



Appeal Decisions

Hearing held on 18 April & 24 May 2023

Site visits made on 17 April & 24 May 2023

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 8 December 2023

Appeals A & B Refs: APP/C1760/C/22/3296158 & 3296159

Barn Springs, Clatford Lodge, Anna Valley, Andover, Hampshire SP11 7DL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr John Nugent & Mrs Jayne Hassall respectively against an enforcement notice issued by Test Valley Borough Council.
- The notice was issued on 8 March 2022.
- The breach of planning control as alleged in the notice is: Without planning permission,
 - (a) the making of a material change in use of land to a residential use and,
 - (b) the carrying out of associated building operations involving:-
 - (i) The alteration and extension of a building to form a dwellinghouse,
 - (ii) The erection of seven outbuildings,
 - (iii) The erection of fences and gates,
 - (iv) The erection of a retaining wall,
 - (v) The installation of external cladding,
 - (vi) The formation of hard surfacing,
 - (vii) The installation of timber sleepers, [and]
 - (viii) The installation of a biodigester.
- The requirements of the notice are to:
 1. Permanently cease the use of the land outlined in red on the attached plan for residential purposes.
 2. Disconnect and permanently remove all utility services, other than the water supply, from the building annotated with a '1' and '1A' on the attached plan.
 3. Demolish the extended part of the building, annotated with a '1A' on the attached plan.
 4. Permanently remove the kitchen and bathroom facilities from the building annotated with a '1' on the attached plan.
 5. Permanently remove all electrical fittings, internal stud walls, plasterboard, ceiling board and hard flooring from the building, annotated with a '1' on the attached plan.
 6. Permanently remove all remaining residential items and material from the building, annotated with a '1' on the attached plan.
 7. Permanently remove all doors and windows from the building, annotated with a '1' on the attached plan.
 8. Re-instate the two former stable doorways in the southern elevation, and the former double doorway in the eastern elevation, and then brick up the doorway in the western elevation, of the building annotated with a '1' on the attached plan.
 9. Permanently remove all external cladding from the building, annotated with a '1' on the attached plan.
 10. Demolish the seven (7) outbuildings, annotated with a '2', '3', '4', '5', '6', '7' & '11' on the attached plan.
 11. Permanently remove the hard surfacing material, as annotated in a blue hatch pattern, on the attached plan.
 12. Permanently remove the Biodigester unit, as annotated with a 'BD' on the attached plan.
 13. Permanently remove the timber sleepers and brick retaining walls, as annotated with a black zig-zag pattern, on the attached plan.

14. Permanently remove the entire fence, entrance gate and posts, along with the post box, as annotated with a black line leading between points 'X' and 'Y' on the attached plan.
 15. Permanently remove the three metal shipping containers, as annotated with a '8', '9' and '10', on the attached plan.
 16. Permanently remove the touring caravan from the land.
 17. Permanently remove all remaining outside residential paraphernalia from the land, including (but not limited to) tables and chairs, the rotary washing line and pot plants.
 18. Permanently remove from the land all resultant materials and waste associated with the completion of requirements from 1-17 above.
- The periods for compliance with the requirements are: Steps 1 & 2 – Six (6) months, and Steps 3-18 – Nine (9) months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f), and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decisions

1. It is directed that the enforcement notice is varied by changing and reducing its requirements to the following:
 1. Permanently cease the use of the land outlined in red on the attached plan for residential purposes.
 2. Disconnect and permanently remove all utility services, other than the water supply and electricity, from the building annotated with a '1' on the attached plan.
 3. Demolish the extended part of the building, annotated with a '1A' on the attached plan.
 4. Permanently remove the kitchen and bathroom facilities from the building annotated with a '1' on the attached plan.
 5. Permanently remove all internal stud walls, plasterboard, ceiling board and hard flooring from the building, annotated with a '1' on the attached plan.
 6. Permanently remove the existing doors and windows from the building (apart from the most easterly window in the building's southern elevation), annotated with a '1' on the attached plan.
 7. Re-instate the two former stable doorways in the southern elevation, and then brick up the doorway in the western elevation, of the building annotated with a '1' on the attached plan.
 8. Demolish the outbuilding annotated with a '3' on the attached plan.
 9. Permanently remove the post box fastened to the gatepost at the site entrance.
 10. Permanently remove the three metal shipping containers, as annotated with a '8', '9' and '10', on the attached plan.
 11. Permanently remove the touring caravan from the land.
 12. Permanently remove tables and chairs, the rotary washing line and pot plants from the land.
 13. Permanently remove from the land all resultant materials and waste associated with the completion of requirements from 1-12 above.

The 'Time for Compliance' shall be corrected as follows: 'Steps 1 & 2 of paragraph 5 to be completed within Six (6) months from the date of this decision; and Steps 3 to 13 of paragraph 5 to be completed within Nine (9) months from the date of this decision.'

The 'Reasons for Issuing this Notice' shall be altered as follows: 'It appears to the Council that the above breach of planning control has occurred within the last ten (10) years.'

2. Subject to these variations and corrections, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Applications for costs

3. An application for costs was made in respect of both appeals by the Council against the appellants. This application will be the subject of a separate decision shortly.

Preliminary Matters – The Notice

4. The requirements of the notice are quite specific in relation to the building operations alleged by the Council to be part and parcel of the unauthorised residential development. Consequently, if I find that some of them are not associated with this use or could reasonably be retained on the land if it was used, for instance, as a non-residential small holding, then the notice could be altered to accommodate this without prejudice to either party. I assess this in detail under combined grounds of appeal (a) and (f) below. In the light of my conclusions, the requirements of the notice are varied as set out in the Decisions above.
5. In Section 4 of the notice (the Reasons for Issuing it) it is stated that it appears to the Council that the breach has occurred within the last 4 years, although it was agreed by both parties that this should say 10 years, because Section 3 (a) of the notice alleges the making of a material change in use of land to a residential use. Because both parties agreed this at the Hearing, no prejudice would be caused by my altering the notice accordingly.
6. Solely in relation to Requirement 17, it was agreed between the parties that the middle part of this sentence is vague and unspecific and that the Requirement should be altered simply to read: 'Permanently remove tables and chairs, the rotary washing line and pot plants.' This is reflected in new Requirement 12 above.

Reasons

Ground (b)

7. Ground (b) is that the matters listed in the notice have not occurred as a matter of fact.
8. The appellants do not set out any case under this ground and start by addressing grounds (c) and (d) first in their appeal statement¹, which is what I shall do because the arguments relating to some of the operational

¹ The (latest) Roman Summer Appeal Statement dated March 2023

development are not concerned with whether that development exists on the ground (which is undisputed) but rather whether planning permission is needed for it and/or when it was installed.

Ground (c)

9. Ground (c) is that those matters (if they occurred) do not constitute a breach of planning control.
10. The appellants argue that their land has an established mixed use for residential use including overnight stays in Building 1 (the converted former stable building that is currently the main part of the unauthorised dwelling), recreational use by their wider family and friends, general storage of a range of domestic and business-related goods, materials and machinery both inside the building and elsewhere on their land, and the keeping of horses and related horse boxes and trailers.
11. Whether the 'eastern barn' (the barn that lies adjacent to the eastern boundary of the appellants' land but outside the land attacked by the enforcement notice) or any other part of the appellants' land that lies outside of the red line covered by the notice has any or all of these uses is irrelevant to consideration of this appeal.
12. In terms of Building 1, the fact that there has been the odd night, nights or weekend stay by one or other or both appellants and members of their family over the years certainly does not amount to a lawful residential use of this building or the land within the red line of the plan attached to the notice. Such occasional stays, even if they were every weekend over a certain period of time, do not amount to a material change of use because if the Council had served a notice regarding such at the time of any such occasional stays, it would have been unsuccessful in establishing that a residential use had taken place. In any case, such stays essentially constituted 'camping out' in the stable building, notwithstanding that it clearly had a toilet and electricity as explained below.
13. From the appellants' statutory declarations, and those of Mrs Hassall's sons, it is very unclear how many times exactly Building 1 was slept in overnight, when exactly (which years, which period of years) and by whom. The burden of proof lies with the appellants and because the information provided is vague and unclear, I determine that a lawful residential use of the land has not been conclusively made out. To establish such a lawful residential use there would need to be evidence that the building has been continuously occupied as residential accommodation for a period of four years without any substantial breaks. That has not been done, which is not surprising because the stable building did not contain all the normal facilities of a dwelling.
14. Equally, I am unconvinced that a lawful storage use has been established in the building or on the land attacked by the notice, even as part of a mixed use combined with its use as an agricultural paddock or smallholding. Mrs Hassall's sons claim to have stored building materials, tools and machinery associated with their businesses on the site continuously for 11 years but it is unclear exactly what material, and how much, was stored, and for how long. The brothers also had a boat that was stored on the site for many years and Mr Harvey-Smith had an old car that he sometimes worked on there, but neither

can be said to constitute a definitive storage use amounting to a change of use of the land or Building 1.

15. The Council's evidence, many of the neighbours' recollections and even the photographic evidence supplied by the appellants themselves appear to show that the land was predominantly overgrown and unkempt between 1998 and 2017 and indeed was subject to trespass not only by neighbours but by local youths who used it for various nefarious purposes and left much litter and rubbish on it. So, whilst the sons undoubtedly stored materials and equipment associated with their jobs on the land from time to time, such storage only appears to have taken place on a small part of the site and it is unclear how much material was stored and when during the last 11 years.
16. Mrs Hassall and her sons also say that they used Building 1 to store various household items and personal possessions. That may well be so, but that does not in itself confirm a mixed use of the land. And again, it is unclear what was stored there, for how long, and whether such storage was continuous or intermittent. Taking account of the various evidence provided by the main parties and the neighbours, it appears that the land attacked by the notice, and indeed the main rectangular area of land to the south of Springvale owned by Mrs Hassall, was a paddock or piece of agricultural land that had in recent years (1998 onwards when she moved to the Wirral) been overgrown and largely unused until the appellants returned from the Wirral in 2018 and started clearing and restoring it in order to establish their small holding. It is also clear from the sons' evidence that the shipping containers were stationed on the southern part of the site in 2017/18; that is borne out by the Council's aerial photos².
17. I accept that Mrs Hassall kept horses, chickens and grew vegetables on her land prior to moving to the Wirral in 1998 and accept that it can lawfully be used for such purposes now, in other words as a small holding or for purposes akin to such. Indeed, Building 1 was formerly a building containing three stables. But for the above reasons I do not accept that the land has a lawful residential or storage use, notwithstanding there has been a toilet and electricity in it for well over 10 years.
18. This conclusion has potential implications for the various operational development attacked by the notice because, if such development is part of the unauthorised use of the site, the implication is that it should be removed, as the notice requires. If it isn't part of the residential development in that it could reasonably be required as part and parcel of a non-residential smallholding, then there may be grounds for retaining it, or at least some of it.
19. Specifically in relation to ground (c), the appellants contend that most of the fencing, entrance gate and other means of enclosure (including the timber sleepers) are permitted development. However, the fence adjacent to Springvale is clearly above 2m high and requires permission since it does not benefit from permitted development under Part 2 of GDPO³. The sleepers are obviously just retaining the lawn to the west of the unauthorised dwelling and are not a means of enclosure as such. Ordinarily the gate (2m high) would be permitted development but since it is part and parcel of the residential use, its

² LPA Statement Appendix AP15

³ The Town and Country Planning (General Permitted Development) (England) Order 2015

removal can legitimately be required under the *Murfitt*⁴ and *Somak Travel*⁵ judgements. There is no agricultural business taking place at the site and so such development does not fall under permitted development under Part 6 of the GDPO.

20. In regard to the 7 outbuildings attacked by Requirement 10 of the notice, the appellants concede that planning permission is required for them (in paragraph 8.6 of their appeal statement). Anyway, they are mostly substantial structures, have not been moved since they were installed and are clearly intended to be permanent, and therefore undoubtedly require planning permission, with the possible exception of the polytunnel.
21. I consider the operational development in grounds (d), (a) and (f) as appropriate below.

Ground (d)

22. Ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
23. There is no doubt that there has been a toilet situated in the former stable building and that a cesspit (and then a biodigester) to process the toilet waste has been there for the same amount of time, well over 10 years, as has an electricity supply to the building and site. The requirements to remove the electricity supply should be deleted from the notice because they are immune from enforcement action under s171B of the Act. It is unclear exactly when the current biodigester was installed and whether it was in the same location as the former cesspit, and I address whether it should be allowed to remain under grounds (a) and (f) below.
24. I now consider when the 7 outbuildings were erected or provided as well as other operational development. The photos attached to Barry Bond's witness statement provide evidence that the following buildings (the numbers of which on the plan attached to the notice are indicated in brackets below) were not substantially complete by 8 March 2018, 4 years before the notice was issued: the extension to the stable building (1A), the new pump house building (2), the timber shed (3), the chicken run building (4), the polytunnel (5), the shed next to it (6), the turkey house (7) and the timber shed adjacent to the eastern elevation of the stable building used to store the appellants' quad bike (11).
25. They also show that the hard surfacing and installation of the timber sleepers were not in place within 4 years of the issue of the notice. So, even on the assumption that this operational development is not part and parcel of the unauthorised residential use and only requires to have been there for 4 years to gain immunity, it does not do so because none of this work was substantially complete by then.
26. However, although new hardstanding material has been laid within 4 years based on all the evidence, I agree with the appellants that there has always been an access track into the site and parallel to its eastern boundary running the length of the site, albeit it was extended westwards at the time the new pump house was built and the lawn surrounded by the sleepers was installed. I

⁴ *Murfitt v SSE (1980) JPL 598*

⁵ *Somak Travel v SSE (1987) JPL 630*

address the current extent of the hard surfaced area in relation to grounds (a) and (f) below.

Grounds (a) and (f)

27. 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. Ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters.
28. Given the previous use of the site and Mrs Hassall's wider land ownership here for growing vegetables and keeping horses and livestock akin to a small holding, in terms of the operational development it is appropriate to deal with grounds (a) and (f) together.
29. But first I address ground (a) in relation to the residential use. As set out above, I do not accept that there is any fallback position in terms of any residential or storage use on the land, whilst I do acknowledge that sleepovers have occurred in the former stable building and that the personal possessions of Mrs Hassall and her sons, and storage of material and machinery associated with her sons' businesses, have from time to time occurred on the land.
30. The relevant policies in the Council's development plan, the Test Valley Borough Revised Local Plan 2011-2029 adopted in 2016 (RLP), are COM2, COM10, E3, and LE16. I deal first with the deemed application for residential use with each of these policies in turn.
31. Policy 'COM2: Settlement Hierarchy' is permissive of development within the boundaries of settlements identified in the settlement hierarchy in Table 7 (and identified on Inset Maps) in the RLP. Inset Maps 7 & 11 set out the settlement boundaries of Anna Valley and Upper Clatford. The site lies outside their boundaries. The Policy goes on to state that development outside settlement boundaries will only be permitted if it complies with a series of relevant policies, including COM10 and LE16, the relevant policies in this case, which I address below.
32. Subsection b) of COM2 states that development will also be permitted if it is essential for the proposal to be located in the countryside. The site is in the countryside because, as defined in paragraph 5.46 of the RLP, land outside settlement boundaries is so defined for the purpose of planning policy. I accept that smallholdings are often in the countryside, but smallholdings and horse/sheep paddocks do not generally have dwellings on them nor is there a need for them generally or indeed in this case. The appellants could equally well manage their land as a smallholding without living there. I accept that they have had break-ins and trespassing on their land but that was at a time when they were living away in the Wirral, a very different situation to now. They have made clear that they still intend to regularly use the land even if they could not live on it, because they would be living locally anyway.
33. Policy 'COM10: Occupational Accommodation for Rural Workers in the Countryside' is only relevant where such accommodation is needed for a new or existing business. In this case there is no such business, as the appellants

acknowledge. So, this policy is of little relevance, although suffice it to say that the residential use here clearly fails to comply with it.

34. Policy 'LE16: Re-Use of Buildings in the Countryside' requires compliance with criteria a) to g) in order for residential use to be permitted. The Council do not dispute that Criterion a) is complied with; this requires the building to be structurally sound and suitable for conversion without substantial rebuilding, extension or alteration. I agree with respect to the original stable building being structurally sound, but it has undergone considerable rebuilding and has been extended, all clearly as shown in Mr Bond's photographic evidence. The appellants acknowledge that it has been extended (Building 1A). As such, I disagree with the Council that criterion a) has been met.
35. Criterion b) is that the proposal would not result in the requirement for another building to fulfil the function of the building being converted. Plainly this criterion has not been met because Building 1 was a stable and its conversion to a dwelling has necessitated another freestanding stable in the field to the south of the vegetable garden and polytunnel.
36. Criterion c) requires the proposed use to be restricted primarily to the building. This is not the case, first because it has been extended, secondly because a residential lawn has been created next to it, as well as a number of other outbuildings and an expanded hardstanding area to accommodate parking for 5 or 6 cars, which may not all be there if the residential use of Building 1 was not taking place.
37. Criterion d) requires the development to lead to an enhancement of its immediate setting. The residential use has coincided with the erection of the various outbuildings attacked by the notice. Some of these buildings/structures are not, in my view, particularly harmful to the character and appearance of the area and certainly some of them are not untypically sited on paddocks and smallholdings including those in the surrounding area. But they do impinge on the openness of the land in the Local Gap between Andover and Anna Valley, as addressed specifically by Policy E3, and as such cannot be said to enhance Building 1's immediate setting.
38. Criterion e) requires the residential development to be for occupational accommodation for rural workers. Although the appellants work the land in the sense of cultivating, tending and maintaining it, they are not rural workers because there is no agricultural or other rural business taking place on the land, as set out above.
39. Criterion f) requires that every reasonable attempt has been made to secure commercial use including tourist accommodation. Although the appellants consulted with the Council regarding this prior to making the application, they have not actually sought to secure a commercial use on the site, in part due to their age/time of life, and certainly not tourist accommodation because they desire to keep living here themselves.
40. Criterion g) is not relevant to Building 1 because the building has no architectural or historic merit.
41. In summary, none of the relevant criteria in Policy LE16 are satisfied and consequently the residential use of the land fails to comply with it. Because the

residential use fails to comply with Policies COM10 and LE16, it also fails to comply with Policy COM2.

42. Policy 'E3: Local Gaps' is permissive of development provided that within such Gaps: a) it would not diminish the physical and/or visual separation; and b) it would not individually or cumulatively with other existing or proposed development compromise the integrity of the gap. The site lies within the Anna Valley/Upper Clatford Local Gap, one of the narrow bands of countryside that separates Andover from the small rural communities around it. The distance between the southern edge of Andover and Anna Valley itself to the south of the brook immediately below the site is relatively narrow and this is compounded by the dwellings immediately to the east including The Stables and The Grange.
43. The residential and storage use of the site has diminished both the physical and visual separation of the two settlements by adding to built development on the site, in the form of the extension to the stable building, the outbuildings, and the large shipping containers in the southeast corner of the land. Whilst it is clear that the purpose of the policy is not to prevent all development (such as agricultural buildings) within such Local Gaps, its purpose is clearly to maintain physical and visual openness. Accordingly, to the extent that the new buildings and structures associated solely with the unauthorised residential and wider storage use of the land impinge on such openness, they are contrary to Policy E3 and should be demolished or removed.
44. In conclusion, the unauthorised residential use on the land and the storage use taking place in the shipping containers on the southern part of the land are contrary to and in conflict with RLP Policies COM2, COM10, LE16 and E3. These are the most relevant policies in the Plan and, as such, the unauthorised uses are contrary to the development plan as a whole.
45. The shipping containers (numbered 8, 9 & 10 on the red line plan) in particular are noticeably visible and should be removed from the site. The extension to the dwelling should also be removed because it would not be necessary if the stable building was not used as a (larger) dwelling building.
46. I am mindful that the appellants could, and they say would, lawfully use their land as a smallholding for growing vegetables and keeping horses, sheep, chickens and potentially other livestock even if they were not allowed to live on it. They would continue to need to maintain it by for instance cutting the grass in the paddock, which is facilitated by using the quad bike stored in Building 11, which is a small and low timber shed. I therefore see no objection to this building being retained; the requirement to remove it is therefore excessive in terms of stopping the use of the land for residential purposes.
47. I also consider that Buildings/structures 4 (the chicken run and housing), 5 (the polytunnel), 6 (the small and low garden shed containing tools etc sited next to it) and 7 (the turkey housing unit) are also acceptable. Although they impact the openness of the Anna Valley Local Gap in terms of their physical footprint and volume and can be seen from adjacent land, the harm they create in this respect is minimal since most of the appellants' land remains open. More fundamentally, in my view it would be excessive and unreasonable to require these minor buildings/structures to be removed because they are clearly associated with the lawful use of the site as a paddock or smallholding,

irrespective of the fact that there is no agricultural business here at present or any intention of creating one.

48. The same applies to Building 2 (the new pump house building), albeit this is a completely new building. The previous pump house shown tumbled down on the various photos produced in evidence clearly needed replacing. The water pump needs covering because the pump needs an electricity supply. Although the building may be slightly bigger than the previous pump house, it is not significantly so, and I have no objection to its regressive dark-stained timber cladding. The building is surrounded by a retaining wall on three sides given the topography of the land. It is therefore reasonable that this retaining wall is also kept.
49. Building 3 is another timber shed which from my observations on site appeared to be a repository for garden furniture and other items associated with the domestic lawn immediately to the southwest of the dwelling, which itself is raised above the surrounding topography by a double layer of wooden sleepers. Absent of the residential use, I can see no reason why this domestic timber shed should be retained.
50. I now consider the various other requirements set out in the notice. As set out above, disconnecting electricity from Building 1 is unreasonable because there has been a supply to it for well over 10 years.
51. Requirement 4 to remove the kitchen and bathroom facilities is reasonable though, and not excessive, since these features functionally enable the residential use of Building 1, and Building 1A should be demolished for the reasons explained above.
52. I have carefully considered the requirements of Requirement 5. The electrical fittings, internal stud walls, plasterboard, ceiling board and hard flooring enable the building to be used as a dwelling. They are unnecessary for Building 1 to be merely used as a dayroom or shelter whilst the appellants work on and look after their smallholding. Apart from the electrical fittings, this internal fitout work was only completed in order to make the building into a dwelling. To ensure that it does not continue to be used as such I consider that it is therefore not excessive to require its removal.
53. Requirement 6, to permanently remove all remaining residential items, is unnecessary in view of Requirement 1 to permanently cease Building 1's residential use, and it is unclear and vague in terms of what residential items are being referred to by this Requirement. It should therefore be deleted from the notice.
54. Requirement 7, to remove all doors and windows from Building 1 appears to me excessive because the original building had a window in its main southerly elevation. Requirement 8 requires the reinstatement of the two former stable doorways in the southern elevation, the former double doorway in the eastern elevation and to brick up the doorway in the western elevation. I consider it would be reasonable for the easterly window opening in the southern elevation to be retained. There is no need to reinstate the former double doorway in the eastern elevation because I am allowing the retention of the timber storage shed (Building 11). But I do consider that the stable doorways should be re-established in the southern elevation since this could or would allow Building 1 to be again used as stables, avoiding the necessity for the freestanding stable

building in the field to the south, hopefully minimising additional structures in the Local Gap.

55. Requirement 9 specifies the removal of the black external timber cladding from Building 1. I can see no reasonable need for this since it improves the appearance of what was a fairly unprepossessing building formerly, apart from that portion of cladding needed to be removed to allow for the replacement of the stable doors on the southern elevation. I have already addressed above the mandate in Requirement 10 to demolish the 7 outbuildings.
56. Requirement 11 requires permanent removal of the hard surfacing material hatched blue on the plan attached to the notice. I have indicated above I am satisfied that there has always been an access track into the site and parallel to its eastern boundary running the length of the site, although it was extended westwards at the time the new pump house was built and the lawn surrounded by the sleepers was installed. I am satisfied that this area originally contained some form of hardstanding material, albeit new material has been laid within the last four years.
57. I agree with the appellants that the new area of hardstanding is essentially the area outlined/highlighted blue lying immediately south of the residential lawn area (shown on the plan in paragraph 9.39 of their appeal statement). I have no objection to this minor extension of the hardstanding on the site; it does not materially diminish the physical or visual separation of Andover from Anna Valley in the Local Gap and enables vehicles and machinery to access the main western field as well as the biodigester in case it needs servicing or emptying. Equally I have no objection to the resurfacing of the other existing areas of hardstanding because that too does not diminish the Gap's physical or visual separation or compromise its integrity; such new material will merely allow vehicles and machinery to service and maintain the whole of the appellants' land here without any significant adverse effect on the Gap.
58. Requirement 12 is to permanently remove the biodigester unit. As I've set out in relation to the ground (d) appeal above, there has been a toilet in Building 1 for well over 10 years (probably about 30 years in fact). There was previously a cesspit to process the waste. It was at some time replaced, whether in the exact same spot or in a location nearby – the appellants say 17 years ago, which the Council challenges. But a toilet can and will remain in Building 1 and its waste needs processing. The biodigester is of course sited underground. It gives rise to minimal physical or visual impact of the Local Gap and some form of waste treatment will inevitably be needed. Consequently, I can see no objection to its retention and this Requirement is therefore excised from the notice.
59. Requirement 13 is to permanently remove the timber sleepers around the lawn area immediately to the west of the unauthorised dwelling. Whilst the lawn is clearly associated with the residential use, I cannot see any harm to its retention or indeed that of its supporting sleepers because neither physically or visually have any significant effect on the integrity of the Local Gap, the lawn abutting the chicken run structure which I have already indicated is acceptable in its own right. Accordingly, this Requirement is also excised from the notice.
60. Requirement 14 is to remove the fence above 2m high on the boundary with Springvale, the entrance gate and posts, and the post box all between 'X' and 'Y' as set out on the plan attached to the notice. I cannot see any harm in the

fence because it blocks any unwanted views from Springvale and, in any case, there is actually a higher ornate brown metal trellis on the neighbour's land that is higher than this fence. Admittedly the 2m high gate looks like a gate to a residential property, especially with its post box. The post box should of course be removed because there will be no residential use at the site. But, in view of the appellants concerns about breaks-ins, security and the safety of their horses, I consider that the robust gate can be retained.

61. Requirement 15 is to remove the shipping containers from the southern part of the land. I have already indicated that these should be removed because they compromise both physically and visually the integrity of the Local Gap and their use for storage purposes is at odds with the lawful use of the site as a paddock/smallholding.
62. Requirement 16 refers to removal of a touring caravan. This has already been removed but I see no reason why this requirement should not remain within the notice, in case the appellants were to decide to bring another such caravan onto the site, because this would unnecessarily add to clutter on the site.
63. I address above that Requirement 17 to now permanently remove tables and chairs, the rotary washing line and pot plants from the site, because these items are all part and parcel of the unauthorised residential use of the site.
64. Requirement 18 requires the removal of all resultant materials and waste associated with the completion of all the rest of the Requirements. There will obviously be waste associated with the removal of the buildings/structures/containers and I accept that that this 'mop-up' requirement is necessary to deal with any waste arising from such.

Ground (g)

65. Ground (g) is that the compliance period specified in the notice falls short of what should reasonably be allowed. The appellants point out that they are elderly and Mr Nugent suffers declining ill health. They also raise the point that they will lose their home and that this will impact on their human rights, as well as arguing that 6 months is not long enough to be able to find decent affordable alternative accommodation.
66. I disagree with the latter argument. Six months is a reasonable period in which to find an alternative dwelling to rent or purchase. Even if they found that they could not complete the purchase of an alternative dwelling within 6 months, it is unlikely that the Council would seek to prosecute them, or succeed in doing so if it tried to, for failing to comply with the notice if they had exchanged contracts on such a new place of abode.
67. I have considered the rights of the appellants under the Human Rights Act 1998, in particular Article 8 which affords the right to respect for private and family life as well as a person's home. This is a qualified right, and interference may be justified where it is in the public interest, as in breaches of planning legislation. I have also taken account in this respect the appellants' ages and Mr Nugent's health conditions. There is no reason why moving house in the locality should deprive either of them from access to relevant health services. The requirements of the notice, as amended, would continue to let the appellants use the land for its lawful purpose. The cessation of the

unauthorised residential use is fully justified in order to comply with adopted planning policies in the development plan.

68. For these reasons I consider that 6 months for Requirements 1 and 2, and 9 months for Requirements 3 to 13 is a reasonable period of time for compliance.

Conclusion

69. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Nick Fagan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

- Jonathon Easton KC (Kings Chambers)
- John Nugent
- Jayne Hassall
- Gregory Cummins
- Karl Harvey-Smith
- Richard Gee BA (Hons) BPI, Roman Summer (agent)
- Carl Taylor, TPM Landscape Ltd
- Chris Rogers, RPS Group

FOR THE LOCAL PLANNING AUTHORITY:

- Charles Merrett (Francis Taylor Buildings)
- Tim Parker
- Samantha Owen

INTERESTED PARTIES:

- Barry Bond
- Susan Bond
- Chris Jacques
- Melissa Jacques
- Hilary Rushworth
- Mr Willman
- Jane Willman
- Eric Spencely
- Cllr T Burns

DOCUMENTS SUBMITTED AT OR BETWEEN THE HEARING'S SESSIONS

1. Sign in sheet for fire procedure on 18 April
2. LPA's Review of (the newer) statutory declarations from the appellants and Mrs Hassell's sons
3. LPA Response to Late Evidence, May 2023
4. Appellant response to such, letter from Mr Gee dated 19 May 2023