



Appeal Decisions

Inquiry Held on 11 and 12 October 2022, 4 and 6 April 2023, and 21 and 22 June 2023

Site visit made on 12 October 2022 and 22 June 2023

by Mrs H M Higenbottam BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 24 January 2024

Appeal A: APP/U2235/C/22/3293458

Land at Tanner Farm Caravan Park, Goudhurst Road, Marden, Tonbridge Kent TN12 9ND

- 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 Tanner Farm Park Trading Limited against an enforcement notice issued by Maidstone Borough Council.
 - The enforcement notice was issued on 3 February 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of use of land to a recreational use (Sui Generis), on the land identified on the plan edged in red attached to the Notice.
 - The requirements of the notice are:
 - a) Cease the use of the land for recreational use within the red line of the attached plan.
 - b) Remove from the land all play equipment, climbing frames, goal post/basketball structures and any other structures that facilitate a leisure use within the red line of the attached plan.
 - c) Remove all resultant materials, rubbish and debris from complying with step (b) above, from the Land within the redline of the attached plan.
 - The period for compliance with the requirements is two (2) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/U2235/C/22/3293462

Tanner Farm Park, Tanner Farm, Goudhurst Road, Marden, Tonbridge TN12 9ND

- 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 Tanner Farm Park Trading Limited against an enforcement notice issued by Maidstone Borough Council.
- The enforcement notice was issued on 3 February 2022.
- The breach of planning control alleged in the notice is failure to comply with:
 - 1. Condition No (v) of a planning permission Ref 87/1718 granted on 25 February 1988 (Planning Permission A).
 - 2. Condition No 7 of planning permission Ref 93/1450 granted on 17 December 1993 (Planning Permission B).
- The development to which Planning Permission A relates is Towing caravan and camping park. The condition in question is No (v) which states that:
The site shall only be used as a touring caravan and camp site and shall not be used for the permanent stationing of caravans, mobile homes, caravanettes or tents.
Reason: In order to control development.

- The development to which Planning Permission B relates is Change of use for extension of area for touring caravan/camping site. The condition in question is No 7 which states:
 - The site shall only be used as a touring caravan and camp site and shall not be used for the permanent stationing of caravans, mobile homes, caravanettes or tents.
Reason: In order to control development.
 - The requirements of the notice are:
 - a) Cease the use of the land for stationing of static mobile homes in the red hatched areas of the attached plan edged in red.
 - b) Remove from the land the static mobile homes and concrete bases indicated on the plan in the red hatched areas of the attached plan edged in red.
 - c) Remove all resultant materials, rubbish, surrounding decking, paraphernalia and debris from complying with step (a) and (b) above from the Land.
 - The period for compliance with the requirements is six (6) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A

1. It is directed that the enforcement notice be corrected by the deletion of the word 'leisure' in paragraph 3 b) and substitute thereto with the word 'recreational';. Subject to these corrections the appeal is dismissed, and the enforcement notice is upheld.

Appeal B

2. It is directed that the enforcement notice be varied by the deletion of the words
 - 'and concrete bases' in paragraph 3 b)
 - ',surrounding decking, paraphernalia' in paragraph 3 c).

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

Preliminary Matters

3. During the course of the Inquiry, two further grounds of appeal were introduced by the appellant in relation to Appeal B. A ground (e) and a ground (f). I will deal with each of these in turn.
4. Oral evidence was heard under oath or affirmation.
5. For the purposes of Appeal A, I shall refer to the planning permission reference 87/1718, which is referred to as Planning Permission A in the Notice, as the 1987 Permission and planning permission reference 93/1450, which is referred to as Planning Permission B in the Notice, as the 1993 Permission.
6. The requirement a) of the Notice is that the stationing of static mobile homes in the red hatched areas on the plan attached to the Notice is required to cease. As such, any evidence outside of the areas hatched red is not relevant to my determination of Appeal B.
7. In relation to Appeal B the appellant confirmed at the start of the Inquiry that references to log cabins are log mobile homes and are caravans.

Appeal A The Notice

8. The allegation refers to a material change of use to recreational use but requirement b) refers to a leisure use. I raised this inconsistency at the Inquiry. It was agreed that the meaning was the same. Neither party identified any injustice or prejudice to the proposed variation to requirement b) so that it follows on from the allegation. I will therefore vary the requirement to refer to recreational use to follow on directly from the allegation. Neither party will be prejudiced by this variation.

Appeal B The Notice

9. The plan attached to the Notice includes the access road to the Caravan Park, the land the subject of the Appeal A Notice and includes land on which The Barn (subject of a separate appeal reference APP/U2235/X/22/3308909) relating to the refusal of a Lawful Development Certificate) and the land on which storage of caravans takes place. Within the redline is a yellow outline relating to the 1987 Permission and a green outline relating to the 1993 Permission. Two areas are hatched red. The requirement 1 requires the use of the land for the stationing of static mobile homes in the red hatched areas to cease. I am satisfied that it is clear that the Notice seeks to attack breaches of conditions in the two areas of red hatching only. I will deal with the appeal on that basis.

Reasons

Appeal B under ground (e)

10. I am starting with the ground (e) for Appeal B, since if it were to succeed it may be necessary to quash the Notice and other grounds would not then be considered. The ground (e) appeal relates to whether or not the notice was served as required by s. 172 of the Act.
11. Section 172(2) of the Act requires a copy of the notice to be served on the owner and any person having an interest in the land. An owner is defined as a person, other than a mortgagee not in possession, who whether in his own right or as a trustee for any other person is entitled to receive the rack rent of the land or whether the land is not let at rack rent would be so entitled if it were to be let. A person may be an occupier because of, a lease, a license or oral permission.
12. The Council provided a witness statement dated 4 February 2022 confirming that four envelopes each containing the two Enforcement Notices (one the subject of Appeal A and one the subject of Appeal B) dated 3 February 2022, a cover letter and an explanatory note were handed to Natalie Orchin outside the reception building. The envelopes were addressed to:

Mr Neil Morgan Tanner Farm Park, Goudhurst Road, Marden, Kent TN12 9ND
Tanner Farm Park Tanner Farm Park, Goudhurst Road, Marden, Kent TN12 9ND
Owner Tanner Farm Park, Goudhurst Road, Marden, Kent TN12 9ND
Occupier Tanner Farm Park, Goudhurst Road, Marden, Kent TN12 9ND
13. A copy of each Enforcement Notice was waterproof wrapped and attached to concrete posts at the entrance to Tanner Farm Caravan Park. Each of those

notices was addressed to '*Any other persons known to have an interest in the land Tanner Farm Park, Goudhurst Road, Marden, Kent TN12 9ND*'.

14. Two Enforcement Notices (one the subject of Appeal A and one the subject of Appeal B) dated 3 February 2022, a cover letter and an explanatory note were sent by way of recorded first class post addressed to:

Tanner Farm Park Trading Limited (Co. Regn. No. 10181620) at Tallington Lakes Leisure Park, Barholm Road, Tallington, Stamford PE9 4RJ.

Neil Morgan – Director of Tanner Farm Park Trading Ltd at Tallington Lakes Leisure Park, Barholm Road, Tallington, Stamford PE9 4RJ.

Kim Abbot Secretary of Tanner Farm Park Trading Ltd at Tallington Lakes Leisure Park, Barholm Road, Tallington, Stamford PE9 4RJ.

Arcadia Estates (Kent) Ltd (Co. Regn. No. 9964666) at 5 Brookside, Tallington Lakes Leisure Park, Barholm Road, Stamford, England PE9 4RJ

Neil Morgan Director of Arcadia Estates (Kent) Ltd at 5 Brookside, Tallington Lakes Leisure Park, Barholm Road, Stamford, England PE9 4RJ

Kim Abbot Secretary of Arcadia Estates (Kent) Ltd at 5 Brookside, Tallington Lakes Leisure Park, Barholm Road, Stamford, England PE9 4RJ

Fiona Morgan Secretary of Arcadia Estates (Kent) Ltd at 5 Brookside, Tallington Lakes Leisure Park, Barholm Road, Stamford, England PE9 4RJ

15. The Council undertook land registry searches and there was no references to anyone now claiming to live at the site. The Council undertook searches with the Council Tax department but no individuals were registered.
16. The Council served a s.330 notice and in the response the freeholder is stated to be Arcadia Estates Ltd.
17. I was told in oral evidence by the appellant's witnesses that post is delivered to the reception building on the Caravan Park, and then collected by individuals from that location. There are no means or facilities for post to be left anywhere other than in the reception building. All of those who gave oral evidence on behalf of the appellant and who stated they lived at the Caravan Park gave evidence that all post was collected from the reception area and there were no facilities for post to be delivered to their plots. None of these individuals are registered for Council Tax or on the electoral roll.
18. In relation to Ms Kirby, Ms Elton, Mr and Mrs Sanchez and Blake Sanchez, no documentary evidence of occupation has been provided. Mr Sanchez did state in oral evidence that he purchased the 'lodge' and had an invoice for the lodge at home. He stated he had a 40-year lease including information on ground rent, rubbish and up keep of the park. However, although I asked if Mr Sanches would provide the documentary evidence this was never provided. There is no documentary evidence of any right to occupation or interest in the land in relation to these individuals.
19. Mr Morgan stated in oral evidence firstly that 'we' cannot not locate a copy of the lease referred to by Mr Sanchez and when asked a second time stated he cannot locate it. Mr Morgan went on to state the lease did not say the 'lodge' could be occupied all year, it is silent, and refers to a leisure home but does not

- specify periods it cannot be occupied. He also stated that the lease requires a plot fee and there is an annual fee increase around inflation.
20. Mrs Kirby and Ms Elton are not occupying a pitch on the land identified in the Notice by red hatching. They do not occupy static mobile homes.
21. Mr Sanchez was questioned about whether he was registered for Council Tax or on the electoral roll. He stated that he asked the sales team about Council Tax when purchasing the 'lodge' and they stated it was not needed. In relation to being on the electoral roll, he stated '*it did not come to mind*' and that it was not deliberate to '*keep under the radar*'.
22. The appellant states that the location on which the Notices were affixed i.e. the concrete posts at the entrance to the Caravan Park, is where bins are stored. The photographs showing the Notices affixed to the concrete posts do not show any bins in place. There is no substantiated evidence that the Notices were obscured by bins at the time they were affixed to the concrete posts. The concrete posts are sited on land within the red line of the plan attached to the Notices. As such, I find that the display of these Notices were in a conspicuous place and that the Notices were thus served in accordance with the Act.
23. I am satisfied that everything that could have been done to serve the Notices on every owner and/or occupier of and/or a person having an interest in the land was done by the Council. The Notices were affixed in a prominent location where those entering and leaving the Caravan Park could see them. I therefore find that the Notices were properly served and the appeal on ground (e) therefore fails.

Appeal A on ground (d)

Background

24. The land identified within the Notice by a plan outlined in red is sited to the south of the footpath which runs from east to west, and to the west of The Oast House. I will refer to this area as the southern field in this decision.
25. The southern field is outside of the areas covered by planning permission referenced MA/87/1718W (1987 Permission) for a 'Towing caravan and camping park' and the area covered by planning permission referenced MA/93/1450 (1993 Permission) for a 'Change of use for extension of area for touring caravan/camping site'. I shall refer to the areas covered by those planning permissions as the Caravan Park in this decision. The Caravan Park and other land was within the same ownership until November 2012.
26. The Caravan Park opened on 12 August 1989. This was on land to the north of the footpath and subject to the 1987 Permission and the later 1993 Permission.
27. Mr and Mrs Featherstone purchased The Oast House and some other land to the west of it in November 2012. Then in July 2016 the appellant purchased the Caravan Park the subject of the 1987 Permission and the 1993 Permission and the land the subject of the Notice i.e. the southern field.
28. There is no dispute that the area of land identified as Land 'A' in the Statutory Declarations (SD) of Phyllis Fuller (dated 7 June 2022) and Mr Mannington (dated 25 October 2018) was land on which animals were accommodated. Mr Mannington explained that Land 'A' was originally used for growing wheat,

with the last crop of wheat in 1980. Between 1981 and 1991 it was used for growing conifer trees. In the winter of 1991, the last of the conifers were grubbed out and the land was laid to grass. Land 'A' includes the southern field and the land to the west of The Oast House purchased by Mr and Mrs Featherstone in November 2012.

29. During 1991 the evidence from both Phyllis Fuller and Mr Mannington was that, it was decided that animals would be accommodated on the Land 'A'. Animal pens were installed as well as water supplies for the animals. A hand washing basin was provided to allow clients of the Caravan Park to wash their hands if they interacted with the animals. The animals referred to in evidence were sheep/lambs, goats, pigs, chickens and horses including three heavy horses.
30. The woodland area to the south of Land 'A' was also used for annual camping trip by a local school (Vine Hall School). These annual camps took place from the late 1950's until 2012¹ once a year.
31. Phyllis Fuller's evidence² was that in 1991 animals were brought on to the land identified as Land 'A'. The SD of Mr Mannington states that since 1992 Land 'A' was used for playing of ball games, walking, picnics, organised Easter Egg Hunts, dog walking, heavy horse rides for customers, frisbee throwing, camping and caravanning for large groups such as Guides and Scouts or private groups where there was insufficient space within the camping and caravanning site. However, oral evidence provided by Mr Mannington confirmed that the purpose of Land 'A' was to provide grazing land for the animals and that any other activity referred to was infrequent or ad hoc and not the principal use of the land.
32. In November 2012 The Oast House, and some land to the west of it was sold to Mr and Mrs Featherstone. The land to the west of the Oast House was at one time part of the land used for accommodating the animals. There were some structures on Land 'A', which included the land sold to Mr and Mrs Featherstone to house the chickens and pigs. On the sale of this part of the land to Mr and Mrs Featherstone, the chicken and pig housings were removed.

Planning Unit for Appeal A

33. The Council are of the opinion that the southern field identified on the Notice is a separate planning unit, which is contested by the appellant. Whereas the appellant accepts a recreational use has occurred, but in his view, that recreational use is, he suggests, part and parcel or ancillary to the Caravan Park. The appellant considers that the Caravan Park together with the southern field form a single planning unit.
34. The southern field originally formed part of the agricultural farm of Tanner Park Farm. The 1987 Permission was granted for the use of land to the north of the southern field for use as a 'towing caravan and camping park'. The redline for that planning permission identifying the application site did not include the southern field.
35. The 1993 Permission was granted for a change of use for extension of area for touring caravan/camping site. The redline for that planning permission identifying the application site did not include the southern field.

¹ Statutory Declaration of Mr Mannington stated the annual camps were from 1958 to 2012.

² Statutory Declaration dated 7 June 2022 and oral evidence.

36. Land 'A' identified on the plan attached to the SD's for the appellant includes the southern field and was laid to wheat until 1980. Land 'A' was then used to grow conifer trees until 1991. Clearly at this time it was in agricultural use and was not part of the land the subject of the 1987 Permission.
37. Land 'A' had its own agricultural holding number. Mrs Mannington submitted returns and confirmed that the southern field was used for grazing. Records of livestock movement were kept as expected on an agricultural holding.
38. None of the aerial photographs within the Council's evidence indicated any camping or caravanning on the southern field.
39. The appellant considers that the animals that were accommodated on the southern field from 1991 to around 2012 were ancillary to the Caravan Park as they provided an attraction for the customers of the Caravan Park. In his view, the animals and the land on which they were accommodated were part of the Caravan Park.
40. The Council consider that the southern field is both functionally and physically separate from the Caravan Park. As such, the Council consider that the southern field is within a separate planning unit to the Caravan Park. The accommodation of all the animals referred to, in its view, amounted to an agricultural use of the land and that any interaction by customers of the Caravan Park was *de minimis*.
41. The issue to be determined is therefore whether the way in which the southern field was utilised from 1991 onwards incorporated the southern field within the planning unit of the Caravan Park such that its use was ancillary to the Caravan Park. Or whether the southern field was a planning unit in its own right and if it was whether there has been a recreational use of that land for a period of 10 years or more.
42. The leading case on the subject of planning units is *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207. The tests laid down in that case were:
 1. Whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered;
 2. It may be equally apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another.
 3. Within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each are used for a different main purpose (together with its incidental and ancillary activities) and ought to be considered as a separate planning unit.
43. The assessment of what constitutes a planning unit is a matter of fact and degree. It should be assumed that the unit of occupation is the appropriate planning unit unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.

Physical separation

44. There was fencing and a gate to the south of the footpath on the northern boundary of the southern field. The footpath was clearly separate to the southern field and the Caravan Park. There was a gap in the vegetation on the southern boundary of the Caravan Park which allowed access onto the footpath and from the footpath to the southern field.
45. I heard evidence from Mrs Mannington, both in oral and written evidence, that there had been signage since 2013 on land to the north of the footpath stating '*You are now leaving the caravan park*'. In addition, those signs were noted on Mrs King's site visit on 13 April 2017 and shown in photographs taken on that site visit (Appendix T of her evidence). The signage was located by the gap in the vegetation to the north of the footpath.
46. The land the subject of the Notice (the southern field) was physically separated from the Caravan Park the subject of the 1987 Permission and the 1993 Permission at least until 2016 when the land was sold to the appellant.
47. Fencing was erected between the southern field and the land purchased by Mr and Mrs Featherstone and some hedging planted along that boundary. Internal subdivision fencing within the southern field was removed at some point and while some fencing is seen in photographs of the southern field in 2017 there was no such fencing at the time of my site visits.
48. I therefore find that the southern field was until at least 2016/7 physically separate from the Caravan Park.

Functionally

49. The southern field was laid to grass from 1991. The use of the land up until 2012 was for accommodating animals who also occupied additional land included in Land 'A' attached to the SD's. That additional land was sold to Mr and Mrs Featherstone. Mrs Mannington gave evidence that animals were on the southern field until 2015 before the sale to the appellant.
50. The Sales Brochure said to be from 2012/13 (albeit it is not dated Mr Mannington gave oral evidence that after deciding to sell in 2011 the brochure was produced about a year after) for the Caravan Park and the southern field identifies the southern field as amenity land. It refers to it as a pasture field divided into paddocks for farm animals and/or ponies which the children may feed and an area of mature deciduous woodland with ponds. The labelling of the land as amenity land in the brochure does not confer on it any particular planning status or use. The brochure text refers to trails and access to a public footpath and walks in relation to this land. The photograph in the sales brochure, adjacent to the text describing the amenity land, shows a fenced area with children's play equipment in it. This photograph was confirmed to be the under 10's play area which is sited within the Caravan Park and is not a photograph of the southern field.
51. Section 336 of the Act defines agriculture as including horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the

- use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly;
52. In relation to the use of the land as grazing land the grazing animals can include horses. The grazing of any animal of grazing land therefore falls within the definition of agriculture. The principal purpose to which the land is put must be grazing and not amount to the keeping of an animal for recreational purposes.
53. Sheep, pigs, goats and chickens were kept on the land i.e. Land 'A', as any agricultural animal is. The chickens produced eggs which were sold in the farm shop. The lambs were fattened up and slaughtered and their meat was sold in the farm shop. The pigs were also fattened up and the meat sold in the farm shop. The lambs as they no longer needed bottle feeding were allowed to graze Land 'A' until they were ready for slaughter. In my view, the animals' principal purpose was to produce eggs or meat to be sold in the farm shop.
54. An ancillary function of the animals, particularly the lambs was to allow customers of the Caravan Park to bottle feed them and to see animals on the land. Both Mr and Mrs Mannington referred to customers of the Caravan Park having an expectation of seeing farm animals due to the name of the Caravan Park i.e. Tanner Park Farm.
55. The evidence was that while the animals were on Land 'A' clients of the Caravan Park would, under supervision, visit the animals and to bottle feed the lambs. The oral evidence referred to children bottle feeding lambs with their parents. This was not something which took place every day and was dependent on the time of year and the numbers of children staying on the Caravan Park. Day to day care of the animals and their feeding remained with Mr and Mrs Mannington and their staff. The period in any year when lambs were bottle fed is relatively shortlived around the Easter Period. As lambs grew they relied more on grazing the land for nutrition.
56. The customers of the Caravan Park undertook interaction with the animals for only limited periods of time. Mrs Mannington referred to this interaction being on '*high days and holidays*'. For instance, lambs being bottle fed only took place on a limited number of days, with the majority of their care being undertaken by those working at the Caravan Park or employed for caring for the animals. As such, the interaction with customers of the Caravan Park was of such a minimal amount as to not constitute a use in its own right and was rather a *de minimis* use or an ancillary use to the keeping of the animals for agricultural purposes.
57. In relation to chickens, goats and pigs there is no substantiated evidence that these animals were predominantly or primarily used for activities with customers of the Caravan Park. The animals could clearly be seen by anyone who walked along the footpath, but they did not provide regular interaction with the customers of the Caravan Park. While on occasion customers of the Caravan Park were allowed to feed and pet the animals particularly the lambs, they were brought onto the land to fatten up and when they were of a particular size and weight they were slaughtered their meat being sold in the farm shop. Eggs were sold in the Farm Shop and the pigs were slaughtered and their meat, including bacon and sausages were sold in the farm shop.

58. I appreciate that in the appellant's view the animals were an attraction to the customers of the Caravan Park. However, the evidence demonstrates that for the majority of time there was little if any interaction between the customers of the Caravan Park and the animals. In Spring/around Easter there was some bottle feeding of the lambs and during holiday periods children would feed the lambs, most of the time there was no interaction with the animals and customers of the Caravan Park. As the lambs got larger and did not require bottle feeding, they would graze the land until they were of a size to be slaughtered.
59. The animals were brought on to the land, kept while they were cared for and in the case of customers of the Caravan Park expected to see farm animals because the site was called Tanner Park Farm. In my view, the feeding of the animals, including bottle feeding of the lambs, was ancillary to the primary use of the land for agriculture.
60. On the evidence available, the animals provided some activity on a very limited number of days for the customers of the Caravan Park. However, this in my view was a *de minimis* use and not a principal use of the land. The principle use of Land 'A'/southern field was for agriculture, predominantly grazing.
61. Mr Mannington provided evidence that he kept Heavy Horses on the land which were his hobby and he used them to participate in ploughing matches around the country. While on some days the Heavy Horses pulled carriages around the immediate area for taking Caravan Park customers around, those carriage rides took place outside of the southern field attacked by the Notice and did not take place regularly throughout the year or in very large numbers. They were a *de minimis* activity and that activity did not take place on the land the subject of the Notice. The Heavy Horses were principally a hobby of the then owner of the land.
62. The breeding and keeping of horses is not within the definition of agriculture, unless the purpose of the horses is for agriculture. However, the grazing of any animal, including horses, does fall within the definition of agriculture. The evidence was that the horses grazed the land in the southern field. While some hard feed and hay were provided for the horses in colder winter months the horses still grazed the land. In my view, the southern field was expansive enough for four horses to provide grazing throughout the year and the oral evidence supported my conclusion on that matter.
63. In my view, the land of the southern field was utilised for grazing by the horses, and other animals, and the level of hard feed and hay was so limited as to not amount to the keeping of horses. Furthermore, no exercising of the horses has been demonstrated to have taken place on the southern field attacked by the Notice. Any pleasure cart rides were not within the southern field.
64. The horses were owned primarily as a hobby for Mr Mannington to take part in horse drawn ploughing matches. The horses grazed the land and were fed minimal hard feed and hay, with no exercising of the horses within the southern field and as such fell within the definition of agriculture as a grazing animal.
65. The primary use of Land 'A'/southern field was for agriculture. As such, it was functionally separate from the Caravan Park.

Conclusion on Planning Unit

66. I therefore find that the southern field was physically and functionally separate to the Caravan Park. While the original planning unit also included the land that was sold to Mr and Mrs Featherstone, the majority of the land that was used for the animals, including the horses, comprises the southern field.
67. As I have found that the southern field is a separate planning unit to the Caravan Park, the appellant's argument that it is part and parcel or ancillary to the Caravan Park use cannot succeed.

Use of the Southern Field Planning Unit

68. While there cannot have been a material change of use of the southern field before 2016/17, never the less I have considered the use of the southern field after the change in ownership. In 2016 the appellant bought the Caravan Park and the southern field. Photographs dated 13 April 2017 (Appendix T of Mrs King's proof) show what looks to be play equipment being constructed within the southern field. In the foreground is a pig arc and fencing as well as a timber building. This was after the southern field and Caravan Park were sold to the appellant.
69. The use of the southern field was previously for agriculture as the animals were not a leisure or recreational use of the land and nor were they ancillary to the Caravan Park. The animals, except the horses, were ultimately utilised to produce food and therefore the land on which they were kept was in agricultural use. The horses were grazing animals and thus the grazing was agricultural, as no exercising or keeping of the horses in stables took place on the southern field. The horses' nutrition was predominantly from grazing with minimal supplemental feed in the colder months, although they continued grazing the southern field throughout the year.
70. Post November 2012 the use of the southern field remained agricultural albeit on a smaller area of land. The animals, owned by Mr and Mrs Mannington, were removed from the land sold to Mr and Mrs Featherstone. The date of sale of the Heavy Horses was not provided but by 2016 no Heavy Horses were on the southern field.
71. After the land was sold to the appellant the children's play equipment was erected in April 2017 and the grass was mown, the use of the land became recreational. I note that Mr Morgan stated there were still animals on the site in 2018 but the play equipment had been erected by that time and the use of the field for recreation was evolving. I therefore find on the balance of probabilities, on the evidence available, that at least until 13 April 2017 when the photograph shows the children's play equipment under construction, that the use of the southern field was for agricultural purposes.
72. The Notice alleges a material change of use to a recreational use. I have concluded that the southern field when the animals were kept on the land was an agricultural use and any feeding, petting or other interaction between those animals, including the Heavy Horses, and customers of the Caravan Park was not a principal use of the land. As such, until at least April 2017 the use of the southern field was for agricultural purposes. The introduction of play equipment onto the southern field and customers of the Caravan Park having greater access to the southern field has resulted in a material change of use to

a recreational use. This use was begun less than ten years before the service of the Notice and as such is not lawful. As such the appeal on ground (d) fails.

Appeal B on ground (d)

73. The Notice in Appeal B relates to the alleged breach of a separate but identical condition attached to two planning permissions.

74. The first planning permission is referenced MA/87/1718W (1987 Permission) for a 'Towing caravan and camping park'. Condition (v) of that planning permission states:

'The site shall only be used as a touring caravan and camp site and shall not be used for the permanent stationing of caravans, mobile homes, caravanettes or tents'.

The reason stated for the condition is *'In order to control development'*.

75. The second planning permission is referenced MA/93/1450 (1993 Permission) for a 'Change of use for extension of area for touring caravan/camping site'. Condition 7 of that planning permission states:

'The site shall only be used as a touring caravan and camp site and shall not be used for the permanent stationing of caravans, mobile homes, caravanettes or tents'.

The reason stated for the condition is *'In order to control development'*.

76. The Notice alleges a breach of the conditions. The requirements relate to ceasing the use for stationing of static mobile homes and removing them from the land. However, it does not allege a breach of the conditions in relation to any touring caravans, caravanettes or tents. Furthermore, it only identifies a breach of conditions in relation to the stationing of static mobile homes within the areas hatched red on the plan attached to the Notice.

77. The Notice identifies the noncompliance with the conditions and the requirements clearly state that it is the static mobile homes in specified locations (red hatched areas) which are required to be removed to comply with the conditions.

78. The appellant considers that individuals living in caravans anywhere on the Caravan Park for at least ten years demonstrates a breach of the conditions and as such immunity from action through the passage of time. He considers that the siting of such caravans on different pitches within the Caravan Park over the relevant periods does not affect his claim for immunity through the passage of time. However, the breach of condition is only within the red hatched areas and it is clear from the requirements that it is only static mobile homes. It is clear to me that the Council considers that the static mobile homes being stationed on the red hatched areas is the breach of planning control.

79. There is no doubt that static mobile homes have been stationed within the red hatched areas. However, the evidence does not demonstrate that they have been stationed on the red hatched areas for at least ten years.

80. In my view, the conditions are comparable to those referred to in the *St Anselm v First Secretary of State* [2003] EWHC 1592 (Admin) (St Anselm)

judgement. In that most, but not all, of the parking spaces had been used by others for more than ten years. It was found that only those parking spaces which had been used by others were immune from enforcement action. The condition remained effective in respect of the spaces for which lawfulness through the passage of time had not been shown.

81. In the *Royale Parks Ltd v SSHCLG* [2021] EWCA Civ 1101 judgement (Royale Parks), which concerned a condition which required caravans and chalets on a caravan site to be occupied for holiday purposes only, except for one caravan or chalet which could be occupied by a resident warden. The case was in relation to the refusal of a Lawful Development Certificate (LDC). It was common ground between the parties that the relevant condition had been breached, in the case of at least some of the units, for longer than ten years. The Council had also issued LDC's for specific units for permanent residential use as they had been occupied in breach of the condition for more than ten years.
82. In *Royale Parks* the Court held that the view taken by Sullivan J in the *St Anselm* judgement was correct. The *Royale Parks* judgement concerns an appeal against the refusal of an LDC on a caravan site and whether or not conditions relating to when caravans could be occupied were breached such that the occupation of those caravans in breach of the condition was lawful. The Inspector concluded that the caravan site as a whole had not become immune from enforcement because four caravans/plots on it had accrued immunity. This conclusion was upheld in the judgement.
83. In the current case the appellant presented evidence relating to the whole of the site and not just in relation to the red hatched areas identified on the plan attached to the Notice. He put forward an argument that if I accepted the evidence demonstrated that the conditions had been breached on any part of the site for a continuous period of at least 10 years that the conditions were no longer enforceable through the passage of time. Thus, the appeal in the appellant's view should be allowed.
84. The appellant purchased the Caravan Park in 2016 and had limited firsthand knowledge prior to his purchase, it being gained on infrequent visits to the site prior to finalising the purchase.
85. While the appellant provided evidence in relation to touring caravan occupiers throughout the site to demonstrate that in his view the condition had been breached for a period of 10 years. Ms Kirby occupied the same touring caravan and stated the caravan had not left the site since 2007. However, Ms Kirby occupied different pitches on the Caravan Park during the time she has lived on the site. Her oral evidence confirmed what was stated in the SD and that she moved out of her caravan in 2015 for four months and lived with her father. Her touring caravan is not attacked by the Notice, and it is not sited on one of the areas identified in the Notice with red cross hatching.
86. Ms Kirby gave oral evidence that her touring caravan was stationed on the small red hatched area by reception at some time in 2013 and at that time there were no statics on that plot.
87. The appellant has produced some records of who was on the Caravan Park and their periods of occupation. However out of 130 pitches only 39 pitches are highlighted in yellow and six of those appear only once in the booking records.

- None of the pitches in the records demonstrates permanent occupation of a static mobile home for any ten-year period.
88. While the SD of Ms Kirby refers to other residents being on the site from 2007 until 2019 (such as Mr and Mrs Christmas and Mr and Mrs Hobden) she provides no substantiated evidence of which plots they were sited on or whether they too moved plots during their time at the Caravan Park. The evidence relating to these other individuals does not demonstrate permanent occupation of a static mobile home for any ten-year period.
89. Ms Elton arrived to live on the Caravan Park in December 2016 and confirmed in her SD that she was asked to move her caravan from pitch to pitch. Her caravan is a touring caravan. She confirmed that she had lived at the Caravan Park for 4.5 years at the date of her SD which was 18 August 2021. In that time her touring caravan had been pitched on several hardstanding pitches in the Caravan Park.
90. Motorway workers lived on the Caravan Park in 2016, 2017 and 2018. Ms Elton in her SD and in oral evidence stated that in 2016 they were on the site when she arrived. In 2017 they arrived in October or November and left in March or early April 2018.
91. Mr and Mrs Sanchez began living on the Caravan Park in May 2017. Mr and Mrs Sanchez's SD's are both dated 11 May 2022. Both Mr and Mrs Sanchez are currently employed by the Caravan Park as receptionists, cleaners and wardens. As stated earlier in relation to the ground (e) appeal Mr and Mrs Sanchez bought their 'log cabin' and Mr Sanchez stated that he had a forty-year lease, albeit no documents relating to either the purchase or the lease were provided.
92. Blake Sanchez stated that he had lived on the site for about 5½ years and is employed managing the grounds of the Caravan Park. The two static mobile homes sited to the rear of the reception building are used by him. The left hand one is used by him and his partner and child to live in with the right-hand side one used for storage of household items and workers have coffee/tea/lunch in it. He stated he paid rent but was unclear whether it was a commercial rent or an employee rent. It was unclear whether occupation of the units was tied to his employment at the Caravan Park. He did not know if there was a tenancy agreement for his occupation of the units. No documents relating to rental/occupation of the units were provided.
93. Mr Morgan in an email dated 29 August 2017 (Appendix H of the Council's evidence) states that the two static mobile homes positioned to the rear of the reception building are purely temporary and occasionally used by staff only and their positioning will be temporary.
94. The photographs in Appendix M of the Council's evidence show that on 12 April 2017 two static mobile homes were in situ in the red hatched area towards the north east corner of the 1993 Permission area (outlined in green).
95. In addition, there is no one touring caravan that has been stationed on a single plot permanently. The evidence relating to touring caravans was that they moved around the site and were stationed on different plots at different times. There was no substantiated evidence of any touring caravan being sited on the same plot for a ten-year period as a permanent stationing of a touring caravan.

Moreover, this oral and written evidence does not therefore demonstrate that any static mobile home has been sited on the areas attacked by the Notice for a continuous period of 10 years at any time prior to the Notice being served.

96. The geographical areas identified on the Notice plan by red hatching are the areas where the breach is alleged to have taken place within the Caravan Park planning unit. The aerial photographs in 2005, 2012 and 2015 do not show mobile homes stationed on these areas of land. The first aerial photograph that shows mobile homes in these areas of land is July 2017. The oral evidence and SD of Mr Mannington was that two log mobile homes were installed in April 2014. While there are some discrepancies between what is shown on the aerial photographs and the evidence of Mr Mannington, even if I accept two of the log cabins were installed in 2014, they have not been in position and permanently stationed for a period of ten years. Although, on the photographic evidence the static mobile homes within the 1993 Permission area red hatching were not installed until around 2017, with two being insitu in April 2017 photographs.
97. In the light of the St Anslem and Royale Parks judgements, I therefore conclude on this point, that even if the appellant could demonstrate, on the balance of probabilities that any plots had been occupied permanently by any type of touring caravan, caravanettes or tents, that this would not mean that the other parts of the site do not remain controlled by conditions. Furthermore, the evidence in relation to the occupation of static mobile caravans only supports occupation from 2017 for Mr and Mrs Sanchez and around 2017 for Blake Sanchez.
98. I therefore conclude, on the evidence before me, and on the balance of probabilities, that the permanent stationing of static mobile homes within the areas hatched red on the plan attached to the Notice has not been taking place for ten years prior to the issue of the Notice. As such, the appeal on ground (d) fails.

Appeal B Ground (f)

99. This ground of appeal is that the requirements of the Notice are excessive and that lesser steps would overcome the objections. The purpose of the Notice is to remedy a breach of planning control consisting of a breach of conditions. The appellant considers it is not reasonable or necessary to require the removal of the concrete bases or decking.
100. The conditions that are breached relate to the use of the site for permanent stationing of mobile homes. The allegation does not allege any operational development breach of planning control.
101. Requirement a) requires the cessation of the use of the red hatched land for the stationing of static mobile homes. This is directly and reasonably related to achieving compliance with the two conditions and thus remedying the breach of planning control.
102. Requirement b) requires removal of the static mobile homes and concrete bases on the red hatched land. However, in my view, this goes beyond what is necessary to achieve compliance with the two conditions. The removal of the static mobile homes is directly related to the breach which is the permanent stationing of mobile homes and is therefore reasonable and necessary. The

concrete bases while providing a base for the static mobile home are not of themselves a breach of the conditions and are excessive. I will therefore vary requirement b) to remove reference to the concrete bases.

103. Requirement c) requires resultant materials, rubbish, surrounding decking, paraphernalia, and debris resulting from complying with requirements a) and b) to be removed from the land. The land is all the land outlined in red on the plan attached to the Notice. The removal of materials, rubbish and debris resulting from complying with requirements a) and b) (as varied) relate only to the permanent stationing of mobile homes and is therefore reasonable and necessary. However, the surrounding decking and paraphernalia are not of themselves a breach of the conditions and are therefore excessive.
104. For the reasons given above I conclude that the requirements of the Notice are excessive to remedy the breach of planning control. I shall vary the Notice prior to upholding it. The appeal on ground (f) succeeds to that extent

Hilda Higenbottam

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Morgan	Director Tanner Park Farm Trading Ltd, advocate and witness
He called	
Ms L Kirby	Resident of Tanner Park Farm
Mrs G Sanchez	Resident and employee of Tanner Park Farm
Mr L Sanchez	Resident and employee of Tanner Park Farm
Mr J Mannington	Previous owner of Tanner Park Farm
Ms P Fuller	Resident of Tanner Park Farm
Ms S Elton	

FOR THE LOCAL PLANNING AUTHORITY:

Ms Lambert	Of Counsel instructed by Mid Kent Head of Legal Services
She called	
Mrs King BA(Hons)	Head of Planning Enforcement, Maidstone Borough Council
Mrs Mannington	Previous owner of Tanner Park Farm

INTERESTED PERSONS:

Mr B Sanchez	Resident and employee of Tanner Park Farm
Mr Featherstone	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Opening submissions on behalf of the Council
- 2 Opening submissions on behalf of the Appellant
- 3 Appendix L missing parts of Mrs King's Appendices submitted by the Council
- 4 Appeal decision reference APP/U2235/C/21/3270626 submitted by the Council
- 5 Definition of Amenity Land submitted by the Appellant
- 6 Witness statement of Neil Morgan dated 22 September 2022 submitted by the Appellant
- 7 Judgement (*Fox v First Secretary of State* [2003] EWHC 887 (Admin)) submitted by the Appellant
- 8 Bundle of application documents submitted with a s192 application submitted by the Appellant
- 9 Drwg nos 8561-02 and 8561-03 dated 20 February 2023 submitted by the Appellant
- 10 Email trail with first email dated 29 August 2017 from Mr Morgan to Mr David Prosser subject Re:ENF/16/501147 and ENF/17/500291 Tanner Farm Park submitted by the Appellant
- 11 Witness Statement of Mrs King dated 4 February 2022 submitted by the Council
- 12 Postage forms submitted by the Council
- 13 Copies of plans from both Enforcement Notices submitted by the Council
- 14 Closing submissions on behalf of the Council