The Planning Inspectorate

Appeal Decisions

Hearing Held on 8 and 9 October 2024

Site visit made on 4 December 2024

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 23 January 2025

Appeal A Ref: APP/M2270/C/24/3339249
Land at North Eastern Plot, The Ranch UK, Redwings Lane, Pembury, Tunbridge Wells, Kent TN2 4AD

- 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 Frank Smith against an enforcement notice issued by Tunbridge Wells Borough Council.
- The enforcement notice was issued on 19 January 2024.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the Land from agricultural to mixed use of agriculture, equestrian use and the stationing of a caravan and portable toilet for residential use, along with the associated storage of vehicle trailers, domestic vehicles and the construction of a gravel hard surface.
- The requirements of the notice are:
  1. Cease the residential use of the Land.
  2. Cease the equestrian use of the land.
  3. Permanently remove the caravan from the Land
  4. Permanently remove the portable toilet, all vehicle trailers and all domestic vehicles from the Land.
  5. Dig up and remove the hard gravel surface from the Land and backfill the same area with topsoil.
  6. Permanently remove all domestic paraphernalia, all materials, rubble, rubble and rubbish arising from compliance with steps 1 – 5 above from the Land.
- The period for compliance with the requirements is six (6) calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) 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 falls to be considered.

Appeal B Ref: APP/M2270/C/24/3339251
Land at South Western Plot, The Ranch UK, Redwings Lane, Pembury, Tunbridge Wells, Kent TN2 4AD

- 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 Billie Smith against an enforcement notice issued by Tunbridge Wells Borough Council.
- The enforcement notice was issued on 19 January 2024.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of Land from agriculture to a mixed use of agriculture, equestrian and the stationing of two caravans in residential use including a timber lean-to, a portable toilet along with the associated storage of vehicle trailers, two storage containers, domestic vehicles and the construction of a timber-framed building and hard

gravel surface.
- The requirements of the notice are:
  1. Cease the residential use of the Land.
  2. Cease the equestrian use of the Land.
  3. Permanently remove from the Land all caravans.
  4. Permanently remove from the Land the timber lean-to.
  5. Permanently remove the timber-framed building.
  6. Permanently remove the portable toilet, all vehicle trailers, two storage containers, and all domestic vehicles from the Land.
  7. Dig up and remove the gravel hard surface from the Land.
  8. Permanently remove all paraphernalia associated with the unauthorised residential and equestrian use from the Land.
  9. Permanently remove all materials, rubble and rubbish arising from compliance with steps 1-8 above from the Land.
- The period for compliance with the requirements is six (6) calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) 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 C Ref: APP/M2270/W/24/3339337
The Ranch UK, Redwings Lane, Pembury, Tunbridge Wells, Kent

- 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 Frank Smith against the decision of Tunbridge Wells Borough Council.
- The application Ref 23/02302/FULL, dated 21 August 2023, was refused by notice dated 26 October 2023.
- The development proposed is the change of use of land from agricultural to provide a Gypsy and Traveller pitch (retrospective).

Appeal D Ref: APP/M2270/W/24/3339338
The Ranch UK, Redwings Lane, Pembury, Tunbridge Wells, Kent

- 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 Billie Smith against the decision of Tunbridge Wells Borough Council.
- The application Ref 23/0203/FULL, dated 21 August 2023, was refused by notice dated 26 October 2023.
- The development proposed is the change of use of land from agricultural to provide a Gypsy and Traveller pitch (retrospective).

Summary Decisions:

Appeal A is dismissed and the enforcement notice is upheld with corrections.

Appeal B is dismissed and the enforcement notice is upheld with corrections.

Appeal C is dismissed

Appeal D is dismissed

Procedural Matters

1. These appeals all relate to the same two plots of land located on the south side of Redwings Lane, just to the east of its junction with Old Church Road and to the south of Pembury Reservoir. The address of the two plots is variously described in the enforcement notices and planning applications as the North Eastern Plot and South Western Plot, or Pitch 1 and Pitch 2. In the interest of consistency, I will refer to these two plots as Pitch 1 and Pitch 2. The former is occupied by Mr Frank Smith and his family. The latter is occupied by Mr Billie Smith and his family. Appeals A and C relate to Pitch 1. Appeals B and D relate to Pitch 2.

2. In its representations in relation to these appeals, South East Water indicated that a redacted version had been provided and that sensitive information related to site security at Pembury Reservoir contained in the original had been omitted. It was also indicated in the representation that a copy of the unredacted version could be made available to me if required. During the course of discussion at the Hearing, it became apparent to me that I required sight of the original unredacted version in order to fully understand the evidence presented by South East Water.

3. The Planning Inspectorate is committed to the key guiding principles of openness, fairness and impartiality, known as the Franks Principles. It followed that if I was provided with an unredacted version of the representation made by South East Water, then so too must the appellant and Council have sight of it. It emerged at the Hearing that the Council has already been provided with a copy of the unredacted version on a confidential basis.

4. Understandably, in view of the security implications, South East Water were initially reluctant to provide the unredacted version. However, following discussion, a pragmatic solution was agreed whereby the appellant's agent and myself would both be provided with a copy of the unredacted version subject to signing a Non-Disclosure Agreement. This was done. The appellant's agent is duty bound by his professional Code of Conduct to act in the best interest of his clients. South East Water subsequently agreed that the appellant's specialist witness in relation to this issue could also have sight of the unredacted document.

5. Consequently, even though the appellant's themselves did not have sight of the unredacted version of South East Water's representation, I am satisfied that this solution accorded with the Franks Principles and did not cause any prejudice to the appellant or the Council.

6. At the Hearing, I was made aware of a then outstanding appeal relating to a site close this one, known as Plot 9-11, Land off Redwings Lane, Pembury, Kent TN2 4AD (APP/M2270/W/24/3339009). The appeal was made under section 78 of the 1990 Act against the refusal of planning permission for the change of use of land for private equestrian activities and siting of a lodge for office and site management activities. That appeal was determined on 6 November 2024 and, whilst it related to a different form of development, is nonetheless a material consideration in the determination of this appeal. The appellants and the Council were afforded the opportunity to comment on that decision. I have taken all comments made into account.

7. The revised National Planning Policy Framework (Framework) and the revised Planning Policy for Traveller Sites (PPTS) were both published on 12 December 2024, after the Hearing and shortly after the site visit. I invited the appellant and the Council to comment on the changes made in these two documents in writing. I have taken any comments made into account. Any reference to these documents in my Decision should be taken to be in relation to the 2024 version of these documents, unless specifically stated.

8. In any event, there is no dispute that the occupiers of the sites meet the definition of gypsies and travellers as defined at Annex A of the PPTS. In addition, the appellants are ethnic Romany Gypsies. Their families are local to Kent and have lived and worked in the area for generations, travelling for work seasonally doing fruit and vegetable picking in Kent, Essex and Cambridgeshire.

The Enforcement Notices

9. The requirements of both notices 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 both notices. I am satisfied that no injustice would be caused by so doing.

Appeals A and B: the appeals on ground (a) and the deemed planning applications, and Appeals C and D

10. 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 and a National Landscape.

11. Paragraph 16 of the PPTS states that: "Inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development unless the exceptions set out in Chapter 13 of the National Planning Policy Framework apply". This is the starting point.

12. In my view, the first exception set out in Chapter 13 of the Framework that potentially applies to the development subject to these appeals is that at Paragraph 156(h)(v), relating to material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds). However, that is not applicable in this case because that exception does not encompass any change to residential use. Furthermore, for the reasons that I set out below, the development subject to these appeals does not preserve the openness of the Green Belt and conflicts with the purposes of including land within it.

13. One of the changes made to the Framework in December 2024 was at paragraph 155, which now states that the development of homes, commercial and other development in the Green Belt should not be regarded as inappropriate in certain circumstances set out in that paragraph. It is helpful to set out Paragraph 155 of the Framework in full:

The development of homes, commercial and other development in the Green Belt should also not be regarded as inappropriate where: a. The development

would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan; b. There is a demonstrable unmet need for the type of development proposed; c. The development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of this Framework; and d. Where applicable the development proposed meets the 'Golden Rules' requirements set out in paragraphs 156-157 below.

14. In relation to criterion (b), Footnote 56 of the Framework clarifies that, in the case of traveller sites, this means the lack of a five-year supply of deliverable traveller sites assessed in line with the PPTS. In relation to criterion (c), Footnote 57 of the Framework indicates that in the case of development involving the provision of traveller sites, particular reference should be made to Planning Policy for Traveller Sites paragraph 13.

15. Paragraph 8 of the PPTS is explicit that the Golden Rules do not apply to Traveler sites, such that only criteria (a), (b) and (c) need to be met in this case. On my reading of paragraph 155 of the Framework, the word 'and' between criteria c. and d. is crucial. The inclusion of that word requires that for a development to be found to be not inappropriate in the Green Belt, all relevant criteria set out in paragraph 155 must be complied with. I have approached my consideration of that paragraph on that basis.

16. The development does not/would not utilise 'Grey Belt' land as defined at Annex 2 of the Framework, not least because 'Grey Belt' excludes land where the application of the policies relating to the areas or assets in footnote 7 of the Framework (such as National Landscapes) would provide a strong reason for refusing or restricting development. For the reasons that I set out later in this Decision, I have concluded that the Council cannot demonstrate a five-year supply of sites and that there is a demonstrable unmet need for that type of development. The site is in a sustainable location in the context of paragraph 13 of the PPTS.

17. Consequently, the development alleged in the enforcement notice and proposed in the section 78 appeals does not accord with one of the three criteria set out in paragraph 155 of the Framework that are relevant in this case. This leads me to the conclusion that the development subject to these appeals is inappropriate development in the Green Belt.

18. In reaching that conclusion, I recognise that both enforcement notices allege a mixed use comprised of agriculture, equestrian use and the stationing of a caravan for residential use. A mixed use must be treated as a single entity, even if some components of that mixed use (such as agriculture) would be not inappropriate development within the Green Belt. For that reason, the mixed use alleged in the enforcement notices must be regarded as being inappropriate development in the Green Belt for the purposes of the Framework and the PPTS.

19. The development plan for the area in part comprises the Tunbridge Wells Borough Core Strategy (Core Strategy), adopted in 2010; the Tunbridge Wells Borough Local Plan (Local Plan), adopted in March 1999; and the Pembury Neighbourhood Development Plan (Neighbourhood Plan), adopted in 2023.

20. In relation to development within the Green Belt, Core Policy 2 of the Core Strategy provides that there will be a general presumption against inappropriate development that would not preserve the openness of the Green Belt, or which would conflict with the purpose of including land within it. It goes on to indicate that any new development should accord with the national planning provisions of Planning Policy Guidance Note 2: Green Belts (PPG2) or its replacement.

21. The Local Plan includes Policy MGB1 which provides, amongst other things, that the openness of the Metropolitan Green Belt, as defined on the Proposals Map, will be preserved and no development which would conflict with the purposes of including land within it will be permitted. Policy MGB1 goes on to state that, within the Metropolitan Green Belt, planning permission will not be granted other than for the types of development set out in the policy. The latter includes the carrying out of an engineering or other operation or the making of any material change in the use of land, provided that it maintains the openness of the Metropolitan Green Belt and does not conflict with its purposes.

22. Both policies are predicated on the previous guidance formerly set out in Planning Policy Guidance 2 (PG2), which was published in 1995 and therefore before the publication in 2012 of the first iteration of the Framework. As such, they must be considered out of date in that respect.

23. Nevertheless, the list of development types that could be acceptable in the Green Belt set out in Policy MGB1 is very similar to those set out in the Framework. The only significant difference is the language used: Policy MGB1 does not employ the terms 'inappropriate' and 'not inappropriate' used in the Framework. Apart from that, in practical terms the approach taken in Policy MGB1 is very similar to that taken in the Framework. This brings the breach of planning control alleged in the notice squarely within the remit of Core Policy 2 of the Core Strategy and Policy MGB1 of the Local Plan, notwithstanding that they might be out of date in other respects.

24. The Council has stated four substantive reasons for issuing the enforcement notices, from which the main issues raised are:

    - the effect of the development on the openness of the Green Belt and purposes of including land in the Green Belt
    - the effect of the development on the character and appearance of the area
    - whether the development impacts biodiversity on the Land, including in relation to protected species
    - the effect of the development on the quality and potential yield of groundwater, and
    - 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.

    Appeals C and D raise the same main issues.

Effect on the openness of the Green Belt

25. 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.

26. In spatial terms, the caravans on Pitch 1 and Pitch 2 harm the openness of the Green Belt. The timber-framed building, the timber lean-to, portable toilet and the two storage containers on Pitch 2 also erode of the openness of the Green Belt. However, even collectively, the harm to the openness of the Green Belt in spatial terms is moderate.

27. The harm in visual terms in more significant. With the exception of an electricity sub-station to the west of the appeal site and a telecommunications mast south of the appeal site, this side of the valley is generally devoid of built structures. The Green Belt in this location therefore exhibits a considerable degree of visual openness. Consequently, the stationing of the caravans on Pitch 1 and Pitch 2, together with proliferation of small structures such as the timber-framed building, the timber lean-to and the two storage containers on Pitch 2 all significantly harm the openness of the Green Belt in visual terms. This is exacerbated by the parking of vehicles and trailers. Consequently, the overall harm to the openness of the Green Belt is significant.

28. The Council has referred me to an appeal decision in which the Inspector accepted the proposition that allowing the appeal would potentially result in pressure to erect an additional outbuilding or outbuildings at the appeal site for the storage of garden equipment, vehicle parking or horse stables, that latter taking into account the extensive paddocks associated with the property (APP/M2270/W/17/3173199). The Council is concerned that the same pressure could apply in this case, given that the appellants keep horses on the appeal site.

29. The Council's concerns in this respect are understandable. A planning application for a change of use of Pitch 2 to equestrian and the erection of a 2-bay stable block with store has already been submitted (Council Ref:23/03376/FULL). I understand that this application is currently pending consideration. A plan submitted at the Hearing also clearly showed the location of proposed stables and a new sand school, and may have come from that the application. The plan carried the name of Mr B Smith, and it is therefore obvious that the appellants have ambitions in this respect.

30. I agree with the Council insofar as, if the appeals were allowed and a permanent presence established on the land, there would be pressure on the Council to allow developments on this site, such as stables. That pressure may be difficult to resist. This would then adversely affect the openness of the Green Belt in this location, including the potential cumulative effect.

31. There would, however, be other considerations in respect of any such applications in addition to the openness of the Green Belt. It is also a fundamental principle of planning control that each application must be determined in its own merits. I therefore attach only limited weight to the Council's concerns in this respect.

Purposes of including land in the Green Belt

32. Paragraph 143 of the Framework states that Green Belt serves five purposes:

a) to check the unrestricted sprawl of large built-up areas

b) to prevent neighbouring towns merging into one another

c) to assist in safeguarding the countryside from encroachment

d) to preserve the setting and special character of historic towns, and

e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

33. Purposes b), d) and e) are not relevant in this case. In my view, the A228 (Maidstone Road) serves as a physical barrier that would prevent the check the unrestricted sprawl of Pembury before it reached the appeal site. I therefore consider that the development on the appeal site does not/would not offend purpose a) as set out in the Framework.

34. This leaves purpose c) to assist in safeguarding the countryside from encroachment. The development that has taken place on the appeal site is not for agricultural purposes and therefore, by definition, it does/would encroach into the countryside. However, the extent of the development is not significant. Consequently, the harm to the purposes of including land in the Green Belt is limited.

35. I note that the Inspector reached a similar conclusion in dismissing the appeal in relation to the appeal on Plots 9-11 (APP/M2270/W/24/3339009). In that appeal, the Inspector found that the proposal would have a greater impact on the openness of the Green Belt, result in an encroachment onto undeveloped land and therefore would be contrary to the purpose of including land within it. Although relating to a different development, as a matter of principle this finding reinforces my own conclusions in relation to the developments subject to these appeals.

Character and appearance

36. The appeal site is within High Weald National Landscape[1]. Section 245 of the Levelling Up and Regeneration Act 2023 amended the duty on relevant authorities in respect of their interactions with statutory purposes of National Landscapes, as set out in Section 85 of the Countryside and Rights of Way Act 2000 (as amended). Insofar as it relates to this appeal, the amendment now requires relevant authorities "in exercising or performing any function in relation to or so as to affect land in an AONB… to seek to further the purpose of conserving and enhancing the natural beauty of the AONB". As such, it is incumbent on me to evidence consideration of ways to further the purpose of conserving and enhancing the natural beauty of the High Weald National Landscape.

[1] In 2023, designated Areas of Outstanding Natural Beauty in England and Wales became "National Landscapes". In that sense, the terms AONB and National Landscape are interchangeable.

37. The Borough Landscape Character Assessment Supplementary Planning Document (Landscape SPD) summarises the character for the whole Borough as:

"It is predominantly a rural, agricultural landscape of grazed pastures and arable fields highlighted with broad belts of orchards and occasional hop gardens, all set within a framework of woodland. The landscape presents a peaceful and tranquil character, often with a sense of rural remoteness, which belies its location in the populous South East of England. The strong wooded framework is provided by the upland blankets of coniferous plantation, irregular blocks of ancient woodland, thin ghyll woodlands nest led in the valleys and woodland shaw boundaries that harmoniously knit the various agricultural landscapes together".

38. The appeal site is within Landscape Character Area 14: Pembury/Capel Forested Plateau (LCA14), as defined in the Tunbridge Wells Borough Landscape Assessment Supplementary Planning Document (Landscape Assessment), adopted in December 2017. The key characteristics of LCA14 include:

- sandstone forming a high plateau rising to rounded hill tops in the centre of the forest, cut by long valleys of streams flowing northwards to the Medway, creating the locally characteristic topography of deep valleys and ghylls
- extensive woodland and forest cover dominates and tends to conceal local topographic variations and limits views both within the area and beyond
- a relative sense of remoteness
- a self-contained landscape with a 'remote' secretive character with comparatively little settlement apart from Pembury village
- occasional rural lanes, vernacular buildings and small-scale irregular fields provide an intricate pattern and human scale as well as a sense of history.

39. These characteristics are reaffirmed in the Statement of Significance in the High Weald AONB Management Plan which, insofar as relevant to these appeals, identifies the components as including:

- Geology, landform and water systems – a deeply incised, ridged and faulted landform of clays and sandstone with numerous gill streams
- Routeways – a dense network of historic routeways
- Woodland – abundance of ancient woodland, highly interconnected and in smallholdings
- Field and Heath – small, irregular and productive fields, bounded by hedgerows and woods, and typically used for livestock grazing; with distinctive zones of lowland heaths, and inned river valleys.

40. The appeal site displays many of the characteristics of LCA14, insofar as it lies within a valley formed by the Alder Stream. It therefore forms part of the locally characteristic topography of deep valleys and ghylls. The appeal site sits within a self-contained landscape with a 'remote' secretive character with

comparatively little built development. Occasional lanes are a key characteristic of LCA14: Redwings Lane is a Rural Lane as defined by the Councils Rural Land Supplementary Planning Document. The appeal site adjoins a Rural Lane and, despite the proximity to the A228, exhibits a relative sense of remoteness. The immediate setting of the appeal site comprises paddocks which, whilst not characteristic of LCA14 as a whole, emphasise the different character in the valleys that itself informs the local characteristic topography of deep valleys and ghylls.

41. Although not specifically mentioned in the Landscape Assessment, Pembury Reservoir itself makes an important contribution to the character and appearance of immediate area surrounding the appeal site. The group of buildings and other built development associated with the reservoir do introduce an urbanising feature into the landscape but, as an open body of water, the reservoir itself makes an important contribution to the distinctiveness of the location. Consequently, looked at in the round, Pembury Reservoir is a positive element in the landscape. Other urbanising features in the landscape, such as the telecommunication mast, electricity pylons and electricity sub-station, detract from but do not undermine the overall character of LCA14.

42. The appellants have commissioned a Landscape Hearing Statement. I have some difficulties with this statement. Firstly, the statement does not follow a recognised methodology such as the Guidelines for Landscape and Visual Assessments (GLVIA). Neither does it set out the methodology that it has followed. There is no systematic analysis of the visual effect of the development from a range of viewpoints within an identified Zone of Visual Influence or equivalent. Indeed, there is very little by way of description or analysis of the development or its effect in visual terms. Consequently, the statement lacks robustness.

43. Secondly, the existing development clearly formed part of the baseline. That is wrong. The baseline should be the site as it existed immediately prior to the breach of planning control taking place. For that reason, I attach only limited weight to the findings in this statement.

44. A further Landscape Rebuttal was produced in May 2024 which corrected some, but by no means all, of the omissions in the earlier report. The Landscape Rebuttal purports to have been produced in accordance with the GVLIA. However, as the Council points out, although the new work follows more closely the GLVIA it is not entirely consistent with it and does not conform with the guidance. Nevertheless, the Landscape Rebuttal does consider the visual effects from a range of viewpoints, albeit not from the opposite side of the valley. I have therefore afforded this document only moderate weight.

45. As part of my site visit, I viewed the appeal site from all the positions identified by the parties at the Hearing. I have categorized the effect of the development on the landscape on a scale potentially ranging from 'Major Positive' to 'No Change' to 'Major Adverse'. In doing so, I recognise that the sensitivity to changes in the landscape varies between different receptors. In particular, I am mindful that many of the positions from which I viewed the site are public rights of way used principally for recreational purposes. The users of those rights of way are therefore highly receptive to change in the landscape, such that the magnitude of effects would typically be higher. In the absence of

more recent evidence, I have adopted an aerial photograph taken in 2020 and the photographs in the Sales Brochure for the plots (date unknown) as my baseline, at which time the appeal site was all put to pasture.

46. Before assessing the effect of the development from those viewpoints, it is necessary to comment on the principle of Gypsy and Traveller development in the countryside. The appellant has referred to two appeal decisions in which the Inspectors remarked that Gypsy and Traveller sites are not intrinsically discordant or out of character in the countryside (APP/G1630/W/17/3192162 & APP/R3705/W/18/3199149). Whilst I do not disagree with those comments, the key word there is 'intrinsically'. These decisions must therefore be considered in context.

47. The first appeal (3192162) related to a site in the suburbs of Cheltenham. The site was within the Green Belt but did not have any landscape designations. As such, the Inspector did not carry out a detailed analysis of the effect of the development on the character and appearance of the area, dealing with that issue in a single sentence. In the second appeal (3199149), the landscape character area was influenced by the M6 motorway, pylons and many suburban elements. The site itself was well-screened and, the Inspector found, was neither prominent nor discordant.

48. The situation in relation to these appeals is markedly different. The site(s) is within a National Landscape, and exhibits many of the key characteristics of the Landscape Character Area within which it is located. Caravan sites are not identified as being a key characteristic of LCA14. The considerations in this case are therefore very different to those before the Inspectors in the two cases referred to be the appellant. The findings of the Inspectors in those cases may therefore be distinguished from the circumstances in these appeals.

49. The development on the appeal site is not widely visible from Redwings Lane. Such views that are possible are glimpsed views through the hedgerow that borders the lane. Nevertheless, in those glimpsed views the development on the appeal site is clearly discernible and betrays the presence of a use with associated structures that is discordant with LCA14. I afford the weight to this harm as Minor Adverse.

50. The exception to this is the vehicular access from Redwings Lane. From this position on the public highway, the development on the appeal sites is clearly visible, including the caravan and portable toilet on Pitch 2. From this position, the development appears as an untidy and incongruous intrusion into the open fields on this side of the valley. It is wholly out of keeping with the key characteristics of LCA14, not least because the development and associated activity undermines the self-contained and 'remote' secretive character of the landscape outside of Pembury village. For that reason alone, the development on the appeal site is significantly harmful to the character and appearance of the High Weald National Landscape.

51. The development on the appeal sites is most prominent in views from public footpath WT217A, which runs in a north-south direction to the west of the appeal site. Views of the appeal sites from public footpath WT217A vary as the slope is ascended/descended. At the lower end (north), only the structures on Pitch 2 are visible. These include the timber-framed building used as a stable which, because of its isolated mid-slope position, is particularly incongruous in

this, appearing as an isolated structure with no apparent connection to the landscape its sits within.

52. In that context, there is a direct parallel with the development found to be unacceptable by the Inspector in dismissing the appeal in relation to Plots 9-11 (APP/M2270/W/24/3339009) who, in dismissing the appeal, noted that the introduction of the proposed buildings into a much larger open field that is otherwise free from built development resulted in a prominent and intrusive feature in an open, rural landscape.

53. As the slope in ascended, progressively more of the site comes into view. In these views, the development on the appeal site appears as an untidy collection of structures and stored items that is wholly incongruous with LCA14. The storage containers and lean-to structure are particularly harmful in this respect. Towards the top of the slope, the site is viewed against the background of Pembury Reservoir and the woodland beyond. This exacerbates the harm described above. For all these reasons, I afford the weight to the harm when viewed from public footpath WT217A as Major Adverse.

54. A further factor is that the activity on the appeal sites becomes very apparent in these views. This activity is contrary to the sense of remoteness that is a key characteristic of LCA14, as well as the peaceful and tranquil character referred to in the Landscape SPD.

55. Public footpath WT218 runs to the south of the appeal sites. One of views from this public footpath is identified as a Locally Significant View in the Pembury Neighbourhood Plan. However, from that particular vantage point, views of the appeal sites are largely obscured by the topography and intervening vegetation. From other vantage points along public footpath WT218 only the tops of the caravans and structures on the site can be glimpsed. Nevertheless, where visible the development on the appeal sites appears as an incongruous feature in the landscape. In all views from public footpath WT218, where visible the development on the appeal site is viewed against the backdrop of Pembury Reservoir, the buildings of Kent College and the surrounding woodland. I afford the weight to the harm when viewed from public footpath WT218 as Moderate Adverse.

56. Views of the appeal site from public vantage points on the opposite side of the valley are limited. I noted that when walking public footpath WT204A that only glimpses of the development on the appeal site are possible through the intervening vegetation, mostly from one vantage point where there is a gap in the tree cover. In those views, the development on the appeal site appears as an incongruous intrusion into the otherwise open countryside.

57. However, my site visit was undertaken during the winter when foliage on the trees was at a minimum. It is likely that the views of the development on the appeal site from public footpath WT204A would be significantly reduced during the summer months, possibly to the extent that no views would be possible at all. Accordingly, overall I afford the weight to the harm when viewed from public footpath WT204A as Minor Adverse.

58. In summary, from all the places from which I viewed the appeal site or towards it, the harm to the landscape varied between Minor Adverse at best and Major Adverse at worst. This is because the development that has taken place, by

reason of its residential character and untidy appearance, is intrinsically at odds with the clearly defined and distinctive character of the LCA14. This landscape has a strong sense of identity but the development that has taken place is far beyond the capacity of the landscape to accommodate and assimilate it.

59. I have considered the views from all these positions with or without the mitigation measures proposed to be put in place. The appellant has produced two different landscaping schemes: one in the eventuality that there is a direct connection from the site to the main sewer (Drawing No. TDA.2935.01 Rev B) and one that includes a Wetland Treatment System (Drawing No.TDA.2935.010). Both schemes feature proposed Native Hedgerow planting that, when combined with the existing hedgerow adjacent to Redwings Lane, form a rectangular screen surrounding the lower part of the appeal site.

60. The existing slope is mostly grassland, with some isolated trees. It has a generally open character and natural appearance. The rectangular 'enclosure' formed by the proposed hedgerow would introduce a man-made feature of angular form into this natural landscape. Moreover, the 'enclosure' would be the very antithesis of openness and would significantly harm the character of the valley slope in terms of its otherwise essentially open character. It would be a completely alien feature in this generally open part of the landscape. This would only serve to exacerbate the harms that I have identified above.

61. In addition, the landscape option that features the WTS would introduce an area of water within a man-made pond formed by cutting into the slope and building up the bank. The details of this were not finalised at the time of the Hearing but the version shown on Drawing No.TDA.2935.010 would represent an incongruous feature that would be out of character in this landscape. This would further exacerbate the harms that I have identified above.

62. My conclusions in this respect are reinforced by the findings of the Inspector in relation to the appeal on Plots 9-11 (APP/M2270/W/24/3339009). In dismissing the appeal, the Inspector found that the open undeveloped land of the appeal site contributes positively to the character and appearance of the High Weald National Landscape and considered that the introduction of the proposed buildings and parking would be a prominent and intrusive feature in an open, rural landscape. The Inspector went on to find that the extent of built development and hardstanding would have an urbanising effect on the appeal site and would potentially introduce clutter from domestic paraphernalia on the site.

63. I fully recognise that the development before the Inspector in that case was different in several respects from that before me in these appeals, not least in that the development before the Inspector comprised a building in the centre of the field whereas the development before me in part comprises caravans stationed on the edge of the field adjacent to a hedge. Nevertheless, in my view a direct parallel may be drawn with the findings made the Inspector in that case.

64. In particular, the Inspector noted that the proposed development would be highly visible from the vehicular entrance from Redwings Lane. The same applies in this case. Moreover, the mitigation proposed in that case took the form of hedgerow planting around the appeal site. In that respect, the

Inspector found that that whilst potentially providing some screening once mature, that would also have the effect of enclosing the appeal site as a small area within a larger open field. This would not respect or reflect the landscape characteristic of the High Weald National Landscape where hedgerows would generally be located along field boundaries. I have reached a similar conclusion in relation to the hedgerow that is proposed to enclose the caravans and hardstanding in this case.

65. Consequently, notwithstanding the differences between the two developments, in my view the conclusions reached by the Inspector in that case are a material consideration that weighs against planning permission being granted in for the developments proposed in these appeals. In the interests of consistency in decision making, I attach significant weight to that material consideration.

66. I conclude that the breach of planning control that has taken place on the appeal site and the development proposed in the planning applications has unacceptably harmed/would unacceptably harm the character and appearance of the area. I therefore conclude that the development and proposals is/would be contrary to Policies EN1, EN25 and H4 of the Tunbridge Wells Borough Local Plan (Local Plan) which indicates, amongst other things, that the design and external appearance of the proposal would respect the context of the site and that, outside of the Limits to Built Development, would have a minimal impact on the landscape character of the locality.

67. Policy H4 of the Local Plan specifically relates to proposals for the establishment of gypsy sites. This policy states that permission for gypsy sites will be permitted subject to meeting a number of criteria. Those criteria include that the proposal would not be visually intrusive, would be well-screened by existing vegetation and physically contained by landscaping. Another criterion is that proposals would not be located within an exposed position in the High Weald Area of Outstanding Natural Beauty (now National Landscape).

68. The development on the appeal site does not comply with those criteria, being visually intrusive and located in an exposed position, particularly when viewed from public footpath WT217A. The development therefore does not comply with Policy H4 when read as a whole. I recognise that Policy H4 must be considered out of date in other respects. However, I note that in places Policy H9 of the emerging Local Plan is similarly worded. I therefore consider that Policy H4 of the Local Plan remains up to date in this respect.

69. The development and proposals is/would also be contrary to policy P3 of the Neighbourhood Plan which, amongst other things, provides that proposals should incorporate a high quality of design, which responds and integrates well with its surroundings, and minimises the impact on the natural environment of the High Weald AONB. Policy P11 of the Neighbourhood Plan indicates that, as appropriate to their scale and nature, development proposals within the shaded arcs of the various views of Locally Significant Views should be designed in a way that demonstrates how it has taken into consideration the importance of the locally significant view or views, and mitigates any adverse impact on those views. In this particular case, the development does not impact on the Locally Significant View from Public footpath WT218. Nevertheless, for the reasons set out above, overall the development and proposals fail to accord with this policy.

70. The development/proposals also fail to accord with Paragraph 180 of the Framework which, amongst other things, indicates that decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes and recognising the intrinsic character and beauty of the countryside. Paragraph 182 of the Framework confirms that great weight should be given to conserving and enhancing landscape and scenic beauty in National Landscapes, which have the highest status of protection in relation to these issues.

71. Finally in this context, paragraph 25 of the PPTS states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. The appeal site(s) is in the open countryside and away from any existing settlements and not in an area allocated in the development plan.

Biodiversity

72. The appellants have commissioned a Preliminary Ecological Appraisal and Bat Survey (PEA), dated September 2024. I have a number of difficulties with this PEA.

73. Firstly, the survey visit for the PEA was undertaken in September and concedes that any early flowering plants on site would have not been identified. The report explains that the site is dominated by common plant species and is subjected to an intensive management regime. The report therefore considers that the risk of under recording important species is likely to be very negligible, an *assumption* further reinforced by the analysis of the historical images available (emphasis added). To my mind, any report of this type that relies upon assumptions runs the risk of not capturing that baseline accurately and undervaluing the ecological value of the site. Relying on historical images is not, in my view, sufficient for that purpose.

74. The main defect with the PEA is that the habitat survey/baseline is the current condition of the site, whereas consideration of the application should be prior to the unauthorised development took place. The baseline for the assessment should be the lawful use of the land as taking place immediately before the breach of planning control took place. For example, the PEA concludes that Great Crested Newts (GCN) are 'likely absent' despite the area being noted as 'amber' for GCN and multiple records within 2km of the appeal site. The salient point is that this prediction is based on the current condition of the site and not the condition of the site before the development took place.

75. Furthermore, the guidance in the Planning Policy Guidance (PPG) indicates that if there has been degradation and there is insufficient evidence about the biodiversity value of the onsite habitat immediately before the degradation, the pre-development biodiversity value of the onsite habitat must be taken to be the highest biodiversity value of the habitat which is reasonably supported by any available evidence relating to it. The PEA contends that degradation has occurred but has not adopted the approach advocated in the PPG.

76. My primary concern with the findings in the PEA is that is dismissive of the likely presence of and effects on protected species. Having identified that the presence of some protected species is 'Likely' (in one case 'Highly Likely'), the

PEA is largely silent on what measures will be taken to avoid or mitigate any harm to those species: for example, in relation to breeding birds.

77. The PEA also appears contradictory in some respects, not recording any harm to protected species despite acknowledging the presence of suitable habitats of trees, hedgerow and grassland margins associated with the hedgerow. For example, Table 4.3 of the PEA records that Hazel dormice are likely to be present, with the commentary explaining that the native hedgerow running along the northern boundary is well connected to suitable habitats and therefore considered likely to support this species. However, without any supporting surveys or other evidence, in describing impacts and opportunities the PEA suggests that the likelihood of dormice being present as relatively low. I have great difficulty in reconciling those two statements.

78. In relation to bats, the PEA records that the site and wider landholding could provide suitable foraging habitat for a number of different species. It is accepted that the hedgerow along the northern boundary is likely to function as a commuting feature as it offers connectivity between patches of good quality roosting and foraging habitats (ancient woodland, woodland edge and water bodies). The modified grassland on site, due to its lack of structure and low biodiversity is considered to offer sub-optimal opportunities to foraging bats. Roosting opportunities within the site boundary are restricted to the presence of two mature oak trees. The wording of this last sentence – 'restricted to' - implies that bats could use the mature oaks for roosting.

79. The Council takes that view and considers that the mature oaks offer potential for roosting bats, with the boundary hedgerows and areas of scrub providing foraging and commuting opportunities. In the absence of a survey of the mature oaks for roosting potential and/or the bat population generally, it is not possible to be definitive about the presence of bats or the numbers/species that might be present. Moreover, if bats are present, they could be adversely affected by the provision of lighting on the appeal site, notwithstanding that the caravans could be re-sited further away from the existing hedgerow and the lighting controlled by a condition.

80. The PEA is just that: an initial assessment. Nonetheless, the PEA constitutes credible evidence from an appropriately qualified and experienced individual that protected species are likely (or highly likely) to be present on the site. A full Ecological Impact Assessment (EcIA) is therefore required that goes beyond just establishing the correct baseline and identifying possible constraints to development. I fully understand that the timetable for this appeal prevented such a survey being undertaken. Nevertheless, in the absence of an EcIA, the full ecological impact of the development cannot be fully understood.

81. ODPM Circular 06/2005 states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. Circular 06/2005 goes on to state that the need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances.

82. One of the conditions put forward by the appellants is that, within three months of my decision, an Ecological Appraisal identifying biodiversity impacts

and mitigations shall be submitted to and approved in writing by the Local Planning Authority. I recognise that the appellants are living on the appeal site, albeit without the benefit of planning permission. However, I do not consider that this in itself constitutes exceptional circumstances in the context of Circular 06/2005. It therefore follows that imposing such a condition on a planning permission would not be an appropriate and acceptable way in which to address any ecological impacts arising from the development, particularly in relation to protected species.

83. The (deemed) planning applications were submitted before mandatory Biodiversity Net Gain (BNG) under the Environment Act 2021 came into force. It is not currently possible to apply a mandatory 10% biodiversity net gain to retrospective applications. The requirement for BNG in this case therefore arises out of policies in the development plan. These include Core Policy 4 of the Core Strategy which states that the objective will be to avoid net loss of biodiversity and geodiversity across the Borough as a whole. Policy P8 of the Neighbourhood Plan states that ecological assessments by a suitably qualified people must utilise the Defra biodiversity metric on all habitats to demonstrate biodiversity net gain. The supporting text to Policy P8 (albeit not the policy itself) goes on to state that where significant harm cannot be avoided, adequately mitigated or compensated for, then planning permission should be refused.

84. It is axiomatic that the pre-development biodiversity value of a site is a critical step in establishing whether the biodiversity gain objective would be met. This requires a site survey to be undertaken by a competent individual that identifies whether specific habitat types are present. In this case, whilst the PEA has been undertaken by a competent individual, the baseline adopted in that report is wrong. It follows that any calculations made in respect of BNG achievable with the development are inaccurate.

85. The Ecological Advice Service at Kent County Council, which reviews BNG statements on behalf of the Council, considers it likely that BNG could be secured by condition should the appeals be allowed. I take a different view. In the absence of an accurate baseline survey, it is not possible to know what gain over that baseline could be achieved, if any. Undertaking suitable surveys could potentially take some time, throughout which the harms set out in the Enforcement Notice in over respects would persist, with no guarantee that positive BNG could ultimately be achieved. In that scenario, seeking to secure BNG through a condition would not be appropriate.

86. I conclude that insufficient information has been submitted to adequately demonstrate that the (proposed) development could be achieved without a detrimental impact upon the biodiversity of the site, including the number and location of protected species. I therefore conclude that the development would contrary to Core Policy 4 of the Core Strategy and Policy P8 of the Neighbourhood Plan.

87. The development/proposals also fail to accord with paragraphs 180 and 182 of the Framework which, amongst other things, seek to minimise impacts on and provide net gains for biodiversity and confirm that the conservation and enhancement of wildlife is an important consideration in National Landscapes.

Groundwater

88. The development on the appeal site lies directly south of Pembury Reservoir and the associated tunnel assets. The reservoir and the associated water treatment works are operated by South East Water. South East Water strongly objects to the development based upon the risk to public drinking water supply.

89. By way of background, the springs at Pembury Reservoir are fed entirely by groundwater from the Lower Tunbridge Wells Sands aquifer. This is classified by the Environment Agency as a Secondary A Aquifer, defined as:

"Geology with a wide range of permeability and storage, supporting limited supplies at a local rather than a strategic scale, but still important for rivers, wetlands and lakes"

90. The springs and the spring system linked to Pembury Reservoir are Victorian engineering, with the tunnels and spring diversion mains being brick lined to capture groundwater. The Lower Tunbridge Wells Sands are unconfined and therefore in direct connectivity with the ground above, meaning that any fuel oils, fertiliser, manure/sewage, or other chemical applied (including veterinary medications) by way of intensive land use at this location could pollute the underground water sources. As a result, it would be challenging to isolate water in the ground from feeding Pembury Reservoir.

91. As part of my site visit, I was afforded the opportunity to visit Pembury Reservoir, accompanied by representatives of South East Water, the appellant and the Council. I was shown the brick-lined tunnels where water from the springs enters the reservoir, and also the tunnels through which water in the reservoir could be discharged into the Alder Stream if necessary. It was explained at the site visit that the water entering the reservoir is constantly tested but that, should any contamination be detected, it is not possible to treat that contamination on site. One such contaminant is cryptosporidium, a parasite that is known to contaminate lakes, streams and rivers and which originates from the intestines and faeces of animals. Contamination by Cryptosporidium was, for example, responsible for the widespread disruption of the water supplies in south-west England during July 2024.

92. The consequence of the water becoming contaminated is therefore that supplies of water from Pembury Reservoir must be immediately stopped. This underlines the importance of preventing groundwater from being contaminated at source. This is the very principle behind the designation of Source Protection Zones.

93. The appellant's initial proposals featured a Free Water Surface (FWS) wetland treatment system feeding into a Drainage Field. The proposed location of the Drainage Field is inside the Source Protection Zones 2 and 3, and also inside the Source Protection Zone 4 (Zone of Special Interest). South East Water advise that there are risks to public drinking water supply across all designated Source Protection Zones. The appellants accept that the groundwater within Source Protection Zone 4 is a primary receptor that could be affected by any contaminated discharges from the appeal site.

94. South East Water consider that the proposed drainage field and discharge presents a particular contamination risk by virtue of being positioned within the Environment Agency's Groundwater Source Protection Zone 4, 'Zone of Special Interest'. This represents surface water catchments to streams or areas of land draining into the aquifer from outside of the outcrop area, for example, for groundwater recharge. Source Protection Zone 4 contributes a significant proportion of the groundwater source yield. South East Water considers that this highlights the vulnerability of a critical strategic public water source, supplying over 50,000 household customers, large Non-Household customers and several vulnerable customers, such as schools and hospitals in the Pembury and Tunbridge Wells areas.

95. The proposed operations also fall within Source Protection Zone 1c, the 'inner zone', which is designated for the deeper abstractions from the Ashdown Beds beneath the Wadhurst Clay. These are confined and consequently there is an assumption that there is no hydraulic connection between surface waters. But, as South East Water explain, that does not take into consideration the slope and existing evidence of flooding across Redwings Lane, with surface water reaching the reservoir.

96. There was some discussion at the Hearing regarding the extent and location of the Lower Tunbridge Wells Sands Formation and its position in relation to the Source Protection Zones. The map relied upon by South East Water clearly shows the appeal site to be within the Source Protection Zones, including Zone 4 as shaded brown on that map. South East Water explain that this map is produced by overlaying 'layers' of information. The maps provided by South East Water correlate with those provided by the Environment Agency as part of their consultation response.

97. The plan relied upon by the appellants appeared to show the brown shaded area representing Zone 4 as being much smaller in extent and of a different shape. On that map, the Drainage Field would be within the Source Protection Zone but the WTS would be outside of it. However, the Legend for that map appears to suggest that information relates only to Source Protection Zone 1c. Given that the maps are produced using layers of information, I cannot discount the possibility the map relied upon by the appellants is in relation to that layer only. The map relied upon by South East Water is therefore to be preferred.

98. The appellants have commissioned a Groundwater Risk Assessment. This includes water balance calculations relating to infiltration, suggesting the wetland will not be impermeable. The underlying geology is unconfined; consequently the wetland treatment system would need to have a fully impermeable barrier, with a detailed programme of waste management, and a remediation strategy based upon wetland failure.

99. The Environment Agency have confirmed that this discharge would only fall under the General Binding Rules (GBRs) environmental permit exemption if the wetland treatment system is lined by a fully impermeable barrier. The risk assessment currently provides water balance calculations that include infiltration, suggesting the wetland will not be impermeable. Percolation tests have not been undertaken in the location of the proposed drainage field, and those that have been undertaken elsewhere on the appeal site would not be suitable for a Drainage Field. Assumptions cannot be made in this regard.

There must be at least a 1.2m unsaturated zone beneath the invert level of the drainage field pipework, at all times of year. Finally, the Environment Agency confirm that the Pembury Reservoir would have to be lined so as not to be in direct hydraulic continuity with the groundwater of the Tunbridge Wells Sands Formation.

100. If the above criteria cannot be met in full, the Environment Agency confirm that the appellants must then apply for an environmental permit (groundwater activity). The Environment Agency make it clear that there can no guarantee that a permit would be granted for this discharge in this location.

101. There are three sets of tunnels (Tunnel Springs, Source Tunnel and Alder Tunnel) set within Lower Tunbridge Wells Sands Formation, which is known for its high porosity. These tunnels are in direct hydraulic continuity with the groundwater of the Tunbridge Wells Sands Formation. As such, South East Water consider that there is a high risk from subsurface infiltration of effluent. Moreover, these tunnels link to the Alder Stream. Any contamination that reaches the spring tunnels would therefore also contaminate the Alder Stream.

102. The appellants stress that the water that percolates through the WTS and Drainage Field would meet, and possibly exceed, Drinking Water Standard (DWS). However, as South East Water explained at the Hearing, DWS is not the only standard that applies to water quality. South East Water confirmed that the water extracted from the Tunbridge Wells Sands aquifer needs to comply with all the relevant standards.

103. Furthermore, whilst the percolation tests were carried out in general accordance with best practice, the tests that have been undertaken were not carried out in the same locations as the proposed FTS or Drainage Field would be. Consequently, I cannot discount the possibility that the soil conditions (and therefore percolation rates) were not the same as where the FTS or Drainage Field would be. Moreover, questions were raised at the Hearing about the depth of the proposed Drainage Field, the potential freeboard of the FTS and the slope of the FTS. All of those factors could potentially affect the performance of the FTS or Drainage Field. This reduces the reliance that I can place on the FTS and Drainage Field to successfully treat the water to the required standard(s).

104. South East Water explain that, where development has historically taken place around Pembury Water Treatment Works, severe restrictions have been imposed that require containment of any wastewater and a prohibition upon the storage or application of chemicals or other chemical inputs, apart from animal manure. Where grazing is permitted, in order to mitigate risks of transfer of water quality issues, this is at a very low stocking level, which South East Water would class as the equivalent of one horse per hectare for year-round grazing (with no supplementary feed), and with no permanent structures to be erected.

105. I am mindful that the concerns expressed by South East water are not confined to the FTS. Concern is also expressed that the operation as an equine pasture, and storage at the site is a primary risk. In that context, South East Water maintain that there is insufficient detail regarding how the manure storage will be contained/bunded within the concrete yard to ensure that nutrients, veterinary medicines, equine parasites, cannot run off and enter the

underlying aquifer. South East Water go on to explain that even setting aside their concerns over the FTS there remains a risk to the public water supply, due to the high risk slope at this location which, particularly under heavy or prolonged rainfall events, represents a direct pathway for infiltration to the underlying aquifer and spring system, or for overland runoff to the reservoir, and nearby Alder Stream. Evidence to support that concern was provided in the unredacted statement made available by South East Water.

106. The appellants currently have up to eight horses on the land, far exceeding the maximum considered acceptable by South East Water. The appellants did accept that the number of horses kept on the land could be reduced to a number that would be acceptable to South East Water and explained that no chemicals or fuels are stored on the land. It was suggested that this could be controlled through the imposition of conditions. This would include an interceptor to capture any spilled fuel or oil washed off the hardstanding.

107. However, whilst I can understand that reducing the number of horses kept on the land to the minimum considered acceptable to South East Water could reduce the risks to an acceptable level in some respects, it seems to me that the issues relating to the storage and use of chemicals on the site would be omnipresent even if only a few horses were kept on the land. The risk of chemicals seeping into the groundwater would still be present, and I have no evidence to show that even small amounts of chemicals entering the groundwater would not pose a risk to public health. For that reason, I am not satisfied that the concerns of South East Water could be successfully addressed by the imposition of conditions.

108. On the evidence before me, there is an inherent and plausible risk to public water supply and South East Water's infrastructure arising from the development that has taken place and is proposed. Indeed, South East Water indicated that it may find it necessary to utilise its statutory powers under the Water Industry Act 1991 to prevent the (existing) land use. It would not be prudent to let the situation reach that stage. The risk to the supply of water has the potential to affect some 50,000 people, not least in relation to public health. The design of the WTS and Drainage Field have not yet been finalised and more testing is required. In my view, it would not be sensible to rely on the imposition of planning conditions where the quality and yield of drinking water to a sizeable population would be at risk.

109. The appellants initially believed that the closest connection point to the main sewer was some 300m from the appeal site. For that reason, any consideration of connecting to it was initially discounted due to cost. However, at the Hearing, it emerged that the closest connection point to the main sewer was in fact only some 120m from the appeal site. The appellants sought a revised quote for connecting to the sewer, which was acceptable to them (in the event that a permanent permission was forthcoming). This then replaced the WTS and Drainage Field as the preferred solution. South East Water confirmed that, in principle, this would overcome their objections (that is when combined with the restrictions on the number of horses kept on the land).

110. The difficulty is that there was very little preparatory work done in relation to the connection to the main sewer. Beyond being located in Old Church Road, the precise location of the main sewer has not been specified. No feasibility study has been undertaken. Consequently, there can be no

guarantee that this would even be possible. I have not been provided with detailed and fully worked out costings for connecting with the main sewer. Some opinions were expressed at the Hearing that the costs quoted were unrealistically low, based on personal experience of smaller such schemes.

111. As a result, I have no confidence that connection with the main sewer could be achieved at a cost the appellants could afford, or for that matter could even be achieved at all. The corollary is that, should on further analysis connection to the main sewer prove impractical or unaffordable, the appellants would have to revert to the WTS and Drainage Field solution that I already found to be unacceptable and which, on the evidence before me, is unlikely to receive an environmental permit in its present form. It is for this reason that, in my view, it would not be sensible to rely upon a planning condition to secure the connection to the main sewer. The stakes are too high, given the potential implications for quality and yield of the water supply to a sizeable population.

112. Given that insufficient work has been done at this time to show that connection with the main sewer is technically and financially possible, there is a realistic prospect that this may ultimately prove not to be possible. Consequently, on balance, I consider that the risk to public health and the supply of drinking water outweighs the benefits to the appellants.

113. I note that the Inspector reached a similar conclusion in relation to the risk to groundwater in dismissing the appeal in relation to the appeal on Plots 9-11 (APP/M2270/W/24/3339009). In that case, the Inspector concluded that it had not been demonstrated that the proposal would not result in unacceptable contamination to water that drains into the reservoir. Significantly and in a direct parallel with the appellant's latest position in respect of the current appeals, this conclusion was reached notwithstanding that the appellant in that case had indicated on the planning application form that it was their intention to connect to a mains sewer.

114. I do not know what evidence on this issue was before the Inspector in that case. However, it is clear from the Inspector's Decision Letter that the appellant in that case was of the view that planning conditions could be used to secure appropriate details of drainage and treatment of waste from the proposed use, along with conditions stipulating that no manure or waste materials shall be burned and to require details of a sustainable urban drainage scheme. It is therefore particularly instructive to note the Inspector's finding that*, given the degree of uncertainty as to the magnitude of risk* to groundwater and surface water, she did not consider that the matter could reasonably be dealt with by planning condition (emphasis added). That conclusion mirrors my own in relation to these appeals, and is again a material consideration to which I attach considerable weight.

115. During the site visit, the appellants drew my attention to the telecommunication mast that directly adjoins their land and to the two generators that provide power to it. The appellants point out that fuel from these generators spills onto the ground. I took a closer look at these generators as part of walk along public footpath WT218 and, whilst there was no evidence of any fuel spillage at the time of my site visit, on the limited evidence before me I do not discount that possibility. The representative of South East Water present at the site visit was aware of this issue but was not in a position to provide any further information.

116. In the absence of any detailed evidence on this matter, I am not able to determine whether this fuel spillage is a source of contamination of the groundwater feeding into the Lower Tunbridge Wells Sands Formation. Moreover, even if it was a source of contamination, that would be an entirely separate matter and would be in addition to any contaminants arising from the appeal site and not instead of it. Consequently, the possibility of contaminants entering the groundwater from the generators associated with the telecommunication mast does not justify the further risk of groundwater contamination that could potentially arise from the appeal site as a result of the development that has taken place.

117. I conclude that there is insufficient evidence to show that the development would not have a detrimental impact on the quality or potential yield of groundwater. I therefore conclude that the development would be contrary to Core Policy 5 of the Core Strategy and Policy EN16 of the Local Plan. These policies require, amongst other things, that developments will be expected to make efficient use of water resources and to protect water quality, and will only be permitted where there would be no unacceptable effect on the quality or potential yield of groundwater.

118. The development/proposals also fail to accord with paragraph 180 of the Framework which, amongst other things, seeks to prevent new development from contributing to unacceptable levels of water pollution and indicates that development should, wherever possible, help to improve water quality.

119. Finally in this respect, paragraph 25 of the PPTS states that local planning authorities should ensure that sites in rural areas should avoid placing an undue pressure on the local infrastructure. For the reasons I have set out, the development would potentially place undue pressure on the local infrastructure (albeit perhaps not in the terms envisaged in the PPTS) in terms of the supply of water.

Other considerations

The need for and supply of sites for gypsies and travellers

120. The Tunbridge Wells Borough Council Five-Year Gypsy and Traveller Pitch Supply Statement 2024 (2024 Statement) sets out the position as at 1 April 2024. The 2024 Statement is informed by the revised Gypsy and Traveller Accommodation Assessment (GTAA) produced in 2024, which updates the assessment of need within the Borough for the period from 2024 to 2039. The GTAA takes account of the revised definition of Gypsies and Travellers in the PPTS published in December 2023, but for obvious reasons not the revised definition set out in the Framework.

121. The 2024 Statement provides figures for two needs: the ethic identity definition (Ethnic), which includes all Gypsies and Travellers irrespective of whether they have ceased to travel or not: and the PPTS Definition, which includes Gypsies and Travellers who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently. In the interest of simplicity, I will focus on the Ethnic Definition as being the higher need.

122. Taking the Ethnic definition, the 2024 Statement indicates that the need between April 2024 to March 2039 totals 54 pitches. The total supply during that period is anticipated to be 25 pitches, but with potential additional pitch capacity at existing sites being 12-13 pitches and potential additional pitches at new site allocations providing an additional 3 pitches. Consequently, the total supply would amount to 40-41 pitches against a total need for 54 pitches, a shortfall of 13-14 pitches. This equates to a five-year supply (Ethnic) of 3.24 years. If the PPTS definition is taken, the five-year supply would be 4.14 years.

123. It follows that whichever definition is taken, the Council is unable to demonstrate a five-year supply of Gypsy and Traveller pitches. Any shortfall would only be exacerbated by the revised definition in the Framework.

124. Paragraph 10 of the PPTS requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against locally set targets and identify a supply of specific developable sites or broad locations for growth for years 6-10 and, where possible, for years 11-15. It is clear that the Council has failed to accord with that requirement in the PPTS.

125. Nevertheless, the PPTS must be read as a whole. Policy E of the PPTS confirms that inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Policy E of the PPTS goes on to confirm that traveller sites in the Green Belt are inappropriate development unless the unless the exceptions set out in Chapter 13 of the National Planning Policy Framework apply. When read in conjunction with Policy E of the PPTS, I am satisfied that none of the exceptions set out in Chapter 13 of the Framework apply in this case, including the exception at paragraph 154(h)(v) in relation to material changes of use of land.

126. Furthermore, paragraph 28 of the PPTS states that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, the provisions in paragraph 11(d) of the Framework apply. For decision making, this means granting permission unless (i) the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

127. Footnote 7 to the Framework confirms that the policies referred to in paragraph 11(d) are those in the Framework itself (rather than those in development plans) relating to, amongst other things, land designated as Green Belt and/or a National Landscape.

128. Paragraph 153 of the Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policy E of the PPTS confirms that traveller sites in the Green Belt are inappropriate development.

129. Paragraph 189 of the Framework indicates that development within the setting of a National Landscape should be sensitively located and designed to

avoid or minimise adverse impacts on the designated areas. I have found that the development causes significant harm to the setting of the High Weald National Landscape.

130. In my view, paragraphs 153 and 189 of the Framework both individually and collectively provide strong reasons for refusing the development that has been carried out and which is proposed. The provision in paragraph 11(d) of the Framework is therefore disapplied in this case on the basis of the proviso in (i) alone.

131. It follows that there is strictly no need for me to go on to consider the proviso in (ii) of paragraph 11(d) of the Framework. Nevertheless, for the sake of completeness, I will do so briefly here.

132. Paragraph 8 of the Framework indicates that achieving sustainable development means that the planning system has three overarching objectives: an economic objective, a social objective and an environmental objective. My reasoning in relation to those objectives is set out elsewhere in this Decision, albeit not under those headings. The following is therefore a 'headline' balancing exercise based on that detailed reasoning.

133. In terms of the economic objective, the development that has been carried out contributes very little to the local economy in terms of re-spend and/or re-investment into that economy. In terms of the social objective, the development does provide a home for the appellants and their families, and there would be social consequences should the appeals not succeed. In terms of the environmental objective, the development causes significant harm to the Green Belt and a National Landscape, has not been demonstrated not to have a detrimental impact upon the biodiversity of the site (including in relation to protected species) and constitutes a significant and omnipresent threat to the water supply of a sizeable population.

134. In balancing those objectives, I conclude that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

135. Having regard to all the above, in this case I attach only moderate weight to the fact that the Council cannot demonstrate a five-year supply of sites.

Availability of sites

136. 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 appellants and their 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.

137. The appellants themselves were looking for suitable sites for some 2 years before having to leave their previous site, but without success. Moreover, it is settled case law that there is no requirement for an applicant to prove that no other sites are available or that particular needs could not be met from another site.

138. The corollary is that the dismissal of these appeals would in all likelihood result in the families having to resort to an unlawful roadside existence, with all of the attendant implications. In the particular circumstances of this case, which includes the physical and mental health of some of the occupiers on the site (see below), that is a material consideration to which I attach substantial weight.

Failure of policy

139. It is clear from the shortfall of sites provided compared to the need for pitches identified on the GTAA and the 2024 Statement that the Council have not allocated sufficient sites to meet their properly assessed minimum accommodation needs. In that respect, the development plan is currently not meeting the needs of the travelling community.

140. In considering this issue, it is necessary to consider the background and context. The key element of the background is that nearly a quarter of the Borough is within the Green Belt (22%) and/or nearly three-quarters in a National Landscape (70%). It is National policy that traveller sites in the Green Belt are inappropriate development. It is also National policy that new traveller sites in open countryside should be very strictly limited in open countryside that is away from existing settlements or outside areas allocated in the development plan. That sets the context for planning policy for the Borough.

141. Looked at in the round and even taking into account all the constraints imposed by the Green Belt/National Landscapes in the Borough, it is fair to say that the Council's policy has not worked out in practice. In that sense that, there has a been a failure of policy. However, there must be more to policy failure than giving a different name to any existing unmet need or shortfall on a five-year supply of pitches or plots. I have already found that there is a shortfall in the supply of gypsy and traveller pitches when compared to identified need. Affording much weight to the failure of policy would introduce a form of double counting in which cause and effect are added together. I therefore afford this consideration limited weight.

Personal circumstances

142. The personal circumstances of the appellants and their families were set out in the written evidence and elaborated upon in oral evidence at the Hearing. 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. One of the residents has a medical condition that would make a roadside existence particularly problematic.

143. As noted on my site visit, the appellants are living in very cramped accommodation, with six people (including two adults) living in one of the three touring caravans on the site. Remaining on the site would not change that situation but would provide the continuing opportunity for the families to secure consistent access to health services, one of the principal aims of the PPTS. I attach significant weight to the personal circumstances of the appellants and their families.

Best interest of the child

144. There are currently 7 children living on the appeal site. At present, only one of the children residing on the site attends a local school. She is doing well there, both enjoying her education and making friends, including with children in the settled community. The other children residing on the site are home-schooled. Some of the children living on the site enjoy interacting with the horses kept there, including the driving of a trap, and this clearly benefits their well-being.

145. Having a stable base also enables the families and children to integrate into the local community, including securing regular attendance at school for the one child. 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.

146. There is, however, a further consideration in this case. It is reasonable to conclude that the population demographic for the area served by Pembury Reservoir broadly confirms to the national average in terms of age profile. The appellant does not dispute that the total population in this area is some 50,000 people. That being the case, it is likely that somewhere around 8,000 of that population are aged 15 or less. Moreover, in addition to residential properties, the area served by Pembury Reservoir includes schools and a hospital.

147. In terms of their health and well-being, it is clearly in the best interests of those children in the settled community to have a constant supply of clean water that conforms to the required standards. I have found that the development that has taken place on the appeal site has the potential to harm the quality and yield of groundwater. This would put the health and well-being of some 8,000 children at potential risk. The harms to the best interests of the children residing on the appeal site are easily identified and quantified. Not so the potential risk to children living in the area served by Pembury Reservoir. Nevertheless, given that a vastly greater number of children in the wider population would be put at risk through any degradation to the quality and yield of groundwater resulting from the use taking place on the appeal site, the collective best interests of those children outweigh that of the smaller number of children residing on the appeal site.

148. The best interest of a child is a primary consideration, and inherently carries as much weight as any other consideration.

Human Rights and the Public Sector Equality Duty

149. I am fully aware that the dismissal of this appeal would result in the appellants 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.

150. 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.

151. The appeal site is within the Green Belt, the protection of which is a long-standing and important element of National planning policy, as set out in the Framework. I have found that development that has taken place on the site and is proposed constitutes 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 notices and the development for which planning permission is sought both harm of the openness Green Belt and conflict with the purposes of including land in the Green Belt.

152. The appeal site is also within a National Landscape. The Framework confirms that great weight should be given to conserving and enhancing landscape and scenic beauty in National Landscapes, which have the highest status of protection in relation to these issues.

153. It is the appellant's own evidence that protected species are likely or even highly likely to be present on the land. However, the appellant's have provided insufficient evidence to demonstrate that the (proposed) development would not have a detrimental impact upon the biodiversity of the site, including the number and location of protected species.

154. The development on the appeal site lies directly south of Pembury Reservoir, which provides water for the population in the Pembury and Tunbridge Wells area. The appellant's have not provided sufficient information to demonstrate that the development would not have a detrimental impact on the quality or potential yield of groundwater, potentially affecting the public health of a population of some 50,000 people.

155. Taking all these considerations into account, dismissing the appeals and upholding the enforcement notices would clearly be in the public interest.

156. Against this harm, the occupation of their caravans stationed on the appeal site is an integral part of the ethnic identity of the appellants and their families as Romany Gypsies, reflecting the long tradition of that minority of following a travelling lifestyle. There is an 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, in all likelihood, compel the appellants and their families to adopt a roadside existence, with all the implications that would bring. The appellants then would not have a stable base from which to travel for work, or to access medical facilities. I also have the best interests of the children residing on the site at the forefront of my mind, including in terms of accessing schools.

157. It was held in *Chapman v UK* 33 EHRR 399 that:

"where a dwelling has been established without the planning permission which is needed under the national law, there is a conflict of interest between the right of the individual under Article 8 of the Convention to respect for his or her

home and the right of others in the community to environmental protection. When considering whether a requirement that the individual leave his or her home is proportionate to the legitimate aim pursued, it is highly relevant whether or not the home was established unlawfully. If the home was lawfully established, this factor would self-evidently be something which would weigh against the legitimacy of requiring the individual to move. Conversely, if the establishment of a home in a particular place was unlawful, the position of the individual objecting to an order to move is less strong. The Court will be slow to grant protection to those who, in conscious defiance of the prohibitions of the law, establish a home on an environmentally protected site. For the Court to do otherwise would be to encourage illegal action to the detriment of the protection of the environmental rights of other people in the community."

158. The Council does not suggest that the breach of planning control alleged in the notices constitutes Intentional Unauthorised Development. Nevertheless, the development was undertaken without the benefit of planning permission and therefore unlawful, such that in *Chapman* terms the appellants' position in objecting to the order to move is "less strong". In *Chapman* terms, that is a "highly relevant" consideration.

159. The judgement in *Chapman* goes onto state that a further relevant consideration to be taken into account is that "….if no alternative accommodation is available the interference is more serious then where such accommodation is available. The more suitable the alternative accommodation is, the less serious the interference constituted by moving the applicant from his or her home."

160. Balancing all these factors, I consider that the interference with the Article 8 rights held by the appellant and their families would be significant, but would be both necessary and proportionate in the event that the notices are 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 their families.

161. As Romany Gypsies, the appellants and their families share the protected characteristic of race for the purposes of the Public Sector Equality Duty (PSED) 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 one child who presently attends a local school. In having regard to PSED, I have taken account of all these factors in reaching my decision.

Conditions

162. A condition requiring that the development is retained in accordance with the approved plans is necessary, as is a condition restricting the number of pitches and caravans on the site(s). The submission and approval of a landscaping scheme would be necessary, albeit for the reasons set out above the submitted scheme would require extensive modification to make it acceptable. In the interests of both visual amenity and biodiversity, a condition requiring that all existing trees, hedges and hedgerows are retained would be necessary.

163. A condition requiring the submission of an Ecological Appraisal would be necessary, to include that an appropriate level of biodiversity net gain is achieved. However, I remain mindful Circular 06/2005 states that the need to ensure ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. In the interests of mitigating any harm to protected species (bats), a condition requiring the submission and approval of details of external lighting would be necessary.

164. 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.

165. The appellants indicated at the Hearing that, on the basis of information that only emerged whilst the event was in progress, connection with the main sewer is now their preferred option for dealing with the disposal of waste water. A condition requiring details of the connection with a main sewer is therefore necessary. The difficulty is that there is very little information before me regarding the details and specifications of that connection: for example, exactly where that connection would take place, the route the pipework would take, the extent of the excavation involved and the remediation of the land after the work is complete. Moreover, no feasibility study has provided. In these circumstances, I have no confidence that connection with the main sewer is technically possible and/or a practical proposition. As it stands, imposing a condition to require connection with the main sewer would not meet the tests of precision, enforceability and reasonableness set out the PPG.

166. The situation in the event that connection with the sewer does not prove possible is no more certain. The condition in that eventuality is convoluted and requires details to be submitted and approved in relation to several matters. The condition also requires that, if any method other than a cesspit is to be used, the applicant must contact the Environment Agency to establish whether a discharge consent is required and then to provide evidence of obtaining the discharge consent. But the condition as drafted is entirely silent on what happens if a discharge consent is not forthcoming from the Environment Agency. Imposing a condition in those terms would similarly not meet the tests of precision, enforceability and reasonableness set out the PPG.

167. Similarly, in the event that the FWS is to be used, the condition in relation to that seeks the submission of various details which my mind would be essential to the eventual acceptability or otherwise of that solution. I accept that a condition could be used to control the implementation of those details when they had been provided beforehand. But in my view it would not be good practice to obtain those details for the first time through a condition. In that scenario, there could be no guarantee that an acceptable scheme would result.

168. It is the same story in relation to conditions requiring details of contamination on the site. A scheme for the capture and disposal of run-off from horse trailers and hardstandings, and the storage of manure, could be

submitted for approval but in view of the concerns expressed by South East Water there can be no guarantee that any such scheme would be effective.

169. 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.

Other matters

170. Mr Mark Slater, representing the Friends of Redwings AONB, expressed concern that allowing the appeals might set a precedent. He explained that the land between Maidstone Road and Redwings Lane (where the appeal site is located) has been divided into a number of plots and that those plots have been offered for sale on an individual basis. I understand that a number of planning applications have already been submitted in relation to these plots and at least one of those has been appealed. Mr Slater is therefore concerned that allowing these appeals would open the floodgates to other permissions and that this would irrevocably harm the character of this side of the valley.

171. There is some evidence to support the view that Mr Slater's position in this respect is more than mere fear or generalised concern: the appeal submitted in relation to Plot 9-11, for example (APP/M2270/C/24/3339009). However, that appeal has been dismissed. The dismissal of that appeal will then be a material consideration in determining any further applications and appeals for development on this side of the valley.

172. Moreover, in this case, to paraphrase, permission is sought for two Gypsy and Traveller pitches with an associated equestrian use. Aside from some relatively small structures that are ancillary or incidental to the use of the land, no built development is proposed. Consequently, even if these appeals were to be allowed and planning permission granted, it could not and would not set a precedent for any other form of development.

173. The planning consultants acting on behalf of the Friends of Redwings AONB point out that whilst the appeal site is only some 400m from the Pembury LBD, the centre of Pembury is some 2.2km away. These distances to the nearest services are considerably beyond the desirable, acceptable and preferred maximum walking distances. It is therefore likely that occupiers of the site would be highly dependent upon a vehicle to reach everyday services and facilities. Indeed, the appellants confirmed at the Hearing that they use vehicles for shopping and accessing other facilities.

174. The PPTS considers sustainability in the round. Paragraph 13 of the PPTS indicates that local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally, having regard to a range of factors (a to h inclusive) set out in that paragraph. Those factors include promoting access to appropriate health services (Criteria b) and ensuring that children can attend school on a regular basis (Criteria c).

175. The PPTS implicitly accepts that traveller sites may be located in rural areas and that this will lessen opportunities for sustainable travel. That is consideration that needs to be weighed in the overall balance, together the

benefit arising through the provision of a settled base from which the access those facilities in terms of reducing both the need for long-distance travelling and possible environmental damage caused by unauthorised encampment.

176. On balance, I conclude that the appeal site does not provide adequate accessibility to service by foot, by cycle or by public transport. However, in this particular case and having regard to the approach taken towards sustainability in the PPTS, this may be considered to be a neutral factor.

177. Both parties have submitted appeal decisions/Court Judgments in support of their respective positions. I have read all of those cases and judgements. But the circumstances in this case are unique: the site is within the Green Belt, a National Landscape, is located on an aquifer providing water to a sizeable population and with protected species highly likely to be present on the site. Furthermore, the 2024 Statement setting out the position in relation to the five-year supply of Gypsy and Traveller pitches in the borough has only recently been published. The personal circumstances of the appellants are also unique to them.

178. The facts and circumstances surrounding this case are very different to those before the Inspectors and the Judges in those other decisions and judgements. For that reason, beyond confirming some general principles that are equally applicable to the facts of this case, I find that the appeal decisions/judgments that have been submitted do not greatly assist me.

Green Belt balancing exercise

179. In accordance with paragraph 153 of the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of the development. In accordance with paragraph 182 of the Framework, I attach great weight to the failure of the development to conserve or enhance the landscape and scenic beauty in the National Landscape.

180. Paragraph 186(a) of the Framework indicates that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. In view of the potential harm to protected species that are likely or highly likely to be live or use the site, I consider that the potential harm to those protected species translates to great weight.

181. In view of the size of the population potentially at risk, the detrimental impact on the quality or potential yield of groundwater attracts great weight. To the extent that any disruption to the quality and supply of water would not be in the interests of the children within that population, that too attracts great weight.

182. These harms are intrinsic to the development that has taken place and is proposed, and could not be overcome by the imposition of suitably worded conditions, especially given the lack of a robust evidence base on which those conditions would be founded.

183. Against this, given that a significant proportion of the Borough is within the Green Belt and/or a National Landscape, I attach only moderate weight to the fact that the Council cannot demonstrate a five-year supply of sites. I attach limited weight to the failure of policy. In the particular circumstances of this

case, I attach substantial weight to the likelihood that the lack of availability of alternative sites would result in the families having to resort to an unlawful roadside existence. I also attach significant weight to the personal circumstances of the appellants and their families in this case, including that they are Romany Gypsies. I attach great weight to the best interests of the children residing on the site, but this is outweighed by the equal weight that I give to best interests of much larger number of children potentially affected by any disruption of the water supply.

184. Consequently, 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.

185. For the reasons set out above, the breach of planning control alleged in the notice is also contrary to policies within the development plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan. Accordingly, I consider that permanent planning permission ought not to be granted for the development alleged in the notices.

Temporary and/or personal permission

186. It is axiomatic that the harms that I have identified above would be less if they only occurred on a temporary basis. The appellants initially sought a temporary permission of 10 years but, in the alternative, suggested that a temporary permission of five years would fit neatly with the education of the one child that presently attends a local school.

187. The overriding consideration in this context is the potential and plausible risk to public health resulting from contamination of the water supply and/or the potential yield of groundwater to serve a population of some 50,000 people. Because of that, in my view a temporary planning permission of any duration would not be appropriate in this case. In that context, the risk to the wider population is not outweighed by the benefit of a temporary permission in facilitating the education of the one child that presently attends a local school, even taking into account the best interests of that child. This is only compounded by the risk to the protected species that are likely or highly likely to live on or to use the appeal site(s).

188. For the same reason, a personal permission would also not be appropriate. In reaching that conclusion, I am again mindful of the medical conditions suffered by various occupiers of the site and their need to access medical facilities, including the resident that is likely to find a roadside existence to be particularly challenging on health grounds. I am also mindful that the appellants are Romany Gypsies and of my duty under the PSED in that respect.

Appeals A and B: conclusions on the appeals on ground (a) and the deemed planning applications, and Appeals C and D

189. I have a great deal of sympathy for the appellants and their families, and the predicament they now find themselves in. They were forced to move, in no uncertain terms, from the site they were previously living on following an irreconcilable dispute with another Gypsy family. They are currently living in

very cramped accommodation in relatively small touring caravans. With the dismissal of these appeals, they face the possibility of a roadside existence. This would be far from ideal for both the families and would not be in the best interest of the children residing on the site. It would also have serious implications for the health of one particular member of the families. I have all of these considerations firmly in mind.

190. Nevertheless, I am mindful of the judgement of the Court of Appeal in *Wychavon District Council v Secretary of State for Communities & Local Government, Kathleen Butler, Leonard Butler* [2008] EWCA Civ 692. In that judgment, Carnwath LJ held that:

"…..in Chapman[2] the Strasbourg court recognised that the gypsy status did not confer "immunity from general laws intended to safeguard the assets of the community as a whole, such as the environment", but added: "… the vulnerable position of Gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases …"

Carnwath LJ then went on to say:

"…..*To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the Gypsy way of life. Against this background, it would be impossible in my view to hold that the loss of a gypsy family's home, with no immediate prospect of replacement, is incapable in law of being regarded as a "very special" factor for the purpose of the guidance. That, however, is far from saying that planning authorities are bound to regard this factor as sufficient in itself to justify the grant of permission in any case. The balance is one for member states and involves issues of "complexity and sensitivity" (see Chapman v UK para 94). That is a judgment of policy not law, and it needs to be addressed at two levels: one of general principle, the other particular to the individual case."*

191. Applying the principles in *Wychavon* to the facts of this case, as a general principle I fully recognise the positive obligation to facilitate the Gypsy way of life. I also fully understand all the implications that dismissing these appeals and upholding the enforcement notices would have on the appellants and their families, not least in relation to the best interests of the children residing on the site as a primary consideration.

192. However, adopting the terminology used in *Wychavon* and having regard to the facts in this case, I do not consider that these factors should be regarded as sufficient to justify the grant of planning permission. The appeal site is particularly sensitive in environmental terms. It is within the Green Belt and a National Landscape. It is highly likely that there are protected species on the site. The site adjoins a reservoir that provides water for a substantial population, such that the quality and yield of groundwater obtained is of paramount importance. Consequently, dismissing the appeals would be in the wider public interest. In weighing the balance of issues in terms of their complexity and sensitivity, I conclude that in this particular case the balance

[2] Referring there to the judgment in *Chapman v UK 33* EHRR 399

falls on the side of dismissing the appeals and upholding the enforcement notices.

193. In no small part, my conclusions flow the fact that the development that has taken place on the site(s) was carried out without the benefit of planning permission (as distinct from being intentional unauthorised development). It is a fundamental principle of planning control that planning permission should not be refused simply on the basis that the development was carried out without planning permission or is unlawful. However, the Ministerial Statement delivered on 17 December 2015 in relation to the protection of the Green Belt makes the point that in this scenario there is no opportunity to appropriately mitigate the harm that has already taken place. The development that has taken place on the appeal site is a case in point.

194. In order to make the development acceptable in certain key respects, including the quality/yield of groundwater and protected species, the appellants rely on a plethora of planning conditions. I fully recognise that a condition(s) could be worded such that the permission would cease to have effect if the condition was not discharged. In principle, such a condition would meet the six policy tests set out in the PPG.

195. However, discharging that condition would take time for the matter to be considered by the Council and possibly by the Planning Inspectorate on appeal. This could feasibly be in excess of a calendar year. Throughout that period of time, the harms and risk to the environment and the population would be both real and omnipresent.

196. Planning conditions are primarily intended to secure the implementation of details or works that have already been submitted and agreed. The difficulty in this case is that the evidence base upon which the conditions are founded is simply not present: for example, in relation to the connection with the main sewer and presence of protected species, as well as the design/performance of the FTS and Drainage Field should that be required. Without that evidence base, relying on conditions to make the development acceptable in planning terms would constitute a hostage to fortune. There can be no guarantee that a planning permission could ultimately be delivered that was acceptable in all respects. In a sensitive environment such as the appeal site, that would not be prudent.

197. Accordingly, I conclude that the appeals on ground (a) should be dismissed, as well as the appeals against the refusal of planning permission.

Appeals A and B: the appeals on ground (g)

198. 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 notices is six months.

199. The appellant seeks a period of compliance of two years. Beyond a general reference to personal circumstances and the health needs of the appellant, taken together with best interests of their children, no detailed justification for the period of compliance sought has been provided. I did, however, note during my site visit that the appellants have a lot of personal possessions stored in shipping containers and various other structures on the land. The

sorting and removal of those personal items is likely to be a time-consuming operation.

200. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with enforcement notice against the private interest bound up in the development subject to the notice. In so doing, I must start from the position that the use of the land subject to the enforcement notice does cause the harm alleged in the reasons for issuing the notice.

201. Dismissing the appeals will force the appellants and their families to find an alternative site on which to which to live. I am aware that no alternative sites are immediately available, such that is likely that the appellants and their families would have to pursue a roadside existence until such time as they did find an alternative site. I certainly do not underestimate all the implications that would bring. I have also had due regard to the PSED, not least in terms of how not having a stable base from which to travel for work would hinder the appellants and their families from following their traditional way of life and integrating with the settled community.

202. I have considered all these in connection with the rights held be the appellants and their families under the HRA. I am aware that some of those living on the site have anxiety about adopting a roadside existence and that for one member of the families this could have significant health implications. The best interest of the children residing on the site are a primary consideration in that regard.

203. Against this, there is potential and plausible risk to public health resulting from any contamination of and/or interruption to the water supply to a population of some 50,000 people. A sizeable percentage of that population would be children under the age of 15. It would not be in the best interest of those children to have any interruption to the water supply. That is equally a primary consideration. Any risk to public health would only increase commensurate with any extension to the period of compliance. That, in my view, would not be an acceptable risk to take. Indeed, that in itself is a compelling reason for not extending the period of compliance.

204. In weighing the balance between public and private interests, for the reasons set out above I consider that the public interest in expeditious compliance with the requirements of the enforcement notice outweighs private interest in extending that period of compliance. I am therefore not persuaded that there is any need to extend the period for compliance with the notices and am satisfied the period of compliance of six months stated in the notices is a proportionate response to the breach of planning control that has occurred.

205. The appellants have referred to an appeal decision relating to a site in Frome, Somerset, where the Inspector allowed an appeal made solely on ground (g) to extend the period of compliance from nine months to two years, the same as now sought (Appeal Refs: APP/Q3305/C/08/2072342 & 2072343). Part of the Inspector's reasoning was that there was a substantial need for gypsy and traveller sites in the area, such that the appellants had considerable difficulty in finding an alternative site. There was, therefore, a clear parallel with the situation faced by the appellants in this case.

206. However, the facts on the other side of the equation were very different to those in this case. In the Frome appeal, the primary harm was the effect of the development on the character and appearance of the surrounding rural area, in particular having regard to the setting of a Grade II* listed building. That site was neither in the Green Belt nor a National Landscape. There is no indication in the Inspector's decision that there were protected species on the site. Importantly, there is no indication in the Inspector's decision that there was any risk to public health arising from that development.

207. The facts and circumstances in the Frome appeal were therefore very different to those in this case. Consequently, the Inspector's decision in the Frome appeal can be distinguished on its facts from the present case, and provides no justification for extending the period of compliance as sought by the appellants.

208. Accordingly, the appeals on ground (g) fail.

Conclusion

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

210. For the reasons given above, I conclude that Appeals C and D should not succeed.

Formal Decisions

Appeal A Ref: APP/M2270/C/24/3339249

211. It is directed that the enforcement notice is corrected by:

- in paragraphs 5(3), 5(4) and 5(6) of the notice, deleting the word 'permanently.'

212. Subject to the correction, 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.

Appeal B Ref: APP/M2270/C/24/3339251

213. It is directed that the enforcement notice is corrected by:

- in paragraphs 5(3), 5(4), 5(5), 5(6), 5(8) and 5(9) of the notice, deleting the word 'permanently.'

214. Subject to the correction, 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.

Appeal C Ref: APP/M2270/W/24/3339337

215. The appeal is dismissed.

Appeal D Ref: APP/M2270/W/24/3339338

216. The appeal is dismissed.

Paul Freer
INSPECTOR

APPEARANCES

For the appellants

Mr Frank Smith	Appellant
Mr Billie Smith	Appellant
Ms Charlotte Vine	
Ms Debbie Smith	
Mr Phil Slater	SLR Consulting Limited
Mr Rhodri Crandon	TDA
Dr Angus Murdoch	Murdoch Planning Limited

For the Local Planning Authority

Mr Thomas Vint	Principal Planning Officer
Mr Richard Hazelgrove	Development Management Team Leader
Mr David Scully	Landscape & Biodiversity Officer
Ms Maria Payne	Enforcement Officer
Ms Emma Goddard	Head of Environment, South East Water
Ms Debbie Wilkinson	Groundwater Manager, South East Water
Mr Matthew Lander	Catchment Scientist, South East Water

Interested Persons

Mr Mark Slater	Friends of Redwings AONB

DOCUMENTS SUBMITTED AT THE HEARING

1/ Tunbridge Wells Borough Council Five-Year Gypsy and Traveller Pitch Supply Statement September 2024

2/ South East Water: Position Statement

3/ Map extract titled Local Hydrology Details

4/ Map extract showing Pembury Reservoir and surrounding water infrastructure

5/ Drawing No. 002 showing Proposed Wetland Treatment and Drainage Field

6/ Amended red line plan for Pitch 1

7/ Draft planning conditions

DOCUMENTS SUBMITTED AFTER THE HEARING

1/ Unredacted version of the consultation response by South East Water dated 16 April 2024, with Appendices.

2/ Proposed Site Layout and Outline Landscape Scheme (Drawing No. TDA.2935.01 Rev B) with the FWS removed.

3/ Draft planning conditions post the 2024 revision to the Framework.