



Appeal Decisions

Inquiry Held on 20 and 21 February 2024

Site visit made on 21 February 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2024

Appeal A: APP/X0415/C/22/3293676

Appeal B: APP/X0415/C/22/3293677

Appeal C: APP/X0415/C/22/3293678

Appeal D: APP/X0415/C/22/3293679

Traps Meadow, Village Road, Whelpley Hill, Buckinghamshire HP5 3RL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Colin Smith, Appeal B is made by Christine Smith, Appeal C is made by Richard Smith and Appeal D is made by Claire Smith against an enforcement notice issued by Buckinghamshire Council.
 - The enforcement notice is described as issued on 17 January 2021.
 - The breach of planning control as alleged in the notice is without planning permission a material change of use of the land to a sui generis mixed use, comprising commercial and residential by virtue of the siting on the Land (currently in the approximate position shown cross-hatched on the Plan) of a mobile home for residential occupation and associated residential paraphernalia ("the Unauthorised Use"), and, operational development comprising the laying of hardstanding in the approximate position shown hatched on the Plan ("the Unauthorised Development").
 - The requirements of the notice are 1) save for the area that is shown as a black block on the Plan, cease the sui generis mixed use of the Land; 2) remove the mobile home (shown in the approximate area of black cross-hatching on the Plan) from the Land; 3) rip up the hardstanding (shown in the approximate area of black hatching on the Plan) and remove from the Land, and 4) remove from the Land all debris and materials arising as a result of compliance with 1) to 3) above.
 - The period for compliance with the requirements is six months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended. Appeals B, C and D are proceeding on the grounds set out in section 174(2) (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A: APP/X0415/C/22/3293676

1. It is directed that the enforcement notice be corrected by 1) replacing the issue date in the notice from '17 January 2021' to '17 January 2022', 2) deleting all words in section 3.1 and replacing them with '*a material change of use of the Land to a sui generis mixed use comprising commercial storage and distribution, and the operation and parking of an HGV and trailer and residential by virtue of the siting on the Land (currently in the approximate position shown cross-hatched on the Plan) of a mobile home for residential occupation and associated residential paraphernalia (the Unauthorised Use),*

and', and 3) the substitution of the plan annexed to this decision letter for the plan attached to the enforcement notice. Subject to these corrections, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/X0415/C/22/3293677

2. It is directed that the enforcement notice be corrected by 1) replacing the issue date in the notice from '*17 January 2021*' to '*17 January 2022*', 2) deleting all words in section 3.1 and replacing them with '*a material change of use of the Land to a sui generis mixed use comprising commercial storage and distribution, and the operation and parking of an HGV and trailer and residential by virtue of the siting on the Land (currently in the approximate position shown cross-hatched on the Plan) of a mobile home for residential occupation and associated residential paraphernalia (the Unauthorised Use)*', and 3) the substitution of the plan annexed to this decision letter for the plan attached to the enforcement notice. Subject to these corrections, the appeal is dismissed, and the enforcement notice is upheld.

Appeal C: APP/X0415/C/22/3293678

3. It is directed that the enforcement notice be corrected by 1) replacing the issue date in the notice from '*17 January 2021*' to '*17 January 2022*', 2) deleting all words in section 3.1 and replacing them with '*a material change of use of the Land to a sui generis mixed use comprising commercial storage and distribution, and the operation and parking of an HGV and trailer and residential by virtue of the siting on the Land (currently in the approximate position shown cross-hatched on the Plan) of a mobile home for residential occupation and associated residential paraphernalia (the Unauthorised Use)*', and 3) the substitution of the plan annexed to this decision letter for the plan attached to the enforcement notice. Subject to these corrections, the appeal is dismissed, and the enforcement notice is upheld.

Appeal D: APP/X0415/C/22/3293679

4. It is directed that the enforcement notice be corrected by 1) replacing the issue date in the notice from '*17 January 2021*' to '*17 January 2022*', 2) deleting all words in section 3.1 and replacing them with '*a material change of use of the Land to a sui generis mixed use comprising commercial storage and distribution, and the operation and parking of an HGV and trailer and residential by virtue of the siting on the Land (currently in the approximate position shown cross-hatched on the Plan) of a mobile home for residential occupation and associated residential paraphernalia (the Unauthorised Use)*', and 3) the substitution of the plan annexed to this decision letter for the plan attached to the enforcement notice. Subject to these corrections, the appeal is dismissed, and the enforcement notice is upheld.

Applications for Costs

5. At the Inquiry, an application for costs was made by the appellants against Buckinghamshire Council and an application for costs was made by Buckinghamshire Council against the appellants. These applications are the subject of separate Decisions.

Procedural Matters

6. I have separately issued an appeal decision¹ in respect of the Council's failure to approve reserved matters details in respect of outline planning permission PL/19/0587/OA for '*demolition of existing commercial building and wooden workshop and erection of new dwelling*'. This written representation appeal has been dismissed.
7. Prior to the inquiry, I informed the main parties that the inquiry would focus on only the legal grounds of appeal. After considering the evidence, I did not consider that it was necessary to question the main parties in detail in respect of the non-legal grounds of appeal. The latter have therefore been considered in the context of the receipt of written evidence.
8. Prior to the inquiry, the appellants submitted a pre-application protocol letter (PAP) to the Planning Inspectorate. The claim made was that the decision to refuse to adjourn the appeals until December 2024, and until the Council's process as regards the provision of a Suitable Alternative Natural Greenspace (SANG) in the area, was unlawful. The Government's Legal Department issued a response to the PAP on 26 January 2024. At the inquiry, I asked the main parties if there was anything new that they wanted to say in respect of the request to adjourn until December 2024.
9. The main parties did not provide anything new in respect of matters raised in the PAP, and, importantly, the Council were not able to offer a definitive timescale in terms of when SANG and an associated strategy would be provided/approved for the area to ensure that the integrity of the Chiltern Beechwoods Special Area of Conservation was not harmed. I deal with the latter as part of the ground (a) appeal and the deemed planning application later in this decision. Given the above, and prior to the above appeal decisions being made, I informed the main parties of my intention to immediately determine all appeals.
10. The National Planning Policy Framework was amended on 19 December 2023 (the Framework). In respect of the ground (a) appeal and the deemed planning application main issue, no material changes have been made to national Green Belt policy arising from the amendments to the Framework.

The Notice

11. The appellants assert that Stephanie Penney (East, West, and South Enforcement Team Leader) did not have delegated authority to sign/issue the notice. However, a notice is only a nullity if there is a defect evident on the face of the document. The Courts have also held that the proper course in respect of a local authority allegedly not following proper procedures when issuing a notice (including whether the local planning authority had the required delegations in place) is to challenge the issue by way of judicial review. Therefore, the appellants' comments in respect of the claim that the notice was not issued in accordance with the Council's scheme of officer delegation does not fall within the scope of what can amount to a nullity argument. This was agreed by the main parties at the inquiry. I therefore make no further comments in respect of this matter.

¹ APP/X0415/W/22/3298566

12. The notice states that it takes effect on 1 March 2022. However, the date of the issued notice is 17 January 2021. The Council states that the issue date is a typographical error and should in fact be 17 January 2022. There is no dispute between the parties that at least 28 days was given between the date of service of the notice on relevant parties and the date when the notice took effect. On the evidence that is before me, I am satisfied that the typographical error has not prejudiced any interested party. Indeed, valid appeals have been lodged within the relevant timescale. I shall therefore correct the issue date in the notice from '17 January 2021' to '17 January 2022', and, in doing so, no injustice would be caused to the main parties. The main parties agreed the latter at the Inquiry.
13. The breach of planning control relates, in part, to a material change of use of the land. The breach of planning control refers to a '*a material change of use of the Land to a sui generis mixed use, comprising commercial and residential*'. At the Inquiry, there was agreement from the main parties that the reference to '*commercial*' meant a use within use class B8 of the Town and Country Planning (Use Classes Order) 1987 (as amended). Indeed, the evidence is that when the notice was issued the land was being used for residential purposes as well as a fencing and landscaping business where items associated with that business are stored within the 'barn' building. In addition, it was agreed by the main parties at the Inquiry that when the notice was issued, the land was being used for the parking of an HGV and trailer. It is understood from the verbal evidence at the Inquiry that the HGV and trailer is owned by Mr Colin Smith who has his own haulage business including an operator's licence.
14. In respect of the above, the main parties agreed at the Inquiry, in the interests of precision, that the breach of planning control could be corrected, without injustice being caused to either of the main parties, by deleting all words in section 3.1 of the notice and replacing them with '*a material change of use of the Land to a sui generis mixed use comprising commercial storage and distribution, and the operation and parking of an HGV and trailer and residential by virtue of the siting on the Land (currently in the approximate position shown cross-hatched on the Plan) of a mobile home for residential occupation and associated residential paraphernalia (the Unauthorised Use), and*'. On the evidence that is before me, I do not disagree with this common ground position and shall accordingly correct the notice.
15. In reaching the above decision to correct the breach of planning control, I do not consider that the originally worded breach of planning control was vague or ambiguous to the extent that the notice could be considered ambiguous or indeed a nullity. In my judgement, the reference to the word '*commercial*' was acceptable for the purposes of the original notice, albeit that the corrected version of the breach of planning control does now provide some additional precision. I consider that the originally worded breach of planning control was sufficient to inform the recipients fairly what they have done wrong. Furthermore, the requirements clearly indicate what the appellants must do to remedy the breach of planning control.
16. Requirement 5.1 of the notice states '*save for the area that is shown as black block on the Plan, cease the sui generis mixed use of the land*'. There can be no doubt that the way that this is worded means that it permits the breach of planning control (as corrected) within the 'black block' on the Plan attached to

the notice. The Council confirmed in written correspondence dated 29 January 2024 that this was not its intention. Nonetheless, it was agreed at the Inquiry that the Council accepts that requirement 5.1 must be interpreted in this way. Indeed, on 29 January 2024 it stated, *'if the wording of the said enforcement notice was amended, as set out in paragraph 8.5 of Ms Islam's proof of evidence, this would be more onerous in one respect, as the appellants would be expected to cease residential use of that part of the site'*.

17. The Council considers that the notice could be varied by deleting all the words in requirement 5.1 and replacing them with *'cease the residential use of the land'*. The Council claims that this would not cause injustice to the appellants. However, I find that widening the scope of the requirements would cause injustice to the appellants by making the notice more onerous to comply with. The appellants would be worse off than if there had been no appeals. Furthermore, it would cause injustice to the appellants as requirement 5.1 permits, as part of a mixed use, residential use of the black block on the Plan. In the absence of this requirement, I have no doubt that appellant A would have looked to make further and detailed written submissions in respect of the ground (a) appeal (i.e., as part of their statement of case and proof of evidence).
18. The Council makes the claim that varying requirement 5.1 so that it reads *'cease the residential use of the land'* would be *'more generous'* as commercial use of the black block on the Plan would *'be permitted to continue'*. I do not agree with this position as, at the Inquiry, the Council accepted that the black block on the plan had, in any event, accrued immunity from enforcement action in respect of a 'B8' use. In the context of section 57(4) of the Act, I do not follow that this is therefore *'more generous.'* The Council's judgement about this matter does not alter my view that excluding residential use of the land within the black block on the Plan would lead to injustice for the appellants.
19. I acknowledge that other interested parties (the occupier of Traps Cottage in particular) are of the view that there is no lawful/established B8 use on the land, but given the way that the notice is drafted (particularly requirement 5.1) the Council has, in effect, decided that it is not expedient to take enforcement action in respect of such a use as part of a mixed use within land comprising the black block of the Plan. Put another way, it is necessary that I consider the grounds of appeal based on the wording in the notice (as corrected/varied) and not based on how other interested parties would have wanted the notice to have been drafted.
20. Given the above reasoning, I shall not vary requirement 5.1 of the notice. Injustice would be caused to the appellants if I were to do so in the manner outlined by the Council. I refer to requirement 5.1 again as part of the consideration of the ground (a) appeal.
21. The appellants claim that the hatched area on the plan attached to the notice referring to the area of extended hardstanding is not accurate. Following evidence in chief, the Council's witness acknowledged that the hatching was approximate (the notice makes this clear as well) and conceded that the appellants' plan submitted in evidence *'may'* be more precise.

22. Following the site visit, which gave Ms Islam an opportunity to measure the extended hardstanding on the ground, the main parties agreed an amended plan to be appended to the notice. This reflects the appellants' view relating to the extent of the extended hardstanding area. I am satisfied that the plan attached the notice can be substituted for this amended plan without injustice being caused to the main parties. It has not been disputed by the appellants that the discrepancy in terms of the extent of the hardstanding hatching on the plan is about 5 square metres (it was agreed by the Council at the inquiry that this was lawfully hardstanding). At the Inquiry, including my site visit, it became apparent that a strip of grass had been included in the hatched area when it should not have done so. Making the hatched area smaller so that it excludes this area would not lead to injustice in the context of requirement 5.3 of the notice which only requires the removal of hardstanding.
23. In my judgement, the above defect relating to the hatched hardstanding is minor. The notice makes it clear that the hardstanding is in '*the approximate*' position shown hatched on the plan. In the context of the clear communication of '*approximate*' and the minor defect, I do not consider that the notice was hopelessly unclear or vague on its face and hence was neither invalid nor a nullity in this regard. While it is clear from the evidence that the Council did not enter the site to take detailed measurements of the hardstanding, when concluding that it '*appeared*' that a breach of planning control had occurred, I am nonetheless satisfied that adequate prior investigations did take place in terms of viewing the site from public land, the consideration of aerial photographs and from an examination of complaints. It is also noteworthy that the notice was issued during the Covid-19 Pandemic. It therefore remains possible that the Council was limiting on-site inspections at this time. This is not a decisive matter in terms of this issue but is nevertheless worthy of comment.
24. Given the agreement amongst the main parties about the boundaries of the hatched hardstanding on the amended plan, it is prudent in my view to consider whether the notice can be correct in this regard without injustice being caused. I am satisfied that the notice can be corrected in terms of substituting the plan attached to the notice for the amended plan which depicts a smaller hatched hardstanding. No injustice would be caused to the appellants in terms of this correction as it corresponds with their evidence about the position of the southern edge of the hatched area of the hardstanding and now excludes a small strip of land to the north which is/was in fact laid to grass.
25. The appellants make the claim that the black block on the plan should include an area of land immediately to the south (i.e., concrete hardstanding) and which is claimed to have been 'used' for B8 use class purposes in association with the 'barn' for more than ten years. The onus is on the appellants to make a case that this land has been used for B8 use class purposes for a continuous period of ten years. On the evidence that is before me, and on the balance of probabilities, I do not find that such a claim has been substantiated with sufficient clarity and without ambiguity. It is noteworthy that in respect of the concrete hardstanding to the south of the barn, the notice does not attack this as operational development. That being so there is a difference between use and operational development.

26. In this appeal, it is not necessary for me to reach a definitive view about the extent of the established B8 use. This is because the breach of planning control relates to a mixed use within a single planning unit. It does not relate to the consideration of a B8 use in one single planning unit. Requirement 5.1 permits the mixed use to continue within the black block on the plan and for the mixed use to cease on the rest of the Land. That said and noting that the Council has accepted in verbal evidence that the black block on the plan equates to an 'established B8 use' of the land, any decision to uphold the notice would not, in any event, override any separate established use rights on the land, should they be capable of being formally proven as part of the determination of a lawful development certificate application.

Reasons

Appeals on ground (c)

27. The appeals made on ground (c) are that the matters alleged do not constitute a breach of planning control. The appellants claim that there has not been a material change of use of the land to a mixed use as the residential element of the mixed use is lawful. I deal with this matter as part of the ground (d) appeal below. The evidence is that the land has a lawful 'commercial' use. Use of the land for a mixed commercial and residential use constitutes a material change of use of the land. This constitutes development by virtue of section 55(1) of the Act and planning permission is required for it.

Extended hardstanding

28. The appellant claims that the hardstanding area in the approximate position shown in hatching on the plan attached to the notice is lawful as it was formed utilising permitted development rights in Class J (hard surfaces for industrial and warehouse premises) of Part 7 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Class J of Part 7 of the GPDO states that '*Development consisting of—(a) the provision of a hard surface within the curtilage of an industrial building or warehouse to be used for the purpose of the undertaking concerned; or (b) the replacement in whole or in part of such a surface*', is permitted development subject also to the limitations and conditions in J.1 and J.2.
29. As detailed below in respect of the ground (d) appeal, there is no persuasive evidence before me that the hardstanding area that is the subject of the corrected notice was a replacement for an existing hardstanding. The evidence is that prior to the extended hardstanding being formed, this part of the land was grass.
30. The Council conceded at the Inquiry that the barn did have an established B8 use and hence was a 'warehouse' for the purposes of considering Class J. Indeed, Class O (interpretation of Part 7) of Part 7 of Schedule 2 of the GPDO states that a '*warehouse means a building used for any purpose within class B8 (storage or distribution) of schedule 1 of the use classes order but does not include a building on land in or adjacent to and occupied together as a mine*'. There is no evidence that the land is close to a mine.

31. The barn is therefore a 'warehouse' use for the purposes of Class J of the GPDO. That said, I heard in evidence that the extended hardstanding area was in use for a combination of both parking for the residential use of the land, the manoeuvring of the parked HGV and trailer, as well as for the established B8 use of the barn. Based on the evidence, I am not persuaded that the extended hardstanding area was formed to be used solely for the purpose of the 'warehouse use'. In this regard, I find that the extended hardstanding area is not permitted development.
32. Even if I were wrong in respect of my findings above, it is also necessary in considering Class J to examine whether the extended hardstanding falls within the curtilage of the warehouse building on the site. It is noteworthy that curtilage is not a use and should not be confused with the planning unit. Interpretation of the word curtilage is not a matter of law but a judgement for the decision-maker given the ordinary meaning of words. It is a matter of fact and degree.
33. There is no persuasive evidence before me that the extended hardstanding has ever had an intimate association with the '*commercial*' building. Indeed, the evidence does not support a contention that prior to the extended hardstanding being formed, this part of the site was part and parcel of the building or served it in any functional or other associated way. There is no credible or objective evidence before me to indicate that the land has historically had an intimate connection with the building or that it has been functionally used to serve the building for '*commercial*' purposes.
34. In my judgement, and notwithstanding the fact that the extended hardstanding is not physically enclosed from the lawful '*commercial*' building/use on the land, or that the land is not or has not been owned by multiple occupiers, considering the evidence relating to the historic use and function of this part of the site, coupled with the location of the extended hardstanding which is well away from the barn itself, I do not find that from a curtilage point of view it can be concluded that this land is or was part and parcel of, or had an intimate association with the subject building. Hence, and, as a matter of fact and degree, I do not find that the extended hardstanding falls within the curtilage of the warehouse building.
35. In my judgement, and based on the facts of this case, I consider that the curtilage is confined to the internal access and the smaller area of land immediately around the building, as can be seen as being visually delineated in the aerial photographs dated May 2018 and the 'early 2018 Vs December 2018' photographs submitted by the occupiers of Traps Cottage. On the facts of this case, I find that these areas of land are intimately associated with the building. They are part and parcel of it.
36. There is no dispute that an extended hardstanding has been formed on the site. Indeed, there is no ground (b) appeal. There is no clear evidence before me to demonstrate that a different hardstanding area existed on this part of the site prior to the hardstanding being formed. Indeed, the aerial photographs provided by both the Council and the appellants do not show any clear visual evidence of the extended hardstanding in May 2018. The hardstanding formed on the site constitutes an engineering operation and hence is an act of development by virtue of section 55(1) of the Act. The extended hardstanding does not benefit from Class J of Part 7 GPDO permitted development rights as

it has not been provided '*within the curtilage of an industrial building or warehouse*'.

Residential mobile home

37. The appellants claim that the mobile home is required for use as temporary residential accommodation in connection with the construction of an approved dwellinghouse. They contend that as outline planning permission has been approved for the erection of a dwellinghouse on the site (i.e., PL/19/0587/OA), the mobile home is permitted development having regard to Class A of Part 4 of the Schedule 2 of the Order which states '*the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land*'. This is subject to condition A.1(b) which states that such buildings, moveable structures, works, plant or machinery are not permitted development if '*planning permission is required for those operations but is not granted or deemed to be granted*'.
38. While it is acknowledged that outline planning permission has been approved for the demolition of existing buildings on the site and the erection of a new dwellinghouse, no development can lawfully commence on the site until the reserved matters details have been approved. Only when those details have been approved will the dwellinghouse be granted. Furthermore, there is no evidence that a dwellinghouse is being constructed on the site or that the mobile home is currently required temporarily in connection with operations being or to be carried out.
39. I have already explained above that I have separately dismissed an appeal relating to reserved matters details relating to outline planning permission PL/19/0587/OA. Furthermore, there is no evidence of any other approved planning permission on the site relating to the erection of a new dwellinghouse. Importantly, the evidence does not indicate that the residential mobile home on the site is '*required*' temporarily in connection with operations on the site that are granted or deemed to be granted.
40. I return to the above issue as part of the ground (f) appeal later in this decision, but for the purposes of this ground (c) appeal the residential mobile home is not required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or adjoining land. In fact, while it might potentially be the case that operations are carried out in the future in respect of authorised residential development on the site, the evidence is that the residential mobile home that is on the site now is not required in connection with any authorised operation or operations on or adjacent to the land. This was indeed a position which was agreed by the appellants' witness following my questioning.
41. Therefore, the residential mobile home does not benefit from Class A of Part 4 GPDO permitted development rights. I therefore conclude that the breach of planning control is unauthorised and planning permission is required for it. Therefore, the ground (c) appeals fail.

Appeals on ground (d)

42. The appeals made on ground (d) are that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.

Extended hardstanding

43. The appellants claim that the hardstanding has existed on the land for more than four years and that the mixed use as alleged in the breach of planning control has continued for more than ten years. The appellants therefore claim immunity from enforcement action in respect of the breach of planning control having regard to sections 171B(1) and 171B(3) of the Act.
44. The aerial photographs dated from December 2003 until May 2018 are sufficient to satisfy me that there has been a hardstanding immediately adjacent to the building for more than four years. However, the aerial photographs between December 2003 and May 2018 do not, in my judgement, show the extended hardstanding which is the subject of the ground (d) appeals. The aerial photograph dated March 2020 shows very clearly the extended hardstanding. The above evidence is on its own sufficient to cast doubt over the claims made by the appellants that the hardstanding which is the subject of the appeal has been in existence for more than four years.
45. There is no credible or objective evidence before me to demonstrate that a hardstanding existed on this part of the land previously. Indeed, it is noteworthy that the witness statement of Anthony Michael Hearn states, in the context of works being carried out in 2019, *'the area of hardstanding at the back was increased (my emphasis) to the area that is in place currently which measures approximately 33 metres from the front of the shed and 17 metres from east to west'*.
46. In my judgement, the evidence is that the hardstanding was formed between May 2018 and March 2020. The notice (as corrected) was issued on 17 January 2022. Therefore, I find on the balance of probabilities that the hardstanding which is the subject of the appeal has not been in place for four years and hence it is not immune from enforcement action by virtue of section 171(B)(1) of the Act.

Residential mobile home

47. The aerial photographs submitted by the main parties appear to show what looks like the roof of a lightly coloured caravan stationed to the side of the 'commercial' building from 2003. The aerial photographs cannot, in themselves, be decisive in terms of this matter. This is because it remains possible that a caravan or mobile home on the land was simply being stored or stationed and had not been put to a residential use. The aerial photograph dated March 2020 shows the mobile home which is the subject of the notice. This is considerably wider/larger than what was positioned on the land before this time and in a slightly different location.

48. There is no dispute between the parties that when the notice was issued, the mobile home was being used for residential purposes. Indeed, there is no ground (b) appeal. While the evidence does appear to indicate that something with a white roof was on land since at least 2003 (the appellants' undated photograph with a young boy standing on a bench suggests this was likely a caravan), the appellants have nonetheless not provided me with sufficient evidence, on the balance of probabilities, to reasonably substantiate the claim that the land has been used continuously for ten years for residential use purposes.
49. I acknowledge that a certificate of lawful development (2012 LDC) was approved² on the land for '*use of a mobile home as a residential dwelling and the use of the surrounding land and buildings for the purposes incidental to the residential use of the mobile home*'. That LDC did not grant immunity from enforcement action and confirm lawfulness in terms of the use of surrounding land for incidental residential purposes, but it did grant immunity from enforcement action and confirm lawfulness in respect of the use of a mobile home as a residential dwelling. The evidence is that the LDC was approved based on evidence which indicated that the mobile home was the sole residence of Mr Coulter.
50. On 29 January 2016, the 2012 LDC was revoked by the Council. The Council say that '*it came to light that Mr Coulter owned other residential properties, paid Council tax on those properties and was registered to vote at an address other than Traps Meadow*'. This is not disputed by the appellants in respect of the ground (d) appeals and, furthermore, it is noteworthy that in the officer report relating to the revocation of the 2012 LDC, and in response to the service of the notice of intended revocation, it states at paragraph 5.6.2 (g) that Mr John Coulter '*is going back to live with his wife at 3 The Green, Deanshanger*.'
51. Both this and the revocation of the 2012 LDC cast sufficient doubt about the appellants' claim regarding use of the land for the siting of a residential mobile home for a continuous period of ten years, and prior to the different mobile home being brought onto the land after the new owners bought the land. I acknowledge that the '*early 2018 v late Dec 2018*' photograph submitted by the occupiers of Traps Cottage does show a mobile home on the land before the larger mobile home which is the subject of the notice was brought onto the land. Nonetheless, the mere existence of the lightly coloured caravan/mobile home on the land in '*early 2018*' does not in itself demonstrate that such a caravan was in actual use for residential purposes. As the evidence is that Mr John Coulter was '*going back to live with his wife*' in 2016, it remains entirely possible that such a mobile home/caravan was being stored on the land, but not occupied for residential use purposes.
52. The evidence indicates that the residential mobile home that is the subject of the notice was brought onto the land sometime between May 2018 and March 2020. As detailed above, the evidence before 2018 is not sufficiently precise or unambiguous to demonstrate continuous ten years use of the land for residential purposes. Furthermore, the mobile home that is on the land now has not been used continuously for residential purposes for ten years.

² CH/2012/0444/EU

53. Following my questioning, the witness for the appellants acknowledged, as part of the cross-examination process, that residential use of the land was not in fact established or lawful. The position of the witness was that a caravan/mobile home could be lawfully stored on the land as distinct from being used for residential purposes. This position was not disputed by the Council at the Inquiry. I shall return to this issue as part of the consideration of the ground (a) appeal. However, the ground (d) appeals must relate to the breach of planning control. In respect of the unauthorised mobile home, the notice quite clearly refers to a mixed use comprising a '*mobile home for residential occupation*'.

Ground (d) appeals conclusion

54. For the above reasons, I conclude, on the balance of probabilities, that the evidence is not sufficiently certain or unambiguous to demonstrate that the hardstanding area and the mixed use of the land are immune from enforcement action. Therefore, the ground (d) appeals fail.

Appeal on ground (a) and the deemed planning application

55. The appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. I have considered the reasons for issuing the notice and note that the appeal site falls within land designated as Green Belt. Furthermore, the evidence is that the appeal site falls within Natural England's stipulated 'zone of influence' of the Chiltern Beechwoods Special Area of Conservation (SAC). In this context, the main issues are: -

- whether the breach of planning control is inappropriate development in the Green Belt including its effect on the openness and the purposes of the Green Belt,
- the effect of the development on the integrity of the SAC, and,
- if the development is inappropriate in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify development.

Whether inappropriate development, openness and Green Belt purposes

56. Policy GB2 of the Chiltern District Local Plan 1997 (LP) states that most development in the Green Belt is inappropriate and there is a general presumption against such development. The policy includes categories of development which are not inappropriate development in the Green Belt including '*engineering and other operations and making of material changes in the use of land (as distinct from buildings) which maintain openness and do not conflict with the purposes of including land in the Green Belt*'. Policy GB2 of the LP is not entirely consistent with the Green Belt exceptions in the Framework. In this regard, I afford any conflict with such a policy less weight than any conflict with the Framework.

57. The breach of planning control includes a material change of use of land. While the main parties concur that some of the development on the land is lawful, the residential component of the mixed use is not. Paragraph 155(e) of the

National Planning Policy Framework is relevant in so far that it states '*certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it*' including '*material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)*'.

58. The residential mobile home is positioned to the side of the detached building. On the evidence that is before me, the mobile home could be moved either within the site, or to and from the site, with relative ease and speed. As a matter of fact and degree, I find that the residential mobile home is not a building. It constitutes a use of the land.
59. The Courts have held that the consideration of openness can have both a spatial and visual dimension. While the mobile home is positioned close to the side of an existing building on the land, it is nevertheless noticeable in view when experienced from Village Road.
60. The mobile home is seen as adding additional bulk and scale to what would otherwise be a more open site. Residential use of the mobile home would likely result in the provision of associated domestic paraphernalia on the land (e.g., football nets, tables, chairs) and would lead to the parking of vehicles including from visitors. Overall, I find that the residential element of the unauthorised mixed use has not preserved the openness of the Green Belt. Owing to the position and scale of the development, and likely associated domestic paraphernalia, I also find some conflict with one the purposes of the Green Belt, i.e., safeguarding the countryside from encroachment. Therefore, the residential component of the mixed use constitutes inappropriate development in the Green Belt.
61. Like material changes in the use of the land, paragraph 155(b) of the Framework states that engineering operations are not inappropriate development in the Green Belt provided they '*preserve its openness and do not conflict with the purposes of including land within it*'. The extended hardstanding has been formed to provide a car parking area for several vehicles and manoeuvring space for the parked HGV and trailer.
62. As an engineered flat surface, the hardstanding preserves the openness of the Green Belt. Nonetheless, the evidence is that it has been formed to facilitate the parking and manoeuvring of vehicles. It is reasonable that I do not decouple the engineering operation from its associated use. While the parking of vehicles is an intermittent use, the evidence is that the hardstanding is used frequently as can be seen from the photographs from various interested parties.
63. When experienced from Village Road, the hardstanding and its associated parking of vehicles is noticeable in view, even accounting for the relatively low conifer hedge. It is worth pointing out that I cannot be certain that the conifer hedge will endure forever (it may die, become diseased or be removed) and should this happen the whole of the appeal site would be very apparent to passers-by.
64. The presence of vehicles on land which was previously laid to grass does not preserve the openness of the Green Belt. It has urbanised the part of the land

adjacent to 'Chilterns' which the evidence indicates was previously much more open and greener. In this regard, I find some conflict with one of the purposes of the Green Belt, i.e., safeguarding the countryside from encroachment. Therefore, the hardstanding constitutes inappropriate development in the Green Belt.

65. For the above reasons, I conclude that the breach of planning control constitutes inappropriate development in the Green Belt. I find that moderate harm has been caused to the openness of the Green Belt and that there is conflict with one of the purposes of the Green Belt. The totality of the harm caused to the Green Belt is a matter to which I afford substantial weight in the planning balance. Therefore, the breach of planning control does not accord with the Green Belt requirements of chapter 13 of the Framework or with policy GB2(f) of the LP. The Council's notice refers to policy GB16 of the LP, but I do not consider that this is directly relevant to the breach of planning control as it relates to *'the extension of an existing residential curtilage onto land in the Green Belt that is in non-residential use'*.

Effect on the SAC

66. Natural England wrote to the Council on 14 March 2022 to inform it of emerging evidence prepared by Footprint Ecology which identifies significant recreational pressure on the SAC, more specifically the Ashbridge Commons and Woods Site of Special Scientific Interest (SSSI) component. The SAC has been designated due to the importance of its habitats including beech forests on neutral to rich soils and semi-natural dry grasslands and scrubland facies on calcareous substrates and dry grasslands and scrublands on chalk or lime. Natural England has advised the Council that with increasing residential development within the surrounding district/area, the SAC will experience further pressure from people using the designated site for recreation. This is from trampling and vegetation wear, soil compaction and erosion, nutrient enrichment, increased risk and incidence of fire, and other impacts including harvesting and activities associated with site management.
67. Based on evidence, Natural England has applied a 12.6km zone of influence (ZOI) from the SAC where likely significant effects on it from net increases in development due to recreational pressures cannot be ruled out, thereby triggering a need for an Appropriate Assessment. The evidence is that the appeal site falls within the ZOI. This was a position also reached by the Inspector who determined appeal APP/X0415/W/22/3290584. I have no reason to disagree with the position adopted by Natural England that the proposal on its own, or in combination with other projects, would be likely to have significant effects on the SAC.
68. In the context of the above, it falls to me as the competent authority to undertake an Appropriate Assessment. In this case, the appellant has not provided me with sufficient information to provide the certainty and control needed to rule out adverse effects on the integrity of the SAC arising from residential use of the caravan. The kind of necessary mitigation to ensure that harm is not caused to the integrity of the SAC relates to Strategic Access Management and Monitoring (SAMM) and the provision of SANG within the zone of influence of the SAC and as part of an agreed mitigation strategy.

69. The Council intends to provide SANG in the area, but the evidence is that there have been delays. In the absence of SANG being provided in the area, or any other acceptable mitigation offered by the appellant, I cannot therefore conclude that the residential component of the unauthorised mixed use does not cause harm to the integrity of the SAC as a European protected site.
70. Prior to the Inquiry, the appellant suggests the imposition of a planning condition which in effect seeks to defer SAMM and SANG financial payments to another time. The suggested condition states that the approved dwelling shall not be occupied until this has been addressed. The breach of planning control relates to a mobile home which is already occupied for residential purposes and hence my assessment of the proposal must be based on that act of development.
71. Furthermore, the suggested pre-commencement style condition is not a suitable mechanism to deal with mitigating adverse effects on the SAC. This is because plans or projects can only proceed where a plan or project would, beyond all reasonable scientific doubt, not result in an adverse effect on the integrity of a site. In this case, a SANG is not in existence in the area and an appropriate strategy has not been prepared relating to the full extent of all necessary financial payments, or any other associated required mitigation. Moreover, section 63 of the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations) states that before giving consent or permission the competent authority must make an appropriate assessment of the implications of the plan or project. On the evidence that is before me, there are two main mitigation measures which both need to be in place before affected planning applications can be determined.
72. I acknowledge the appellant's references to appeal decisions where conditions have been used in respect of European protected sites. I do not have all the background information relating to the circumstances which led to those Inspectors reaching a decision to impose a pre-commencement type planning condition relating to European protected sites. In any event, I have reached my decision having full regard to the specific wording and requirements of the Habitats Regulations and the Framework.
73. The existence of the referenced appeal decisions does not alter or outweigh my conclusion in respect of the SAC main issue. Even if a pre-commencement type condition or planning obligation were possible in these circumstances, which I maintain it is not, it is noteworthy that this would not work in respect of the ground (a) appeal as the mobile home is already in use for residential purposes. Indeed, this is presumably why the appellants decided, as part of the session at the Inquiry where suggested conditions/a planning obligation were discussed, that on reflection they did not want to submit a planning obligation or to table a suggested condition in respect of this matter. Furthermore, it is also perhaps why the appellant's solicitor commented in an email to the Planning Inspectorate on 10 January 2024, in response to not holding these appeals and the reserved matters planning appeal in abeyance until December 2024, that *'to put matters bluntly, from the appellant's point of view at least there is simply no point in incurring the expense of an appeal which will be likely doomed to a failure (my emphasis) in view of the lack of progress in respect of the above measures'*.

74. In respect of mitigation, neither the evidence that is before me nor the option of a condition is sufficient for me to conclude with the necessary certainty, precision, and control that the proposal would not have an adverse effect on the integrity of the SAC and hence can proceed. Furthermore, in this case there are no imperative reasons of overriding public interest which indicate that the project should proceed.
75. Consequently, I conclude that the residential use does not accord with the biodiversity requirements of paragraph 186 of the Framework and the Habitat Regulations. Paragraph 188 of the Framework states that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

Other considerations

76. I recognise that the Council has approved, in outline, residential development on the appeal site. However, the outline planning permission has now expired, and, in this regard, such a fallback position for in-principle residential use on the site no longer exists. I recognise that the Council has indicated that it may support the erection of a dwellinghouse on the land, although this is likely to be subject to the existing buildings being demolished in the interests of the openness of the Green Belt, and no harm being caused to the integrity of the SAC. Neither the former outline planning permission on the site, nor the in-principle support from the Council for the demolition of existing buildings and the erection of a new dwellinghouse on the land, are directly analogous to the breach of planning control. These are not material considerations to which I therefore afford any significant weight in the planning balance.
77. The appellant refers to an approved menage immediately adjacent to the appeal site. The evidence is that this was approved by the Council and was not inappropriate development in the Green Belt. This differs from the hardstanding area where I have concluded that it is inappropriate development in the Green Belt. Furthermore, use of a menage as distinct from use of a hardstanding area for car parking and the manoeuvring of an HGV with trailer has different impacts on the openness of the Green Belt. The menage is not directly analogous to the hardstanding in policy and Green Belt impact terms.
78. The appellant refers to a site elsewhere (Old Hanger Farm) in the Green Belt where it is said that the Council dealt with similar matters pertaining to use of a building for B8 use class purposes and associated car parking. The evidence indicates that in approving the development, a balanced decision was made considering material planning considerations which differed from those that are before me in respect of the ground (a) appeal.
79. While the evidence indicates that car parking has been permitted at Old Hanger Farm, I do not find that it automatically justifies allowing a hardstanding on the appeal site and in this part of the Green Belt. I have determined the ground (a) appeal on its individual planning merits and exercised my own professional planning judgement. I have had regard to the context of the site in examining openness impacts and have balanced various other material planning considerations. I was able to visit Old Hanger Farm as part of my site visit and,

unlike the appeal site, the development (including car parking) on this land is not as conspicuous from the main road owing to the existence of taller and more mature boundary landscaping.

80. There are objections from other interested parties relating to how the hardstanding has been used including photographs from the occupiers of 'The Chilterns' showing parked lorries, trailers, equipment, and stored materials, as well as the parking of cars. I do not know when these photographs were taken, but some of this activity would be capable of being prohibited by imposing a planning condition that the hardstanding is kept permanently available for only the parking of motor vehicles and as an HGV with trailer turning area. Nonetheless, the imposition of such a condition would not overcome or alter my conclusion that the hardstanding area is inappropriate development in the Green Belt and hence is harmful to it.
81. The appellant suggests that I should consider, by means of the imposition of a planning condition, the potential to remove the hardstanding behind and beneath the kennels building as a means of then retaining the extended hardstanding which is the subject of the appeal. The amount of hardstanding is not dissimilar in area terms to the extended hardstanding area. However, there is no evidence that this hardstanding area is being used in the same way as the hardstanding area (i.e., used as a manoeuvring/parking area for cars and the HGV with trailer) which is the subject of the appeal.
82. I recognise that the amount of hardstanding proposed to be removed at the kennels building is not dissimilar to the extended hardstanding area. Nonetheless, I have no objective and clear evidence before me to indicate that the hardstanding is part of an established lawful use. Aerial photographs do appear to show the kennels building being on the land for several years, but there is no certainty before me in terms of its actual lawful use. Therefore, while the hardstanding may be lawful from the point of view of operational development, I have insufficient evidence about whether the hardstanding (particularly behind the building) could lawfully be used for a purpose which, like the extended hardstanding, would result in the same adverse impact on the openness and purposes of the Green Belt.
83. Furthermore, and, in any event, I was able to see on my site visit that the kennels building, and its associated hardstanding, is experienced by passers-by as narrowly occupying the appeal site relative to the extended hardstanding area and which, to a large extent, is visually screened owing to it falling between the wooden shed and the barn. On the evidence that is before me, I am not persuaded that the removal of hardstanding behind and beneath the kennels building (even if this were to also result in the removal of the kennels building itself) would be sufficient to address the identified harm which has been caused to the openness and the purposes of the Green Belt from the extended hardstanding area.
84. Even if I had found that the demolition option (including demolition of the kennels building) provided acceptable mitigation for the harm caused to the openness and purposes of the Green Belt from the unauthorised hardstanding, it is noteworthy that the appellant has not provided any information relating to the possibility of the presence of bats which are protected species. The kennels building is old and in a poor state of repair. I find that there is a reasonable likelihood or possibility of bats using it. I would have needed a preliminary bat

roost assessment or survey before me had the suggested condition been an acceptable option. The appellant did not provide such an assessment or survey in suggesting the condition.

85. I do not find that a condition relating to the removal of the hardstanding at the kennels building would on its own, or in combination with the identified benefits associated with use of the extended hardstanding area, overcome or outweigh my conclusion about the Green Belt harm caused by the unauthorised hardstanding.
86. I do not doubt that the continued use of the site for residential purposes would have the effect of boosting the supply of homes in the area. This is in the context that the evidence is that the local planning authority (LPA) cannot demonstrate a five-year supply of housing sites for the area. Indeed, the Council's Housing Land Position Statement dated 8 January 2024 states that 2.9 years supply can be demonstrated. This is not disputed by the appellant, and I have no reason to disagree with this housing land supply position. While the mobile home's contribution to the housing under-supply position is a benefit to weigh in the planning balance, the contribution from one residential unit would nonetheless be limited in this case. I accept that occupiers of the site would provide some economic boost to existing facilities and services in the area, although again this would not be a very significant benefit.
87. I recognise that there are children living on the site. They attend a local school, and the evidence is that they are settled in this regard. The children would clearly benefit from continuing to have a stable home. The retention of the residential mobile home would enable them to continue with their education without any disruption associated with having to cease residential use of the site, and a requirement to find alternative accommodation. The best interests of the children weigh in favour of allowing the appeal. Nonetheless, this consideration is tempered somewhat as the appellants have not indicated why it would not be possible to occupy an authorised residential unit (including perhaps a rental property) elsewhere in the local area. Furthermore, this consideration needs to be weighed against the harm that would be caused to the integrity of the SAC, which would endure even if a temporary planning permission were to be considered.
88. I recognise the appellant's comment about the need for additional car parking and manoeuvring facilities on the site. Reference is made to the Council's car parking standards and the appellant states that ordinarily a business use would require car parking associated with it. The requirement for car parking and manoeuvring space is a matter that needs to be weighed against the planning harm that I have identified.
89. Nonetheless, it is noteworthy that there is no objective evidence before me to indicate that the 'B8' use on the land would be unviable in the absence of the hardstanding, or that existing jobs would be under threat. Furthermore, while Village Road is relatively narrow in places, I noticed on my site visit that traffic speeds were low. I find that it would be possible to park a limited number of vehicles on the highway without unacceptable harm being caused to highway safety or to the free flow of traffic. Indeed, some vehicles were parked on the highway during my site visit which took place prior to the inquiry (viewing from public land) and on 21 February 2024. The appellant claims that parking

vehicles on the highway would be unsafe, but this comment has not been reasonably substantiated.

90. Furthermore, the appellant's evidence does not sufficiently demonstrate that the full extent of the hardstanding (in conjunction with that which is lawful) is reasonably needed for the number of vehicles required to be parked in association with the B8 use of the barn. While the extended hardstanding does provide improved manoeuvring space for the HGV and trailer, in line with the dimensioned guidance in Policy TR16 of the Chiltern District Local Plan 1997, this must be weighed against the harm that has been caused to the openness and purpose of the Green Belt, and the fact that the area used for car parking is excessive based on car parking requirements.
91. I have concluded above that there would be injustice caused to the appellant if requirement 5.1 were to be varied so that it omitted reference to *'save for the area that is shown as a black block on the Plan'*. The effect of upholding the notice would therefore allow a mixed use within the black block on the Plan. Indeed, the effect of requirement 5.1 and section 173(11) of the Act is that in upholding the notice, planning permission would be granted for a mixed use on the black block on the Plan. Such a mixed use includes a residential component, and this could include the siting of a residential caravan.
92. On the evidence that is before me, I do not know with absolute certainty if the appellant would seek to put a residential mobile home within the black block on the Plan if the notice was upheld. I do, however, note that the appellants' witness said that this would happen if the notice was upheld. In my judgement, I do not find that such a residential use fallback possibility, as part of a mixed use, would be very likely. This is because much of the black block on the Plan is an access track which is used for vehicular movements to and from the barn.
93. Furthermore, the evidence is that the relatively tight space around the barn is needed to facilitate vehicular manoeuvring and access into and out of the barn. In addition, the evidence is that the barn is being used for use class B8 purposes and there is no indication that such a use would cease or that less space within the barn would be needed for the business. Furthermore, at the Inquiry the appellant's witness commented in respect of the landscaping and fencing business stored items and equipment in the barn, *'nearly all is squeezed in....and it needs to be for security if nothing else'*.
94. While there is a greater than theoretical possibility that residential development may take place on the black block on the Plan (as part of a mixed use) if the notice were to be upheld, for the reasons outlined above I afford this fallback position only limited weight as a material planning consideration in favour of allowing the deemed planning application.
95. Even if the appellant were to put the mobile home within the black block on the Plan as part of a mixed use, the likely significant effects on the SAC would not have been fully considered and mitigated as part of this process. Hence, and without mitigation, there is potential for harm to be caused to the integrity of the SAC. Given the requirements of the Habitat Regulations and the Framework, it is necessary that I consider the ground (a) appeal development from the point of view of being able to conclude that no harm is caused to the integrity of the SAC. I have not been able to conclude that to be the case. This

differentiates the ground (a) appeal development from the section 173(11) fallback position if the notice were to be upheld.

96. There was discussion between the main parties at the Inquiry about the possibility of storing a caravan/mobile home on the land and, in this regard, an established/lawful use on the land. This was based on a passage in an officer report³ from the revoked 2012 lawful development certificate where it states *'the mobile home has been in situ since 2001 when the applicant sold Traps Cottage and placed the mobile home on the site. From the evidence available, the fact that the mobile home has been on site in this location from more than 10 years, it is considered that the use of the land for the stationing of the mobile home is immune from enforcement action.'*
97. The appellants' views about this matter were in essence discussed at the Inquiry in the context of what is a matter to be considered as part of the ground (f) appeals. I shall deal with this later in the decision. However, in respect of this ground (a) appeal, even if were possible to lawfully store a caravan/mobile home on the land, this would not have the same harmful impact on the openness of the Green Belt. This is because the residential use of the mobile home which is the subject of the notice would cause more harm to the openness and purposes of the Green Belt from associated domestic paraphernalia and from associated car parking for occupiers and visitors. I therefore afford any claim about being able to store a mobile home/caravan on the land only limited weight in the planning balance.
98. As part of the ground (a) appeal evidence, the Council indicate that I should consider the ground (a) appeal in the context of the *'Green Belt protection and intentional unauthorised development'* planning policy ministerial statement dated 17 December 2015. The ministerial statement makes it clear that intentional unauthorised development, particularly in the Green Belt, is a material planning consideration when determining planning applications and appeals.
99. In my judgement planning permission should not be refused simply on the basis that the development was carried out without planning permission or is unlawful. I consider that a finding of intentional unauthorised development must be supported by evidence of something more than that.
100. In this case, I do not find that evidence supports a claim that the appellants intended the development to be unauthorised, or that they actively sought to harmfully flout the rules. I am persuaded that the appellants brought the residential mobile home onto the land in good faith and initially with a view to living in it while they converted the barn to a dwellinghouse. I recognise that planning permission for the conversion of the barn subsequently expired, but the evidence indicates that the appellants were actively seeking planning permission for alternative residential development on the land at this time.
101. While I do not agree with the appellants in terms of their legal grounds of appeal, it is reasonable that I take the view that at this time they genuinely considered that the breach of planning control was either immune from enforcement action, or that it did not amount to development for which planning permission was required. I do not therefore find that the evidence

³ Planning Committee report dated 28 January 2016

supports the Council's claim that there has been intentional unauthorised development in this case.

Ground (a) balance and conclusion

102. The unauthorised residential component of the mixed use, and the engineering operation in the form of the extended hardstanding, constitute inappropriate development in the Green Belt. Moderate harm has been caused to the openness of the Green Belt and there is some conflict with one of the purposes of the Green Belt, i.e., safeguarding the countryside from encroachment. The totality of the harm to the Green Belt is a matter to which I afford substantial adverse weight in the planning balance.
103. Furthermore, the evidence is that the residential element of the breach of planning control on its own or in combination with other projects would be likely to have a significant effect on the SAC. In this regard, I have not been able to conclude that the residential element of the mixed-use development would not cause harm to the integrity of the SAC. This constitutes a clear reason for refusal of planning permission and, in accordance with the Habitat Regulations, I cannot permit residential development where adverse effects might occur. This is a matter to which I afford very significant adverse weight in decision making terms.
104. Weighed against the above harm are the best interests of the children on the land and the limited social and economic benefits arising from residential use of the site from the point of view of boosting the supply of homes in the area and from the economic support that arises from the use of existing facilities and services in the area. Furthermore, I acknowledge that the extended hardstanding has some benefits from a car parking and vehicle manoeuvring point of view in connection with the use of the nearby building for business purposes. The latter is tempered somewhat owing to the potential for some vehicles to be parked on the highway. In addition, I have given limited positive weight to the mixed-use fallback position on the land which includes a residential component and to the claim that a caravan/mobile home might be capable of being stored on the land.
105. I acknowledge that policy CS19 of the adopted Core Strategy for Chiltern District 2011 (CS) seeks to support the rural economy. Indeed, it supports appropriate development of infill sites and previously developed land. Given my conclusion in respect of the hardstanding from the point of view of the harm caused to the Green Belt (i.e., inappropriate development), I do not find that this element of the breach of planning control accords with policy CS19 of the CS.
106. While I do recognise that residential use of the site has previously been approved by the Council, this is no longer a fallback position as reserved matters details have been refused as part of a separate appeal and the outline planning permission has now expired.
107. While the Council has indicated that it would, in principle, support a planning application for the erection of a dwellinghouse on the site subject to ensuring that no harm is caused to the integrity of the SAC, neither this, nor the fact that the Council granted outline planning permission for a dwellinghouse on the

site previously, is sufficiently weighty to justify approving the deemed planning application in the context of the identified planning harm.

108. I recognise that if the Council were to approve planning permission for a dwellinghouse on the site, it may provide justification for retaining the mobile home on the land given that Class A of Part 4 of Schedule 2 GPDO permitted development rights could then be exercised. Matters relating to the SAC have prevented reserved matters details being approved which would otherwise have enabled a dwellinghouse to be constructed on the land. The Council has stated that it is working with its partners to ensure that SANG is in place in the area which would, in turn, provide a strategy for ensuring that the integrity of the SAC is not harmed from residential development.
109. In the context of the above, I have considered whether the above is sufficient to justify granting temporary planning permission for the residential mobile home on the site. I do not consider that this is justified given the harm caused to the Green Belt and owing to my conclusion in respect of the SAC. Indeed, section 63(5) of the Habitat Regulations states that *'the competent authority may agree to the plan or project only after ...it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).'* I cannot agree to residential use of the site, even on a temporary basis, as I am unable to conclude that such a residential use is not or would not adversely affect the integrity of the SAC. For this reason, coupled with the harm caused to the Green Belt, a temporary planning permission is not justified for the mobile home on the site.
110. For the reasons outlined above, I conclude that in respect of the breach of planning control the harm by reason of inappropriateness in the Green Belt, and the other identified harm, is not clearly outweighed by other identified considerations so as to amount to the very special circumstances necessary to justify development. In reaching this conclusion, I have considered the supportive comments made by other interested parties. Therefore, the ground (a) appeal fails.

Appeals on ground (f)

111. The appeals made under ground (f) are that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.
112. At the Inquiry, the appellants considered that the requirement for the mobile home to be removed from the land (i.e., as per requirement 5.2) was excessive. This was in the context of a claim that it would be possible to 'store' the same mobile home on the land in accordance with an established/lawful use on the land.
113. The purpose of the notice is to remedy the breach of planning control, and this relates, in part, to a mixed use including a residential mobile home. The mobile home that has been brought onto the land has been expressly used for residential purposes. Without the mobile home, there would be no residential use. It is not excessive to require the mobile home to be removed as that has facilitated the use of the land for residential purposes.

114. The appellants' evidence is that the black block on the plan is too small. This is in the context of requirement 5.1. In effect, they claim that it should include further land including that immediately to the south of the barn which I noticed on my site visit had a concrete hardstanding.
115. The witness for the appellants commented at the Inquiry that Inspector Woolnough, who considered a lawful development certificate application in 2014⁴ on the site, was in a better position than me to determine how the land, including the barn, was used between 2003 and 2013. That is indeed true given that no credible or objective new evidence was put to me about this matter in respect the subject appeals. In Inspector Woolnough's decision, he refers to only the barn and the space to the side in respect of 'commercial' use. At the Inquiry, the Council's witness confirmed that it was on the basis of this decision that the black block on the plan had been drawn. In the absence of any credible evidence or analysis from the appellants to challenge Inspector Woolnough's previous finding, I do not find that the evidence supports the appellants' claim that the black block on the plan is too small.
116. Given my conclusions reached in respect of my ground (a) appeal, the steps required in the notice are not excessive and are necessary to remedy the breach of planning control. Therefore, the ground (f) appeals fail. In reaching this decision, it does not mean that the appellants cannot thereafter take advantage of any lawful uses on the land as long as they are conclusively proven.

Ground (g) and the compliance period

117. There is no appeal made under ground (g) of section 174(2) of the Act. Nonetheless, the Courts have held that I have the power to vary the compliance period.
118. The evidence is that the Council would, in principle, be likely to approve planning permission for a dwellinghouse on the site and subject to Green Belt openness and SAC matters being fully addressed. There is an undetermined full planning application being considered by the Council and this is effectively being held in abeyance pending the provision of SANG in the area and an acceptable strategy to ensure that residential development does not cause harm to the integrity of the SAC.
119. Prior to the Inquiry (i.e., January 2024), the Council and the appellant requested that this appeal be put in abeyance until December 2024. It is not clear why this specific date was chosen, but it is presumably so that SANG might be provided in the area thereby potentially enabling residential developments to be approved in accordance with the Habitats Regulations.
120. The Council has commented, in written appeal correspondence, that it would not seek to enforce the removal of the residential mobile home on the land if it was in situ during the period when an approved dwellinghouse was being constructed on the land. I cannot determine when, or if, a dwellinghouse will be approved on the land, or indeed that a planning permission would be implemented. I therefore have determined the deemed planning application on the circumstances that prevail now.

⁴ Appeal Reference No APP/X0415/X/14/2212790

121. I accept that the evidence indicates that there may be a prospect of planning permission being approved for a dwellinghouse on the site sometime in the future. The main parties agree that if a fully consented dwellinghouse were to be approved and constructed on the site, it would be possible to temporarily occupy a residential mobile home on the site while such a dwellinghouse was being constructed. Indeed, this would be possible utilising Class A of Part 4 of Schedule 2 GPDO permitted development rights.
122. I have considered whether I could vary the compliance period in respect of the residential mobile home. However, I am not able to do this in view of my conclusion in respect of the effect of residential use of the mobile home on the integrity of the SAC as a European protected site. Indeed, sections 63(1) and (5) of the Habitat Regulations state that a competent authority, before deciding to undertake, or give any consent, permission or other authorisation for a plan or project must in the light of the conclusions of the assessment agree to the plan or project only after...it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).
123. In this case, given my conclusion in respect of the SAC and in view of the Habitat Regulations, I cannot permit a longer compliance period in the notice. In reaching a decision not to vary the compliance period, I recognise that upholding the notice would mean that occupiers of the land would lose a home. In this regard, as well as in respect of my consideration of matters as part of the ground (a) appeal, I have had regard to Article 8 of the European Convention on Human Rights, as incorporated into the Human Rights Act 1998, which states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.
124. In this case, I find that a compliance period of six months, and my decision to refuse the deemed planning application, strike a fair and justified balance between the need to cease the harmful unauthorised mixed use of the land and to remove the hardstanding in the legitimate public interest and the interference with the Article 8 rights of occupiers of the site. Furthermore, this decision reasonably and proportionately considers the best interests of the children on the land.

Conclusions

Appeal A: APP/X0415/C/22/3293676

125. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Appeal B: APP/X0415/C/22/3293677

126. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Appeal C: APP/X0415/C/22/3293678

127. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Appeal D: APP/X0415/C/22/3293679

128. For the reasons given above, I conclude that the appeal should not succeed.
I shall uphold the enforcement notice with corrections.

D Hartley

INSPECTOR



The Planning Inspectorate

Substitute Plan

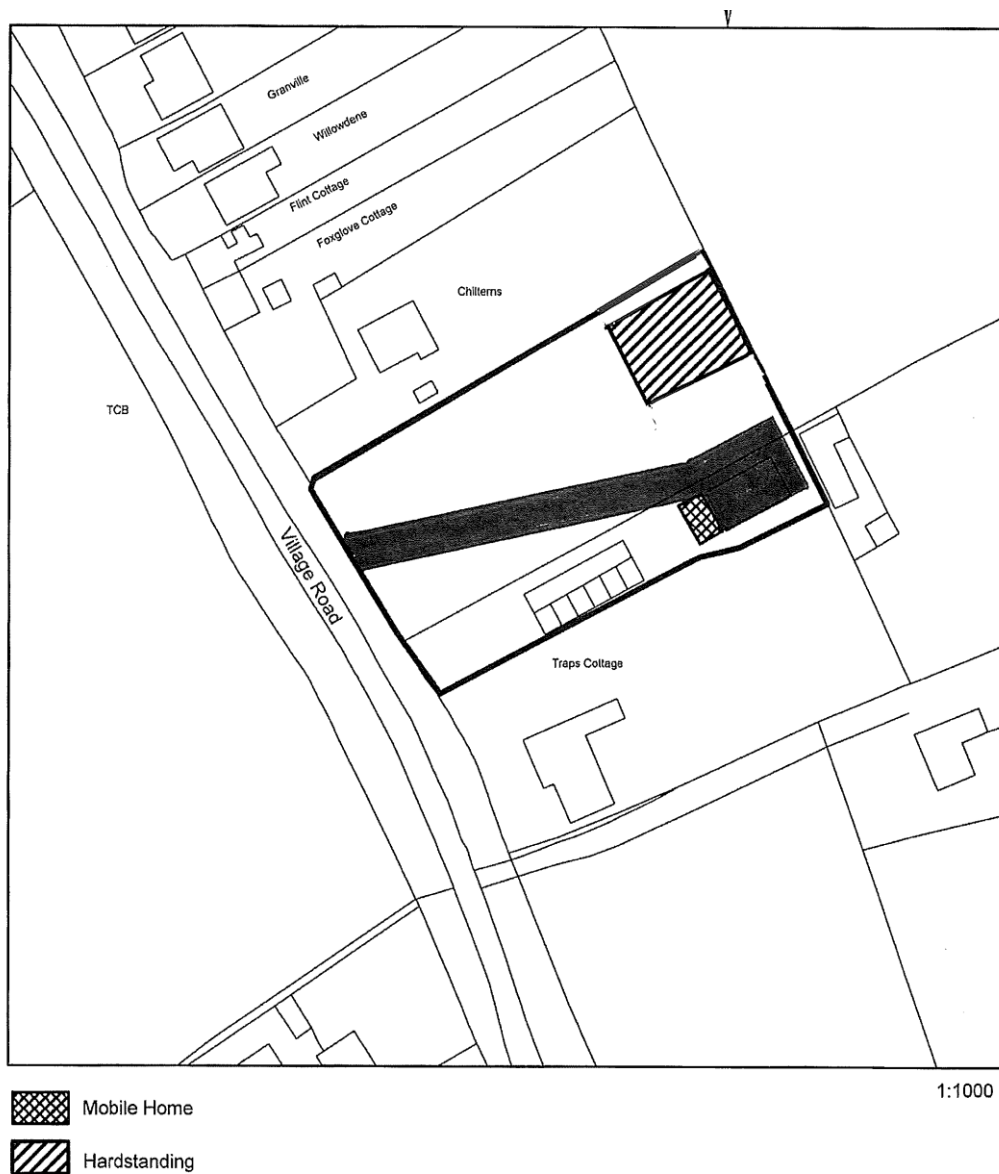
This is the plan referred to in my decision dated: 28 February 2024

by D Hartley BA (Hons) MTP MBA MRTPI

Land at: Traps Meadow, Village Road, Whelpley Hill, Buckinghamshire, HP5 3RL

References: APP/X0415/C/22/3293676, APP/X0415/C/22/3293677, APP/X0415/C/22/3293678 and APP/X0415/C/22/3293679

Scale: Do not scale



APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Horatio Waller, Barrister, FT Chambers, Counsel for the local planning authority

He called

Selina Islam, Senior Planning Enforcement Officer

Stephanie Penney, Enforcement Team Leader (conditions discussion only)

FOR The APPELLANTS

Kate Olley, Barrister, FT Chambers, Counsel for the appellants

She called

Christine Smith (Appellant B)

INTERESTED PERSONS:

None

Documents submitted at the Inquiry

ID1 – Appellant’s opening statement

ID2 – Council’s opening statement

ID3 – Agreed correction to the wording of the mixed-use breach of planning control

ID4 – Planning Contravention Notice response dated 15.12.2020 (Colin Smith)

ID5 – Planning Contravention Notice response dated 15.12.2020 (Christine Smith).

ID6 – Amended suggested conditions following discussion at the Inquiry

ID7 – Council’s closing submissions

ID8 – Appellants’ closing submissions

ID9 – Costs applications made on behalf of the Council

ID10 – Costs applications made on behalf of the appellants

ID11 – Copies of three appeal decisions (i.e., in respect of the effect of developments on European protected sites) and copies of legal judgements from the appellants.

ID12 – Council’s response to the appellants’ costs applications

ID13 – Appellants’ response to the Council’s costs applications

ID14 – Appellants’ final comments in respect of the Council’s costs applications