



Appeal Decisions

Inquiry held on 7 February and 21, 22 November 2023

Site visit made on 21 November 2023

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Appeal Ref: APP/M3645/C/19/3239279

**Land at Swallows End, Crab Hill Lane, South Nutfield, Surrey RH1 5PG
(also known as Plot 1 The Paddocks)**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mark Lewis against an enforcement notice issued by Tandridge District Council.
- The notice, Enforcement Notice No.21 (2019), was issued on 5 September 2019.
- The breach of planning control as alleged in the notice is: Without planning permission the making of a material change of use of the land from agriculture to a mixed use for the stationing of residential caravans and touring caravans for a gypsy traveller site and for use as a kennels (sui generis).
- The requirements of the notice are to:
 1. Cease the residential use of all caravans and permanently remove them from the land.
 2. Cease the use of the land as kennels (Sui Generis).
- The period for compliance with the requirements is within three months from the date on which this Notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Appeal Ref: APP/M3645/C/19/3239283

**Land at Swallows End, Crab Hill Lane, South Nutfield, Surrey RH1 5PG
(also known as Plot 1 The Paddocks)**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mark Lewis against an enforcement notice issued by Tandridge District Council.
- The notice, Enforcement Notice No.22 (2019), was issued on 5 September 2019.
- The breach of planning control as alleged in the notice is: Without planning permission;
 - (i) The erection of outbuildings in the approximate positions marked with crosses on the attached Plan B.
 - (ii) The installation of a hard surface in the approximate area marked in black on the attached Plan C.
- The requirements of the notice are to:
 - i. Remove the outbuildings in the approximate location marked with crosses on the attached Plan B;
 - ii. Remove the hard surface in the approximate area marked black on the attached Plan C;
 - iii. Following compliance with step (i) above, remove all resultant debris and unused materials from the land;
 - iv. Following compliance with step (ii) above, remove all resultant debris and unused materials from the land to an authorised place of disposal and reseed the land to grass.
- The period for compliance with the requirements is within three months from the date on which this Notice takes effect.

- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (d) 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.

Summary of Decision: The enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Appeal Ref: APP/M3645/C/19/3239286

Land at Swallows End, Crab Hill Lane, South Nutfield, Surrey, RH1 5PG (also known as Green Acre and Plot 2 The Paddocks)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mark Lewis against an enforcement notice issued by Tandridge District Council.
- The notice, Enforcement Notice No.23 (2019), was issued on 5 September 2019.
- The breach of planning control as alleged in the notice is: Without planning permission the making of a material change of use of land from agricultural to use for the stationing of residential caravans and touring caravans for a gypsy traveller site.
- The requirement of the notice is to cease the residential use of caravans and permanently remove them from the land.
- The period for compliance with the requirement is within three months from the date on which this Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (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.

Summary of Decision: The enforcement notice is quashed.

Appeal Ref: APP/M3645/C/19/3239288

Land at Swallows End, Crab Hill Lane, South Nutfield, Surrey, RH1 5PG (also known as Green Acre and Plot 2 The Paddocks)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mark Lewis against an enforcement notice issued by Tandridge District Council.
- The notice, Enforcement Notice No.24 (2019), was issued on 5 September 2019.
- The breach of planning control as alleged in the notice is: Without planning permission:
 - i. The erection of outbuildings in the approximate position marked with crosses on the attached Plan B.
 - ii. The installation of a hard surface in the approximate position marked black on the attached Plan C.
- The requirements of the notice are to:
 - i. Remove the three outbuildings in the approximate location marked with crosses on the attached Plan B;
 - ii. Remove the decking surrounding the mobile home, in the approximate area marked black on the attached Plan B;
 - iii. Remove the hard surface in the approximate area marked black on the attached Plan C;
 - iv. Following compliance with steps (i) and (ii) above, remove all resultant debris and unused materials from the land to an authorised place of disposal;
 - v. Following compliance with step (iii) above, remove all resultant debris and unused materials from the land to an authorised place of disposal and reseed the land to grass.
- The period for compliance with the requirements is within three months from the date on which this Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (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.

Summary of Decision: The enforcement notice is quashed.

Appeal Ref: APP/M3645/W/20/3245683

Land at 2 The Paddocks, Crab Hill Lane, South Nutfield, Surrey RH1 5PG

- 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 Mark Lewis against the decision of Tandridge District Council.
- The application Ref TA/2019/1524, dated 22 August 2019, was refused by notice dated 31 December 2019.
- The development proposed is: The use of land for the stationing of caravans for residential purposes for one no. Gypsy pitch, together with the formation of hardstanding and utility/day room ancillary to that use.

Summary of Decision: The appeal is allowed and planning permission is granted subject to conditions.

PRELIMINARY MATTERS

1. The applications for an award of costs made by the appellant against the Council are the subject of separate Decisions.

Procedure

2. On 5 September 2019 the Council issued four enforcement notices, which I will refer to as Notices EN21, EN22, EN23 and EN24. The notices affect Plot 1 and Plot 2 The Paddocks, which are parcels of land to the east of Crab Hill Lane and to the south and east of the property known as Black Barn. Mr Lewis made appeals against the four notices. Notices EN21 and EN22 were subject to separate appeals by Ms K Chambers.
3. An Inspector was appointed to determine all six appeals against the four notices, together with the additional section 78 appeal by Mr Lewis and an appeal by Ms Chambers against the Council's refusal to grant a certificate of lawful use or development. The original intention was that the appeals relating to both plots would be heard on consecutive days in April 2021 by the same inspector. A hearing into the appeals by Ms Chambers was held on 13 April 2021 and the decisions were issued on 29 July 2021 (the July 2021 decisions). No challenge under section 289 of the 1990 Act was made against those decisions.
4. The hearing into the appeals by Mr Lewis was postponed and reprogrammed for 18 November 2021. At the hearing the Inspector concluded that the evidence on traveller status should be tested through cross-examination. The hearing was closed to enable a public inquiry to be arranged at a future date. Subsequently there was correspondence between the Planning Inspectorate and the appellant's agent regarding the determination of the appeals by Ms Chambers against Notices EN21 and EN22 in advance of the appeals by Mr Lewis against the same two notices.
5. I was appointed as the Inspector to determine the appeals by Mr Lewis and I opened the inquiry on 7 February 2023. Part of the discussion was on potential corrections to Notices EN21, EN22, EN23 and EN24 with a view to narrowing down the areas of dispute. The inquiry adjourned to resume on 21 November 2023. During the period of adjournment, a statement of common ground was

agreed. The Council confirmed the traveller status of the appellant was no longer disputed and objections based on the location/accessibility of the site and the effect of noise were not being pursued further.

6. The procedure was reviewed in response to the appellant's request that the event should revert to a hearing, given the agreement reached with the Council on gypsy and traveller status and the lawfulness of the hard standing. The Council did not resist the appellant's proposal for a one day hearing subject to certain provisos. In my view priorities were to ensure the conclusion of oral proceedings in the allocated time without the need for a further adjournment and that the appeals were examined fully. To close the inquiry and change procedure again would not be consistent with that aim and was not necessary. I also confirmed that certain issues would be dealt with by a round table discussion and not be subject to the formality of giving evidence and cross-examination. The procedure and inquiry arrangements were not changed.
7. The notification of the inquiry into the appeals by Mr Lewis included Ms Chambers and the owner/occupier of the land. The appellant was requested to post a site notice. The only interested party to attend the inquiry on the opening day was the owner of Black Barn. The Council sent out notifications about the resumption of the inquiry, which again included Ms Chambers and the owner/occupier of the land. To the best of everyone's knowledge the required notifications were carried out correctly.

Determination of appeals against Notices EN21 and EN22

8. The appellant submitted the decisions on Notices EN21 and EN22 dated 29 July 2021 are nullities, whereas the Council submitted they are not. The matter is not for me to determine and the parties agreed I do not have the power to do so.
9. Submissions also were made on (i) whether I have power to determine the appeals by Mr Lewis against Notices EN21 and EN22 and (ii) whether I have the power to correct and or vary Notices EN21 and EN22 when determining those appeals.

Determination of appeals

10. The Planning Inspectorate confirmed the appeals by Mr Lewis were valid by letter dated 14 November 2019. Nothing arose subsequently to change this position. Schedule 6 of the 1990 Act provides the authority for planning appeals to be determined by Inspectors. The appointment of Inspector Brown came to an end after the hearing in November 2021 and later I was appointed to determine the appeals. The consideration of the appeals by Mr Lewis began afresh.
11. The appellant's primary concern centres on the July 2021 decisions being nullities and that the Secretary of State should seek a declaration to that effect. As observed above, the nullity issue is outside my remit and as far as I am aware no proceedings have been instigated by the Secretary of State.
12. I recognise it is good practice for appeals that are related in circumstance to be heard jointly to ensure that all the evidence is heard and assessed concurrently, with a view to consistency of decision making in related and

similar matters. Unfortunately, this did not happen. The appeals by Mr Lewis are valid appeals still requiring determination.

13. In view of the content of the grounds of appeal made by Mr Lewis, there is no need to reopen the matters determined through Ms Chambers' appeals. The current appeals against Notices EN21 and EN22 are able to proceed and be determined on the evidence specific to the appellant's concerns. As the Council has observed, statutory remedies are available to resolve any inconsistencies with the July 2021 decisions, if necessary. In conclusion, I am satisfied that I can proceed to determine the appellant's appeals against Notices EN21 and EN22.

Power to correct and or vary the notices

14. Appeals have been made by Mr Lewis under section 174 of the 1990 Act. Section 176(1) allows the Secretary of State (or the appointed Inspector) to correct any defect, error or misdescription in the enforcement notice provided that the correction will not cause injustice to the appellant or the local planning authority. The power is available to me as the appointed Inspector in respect of the current appeals. It may be the appellant's case merits a correction and or variation to one or both notices. Injustice will be the key test.

Planning history

15. The planning history set out in the statement of common ground includes reference to a certificate of lawful use or development dated 3 June 2020, ref TA/2019/1921 (the LDC). The LDC certified that the laying of hardstanding within the area edged red on the plan attached to the certificate was lawful on 4 October 2019. The area of lawful hardstanding includes the hard surfaced means of access between Crab Hill Lane and the appellant's land to the east.

APPEAL AGAINST NOTICE EN21

16. The notice alleges an unauthorised material change of use. The appeal was made on ground (b), that the breach of planning control alleged in the notice has not occurred.
17. The appellant's case is that the Land affected by the notice, identified on the notice plan, includes land within the appellant's ownership which is physically separate from and is not in use for the mixed use alleged. The case is supported by an overlay plan that compares the boundary of the Land with the extent of the appellant's land and the physical boundary on the ground. A second concern is that the Land on the notice plan also covers the access road linking the appellant's land to Crab Hill Lane.
18. The Council proposed corrections to the plan to address the appellant's two concerns by excluding (i) a strip of land north of a track on Plot 1, and (ii) the means of access. The appellant confirmed the corrected plan¹ resolves the matters raised, whilst maintaining no amendment to the plan is possible.
19. The evidence demonstrates that the plan attached to Notice EN21 requires amendment to more accurately reflect the extent of the planning units related to Plot 1 and Plot 2 and to take account of the LDC covering the means of

¹ The final version of the agreed corrected plan was submitted by the Council on 4 December 2023

access. The appeal on ground (b) succeeds in so far as the alleged mixed use has not occurred within the physical boundaries of the appellant's land. The plan attached to the notice will be substituted by a corrected plan to identify the Land referred to in paragraph 2 of the Notice.

APPEAL AGAINST NOTICE EN22

20. The notice alleges unauthorised operational development. The appeal was made on grounds (b), (d) and (a).
21. The appeal on ground (b) is based on similar reasons to those regarding Notice EN21 as to the extent of the planning unit and the inclusion of the lawful means of access within the boundary of the Land. In addition, the position of the X marking an outbuilding on the eastern part of the Land is disputed.
22. The Council accepted the notice plans should be corrected to address the concerns of the appellant, in a similar way as for Notice EN21. The plan produced by the Council also removes the area of hard standing and building granted conditional planning permission under the July 2021 decisions. The appellant, whilst maintaining no amendment to the plans is possible, confirmed the submitted amended plan is accurate.
23. Considering the matters raised by Mr Lewis, the Land identified by Plans A, B and C attached to Notice EN22 is the same area as identified by the plan attached to Notice EN21, when issued. Therefore the red line boundary of the planning unit should be amended so that the definition of the Land becomes consistent with that for Notice EN21 when corrected. The purpose of Plan B is to show the approximate position of the outbuildings on the Land. The X on the eastern side of the Land should be more accurate to avoid any doubt on whose land the building enforced against is on. The hard surface shown on Plan C includes the lawful hard surfaced access road serving the appellant's land and should be corrected accordingly.
24. The substitute plan(s) resulting from my decisions should reflect only the corrections resulting from the appeal by Mr Lewis. The purpose of the corrections is to get the notice in order, to represent the position at the time the notice was issued. The hard surface and outbuildings within Plot 1 existed in September 2019. To incorporate changes on the substitute plans resulting from the July 2021 decisions would indirectly alter the description of the breach of planning control and cause injustice to Ms Chambers and to the Council. This is because the development forming a deemed planning application is derived directly from the description of the breach. Where a planning permission is granted through a split decision the general practice is to rely on section 180(1) of the 1990 Act whereby the enforcement notice ceases to have effect insofar as it is inconsistent with the permission granted.
25. The appeal on ground (d) was confined to the lawfulness of the access track. The proposed corrections to the plans attached to the notice include deletion of the access track and the ground (d) appeal does not need to be considered further.
26. The appeal on ground (a) sought planning permission for the access track alone. In view of the success on legal grounds, ground (a) and the application

for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended does not fall to be considered.

27. In conclusion, the plans attached to Notice EN22 will be substituted by plans that identify the appropriate area of Land and more accurately show the position of the outbuilding on the eastern side of the Land and the extent of the unauthorised hard surface.

APPEAL AGAINST NOTICE EN23

28. The appeal was made on grounds (a), (b), (f) and (g).

Appeal on ground (b)

29. The appellant's case is at the time the notice was issued the mobile home was sited outside the red line shown on the plan attached to the notice and that the land was in a mixed use for the stationing of caravans for residential purposes and the keeping of horses.
30. In response to the appellant's case, the Council initially proposed correcting the description of the alleged breach to a mixed use and extending the red line on the plan further northwards. At the inquiry in November the Council, after further consideration, decided the evidence did not support a mixed use and the description of the breach should not be corrected.
31. The issues raised by the respective cases focus on the extent and use of the relevant planning unit at the beginning of September 2019, the position of the caravan/mobile home providing the primary living accommodation and whether any necessary corrections to the notice may be made without causing injustice.

Planning unit and use of land

32. It is common ground that until early 2018 the appeal site was part of the same planning unit as Black Barn. Aerial photographs and information from neighbouring residents indicate that prior to 2018 the land to the north and west of the dwelling Black Barn was open fields. Settlement to the south of Black Barn was sited near to Crab Hill Lane. The appellant bought 2 The Paddocks in 2018. The Land Registry details and title plan identifies a roughly rectangular area which appears equivalent in area to the blue land shown on the location plan with the s78 appeal. On plan A attached to Notice EN23 the northern boundary line of the appeal site appears consistent with the Land Registry title plan. The southern boundary on the notice plan is not consistent with the Land Registry plan but is positioned further to the north. This interpretation is supported by the appellant's overlay plan.
33. The appellant believes the Land Registry title plan does not correspond with the physical boundaries and development on the ground. When the appeal site visit took place the land occupied by the appellant was marked by close boarded boundary fencing. A stable block and a barn were within the defined northern boundary. There appeared to be a field shelter in the far south east corner, marking the southern physical extent of the appellant's holding. The probability is the unit of occupation seen on the site visit was the same when the notice was issued in September 2019, having regard to the evidence of the appellant and the owner of Black Barn, together with aerial photographs.

34. The appellant explained the mobile home was moved in March 2020 from its original position adjacent to the physical northern boundary to a position further into the site. There is no contrary evidence. The home is in a different position now, closer to the western boundary and facing towards the access road.
35. With reference to the *Burdle* case², a mixed use is where two or more primary uses exist within the same planning unit and it is not possible to say that one is incidental to the other. The primary uses may fluctuate in their intensity from time to time but they are not confined within physically distinct areas of land.
36. In this appeal, the planning unit is the unit of occupation defined by the close boarded boundary fencing. On the northern part of the land was an extensive area of hard standing, a mobile home, a touring caravan, a stable block, a barn and small areas of garden space. The southern part of the land was laid to grass. This area was separated from the hard standing by a strip of planting and fencing and access was via a field gate.
37. The appellant lives on the site with his partner and daughter. The family are from the Romany community. The appellant stated he does all sorts of buying and selling, primarily vehicles and horses. The stable block and the barn are to store hay and equipment for the horses on the site. He travels to horse fairs, including Appleby, Stowe, and Wickham, to pick up work and to socialise with the community. At the time of the site visit I noted there were two horses on site, one in the stable block and one in the barn. I was informed one of the loose boxes was used as a utility room. The area of grassland showed very little sign of having been used for residential purposes.
38. Even allowing for the fact my observations of the site were some four years after the notice was issued, the appellant's way of life is unlikely to have changed significantly. The overall evidence leads me to conclude on the balance of probability the material change of use was to a mixed use for the stationing of caravans for residential purposes and the keeping of horses. Two primary uses have been carried out, which have not been within physically distinct areas of land. The use of the land amounted to a mixed use.
39. To summarise, the planning unit where the use has taken place extends beyond the red line outline on the notice plan, the mobile home was initially sited outside the defined area of Land and the material change of use was to a mixed use. Notice EN23 requires corrections to the area of the Land affected and to amend the description of the alleged breach of planning control.

Corrections to Notice EN23

40. An enforcement notice should specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise³. A consequence of the plan attached to an enforcement notice is that it defines the area in respect of which planning permission is sought by way of an appeal under ground (a). In this case to rely on the address of the Land would not be sufficiently precise and a plan is necessary.

² *Burdle and Williams v Secretary of State for the Environment and New Forest District Council* [1972] 1 WLR 1207

³ Regulation 4(c) The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 SI 2002/2682

41. The appellant submitted that if the land area was extended northwards the scope of the notice would be increased and be more onerous. The appellant would be worse off because of the appeal. Also, in response to interested party representations, the enforcement notice should not be used to remedy a land ownership issue.
42. The power to correct the plan is not constrained to reducing the area to which the plan relates. The only test is one of injustice. There is agreement the land immediately to the north of the red line is not within the appellant's registered land title but is within the registered land title of the residents of Black Barn. They were served with a copy of the notice and are aware of the proposed correction. In their representations they expressed full support for the change as a means of achieving closure on the matter.
43. There is agreement the Land should encompass the planning unit and the land where the unauthorised material change of use occurred. In my view this is the primary consideration, rather than the position of the mobile home. The inclusion of the additional land would not introduce any new matter and would correct an understandable drafting error.
44. Correction of the description to a mixed use would better describe the use taking place in 2019 and accord with the description presented by the appellant. The change to the wording when considered in isolation would not cause injustice. However, there would be implications for the ground (a) appeal because the development in question would be a mixed use, which neither party fully addressed in their statements.
45. There also may be implications related to the requirement of the notice 'to cease the residential use of caravans and permanently remove them from the land'. This requirement was consistent with the alleged single primary use of the Land but not necessarily so for a mixed use, bearing in mind the provisions of section 173(11) of the 1990 Act. In short, a potential outcome is unconditional planning permission would be treated as granted in respect of the development consisting of the keeping of horses. Also, if the requirement was corrected to cease the mixed use, the appellant would be worse off than with the existing requirement.
46. The Council proposed adding removal of the decking associated with the caravan to the requirement. The decking was initially included in the requirements of Notice EN24. It would make sense to delete reference to the decking from that notice and include it in Notice EN23. The appellant would not be worse off. However, the approximate area of the decking is shown on the amended plan and is associated with a mobile home positioned outside the red line shown on the issued notice plan.

Conclusions

47. Several corrections to the notice are required to address the various matters raised by the appellant and the Council and to ensure Notice EN23 is consistent when read as a whole. The enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the land where the breach of planning control is alleged to have taken place. In these respects the appeal on ground (b) succeeds. Correcting the breach would affect the steps required for compliance.

48. When considered in the round, I am not satisfied the necessary corrections can be made without injustice to the appellant and the Council. Therefore it is not open to me to correct the errors in accordance with the powers under section 176(1)(a) of the 1990 Act as amended. The enforcement notice is invalid and will be quashed.
49. In these circumstances, the appeal on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

APPEAL AGAINST NOTICE EN24

50. Notice EN24 is directed at operational development comprising the erection of three outbuildings and the installation of a hard surface. The approximate positions of the outbuildings are marked with crosses on Plan B attached to the notice and the approximate position of the hard surface is shown with black shading on Plan C. The requirements also seek the removal of decking surrounding the mobile home, marked black on Plan B.
51. The appeal was made on grounds (a), (b), (d), (f) and (g). Grounds (d) and (a) only relate to the access track, confirmed as lawful through the LDC. The potential inaccuracies of the notice were discussed at some length at the inquiry session in February 2023. At the inquiry in November the appellant argued the notice is a nullity. Submissions on the nullity issue were subsequently made in writing by the appellant and the Council.

Nullity

52. In summary, the appellant's case is the notice fails the *Miller-Mead*⁴ test in that it fails to tell the recipient what he has done wrong and what he must do to remedy it. The outbuildings are said to be incorrectly shown on Plan B, at least one of the outbuildings and potentially a second are not located within the red line area of the Land. It is not possible to know which buildings Notice EN24 applies to because of the inaccuracies. Furthermore "a reasonable person" cannot know what has to be done to comply with the notice. The notice is uncertain, which renders it null.
53. The Council rejects the nullity claim, drawing a distinction between a notice that is a nullity and one which is invalid.
54. An enforcement notice is a nullity if it is so defective on its face that it is without legal effect. Section 173 of the 1990 Act as amended sets out the matters an enforcement notice should contain. An enforcement notice must state the matters which appear to the local planning authority to constitute the breach of planning control. A notice complies with this statutory requirement if it enables any person on whom a copy is served to know what those matters are (sections 173(1)(a) and 173(2)).
55. The notice contains all the essential elements that it should include under section 173. There are flaws, which are appropriately considered under the ground (b) appeal and in my view the notice is not so defective as to be a nullity.

⁴ *Miller-Mead v Minister of Housing and Local Government* [1963] 2 QB 196

Appeal on ground (b)

56. There is a degree of overlap with the matters considered in respect of Notice EN23 as regard the extent of the Land, which in this case affects the position of the outbuildings marked on the plan.
57. The Council explained the outbuildings enforced against are:
- i. A children's playhouse that was sited immediately to the east of the mobile home but which has since been removed.
 - ii. A stables and utility building immediately to the rear of Black Barn, the southern part of which is inside the red line on the Notice plan.
 - iii. The barn-like building in the north eastern corner of the site, which is largely within the red line on the Notice plan.
58. The Council proposed corrections whereby Plans A, B and C would be replaced by a single plan. The red line on the plan would be extended northwards to encompass all three buildings. The three crosses would better reflect the approximate position of each building. Reference to the decking would be deleted and incorporated in Notice EN23.
59. The three buildings existed as a matter of fact when Notice EN24 was issued. The definition of the Land is the primary error. All, not part, of the outbuildings should fall within the red line. The error is most pronounced with the stable block. The knock-on effect is that the crosses are not well located, even if they represent an approximate position. Nothing turns on describing the stable/utility block, the barn and the playhouse as outbuildings. To overcome the error requires amending the boundary and extending the area of the Land northwards.
60. As stated in connection with Notice EN23 the area of Land affected by a notice may be increased provided no injustice would be caused by doing so. There is agreement that the land immediately to the north of the red line is not within the appellant's registered land title. Therefore enlarging the site area would involve new interests and ownership. The land is part of the registered title associated with Black Barn. The owners were served with a copy of the notice and are aware of the proposed correction. They support the proposed correction as a means of securing removal of buildings that have encroached on their land.
61. No injustice would be caused to the Council because it would enable the Council to secure removal of the outbuildings in their entirety and so achieve the purpose of the notice to remedy the breach of planning control.
62. Enlarging the site area would result in clarity for the appellant. No new issues would be raised in the ground (a) appeal. However, the notice would become more onerous to comply with. For this reason the proposed corrections would cause injustice to the appellant.
63. At the February inquiry one of the options identified by the appellant was to delete all references to outbuildings. The second element of the operational development enforced against, the installation of a hard surface, would remain. There was agreement the notice plan could be corrected to omit the hard

surfaced access road to Crab Hill Lane without injustice. No issues were raised about the remaining area of hard surface marked on the notice plan and planning permission was sought through the ground (a) appeal. On that basis no injustice would be caused if the notice was directed only at the installation of the hard surface, excluding the means of access.

64. However, the Council's proposed corrected plan appears to reduce the area of hard surface on the eastern side of the site, whilst extending the area of hatching northwards. The original black shading and the corrected hatching overlap with the position of the buildings. The buildings would have to be removed to comply with the requirement to remove the hard surface. My conclusion is that action against the hard surface cannot easily be separated from the buildings and there is some uncertainty over the extent of the hard surface within the main body of the land. To proceed with the notice on the basis of the hard surface alone would cause injustice to the appellant and the Council.

Conclusions

65. The enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the land where the breach of planning control is alleged to have taken place.
66. The errors cannot be corrected using the provision in section 176(1)(a) of the 1990 Act as amended, since injustice would be caused. For this reason the appeal on ground (b) succeeds. The enforcement notice is invalid and will be quashed.
67. In these circumstances, the appeal on the grounds set out in section 174(2) (d), (a), (f) and (g) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

SECTION 78 APPEAL

The proposed development

68. The development site is a small area of land (589 m²) within the appellant's wider land ownership. Nearly all of the site is proposed to be hard surfaced, with the mobile home sited near the southern boundary and the utility/dayroom in the north western corner. Access from Crab Hill Lane would be via the existing service road. Landscaping and site drainage infrastructure are proposed outside the site on the adjacent land in the appellant's ownership. The proposal is intended to be a replacement for the mobile home sited to the north to avoid siting the caravan in an area at high risk of flooding.
69. Having concluded the unauthorised development on the wider site is a mixed use, the application seeking permission for a single gypsy pitch was not made retrospectively.

Planning policy

70. The development plan comprises the Tandridge District Core Strategy adopted in 2008 (TDCS) and the Tandridge Local Plan Part 2 Detailed Policies 2014 - 2029, adopted in 2014 (TLP).

71. In the Core Strategy Policy CSP 9 sets out criteria for assessing the suitability of proposals for Gypsy and Traveller caravan sites. In the Local Plan Policy DP10 controls development in the Green Belt. Policy DP7 sets out a range of matters that should be addressed to deliver development of high quality design.
72. On 19 December 2023 the revised National Planning Policy Framework was published (the NPPF). National policy for proposals affecting the Green Belt remains unchanged. The updated Planning Policy for Traveller Sites (PPTS) should be read in conjunction with the NPPF. Following the judgement of the Court of Appeal in the *Lisa Smith* case⁵ the definition of Gypsies and Travellers in Annex 1 to the PPTS has reverted to the definition used in the Planning Policy for Traveller Sites adopted in 2012. Policy E of PPTS reiterates that inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh the harm to the Green Belt and any other harm so as to establish very special circumstances for a traveller site.

Main Issue

73. A material change in the use of land to a traveller site is inappropriate development in the Green Belt, as set out in Policy E of PPTS. The appellant did not argue otherwise.
74. The main issue is whether the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations so as to provide the very special circumstances necessary to justify the development.
75. The potential additional harms relate to the actual effect on the openness of the Green Belt and any conflict with purposes of including land within it. The effect on countryside character is also relevant.
76. Other considerations include aspects of need and supply of traveller sites, personal circumstances of the appellant and his family, human rights and equality issues. Article 8, a Convention Right⁶, affords a person the right to respect for their private and family life, their home and their correspondence. This qualified right requires a balance between the rights of the individual and the needs of the wider community. There is a positive obligation to facilitate the Gypsy way of life to the extent that the vulnerable position of Gypsies and Travellers as a minority group means some special consideration should be given to their needs and different lifestyle in the regulatory planning framework and in reaching decisions on particular cases.
77. The public sector equality duty (PSED) set out in the Equality Act 2010 requires that I have due regard to the three aims identified in the Act – to eliminate discrimination, advance equality of opportunity and foster good relations. Romany Gypsies and Irish Travellers are ethnic minorities and have the protected characteristic of race under section 149(7). I am also aware from the evidence that there are persons on the site with the protected characteristics of

⁵ *Smith v Secretary of State for Levelling Up, Housing and Communities and Others* [2022] EWCA Civ 1391

⁶ Article 8 of the European Convention on Human Rights, which was enshrined into UK law by the Human Rights Act 1998.

age and disability. There is no doubt that the PSED is engaged in these appeals. The decisions must be proportionate to achieving the legitimate planning aims.

78. The reasons for refusal stated the site is not easily accessible to local services and facilities by modes of sustainable transport and that the living conditions for future occupants of the site would be harmed by noise pollution from the M23 motorway. The Council decided not to pursue these original objections.

Reasons

Effect on the Green Belt

79. The development of the caravan site would result in the loss of open agricultural land. A mobile home and a utility/day room would be physical structures, although low in height and of a small scale. A touring caravan also would be parked on the site over the periods when the family are not travelling. The site area is proposed to be hard surfaced, introducing an operational feature in place of open undeveloped land. The residential use would lead to regular activity, comings and goings, domestic paraphernalia and the parking of vehicles. A harmful loss of openness would occur. Even though the site is visually well contained, the harm to openness would be significant. The encroachment into the countryside would conflict with one of the purposes of including land in the Green Belt.

Effect on character and appearance

80. The site forms part of a swathe of land comprised of fields of pasture bounded by hedgerows and trees, lying west of the M23 corridor. The village of South Nutfield lies to the north with a small number of properties sporadically located along the eastern side of Crab Hill Lane. Redhill Aerodrome is the main land use to the west, with its grass runways and small complex of buildings. The immediate surroundings to the site have changed in recent years with the development of Black Barn as a residential property and the formation of separate land holdings at Plot 1 and Plot 2 The Paddocks. Further to the north is a tennis centre with three outdoor courts.
81. The proposal would result in a fundamental change in the character and appearance of the site from a greenfield area to a developed area covered by a hard surface with residential caravans and associated outbuilding. The field pattern would become further fragmented. The planting indicated along the western and southern boundaries would soften the edges of the developed area to some degree but would not be consistent with the existing pattern of existing field and roadside vegetation. The stated intention is to relocate the mobile home from its current position on land to the north and a planning condition is proposed to achieve this. Even so the local countryside character would be eroded in a piecemeal way. No reliance can be placed on Notice EN23 or Notice EN24 to resolve the uncertainty over the future of the hard surfacing or the cessation of residential use on the land to the north.
82. The site, apart from the lawful access, is not visible from the public highway and there are no public rights of way nearby. Nearby residents are the main receptors that would experience the change in the appearance of the site.

Representations indicate the change is viewed as negative, which is understandable when compared to the baseline position.

83. In conclusion, the development would significantly harm the visual amenities and character of the area and so fail to comply with criterion (b) of Policy CSP 9. High quality design, required by Policy DP7, would not be achieved. Factors affecting the weight I attach to this harm include the small scale of development, the incorporation of essential functional elements and the proximity of the site to residential properties and major infrastructure. In the planning balance the harm has fairly moderate weight.

Need and supply of traveller sites

84. There is a generally acknowledged national need for additional traveller sites. One indicator is the national caravan count figures which showed an increase in the number of unauthorised caravans in England in 2022. The level of need varies from region to region and district to district.
85. The Tandridge Gypsy and Traveller Accommodation Assessment January 2017 (the GTAA) is the last full study of gypsy and traveller pitch provision to be carried out. The baseline date of the study was March 2016 when all the site interviews were completed. For the period 2016 - 2033 the GTAA identified a need for 5 additional pitches for households that meet the definition of gypsies and travellers in the 2015 PPTS, a need for up to 15 additional pitches for unknown households and 23 additional pitches for households that did not meet the 2015 PPTS definition.
86. The Council accepted the need figure in the GTAA was an underestimate due to failings in the methodology and assumptions. The Council's best estimate was a target of 25 to 30 pitches over the next ten years. Allowing for the 17 new pitches granted permission the Council considered the need is for an extra 8 to 13 pitches to 2033. The appellant argued pitch provision should be made for all who culturally are a Gypsy or Traveller. In assessing need a range of factors were considered, including hidden need, emerging need and the current supply of authorised pitches. The appellant concluded outstanding need in the district is 31 additional pitches by 2024 and for 47 pitches by 2033.
87. The GTAA, whilst a starting point, is out of date and is not a robust evidence base to establish accommodation needs in the District now. The evidence suggests that the level of need was very much an underestimate. I note the Local Plan Inspector identified the GTAA as a document that required to be reviewed and updated⁷. I agree with my colleagues in recent appeal decisions for traveller sites that the need for pitches is significant and this consideration has significant weight.
88. The Core Strategy states the needs of Gypsies and Travellers must be met. A Site Allocations Development Plan Document (DPD) was the mechanism for doing so. The stated preference was for allocating urban sites, although allocation of sites within the Green Belt was anticipated. A DPD was not progressed and all additional pitches have come forward through the development management process. A total of 17 pitches were granted planning permission from the end of 2019 to the end of 2022⁸. This demonstrates that

⁷ Appellant's Appendix A28 Letter to the Council dated 24 March 2022

⁸ Document 7 Statement of common ground paragraphs 39 and 40.

acceptable sites do exist. The sites are small (the maximum number of pitches on a site was four), consistent with the direction in Policy CSP 9.

89. The Council is awaiting the Inspector's report on the emerging Local Plan to 2033, which is expected to find the Plan unsound⁹. Work will then commence on a new plan in 2024. A strategy for providing traveller sites through the development plan is some way off. Unsurprisingly there is not a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set target. The national policy aims in respect of traveller sites are not currently being met in Tandridge.
90. The picture is one of an absence of site allocations and pressure on existing authorised sites. No suitable available alternative site has been suggested if the appellant and his family are unsuccessful in their appeal. The site in Basildon identified by the Council is not available because it is occupied by other members of the appellant's family. The information on planning permissions over the last few years shows that acceptable sites do come forward. However, finding an acceptable alternative site probably would be difficult, bearing in mind a very high proportion of land in Tandridge District (approximately 94%) is in the Green Belt¹⁰.

Family circumstances

91. The appellant hopes to be able to live on the site with his partner and daughter. The appellant explained he lived around Tandridge on and off for most of his life. His family continue to be based in the area and the site would enable strong family and cultural ties to be maintained. Proximity to medical services is important because of health issues within the family. The uncertainty over the pitch is said to have had a negative impact on their daughter's education.
92. With this information in mind, the site has locational advantages for this family. A permanent pitch would facilitate their Gypsy way of life and be in the best interests of their daughter.

Other considerations

93. With reference to the criteria in Policy CSP 9 the site is small and is capable of being provided with the necessary service infrastructure. There is a safe access to the highway and adequate space for on-site parking and turning facilities. Crab Hill Lane is a rural road that is unlit and without footways. There are no bus stops close by. The site does not have safe and convenient access by foot or public transport to local services but the location is not remote and journeys by car would be short. Accessibility does not count significantly against the proposal given that criterion (f) states a preference, not a requirement, for sites accessible by non-car modes of transport.
94. The acoustic report identifies design measures and boundary treatment with a view to ensuring traffic noise from the M23 motorway would be adequately mitigated. The siting of the mobile home would be outside the area identified as being at high risk of flooding.

⁹ Document 7 Statement of common ground paragraph 27

¹⁰ Appellant's Appendix A23 page 9

Planning balance and conclusion

95. The harm to the Green Belt provides substantial weight against the proposal. The harm to the visual amenities and character of the area has fairly moderate weight.
96. There is a pressing need for a significant number of additional traveller sites in Tandridge District. In the absence of site allocations and planned provision through the local plan process windfall sites are the primary source of provision. The proposed site is available, capable of being adequately serviced and would contribute to the stock of traveller sites. A permanent base would facilitate improved educational and employment opportunities and better healthcare, consistent with social and equality objectives. This positive outcome is very relevant to the appellant's family and is equally applicable to the wider gypsy and traveller community. Assessments for the emerging Local Plan were unable to identify any sustainably located, suitable urban or edge of settlement sites. There continues to be considerable uncertainty over the prospect of and the timescale for site allocations.
97. The considerations supporting the development are very strong when placed in the context of being fair, realistic and inclusive to the provision of traveller sites in the District. In the circumstances, they clearly outweigh the harms I have identified to the Green Belt and local character. Very special circumstances exist which justify the development. Criterion (a) of Policy CSP 9 is satisfied. The proposal complies with Policy DP10 of the Local Plan and is supported by the development plan as a whole. There are no considerations to indicate the direction of the development plan should not be followed. Planning permission will be granted.

Conditions

98. The NPPF states planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Council and the appellant have put forward lists of planning conditions following on from the discussion at the inquiry.
99. Permission is not being sought retrospectively and so the standard condition for commencement of the development should be imposed. Three years is the usual period and is proposed by the appellant. However, a shorter time period of one year would encourage delivery of the development and be in the interests of safety by ensuring the mobile home is sited where there is less risk of flooding.
100. A condition which specifies the approved plans is good practice and provides certainty. The relevant plans are the location plan that identifies the site and adjacent land in the appellant's ownership, the proposed site layout plan and the plan of the proposed utility block¹¹.
101. The proposal has been assessed and justified on the basis the mobile home will be for occupation by gypsies and travellers. A restriction on occupation will ensure the development fulfils this purpose. The definition of gypsies and

¹¹ Location plan ref 19_1005_001, proposed site layout plan ref 19_1005_003, plan of the proposed utility block ref 19_1005_005

travellers will be worded to reflect the updated PPTS and to avoid discrimination. A temporary permission or condition making the permission personal to the appellant are not necessary because the development complies with the development plan.

102. Control on the number and type of caravans and to limit development to a single pitch are necessary in view of the size of the site and to protect the Green Belt and local character. For the same reasons and to minimise the risk to the occupiers from flooding, a requirement to remove the existing mobile home from adjacent land is reasonable and necessary. Preclusion of commercial activities and the parking or storage of vehicles over 3.5 tonnes is in the interests of amenity. The Council's proposed condition to limit the number of vehicles parked on the site and adjoining land would not be reasonable.
103. In response to the findings of the noise report, a condition requiring the erection of an acoustic screen would secure suitable living conditions for the occupiers of the mobile home. Installation of drainage facilities should be carried out before first occupation in the interests of amenity. A similar timescale should apply to the laying of hard standing to serve as parking and turning space to avoid any adverse off-site effects for neighbouring residents.
104. Proposals for soft landscaping lack detail. The implementation of an approved landscape scheme with provision for replacement planting are necessary to enhance the appearance of the development. There was agreement that external lighting should be controlled to protect visual and general amenity.
105. In view of the permanent permission provision for electric vehicle charging within the site is reasonable to encourage use of vehicles that have less environmental impact. There is not the evidence to support the necessity of a condition requiring an approved flood emergency plan.

DECISIONS

Appeal Ref APP/M3645/C/19/3239279

106. It is directed that the enforcement notice is corrected by the substitution of the plan annexed to this decision for Plan A attached to the enforcement notice. Subject to the correction the enforcement notice is upheld.

Appeal Ref APP/M3645/C/19/3239283

107. It is directed that the enforcement notice is corrected by the substitution of Plans A, B and C annexed to this decision for Plans A, B and C attached to the enforcement notice. Subject to the correction the enforcement notice is upheld.

Appeal Ref APP/M3645/C/19/3239286

108. The enforcement notice is quashed.

Appeal Ref APP/M3645/C/19/3239288

109. The enforcement notice is quashed.

Appeal Ref APP/M3645/W/20/3245683

110. The appeal is allowed and planning permission is granted for: The material change of use of land to use for the stationing of caravans for residential purposes for one no. Gypsy pitch, together with the formation of hardstanding and utility/day room ancillary to that use on Land at 2 The Paddocks, Crab Hill Lane, South Nutfield, Surrey RH1 5PG in accordance with the terms of the application, Ref TA/2019/1524, dated 22 August 2019, and the plans submitted with it, subject to the following conditions:

- 1) The development hereby permitted shall begin not later than 1 year from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: location plan 19_1005_001, proposed site layout 19_1005_003 and proposed utility block 19_1005_005.
- 3) The site shall not be occupied by any persons other than gypsies and travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 4) There shall be no more than one pitch on the site. On the pitch hereby approved no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, shall be stationed at any time, of which only one shall be a static caravan.
- 5) Within 3 months of the first residential occupation of any caravan on the pitch hereby approved, all mobile homes, static caravans or touring caravans used for residential purposes sited on the land edged blue on the location plan 19_1005_001 shall be removed permanently from that land.
- 6) No vehicle over 3.5 tonnes unladen weight shall be parked or stored on the site.
- 7) No commercial activities shall take place on the site, including the storage of materials.
- 8) An acoustic screen formed of a 1.8 metre close boarded fence shall be erected along the full length of the eastern boundary of the land. The acoustic screen shall be completed before the first residential occupation of any caravan on the site and shall be retained thereafter.
- 9) No external lighting associated with the use hereby permitted shall be installed on the site unless details have first been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and shall be maintained thereafter.
- 10) No caravan shall be occupied for residential purposes until the area of loose bound permeable hardstanding shown on the proposed site layout plan 19_1005_003 has been laid out and the hardstanding made available for the parking and turning of vehicles. Thereafter the hard

surfaced area shall be retained and kept available at all times for the parking and turning of vehicles.

- 11) No caravan on the site shall be occupied for residential purposes until the proposed foul drainage and soakaway, indicated on the proposed site layout plan 19_1005_003, has been installed in accordance with details that have first been approved in writing by the local planning authority.
- 12) Within one month of commencement of development a scheme of soft landscaping and a timetable for its implementation shall be submitted to the local planning authority for approval in writing. Details of soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant sizes and proposed numbers/densities where appropriate.
- 13) The landscaping works shall be carried out in accordance with the approved details prior to the first residential occupation of any caravan on the site or in accordance with the agreed implementation programme. Any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, shall be replaced with another of the same species and size as that originally planted.
- 14) Prior to the first residential occupation of the site, a fast charge socket for electric vehicle charging shall be installed to a minimum requirement of 7kw Mode 3 with a Type 2 connector, with a 230 volts AC 32 Amps single phase dedicated supply. Thereafter the electric vehicle charging facility shall be retained on the site and be available for use at all times.

Diane Lewis

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Green	Director, Green Planning Studio Limited
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FOR THE LOCAL PLANNING AUTHORITY:

Stephen Whale of Counsel	Instructed by a solicitor to Tandridge District Council
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He called

Fiona Lander BA MSc MRTPI	Planning Enforcement Officer Tandridge District Council
Clifford Thurlow BA(Hons) DipTP MRTPI	Previously Interim Chief Planning Officer Tandridge District Council

INTERESTED PARTIES:

Alex Moseley	White and Son
Charles Reed	Local Resident

DOCUMENTS submitted at the inquiry

- 1 Notice of refusal of Certificate of Lawful Use or Development Ref TA/2019/1921
- 2 Certificate of Lawful Use or Development Ref TA/2019/1921
- 3 Representation
- 4 Email correspondence and attachments
- 5 Witness statement of Mark Lewis signed and dated 18 November 2021
- 6 Witness statement of Mark Lewis signed and dated 21 November 2023
- 7 Statement of common ground dated 21 November 2023
- 8 Draft conditions for Notice EN24



The Planning Inspectorate

Plan

This is the plan referred to in the decision dated: 26 January 2024

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

Land at: Swallows End, Crab Hill Lane, South Nutfield RH1 5PG (also known as Plot 1 The Paddocks)

Reference: APP/M3645/C/19/3239279





Plans

These are Plans A, B and C referred to in the decision dated: 26 January 2024

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

Land at: Swallows End, Crab Hill Lane, South Nutfield RH1 5PG (also known as Plot 1 The Paddocks)

Reference: APP/M3645/C/19/3239283

PLAN A





PLAN B



PLAN C