



Appeal Decisions

Hearing held on 26 November 2024

Site visits made on 26 and 27 November 2024

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

an Inspector appointed by the Secretary of State

Decision date: 5TH FEBRUARY 2025

Appeal A Ref: APP/M3645/C/22/3304211

Land lying to the south west side of Coldharbour Farm, Lingfield Common Road, Lingfield RH7 6BZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Jack Hall against an enforcement notice issued by Tandridge District Council.
- The notice was issued on 30 June 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of metal gates and fencing, which exceed 2 metres in height in part, enclosing the northern part of the site in the approximate position outlined in brown on the attached plan, and associated with the use of the land for the storage and distribution of portable toilets.
- The requirements of the notice are to:
 - (i) Remove the gates and fence shown in the approximate position shown on by a brown line on the attached plan.
 - (ii) Following compliance with (i) above, remove all resulting debris and unused materials from the land to an authorised place disposal.
- The period for compliance with the requirements is: Four (4) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: Appeal A is dismissed, and the enforcement notice is upheld with corrections and variations.

Appeal B Ref: APP/M3645/C/22/3304210

Land lying to the south west side of Coldharbour Farm, Lingfield Common Road, Lingfield RH7 6BZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Jack Hall against an enforcement notice issued by Tandridge District Council.
- The notice was issued on 30 June 2022.
- The breach of planning control as alleged in the notice is without planning permission, the formation of a hard surface in the approximate position outlined in green on the attached plan.
- The requirements of the notice are to:
 - (i) Excavate all hard surface material (including concrete and chalk) from the area outlined in green on the attached plan to a depth where all the pre-existing earth prior to the formation of the hard surface is exposed.
 - (ii) On completion of step i. above regrade the land to match the profile of the land to the South and West and reseed the land with a native species grass mix.
 - (iii) Remove the material arising from compliance with 5(i) above to an authorised place of disposal.
- The period for compliance with the requirements is : Six (6) months.

- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: Appeal B is dismissed, and the enforcement notice is upheld with variations.

Appeal C Ref: APP/M3645/C/22/3304209

Land lying to the south west side of Coldharbour Farm, Lingfield Common Road, Lingfield RH7 6BZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Jack Hall against an enforcement notice issued by Tandridge District Council.
- The notice was issued on 30 June 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a building in the approximate position outlined in blue on the attached plan.
- The requirements of the notice are to:
 - (i) Remove the building in the approximate position outlined in blue on the attached plan.
 - (ii) Following compliance with (i) above, remove all resulting debris and unused materials from the land to an authorised place of disposal.
- The period for compliance with the requirements is : Four (4) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: Appeal C is dismissed, and the enforcement notice is upheld with variations.

Matters Concerning the Enforcement Notices

1. It is incumbent upon me to put the Enforcement Notices (Notices) in order. I have had regard to my powers under section 176(1)(a) of the Town and Country Planning Act 1990 (1990 Act) to correct any defect, error or misdescription in the Notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the test is whether the correction or variation would not cause any injustice to the appellant or the Council.
2. The Notice associated with Appeal A contains some unnecessary words. No objection was raised by any party at the hearing to the removal of the unnecessary words identified on the Notice with Appeal A. Also, in paragraph 5, step (ii) of the Notice with Appeal B, the Council has included a detailed description of how to restore the land to its former condition, which could be considered excessive to remedy the breach. No objection was raised by any party at the hearing to the wording of the requirement being varied to accord with 173 (4)(a) of the 1990 Act.
3. The corrections and variations, set out below for clarity, do not alter the nature of the allegation or cause any injustice to the Council or the appellant.
4. In the Notice with Appeal A, paragraph 3, delete the words 'which exceed 2 metres in height in part' and 'and associated with the use of the land for the storage and distribution of portable toilets.' Also, in paragraph 5, step (i) of the same Notice, delete the words 'shown on.'

5. In the Notice with Appeal B, paragraph 5, step (i) delete the words 'to a depth where all the pre-existing earth prior to the formation of the hard surface is exposed.' Also, in paragraph 5, step (ii) of the same Notice, delete the words 'reseed the land with a native species grass mix' and substitute with the words 'restore it to its condition before the breach took place.'

Preliminary Matters

6. During the appeals' determination, a revised version of the National Planning Policy Framework (the Framework) was adopted in December 2024. The main parties were given an opportunity to comment on the revised Framework's relevance to the developments subject of the Notices, and I have taken their comments into account.
7. The address of the land affected by the Notices did not include a postcode. The Appeal Forms for Appeal A, B and C identify the site as 'Land lying to the southwest side of Coldharbour Farm, Lingfield Common Road, Lingfield, RH7 6BZ.' I am satisfied that the postcode on the Appeal Form applies to the land affected by the Notices. I have included it in the address, and this is reflected in the banner headings above.
8. A fourth enforcement notice was also issued by Tandridge District Council on 30 June 2022, alleging the material change of use of the site to a mix of agriculture and the storage of portable toilets. However, this enforcement notice has not been appealed and has come into effect. From my understanding, the fourth notice does not require the removal of any of the developments subject of the appeals before me. Although disputed by interested parties, the appellant indicated that he has complied with the notice and ceased the alleged mixed-use.
9. However, the requirements of the fourth notice do not form part of these appeals, and whether it has been complied with is a matter for the Council to determine. Nonetheless, as it has come into force, and following compliance with its requirements, the appellant can revert to the previous lawful use in line with section 57 (4) of the 1990 Act. The appellant and Council agree that the previous lawful use of the land is primarily for agriculture, but the appellant has indicated that the alleged operational development has been carried out to keep horses on the land for personal, rather than commercial or agricultural reasons.
10. Although the alleged operational development is not being used in association with the lawful use of the land for agriculture, section 75 of the 1990 Act sets out the effect of granting planning permission. Section 75(2) and (3) of the 1990 Act state that where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used; or if no purpose is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed. As such, I will have regard to the operational development alleged in the notices in line with the provisions set out in section 75 of the 1990 Act.
11. I also note that some items and structures on the land were not included in the allegation or have been brought onto the land since the Notices were issued. From the discussion at the hearing and what I saw on site, this amounted to a bund, a sealed cesspit, a dog kennel and several industrial containers. Also, the gates and fences erected at the time the Notices were served appear to have

been replaced with an alternative gate and fences. However, section 177(1)(a) of the 1990 Act only allows the grant of planning permission in respect of matters stated in the Notices as constituting a breach of planning control 'whether in relation to the whole or any part of those matters.'

12. Consequently, any items not included in the Notice, or brought onto the land after it was issued, do not form part of the appeal. For clarity, my determination with respect to the appeals will relate to the gate and fence enclosures, hard surface and building that were on the land at the time the Notices were issued.
13. As set out in the banner, there are three separate enforcement notices and appeals. Although largely severable from one another, they all relate to operational development that was carried out by the appellant. I have considered the developments set out in Appeals A, B and C on ground (a) on their own merits, but as the main issues are the same and to avoid duplication, I have considered the appeals together.

Appeals A, B and C on Ground (a) and the Deemed Planning Application

14. The **main issues** in this appeal are: -

- Whether the development would be inappropriate development in the Green Belt.
- The effect of the development on the openness of the Green Belt.
- The effect of the development on the character and appearance of the area.
- The effect of the development on the setting of heritage assets, namely Paris Farm and Coldharbour Farm Listed Buildings (Grade II).
- The effect of the development on ecology and biodiversity, including the ecological integrity of the Lingfield Nature Reserve, Blindly Heath Site of Special Scientific Interest (SSSI) and the Lingfield Cernes SSSI.
- The effect of the development on the living conditions of the occupants of Paris Farm Cottage, Yew Tree Cottage and Paris Farm with regard to outlook and privacy.
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development in the Green Belt

15. The Framework states that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new buildings and other forms of development should be regarded as inappropriate in the Green Belt, subject to several exceptions.
16. I have been mindful of the recent changes to the Framework, which introduced changes to paragraph 155, and the concept of grey belt land¹. When given the

¹ Annex 2: Glossary of the Framework defines 'grey belt' as land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in

opportunity to provide observations on the changes to the Framework, neither party indicated any change to their case. However, for completeness it is necessary for me to address the changes introduced to the Green Belt policies in the revised Framework.

17. The land, subject of the appeals is not identified as previously developed land. However, in my judgement, it is other land that does not strongly contribute to any of the purposes set out in (a), (b), or (d) of paragraph 143 of the Framework and it is therefore grey belt land. Nonetheless, paragraph 155 indicates that, to avoid being inappropriate development in the Green Belt, development on grey belt land must meet other criteria. These include that there is a demonstrable unmet need for the type of development proposed. I have not been provided with any evidence to show that there is a demonstrable unmet need for the type of development carried out. Accordingly, based on the evidence before me, the developments subject of the three appeals are not compliant with paragraph 155 of the Framework.
18. The appellant's case is that the developments subject of the Notices accords with the exception in paragraph 154 (b) for development that involves the provision of appropriate facilities (in connection with the existing use of land or a change of use), including buildings, for outdoor sport and outdoor recreation facilities as well as paragraph 154 (h) (ii) for engineering operations. Both exceptions are not inappropriate development if they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
19. A 'building' is defined in section 336 of the 1990 Act to include 'any structure or erection and any part of a building, as so defined, but does not include plant or machinery comprised in a building.' It is, therefore, reasonable to conclude that the gates and fences, as well as the building, can be included in this interpretation. The hard surfaced area is not a building but an engineering operation, and therefore, should be assessed against paragraph 154 (h)(ii) of the Framework.
20. Policy DP13 of the Tandridge Local Plan Part 2: Detailed Policies 2014 (the Local Plan) specifically sets out that the construction of new buildings will be regarded as inappropriate in the Green Belt, subject to several exceptions listed. This includes paragraph B, which reiterates the requirements in the Framework for the provision of appropriate facilities for outdoor sport and recreation. This is also reinforced in Policy DP17 of the Local Plan, which refers to development for equestrian facilities, but requires proposals to preserve the openness of the Green Belt and not conflict with the purposes of including land within it.
21. Policy DP10 of the Local Plan states that proposals involving inappropriate development in the Green Belt will only be permitted where very special circumstances exist, to the extent that other considerations clearly outweigh any potential harm to the Green Belt. Aside from the exceptions set out in paragraph 155 above, the Local Plan policies are largely consistent with the recently revised Framework.
22. The appellant has set out in his ground (a) appeals that the land is currently used for agriculture, with a small herd of cattle, but he is using the building to keep horses for personal, rather than agricultural or commercial, purposes. It is

paragraph 143. 'Grey belt' excludes land where the application of the policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development.

also indicated that the gates and fences were erected to provide additional privacy and security in connection with the use for outdoor recreation. The hard surfaced area allows him to gain access to the land in his vehicles, as well as providing a firmer ground to allow the horses to safely access the grazing fields.

23. There is no definition of 'outdoor recreation' within the Framework, and I have determined the use of the words in ordinary English. The Collins Dictionary defines, 'outdoor recreation' to mean something that consists of things that you do in your spare time to relax in the outdoors. Consequently, outdoor recreation is quite a broad term, which could cover a wide range of outdoor activities.
24. Interested parties dispute that the appellant is using the land for outdoor recreation. It is contended that despite the horses being kept on the land, any riding or outdoor recreation occurs elsewhere. I have had regard to this, but within the broad scope of the term, the keeping of horses on the land, by attending to their needs and welfare, is something that I would consider to be an outdoor activity or recreation, whether the horses are ridden on the land or not. Furthermore, I acknowledge that there are facilities for the appellant in the building, however, it is primarily designed and used to keep horses, with stables, a tack room and hay storage. The gates and fences also serve to secure the animals as well as seek to prevent any crime.
25. I would, therefore, regard the stable building as well as the gates and fences as appropriate facilities for outdoor recreation in compliance with paragraph 154 (b) of the Framework. The works to form the hardstanding also amount to an engineering operation, complying with the exception set out in paragraph 154 (h)(ii) of the Framework. Even though the developments can be regarded as appropriate facilities and an engineering operation, it is still necessary to assess their effect on the openness and purposes of the Green Belt to determine whether it is inappropriate development.

Openness and compliance with the five purposes

26. Paragraph 142 of the Framework states that the Government attaches great importance to Green Belts. The fundamental aim of the Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness has both a visual and spatial dimension and the absence of visual intrusion does not mean that there is no impact on the openness of the Green Belt.
27. The building, hard surface, gates and fencing have all been constructed in an undeveloped open field. Despite not being tall, the volume of the building as well as the length and height of the gate and fence enclosures would have a greater spatial impact on the openness of the Green Belt than before the development took place. The hard surface area itself does not have a volume or height, but its use for the storage of horse trailers, shipping containers, lorries and cars have a notable combined bulk and volume. In a physical sense, all of the items take up space that was previously free from development. As such, there is a spatial impact on the openness of the Green Belt from all three developments.
28. The building, gates and fencing and hard surface are visible from the Public Right of Way (PROW) that passes the northern boundary of the site at close

range². The nature of the hard surface works as well as the height of the building, fencing and gates means that they are not particularly prominent from wider public viewpoints. However, the building and fencing are still visible from PROWs³ that border the fields in the appellant's ownership. Furthermore, despite not being visually prominent itself, the siting of parked cars, storage containers, as well as lorries and horse trailers on the hard surface also effects the visual openness of the Green Belt.

29. With the above in mind, the developments subject of Appeals A, B and C all have a spatial and visual impact, resulting in harm to the openness of the Green Belt. The appellant has indicated that the building, hard surface, gates and fencing all comply with the five purposes of the Green Belt. However, by carrying out development on an undeveloped parcel of land, the unauthorised developments must be regarded as an encroachment into the countryside. Notwithstanding this, even if the developments complied with all five purposes, this does not alter the fact that they still result in harm to the openness of the Green Belt.
30. Accordingly, the building, hard surface as well as gates and fencing are, therefore, inappropriate developments that do not preserve the openness of the Green Belt. The developments alleged in the Notices, individually and cumulatively, fail to accord with Policies DP10, DP13 and DP17 of the Local Plan, and the exceptions set out in paragraphs 154(b), 154 (h) (ii) and 155 of the Framework. The developments are, therefore, inappropriate developments in the Green Belt and should not be approved unless there are very special circumstances.

Character and Appearance

31. Policies CSP18 and CSP21 of the Tandridge Core Strategy 2018 (Core Strategy) as well as Policy DP7 of the Local Plan require all new developments to have regard to their context and be of a high standard of design. They also require the character and distinctiveness of the district's landscapes and countryside to be protected.
32. The appeal site is accessed via a long private track situated off the southern side of Lingfield Common Road. Aside from the more ordered pattern of housing development on Lingfield Common Road, the area surrounding the appeal site is predominantly made up of open fields, wooded areas and isolated dwellings located along private tracks.
33. The appeal site itself is adjoined by undeveloped fields, including Lingfield Nature Reserve (LNR), and the garden of Yew Tree Cottage. The site has trees and vegetation along its boundaries and is situated at a higher level than the adjacent private access track and PROW⁴. Apart from the alleged developments, the site maintains a largely undeveloped and open character that is valuable to the sense of place, contributing positively to its rural setting.

Appeal A- Gates and Enclosures

34. Based on the evidence before me, the gates and fences encircling the yard at the time the Notices were served were made up of unfinished corrugated metal

² PROW No 436- Image 3- Map showing public footpaths- Appendix C (iV) of DMH Stallard Representation

³ PROW No 434 and 435- Image 3- Map showing public footpaths- Appendix C (iV) of DMH Stallard Representation

⁴ PROW No 436- Image 3- Map showing public footpaths- Appendix C (iV) of DMH Stallard Representation

sheets with some steel posts in between. The fencing was situated on the higher ground of the site, and just behind some overgrown trees and vegetation.

35. Policy DP9 of the Local Plan sets out specific criteria for development involving gates, fences, walls & other means of enclosure. As well as requiring the design, scale and materials to be appropriate for its context, it states that in rural areas, development should seek to incorporate native hedging, shrubs or low wooden fencing as they are considered to be more in keeping.
36. There are a variety of boundary treatments in the vicinity of the site, but a large proportion of these comprise hedgerows, trees, vegetation and fences that are finished in timber or have an open design. Despite the variety of enclosures, the length, elevated height and solid corrugated metal appearance of the gates and fences appears incongruous in this context, at odds with the typical enclosures within the vicinity. The prominence of the gates and fences when viewed from the private track off Lingfield Common Road, as well as from close and wider range views from PROWs around the site, exacerbates the visual impact.
37. The gates and fences could be finished in a darker colour, along with some landscaping, to soften the overall visual impact. However, this mitigation would not alter the appearance of the gate and fences from close range, which would be at odds with typical enclosures in the locality.
38. Accordingly, the gate and fences, subject of Notice A, cause significant harm to the rural character and appearance of the area. The fences and gates are contrary to Policies CSP18 and CSP21 of the Core Strategy 2018 as well as Policy DP7 and DP9 of the Local Plan, which amongst other things, require all new developments to have regard to their context and be of a high standard of design as well as seek to incorporate appropriate landscaping and materials associated with gates and fences in rural areas.

Appeal B-Hard Surface

39. The hard surface has an upward slope towards the opening, but within the site it is a largely flat area in the corner of the land edged in red. The hard surface is around the stables but also extends beyond and includes a single track towards the open field. The appellant indicates that it was formed principally using chalk, but the Council indicates that concrete materials were also included. The land has been raised by the importation of the material to form the hard surface.
40. I appreciate that the hard surface has been designed to allow access into the field, and chalk is a material that would be typically used in the area for this type of development. However, in my judgement, the size and scale of the hard surfaced area does significantly alter the appearance of the undeveloped land. Based on the evidence before me, the hard surface also appears excessive for its purpose of providing access, and turning, for vehicles as well as to help the horses access the wider grazing fields. Despite being on the land for an extended period, it is still an appreciable feature from close range that has failed to amalgamate over time. It is concealed from wider viewpoints, but it is still visible from the approach on the private road and the adjoining PROW⁵.
41. Accordingly, the hard surface has significantly impacted on the unspoilt appearance of the site, resulting in a feature of a scale and design that is not

⁵ PROW No 436- Image 3- Map showing public footpaths- Appendix C (iv) of DMH Stallard Representation

commensurate with its use and at odds with the character and appearance of the site and wider area.

42. Consequently, the hard surface adversely impacts on the character and appearance of the site and immediate area, contrary to Policies CSP18 and CSP21 of the Tandridge Core Strategy as well as Policy DP7 of the Local Plan. These policies require all new developments to have regard to their context; be of a high standard of design and to protect the character and appearance of the district's landscapes and countryside.

Appeal C- Building

43. Policy DP17 of the Local Plan refers specifically to the development of equestrian facilities. The policy requires developers to prioritise existing buildings if present. However, if no other buildings are on site, the development should be an appropriate size and scale, relative to its intended use and the fields concerned. The facilities should also be appropriate in terms of siting, design, scale, layout, external materials and appearance.
44. The building on the site is an L-shaped timber-clad single storey building. Although not a small building, the scale, design and single storey height is a typical mid-sized stable building commonly found in rural locations for this purpose. It is relative to its intended use and the fields concerned. The scale, design, appearance and finishing materials of the building is also considered acceptable in respect of the character and appearance of the site and its setting.
45. Accordingly, the building is not harmful to the character and appearance of the site and immediate area, complying with Policies CSP18 and CSP21 of the Core Strategy and Policy DP7 of the Local Plan as well as the scale and design criteria set out in Policy DP17 of the Local Plan.

Impact on Heritage Assets

46. Two properties close to the application site, Paris Farm and Coldharbour Farm are both Grade II Listed Buildings. Based on my observations, and the evidence provided, the significance of Paris Farm and Coldharbour Farm is largely defined by their age as well as the materials, form and architectural features of the period buildings. Both Listed Buildings would have been dwellings on the edge of the common, with open fields to the south. It is understood that the common and open fields did not form part of either of the building's historical holdings. Nonetheless, the surrounding undeveloped open fields still result in a setting that reflects their rural beginnings, contributing to their significance.
47. Despite the proximity, the appeal site is to the north-west of Coldharbour Farm, with modern residential buildings in between as well as a strong tree lined boundary dividing the sites. As such, the appeal site is not read in the same context and does not make a positive contribution to the setting of Coldharbour Farm. Therefore, the impact of the developments preserves the rural setting of Coldharbour Farm.
48. The appeal site is closer to and does contribute more towards the significance of the rural setting of Paris Farm. Notwithstanding this, the distance and topography in between means there is minimal intervisibility from Paris Farm towards the site and vice versa. In terms of wider views of the site and Paris

Farm together from the nearby PROW⁶, the hard surface is not visible and, therefore, has no effect on the setting from this position. The building is visible but is largely seen in the context of existing buildings and would be a typical development in a rural area such as this.

49. As such, in my judgement, the developments subject of Appeals B and C do not undermine but preserve the rural setting and its significance to Paris Farm. Accordingly, the developments subject of Appeals B and C, would be compliant with the requirements of Policy DP20 of the Local Plan, which seeks to protect, preserve and wherever possible enhance the setting of heritage assets.
50. In contrast, the gates and fencing erected at the time the Notices were served were prominent in distant views of Paris farm and the appeal site from the nearby PROW⁷. As already indicated, the length, height and materials of the gates and enclosures appear incongruous in this rural context, resulting in harm to the setting of the Listed Building. The harm from the gates and fences could be mitigated to some extent by finishing or some additional planting. Nonetheless, the impact of the development would still result in 'less than substantial' harm to the setting and significance of the heritage asset.
51. Paragraph 215 of the Framework is applicable in these instances and indicates that less than substantial harm to the significance of the heritage assets should be weighed against the public benefits of the proposal. The appellant has not put forward any public benefits, but the provision of gates and fencing safeguards the animals and keeps the site secure. There would also be some limited economic benefits from their construction, in terms of additional expenditure in the local economy. These public benefits can be afforded limited weight in this instance.
52. I consider that the limited public benefits associated with the gates and fencing would not be sufficient to outweigh the 'less than substantial harm that I have identified to the setting and significance of Paris Farm, a Grade II Listed Building. In coming to this decision, I have had regard to my statutory duty set out in the Planning (Listed Buildings and Conservation Areas) Act 1990 and given considerable weight and importance to paying special attention to the desirability of preserving or enhancing the setting of the heritage asset.
53. Accordingly, the development subject of Appeal A adversely effects the setting of Paris Farm, a Grade II Listed Building. Therefore, the gates and fencing are contrary to Policy DP20 of the Local Plan, which amongst other things, seeks to protect, preserve and wherever possible enhance the setting of the district's heritage assets. Also, planning consent will only be granted where the public benefits of a proposal significantly outweigh the harm to a designated heritage asset or its setting.

Ecology and Biodiversity

54. The Council's Statement of Case details that the site is adjacent to a Local Nature Reserve (LNR) and falls within the impact risk zones of two Sites of Special Scientific Interest (SSSIs), namely Blindley Heath SSSI and Lingfield Cernes SSSI.

⁶ PROW No. 435 Map showing public footpaths - Appendix C (iv) of DMH Stallard Representation

⁷ PROW No. 435 Map showing public footpaths - Appendix C (iv) of DMH Stallard Representation

55. The Council outlined at the hearing that the operational development subject of the Notices and their use in association with outdoor recreation would not be a development that would likely lead to a significant effect of the SSSIs. I would agree that the scale and type of development being considered is not development that would likely lead to a significant effect of the SSSIs and their reasons for being nationally protected sites. Nonetheless, the development still has the potential to have an adverse impact on ecology and biodiversity on the site and the adjacent LNR.
56. Policy DP19 of the Local Plan sets out a strategic approach to achieving and maximising green infrastructure and enhancements to local biodiversity in the area. Criterion D of the same policy states planning permission for development directly or indirectly affecting protected or priority species will only be permitted where it can be demonstrated that the species involved will not be harmed or appropriate mitigation measures can be put in place. Paragraph 19.7 of the Local Plan also sets out that adequate information must be submitted with planning applications for proposals which may affect any designated site, non-designated site, protected species or Priority Habitats and Priority Species.
57. Planning Practice Guidance⁸ also states that an ecological survey will be necessary in advance of a planning application if the type and location of development could have a significant impact on biodiversity and existing information is lacking or inadequate. With regard to the PPG advice and guidance, together with the local policy context, where there is a reasonable likelihood of protected species and habitats being present, it is essential that their presence, and the extent to which they would be affected by the development, is established prior to planning permission being granted.
58. Prior to any development taking place, the site was an undeveloped field, which could be identified as green infrastructure as defined by the Local Plan⁹ and the Framework¹⁰. Also, the adjoining land is a Local Nature Reserve (LNR), where it is understood that Great Crested Newts, a protected species, are present. As such, there is a reasonable likelihood of protected habitats and species being present on the land. Without a baseline ecological survey, I have insufficient information to corroborate that the developments would have an acceptable impact on the ecology and biodiversity at the site and is compliant with the criteria outlined in Policy DP19 of the Local Plan.
59. The appellant outlined that he would carry out an ecological survey. However, as no surveys have been carried out, a retrospective condition would have to be imposed to ensure the survey is conducted following the grant of planning permission.
60. I have had regard to the appellant's suggestion of imposing a retrospective condition requiring a survey. Although ecological surveys can be carried out under conditions attached to a planning permission, this should only be in exceptional circumstances. However, there is no evidence before me to suggest that there are exceptional circumstances in this case. In the absence of a baseline ecological assessment, it is not possible to grant permission as I have

⁸ Paragraph: 018 Reference ID: 8-018-20190721

⁹ Table titled Types of Green Infrastructure- Pages 49 and 50 of the Local Plan.

¹⁰ Green Infrastructure is defined as a network of multi-functional green and blue spaces and other natural features, urban and rural, which is capable of delivering a wide range of environmental, economic, health and wellbeing benefits for nature, climate, local and wider communities and prosperity.

no way of assessing the effect the development on the protected species and their habitats, or whether appropriate mitigation is possible to offset that harm.

61. Therefore, the developments do not comply with criterion D of Policy DP19 of the Local Plan, as I have insufficient information to determine if the developments, directly or indirectly, affect protected species and that they will not be harmed, or appropriate mitigation measures can be put in place. The developments would also fail to comply with paragraph 193 of the Framework, which states 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.

Living Conditions

62. The nearest neighbours are properties at the back of Nursery Gardens, as well as Yew Tree Cottage and Paris Farm Cottage. I have had regard to the fact that the land is approximately 2m higher than the adjoining footpath, and the building and gates are also raised by the laying of the hard surface.
63. Despite the raised position, the impact of the developments on the nearest neighbour's outlook and privacy is sufficiently mitigated by the separation distances as well as the modest height of the building and enclosures. The increase in traffic and movements to and from the site in connection with the outdoor recreation use would also not be significant over and above the lawful use of the land for agriculture. As such, in my judgement, the coming and goings would not result in an unacceptable increase in the level of noise and disturbance to the nearest neighbours.
64. Accordingly, the developments subject to Appeals A, B and C do not result in a significant harm to the living conditions of the occupants of Nursery Gardens, Yew Tree Cottage or Paris Farm Cottage. The developments, therefore, comply with Policy CSP18 of the Core Strategy and Policy DP7 of the Local Plan, which seek to protect and safeguard the living conditions of neighbouring occupiers. The developments also comply with the policies on neighbouring impacts set out within the Framework.

Other Considerations

65. An interested party highlighted the Government's Planning Policy Statement (PPS) on Green Belt protection and intentional unauthorised development. The PPS introduces a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals. It is indicated that the appellant was aware that the alleged gates needed planning permission, but he disregarded any advice from the Council and went on to intentionally erect unauthorised fencing.
66. In response to this, the appellant's agent disputes that he intentionally made the decision to carry out unauthorised development. It was indicated by the appellant's agent that he was not advising his client at that time and the Council did not include this as a reason for serving the Notices.
67. I have had regard to this issue, but a finding of intentional unauthorised development must be supported by evidence of something more, to demonstrate that the appellant intended the development to be unauthorised or actively sought to harmfully flout the rules. I accept that the appellant carried out further works after contact with the Council. However, based on the

evidence before me, the appellant has also engaged with the Council to remedy the breaches, by either carrying out remedial works on site or by seeking to regularise developments via a formal application. Based on the evidence before me, I do not regard the appellant's actions as those of someone who intended the development to be unauthorised or actively sought to harmfully flout the rules.

Very Special Circumstances and Green Belt Balance

68. I turn now to address other considerations that might clearly outweigh harm arising from inappropriate development in the Green Belt, to provide the very special circumstances required to justify a grant of planning permission. The appellant has not explicitly put forward any very special circumstances, although the provision of a vehicle access and a secure site for the stabling of horses could be considered to be a public benefit. Furthermore, there would be a limited economic benefit that would be derived from the development being built and the purchase of food and facilities for the horses.
69. In considering the substantial weight given to the harm to the Green Belt and its openness in the Framework¹¹, to my mind, the benefits outlined above do not clearly outweigh the harm to the Green Belt from any of the three developments, along with the harm to the character and appearance of the area in respect of Appeals A and B, the setting of the heritage assets in respect of Appeal A and the effects of any of the three developments on ecology and biodiversity.
70. Therefore, I find that the other considerations in these cases do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the developments do not exist and the alleged operational development of the gates and fencing, hard surface and building would conflict with the Framework and the relevant policies of the development plan as outlined above.

Conclusion on Ground (a) Appeal the Deemed Planning Application

71. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, I conclude that Appeal A, Appeal B and Appeal C on ground (a) should be dismissed.

Appeal A on ground (f)

72. An appeal on ground (f) is made on the basis that the requirements of the Notice exceed what is necessary. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the Notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
73. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is section 173(4)(a), which is to remedy the breach of planning control and the second is section 173(4)(b), which requires the recipient to remedy any injury to amenity which has been caused by the breach. In this case, the Notice refers to section 171A (1) (a) and requires the removal of the gates and fences in their entirety. This is consistent with the purpose of remedying the breach of planning control.

¹¹ Paragraph 153 of the Framework.

74. The appellant contends that the requirement to remove the gates and fencing in their entirety is excessive, and the requirements should be varied to require the gates and fencing to be lowered to 2m. I acknowledge that following the Notice being served, the appellant lowered the gates and fence to a 2m height, which in most cases is permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, the appellant cannot claim permitted development rights retrospectively in respect of any part of the development already carried out, especially when an active enforcement notice is in place.
75. As such, lowering of the fence to 2m does not remedy the breach of planning control or comply with the requirements of the Notice. Furthermore, given the inappropriate design and appearance of the gates and fences erected at the time the Notice was served, lowering them to 2m would not sufficiently remedy the injury to amenity. In my judgement, the requirement to entirely remove the gates and fences erected at the time the Notice was served is not excessive to remedy the breach and complies with 173(4)(a) of the 1990 Act.
76. Furthermore, I do acknowledge that the appellant has carried out works to remove and replace the gates and fences erected at the site with alternatives. However, the ground (a) appeal failed, and the works on site are not 'part of the matters' of the Notice. As such, the requirements of a Notice cannot be varied so as to result in a grant of deemed planning permission under s173(11) of the 1990 Act for operations or activities that were not in existence when the Notice was issued.
77. For the reasons set out above, Appeal A on ground (f) fails.

Appeal A and Appeal C on Ground (g)

78. An appeal on ground (g) is that the period specified in the Notice falls short of what should reasonably be allowed. The Notices for Appeal A and Appeal C both specify a period of four months from the date the Notices take effect. The Appellant contends that the period for compliance for Appeal A and Appeal C should be extended by two months. The appellant, therefore, requests a total of six months to comply with each Notice.
79. The appellant indicates that an additional two months would be needed to find alternative accommodation for the horses; seek quotes from potential builders to remove the building and provide sufficient time to remove the building, gates, fencing and any resultant materials from the land.
80. Having regard to time needed to find alternative accommodation for the horses as well as employ a contractor to carry out the works, I consider that a period in excess of four months can be justified for compliance with the Notice subject of Appeal C. The proposed time frame of six months would strike an appropriate balance between the need to minimise the identified harms, the time needed to comply with requirements and the welfare of the animals.
81. In respect of the Notice attached to Appeal A, I am mindful that the gates and fencing have been significantly changed on site, and the fact that the requirements of the Notice could require the altered gates and fencing to be removed. Although it was not open to me to allow the ground (f) appeal, in my judgement, it is reasonable to conclude that an extended period would be appropriate to allow the appellant time to explore the planning merits of the

alternative gates and fences currently erected on site. On this basis, I consider that the proposed time frame of six months would also be appropriate.

82. To this limited extent, Appeal A and Appeal C on ground (g) succeeds. I shall vary the terms of Notices attached to Appeal A and C accordingly.

Formal Decisions

Appeal A- APP/M3645/C/22/3304211

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

In paragraph 3, delete the words 'which exceed 2 metres in height in part.'

In paragraph 3, delete the words 'and associated with the use of the land for storage and distribution of portable toilets.'

In paragraph 5, step (i) delete the words 'shown on.'

In paragraph 5, specifying the time for compliance, delete the word 'four' and substitute with the word 'six.'

84. The appeal succeeds on ground (g) only and, subject to the corrections and variations, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B- APP/M3645/C/22/3304210

85. It is directed that the enforcement notice is varied by:

In paragraph 5, step (i), delete the words 'to a depth where all the pre-existing earth prior to the formation of the hard surface is exposed.'

In paragraph 5, Step (ii) delete the words 'reseed the land with a native species grass mix' and replace with the words 'restore it to its condition before the breach took place.'

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

Appeal C- APP/M3645/C/22/3304209

87. It is directed that the enforcement notice is varied by:

In paragraph 5, specifying the time for compliance, delete the word 'four' and substitute with the word 'six.'

88. The appeal succeeds on ground (g) only and, subject to the variation, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M. P. Howell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr. Jack Hall	Appellant
Mr. Julian Sutton BA (Hons) Msc MRTPI	Planning Agent for the appellant.

FOR THE LOCAL PLANNING AUTHORITY:

Mr. Ryno Van Der Hoven	Principal Planning Enforcement Officer- Tandridge District Council
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INTERESTED PARTIES:

Mr. Christopher Bowden	Neighbour
Ms. Elizabeth Lockwood	Neighbour
Mr. Trevor Hall	Friend/family member of appellant

DOCUMENTS SUBMITTED AT HEARING:

- List of agreed conditions between appellant and Council.
- Copy of Officer Delegated Report for Application Council reference 2019/2164.
- Electronic copy of Consultation response from Historic Environment Planning: Historic Buildings (Surrey County Council)- Dated 19/11/2024.