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## Appeal Decision

Hearing held on 9 January 2024

Site visit made on 10 January 2024

**by M. P. Howell BA (Hons) Dip TP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 05 March 2024**

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### **Appeal Ref: APP/E2205/C/22/3309329**

### **Part of area of land known as land and buildings at Pett Farm, Pett Lane, Charing, Ashford, Kent TN27 0DS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Boyd Roberts against an enforcement notice issued by Ashford Borough Council.
- The notice was issued on 16 September 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a building (including attached veranda and timber decking) ("the Building") used as a single dwelling house; and the carrying out of further facilitating operational development comprising the laying of a concrete base beneath and immediately around the Building; the formation of two brick pathways; the erection of a domestic greenhouse; the erection of a storage building; the erection of fencing along the south-west boundary and south-east boundary of the Land; and the introduction of various domestic paraphernalia, all associated with the unlawful residential use of the Building.
- The requirements of the notice are to:
  - (i) Cease permanently the residential use of the Building (shown located in the approximate position marked 'cross hatched' on the attached Plan B)
  - (ii) Demolish and remove permanently from the Land the Building (shown located in the approximate position marked 'cross hatched' on the attached Plan B)
  - (iii) Excavate and remove permanently from the Land the concrete base located beneath and immediately around the building (shown located in the approximate position marked 'cross hatched' on the attached Plan B)
  - (iv) Excavate and remove permanently from the Land the two brick pathways (shown located in the approximate position marked 'hatched' on the attached Plan B)
  - (v) Demolish and remove permanently from the Land the domestic greenhouse (shown located in the approximate position marked 'A' on the attached Plan B)
  - (vi) Demolish and remove permanently from the Land the storage building (shown located in the approximate position marked 'B' on the attached Plan B)
  - (vii) Demolish and remove permanently from the Land the fencing along the south-west boundary and south-east boundary of the Land (shown located in the approximate position marked with a 'dashed line' on the attached Plan B)
  - (viii) Remove permanently from the Land all domestic paraphernalia brought on to the Land in association with the unlawful residential use of the Building.
  - (ix) Remove permanently from the Land all materials, waste and debris resulting from compliance with steps 5(i) to 5 (viii) (above).
  - (x) Following compliance with steps 5 (ii) to 5(ix) (above), restore the surface of the Land to the levels and contours that existed immediately prior to the carrying out of the unauthorised development, that is to say to the natural slope and contours of the surrounding Land.
- The periods for compliance with the requirements are: requirement (i) 9 months; (ii) 12 months; (iii) to (viii) 14 months; (ix) 15 months and (x) 16 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) 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 Decision: The appeal is dismissed, and the enforcement notice, as corrected and varied, is upheld as set out below in the Formal Decision.**

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### **Matters Concerning the Enforcement Notice**

1. At the hearing, it was discussed that the base was not simply concrete but made up of a steel frame with concrete sleepers. Photographs from the appellant demonstrated that this was accurate. Neither party objected to the correction of the description in the allegation to describe the base in this manner. Considering this correction, the description of the concrete base set out in step (iii) of the requirements would need to be varied to match the allegation. The description of various domestic paraphernalia was also discussed. However, the appellant stated that he understood what was meant by the description, which referred to various transient garden items. However, it was considered unnecessary to describe the purpose of the various domestic paraphernalia in the allegation.
2. It is also incumbent upon me to put the Enforcement Notice (Notice) in order. The Notice contains several superfluous words, and no objection was raised to them being deleted. These include the word 'permanently' set out in each step of the requirements. Also, a description of the fence location was unnecessary when a plan showing the location is attached. Further, a lengthy description on how to restore the land to its former condition is unnecessary. These corrections and variations were discussed at the hearing, and no objections were raised. The corrections and variations, as set out below for clarity, do not alter the nature of the allegation or cause any injustice to the Council or appellant.
3. In paragraph 3, delete the words '*a concrete base beneath and immediately around the building*' and substitute with the words '*steel frame and concrete sleepers base.*' In paragraph 5, step (i) to (ix) delete the words '*permanently.*' In paragraph 5, step (vii), delete the words '*along the south-west boundary and south-east boundary of the Land.*' In paragraph 5, step (viii), delete the words '*brought on to the Land in association with the unlawful residential use of the Building.*' In paragraph 5, step (x), delete the words '*restore the surface of the Land to the levels and contours that existed immediately prior to the carrying out of the unauthorised development, that is to say to the natural slope and contours of the surrounding Land.*' I will substitute the deletion with the words '*restore the Land to its previous condition.*'

### **Application for costs**

4. An application for costs was made by Mr Boyd Roberts against Ashford Borough Council. This application is the subject of a separate decision.

### **Preliminary Matters**

5. During the course of the appeal the revised National Planning Policy Framework December 2023 (the Framework) was published. A discussion was had with appellant and Council at the hearing with respect to the changes to paragraph 11 (d), footnote 8. It was agreed that as the application subject of this appeal was made before the date of the new Framework, then the policy set out in paragraph 76 does not apply. Accordingly, it was agreed that there are no substantive changes relevant to the appeal, and no prejudice would be caused by me having regard to it.

6. The Levelling Up and Regeneration Act 2023 contains provisions in Schedule 15 to mandate decision makers as to how to treat named catchment areas which are not currently in compliance, but which will be 'deemed' to be in compliance by 2030. The Secretary of State for DEFRA has recently designated 16 such catchments in which water companies are now required to upgrade their Wastewater Treatment Works (WwTW) before 1 April 2030. This list of catchment areas to which this requirement applies has now been published and includes the Stodmarsh Lakes. I will have regard to this when making my decision.
7. The land was described as being in North Downs, Kent Downs and High Weald Area of Outstanding Natural Beauty (AONB) in different reports submitted with the appeal evidence. It was confirmed at the hearing that the land was the Kent Downs AONB, and I will refer to it as such hereafter.
8. In the Council's Final Comments submission, it is stated that a Planning Contravention Notice (PCN) was served on the appellant. However, on request of a copy of the PCN, the Council indicated that this was an error. It was not a PCN, but a section 330 Notice. A copy of the completed section 330 Notice was provided to me at the hearing. It confirms Mr Boyd Roberts as the occupier of the land and premises the subject of the enforcement notice, which is his home.

### **The Appeal on Ground (b)**

9. An appeal on this ground is that the matters alleged in the enforcement notice, as corrected and varied, have not occurred. In order to succeed on this ground, the appellant must demonstrate that, on the balance of probability, the matters stated in the enforcement notice have not occurred as a matter of fact. The appellant seeks to demonstrate that the alleged building is in fact a caravan.
10. The appellant does not contest the second part of the allegation, which relates to facilitating operational development comprising the laying of a steel frame base with concrete sleepers; the formation of two brick pathways; the erection of a domestic greenhouse; a storage building and fencing. The ground (b) appeal, therefore, turns on whether the structure is a caravan rather than a building as alleged.
11. Both parties have drawn my attention to the definitions set out in the Caravan Sites and Control of Development Act 1960 (1960 Act). In section 29 (1) of the 1960 Act, the term caravan is defined as 'any structure designed or adapted for human habitation which is capable of being moved from one place to another whether being towed or by being transported on a motor vehicle or (trailer) and any motor vehicle so designed or adapted, but does not include (a) any railway rolling stock which is for the time being on rails forming part of a railway system or (b) any tent.' A 'twin unit' caravan is also not outside the scope of the definition of a caravan. However, the twin unit is a caravan defined in Part III (13) of the Caravan Sites Act 1968 (1968 Act), which indicates three prerequisites to be a twin unit caravan, often referred to as the size, construction and mobility tests.
12. The size test is defined by a particular set of dimensions, and there is no dispute in this regard. The dispute in this case is with respect to the construction and mobility tests. Section 13 (1) of the 1968 Act indicates a structure designed or adapted for human habitation which: -

(a) Is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices.

(b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer).

20. My attention has been drawn to various legal authorities relating to caravans <sup>1</sup>. The cases have established that a caravan is defined by the statutory definitions set out, and not the everyday meaning of 'caravan.' It is not necessary for a caravan to be towed to determine whether it could lawfully be moved on the highway. Also, it would be contrary to the purposes of the Town and Country Planning Act (1990 Act) to hold that because caravans are 'structures' for the purposes of the 1968 Act, they must fall within s336(1) definition of 'building' set out in the 1990 Act. I have had regard to these legal authorities when considering the appeal on ground (b).

### *Construction Test*

21. In terms of the construction test, limited information is provided in the written submissions, aside from the statement that the appellant complies with all of the relevant tests set out in the 1960 and 1968 Act.
22. At the hearing, Mr Roberts indicated that he had witnessed a friend constructing a log cabin style mobile home approved by the Council, which he understood to be the proper construction process. He claimed that the structure was not brought on as two whole assembled sections but delivered by a trailer in numerous sections and materials. He laid out the timber frame in two parts, with a central dividing gap along their length. The two timber frames sat on top of the steel frame and concrete sleepers. He constructed the elevations and roof before bolting the central ridge timbers of the roof along its length. The structure was then externally clad with timber panelling and fitted out with the accommodation, comprising a kitchen/living space, utility room, bathroom and two double bedrooms.
23. Having regard to the information provided by Mr Roberts, his intention was clearly to carry out the works in accordance with the plans agreed as part of the 2018 application for the stationing of a residential mobile home<sup>2</sup>. The structure is the same length, width, height and position as the mobile home agreed. However, my interpretation of the construction test is that in order to be a caravan, the structure can be delivered to the site in a 'flat pack style kit' but when constructed and assembled should not compose of more than two sections. When the two sections are assembled, the joining together is the final act of assembly.
24. Although I acknowledge that the two sections do not have to be constructed away from the site, it is evident that the structure was constructed from numerous bits of material, which were brought onto the site and constructed in one operation. Also, while the base was laid out in two sections, the joining of the two sections occurred part way through the process and was not the final act of assembly. Mr Robert's description of the process is supported by the Council's

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<sup>1</sup> *Wyre Forest BC v SSE & Allen's Caravans* [1990] 2 WLR 517; *Measor v SOS* (1998); *Brentall v. Erewash Borough Council and Carter v SSE & Carrick DC* [1991] JPL 311 (CoA)

<sup>2</sup> Council reference 18/00410/AS

photographs taken at that time. The images show the shell of the structure complete but still in the process of being externally clad with timbers and with no accommodation contained therein. The constructed shell was clad in timber externally and fitted with accommodation for day to day living following the joining of the two sections. I therefore find the construction test as a caravan is not satisfied in this case.

25. I have had regard to the appeals highlighted to support the appellant's position in respect of the construction process<sup>3</sup>. I do not have the full details of these cases for comparison, and in every case the process of construction, as well as the level of detail provided to the Inspector, is likely to be different. However, based on the information set out in those decisions, the appeals at 159 Victoria Avenue and 28 Lodge Lane indicate that it is necessary for the joining together of two constructed and assembled sections to be the final part of the process. As outlined above, this is not the case in this instance. As such, I have given them limited weight in my decision.

### *Mobility test*

26. Like the construction test, limited information is provided in the written submissions, aside from the statement that the appellant complies with all of the relevant tests set out in the 1960 and 1968 Act. The appellant claimed in the hearing that the structure would need to be de-bolted centrally to separate the structure into two sections. A sling could then be placed between the two sections, so that they could be lifted individually and moved onto a trailer/vehicle to be moved. In addition, fixtures such as the large roof canopy and decking, together with the connection to utility services, would need to be unbolted and disconnected from the structure before it is moved. Also, a tie beam, which is understood not to be a structural component, would also need to be removed. The external cladding across the width of the end elevations would also need to be cut or removed before separating the two sections could occur.
27. I am mindful that there are several fixed items that would need to be removed, such as the decking, canopy, tie beam and external cladding before the structure could be separated in two. Although the internal tie beam is not a structural necessity, from what I saw during my site visit, it would not be a simple process to separate it from the internal roof timbers. Furthermore, and more importantly I do not have specific detail on how this process would be carried out, how long it would take and what is needed to separate and move the two sections. Also, I do not have details on the extent of bracing required to support the two sections during relocation, or what repair work to the structure would be needed, if any, once it was relocated.
28. Thus, I have limited supporting evidence to demonstrate that the structure could be moved by road from one place to another when being towed or transported on a motor vehicle or trailer. I therefore find the appellant's evidence to demonstrate that the unit is physically capable of being moved from one place to another as a single unit to lack precision and to be ambiguous. As such, the appellant has failed to demonstrate, on the balance of probabilities, that the structure complies with the mobility test.

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<sup>3</sup> Appeal reference APP/N1025/C/01/1074589 and Appeal reference APP/B5480/C/17/3174314



### *Is it a building?*

29. As indicated previously, the courts have held that just because a caravan is a 'structure' in respect of the 1968 Act, it does not automatically mean that it must be a building. Section 336 of the 1990 Act provides a definition of a building as including 'any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.'
30. Settled caselaw (*Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385 ), endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] JPL 1025 has also identified three primary factors as being decisive in determining what is a building. These are: (1) that it is of a size that it would normally be constructed, as opposed to being brought ready-made onto the site; (2) there would be physical attachment to the ground; and (3) it would cause a physical change of some permanence. None of the factors are necessarily decisive.
31. The structure does not have foundations and is not physically attached to the ground. It rests on a steel frame and concrete sleepers; however, it is not raised and appears to be held in place through its own weight. Furthermore, the structure is of a notable size, which is the equivalent of a modest sized two bedroom bungalow. The structure was formed by the appellant bringing in separate materials and forming the structure through a single building operation. Based on its size and how the appellant erected the structure on the land, it is something that was constructed as opposed to being brought on to the land ready-made.
32. The structure has been on site since 2018 and has not been moved. The structure has remained on top of the steel frame since that time, and brick pathways have been laid, which direct you to the front door. As with any structure, it may be removed if circumstances change, but that does not make it impermanent. Although it is not fixed to the ground through foundations, given its size and footprint, together with the attached canopy and decking, it is held in place by its own weight. It has also never been moved, and the appellant has applied for the structure to remain in place permanently. In this respect, I find the structure causes a physical change to the land of some permanence.
33. I therefore conclude that the structure is a building due to being constructed on site, its degree of permanence and physical attachment to the ground through its own weight. I find that, as a matter of fact and degree, the structure falls within the meaning of development in section 55(1) of the 1990 Act as a building. For this reason, I conclude that, on the balance of probability, the construction of a building on the land has occurred. Accordingly, the ground (b) appeal fails.

### **The Appeal on Ground (a) and the Deemed Planning Application**

34. The **main issues** in this appeal are:

- The effect of the development on the ecological integrity of the Stodmarsh Special Protection Area (SPA), Ramsar Site, Special Area of Conservation and a Site of Special Scientific Interest (SSSI), with regard to Nutrient Neutrality.
- Whether there is an essential need for a permanent dwelling to accommodate a rural worker, having regard to the development plan and

national planning policies that seek to avoid isolated homes in the countryside.

- The effect of the development on the character and appearance of the area, and the conservation and enhancement of the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty (AONB).

## **Reasons**

### *Protected Sites*

35. The site is located within the Stour River Catchment. The River Stour feeds into Stodmarsh Lakes, which are a set of lakes that are afforded a range of protection including, a Special Protection Area (SPA), Ramsar Site, Special Area of Conservation (SAC), and a Site of Special Scientific Interest (SSSI). Parts are also designated as a National Nature Reserve (NNR). These are Protected European and RAMSAR Sites subject to the Conservation of Habitats and Species Regulations 2017 (as amended) (The Habitats Regulations).
36. The protected sites contain a significant range of habitat types and species and associated conservation objectives. Specifically, Stodmarsh Lakes are internationally important feeding grounds for rare bird populations and other water dependent species and are protected under The Habitats Regulations. On the basis of advice from Natural England, updated in March 2022, all new residential development in the River Stour Catchment needs to demonstrate nutrient neutrality.
37. As the log cabin has been erected, there are no concerns with respect to polluted surface water during the construction period. However, the cesspit on site is drained and taken to a wastewater treatment plant, which discharges into the Stour River Catchment following treatment. The appellant claims that the retention of the log cabin is not new development, it has been on site since 2018, it has no concrete foundation to hinder drainage and the dwelling is served by a sealed cesspit. Accordingly, the appellant claims the retention of the log cabin for 1 person would not increase the nitrate or phosphate levels in the wastewater being discharged. Therefore, any likely significant effects (LSE) on the protected Stodmarsh Lakes are negligible.
38. I have had regard to the appellant's position, but he does not benefit from any planning permission for the log cabin building erected on site. The ground (a) appeal is also proposing the permanent retention of the log cabin, as opposed to a temporary consent, which was granted previously for a mobile home on the land. As such, I must regard the development as new, and must consider the shift in policy since the log cabin was erected on site.
39. The retention of the log cabin and the wastewater discharging arrangement may allow the current nutrient levels to be maintained. However, due to the unfavourable status of the protected site, maintaining the current levels may undermine the objective of restoring it. Also, for an Appropriate Assessment (AA) to conclude that there is no LSE, the decision maker must be satisfied that the development can achieve nutrient neutrality. Consequently, I cannot rule out that the retention of the development permanently would not have any LSE on the important features of the protected site, alone or in combination with other plans and projects.

40. In accordance with section 63 of The Habitats Regulations, as the competent authority I am required to undertake an Appropriate Assessment (AA). Excessive levels of nutrients can cause the rapid growth of certain plants and algae through the process of eutrophication, which can displace species that are either important in their own right or which act as sources of food and shelter for others. Due to the unfavourable status, I cannot conclude with any certainty that the development would not have an adverse effect on the conservation objectives and integrity of the protected site. I must however have regard to any measures that could be delivered which would avoid or mitigate the adverse effects.
41. The Council outlined that it had started to prepare a local mitigation strategy, but this has been paused with no clear understanding of when it might be resumed. They also identify that the appellant has not consulted Natural England (NE), produced an Appropriate Assessment or any other substantive information relating to the levels of nitrate and phosphorus from the development to be calculated. No on-site or off-site mitigation is proposed. It was suggested by the appellant that a condition requiring mitigation to be agreed could be attached to achieve nutrient neutrality.
42. I have considered whether a condition could be imposed to ensure that within a specific timeframe a site specific scheme or a planning obligation is entered into to ensure there is mitigation on site, or via some form off site credit to offset the pollutants being discharged. However, as the appellant has not provided any detail on the levels of nutrients from the development, I am unable to determine what mitigation would be appropriate to achieve nutrient neutrality. Furthermore, as there is no strategic mitigation scheme in place, or close to being finalised, there is insufficient assurance that measures can be secured to achieve nutrient neutrality within an appropriate time period. As such, I do not have sufficient information to understand what mitigation would be required to offset the harm or what appropriate time frame would be needed to comply with the condition.
43. It was indicated in the hearing that the wastewater from the log cabin is possibly taken to a wastewater treatment plant outside of the catchment, in Kennington. However, no evidence was produced to confirm this to be the case. Even if there was evidence to show it was taken outside the catchment, a condition would not be sufficient to enforce that wastewater from the treatment plant (off site) is discharged outside the catchment by a third party. Such a condition would not pass the test of being enforceable set out in the Framework. Furthermore, there is no legal mechanism, such as a planning obligation, before me to secure the wastewater is taken outside the catchment area in perpetuity.
44. I have also had regard to the fact that the catchment will be brought into compliance with the Habitats Regulations by 2030, as water companies are now required to upgrade their WwTW before 1 April 2030. However, the log cabin is already in situ, which negates the possibility of a Grampian condition being used to limit occupation until the upgrades in the relevant WwTW have been carried out. As such, at this time, the upgrade to the WwTW in the catchment by 2030 does not alter my conclusions on the matter.
45. Having regard to the precautionary approach promoted by the Habitats Regulations, and based on the evidence provided, I must conclude that the development has a likely significant effect on the conservation objectives of Stodmarsh Lakes. No mitigation has been proposed, or can be secured, that would achieve nutrient neutrality. I am therefore unable to rule out the possibility



that the development, either alone or in combination with other development, would have an adverse effect on the integrity of the protected sites and protected species. No alternative solution, overriding public interest, or compensatory measures have been put forward. Consequently, having regard to the Habitats Regulations, permission must not be granted.

46. The development also conflicts with Policies ENV1 and ENV8 of the Ashford Local Plan 2019 (Local Plan), which oppose development that would have an adverse effect on the integrity of protected sites. The development would also be contrary to Paragraph 186 of the Framework. This indicates that planning permission should be refused if significant harm to biodiversity cannot be avoided, mitigated, or as a last resort, compensated for then planning permission should be refused.

#### *Permanent Dwelling for Rural Worker*

47. Pett farm is located in the countryside, approximately 500m to the east of the village of Charing and includes a mixture of larger modern agricultural buildings as well as single storey stable buildings, a lunge pen, horse walker, sand school and storage areas. While Mr Roberts is the landowner of Pett Farm, he rents out approximately half the land holding for arable and livestock purposes. He also lets out one of the agricultural buildings for the storage of marquees by a third party. These parts of the Pett Farm business supplement his livery business income but he has no operational obligations in respect of these matters.
48. The appellant currently resides in the log cabin on the land, which he maintained was the lawful implementation of the temporary consent for the mobile home<sup>4</sup>. Following the expiry of the temporary permission for the mobile home, the appellant has remained living on the site in the log cabin. He submitted an application for the permanent retention of the log cabin as a mobile home in 2021, but this was refused<sup>5</sup>.

#### *Policy Context*

49. Policy HOU5 of the Ashford Local Plan 2019 (Local Plan) indicates that residential development that is adjoining or close to the existing built-up confines of a list of settlements, which includes Charing, will be granted subject to complying with criteria on the scale of the development, traffic generation, design, accessibility and impact on heritage assets. Outside of those villages, elsewhere in the countryside, residential development would only be permitted, if the development complies with one of five criteria. One of the criteria is that the development is accommodation to cater for an essential need for a rural worker to live at, or in close proximity to, their place of work in the countryside.
50. The Framework is consistent with the Local Plan, which at paragraph 84, states that it seeks to avoid the development of isolated homes in the countryside unless special circumstances apply. This includes an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work. The Planning Practice Guidance (PPG)<sup>6</sup> also sets out considerations that are relevant to take into account when applying the provisions of paragraph 79a (now paragraph 84) of the Framework.

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<sup>4</sup> Council reference 1800410/AS

<sup>5</sup> Council reference 21/00896/AS

<sup>6</sup> Paragraph: 010 Reference ID: 67-010-20190722, Revision Date: 22 07 2019

51. Paragraph 88 also includes support for the sustainable growth and expansion of all types of business in rural areas, through conversions and the development of well designed, beautiful new buildings. Also, policies and decisions should enable the development and diversification of agricultural and other land-based rural businesses.
52. The relevant parts of the PPG and the Framework set out above replace the advice and guidance set out in Planning Policy Statement 7 (PPS7). The appellant has indicated that since PPS7 has been superseded by the Framework, *the courts*<sup>7</sup>, have held that the Framework does not specifically require a development to be economically viable. In light of caselaw, and concerns over personal financial information being publicly available, the appellant has not submitted detailed and up to date financial records for the business.

### *Essential Need*

53. Although Mr Roberts originally sought consent for pig farming and a livery yard, for various reasons, he does not consider it viable to farm pigs at present. In view of this, the functional need to be on site rests with his responsibilities in connection with the DIY livery yard as well as certain periods during the winter when he takes care of sheep.
54. In the absence of their owners, the appellant tends to a relatively high number of horses (18). He is responsible for turning them out, providing food, water and bedding as well as supplementary feed. The appellant also provides out of hours care to the horses in the event of injury and medical emergency. One tenant of the DIY livery also rents several stables at the site and provides a full livery service to others. Mr Roberts provides out of hours help to this tenant as and when it is needed. It was outlined in the hearing that from autumn until spring, sheep (approximately 60) regularly graze on the land near to the yard as part of an informal agreement with a local farmer. They need to be regularly checked to ensure there are no medical issues and to safeguard their overall health and safety. However, he does not tend to these animals during the more intensive lambing season.
55. I was told the business could be significantly impacted if someone was not on hand to deal with the out of hours welfare of the animals as well as in emergency situations, where swift action is required. If there was not an on-site presence out of hours, there would be a serious risk to animal welfare, from such matters as colic and horses being stuck in their boxes (often known as being cast). Also in the summer, when horses are often turned out in the fields overnight, it is necessary to be present to ensure mares and geldings do not end up being mixed, which results in fights, causing serious injury or death. The onsite presence is also providing the customers with the confidence that their horses are properly safeguarded when they are not present.
56. Interested party representations suggest that the DIY livery agreements with the horse owners specifically excludes the appellant from any responsibilities regarding animal welfare. However, this was disputed by the appellant at the hearing, and no evidence has been provided by the third party to demonstrate this to be the case. As such, I given this matter limited weight in my decision.

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<sup>7</sup> Regina ex parte Embleton PC and David Ainsley v Northumberland CC and Ivor Gaston [2013] EWHC 3631 (Admin)

57. The appellant is responsible for pasture management, which requires removal of dung, which can affect horse health. Also, ensuring the land to the front and rear is properly managed, rotated, harrowed, and seeded, to allow for grazing of the horses as well as hay and silage being grown and taken as a crop from the land to be sold to DIY livery clients and others. He also maintains the yard, stables, horse exercising facilities, agricultural buildings as well as other plant, machinery, and fences on the land to a high standard.
58. The appellant also provides on-site security for possible fire, theft, damages and break ins. The site stores horse boxes, high value horse vehicles/trailers, together with saddles, horse rugs and agricultural machinery. Cameras and alarms together with an automated gate into the yard are already set up to prevent theft and crime. However, from what I saw on site, the yard is unduly exposed due to the available public access to the rear, via the Public Rights of Way (PROW). This public access together with the storage of high value vehicles and accessories poses a more serious problem over theft of goods, vehicles and machinery than most sites. Due to the distance that would need to be travelled following the triggering of an alarm, an on-site presence is more likely to deter and prevent crime on this site.
59. With the above factors in mind, I am of the view that there is a functional need to be on the site, based primarily on the scale of the livery yard, his labour responsibilities, the duty of care to a number of horses, emergency duties out of hours associated with the animals and the potential risk of crime at the site.
60. I appreciate the Council are concerned over the viability of the business. The 2020 accounts provided with the refused application did not show a good level of profit, and income from other elements of the business were included but not part of the functional need. In this respect, to grant a permanent permission for a dwelling to serve a business, which might not survive, would not be appropriate regardless of the functional need. However, what is evident from the 2020 accounts is that a significant proportion of the income comes from the DIY livery yard rents together with the hay and straw sales. It was also set out in the hearing that the income from the livery was adequate to achieve a rural workers wage. Although income from the pig farming would be lost, this was not a significant proportion of the income previously considered as part of the temporary permission for the mobile home. Mr Roberts also confirmed at the hearing that he made losses from the pig farming.
61. Mr Roberts has remained living on the site since 2019, and he has no other sources of income aside from the livery yard and the other elements of Pett Farm mentioned. To offset the losses from the pig farming, the DIY livery was grown by increasing rent prices for the livery. Mr Roberts has submitted several planning applications since 2015 to regularise the land as a livery yard, as well as to retain stables, a sand school and horse walkers. The appellant has also invested a significant amount of money, approximately £60,000, into the site to improve and add to other services and facilities. The livery business also appears to be in demand, with all stables on site being rented, and a waiting list for any stables which become available.
62. The above mentioned matters show that Mr Roberts is directing his efforts at the most viable aspect of the Pett Farm activities. Also, given the investment, growth and demand for his facilities and services, I have confidence that the business is viable for the foreseeable future.

63. The Council outline that given the proximity from the village of Charing, the appellant could use alternative accommodation in Charing to operate the business. However, the Council did not provide details of any properties to rent or purchase within the locality. In any event, the PPG guidance only requires consideration of whether the need could be met through improvements to existing accommodation on the site. Based on the evidence before me, and after viewing the buildings on site, there were no existing vacant, underutilised buildings or other suitable accommodation on site that could provide the necessary accommodation.
64. Accordingly, there is an essential need for a rural worker to reside on site to provide out of hours care for the horses, to deal with any emergencies with the horses and sheep grazing as well as to provide security. The development complies with Policy HOU5 of the Local Plan, which allows residential development in isolated locations provided there is an essential need for a rural worker to live permanently at, or near, their place of work. The development also complies with Paragraph 84 of the Framework, which allows dwellings in isolated locations provided there is an essential need for a rural worker.
65. Paragraph 88 of the Framework also supports the sustainable growth and expansion of all types of business in rural areas, through the development of well designed, beautiful buildings, and decisions should enable the development and diversification of agricultural and other land-based rural businesses.

#### *Character and Appearance*

66. The appeal site is in a rural setting within the Kent Downs AONB. The Kent Downs AONB Management Plan 2021-2026(Management Plan) classifies six Landscape Character Types (LCT) within the Kent Downs AONB, reflecting the area's underlying geology and its topography; these are Chalk Scarp and Vales, Chalk Cliffs and Coast, Chalk Downs, Greensand, Low Weald and River Valleys.
67. It is indicated that the site is within the 'Chalk Scarp and Vales' LCT. The 'Scarp and Vale' LCT, is described as the long arc of the North Downs chalk ridge. This is the most dominant element of the AONB, consisting of the steep, south-facing scarp slopes rising above the Gault clay vale below. It is stated that spectacular views are offered along the chalk escarpment across the Vale of Holmesdale. It is also indicated that the built form of the Kent Downs AONB has a rich tradition of half-timbered and weather-boarded buildings, as well as locally distinctive architecture in materials such as Ragstone, Flint, Chalk as well as soft red bricks and peg-tiles.
68. The site and its immediate surroundings comprise largely of two storey period buildings that sit within the countryside, outside of the built-up area of the village of Charing. The buildings associated with Pett Farm are timber clad single storey stable buildings and larger steel framed modern agricultural buildings, finished in timber cladding and corrugated sheeting. To the front, the land is flat but to the rear it steeply rises to Pilgrims Way. The land to the front and rear are undeveloped parcels of open pastureland. PROW are situated to the front and rear of the site, including a bridleway to the east. The site and immediate surroundings have a character and appearance that aligns with the landscape character described, positively contributing to the landscape and scenic beauty of the Kent Downs AONB.

69. The development is a modest single storey log cabin structure, which is situated directly to the east of a larger modern agricultural building and to the rear of a more contemporary bungalow that fronts Pett Lane.
70. I accept that many of the dwellings in the immediate vicinity are two storey, red brick, period dwellings. However, the immediate stable buildings, the converted residential barn and an adjoining contemporary bungalow are all single storey buildings with a simple form as well as a modest scale and height. In this context, the modest scale, simple form and single storey height of the log cabin would be compatible with the immediate built form. Furthermore, with the benefit of a site visit, it was noted the nearby barn conversion is finished in black timber, and part of the end elevations of the cottages are finished in half-timber cladding. Consequently, the use of the timber cladding in this setting is not unusual for the AONB and would not appear out of place with the finishes found on the immediate built form.
71. At the time of my visit, the log cabin was visible via the surrounding PROWs, but it was not a prominent structure from the mid to long distance views. These wider views were also screened at certain points by the topography of the land, intervening built development and landscaping. During the summer months when the trees and hedgerows are in leaf, the development is unlikely to be visible from these wider public vantage points. As such, having regard to the siting, scale, design, single storey height and finishes, the log cabin is a well-designed building that does not result in any adverse visual change to the landscape character of the AONB.
72. The Management Plan (page 57) outlines that equine activities play an important role in the AONB land-based economy and can provide a market for local farm produce for feed and bedding. Also, a common thread through the Management Plan is the benefit of the upkeep and maintenance of the large network of PROWs. This encourages more active lifestyles and utilisation of the PROW by the public. Accordingly, the retention of the ongoing residential use tied to the livery business would result in an enhancement of the AONB, due to the important role it plays in the local rural economy. The public also benefit from the use of the well-maintained PROW across the appellant's land.
73. Accordingly, the development does not adversely affect the character and appearance of the area, conserving and enhancing the landscape and scenic beauty of the Kent Downs AONB. Therefore, the development complies with the objectives of Policies ENVa, ENVb, ENV5 and HOU5 of the Local Plan. These policies seek to ensure development respects the local character and distinctiveness of the area, conserving, protecting and enhancing the landscape and scenic beauty of the Kent Downs AONB.
74. In reaching this conclusion, I have given great weight to the conservation (and enhancement) of the landscape and scenic beauty of the AONB. The development complies with the design policies of section 12 and paragraph 182 of the Framework.

#### *Other Matters*

75. The appeal site is within proximity of three Listed Buildings, Pett Place, a Grade I Listed Building; Court Barn (or Tithe Barn), a Grade II\* Listed Building and Cherry and Hazel Cottage, are Grade II Listed Buildings. The main parties agreed



during the hearing that the development is outside the settings of these designated heritage assets, and it would not therefore affect their significance.

76. I have had regard to my statutory duty set out in the Planning (Listed Buildings and Conservation Areas) Act 1990. Based on my observations, and the evidence provided, the significance of the buildings is largely defined by their age, as well as the materials and architectural features of the period buildings. Pett Place is a larger, historical property, with some parts of the building dated in the 16<sup>th</sup> Century. It has red brick elevations as well as sash windows with glazing bars and is set within a spacious walled garden. The pair of cottages are closer to Pett Lane, with red brick elevations with grey headers, a tiled roof as well as sash and casement windows. Court Farm is a medial aisled timber barn with a wagon entrance and a crown post roof that is tiled.
77. Despite its proximity to the listed buildings set out above, the development is separated from Pett Place by approximately 100m, with modern stable and agricultural buildings in between. It is closer to Cherry and Hazel Cottages and Court Barn, but again it is situated to the east at a higher level and is separated by the yard and the contemporary agricultural buildings. Due to its size and position, the development is not read in the same context as the heritage assets from a close or wider perspective. Consequently, I agree with the Council's findings, and consider the development to be outside the settings of these listed buildings.
78. I have had regard to representations that detail support for the development and the ongoing operation of the rural enterprise. Although I am not opposed to the principle of the development as a rural enterprise or its impact on the Kent Downs AONB, the issue pertaining to Stodmarsh Lakes as a protected habitat has not been addressed sufficiently. The acceptability in respect of the other main issues does not mitigate the significant impact the development could have on the protected habitat site, and subsequent conflict with the Local Plan, The Habitat Regulations and the Framework.

### *Planning Balance*

79. It was confirmed at the hearing that a supply of deliverable housing land cannot be demonstrated. However, paragraph 11 of the Framework informs that the presumption in favour of sustainable development is not engaged where the application of the policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development. Footnote 7 of the Framework advises that such policies include those relating to habitat sites. Therefore, the provisions of paragraph 11d ii of the Framework are not engaged.
80. In view of the above, to allow the permanent retention of the log cabin on the appeal site, would run contrary to The Habitats Regulations, and Policies ENV1 and ENV8 of the Local Plan, which oppose development that would have an adverse effect on the integrity of protected sites. I therefore give significant weight to the conflict with Policies ENV1 and ENV8 of the Local Plan, which are generally consistent with the Framework.
81. I have found that the development is in keeping with the character and appearance of the area, as well as preserving and enhancing the AONB. The development therefore accords with relevant policies in this regard, which is a neutral impact.

82. The development would result in an uplift in housing in an area of under supply, however, the uplift would be small. The business supports the appellant, provides additional benefits to local people utilising the livery yard, as well as associated economic benefits to other rural businesses in the immediate vicinity. I would attribute moderate weight to these benefits. These benefits singularly, or cumulatively, do not outweigh the harm I have identified, which results in a significant conflict with development plan policies that protect the integrity of protected sites.

*Conclusion on Ground (a) and the Deemed Planning application*

83. With the above in mind, the development would conflict with the development plan and there are no other considerations worthy of sufficient weight that would indicate a decision other than in accordance with it. Therefore, I conclude that the appeal on ground (a) shall not succeed. I shall uphold the corrected and varied enforcement notice and refuse to grant planning permission on the deemed application.

**Ground (g)**

84. This ground of appeal is that any period specified in the Notice falls short of what should reasonably be allowed. The appellant has requested an additional 3 months to each requirement, which would give Mr Roberts 12 months to cease the use, and 19 months to comply with the final requirements.

85. The additional time requested is based on the need for the appellant to find alternative living accommodation as well as alternative ways and arrangements of managing his business. It was agreed during the hearing that the additional time would amount to (i) twelve months; (ii) fifteen months; (iii) to (viii) seventeen months (ix) eighteen months and (x) nineteen months. I have also had regard to rights conveyed within the Human Rights Act (1998), which refers to the peaceful enjoyment of property.

86. Having regard to the loss of the appellant's home, and the impact on the operations of his business, I consider that a period of time in excess of the sixteen months can be justified. This time frame would strike an appropriate balance between having to minimise the impact on the protected habitat site with the changes to how the business may operate without an on-site presence. It also allows sufficient time for Mr Roberts to find suitable and affordable living accommodation.

87. To this limited extent, the appeal on ground (g) succeeds. I shall vary the terms of the Notice accordingly.

**Overall Conclusions**

88. For the reasons given above, I conclude that the appeal should not succeed on grounds (b) and (a) but shall succeed on ground (g). I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application made under section 177(5) of the 1990 Act as amended.

## Formal Decision

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

*In paragraph 3, delete the words 'a concrete base beneath and immediately around the building' and substitute with the words 'steel frame base and concrete sleepers.'*

*In paragraph 5, steps (i) to (ix) delete the words 'permanently.'*

*In paragraph 5, step (vii), delete the words 'along the south-west boundary and south-east boundary of the Land.'*

*In paragraph 5, step (viii), delete the words 'brought on to the Land in association with the unlawful residential use of the Building.'*

*In paragraph 5, step (x), delete the words 'restore the surface of the Land to the levels and contours that existed immediately prior to the carrying out of the unauthorised development, that is to say to the natural slope and contours of the surrounding Land.' and substitute with the words 'restore the Land to its previous condition.'*

*In paragraph 5, step (i), specifying the time for compliance, delete the word 'nine' and substitute with the word 'twelve.'*

*In paragraph 5, step (ii), specifying the time for compliance, delete the word 'twelve' and substitute with the word 'fifteen.'*

*In paragraph 5, steps (iii) to (viii), specifying the time for compliance, delete the word 'fourteen' and substitute with the word 'seventeen.'*

*In paragraph 5, step (ix) specifying the time for compliance, delete the word 'fifteen' and substitute with the word 'eighteen.'*

*In paragraph 5, step (x), specifying the time for compliance, delete the word 'sixteen' and substitute with the word 'nineteen.'*

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

*M. P. Howell*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Ms Judith Norris  
Mr Boyd Roberts

The Rural Planning Practice  
Appellant

### **FOR THE LOCAL PLANNING AUTHORITY:**

Ms Claire Cutts

Enforcement Officer (Deputy Team  
Leader), Ashford Borough Council  
Planning Officer, Ashford Borough  
Council

Ms Laura Payne

### **INTERESTED PARTIES**

Ms Corrine Bain Smith  
Ms Dawne Austin  
Mr Patrick Hurst

Charing Parish Council  
Charing Parish Council  
neighbouring resident

### **DOCUMENTS SUBMITTED AT THE HEARING:**

- Copy of completed Notice under Section 330 of the 1990 Act (dated 22.07.22)
- Plan Identifying land owned and used in connection with Pett Farm livery yard
- Copy of Letter to Mr. Roberts from Council (17.06.19)- Council application 18/00410/AS
- Consultation response- Rural Planning Limited (23.02.22)- Council application 21/00896/AS
- Charing Parish Council representation (written copy)
- Copy of Appeals reference APP/N1025/C/01/1074589 (159 Victoria Avenue)
- Copy of Appeals reference APP/B5480/C/17/3174314 (28 Lodge Lane)
- Copy of Appeals reference APP/C2741/W/22/3303588 (Welton Stables)
- Written submissions of Costs rebuttal from Council.