers and I have given

further weight to the benefits for the appellant's children. However, I refused planning permission as these factors did not outweigh the non-compliance overall with the development plan.

63. Clearly the appellant will have difficulty in finding another site given the lack of supply and 6 months is a very short period in which to do so. For this reason, there is a strong justification to extend the period. Furthermore, whilst ceasing the residential use of the site and removal of the physical items that are part and parcel of it, will eventually have benefits for restoring the site, it seems likely that some progress could be made towards the other requirements if the appellant can remain for 12 months as that will allow more time to do so. In particular, some planting may be possible to undertake before the residential use ceases. It is reasonable however to allow longer than 12 months to complete the planting as some cannot happen until the residential use has ceased.
64. In order to strike a more reasonable and proportionate balance, the period for compliance with requirements 'a)' to 'm)' should be 12 months, the period for requirements 'o)' 'i)' to 'iii)' should be 18 months and the remainder of 'o)' should be 5 years.
65. The appeal on ground (g) is allowed.

Conclusion

66. For the reasons given above, I conclude that appeal B should not succeed and planning permission is refused.
67. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeals on grounds (f) and (g) succeed to that extent.

Andy Harwood

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Jupp Planning Consultant

Mr Griggs Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Goodman Planning Officer

Mr Parker Planning Officer

Mrs Avery Ecology Officer

Mr Gogan Tree Officer

Mr Crutchfield Landscape Officer (joined via video link)

INTERESTED PARTIES:

Cllr Mr Dowden Test Valley Borough Council & Hampshire County Council

Cllr Mrs Dowden Test Valley Borough Council

Cllr Warnes Test Valley Borough Council

Cllr Burley Test Valley Borough Council

DOCUMENTS

Appeal notification letter for Appeal B

Background documents concerning the SPAs and SACs

Agreed Statement of Common Ground

Response from the Hampshire County Senior Ecologist 18 February 2020

Response from Test Valley Ecologist 2 February 2021

A list of suggested conditions

PLANS

'Drawing 3C – proposed site plan'

'Drawing 5 - Visibility splays plan'