The Planning Inspectorate

# Appeal Decisions

Inquiry Held on 16, 17, 18 & 19 April 2024, and 21 June 2024

Site visit made on 17 April 2024

**by Paul Freer BA (Hons) LLM PhD MRTPI**

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

**Decision date: 8 July 2024**

## Appeal A Ref: APP/W1905/C/23/3334117
## Land south of Cock Lane, Hoddesdon, Hertfordshire, EN11

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Billy Joe Saunders against an enforcement notice issued by Broxbourne Borough Council.
- The enforcement notice, numbered ENF/23/0033, was issued on 31 October 2023.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of the Land to residential caravan site by the stationing caravans and mobile homes on the Land along with associated operational development.
- The requirements of the notice are:
  (i) Permanently cease the use of the Land as a residential caravan site
  (ii) Permanently remove all caravans and mobile homes from the Land
  (iii) Permanently remove all buildings and structures from the Land except the one that is diagonally hatched black on the attached plan
  (iv) Permanently remove all the tarmac from the Land from the Land, including the area shown shaded with a black pattern on the attached plan
  (v) Remove any resultant debris from the Land
  (vi) Restore the land shown shaded by a black pattern by seeding the land using native grass seed
- The periods for compliance with the requirements are:
  Step (i) – 3 months from the date this Notice takes effect
  Step (ii) – 4 months from the date this Notice takes effect
  Step (iii) – 5 months from the date this Notice takes effect
  Step (iv) – 5 months from the date this Notice takes effect
  Step (v) – 6 months from the date this Notice takes effect
  Step (vi) - 6 months from the date this Notice takes effect
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act fall to be considered.

## Appeal B Ref: APP/W1905/W/23/3327012
## Woodland Stables, Cock Lane, South Heath, Hertfordshire EN11 8LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Billy Joe Saunders against the decision of Broxbourne Borough Council.
- The application Ref 07/23/0119/F, dated 9 February 2023, was refused by notice dated 25 May 2023.
- The development proposed is described as the change of use of land to residential, for members of the Gypsy Traveller community. The proposed development to contain 7

static caravans, 6 touring caravans, parking for 12 cars, hardstanding, and associated development. This application is part retrospective.

**Summary Decisions:**

**Appeal A is dismissed and the enforcement is upheld with corrections and variations**

**Appeal B is allowed subject to conditions**

## Procedural matters

1. The appellant contends that the enforcement notice is a nullity. This is not a matter that falls neatly into any of the grounds of appeal set out in section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act). I will therefore consider this as a separate matter below.

2. The appeal on ground (e) was withdrawn at the Inquiry and no further action is taken in relation to it.

3. In relation to Appeal B, I have taken the description of the development proposed in the header above from the application form. That description was subsequently altered during the determination of the application to:

   *Retrospective planning permission for change of use of land to residential, for members of the Gypsy Traveller community for 7no. static caravans 6no. touring caravans, parking for 12 cars, hardstanding, and associated development.*

4. That was the development for which the Council refused planning permission. The appellant now considers that this description is itself defective and suggests that the description of development should properly be described as:

   *A material change of use of land to the stationing of caravans for residential purposes, and the laying of hardstanding ancillary to that use.*

5. The Council does not resist that description. I am content that this further amended description accurately describes the development that is proposed and I shall consider Appeal B on that basis. In the event that Appeal B is allowed and planning permission granted, the quantum of development proposed and potentially other matters would need to be controlled through the imposition of conditions.

6. There is no dispute that the occupiers of the site meet the definition of gypsies and travellers as defined at Annex A of the Planning Policy for Traveller Sites (PPTS)[1].

7. No third-party representations were received in relation to either appeal. However, during my opening remarks at the Inquiry and before I was able to intervene, there was an unsolicited outburst from a member of the public in which some wholly inappropriate comments were made. I have had no regard to those comments.

[1] As updated on 19 December 2023

**Nullity**

8. The modern approach to the question of nullity is to be found in the judgment of the High Court in *Oates v SoCLG and Canterbury* [2017] EWHC 2716, which drew extensively upon the preceding case law on the subject. A number of principles emerge from this judgment, including that the test in relation to nullity is best understood not as one of 'hopeless ambiguity' but rather as a failure to tell the recipient with 'reasonable certainty' what the breach of planning control is and what must be done to remedy it. The judgment in *Oates* also indicates that a degree of uncertainty does not necessarily render it non-compliant with statute and that the notice should be read as a whole. It was held in *Oates* that it was open to an inspector to conclude that while one section of a notice was too uncertain and could not stand, taken as a whole the notice did comply with the statutory requirements. Overall, the judgment in *Oates* indicates that the question of nullity should not be approached in a way which is unduly technical or formalistic.

9. Section 173(2) of the 1990 Act states that a notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are. The requirement at paragraph 5(iii) of the notice is to permanently remove all buildings and structures from the Land except the one that is diagonally hatched black on the attached plan. None of the other structures and buildings are identified on the plan attached to the notice such that, in the appellant's view, it is not possible to understand from the notice which buildings are caught by the notice. The appellant considers this to be a clear failure to comply with s173(1) of the 1990 Act and that the notice is therefore a nullity.

10. The judgment in *Oates* indicates that, when considering the question of nullity, the notice is to be taken as a whole. Buildings and structures are both forms of operational development. In this case, the requirement at paragraph 5(iii) of the notice is to permanently remove *all* buildings and structures from the Land except the one that is diagonally hatched black on the plan attached to the notice (emphasis added). The plan attached to the notice clearly shows the area to which it relates edged in red.

11. Consequently, taking the notice as a whole and as a matter of ordinary language, the notice can only be read as to require the removal of *all* the buildings and structures from the land edged in red on the plan attached to the notice, with the exception of that which is shown diagonally hatched in black on that plan. That is clear from within the four corners of the document.

12. Whilst a plan attached to the notice showing the buildings and structures to be removed would have been helpful and no doubt would have assisted the appellant, it is not necessary to enable the recipient to understand what must be done to remedy the breach of planning control alleged in the notice. In that context, I note that Regulation 4(c) of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (the Regulations) only requires that an enforcement notice shall specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise. The enforcement notice in this case is accompanied by a plan that clearly identifies the precise boundaries of the land to which the notice relates and therefore accords with the Regulations. There is no

requirement in the Regulations that an enforcement notice shall include a plan that identifies buildings or structures that the notice requires to be removed.

13. I consider that the enforcement notice, when read as a whole, is sufficient to tell the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. In any event, the judgment in *Oates* indicates that a degree of uncertainty does not necessarily render it non-compliant with statute. In that respect, if there is any uncertainty in the requirements of the notice when read as a whole, it is well within the degree of uncertainty accepted in *Oates* as still being compliant with statute.

14. The Council did subsequently muddy the waters by indicating that it did not intend the entrance gates to be removed as part of the requirements of the notice. There is no doubt that these gates are, at the very least, a structure and possibly also a building, insofar as more likely than not they amount to "building operations" as set out in the definition of development in section 55(1) of the 1990 Act. In response to questions put to her, Ms White conceded that the entrance gates "can be considered structures". She went on to explain that, had the Council wanted the entrance gates to be removed, they would have been included as a specific point for removal in the same way as the tarmac also referenced in the notice.

15. I have great difficulty in reconciling the Council's position in this respect. Given that the Council accepts that the entrance gates can be considered to be a structure, the obvious corollary is that the entrance gates must be caught by the requirement in the notice to remove *all* buildings and structures from the land. Furthermore, had the Council intended that the entrance gates not to be caught by the notice, it would have been a simple matter to specifically exclude them in the same way as the building shown diagonally hatched in black on the plan attached to the notice.

16. The subsequent revelation that the Council did not intend the entrance gates to be caught by the notice indicates a level of ambiguity and uncertainty in the Council's position. However, this only became apparent during the appeal process. The question of nullity relates to the recipient's understanding upon first receipt of the notice: on first opening the envelope, as it were. For the reasons set out above, the requirements of the notice would have been apparent to the recipient as a matter of ordinary language.

17. Having regard to the above, I conclude that the notice is not a nullity.

**The Enforcement Notice**

18. The breach of planning control alleged in the notice is, without planning permission, the change of use of the Land to residential caravan site by the stationing of caravans and mobile homes on the Land along with associated operational development. I note that there is a missing 'a' and a missing 'of' in that allegation, and I shall correct the notice in those respects.

19. A change of use is not, of itself, development for the purposes of Section 55(1) of the Town and Country Planning Act 1990 (the 1990 Act). That section defines the meaning of development as:

*the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land* (emphasis added).

I shall therefore correct the notice to refer to a material change of use of the land as defined in section 55(1) of that Act. I am satisfied that no injustice would be caused by so doing.

20. The requirements at paragraphs 5(i) to 5(iv) all include the word 'permanently.' Having regard to the provisions of Section 181(1) of the 1990 Act, which states that compliance with an enforcement notice shall not discharge that notice, the word 'permanently' is unnecessary. I shall therefore delete it from those requirements. I am satisfied that no injustice would be caused by so doing.

**Appeal A: The appeal on ground (b)**

21. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. An appeal is this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred.

22. The breach of planning control alleges, in summary, the (material) change of use of the land to a residential caravan site. On 6 October 2008, planning permission (Council Ref:7/0596/08/F/HOD) was granted for the 'change of use of stables to livery yard'. The appellant defines a 'livery yard' as a use of land best described as 'the keeping of horses'. This is not an agricultural use and as such constitutes development requiring planning permission. The stables to which that permission relates have subsequently been replaced but those replacement stables are on land covered by the enforcement notice and currently in use for the keeping of horses.

23. This leads the appellant to the view that the use taking place across the land covered by the enforcement notice is misdescribed and should more properly be described as a 'mixed used for the stationing of caravans for residential purposes and the keeping of horses'.

24. Two points flow from this. Firstly, the stables granted planning permission under reference 7/0596/08/F/HOD was a different (and notably smaller) building than the replacement stables now on the site and currently used for the keeping of horses. The latter are therefore an entirely different development to that approved in October 2008 and under a very different set of prevailing circumstances. I am therefore not persuaded that the planning permission granted under reference 7/0596/08/F/HOD transfers to the replacement stables building.

25. The second point relates to the nature of the use for which the replacement stables are used. The guidance entitled 'Keeping horses' published by the Department for Environment, Food and Rural Affairs (Defra) defines a livery yard as being where horses are housed and cared for in return for payment, but do not belong to the owner of the yard. Similarly, guidance entitles 'Keeping horses commercially', also published by Defra, defines a livery yard as being where horses are housed and cared for in return for payment or reward, but do not belong to the owner of the yard. The Oxford English Dictionary (OED) defines a livery stable, and also a livery yard, as a stable where horses are kept at livery or let out for hire. The OED defines 'at livery' as a horse kept for the owner and fed and cared for at a fixed charge.

26. The essence of the definitions used by Defra and the OED are that a livery stable or yard entails horses kept for the owner in return for payment or reward. That appears to be the case for the livery yard granted planning permission in October 2008 under reference 7/0596/08/F/HOD: indeed, the fact that planning permission was applied for and granted tends to suggest that the 'to' use as a livery yard proposed was materially different to the 'from' use as stables.

27. But that is not the case with the stables currently on the site. Some of the horses stabled there do belong to the landowner (the appellant). Others are owner by residents of the site and are stabled there by permission of the appellant. The common denominator, on the evidence before me, is that none of the horses are kept in the stables in return for payment or reward. It follows that the present use of the stables is not as a livery yard as defined by Defra or in the OED. In my view, the present use of stables is more properly described as being ancillary to the stationing on the land of caravans for residential purposes.

28. In this respect, the use alleged in the notice can be distinguished on its facts from that considered under appeal reference APP/X1355/C/14/222237546 wherein the Inspector found that the notice "should allege that the site is in mixed use for residential use and the keeping of horses, even if the Council would not require the equestrian activity to cease". The use of the current appeal site is not a mixed use, with the keeping of horses being ancillary to the primary use of the land for the stationing of caravans for residential occupation.

29. I conclude that the appellant is not correct to describe the use taking place on the land as a mixed use for the stationing of caravans for residential purposes and the keeping of horses. I further conclude that the matters alleged in the notice have occurred. Accordingly, the appeal on ground (b) fails.

**Appeal A: The appeal on ground (c)**

30. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal is this ground is another of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.

31. On 29 July 2013, temporary planning permission for existing the use of mobile home as a residential dwelling in conjunction with horse livery and cattery/rescue centre operating on the site at that time (Council Ref: 07/13/0465/F). In September 2014, that temporary permission was extended for a further period of 3 years (Council Ref: 07/14/0674/F).

32. The appellant relies on section 57(4) of the 1990 Act which provides that where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development had not been carried out. On that basis, the appellant contends that the stationing of a mobile home for residential purposes on the site is lawful by reason of planning permission 07/14/0674/F.

33. In that context, the appellant further relies on the judgment in *Pioneer Aggregates UK v SSE* [1985] 1 AC 132 which sets out the ways in which a planning permission, once implemented, can be lost. None of those mechanisms involved a use that continues beyond the time limit set by a condition imposed on a temporary planning permission. It follows that a planning permission for a material change of use that is granted subject to a time limiting condition does not expire at the end of that period but remains extant, albeit any continuing use would be in breach of that condition and the remedy for that breach is an application to vary or remove the time limiting condition.

34. There is no dispute that planning permission 07/13/0465/F was lawfully implemented, at which point the change of use took place. Planning permission 07/14/0674/F merely extended that use. However, the use permitted by planning permission 07/13/0465/F was very specific, as set out in the description of the development permitted on the Decision Notice. The use thereby permitted, and which took place with the implementation of that permission, was 'use of mobile home as a residential dwelling *in conjunction with* horse livery and cattery/rescue centre' (emphasis added). It follows that the use permitted, and implemented, was not solely for use of a mobile home as a residential dwelling. It was something different, and more involved, than that.

35. Moreover, the use as a mobile home was subject to conditions, including that the permission was for limited a period limited period only (Condition 2) and personal to the then applicants (Condition 3). In both cases, the stated reason for imposing those conditions was to meet the special need/circumstances of the applicants. This reflected the requirement for someone to be permanently based at the site in connection with the horse livery and the cattery/rescue centre. The imposition of conditions must accord with the six tests set out in the Planning Practice Guidance (PPG), including that they are necessary to make the development acceptable in planning terms. It follows that the use of the mobile home as a residential dwelling in conjunction with horse livery and cattery/rescue centre was necessary for a planning purpose particular to the circumstances at that time.

36. I have already found that the stables on the land are not operating as a livery yard. There is currently no cattery/rescue centre operating on the land. It follows that the use the mobile home(s) on the site is not in conjunction with horse livery and a cattery/rescue centre. It is therefore not the same use permitted by planning permission 07/13/0465/F, and which took place upon implementation of that planning permission. The corollary is that neither section 57(4) of the 1990 Act nor the judgement in *Pioneer Aggregates UK* are of assistance to the appellant in this case[2].

37. Even setting aside the point about the use of the mobile home not being in conjunction with horse livery and a cattery/rescue centre, there is a further consideration here. Planning permission 07/13/0465/F was for use of a mobile home for residential use in the singular. The breach of planning control alleged in the enforcement notice is the stationing of caravans and mobile homes in the plural: there were a total of eight mobile homes on the land at the time of my site visit. In my view, the increased quantum of mobile homes on the land

[2] For that reason, I have not rehearsed in detail here the evidence and submissions on this point.

constitutes a use of a different character to that granted under planning permission 07/13/0465/F. It is settled case law that a change in the character of a use can result in a material change of use requiring planning permission. In my opinion, as a matter of fact and degree, that is what has occurred in this case.

38. As originally made, the Appellant's appeal on ground (c) focused on whether the hardstanding is attacked by the notice. This point was not pursued in the appellant's closing submissions but neither was it expressly withdrawn. For completeness, I will therefore consider it here.

39. Two points immediately arise. Firstly, the notice specifically requires the removal of all the *tarmac* from the Land from the Land (emphasis added). In giving her evidence, Ms. White explained that this was deliberate in order to distinguish the newly laid hardstanding (i.e the tarmac) from existing hardstanding that the Council accepts is now lawful through the passage of time. Furthermore, Ms White accepted the proposition put to her in cross examination that even if the notice does attack the pre-existing lawful hardstanding, ground (c) should succeed to that extent.

40. The formation and laying out of hardstanding typically falls within the definition of engineering operations for the purposes of section 55(1) of the Act. This would include the laying of tarmac over a pre-existing hard surface, as has happened here. By reason its extent and depth, the tarmac laid at the appeal site comprises, as a matter of fact and degree, an engineering operation and therefore development for the purposes section 55(1) of the Act. Section 57 of the 1990 Act states that planning permission is required for development. There is no planning permission, deemed or otherwise, in place for this tarmac.

41. I conclude, on the balance of probability, that the breach of planning control constituted by the matters stated in the notice does constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

**Appeal A: The appeal on ground (d)**

42. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In this case, the appeal on ground (d) only relates to the tarmac. In order to succeed on this ground, the appellant must show that the laying of this tarmac has been substantially complete for a period of four years beginning with the date of the breach. The relevant date is therefore 31 October 2019. The test in this regard is the balance of probability and the burden of proof is on the appellant.

43. Areas of hardstanding are visible in aerial photographs taken in April 2010, April 2013 and June 2018. In all those photographs, the hardstanding is light brown in colour. The Council is aware that the previous lawful uses of the land incorporated an amount of hard surfacing and the Council is not seeking the removal of this lawful hard surfacing. It is for that reason that the Council has specifically used the word "tarmac" in the enforcement notice in order to avoid any suggestion that the removal the hard surface is required.

44. However, in an aerial photograph taken in April 2020, the same area now appears dark grey in colour. It is markedly different in appearance from the hardstanding in the earlier photographs. An aerial photograph taken a year

later, in April 2021, shows the hardstanding extending over a greater area and having a dark grey colour consistent with that of the hardstanding in the 2020 photograph. It is also consistent with the tarmac surface that was present at the time of my site visit.

45. The appellant explains that he moved onto the site in November 2019. This date is after the aerial photographs showing the hardstanding as having a light brown colour but before the later photographs showing the surface as a dark grey colour. It is therefore more likely than not that the dark grey surface shown in the post-2020 photographs is a covering of tarmac laid by the appellant at some point between acquiring the site in November 2019 and April 2020. Indeed, the appellant does not dispute that the tarmac is new development. As such, as a matter of fact and degree, the engineering operation was not substantially complete on the relevant date.

46. Accordingly, on the balance of probability, the appeal on ground (d) fails.

**Appeal A: the appeal on ground (a) and the deemed planning application, and Appeal B**

47. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The appeal site is within the Green Belt. In relation to Appeal A, the Council has stated two substantive reasons for issuing the enforcement notice, from which the main issues raised are:

- whether the breach of planning control alleged in the notice is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (Framework), the PPTS and the development plan
- the effect on the openness of the Green Belt,
- the effect of the development on highway safety, and
- if the breach of planning control alleged in the notice is inappropriate development 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 the development.

48. Appeal B raises the same main issues.

***Whether the proposal is inappropriate development for the purposes of the Framework, the PPTS and the development plan***

49. Paragraph 155 of the Framework provides that certain forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These include a material change of use of the land. However, this must be read alongside Paragraph 16 of the PPTS, which states that traveller sites (temporary or permanent) in the Green Belt are inappropriate development. The appellant does not dispute that the developments subject to Appeals A and B are inappropriate development within the Green Belt.

50. Paragraph 154 of the Framework indicates that, with some exceptions, local planning authorities should regard the construction of new buildings as inappropriate in the Green Belt. One of the exceptions is the provision of

appropriate facilities (in connection with the existing use of land or a change of use) for outdoor recreation. On that basis, the appellant contends that the new stable building is not inappropriate development in the Green Belt. The Council does not disagree with that approach.

51. I do not agree. In my view, the primary purpose of the new stable building is for the keeping of horses as part of the traditional way of life of members of the travelling community resident on the site. It is ancillary to the primary use of the land for the stationing of caravans for residential occupation. The provision of outdoor recreation might be a secondary activity associated with the keeping of horses in that building, but on my understanding of the evidence given by the appellant's witnesses that is not the primary reason. Consequently, I consider that the new stable block does not qualify as one of the exceptions listed paragraph 154 of the Framework, and as such is inappropriate development in the Green Belt.

52. It is also important to consider precisely what the exception in paragraph154 of the Framework covers. That paragraph provides that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are: … b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; *as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it* (emphasis added).

53. Consequently, even if the stables could be considered to be for the purposes of outdoor sport and/or outdoor recreation, they would need to accord with the proviso set out in paragraph 154 relating to the openness of the Green Belt and the purposes of including land within it. In my view, they do not.

54. In that context, it was held in *Fordent Holdings Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 2844 (Admin) that in each case it will be for the decision maker to decide whether a particular building which is, or buildings which are, claimed to be appropriate facilities for outdoor sport or recreation to decide whether what is proposed preserves openness and does not conflict with the purposes of including land within the Green Belt. The judgment goes on to state that, if it does, then what is proposed will come within the potential exception created by the second bullet point in the list in Paragraph 89 of the Framework[3]. If it does not then it will fall within the scope of the first sentence of that paragraph and can be permitted only if very special circumstances are made out.

55. Photographs provided as part of the Council's evidence reveal that the previously existing stable building was a rustic, small scale, timber building. The existing stables are considering larger in terms of both length and height, and therefore in volume. The existing stables building therefore has a greater impact on the openness of the Green Belt than the building it replaced. It is settled case law that even a "limited adverse impact on openness" would mean that openness was not preserved. If follows that openness cannot be preserved if there is a finding that there would be an adverse impact on it of any kind. For that reason, the existing stables cannot possibly be said to preserve the openness of the Green Belt.

[3] Now paragraph 154

56. The enlargement of the stable building also conflicts with one of the purposes of including land within Green Belt insofar as it encroaches further into it.

57. For all the above reasons, and notwithstanding the views of the witnesses at the Inquiry, I consider the new stable building is inappropriate development in the Green Belt. I will consider the effect of the stable building on the openness of the Green Belt below.

58. Policy GB1 of the Broxbourne Local Plan (Local Plan) states that within the Green Belt planning applications will be determined in line with the provisions of the Framework. It follows that the developments subject to Appeals A and B are inappropriate development within the Green Belt for the purposes of the development plan.

59. I therefore conclude that the breach of planning control alleged in the enforcement notice, and the development proposed in the application subject to Appeal B, is inappropriate development in the Green Belt for the purposes of the Framework and the PPTS, as well as Policy GB1 of the Local Plan. Paragraph 152 of the Framework confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

*The effect on the openness of the Green Belt*

60. The Courts have held that matters relevant to the openness of the Green Belt are a matter of planning judgement, and that openness can have both a spatial aspect as well as a visual aspect. The Council has not alleged any harm to the character and appearance of the area, and my assessment of any visual effects of the development is confined to the effect on the openness of the Green Belt.

61. The breach of planning control subject to Appeal A is not the same development as that proposed in Appeal B. The breach of planning control alleged in the enforcement notice is the material change of use to a residential caravan site by the stationing caravans of and mobile homes on the Land along with associated operational development. The latter includes the laying of the tarmac, a new stable building, a building used as a gym and the entrance gates. The development proposed in Appeal B is a material change of use of land to the stationing of caravans for residential purposes, and the laying of hardstanding ancillary to that use, on smaller site (being part of that subject to the enforcement notice). It follows that the quantum of development is different in Appeal A to Appeal B, and that impact on the openness of the Green Belt is accordingly different.

*The stationing of caravans for residential purposes*

62. A total of eight mobile homes have been stationed in a line on the southern section of the area of tarmac. I understand that one of these will shortly be removed from the site, and replaced by a mobile home currently sited elsewhere on the site. These mobile homes are not buildings or structures but, because of their number, size and spacing, they harm the openness of the Green Belt in spatial terms. I recognise that the mobile homes are not widely visible from outside of the appeal site. Nevertheless, for the same reasons, the stationing of these mobile homes adversely impacts on the openness of the Green Belt in visual terms when viewed from within the site itself.

63. I also recognise that the mobile homes are caravans and by definition are capable of being moved. This reduces the effect on the openness of the Green Belt to some extent. However, in practice, these mobile homes are intended to provide a static base from which the occupants can travel to work and access local facilities. It is therefore unlikely that these caravans will move frequently, if at all, or move very far if they do. I therefore consider the fact that they are technically capable of being moved only reduces the impact on the openness of the Green Belt only to a marginal extent. Consequently, the stationing of the mobile homes results in significant harm to the openness of the Green Belt.

*The area of tarmac*

64. The laying of this tarmac was an engineering operation, the effect of which was to change the physical nature of the land. The area covered by the tarmac is extensive. This area of tarmac has very little impact on the openness of the Green Belt in spatial terms. However, compared with the previous hard surface, the change in the physical nature resulting from the new tarmac has a significant impact on the openness of the Green Belt in visual terms. This is very evident from the aerial photographs of the site in which the new tarmac is much more obvious and visually intrusive that the pre-existing hardstanding. Consequently, the new tarmac causes significant harm to the openness of the Green Belt, notwithstanding that it is not widely visible from outside of the site.

*The new stable building*

65. The new stable building is significantly larger in footprint and volume than the stable building that it replaced. In both spatial and visual terms, the new stable building therefore substantially harms the openness of the Green Belt in both spatial and visual terms.

66. In reaching that conclusion, I fully recognise that the keeping of horses forms an important part of gypsy and traveller culture. Several of the witnesses indicated that they keep horses in the stables or on the land, and spoke to how the children residing on the site benefitted from interacting with those horses. Nevertheless, that does not alter the impact of the stables building on the openness of the Green Belt.

*The gym building*

67. This new structure introduces a significant volume of new built form onto the site. By reason of its size, height and volume, the gym building substantially harms the openness of the Green Belt in both spatial and visual terms. I recognise that the gym is required by the appellant in connection with his profession and that some of the children that reside on the site benefit to some degree from the presence of that facility. Nevertheless, those factors do not go to the status of the building as inappropriate development within the Green Belt or its impact on the openness of the Green Belt.

*The entrance gates*

68. The entrance gates are operational development associated with the stationing of the caravans for residential use, and as such are technically caught by the notice. However, the Council has indicated that it did not intend to enforce against those entrance gates. Accordingly, I have discounted them entirely from my consideration of the openness of the Green Belt and will correct the notice the exclude them from the breach of planning control that is alleged.

69. In relation to Appeal A, I conclude that the total harm to the openness of the Green Belt resulting from the material change of use of the land to a residential caravan site and the associated operational development amounts substantial harm[4]. In relation to Appeal B, I conclude the total harm to the openness of the Green Belt resulting from the proposed material change of use of land to the stationing of caravans for residential purposes and the laying of hardstanding ancillary to that use also amounts to significant harm[5].

***Highway safety***

70. The considerations in relation to this issue were clearly set out in Ms Hart's evidence, and may be summarised as:

- there are no footways leading to the site along the highway, which is subject to 60mph restricted speed limit.
- there is no street lighting and limited grass verge to walk on
- pedestrians would have to walk on the carriageway of Cock Lane from/to the junction with Harmonds Wood Close footway some 500m to the east, which represents a highway safety concern.

71. The stretch of Cocks Lane from which access to the appeal is gained is clearly and unattractive and inhospitable environment for pedestrians. The appellant contends that Cocks Lane is "nothing unremarkable" and no different from many country lanes. That may well be correct. However, that does not mean other country lanes are necessarily a safe and attractive environment for pedestrians. It would be a matter of fact and degree in each case.

72. In this case, there is no evidence before me in terms of accident statistics, traffic counts or average vehicle speeds. For example, I have not been made aware of any accidents involving pedestrians on this stretch of Cocks Lane, including since the stationing of caravans for residential occupation commenced in or around 2019. Nevertheless, it was apparent from my site visit that vehicles do travel at speed along this stretch of Cocks Lane, if not at 60mph then at something approaching that.

73. The combination of relatively high speeds, no street lighting and no footway introduces a very real risk of vehicular/pedestrian conflict. Even in broad daylight, it was not a comfortable environment to be in as a pedestrian: and that is without being encumbered by pushing a wheelchair/pushchair, or being accompanied by young children. It would be an extremely uncomfortable environment for pedestrians during the hours of darkness or in poor visibility.

74. I am mindful that the stationing of caravans for residential occupation on the appeal site could result in this stretch of Cocks Lane being used on a regular basis by up to eight households, some with young children. Moreover, the risk would not be limited to pedestrian movements generated by the appeal site itself. There would also be an attendant risk to other pedestrians from vehicular traffic emanating from the appeal site.

75. I recognise that pedestrians could use public footpaths from the point at which Cock Lane and the A10 intersect. Even so, pedestrians would still need to enter the carriageway from that point to the access to the appeal site. The

[4] As distinct from the weight to be attached to that harm.
[5] Again, as distinct from the weight to be attached to that harm.

County Council as highway authority did not attend the Inquiry but their consultation response includes the comment that "pedestrians would have to route on the carriageway for the full length which represents a highway safety concern". Whilst falling short of an objection on highway safety grounds, this comment shows that the highway authority does have concerns over highway safety resulting from the development.

76. I share those concerns. The risk of personal injury due to vehicular/pedestrian conflict would be low, but the consequences potentially severe. In giving her evidence, Ms Hart accepted that on the scale of harm caused by a development, this was at the lesser end. Nevertheless, such harm carries significant weight.

**Other considerations**

*General need for additional gypsy and traveller accommodation*

77. There is a significant unmet need for additional gypsy and traveller accommodation in the Borough. The appellant has produced a detailed analysis of the current Gypsy and Traveller Accommodation Assessment (GTAA) for the Borough. It is significant that the GTAA has a baseline date of March 2017 and was therefore prepared prior to the Court of Appeal judgment in *Lisa Smith v SSLUHC* [2022] EWCA Civ 1391, in which it was held that the definition in the 2015 version of the PPTS excluding gypsies and travellers that are longer able to travel due to age or illness (disability) was discriminatory.

78. At the baseline date for the GTAA in March 2017 there was an immediate need for 37 pitches. By 2022, there should have been a minimum of 73 pitches in the Borough. By 2027 there should be a minimum of 78 pitches in the Borough, increasing to 81 by 2029. However, to date, the pitch provision has been 35 pitches, leaving a need for 46 pitches to satisfy a 5-year supply from the date of the Inquiry. Put another way, the actual provision represents less than half of the minimum identified need. Moreover, that position has is likely to have been exacerbated since the judgment in *Lisa Smith*. This is not challenged by the Council.

*Lack of alternative pitch provision*

*79.* It was held in *Angela Smith v Doncaster MBC* [2007] EWHC 1034 (Admin) that alternative sites must be available, affordable, acceptable and suitable. The Council accepts that there are no alternative accommodation options for the appellant and the resident families that meet the criteria set out in *Angela Smith*. Similarly, doubling up on existing pitches and roadside encampments are not to be considered lawful alternative sites. The dismissal of these appeals would therefore result in the families having to resort to an unlawful roadside existence, with all of the attendant implications.

*Lack of a 5-year housing land supply*

*80.* The PPTS requires that local planning authorities (a) identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets and (b) identify a supply of specific, developable sites, or broad locations for growth, for years 6 to 10 and, where possible, for years 11-15.

*81.* The Council can neither demonstrate a 5-year supply nor broad locations for growth for years 6 to 10 years. It has also confirmed that the position is unlikely change in the emerging Local Plan.

*Failure of policy*

*82.* It is clear from the shortfall of sites provided compared to the need for pitches identified on the GTAA that the Council have not allocated sufficient sites to meet their properly assessed minimum accommodation needs. In that respect, the development plan is not meeting the needs of the travelling community. Furthermore, the Local Plan is entirely closed to non-definitional Gypsy & Travellers and to those who are not currently living on the three existing sites within the Borough.

*83.* In considering this issue, it is necessary to consider the background and context. The key element of the background is that a significant proportion of the Borough is within the Green Belt. It is National policy that traveller sites in the Green Belt are inappropriate development. That sets the context for planning policy for the Borough, as considered by the Inspector in determining whether the Local Plan sound through the Examination in Public (EiP).

*84.* In finding the Local Plan to be sound, the Inspector clearly considered that needs may arise from travellers who wish to move into the Borough from other parts of Hertfordshire, Essex, London or elsewhere in the future. Even though the EiP pre-dated the judgement in *Lisa Smith*, the Inspector also took into account that some families that may not meet the national definition. On that basis, the Inspector considered that the Local Plan should build in flexibility to accommodate additional needs that may arise. Ultimately, the Inspector concluded that:

*"In so far as any such needs would arise from the existing communities, policy GT1 (as modified) is sufficiently flexible to deliver additional provision. In terms of other needs that may arise, policy H3 states that the Council will seek a mix of housing on development sites that provide for a mix of occupiers. This could be used to deliver additional accommodation for travellers if clear evidence of additional needs emerged. Furthermore, my recommended modification to the reasoned justification for policy GB2 would ensure that disused glasshouse sites in the Green Belt could be redeveloped with self-build accommodation for gypsies and travellers. Overall, therefore, the Plan should be effective in ensuring that needs can be met".*

85. It is evident from the shortfall in pitch provision that, in practice, the policy has not worked as envisaged by the Inspector. Nevertheless, Ms Hart does not consider this to mean that there has been a failure of policy. In her view, the development plan "could" meet needs and that policies H3 and GB2 provide "the potential to" meet the need. In doing so she accepted that there would have to be "proactive intervention" but considered that "could" happen. Furthermore, on behalf of the appellant, Mr. Green accepted that if the Council were proactive, they might be able to "do something".

86. It is fair to say that the Council's policies in relation to gypsy & traveller development have not achieved the outcomes envisaged by the Inspector in finding the Local Plan to be sound. Taking a pro-active approach in the future may enable the Council to regain some of the lost ground but that cannot affect the situation at this time. Therefore, looked at in the round and even taking

into account all the constraints imposed by the Green Belt in the Borough, it is fair to say the Council's policy has not worked out in practice. In that sense that, there has a been a failure of policy. However, I adopt the approach taken by the Inspector in relation to the appeal in relation to Land at Shortwood Road, Pucklechurch (APP/P0119/C/07/2037529), who considered that affording weight to the failure of policy would introduce a form of double counting in which cause and effect are added together.

*Likely location of future gypsy and traveller sites*

87. In order to provide for the expansion of the three family sites set out in Policy GT1 the Council had to remove those sites from the Green Belt. Practically all of the land outside of the Green Belt in this area is within the built-up area on the edge of the M25. The appellant considers, and I agree, that this does not present a viable or economic option for gypsy and traveller site development.

88. It follows that there is a very strong likelihood that the location of future gypsy and traveller sites would be on what is now Green Belt land. Paragraph 17 of the PPTS is clear that:

*"Green Belt boundaries should be altered only in exceptional circumstances. If a local planning authority wishes to make an exceptional, limited alteration to the defined Green Belt boundary (which might be to accommodate a site inset within the Green Belt) to meet a specific identified need for a traveller site, it should do so only through the plan-making process and not in response to a planning application".*

89. An assessment as to the appropriate future location for sites in the Green Belt is therefore more properly done at Local Plan stage through a Green Belt review, which is exactly was exactly what the Council did when it went through its previous local plan process and removed land from the Green Belt resulting in policy GT1. The Council's Local Development Scheme, published in December 2023, indicates that at present the Council is proposing a single Development Plan Document, namely the Broxbourne Local Plan Partial Review. However, this partial review only relates to two specific policies and does not include the provision of gypsy & traveller sites. Consequently, there can be no guarantee as to how many sites, if any, might be identified through any future Local Plan process, or when any sites identified might become available.

*90.* The most likely outcome of gypsy and traveller sites ultimately not being available or suitable would be that the appellant and families resident on the site would have to resort to an unlawful roadside existence, with all of the attendant implications. I have already taken into account that the current lack of alternative pitch provision would result in the families having to resort to an unlawful roadside existence. The difficulty in determining the quantum and likely location of future gypsy and traveller sites is therefore an extension of that issue. In that respect, this issue also represents a form of double counting which should not attract additional weight.

*Fallback position*

91. The principle of a fallback position requires a comparison of the impact of the development subject to the enforcement notice against the effect of what other development could lawfully take place use. In this case, the development permitted by planning permission 07/13/0465/F had, by a significant margin, a

less harmful impact on the openness of the Green Belt than the existing use of the appeal site. Consequently, whilst it would be perfectly open to the appellant to revert to the development permitted by planning permission 07/13/0465/F, that would in no way justify the retention of the use and associated operational development subject to the enforcement notice.

*Extant planning permission for a livery*

92. The appellant maintains that if the enforcement notice is upheld and he cannot remain living on the site, he will take up the permission for the livery stables (07/13/0465/F). Given that the appellant has a passionate interest in horses, I have no reason to doubt that. However, even setting aside whether the reversion to the 'livery permission' would require the attendant reversion to the buildings in situ at that time, in terms of the openness of the Green Belt that would be a favourable outcome (i.e: the removal of the eight mobile homes, the gym building, the larger stables building and the tarmac). Consequently, for the same reason as in relation to the fallback position above I attach no weight to this possibility.

*Animal welfare*

93. The appellant maintains that one of the benefits of residential occupation on site would be to increase the level of care to be given to any animals that live on the land. This is undoubtedly true to a certain extent. However, no good evidence has been provided as to any specific medical issues or needs that the animals on site have which would mean that their welfare is better attended to with residential occupation on site and could not be provided by someone living off-site.

*Personal circumstances of the residents on the appeal site*

94. The parties agreed that the personal circumstances of the residents on the appeal site only need to be considered if I was to find that the other material considerations claimed are insufficient to clearly outweigh the identified harm. I concur with that approach. It is, however, convenient to briefly set out those personal circumstances here, not least because they feed into the considerations below relating to the human rights of those individuals.

95. The personal circumstances of the appellant and the resident families were set out in their respective witness statements and in most cases elaborated upon in oral evidence. It is neither necessary nor appropriate to rehearse that evidence in detail here. It is sufficient to record that several of the residents are experiencing health issues for which they require access to medical facilities. In some cases, this includes issues relating to their mental health, including anxiety around the possibility of reverting to a roadside existence.

96. There are currently 14 children living on the appeal site, including a newborn child. In addition, at the time of the Inquiry two of the residents on the site were pregnant. The site will provide the continuing opportunity for the families to secure consistent access to education and health services, one of the principal aims of the PPTS. Having a stable base also enables the families and children to integrate into the local community, with the children securing regular attendance at school.

97. I have no doubt that it would be in the best interest of all the children residing on the site to remain there as a stable base, not only from which to access

education and medical facilities but also to remove the children from the prospect of the dangerous environments of a roadside existence. It is also clear that the children living on the site benefit from interaction with the horses kept there and the facilities in the gym building. It would be in their best interests to continue to do so.

98. The best interest of these children is a primary consideration, and inherently carries as much weight as any other consideration.

*Human Rights and the Public Sector Equality Duty*

99. I am fully aware that the dismissal of this appeal would result in the appellant and the other occupiers on the site losing their homes. This would interfere with their rights under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA). In particular, their rights under Article 8 (right for respect for private and family life, home and correspondence) and Article 1 of the First Protocol (right to respect to property) would be interfered with. Both of the above are qualified rights, and interference with them may be justified where lawful and in the public interest.

100. The issue of an enforcement notice is in accordance with the law, specifically section 172 of the 1990 Act. Accordingly, there is a clear legal basis for the interference with the rights under Article 8 and Article 1 of the First Protocol held by the appellant and the other occupiers of the site.

101. The appeal site is within the Green Belt, the protection of which is an important element of National planning policy, as set out in the Framework. I have found that the breach of planning control alleged in the enforcement notice (Appeal A) and the development for which planning permission is sought (Appeal B) each constitute inappropriate development in the Green Belt. The Framework confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I have also found that the breach of planning control subject to notice and the development for which planning permission is sought both harm of the openness Green Belt and presents a risk to pedestrian safety. Dismissing the appeals and upholding the enforcement notice would therefore be in the public interest.

102. Against this harm, there is a significant unmet need for gypsy and traveller sites in the Borough. The Council cannot point to a five-year supply of sites. There are no suitable alternative sites available. Upholding the notice would therefore result in the appellant and his family losing their home and, in all likelihood, would oblige some if not all of the residents on the site to return to a roadside existence, with all the implications that would bring. I also have the best interests of the children residing on the site at the forefront of my mind.

103. Balancing all these factors, I consider that the interference with the Article 8 rights held by the appellant and the other families residing on the site would be significant, but would be both necessary and proportionate in the event that the notice is upheld or in refusing to grant a permanent planning permission. In reaching that conclusion, I am satisfied the policy objective could not be achieved by means that interfere less with the appellant's rights and those of the other residents of the site.

104. The appellant and the other residents on the site share the protected characteristic of race for the purposes of the Public Sector Equality Duty under section 149 of the Equality Act 2010. Upholding the notice or refusing to grant a permanent permission would impact negatively on their way of life and would reduce the opportunities available to them. It would also deny or reduce the opportunities available to foster good relations with the settled community, including those of the children at their school.

*Conditions*

105. A condition restricting the number of pitches and caravans on the site would be necessary, albeit this would vary between Appeal and Appeal B. A condition requiring that no vehicle over 3.5 tonnes (save for vehicles used for the transportation of horses) shall be stationed, parked or stored on this site is necessary, as is a condition limiting and the number of commercial vehicles to one per pitch. A condition requiring that no commercial activities shall take place on the land would be necessary, but I see no reason why a livery yard should be excluded from that requirement: there is no livery yard on the site at present and that would be extending the terms of the permission sought, which is not permissible. A condition requiring that no external lighting shall be installed on the site unless approved in writing by the local planning authority in accordance with the approved scheme is necessary.

106. Conditions restricting the occupation of the caravans to gypsy and travellers, or to specific persons, would need to be considered in the context of whether the personal circumstances of the occupiers of the site is a determinative factor. Similarly, a condition restricting any permission to a temporary period would fall to be considered if a permanent permission was not appropriate.

***Appeal A: Green Belt balancing exercise and conclusion on the ground (a) appeal***

107. In accordance with paragraph 148 of the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of the development. In addition to this definitional harm, I conclude that the total harm to the openness of the Green Belt resulting from the material change of use of the land to a residential caravan site and the associated operational development amounts substantial harm. That is a matter to which I attach substantial weight. I attach significant weight to the risk to pedestrian safety. These harms could not be overcome by the imposition of suitably worded conditions.

108. Against this, as a primary consideration I attach substantial weight to the best of interest of the children to remain residing on the appeal site. I attach significant weight to the high level of unmet need in the Borough and to the fact that the Council is not able to demonstrate 5-year housing land supply. I also attach significant weight to the lack of any suitable alternative sites. For the reasons set out above, I attach negligible weight to the welfare of the animals on the site. There is no 'fall back' position open to the appellant to which I can attach any weight. The failure in policy and the likely availability of future sites both constitute double-counting to which I attach no weight.

109. Consequently, in weighing the balance, the harm by reason of inappropriateness and any other harm, is not clearly outweighed by other

considerations, such that the very special circumstances necessary to justify the development do not exist.

110. In this scenario, it is then necessary for me to factor the weight to be given to the personal circumstances of all the occupiers of the site into the equation. It is apparent from the evidence that I have read and heard that the personal circumstances of those occupiers would be best served by remaining on the site. However, whilst I fully recognise that those circumstances, particularly insofar as they relate to personal health, are of considerable importance to those individuals, in my view there is no compelling or overriding reason to suggest that the residents (either any one individual or collectively) must remain on the site. For that reason, I only attach significant weight to those personal circumstances[6].

111. Paragraph 16 of the PPTS indicates that, subject to the best interests of the child, personal circumstances and unmet need are *unlikely* to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances (emphasis added). The inclusion of the word 'unlikely' in that paragraph is a clear indication that, in some situations, personal circumstances and unmet need are capable of clearly outweighing harm to the Green Belt and any other harm so as to establish very special circumstances.

112. This not one of those situations. Even when that significant weight is added into the balance, the harm by reason of inappropriateness and any other harm, is still not clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development do not exist.

113. Having regard to the above, I conclude the breach of planning control is contrary to Policies GB1 and TM2 of the Broxbourne Local Plan 2018-2033. These policies are consistent, or at least broadly consistent, with the Framework. These policies respectively provide, amongst other things, that within the Green Belt planning applications will be considered in line with the Framework and that development will not be permitted where is a severe impact on the highway network. I have not been advised of any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

114. In this case, because of the substantial harm to the openness of the Green Belt resulting from the operational development associated with the use of the site, the balance does not shift when a temporary planning permission is considered. Furthermore, I have already found that the personal circumstances of the occupiers of the site are not sufficient to justify a personal permission. For those reasons, I have not considered a temporary and/or personal permission further.

115. Section 177(1)(a) of the 1990 Act provides that, on determination of an appeal under Section 174, the Secretary of State may grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to any part of the land to which the notice relates.

[6] The appellant suggests that I should attach substantial weight to these personal circumstances.

116. Further to that provision, I have considered whether I could grant planning permision for the stationing of caravans/mobile homes on the southern section of the area of tarmac in isolation, these being part of the matters stated in the notice and a part of the site to which the notice relates. This would avoid the substantial harm to the openness of the Green Belt resulting from the associated operational development, and therefore shift the balance in relation to the existence of very special circumstances.

117. The difficulty is specifying the location of those mobile homes in any planning permission that may be granted. The red line area to which the enforcement notice relates extends considerably beyond the part of the site on which most of the static caravans are located, and to which the remaining mobile home is likely to be moved shortly. Consequently, without a plan specifying a smaller site area, I am not able to define with sufficient precision the area to which the planning permission would relate. I have considered whether I could use the plan submitted as part of the planning application subject to Appeal B for that purpose, but because the description of development is different (the plans specifically show 7 static caravans), that is not an option open to me. Consequently, I am not in a position to grant planning permission for part of the matters or part of the site.

118. Accordingly, I conclude that planning permission ought not be granted and that the appeal on ground (a) should be dismissed.

***Appeal B: Green Belt balancing exercise and conclusion***

119. The balance does, however, shift when the proposed development on the smaller site subject to Appeal B is considered. In this case, the weight to be afforded to the definitional harm remains substantial but the harm to the Green Belt through loss of openness is much reduced. This now attracts significant weight, as does the risk to pedestrian safety.

120. Against that, the weight to be afforded to the best of interest of the children residing on the appeal site remains as substantial. The weight to be given to the high level of unmet need in the Borough remains as significant, as does the weight to be afforded to the fact that the Council is not able to demonstrate 5-year housing land supply. The weight to be given to the lack of any suitable alternative sites remains as significant. The weight to be afforded to the welfare of the animals on the site remains negligible, but still carries some weight.

121. Consequently, in weighing the balance for this smaller site, the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development do exist. Permanent planning permission may therefore be granted, subject to conditions.

122. In this scenario, it is not necessary for me to factor the weight to be given to the personal circumstances of the occupiers of the site into the equation. It follows that a personal permission would not be appropriate, albeit it is necessary to restrict occupation of the site to any persons that meet the definition of gypsies and travellers set out in the PPTS, for whom the benefits of a settled base from which to travel and access medical/educational facilities would equally apply.

123. Accordingly, I conclude that Appeal B should be allowed subject to the conditions set out in the Formal Decision below.

**Appeal A: the appeal on ground (f)**

124. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice include to cease the use of the Land as a residential caravan site, to remove all caravans and mobile homes from the Land, to remove all buildings and structures from the Land (except the one specifically excluded) and to remove all the tarmac from the Land. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.

125. The requirement at paragraph 5 (ii) of the notice, as I already propose to vary it, requires all caravans and mobile homes to be removed from the Land. This would catch all caravans on the site for whatever purpose, including those that could be lawfully stationed on the land for a number of purposes. This requirement is not necessary to achieve the purpose of the notice, and is therefore excessive. I shall vary the notice to only require the removal of caravans that are an integral part of/facilitate the breach of planning control alleged in the notice. In any event, this requirement will be largely superseded by the grant of planning permission in Appeal B.

126. The requirement at paragraph 5(iii) of the notice, as I already propose to vary it, requires that all buildings and structures are removed from the Land (except the one that is diagonally hatched black on the attached plan). One of the buildings on the site that would be caught by this requirement is the stables building. That building is an integral part of the breach of planning control alleged in paragraph 3 the notice ('along with associated operational development'). The removal of the stables building is therefore necessary to achieve the purpose of the notice and is not excessive.

127. The requirement at paragraph 5(iv) of the notice, as I already propose to vary it, requires that all the tarmac is removed from the Land, including the area shown shaded with a black pattern on the attached plan. The Council has made it very clear that the use of the word 'tarmac' was deliberate in order to distinguish the newly laid hardstanding (i.e the tarmac) from the previously existing hardstanding. The laying of this tarmac is an integral part of the breach of planning control alleged in the notice. The removal of the tarmac, as opposed to the underlying previously existing tarmac, is therefore necessary to achieve the purpose of the notice and is not excessive. In any event, this requirement will be superseded by the grant of planning permission in Appeal B.

128. The requirement at paragraph 5 (vi) of the notice requires that the land is restored by seeding the land using native grass seed. Prior to the breach of planning control taking place, a significant part of the land was not grassland. This requirement is therefore goes beyond what is necessary to achieve the purpose of the notice and is therefore excessive. I shall vary the notice to

require that the land is restored to its condition prior to the breach of planning control taking place. This would dovetail neatly with the requirement at paragraph 5(iv) of the notice and would be consistent with Section 173(4) of the 1990 Act.

129. Accordingly, the appeal on ground (f) succeeds to the extent set out above but fails in all other respects.

**Appeal A: the appeal on ground (g)**

130. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice varies from 3 months to 6 months, with full compliance required within 6 months. The appellant seeks a period of compliance of 2 years for compliance with the requirement at paragraph 5 (i) of the notice, followed by the sequential approach set out in the remaining requirements of the notice.

131. The extended period of compliance sought by the appellant is to enable the occupiers living on the site to find alternative accommodation, having regard to the lack of suitable, affordable, available, and acceptable alternative sites. However, the period of two years sought by the appellant is tantamount to a temporary planning permission, but without the benefit of conditions to mitigate the harm caused by the development. In any event, I have already found under the appeal on ground (a) that a temporary planning permission would not be appropriate in this case.

132. The situation has moved on since the appeal was made, insofar as permanent planning permission will now be granted for seven of the eight pitches on the appeal site following the success of Appeal B. This leaves a requirement for the occupiers of one pitch to find an alternative site (it not being open to me change the description of development of the planning permission to be granted to include the eighth pitch).

133. Having heard and reflected upon the evidence given at the Inquiry, Ms White revised her position[7] and suggested in oral evidence that a 12-month period for compliance with steps i)[8] would be appropriate, with the rest of the steps following in the same sequential order as before. In the view of the lack of suitable alternative sites, I consider that allowing a whole year to find one alternative site and to the remove that caravan would be reasonable.

134. However, I see no reason to amend the period for compliance in relation to the other steps. There is no reason why those steps cannot be carried out in parallel with the search for an alternative site. Moreover, I have been presented with no compelling evidence to show that the steps could not physically be carried out within the timescales specified in the notice. Indeed, the appellant has explicitly accepted that the period for compliance with sequential steps (iii) to (vi) is achievable.

135. Accordingly, the appeal on ground (g) succeeds to that limit extent I will vary the notice accordingly. The appeal on ground (g) fails in all other respects. I am satisfied that this would be a proportionate response to the breach of planning control that has occurred.

[7] Subsequently confirmed in writing to be the Council's position.
[8] As I propose to vary it, to cease the use of the Land as a residential caravan site.

**Conclusion**

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

137. For the reasons given above, I conclude that the Appeal B should succeed and I shall grant planning permission subject to conditions.

138. Section 180(1) of the 1990 Act as amended provides that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

139. The permission that I shall grant pursuant to Appeal B will be limited by a condition to the material change of use of land to the stationing of caravans for residential purposes comprising 7no. static caravans, 6no. touring caravans, and the laying of hardstanding ancillary to that use. It follows that the requirement at paragraphs 5(i), 5 (ii) and 5(iv) of the notice will cease to have effect in that respect. It further follows that the requirement to remove all caravans and mobile homes from the Land will now only relate to the eighth mobile home that was present on the land at the time of my site visit.

**Formal Decisions**

**Appeal A Ref: APP/W1905/C/23/3334117**

140. It is directed that the notice is corrected by:

- in paragraph 3 of the notice, inserting the word 'material' before the words 'change of use'
- in paragraph 3 of the notice, inserting the letter 'a' between the words 'land to' and 'caravan site' and the word 'of' between the words 'stationing' and 'caravans'
- in paragraph 3 of the notice, after the words 'along with associated operational development, add the words 'with the exception of the entrance gates'

141. It is directed that the notice is varied by:

- in paragraphs 5(i), 5(ii), 5(iii) and 5(iv) deleting the word 'Permanently'
- in paragraph 5(ii), after the words 'remove all caravans and mobile homes from the Land' adding the words 'that were integral to and which facilitated the breach of planning control that has taken place'.
- deleting paragraph 5(v) in its entirety and substitute there the words 'Restore the Land to its condition prior to the breach of planning control taking place'
- in paragraph 6, steps (i) and (ii), deleting '3 months' and '4 months' respectively and substituting there '12 months'

142. Subject to the corrections and variations, 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.

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143. The appeal is allowed and planning permission is granted for the material change of use of the land to the stationing of caravans for residential purposes, and the laying of hardstanding ancillary to that use, at Woodland Stables, Cock Lane, South Heath, Hertfordshire EN11 8LS, subject to the following conditions:

1. The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex A of the Planning Policy for Travellers Sites.

2. Notwithstanding the submitted plans, there shall be no more than 7 pitches on the site, and no more than 7 static caravans and 6 touring caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan sites Act 1968, as amended, stationed on the site at any one time.

3. No vehicle over 3.5 tonnes (save for vehicles used for the transportation of horses) shall be stationed, parked or stored on the land.

4. No more than one commercial vehicle per pitch shall be kept, stored or parked on the land and that shall only be for use by the occupiers of the caravans hereby permitted.

5. No commercial activities shall take place on the land, including use as a livery yard and the storage of materials.

6. No external lighting shall be installed on the site unless details of the position, height and type of lights have been submitted to and approved in writing by the local planning authority. The external lighting shall be installed and operated in accordance with the approved details and no other external lighting shall be installed or operated.

*Paul Freer*
INSPECTOR

## APPEARANCES

**For the appellant:**

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|---|---|
| Mr Michael Rudd | Of Counsel |

He called:

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| Mr Billy Joe Saunders | Appellant |
| Ms Josephine Connors | |
| Mr Maurice Smith | |
| Ms Nicola Hutchins | |
| Mr Taylor Smith | |
| Mr Charlie Boswell | |
| Mr Matthew Green | Director, Green Planning Studio Limited |

**For the Local Planning Authority**

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| Ms Leanne Buckley-Thomson | Of Counsel |

She called:

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| Ms Laura White BSc (Hons) | Senior Planning Enforcement Officer |
| Ms Louise Hart BA (Hons) MSc LRTPI | Principal Planning Officer |

## DOCUMENTS SUBMITTED AT THE INQUIRY

1. Opening submissions on behalf of the Appellant
2. Opening submissions on behalf of the Local Planning Authority
3. Signed Witness Statement of Ms Josephine Connors
4. Signed Witness Statement of Mr Maurice Smith
5. Signed Witness Statement of Ms Nicola Hutchins
6. Signed Witness Statement of Mr Taylor Smith
7. Signed Witness Statement of Charles Boswell
8. List of Draft Conditions
9. Signed Witness Statement of Mr Thomas Saunders
10. Extracts from guidance published by the Department for Environment, Food & Rural Affairs titled 'Keeping horses' and 'Keeping horses commercially'
11. Closing submissions on behalf of the Local Planning Authority
12. Closing submissions on behalf of the Appellant