



Appeal Decisions

Hearing held on 5 & 6 February 2025

Site visit made on 6 February 2025

by R J Perrins MA

an Inspector appointed by the Secretary of State

Decision date: 06 May 2025

Appeals A & B Ref: APP/Z3825/C/24/3350118/119

Plot 3A, Wineham Lane, Wineham, Henfield, West Sussex, BN5 9AZ.

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mr Samson Smith and Mr Joe Johnny James against an enforcement notice issued by Horsham District Council.
- The notice was issued on 7 August 2024.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to use for the stationing of caravans for the purposes of human habitation together with the associated operational development comprising the importation of soil and waste material to create a hard surface, the installation of a septic tank in the approximate position shown hatched brown on the attached plan, installation of a water treatment plant in the approximate position hatched blue on the attached plan and the construction of a building/wooden structure used in connection with the unauthorised residential use.
- The requirements of the notice are:
 1. Permanently cease the use of the land for the stationing of caravans for the purposes of human habitation;
 2. Remove from the land all the caravans and associated domestic paraphernalia;
 3. Remove all the buildings and structures erected on the land and used in association with the unauthorised use of the land including the wooden structure in the approximate position shown hatched orange on the attached plan;
 4. Remove from the land all works of operational development incidental to the unauthorised residential use of the land as a caravan site, namely the septic tank shown in the approximate position shown hatched brown on the attached plan and waste water treatment plant shown in the approximate position shown hatched blue on the attached plan;
 5. Remove from the land the hardstanding and any resulting debris from the land shown in the approximate position shown hatched green on the attached plan;
 6. Following the above steps, restore the land to its original condition by re-seeding it with grass.
- The period for compliance with the requirements are:

Steps (1), (2), (3) and (4)- three months.
Steps (5) and (6)- 6 months.
- The appeals are proceeding on the grounds set out in section 174(2), (e), (f), (g) of the Town and Country Planning Act 1990 (as amended). In addition, the appeal by Mr Samson Smith is proceeding on the ground set out in section 174(2), (a). 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.

Appeals C to K Refs:

APP/Z3825/C/24/3350120/121/122/123/124/125/126/127/128

Plot 3A, Wineham Lane, Wineham, Henfield, West Sussex, BN5 9AZ.

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mr Occupier Mobile Home 1; Mr Occupier Mobile Home 2; Mr Occupier Touring Caravan 1; Mr Occupier Touring Caravan 2; Mr Occupier Touring Caravan 3; Mr Occupier Touring Caravan 4; Mr Occupier Touring Caravan 5; Mr Occupier Touring Caravan 6; Mr Occupier Touring Caravan 7 against an enforcement notice issued by Horsham District Council.
 - The notice was issued on 7 August 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to use for the stationing of caravans for the purposes of human habitation together with the associated operational development comprising the importation of soil and waste material to create a hard surface, the installation of a septic tank in the approximate position shown hatched brown on the attached plan, installation of a water treatment plant in the approximate position hatched blue on the attached plan and the construction of a building/wooden structure used in connection with the unauthorised residential use.
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 6. Following the above steps, restore the land to its original condition by re-seeding it with grass.
 - The period for compliance with the requirements are:

Steps (1), (2), (3) and (4)- three months.
Steps (5) and (6)- 6 months.

The appeals are proceeding on the grounds set out in section 174(2) (e), (f), (g) of the Town and Country Planning Act 1990 (as amended).
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Decisions Appeals A & B

1. It is directed that the enforcement notice is corrected and varied by: the insertion of the words "associated with the breach of planning control" at the end of requirement 2 in paragraph 5 of the notice; the deletion of the words "original condition by re-seeding it with grass" from requirement 6 in paragraph 5 of the notice and their substitution with the words "condition before the breach took place"; and in paragraph 6, for Steps (1), (2), (3) and (4) the replacement of three months for the time for compliance with 12 months and for Steps (5) and (6) the replacement of 6 months with 15 months.
2. Subject to the corrections and variations, the appeals are 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.

Decisions Appeals C to K

3. The appeals are invalid, and I take no further action.

Preliminary Matters

4. The Hearing sat for two days with an accompanied site visit during the second morning. Since the appeal, on 12 December 2024 the Government published a revised National Planning Policy Framework (the Framework). The Framework was accompanied by a written ministerial statement (WMS). Alongside this a revised Planning Policy for Traveller Sites (PPTS) was also published. There was opportunity to discuss any implications at the Hearing and my reasoning is based on the revised policy.
5. In my pre-Hearing note, I set out my concerns regarding S174(1)¹ of the Act and Appeals C to K all having been made by 'Mr Occupier'. That does not identify a person as required by s174(6)² of the Act. In my view, I am unable to determine an appeal by an unidentified appellant when, under the named appellants' agent's own admission, it was not clear who was occupying the site at the time the appeals were made. Indeed, from the evidence heard, it is apparent that numerous plots were vacant when the appeal was made. Appeals C to K, on the appeal form, refer to either 'Mr Occupier Mobile Home' or 'Mr Occupier Touring Caravan' with an associated number which is at odds with the fact that many of those plots had nothing on them. That is to say there were no 'occupiers' which adds further weight to my concerns that the appellants had not been identified.
6. I recognise the Planning Inspectorate automatically validating the appeals has led to this situation and usually such matters would be identified at that stage and clarity sought. However, whilst I accept it is unusual for an Inspector to find an appeal invalid, as set out in my pre-Hearing note, persons have not been identified and, whilst the appellants have had time to consider the matter, there is nothing before me to suggest finding those appeals invalid is not a matter within my powers.
7. Moreover, no party would be prejudiced as the issues to be considered would not change, and the evidence including that of all occupiers of the site, will remain to be considered. With all occupiers having the opportunity to give evidence at the Hearing. In that light I find appeals C to K to be invalid, and I need not come to a view on them or take any further action.
8. With regards to the site address, I accept that there is agreement that the site is known, and should be identified as, Oaks, Farm, Kent Street, Cowfold, West Sussex. However, whilst the enforcement notice refers in the first instance to Plot 3A, Wineham Lane etc it goes on to state that it is also known by the Oaks Farm address. Given that, and the fact that everyone is clear what site the notice embraces, I see no reason to amend the site address.

The appeals on ground (e)

9. S172(2) of the Act provides that a copy of the notice shall be served on the owner and occupier of the land to which it relates, and on any other person having an interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the Local Planning Authority, is materially affected.

¹ 'a person having an interest in the land to which an Enforcement Notice relates, or a relevant occupier may appeal to the Secretary of State, whether or not a copy of the Enforcement Notice has been served on them'

² 'a person who (a) on the date on which the enforcement notice is issued occupies the land to which the notice relates by virtue of a licence; and (b) continues so to occupy the land when the appeal is brought'

10. The appellants argue that the enforcement notice was not served upon all of those with an interest in the land. No Planning Contravention Notice (PCN) was served, no Requisition for Information (RI) under the Miscellaneous Provisions Act was made, and the Council failed to carry out a welfare check of those on site. None of that is disputed by the Council. Although, they contend they did all they could given the land was changing hands and notices were served on all plots, the land itself, and upon the registered owners at their own properties.
11. I have some sympathy with the appellants in that the Council could have done more by way of a PCN, RI and welfare checks. However, as set out above, it is apparent even the appellants' agent did not know fully who was occupying, or intended to occupy, the site at the time the notice was served and the appeals made. Whilst the Council could have taken further steps, it appears to me reasonable attempts were made to serve the notice in accordance with S172. Nevertheless, and in any event, Section 176(5) provides for non-service to be disregarded if no substantial prejudice has arisen.
12. Moreover, regardless of whether the Council carried out sufficient investigation or not, and as accepted by Counsel for the appellants, all those with an interest in the land attended the Hearing. All had an opportunity to speak, setting out their personal circumstances and any concerns they had regarding the enforcement notice and the subsequent appeals. Given all of that, I am unable to identify any substantial prejudice in this instance.
13. In light of the foregoing, the appeals on ground (e) fail.

The appeals on ground (a)

Main Issues

14. The courts have held that a deemed planning application under ground (a) comes from the matters alleged. Namely, the change of use as set out in my third bullet point above. S177(1) provides that planning permission may be granted 'in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates'. Case-law also demonstrates that I am able to consider an alternative scheme and whether such a scheme forms part of the matters alleged, is a matter of planning judgement.
15. To that end, the appellants have submitted a proposed block plan³ showing, amongst other things, 13 plots, the majority to the western half of the site and three bordering the public right of way to the east. It seems to me, given the allegation does not quantify the number of caravans, that such a scheme would form part of the matters alleged and that is what I have considered. I also recognise the planning history which includes a refused application (ref:DC/23/2110) for *3 gypsy and traveller static caravans, 3 touring caravans for residential purposes along with associated ancillary buildings, together with the formation of hardstanding and associated landscaping* has formed part of the appellants' deliberations.

³ Ref: GP/01/24 submitted with the Statement of Case

16. It was agreed at the Hearing that Biodiversity Net Gain (BNG) does not fall to be considered for a deemed planning application under a ground (a) appeal. Whilst discussion and representations on it were useful in terms of understanding the effects on biodiversity, I need not come to a view on BNG.
17. There is also agreement that the Council is unable to demonstrate a five-year supply of gypsy and traveller pitches and there is no dispute that occupiers of the site meet the PPTS definition for gypsies and travellers. Therefore, from all I have heard and read, the main issues are the effect of the change of use upon:
- The character and appearance of the area and countryside location.
 - The ecology, biodiversity and hydrology of the area.
 - The Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites in relation to water neutrality.
 - Whether there are any other considerations that would outweigh any harm identified.

Reasons

Character and appearance

18. The site is an agricultural field to the east of Kent Street, from which the site is accessed. The key landscape characteristics of the area are gently undulating low ridges, scattered small woodlands, small and medium sized pasture fields, mostly small-scale intricate landscape and field ponds. To the west, on the opposite side of the road, is a grade II listed cottage. Other sporadic dwellings of various sizes and styles can be found along Kent Street and can be seen, from generally glimpsed views, from within the site. Prior to the development, the land was open with only electric poles bisecting the site. Boundaries are served by a strong tree and hedge line typical of the Low Weald countryside location.
19. A Right of Way can be found just inside the eastern boundary, one of a network of local routes which link Wineham Lane and Kent Street amongst other locations. I saw that the right of way was well used, and extensive views of the site and wider pastoral landscape, were available from the right of way and also from Kent Street.
20. Into that pastoral and rural setting, an access road has been laid and the land divided into a number of plots with post and wire fencing. Some of those plots have hardstanding and it was clear from my site visit, and the unchallenged view of local residents, that some of those works were very recent. To the easternmost corner there is a wooden structure and larch lap fencing of the type found in residential settings, a single mobile toilet and wastewater treatment plant. I was also able to see blue water pipes serving each plot and evidence of sewage pipes.
21. At the time of my visit there were approximately 12 touring caravans and two static caravans on the site. There were 10 plots nearest to Kent Street and three adjoining the right of way to the west. An area of undeveloped land between them being necessitated by the high voltage telegraph poles that pass through the site.

22. I accept that in the locality there are a number of residential properties of different styles and sizes, including residential paraphernalia and tennis courts. To the south of the site, in view from the public footpath, a large relatively featureless building, sits within the rear garden of the dwelling. Whilst it appears like nothing else in view, it nevertheless does not appear out of sorts; a residential building situated within what can only be viewed as a residential garden. That is most unlike the appeal site sitting, as an unexpected urbanising feature, within what was undeveloped open countryside.
23. I recognise Bolney Substation is found nearby and that undoubtedly has had a huge effect on the countryside location. However, it is not within sight of the appeal site. Moreover, it is a substantially different form of development being an important strategic asset in the UK. Most unlike the development being considered here. The caravan park at Royal Oak is also nearby but also out of sight of the appeal site and it is accepted is not comparable to the development before me. The park was given permission and established many years ago and for a different purpose. Although, I recognise it forms part of the wider landscape area and the design and external treatments of caravans on that site help its visual effect on the location.
24. In addition, I recognise that the PPTS does not discount sites in the countryside and there is some inevitability, given the rural nature of Horsham District, that countryside sites will need to be considered. I also accept that the PPTS sets out that where the local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, consideration must be given as to how any planning objections could be overcome using planning conditions or obligations.
25. I have considered a condition that would require any caravans to be clad as per the caravans at Royal Oak Caravan Park and the examples submitted of various external finishes. However, this would not overcome the harm I have found in terms of the effect of the site overall on the landscape that includes access road, fencing, services and domestic paraphernalia. In addition, I am not convinced, given the lack of any proposed scheme, how such cladding would work retrospectively and any effect on how that would change the ability to meet the definition as caravans.
26. There is also a question mark over whether such a condition would be enforceable in any event, particularly with new caravans arriving at the site. It is common for sites such as these to have one static unit and one caravan for touring (reflecting one of the suggested conditions) and I fail to see how those touring caravans could be clad without compromising their purpose and function. In addition, it is not clear how any cladding (if it were possible) would affect the water neutrality schemes discussed below.
27. I am also concerned, from what I saw on site, and without evidence to the contrary, that the construction of the access road next to the existing mature trees, will have compromised those trees. There is no dispute that the access track is within the recognised root protection area (RPA) of those trees and root severance and compaction of the ground may have occurred. In my experience, the effects of such activities may not be recognised for some time and only when the trees begin to go into decline due to the compromised rooting systems. If that were so, that would add further unacceptable harm to the character and appearance of the locality.

28. I say that recognising a landscaping scheme, arboricultural method statement and site layout/management scheme could be secured by condition and landscaping could include planting to the boundaries to afford screening particularly to the right of way. However, such screening would have an adverse effect on the open views currently enjoyed from the footpath and elsewhere. In addition, reference to a condition for the 'installation of a retrospective grid protection' to secure mitigation measures to protect RPAs are simply without detail or any professional input. I am not convinced any damage that has been done could be mitigated against in any event.
29. Bringing all of this together, I am in no doubt that the development draws the eye, the open countryside has been interrupted and views of, and across, the site have been unacceptably harmed. It is hard, given the harsh nature of the roadway construction, the variety of caravans, vehicles, fences, services and domestic paraphernalia, to consider that any reasonable viewer, from public footpath or road, would not question how the development had come to be. It is unlike anything else in view, a series of discordant, urbanising features reflecting nothing of any nearby established residential or other development.
30. Therefore, despite any ameliorating effect a landscaping condition may have, I conclude that the development has had, and would continue to cause, significant harm to the intrinsic character and beauty of the landscape. As such, it is contrary to Policies 2, 23, 25, 26, 32 and 33 of the Horsham District Planning Framework (HDPF) and the Framework. These policies seek developments that protect, conserve and enhance the rural character and landscape of the area. Gypsy and traveller sites should not have an unacceptable impact on the character and appearance of the landscape and should be sensitively designed to mitigate any impact on their surroundings.

Ecology, Biodiversity and Hydrology.

31. The appellants' Ecological Impact Assessment carried out in June 2024 identified the site as being suitable for Great Crested Newts (GCN), reptiles, bats, dormice, badgers, hedgehogs, nesting birds and invertebrates. With regards to GCN, fifteen ponds were identified within 500m of the site, a number of which I viewed during my site visit and saw they were close to the site boundaries. The report also identifies suitable habitat between the ponds for GCN dispersal. It should be no surprise therefore that it is not possible to rule out potential harmful impacts to GCN during the construction phase.
32. Given that, a district level license (DLL) would be necessary to mitigate any effect. However, the Council set out that a DLL would not be available for a retrospective site. Even if it were, there is insufficient evidence before me that fully evaluates the presence of GCN, a protected species, and what levels of compensation would be required. While the appellants suggest conditions as per that imposed by an Inspector at Lawn Hill, Edgcott⁴, in that case a GCN survey had been carried out and a road separated ponds from the site; it is not comparable.
33. Furthermore, Circular 06/2005 advises that surveys should only be required by condition in exceptional circumstances. There are no exceptional circumstances here that would justify requiring surveys by condition. Therefore, I must apply the precautionary principle and find that the development could, if it hasn't

⁴ APP/J0405/W/23/3332664

already, result in harm to GCN. With respect to reptiles and bats the same arguments apply. Although I recognise that a semi-natural buffer and ecological enhancements would provide benefits to dormice, birds, badgers, hedgehogs and invertebrates and such matters could be secure by conditions.

34. In addition to this, as I saw on site, a significant amount of hardcore has been imported to the site. The evidence suggests that some of that may have come from EGAP Recycling Ltd and may have been tested. However, that evidence is not compelling. I say that as the evidence only covers 12 loads and the reports have no reference to the appeal site, and dates precede the importation of material. That maybe because the tests were taken off-site before the material was delivered, but that was only a small part of the totality of what was brought on to site given undisputed reports of local residents pointing to over 100 vehicle loads arriving on site.
35. Moreover, from my site inspection, it was clear that imported material was not consistence in nature and included brick rubble, concrete and waste. I am not convinced on the evidence that all, if any, of the material imported had been tested and found to be uncontaminated. That adds further weight to my concerns that the development has led to unacceptable harm to the quality of the environment and has done nothing to enhance the existing biodiversity of the site.
36. I recognise a condition to secure a landscaping scheme to provide trees and wildlife areas would go some way to compensate for any damage caused. However, as set out, without robust surveys to determine the presence of protected species on the site and what levels of mitigation or compensation is required, there is an inevitability that I find the development has led to unacceptable harm to the ecology, biodiversity and hydrology of the site.
37. That is at odds with Policies 24, 31 and 33 of the HDPF which seek to maintain and improve, the environment and existing biodiversity of sites. It would also be contrary to the requirements in the Framework that seek to protect and enhance biodiversity, and the legal obligations placed upon me as the Competent Authority. This is something, given the particular circumstances and habitat and species potential of the site, that weighs significantly against the development.

Water neutrality.

38. The site is located within the Sussex North Water Supply Zone where Natural England have indicated that groundwater abstraction may have an adverse effect on the integrity of the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar Site. They have advised that developments within this zone must not add to this impact.
39. In light of that a bundle was submitted at the Hearing containing a Water Neutrality Statement and series of documents outlining how water neutrality was achieved on a site in Horsham for the *siting of 2 static caravans and 2 touring caravans for human habitation*. Those documents include how the development would compensate for the additional water demand by way of a rainwater harvesting system.

40. The bundle included a response to the scheme from the Council setting out, that to provide them with any confidence, the scheme would need to be maintained and managed for the lifetime of the development and a detailed water supply management and maintenance report would need to be submitted. There were also concerns regarding the disposal of sewage and the lack of any detailed information. To that end a document containing further details was also submitted including an example of a 6-person sewage treatment plant.
41. Following that, the Council accepted (in that case) that the water neutrality statement could be achievable with a management plan and secured by conditions. Although sewage disposal detail was still lacking and confirmation that sewage could be dealt with adequately had not been made. A final document in the bundle sets out English Nature had no objections subject to the management measures proposed.
42. I am asked to consider the same approach here, and to secure such matters by planning conditions. I am again mindful that the PPTS encourages the use of conditions to overcome any harm. However, the scheme submitted was essentially for two plots, much less than the development before me. I am not convinced it is simply a matter of scaling up and presuming the outcome would be the same. I say that because there is no surety over the size of the caravans that would be installed on each plot. As such the calculations for water collection, based on a certain area of roof, would not reflect the capacity on site. I do not consider, to overcome that, that a condition requiring each occupier to have a mobile home of a certain size would be reasonable.
43. In addition, it seems to me the approach by the Inspector at Pear Tree Farm⁵ could not be mirrored here given in that case water was to be collected from an on-site freshwater spring. Even if I were satisfied that the roof area was adequate for the number of residents there is nothing before me of any clarity to demonstrate what such a system would look like once installed. Whether that would be internal or external and what effect it would have on the internal or external arrangements of the caravans/mobile homes and any subsequent effect on the character and appearance of the site overall.
44. Without a detailed scheme I also have some sympathy with the Council's view that enforcing such a condition would be problematic. Further, ensuring the scheme was retained for the lifetime of the development would not be reasonable given the likely transient nature of the occupiers of the site over its lifetime.
45. Finally, the concerns of local residents regarding the current management of sewage on site being problematic was not disputed. There is simply no information as to how sewage would be managed, given the size and location of the site and current issues regarding flooding and subsidence around one of the installed waste systems, I cannot be confident that a suitable scheme could be secured by way of condition.
46. For these reasons, and without any s106 agreement to secure off-site credits to be considered, I find as the competent authority, the suggested measures would be insufficient and the change of use would continue to have a likely significant effect on the integrity of the Arun Valley SAC, SPA, and Ramsar site

⁵ Ref: APP/Z3825/C/23/3318225

in relation to water neutrality, in conflict with HDPF Policy 31, the Framework, and the Regulations, insofar as they seek to protect and enhance biodiversity, including protected sites.

47. Paragraph 195 of the 2024 Framework states that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitat site (either alone or in combination with other plans or projects) unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

Other matters.

Intentional unauthorised development

48. The Department for Communities and Local Government policy statement 2015 introduced planning policy to make intentional unauthorised development (IUD) a material consideration that would be weighed in the determination of planning applications and appeals from 31 August 2015. In respect of IUD, planning permission should not be refused simply on the basis that the development was carried out without planning permission or is unlawful. A finding of IUD must be supported by evidence of something more than this, i.e., that an appellant intended the development to be unauthorised or actively sought to harmfully flout the rules.
49. I recognise this has not formed part of the Council's case. Nevertheless, it has been addressed by local residents. In this case, the undisputed evidence is that a planning application was submitted (DC/23/2110) for the stationing of 3 gypsy and traveller static caravans, 3 touring caravans for residential purposes along with associated ancillary buildings, together with the formation of hardstanding and associated landscaping. That was subsequently refused on 15 January 2024. A further application (DC/24/0014) for stationing of 6 No gypsy residential units and associated development was submitted and found to be invalid.
50. On the Spring Bank Holiday weekend in May 2024 a new access to the site had been created, water supply connected, hardcore delivered, fencing erected, individual pitches laid out, septic tank installed, and caravans and mobile homes brought on site. All of that in the face of the refused planning application. In addition, pitches were advertised for sale at £60,000 or more.
51. While I can appreciate the desire to have a settled base for the families, including for the children, unauthorised development has occurred. In this case, and, based on the evidence that is before me, I find the unauthorised action was intentional. The evidence is that while a planning application was submitted, the outcome was ignored, and the unauthorised development took place and plots advertised for sale. It seems to me therefore that the unauthorised development was intentional.
52. Having said that, I recognise the paucity of any alternative available Gypsy/Traveller pitches in the area or elsewhere and there is nothing before me to suggest that the position was different when the families moved onto the site. This does temper the weight that I afford to the IUD, it does nevertheless carry moderate weight against the development, in decision making terms.

Heritage asset.

53. Any effect on the setting of the grade II listed Potts Farmhouse does not form part of the Council's reasons for serving the notice. Nevertheless, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty upon me to have special regard to the desirability of preserving the setting of listed buildings.
54. Potts Farmhouse is described as a 'Small C17 timber-framed cottage with plaster infilling, ground floor rebuilt in red brick. Steeply Pitched tile roof. Casement windows. Chimney breast on east wall. Two storeys. Two windows. Modern L-wing behind in imitation timbering'. The Farmhouse looks directly out onto the appeal site and at the time of my visit, caravans and vehicles on the site could be seen from views taken from upper floor windows. At ground floor level in front of the property views were restricted by the building in the front garden, trees and hedgerow. Save that is from the driveway entrance from where the appeal site can be clearly seen.
55. I recognise those views would be lesser when trees were in full leaf and that the building in the garden appeared to have recent modern windows added to it. Also, views from the first floor were not all from habitable windows. However, there is no dispute that the appeal site has a historic and formerly functional link with the open countryside/farmland, which includes Potts Farmhouse, and where a degree of tranquillity would have been experienced.
56. The introduction of the change of use, the numerous caravans, areas of hardstanding, associated structures and the comings and goings will have interrupted that tranquillity and, as set out above, the eye is drawn to the development from various vantage points. That is also the case for Potts Farmhouse where the appeal site is a visual distraction which has resulted in harm to its setting.
57. To this extent, I find that it has caused less than substantial harm to the Farmhouse which, as set out in Paragraph 215 of the Framework, should be balanced against public benefits, or taken into account as the case may be. I return to this below.

Location and access to services

58. The appellants have referred to numerous previous appeal decisions involving gypsy and traveller sites, many submitted to demonstrate sustainability in terms of access to services and facilities. However, in this case that is not a matter under dispute by the Council and I need not address them in any details. I understand concerns of interested parties regarding access to the site and reliance upon the motor vehicle, that is somewhat inevitable in most countryside locations.
59. However, I see no reason to disagree with the Council in that the site is within 4 kilometres of primary school, shops and GP surgery with the main bus route being 3.5km away. The site is therefore located within a reasonable distance of services and in compliance with policy in that regard. Although, that carries minimal weight in favour of the appeals.

Other Considerations

60. The Council has confirmed that it is unable to demonstrate a five-year supply of specific, deliverable sites. The number of pitches in this case would contribute towards reducing the identified need. The unmet need for gypsy and traveller pitches is of significant importance and something I afford significant weight.
61. The fact that there is an undisputed lack of alternative sites also carries significant weight although that is tempered by my conclusions on the ground (f) appeals, in terms of an extension of time.
62. The site is close to a range of services and facilities and the proposal is also considered by the Council to be acceptable in respect of its effect on living conditions of neighbouring occupiers and on highway safety. I consider these matters to be neutral.

Gypsy and Traveller Status

63. There is no dispute between the main parties that the current and future occupiers of the site meet the definition of Travellers in Annex 1 of the 2024 PPTS. Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998 (HRA) states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.
64. Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration. I must also have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.

Best Interests of the Children and Personal Circumstances

65. I heard that occupation of the site is less than regular. I heard from many of the current, or future occupiers, of the majority of the plots and am told that all occupiers would need to go to roadside living should the enforcement notice be upheld. I recognise that many have been trying to secure alternative pitches and or land without success for many years.
66. I need not rehearse all of the personal circumstances heard but a common theme was many of the current occupiers only use the site at weekends or when the weather was dry. I heard that the site becomes very muddy and wet during inclement and winter periods which discourages many from staying permanently. That is compounded by a lack of a power supply on the site. That was reflected by the evidence of local residents who have kept a record of comings and goings on the site.
67. Whilst I recognise there is no suggestion of 24/7 monitoring, it is clear to me that local residents are organised and concerned enough to regularly monitor the site. That would be readily done from the adjacent right of way and road. I

accept they may not capture all of the comings and goings but their records of which plot was occupied when, after hearing from the occupiers of each plot, went generally unchallenged. For example, the fact that Plot 5 had no occupancy since early June and the occupiers of Plot 7 had only been on site for two days in January.

68. I am also mindful in particular, that their claim that there had been an increase in activity for the few weeks prior to the Hearing was unchallenged. The evidence of recent engineering activity that I saw during my site reflecting that. It also seems to me that it is unlikely that such comings and goings would be from a roadside existence and the majority of those who spoke at the Hearing did have other arrangements. Although I accept some arrangements, such as doubling up on a friend's site or occupying a site that floods on occasion, are not ideal.
69. It seems to me therefore, that much of the site is being used by occupiers on a temporary or part-time basis. A number of children visit the site at weekends or during holidays to stay with a parent and I recognise that is an important part of their best interests. However, from what I heard they have a more permanent base elsewhere with the other parent. Other occupiers such as those at Plot 4 are living lawfully in a mobile home, with three children, on a grandparent's drive whilst they care for them. Given that has been ongoing for a number of years it would appear to be tenable. Moreover, in that case the desire to move onto the site appears to be borne out of securing a site for some time in the future rather than an immediate need.
70. I am told that Plot 6 would be occupied by a grandmother (who didn't appear at the Hearing) whose 19 grandchildren would stay on different occasions, most weekends. With some children been cared for throughout the week. However, that would point to the grandchildren having a settled base elsewhere. The future occupiers of Plot 8 set out that they are currently on the roadside and one of their children needs regular medicine from a chemist but they do not appear at the Hearing and there is no detail or corroborating evidence regarding the need of any children, medical or otherwise.
71. In contrast, the occupiers of Plot 11 have been on site since May last year and have four children. The family are registered at the local medical centre and children go to a local primary school, one being home schooled, and I heard of the involvement of Child and Adolescent Mental Health Services because of the undisputed need of one of the children.
72. Bringing all of this together, it is apparent there is a wide range of responses to the 'Client Details' forms submitted by current or future occupiers, some of which was reflected by those who spoke at the Hearing. Overall, it paints a general picture of the majority of plots being occupied on a part-time basis or having been secured to enable relocation from other sites, which may be unsuitable for various reasons. I do though recognise that many of the families are related, and it would be good for children to be with their cousins and extended families and to have a settled base. Although, I am not convinced there would be serious consequences if the notice was upheld for those who are currently using the site (or not) in that way.
73. I accept that if the notice was upheld that would have significant consequences for those who are living on the site on a more permanent basis. There would be an adverse effect on home and family life, such that Article 8 Convention

Rights would be engaged⁶. Article 8 brings about an obligation to facilitate the Gypsy way of life. As a minority group special consideration should be given to their needs and lifestyle.

74. Furthermore, Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of children must be a primary consideration in all actions made by public authorities. Article 8 rights of any children should be considered in that context. No other consideration can be treated as inherently more important than the best interests of the children and the need to safeguard and promote their welfare. Although, such matters may not be necessarily determinative and may be outweighed by other considerations. That is to say, rights under Article 8(1) are qualified rights and, in appropriate circumstances, interference may be justified in the public interest.
75. That public interest includes the regulation of land use through development control measures, which is recognised as an important function of Government and necessary for the economic well-being of the country. To that end, the right balance needs to be struck between the general interests of the wider community and the requirement to protect an individual's private rights. In addition, I must have regard to the protected characteristics of Gypsies in relation to the PSED when applying the duties of section 149 of the Equality Act 2010.
76. As discussed above, there is no dispute that there is a lack of alternative sites in the locality and some of the current occupiers of the site may have to resort to roadside living. However, I am not certain that is inevitable for all and I say that given the lack of clarity regarding the occupiers of the site and the comings and goings as discussed above.
77. Clearly, a settled base would be in the best interests of those children living permanently on site. Case law establishes that the best interests of the children are a primary consideration, and a settled base rather than a predominantly road-side existence is clearly in the best interests of the children. If alternative accommodation was available elsewhere the degree of disruption would be less and the weight, I would afford to the harmful impact reduced. I therefore attach considerable weight to those personal circumstances. Whether any interference is proportionate in the circumstances is a matter to which I will return in the planning balance.

Planning Balance and ground (a) conclusion

78. Subject to the imposition of a condition for, visibility splays, turning and access there would be no harm to highway safety. Further conditions, not thus far discussed, could be imposed to ensure no industrial or commercial activities were carried out on the site, and no large vehicles stored or parked. Permitted development rights could be removed and lighting restricted. A condition could secure adequate refuse and recycling facilities. These are matters of neutral consequence in the overall balance.
79. The harm that has been caused to the character and appearance of the countryside location I give substantial adverse weight. The harm to ecology, biodiversity and hydrology also carries substantial weight. Furthermore, I am

⁶ Article 8 of the European Convention on Human Rights, enshrined into UK law by the Human Rights Act 1998

unable to conclude that the integrity of SAC has not been, and would not continue to be, harmed. Paragraph 193(a) of the Framework 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. For this reason alone, planning permission should be refused.

80. The matter of Intentional Unauthorised Development weighs moderately against the change of use. With regard to heritage policy, in considering the tests in in the Framework, I find that the less than substantial harm to the setting of the listed building would be outweighed by the public benefits.
81. Matters weighing in favour include the failure of policy to ensure an up to date strategy for the provision of pitches in the area in the face of a recognised lack of supply and alternative gypsy and traveller pitches. I recognise the unmet need is not certain to be met in the immediate future and the site is close to local services. These matters in combination carry significant weight.
82. I have also considered the personal circumstances of the families, as set out above, which includes the best interest of the children living permanently on the site. That includes the stability arising from a settled base in terms of health, education and social development. This carries substantial weight. Overall though, the combination of these factors does not in my judgement outweigh the harms identified. I say that as I am mindful that the harm to the integrity of the SAC is something the Framework recognises as a matter that would warrant refusal alone.
83. I recognise the appellants' human rights have to be fairly balanced against the legitimate objective of protecting the countryside and integrity of the SAC. Dismissal of the appeal would not make any of the occupiers immediately homeless, but it would deprive them of the possibility of establishing a home on the appeal site. Dismissal would represent an interference with their rights under Article 8 of the First Protocol of the European Convention on Human Rights.
84. However, the protection of countryside, the SAC, SPA and Ramsar sites, the listed building, ecology, biodiversity and hydrology is an important aim of local and national planning policies and has a clear basis in the relevant planning legislation and habitat regulations. In these circumstances, some interference with Article 8 rights is permissible, and I consider that the protection of the public interest cannot be achieved by means which are less interfering with the occupiers' rights. They are proportionate and necessary and hence would not result in a violation of rights under Article 8.
85. That finding would apply equally to a temporary planning permission. Such a permission would mean the harm would be temporary for a number of years but the development would remain contrary to the aims of the development plan and Framework as set out. Given the multiple factors weighing against the grant of permission for the site, even the worst-case scenario of roadside living would represent a proportionate response in my view. Although, given my conclusion on the ground (g) appeals it remains possible that those currently living on site may be able to find a site elsewhere within the amended compliance period. A roadside existence may not therefore be an inevitable outcome.

86. In reaching this decision and in accordance with the public sector equality duty, I have had due regard to minimising the disadvantages suffered by the appellants and occupiers of the site and to meeting their needs in so far as they are different to those without a relevant protected characteristic.
87. Finally, a large number of planning appeals and high court judgements have been submitted by the appellants to support their arguments concerning various matters. I have had regard to them, when considering each issue raised, but find nothing to lead me to a different conclusion. I recognise there is a great deal of similarity in the issues considered in those appeals and my deliberations here. However, it should come as no surprise that each case must be decided upon its own merits and particular set of circumstances as is the case here.

Overall conclusion on ground (a)

88. The other considerations do not indicate that the appeal should be determined other than in accordance with the development plan as a whole. The change of use is contrary to it and the Framework and is unacceptable. Therefore, for the reasons given, and having considered all matters, the appeal on ground (a) fails.

The appeals on ground (f)

89. I have taken into account the purpose in serving the notice; the Council confirmed that the purpose of the requirements in the notice fall within s173(4)(a), that is to remedy the breach by restoring the land to its condition before the breach took place. That is consistent with the enforcement notice as issued. Bearing in mind the terms of s174(2)(f), the appeal on ground (f) is concerned with whether the steps exceed what is necessary to achieve that purpose.
90. No alternatives have been put forward by the appellants for consideration. However, it was agreed that requirements 2 & 6 could go beyond the purpose of the notice. That is to say that requirement 2 would embrace more than the caravans associated with the breach and requirement 6 in seeking re-seeding with grass may go beyond establishing what was there before. Whilst some re-seeding may be required to establish a grass sward, I accept that 'restoring the land to its condition before the breach took place' provides more opportunity to get it right.
91. The appeals on ground (f) therefore succeed in part and I will correct the notice to reflect that.

The appeals on ground (g)

92. It is claimed that at least 18 months are needed to comply with the notice as those living on site, as discussed above, have nowhere to go. I accept that the families who are living on site would need time to find an alternative site(s). To that end I see no reason to disagree with Council's view that 12 months in respect of Steps (1), (2), (3) and (4), and 15 months in respect of Steps (5) and (6) would be more reasonable and consistent with the requirements of the notice and I shall vary the notice to this effect. The appeals on ground (g) succeed in part.

Conclusion

93. For the reasons given above and having considered all matters raised, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance with the notice falls short of what is reasonable. The appeals on grounds (f) and (g) succeed to that extent. The appeals on grounds (a) and (e) do not succeed and I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act (as amended).

R Perrins

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:	
Alan Masters	Counsel
Tony White	Planning Agent
George Pullen	Planning Agent
Samson Smith	Appellant
Lisa Smith	Occupier
Nathan Cawt	Occupier
Jimmy James	Occupier
Betsy Smith	Occupier
Billy Eastwood	Occupier
Mark Dean	Occupier
Ruben Giles	Occupier
Mr& Mrs Frank Johnson	Occupiers
William Light	Occupier
Robbie Giles	Occupier

FOR THE LOCAL PLANNING AUTHORITY:	
Jack Barber	Counsel
Madeleine Hartley	Planning Compliance Team Leader
Ines Watson	Specialists Team leader and Landscape Architect
Linsey King	Ecology Officer
Mark McLaughlin	Principal Planning Officer
Jennie Shea	District Licensing Officer
Adrian Smith	Major Applications Team Leader
Helen Sissons	Compliance Officer

INTERESTED PERSONS:	
Marilyn Amos	Shermanbury Parish Council
Aaron Rosewell	Local Resident
Ian Dudley	Landscape Architect
Nick Sibbert	Ecology consultant
Peter Ranier	Planning Consultant

DOCUMENTS

1	Transcript of statement read out on behalf of Shermanbury PC
2	Extract from <i>Guidelines for Landscape and Visual Impact Assessment</i>
3	Water Neutrality Bundle of five documents
4	Schedule of suggested conditions