



Appeal Decisions

Inquiry held on 25 and 26 February and 5 March 2025

Site visits made on 25 and 27 February 2025

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 12 May 2025

Appeal A Ref: APP/M1710/C/24/3347356

Appeal B Ref: APP/M1710/C/24/3347357

Land Adjacent to Oak Tree Farm, Gibbs Lane, Shortheath Common, Bordon, Hampshire GU35 9JS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mr Jesse Stevens (Appeal A) and Mrs Kelly Stevens (Appeal B) against an enforcement notice issued by East Hampshire District Council.
 - The notice was issued on 26 June 2024.
 - The breach of planning control as alleged in the notice is: "Within the last 10 years and without planning permission, the material change of use of land to a residential gypsy/traveller site, to include the stationing of caravans."
 - The requirements of the notice are to:
 1. cease the use of the land edged red on the attached plan as a gypsy traveller site
 2. permanently remove all caravans from the land edged red on the attached plan
 3. remove all fencing that forms the enclosure to the land edged red on the attached plan
 4. permanently remove all residential paraphernalia from the land edged red on the attached plan
 5. remove all resultant debris from the land
 6. return the land edged red on the attached plan to the condition of that prior to the breach of planning control taking place.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Appeal C Ref: APP/M1710/W/24/3352249

Land Adjacent to Oak Tree Farm, Gibbs Lane, Shortheath Common, Bordon, Hampshire GU35 9JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Jesse Stevens against the decision of East Hampshire District Council.
 - The application Ref is 34313/028.
 - The development proposed is the siting of two residential static caravans, and erection of utility building/day room to provide accommodation for a Traveller family.
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Summary of Decisions: The appeal against the refusal of planning permission is dismissed. The appeals against the Enforcement Notice succeed in part, in that the Notice is upheld, and the compliance period varied from 6 months to 2 years.

Preliminary matters

1. In the interests of clarity, I shall refer to Appeals A and B collectively as "the Enforcement Appeals" and to Appeal C as "the Planning Appeal".

2. The original planning application, that is now the subject of the Planning Appeal, was for two caravans and a day room. During its determination the circumstances of the Appellant changed, and it was agreed with the Council that the application should be amended to one caravan and a day room. Due to a further change in circumstances, the Appellant requested that the appeal be determined on the original basis that permission is sought for two caravans and a day room. I have had regard to the procedural implications of the concurrent Enforcement Notice¹, and to the fact that the Inquiry provided the Council with an opportunity to address, in the course of its evidence, the impacts of two caravans rather than one. In my judgment, the interests of fairness will be best served by treating the application as seeking permission for two caravans and a day room, as originally proposed. I shall determine the Planning Appeal on that basis.
3. The Inquiry sat for two days on 25 and 26 February, during which evidence was given either on affirmation or under oath. On 5 March conditions were discussed and closing submissions made online, using a platform hosted by the Council.
4. The Appellants made an application for an award of costs against the Council, relating to the Enforcement Appeals. That application is the subject of a separate Decision Letter of even date.
5. On 10 March I circulated a Post Inquiry Note to the parties, inviting their submissions on the relevance and application of Regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 to the Enforcement Appeals, a matter that had not been aired at the Inquiry. I have taken their responses into account in my determination of the appeals.

The Planning Appeal

6. It is common ground that the Appellant and his family, as occupiers of the Appeal Site, meet the Government's definition of "Gypsies and Travellers" ² and that, if planning permission were to be granted, a condition should be attached to restrict occupation solely to those meeting this definition. The Appeal therefore needs to be determined against the national and local planning policies concerning the provision of sites for Gypsies and Travellers.
7. The main issues are:
 - the effect of the development on protected habitats and species;
 - the effect upon the character and appearance of the area;
 - the extent to which services and facilities would be accessible from the Appeal Site by sustainable modes of transport;
 - whether there is adequate and legal access to and from the Appeal Site for both pedestrians and vehicle users;
 - the need for Gypsy and Traveller pitches, and the availability of suitable alternative sites; and

¹ The Notice was issued after the date on which planning permission was refused, and alleged essentially the same development as that for which planning permission had been sought: that is, the material change of use of the land to residential. In these circumstances, the Appellant is precluded by s.174(2A) of the 1990 Act from making a ground (a) appeal, which would otherwise have provided the opportunity to seek planning permission for the two static caravans present on the Appeal Site when the Notice was issued.

² As set out in Annex 1 to the PPTS

- the personal circumstances of the occupiers, and the best interests of any children.

The effect of the development on protected habitats and species

8. The UK Government has national and international obligations for the protection of a range of natural habitats and associated flora and fauna. These include Special Protection Areas (SPAs) for wild birds and their habitats, and Special Areas of Conservation (SACs) for specified habitats and species. The Appeal Site is adjacent to the boundary of the Shortheath Common SAC, which is part of the Wealden Heaths Phase II SPA. The SAC is also designated as a Site of Special Scientific Interest (SSSI).
9. The Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) provide that for all planning applications which are not directly connected with the conservation management of a habitat site, consideration needs to be given as to whether the proposed development is “likely to have a significant effect”³ on that site. Where the potential for likely significant effects cannot be excluded, the “Competent Authority”⁴ must make an Appropriate Assessment of the implications of the proposal for that site, and may approve the proposal only after having ruled out adverse effects on the integrity of the habitats site. Where an adverse effect cannot be ruled out, and where there are no alternative solutions, the proposal can only proceed if there are imperative reasons of over-riding public interest and if the necessary compensatory measures can be secured.
10. The first stage, then, is to establish the potential for “likely significant effects”. The Appellants commissioned a Shadow Habitats Regulations Assessment (HRA) from a professional ecologist, which considered the proposal (as it then was) to provide one residential static caravan and construct a day room. The HRA notes that public access and disturbance are listed as a major threat to the qualifying bird populations supported by Wealden Heaths Phase II SPA, and that areas of acid grassland and dry heath are being lost from Shortheath Common SAC due to recreational disturbance. It concludes that the potential for significant disturbance from vehicular traffic passing through the SAC to and from the Appeal Site, in addition to the accessibility of the designated sites on foot, means that significant effects are likely. Natural England shared that view, and I agree that likely significant effects cannot be ruled out.
11. This means that it is necessary to carry out an Appropriate Assessment of the likely significant effects on the integrity of the designated sites, and the conservation objectives for the specific qualifying features that could be affected. Any proposed mitigation, aimed at avoiding or reducing any significant effects, can be taken into account at this stage.
12. The SPA supports three qualifying species of bird: nightjars, Dartford warblers, and woodlarks. The qualifying features of the Shortheath Common SAC are its transition mires and quaking bogs, European dry heaths and bog woodland; it is also a functional part of the Wealden Heaths SPA complex. The qualifying bird species and habitats of the SPA and SCA are sensitive to increased recreational

³ The terms used by Regulation 63(1)

⁴ The “Competent Authority” in respect of applications for planning permission is the Council; for appeals against the refusal of planning permission, it is the Inspector appointed to determine the appeal.

pressure and vehicle movements, through disturbance (particularly to ground nesting species) and habitat degradation through erosion, compaction and damage to vegetation. The Appellant's HRA concluded that without mitigation, the development was likely to give rise to significant adverse effects on the integrity of the SAC and the SPA, and the favourable conservation status of their qualifying features. I also note that in its response to the HRA, Natural England took the view that given the close proximity of the Appeal Site to the SAC and SPA, it is unlikely that any mitigation measures would be sufficient to prevent adverse effects.

13. No mitigation was proposed as part of the planning application, or in support of the appeal. On the second day of the inquiry, the agent for the Appellant submitted a document entitled "Habitats Regulations Information Note for Proposed Residential Development within close proximity to the Wealden Heaths Phase I and II SPA", published jointly by East Hampshire District Council and Waverley Borough Council. Section 5 of the Information Note is headed "Possible Avoidance and Mitigation Measures", and explains that where likely significant effects are identified, appropriate mitigation will be sought. It goes on to give examples, such as the provision of "Suitable Alternative Natural Greenspace" to divert visitors from visiting the SPA; it points out that this form of mitigation is best considered for large new developments, and that its effectiveness will depend upon its location and design.
14. I appreciate that the provision of alternative green space – or, for smaller schemes, a proportionate financial contribution toward such provision – can be an effective form of mitigation, and I am told that the Appellants would be willing to enter into a S.106 Planning Obligation to secure it. However, no such planning obligation has been provided in the course of the Appeals, and more fundamentally, no suitable alternative green space has been identified. I note that the Appellant has no intention of using the SPA and SAC for recreational purposes, but given that there would be a total of five people living at the Appeal Site, including a child under the age of ten, an increase in the recreational use of the designated sites cannot be ruled out. It would not be reasonable, or enforceable, to impose a condition preventing the occupiers from making any recreational use of Shortheath Common.
15. I also note that the Shadow HRA submitted by the Appellant does not compare the proposed use of the Appeal Site with its existing lawful use.⁵ The Council accepts that there is planning permission for stables, a compound and two sizeable storage barns, and that these facilities could be occupied and operated by a commercial provider unconnected with the Appellant. Such use would be likely to involve vehicular movements to and from the Appeal Site. However, in the absence of any evidence from the Appellant as to comparative traffic volumes, and without any suggested mechanism for controlling them, it does not follow that granting permission for residential use would necessarily result in a lower number of vehicles travelling to and from the Appeal Site.
16. In conclusion, I am not satisfied that in the absence of mitigation, adverse effects on the integrity of the Shortheath Common SAC and Wealden Heaths Phase II SPA, and the favourable conservation status of their qualifying features, can reasonably be ruled out. This being the case, the next stage is to consider whether the derogation tests contained in Regulations 64 and 68 can be met: that is, if

⁵ This is not intended as criticism: it is clear, from other evidence, that establishing the lawful use has not been straightforward.

there are no alternative solutions, the development must be carried out for imperative reasons of overriding public interest, and compensatory measures secured to ensure that the overall coherence of the designated sites is protected.

17. Possible alternative solutions must be considered objectively and broadly, and could include options that would be delivered by someone other than the developer or options at a different location. Neither party has been able to identify any suitable alternative sites currently available to the Appellant and his family, but that does not rule out the possibility of an alternative solution; it is possible that two pitches could potentially be provided on land owned by someone other than the Appellant, in an area which would have less of an impact on the integrity of the SAC and SAP, but as a solution that can be put no higher than “possible”. However, even if I were persuaded that there were no alternative solutions, I would still need to be satisfied that there were imperative reasons of overriding public interest for the proposed development of this Appeal Site to go ahead.
18. The provision of two residential pitches for Gypsies and Travellers, in a District where there is a significant unmet need, would clearly be in the public interest. It would help to address some of that unmet need, and help to prevent unauthorised roadside encampments. There is also public benefit in securing access to education and health services through the provision of a settled base, both of which improve not just the personal outcomes of the occupiers but also the community outcomes. But where (as here) the designated site hosts a priority natural habitat, the reasons which could justify carrying out the development are limited to those concerning human health, public safety, beneficial consequences of primary importance to the environment, or other reasons which the Competent Authority regards as imperative reasons of overriding public interest.⁶ In my view, the proposed development does not fall within any of those categories.
19. Further, even if imperative reasons of overriding public interest had been demonstrated, Regulation 68 does not allow development to go ahead unless compensatory measures are secured which would redress its negative effect. In order to assess the effectiveness of any proposed compensation, the Competent Authority needs to consider matters such as whether it is technically feasible, financially viable, how its implementation and monitoring will be secured, and its distance from the site. In this case, no compensatory measures have been secured, or indeed identified. In the absence of any indication at all that appropriate compensation could be identified and provided within a reasonable timescale, it would not be appropriate simply to impose a condition requiring satisfactory compensation to be provided before development commenced.
20. In summary, I have found that an adverse effect on the integrity of designated sites cannot be ruled out, and there are no imperative reasons of overriding public interest for the proposed development to be carried out on the Appeal Site. I conclude that it would conflict with the requirements of Policy CP22 of the East Hampshire District Local Plan: Joint Core Strategy (“the Local Plan”), which are that any new housing proposed within 400m of the boundary of the Wealden Heaths Phase II SPA must provide a project-specific HRA to demonstrate that either no adverse effect on the ecological integrity of the SPA will occur, or that adequate measures will be put in place to avoid (or, as a secondary solution,

⁶ Regulation 64(2)

adequately mitigate) any adverse effects. Further, the provisions of the Habitats Regulations operate to prevent the grant of planning permission in this case.

21. The Appellant points out that the Council has repeatedly increased the number of “windfall” residential sites permitted within that 400m buffer zone, from 30 to 33 and then to 43. But that does not, in itself, indicate that the buffer zone is arbitrary or in need of extension. The Council has provided clear and detailed evidence as to how and why the windfall allowance was originally assessed, and subsequently revised. A few years after the adoption of the Local Plan it became clear that the windfall allowance was being used up faster than expected, and the need for Traveller sites had increased significantly: the Council consequently adopted a Supplementary Planning Document, in July 2018, which restricted development within the 400m buffer zone to Traveller sites or affordable rural housing until such time as the 43 dwelling windfall allowance was reached.
22. The Council’s monitoring shows that the 400m windfall allowance was reached in February 2022. This means that development will now only be permitted when supported by an HRA and, where necessary, an Appropriate Assessment which demonstrates that it will not result in harm to the SPA or Shortheath Common SAC. I note that the same approach is taken in the emerging Local Plan: draft Policy NBE4 specifies that no net gain in dwellings or pitches will be permitted within 400m of the SPA or SACs, unless an Appropriate Assessment demonstrates that no harm would result to them.
23. There is, then, nothing to suggest that if the pressing need for housing and pitches renders development within the 400m buffer zone necessary, the appropriate response would be simply to increase the windfall allowance. Rather, the focus would be on identifying and delivering suitable mitigation, to ensure that development could be carried out without harmful effects on the SPA or SACs. As discussed above, no form of mitigation is currently before me.

The effect on the character and appearance of the area

24. The Appeal Site is a parcel of land of around 1ha, which originally formed part of the larger landholding of Oak Tree Farm. It is outside any settlement boundary, and so is considered open countryside for planning purposes. The land is adjacent to Shortheath Common, which is now part of the South Downs National Park (“the SDNP”). Following the subdivision of the holding, the dwelling currently known as Oak Tree Farm, and its residential curtilage, is in separate ownership to the Appeal Site.
25. The Council’s Landscape Character Assessment (LCA) 2024, and the adjacent SDNP LCA 2020, provide local information as to the landscape context. The Appeal Site lies within LCA area 8c.4 “Oakhanger to Bordon Farmland and Heath Mosaic”, described as an important buffer of woodland and common land between the SDNP, and the built form of Whitehill and Bordon. Both the LCA area 6a “Wealden Farmland and Heath Mosaic” to the east of the Appeal Site, and the SDNP LCA area L2 “Mixed Farm and Woodland Vales” to the north, south and west of the Site (within the National Park) describe the landscape character here as “strongly rural”.
26. The evidence of the Council’s Landscape Architect is that this location has a historic cultural association with the Common, being carved from it by clearance and enclosure, likely in Medieval times. Subsequent periods saw this woodland

clearing divided, with the land at Oak Tree Farm remaining a relatively open expanse of agricultural grassland. The adjacent Batchelor Farm and nearby residential dwellings create a pattern of development typical of the Common edge, with scattered dwellings in large plot lands, often retaining embedded Common Rights as an indicator of their historic origin. The Council is concerned that the current development proposal would further divide an already sub-divided plot, introducing additional residential development on the edge of a sensitive landscape and diluting the historic settlement pattern.

27. While I understand these concerns, it is important to be clear that the existing lawful use, and consequently the present character and appearance, of the Appeal Site itself is no longer simply that of open agricultural grassland. The land at Oak Tree Farm has a complex planning and enforcement history. In 2000, prior to the subdivision of the holding, planning permission was granted for the demolition of existing buildings and hardstandings, removal of materials and restoration of land, erection of two storage buildings, a compound and a stable block (“the 2000 Permission”).⁷ After the subdivision of the holding, the (then) owner of the Appeal Site applied for and was granted a Certificate of Lawfulness, clarifying the extent of what was permitted.⁸ This confirmed the lawfulness of two storage barns for B8 use, measuring 17.45m x 22m and 12m x 22m, and a block of 7 stables “incidental to the enjoyment of the dwellinghouse (Oaktree Farm) as a private residence and for no other purpose”, in the positions shown on drg. no. GP/01/20 Rev C. In the light of this the parties agree that the lawful use of the Appeal Site is now a mixed use, consisting of commercial B8 storage and distribution, equestrian stabling (incidental private use) and agricultural grazing.
28. I saw at my site visit that while the permitted stable block has not yet been built, the larger of the two storage buildings is nearly complete and the framework for the other has been constructed. Neither of these two buildings are restricted to providing storage for agricultural purposes, or for purposes ancillary to the use or occupation of the land: the Council’s own evidence is that a separate business unit could be formed on the Appeal Site.
29. I note the Council’s point that the storage barns are agricultural in appearance, which is in keeping with the rural character of their location. I also note that the proposed residential use of the site would involve the siting of caravans and a utility building, rather than the construction of a house. There is nothing in the PPTS, or the Local Plan, that precludes the siting of Gypsy and Traveller pitches in rural areas. Gypsies and Travellers have long tended to live in or on the edge of the countryside, for access to work across a wide area, and because they are likely to be excluded from urban sites by high land prices and objections from the settled community. Traveller sites can therefore be a common sight in the countryside, and are not an intrinsically discordant or intrusive form of development.
30. While the surrounding area is highly accessible, and regularly used by walkers, riders and anglers, public views of the Appeal Site are limited to glimpsed views from Gibbs Lane, and from two public footpaths which run through woodland to the north, and heathland to the west. In these views, the upper part of the storage barns on the Appeal Site appear above the perimeter fence, seen in the context of

⁷ Ref F.34313/006/FUL dated 12 May 2000

⁸ Ref 34313/026 dated 13 January 2021

the other existing agricultural buildings, dwellings, and adjoining Gypsy and Traveller site on the fringe of the Common.

31. The upper parts of the two proposed caravans and the utility building would also be visible above the perimeter fence in some of these glimpsed views, but would be largely screened by the storage barns in others. I share the Council's opinion that the visual impact of these glimpsed views could be mitigated through the use of appropriate materials and recessive coloured cladding. I also agree that the loss of landscape connectivity, through compartmentalisation and high fencing, could be reduced by the use of boundaries created from native planting. These provisions could be secured by condition.
32. The Appeal Site is located in a zone of low-level light pollution, adjacent to the SDNP's Dark Skies zone, where additional lighting associated with residential use could have a negative impact. However it would be possible to control this, through a condition requiring the Council's prior approval of any external lighting. Headlights from cars can be also be a source of light pollution, and additional vehicle movements would adversely affect the tranquility of the area, and contribute to erosion and compaction of the tracks across the Common. However, since the Council accepts that a separate business unit could lawfully be formed on the Appeal Site, it does not necessarily follow that residential occupation by the Appellant and his family, in connection with their own use of the permitted storage buildings, would result in more vehicle movements to and from the Appeal Site.
33. Taking all of this into account, I conclude that while the proposal is relatively small in scale, the siting of two static caravans and a utility building would nevertheless increase the extent of development on the Appeal Site, and involve the introduction of domestic paraphernalia and activities associated with residential use. This would cause some, albeit limited, harm to the character of this edge of the Common, which forms part of the setting of the SDNP. To this extent the development would conflict with the aims of Local Plan Policies CP20 and CP29, which seek to ensure that new development protects and enhances local distinctiveness, and respects the character of the countryside. However, given that the extent of the adverse visual impact would (subject to appropriately worded conditions) be minimal, I consider that the proposed development would comply with criteria (e) of Local Plan Policy CP15, which requires that proposals for Gypsy and Traveller pitches can be adequately screened or landscaped to blend the site into its surroundings.

Accessibility by sustainable modes of transport

34. The Council rightly points out that the prioritisation of sustainable modes of transport is a national policy, applicable to all forms of development: Paragraph 115(a) of the government's National Planning Policy Framework (NPPF) explains that when assessing applications for development, sustainable transport modes should be prioritised "taking account of the vision for the site, the type of development and its location." Paragraph 26 of Planning Policy for Traveller Sites (PPTS) states that new traveller site development, in open countryside that is away from existing settlements or outside areas allocated in the Development Plan, should be "very strictly" limited.
35. However, as noted above, this does not mean that the siting of Gypsy and Traveller pitches in rural areas or open countryside is precluded in principle. The

NPPF recognises that “opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making” ⁹.

36. The PPTS provides a list of criteria to ensure Traveller Sites are “sustainable economically, socially and environmentally” ¹⁰. These criteria include promoting access to appropriate health services; ensuring that children can attend school on a regular basis; providing a settled base that reduces the need for long-distance travelling; and reflecting the extent to which traditional lifestyles (whereby some travellers live and work from the same location, thereby omitting many travel to work journeys) can contribute to sustainability. They do not include specified distances from, or means of transport to, local shops and services. This criteria-based assessment is reflected in the approach taken by Local Plan Policy 15, which states that planning permission for Traveller Sites will be granted if, among other things, they are “located conveniently for access to schools, medical services and other community facilities.”
37. It is worth noting that a “convenient” location for a Gypsy and Traveller site cannot be assessed on the same terms as bricks and mortar dwellings. People with a nomadic way of life will travel by definition, and not work in employment areas that were planned along public transport routes. Wherever they live, Travellers rely on private vehicles for work and thus often for access to shops and services too.
38. The Appeal Site is set within a small existing cluster of residential properties, in open countryside outside any settlement boundary. The village of Kingsley is within walking distance, across the Common; it has a grocery store, but no health services or primary school. The much larger settlement of Bordon has a wide range of shops, facilities and services, and is 2.9km away by car; it would take approximately 37 minutes to walk there, along unmade paths with no lighting, and just over 10 minutes by bicycle.
39. Opportunities for occupiers of the Appeal Site to use sustainable modes of transport would be limited, and it is likely therefore that they would be largely reliant on the use of a private car for access to shops, healthcare, education and other facilities. However, most of those trips would be of short duration, comparable to those undertaken by the settled population in this rural area. In addition, the Appellant is the owner of the authorised B8 storage units on the Appeal Site, and his evidence is that living at the site of his business would reduce the need for travelling between the Appeal Site and alternative off-site accommodation. Since it is common ground that no other available alternative sites for the Appellant have been identified, there is also the consideration that if unable to live at the Appeal Site, the Appellant and his family would be likely to adopt an unlawful roadside existence, potentially further away from shops, schools and healthcare, which could generate increased journeys by private vehicle.
40. Taking all of this into account, I consider that in the context of providing suitably located pitches for Gypsies and Travellers, the Appeal Site would be conveniently located for access to schools, medical services and other community facilities, and would therefore accord with criteria (b) of Local Plan Policy CP15. It would also, as the Council accepts, meet all of the relevant criteria set out at paragraph 13 of the PPTS.

⁹ Paragraph 110

¹⁰ Paragraph 13

41. The Council's third reason for refusing planning permission for the proposed development, on the basis that the Appeal Site is an "unsustainable location", referred to conflict with various Local Plan Policies concerning matters such as the Spatial Strategy for housing and the general approach to development in the countryside. However, where - as here, in the form of CP15 - a Local Plan contains a dedicated Policy setting out the specific set of circumstances in which planning permission for a particular type of development "will be granted", proposals for that type of development should be assessed against that Policy. In my judgment, the location of the development here proposed accords with the relevant criterion of the relevant Policy, and so on this issue can be considered to comply with the Development Plan as a whole.

The adequacy of the access arrangements

42. Various unsurfaced tracks run across Shortheath Common, providing access to properties. Hampshire County Council is the registered owner of the common, and gave evidence that the current vehicular access to the Appeal Site is not lawful. The County Council explained that the Appeal Site was last sold with no legal access agreed, and that the only way to acquire a right to drive a motor vehicle over a common is either by a right being granted expressly by easement, or established by prescription or long use. The Appellant has not sought a Deed of Access easement grant from the landowner. The case originally made on behalf of the Appellant was that a prescriptive right of at least 20 years over the current unauthorised access could be proven, but when the evidence was tested at the Inquiry, it was established that the period of use was insufficient.
43. There is an alternative access to the Appeal Site, the use of which would be lawful: at the Inquiry, the County Council confirmed that it would not refuse an application to grant a Deed of Access. That access has however been blocked, apparently by a neighbouring landowner; no information has been provided as to when or why. The case now made on behalf of the Appellant is simply that the situation can and will be rectified. In support of this, my attention was drawn to the alacrity with which the County Council addressed the issue of a laurel hedge planted on the Common adjacent to the Appeal Site, for which consent from Natural England was required but not obtained. Requests for the removal of the hedge by the landowner having met with no response, the County Council carried out the work itself and billed the owner for reimbursement.
44. The Council rightly notes that neither the current unauthorised access, nor the potential alternative lawful access, is a "highway" for the purpose of considering the County Council's statutory powers and duties to maintain, and prevent the obstruction of, such routes. However, the evidence of both the Council and the County Council is that the use of the current access is harmful to the ecological integrity of Shortheath Common. A letter from Natural England to the County Council, dated 29 May 2020, states that it would not support "formal adoption" of the currently used access to the Appeal Site, and advises the County Council to "retain" the alternative access (the route that is currently blocked).
45. Since it is common ground that the Appeal Site has an existing lawful use that includes two sizeable storage barns, and that a separate business unit could be formed on the land, it is clear that vehicular traffic to and from the Appeal Site will continue irrespective of whether or not the currently proposed residential use is permitted. That being the case, there is weight to the argument that as the

landowner of the Common, acting on the advice of Natural England, the County Council could reasonably be expected to take action to ensure the reinstatement of the currently blocked access, rather than allow the continued harmful use of the unauthorised access.

46. Since there is no evidence that permitting the proposed residential use of the Appeal Site would increase (or decrease) the number of vehicle movements in comparison with its existing lawful use, there is nothing to suggest that there would be any change to the existing risk of conflict between vehicular and pedestrian users of the tracks over the common.
47. In summary, I am satisfied that lawful access to the Appeal Site could be provided. There is no conflict, in this respect, with the requirements of criterion (c) of Local Plan Policy CP15 concerning the adequacy of provision for access, parking, turning and servicing. Nor do I find any conflict with the aims of Local Plan Policy CP31 to protect the safety of highway users.

The need for, and availability of, pitches for Gypsies and Travellers

48. The Statement of Common Ground signed by both parties at the start of the Inquiry records their agreement that there is currently an unmet need for Gypsy and Traveller sites in the district. This is a material consideration that weighs in favour of permitting the development here proposed. The Council's evidence as to the extent of the unmet need is based on the most recent Gypsy and Traveller Accommodation Assessment (GTAA) for the district, which was published in July 2024, and identified a need for a further 64 pitches.
49. However, it is important to bear in mind that the revised version of the PPTS, published on 12 December 2024, amended the definition (for planning policy purposes) of Gypsies and Travellers. That definition now includes "all other persons with a cultural tradition of nomadism or of living in a caravan." This means that such persons who did not meet the previous definition (in use when the 2024 GTAA was undertaken), because they had ceased to travel for a reason other than educational or health needs or old age, will meet the new definition whatever their reason for not currently pursuing a nomadic habit of life. While there is no current evidence as to the numbers involved, the terms of the definition have been expanded rather than restricted, so there will be more people who meet the definition of Gypsies and Travellers for planning policy purposes than were accounted for in the most recent assessment of the district's accommodation needs. As a consequence, while not all of them will be in need of a pitch, it is reasonably certain that the current level of need will increase.
50. Paragraph 10 of the PPTS states that local planning authorities should identify, and update annually, a supply of specific deliverable Gypsy and Traveller sites sufficient to provide five years' worth of pitches against their locally set targets. The Council accepts that it currently has a supply of less than two years, and that this may be impacted further by the change to the PPTS definition of "Gypsy and Traveller" made by the Government in December 2024. The inability to demonstrate a five year supply of sites is a separate material consideration, distinct from the general need identified above, which adds further weight in favour of the proposed development.
51. As to the availability of alternative sites, there is no requirement in planning policy or case law for the Appellant to prove that no other sites are available, or that the

particular needs of his family could not be met from another site. In any event, neither party has been able to identify any alternative sites. The Council contends that there might be some available, but was unable to suggest where they might be. There are no public or transit sites available in the District, no pitches available on any allocated sites, and no evidence of other sites where planning permission has been sought and is expected to be granted. The lack of any alternative accommodation carries considerable weight.

52. The first version of the PPTS was published in 2012, and contained – as has every subsequent version – the requirement to identify a five year supply of sites. It appears that during the ensuing 13 years the Council has not, at any stage, been able to meet that requirement. That is not to say that the Council has made no attempt to fulfil its obligations. It has commissioned regular GTAAAs, to assess the extent of the need. It has carried out “calls for sites”, a process which remains ongoing, although I note that the background paper for the emerging Local Plan, entitled “Meeting the Accommodation Needs of Gypsies, Travellers and Travelling Showpeople 2024” records that none of the responses have resulted in any suitable sites being identified. The current Local Plan contains a criteria-based Policy (CP15) against which applications for Gypsy and Traveller pitches on unallocated sites are assessed, and 49 have been approved since 2016, albeit some of those were allowed on appeal.
53. In closing submissions for the Council, it was suggested that while it recognises that more needs to be done, it would be wrong to characterise the Council as one which is not taking steps to meet needs. I agree: it is clear that the Council recognises its responsibilities and, as is the case in many other areas of the country, faces constraints which make identifying sufficient suitable sites a difficult task. Nevertheless, it remains the case that the steps so far taken have not been adequate to address the scale of the District’s need, such that there has been a persistent failure of Development Plan policy to provide enough Gypsy and Traveller pitches. Put another way, national planning policy requires local planning authorities to make adequate and appropriate provision for the accommodation needs of their Travelling Communities. The Council has now been failing to do so for well over a decade.
54. In my judgment, there has been a failure of policy and this weighs in favour of granting planning permission for the proposed development.

The personal circumstances of the occupiers and the best interests of the child

55. Details of the personal circumstances of the Appellant and his family have been provided in various documents, and are accepted by the Council. It is not necessary, or appropriate, to set out those details in this public document. In summary, there are a number of serious health problems, and a clear and genuine need for the family, including one school-age child, to be together.
56. The evidence before me is that there are no available alternative sites for the Appellant and his family. If these appeals fail, there is a very strong likelihood that they would end up living on the roadside. As was rightly pointed out, on behalf of the Appellants, it is not necessary for a family to have health concerns in order for weight to be given to their health needs: there is no dispute that to improve the health and life opportunities of the Travelling community, access to medical treatment is necessary. The best opportunity of obtaining appropriate and

consistent medical care upon becoming ill, or to prevent serious illness, is from a stable base, not from an uncertain roadside existence. The lack of a stable base would therefore be detrimental to the wellbeing of any Traveller family, but in this particular case, there are medical conditions within the family which would for some of their members make life on the roadside even harder, and more detrimental to their health, than would ordinarily be the case.

57. It is also important to bear in mind that making the occupiers of the Appeal Site homeless would engage Article 8 of the European Convention on Human Rights, set out in UK law within Schedule 1 of the Human Rights Act 1998, which is the right for respect for private and family life. This is a “qualified” right, which means that determining whether it may be infringed involves balancing the fundamental rights of individuals against the legitimate interests of others, and the wider public interest. I shall consider this further when I turn to the overall planning balance.
58. It is well established that the best interests of the children is a primary consideration for decision makers in any planning appeal proceedings in which children are involved: no other consideration can be inherently more important than the best interests of the children, but the weight given to each consideration will depend on all the circumstances of the case. It is also well established that children are likely to have lower educational attainment and experience other harm from the disruption caused if they miss school regularly, or have to move between different schools.
59. A grant of planning permission authorising the proposed caravans and utility building on the Appeal Site would provide the family with a secure and stable base to bring up the child. A fixed address would improve their access to health services and education; without one, it is harder to register for, and sustain, medical care and schooling. There are social, as well as individual, benefits to everyone having proper health care and all children attending school regularly.
60. The child who lives at the Appeal Site is enrolled at a local Primary School. While the distance involved and the absence of footways and lighting means it is not a journey that could easily be walked, the school is only a short trip away by car, and readily accessible as part of a linked trip to work, shops or other services. A letter from the school dated October 2024 explains that after a prolonged absence from education, the child in question has settled quickly, made friends and is making progress academically. I also note that regular attendance at school brings with it other benefits, such as the opportunity to join after-school clubs and sports teams, and create friendships which can help families integrate within the local community.
61. Conversely, refusing planning permission for the proposed development and upholding the enforcement notice would make it very likely that the child living at the Appeal Site would, along with their family, be rendered homeless. There would be serious adverse impacts in terms of the stability of their home life, and the conditions in which they would be living on the roadside. There would also be serious adverse impacts on the continuity of their education and healthcare if, as a result of having to leave the Appeal Site, their family had to move further from their current school and healthcare providers and so were no longer able to keep the child registered with them.

62. In light of the evidence that there are no suitable and available alternatives to the Appeal Site which could provide the child with a settled home base, granting permission for the proposed development would clearly be in their best interests.
63. The Public Sector Equality Duty (PSED) set out in s.149 of the Equality Act 2010 establishes that local planning authorities and Planning Inspectors must have due regard to the need to eliminate discrimination and harassment, and to advance equality of opportunity, and foster good relations, between persons who share a relevant protected characteristic and those who do not. This means, among other things, removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic, and taking steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of those who do not share it.
64. The Appellant and his family are members of an ethnic minority, which is a protected characteristic for the purposes of the PSED. The accommodation needs of those who share this protected characteristic differ from those who do not. In brief, members of the travelling community need suitable sites for caravans: members of the settled community need suitable sites for dwellinghouses. Closing submissions made on behalf of the Appellant contend that at present the accommodation needs of the travelling community have largely been abandoned, with the likelihood of that failure continuing for an extended period, and that such failure would be inconceivable if it related to conventional housing for the settled community.
65. As discussed above, it is evident that the adopted Development Plan has failed to meet the accommodation needs of the District's travelling community for well over a decade, and the Council is unable to demonstrate the 5 year supply of pitches (measured against the identified needs of the travelling community) required by the PPTS. I have no evidence as to whether or not the Council is able to demonstrate the 5 year supply of housing land (measured against the identified needs of the settled community) required by the NPPF. Even if I had it would not be appropriate for me, as the Inspector appointed to determine these site-specific appeals, to seek to draw conclusions about any systemic inequality of approach on the part of the Council: my focus must be on the application of the PSED to the particular case that is currently before me.

Other matters

66. A Written Ministerial Statement (WMS) of 17 December 2015, which remains in force, made "intentional unauthorised development" a material consideration in planning applications and appeals. It explains that the reason for this is the Government's concern about the harm caused where the development of land has been undertaken in advance of obtaining planning permission, because in such cases, there is no opportunity to mitigate the harm that has already taken place.
67. The Council contends that the proposal that is the subject of this planning appeal is for the retention of unauthorised development, and that this material consideration should carry a limited amount of weight in the overall planning balance. However, the Appellant contends that the application here at issue does NOT seek retrospective planning permission for the retention of development under s.73A of the 1990 Act, because the development it proposes – that is, the

change of use of the land to a residential Gypsy and Traveller pitch – has not yet taken place.

68. The Appellant purchased the Appeal Site in December 2021 with extant planning permission for two storage barns and a stable block, none of which had at that time been constructed. Two weeks later he stationed two static caravans on the land, and his agent wrote to the Council explaining that these were to provide accommodation while engineering works were carried out, and that regular updates would be provided. The Appellant has subsequently built one of the permitted storage barns, and partially constructed the other. His position was, and remains, that the residential occupation of the caravans by persons employed in connection with those works qualified as Permitted Development under Schedule 2, Part 5, Class A of the Town and Country Planning (General Permitted Development Order) 2015 as amended (“the GPDO”), and so did not require planning permission.
69. The question of whether or not the siting and occupation of the caravans did in fact qualify as Permitted Development is disputed, and forms part of the Enforcement Appeals. For present purposes it is sufficient simply to note that the Appellant, having received professional advice that this was the case, believed his occupation of the caravans to be authorised for the duration of the building operations. In my judgment, that was not unreasonable. The intended purpose of the application for planning permission submitted in May 2023 was to authorise the future residential use of the land, once the building works had been completed, as a Gypsy and Traveller pitch.
70. Taking all of this into account, I am satisfied that the Appellant did not deliberately and intentionally engage in unauthorised development of the Appeal Site; rather, he believed the siting and occupation of the caravans (the subject of the concurrent Enforcement Appeals) to be authorised by the building works he was engaged in. Further, he has now sought planning permission for the change of use of the land to a residential pitch. This provides an opportunity (per the 2015 WMS) to assess whether any harm caused by such development can be appropriately mitigated, and if so, how that mitigation can be secured. I therefore conclude that in the circumstances of this particular case, there has not been “intentional” unauthorised development that should be considered to weigh against the proposal.

The overall planning balance

71. The starting point is that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise.¹¹ Material considerations include the Government’s national planning policies and guidance, as set out in the NPPF and PPTS.
72. Paragraph 28 of the PPTS states that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable pitches, the provisions in paragraph 11(d) of the NPPF apply. That paragraph sets out the “presumption in favour of sustainable development”, and what this means for decision-taking. However, paragraph 195 of the NPPF makes it clear 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 habitats site (this includes SPAs and SACs),

¹¹ S.38(6) of the Planning and Compulsory Purchase Act 2004 and s.70(2) of the Town and Country Planning Act 1990

unless an Appropriate Assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

73. The Appropriate Assessment I carried out above concluded that that an adverse effect on the integrity of habitats sites cannot, on the basis of the evidence currently available, be ruled out. It follows that the NPPF presumption in favour of sustainable development does not apply to the development here proposed.
74. In terms of the Development Plan the most relevant policy for this development proposal is CP15, which states that planning permission for permanent sites for Gypsies and Travellers will be granted provided six specified criteria are met.¹² I am satisfied, in the light of the considerations discussed above, that this proposal satisfies all six of those criteria. It would conflict, to a limited degree, with the aims of Local Plan Policies CP20 and CP29, in that it would cause a small amount of harm to the character of the landscape. If that were the only conflict with the Development Plan, I would not hesitate to conclude that it was clearly overcome by the best interests of the child involved in this case, which is a primary consideration, together with the extent of unmet need for Gypsy and Traveller accommodation; the Council's inability to demonstrate a 5 year supply of pitches; the lack of any available alternative accommodation; policy failure; and the personal circumstances of the Appellant and his family – all of these being material considerations which, in combination, carry a very substantial amount of weight in favour of permitting the proposed development.
75. However, an inescapable feature of the Appeal Site is its proximity to the Shortheath Common SAC and Wealden Heaths Phase II SPA, which are habitat sites of international importance. For the reasons set out above, I have concluded that it is not possible to ascertain that the proposed development would have no adverse effect on the integrity of these protected sites. This means that not only does the proposal fail to meet the requirements of Local Plan Policy CP22, but the provisions of the Habitats Regulations prevent the grant of planning permission.
76. In short, I find that in terms of the planning balance there are material considerations of very substantial weight. However, in addition to conflict with the character and appearance policies of the Development Plan there would also be conflict with the policy that protects internationally designated sites; further, in the circumstances of the current case, granting planning permission would be in breach of the Habitats Regulations.
77. That would remain the case even if the permission were to be granted for a temporary period only. The Appellant submits that, in the event I were not minded to grant permanent planning permission, permission should be granted for a period of at least five years as this would serve the dual purpose of allowing further pitches to come forward through the Local Plan process, and allowing time for appropriate mitigation and/or compensation for effects on the habitat sites to be identified and secured. The period of five years is based on the currently anticipated adoption of the emerging Local Plan in August 2027, with a further 12-18 months for allocated sites to become available, and an allowance for slippage of the programme.
78. It is fair to note that the benefits of the material considerations that weigh in favour of the proposal would not be much reduced if the permission were granted for a

¹² The seventh criterion is only applicable to applications for transit sites.

temporary period, whereas harm to the habitats sites would, through being limited to a specified number of years rather than continuing into the foreseeable future. However, it is not the *duration* of harm that is at issue here, but whether *any* adverse impacts on the integrity of the protected sites – taking account of any proposed mitigation – can be ruled out. As discussed above, no mitigation has yet been identified or secured, and there is presently no substantive basis to the suggestion that it could or would be within the next five years.

79. It is therefore the case that while the overall planning balance weighs more heavily in favour of a temporary planning permission than a permanent permission, it would still conflict with the requirements of the Habitat Regulations. The Habitat Regulations themselves make specific provision for the circumstances in which development may be permitted even if adverse impacts on the integrity of protected sites cannot be ruled out: those are where the development must be carried out for imperative reasons of overriding public interest (Regulation 64) and any necessary compensatory measures are secured (Regulation 68). Those circumstances do not apply here, and would not do so even if the grant of permission were a temporary one, for five years or any lesser period.

Conclusion on the Planning Appeal

80. Dismissing the Planning Appeal would interfere with the rights of the Appellant and his family under Article 8 of the Human Rights Act, in that it would result in the loss of a future home for them; there is also a positive obligation imposed by Article 8 to facilitate the Gypsy way of life. However, the human rights interference associated with this conclusion is in accordance with the law, and is necessary in a democratic society to protect environmental interests, which is a legitimate objective. In terms of the Public Sector Equality Duty, I am mindful that dismissing the appeal would perpetuate the difficulties in securing accommodation that are currently endured by the Appellant and his family due to their ethnicity, and that health issues would make life without a settled base particularly difficult for them. I have had careful regard to these matters in determining the Planning Appeal, and will return to them in my determination of the Enforcement Appeals.
81. Having considered every relevant material consideration, and the possibility of imposing conditions, I consider that a decision in the public interest cannot be achieved by means that would cause less interference with the Appellant's rights. A refusal to grant planning permission is a proportionate and necessary response in the circumstances of this case.
82. In summary, I find that the proposed development would conflict with the Development Plan taken as a whole, and would be in breach of the Habitats Regulations, a material consideration which weighs very heavily indeed against a grant of planning permission. The combined force of all of the other material considerations in favour of the proposal is not sufficient to outweigh the conflict with both the Development Plan and the Habitats Regulations.
83. I conclude that the Planning Appeal must be dismissed.

The Enforcement Appeals

The terms of the Notice

84. The Enforcement Notice alleges the material change of use of an area of land, shown edged in red on the plan attached to it. That area of land is not the entirety of the land owned by the Appellants, but lies wholly within it. The Appellant contends that rather than identifying this smaller area of land, the Notice should have been directed at the entirety of the land owned by the Appellants, and should have recognised that this wider area of land was currently in a mixed use, such that the material change of use (if the allegation were correct) would be from a mixed use that did not include residential use, to a mixed use that did include residential use.
85. Establishing whether there has been a material change of use involves determining the most appropriate physical area against which to assess the materiality of that use. That area is known as the “planning unit”, a concept which has evolved from caselaw. Caselaw has also established that an Enforcement Notice does not have to be directed at the whole planning unit, or even to identify it. In cases where the activity complained of only takes place on a small area of land, a Council is entitled to anticipate changes to defeat the operation of the Notice by enforcing against the planning unit as a whole. But it is not obliged to do so: it is open to the Council to serve an Enforcement Notice directed only at that part of the planning unit where they consider the alleged material change of use to be taking place.
86. I will return to the question of the planning unit, and whether or not there has been a material change of use, when I consider the individual grounds of appeal below. But as to the general approach taken by the Notice, and the terms in which it has been drafted, I see nothing that would render the Notice invalid or that stands in need of correction.

The appeals on grounds (b) and (c)

87. The grounds of appeal are that the alleged breach of planning control has not occurred as a matter of fact (ground b), and that the matters alleged by the Notice do not constitute a breach of planning control (ground c). Since the Appellants’ case on both of these grounds involves the applicability of Permitted Development Rights, it makes sense to deal with them together.
88. The Appellants contend that the stationing of caravans on the land for residential purposes is Permitted Development under Schedule 2, Part 5, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (“the GPDO”). That Class includes, through reference to the Caravan Sites and Control of Development Act 1960, “use as a caravan site of land which forms part of, or adjoins, land on which building or engineering operations are being carried out... if that use is for the accommodation of a person or persons employed in connection with the said operations.” This is subject to the condition that the use is discontinued when the specified circumstances cease to exist.

89. The Appellants' case is that the caravans were stationed on the Appeal Site in December 2021, as explained to the Council in an email from their agent dated 17 December 2021, for the purpose of providing accommodation while engineering works were carried out. Mr Stevens gave evidence to the Inquiry that at no time since then did he cease building the permitted storage barns, and at no time did his intention to complete the barns cease.
90. Article 3(1) of the GPDO grants planning permission for the classes of development described in Schedule 2 to that Order, subject to regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017. Regulation 75 makes it a condition of any planning permission granted by the GPDO that development which "is likely to have a significant effect" on a designated habitat site "must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 77."
91. The Appellants did not make an application for, and did not receive, the approval of the local planning authority under Regulation 77 before stationing the caravans on the land in December 2021.
92. It is fair to note that at that time, the Appellants did not have the benefit of the information contained in the Shadow Habitats Regulations Assessment, which they commissioned in 2024 to support the planning application for the residential occupation of the caravans on site, and which recorded the potential for significant effects to arise in relation to the conservation objectives of nearby designated sites. I also note that the Council, having received notice from the Appellants' agent that caravans had been stationed on the Appeal Site in accordance with Permitted Development rights, did not notify the agent of the need to make a Regulation 77 application. The Council has not said as much, but it seems to me highly likely that the reason why no such application was sought or made is because the parties involved were not, at that time, aware of the procedure. However, that does not mean that it is not, and was not, applicable.
93. It is no part of the Appellants' case (rightly, in my view) that the accommodation provided by the two caravans for the purposes of constructing the storage barns would be any less likely to have a significant effect on the designated sites than the residential occupation proposed by the planning application. The Appellants' own ecologist has advised that it is likely that the development would have a significant effect, and that appears to be accepted. The provisions of Regulation 75 require the developer to obtain written notification of the approval of the Council before beginning any development otherwise permitted by the GPDO, and this was not done. It follows that the use of the caravans for accommodation did not accord with the relevant provisions and conditions of the GPDO and Habitats Regulations, and so did not constitute Permitted Development.
94. Further, under ground (b), the Appellants contend that the breach of planning control alleged is materially incorrect and cannot be corrected without causing prejudice to them. This is based on the argument that even if the stationing of the caravans were unlawful, it resulted in a new mixed use across the whole wider site, not a separate planning unit in its own right, so the breach of planning control that ought to have been alleged was from one mixed use to another.
95. For the reasons set out above, I do not find anything wrong with the Council's approach of directing the Notice at a smaller area of land than the planning unit as

a whole. The relevance of the planning unit lies in its use as a reference point for establishing, by comparison with its existing use, whether a material change of use has occurred. The judgment in *Burdle*¹³ established that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes.

96. There does not appear to be any dispute that the planning unit in this case is the entirety of the land owned by the Appellants, and the Statement of Common Ground records its existing lawful use as being a mixed use, comprising commercial B8 storage and distribution use; equestrian stable (incidental private use); and agricultural grazing.
97. The Appellant rightly points out that the whole of the planning unit benefits from a grant of planning permission made in 2000¹⁴ for the demolition of existing buildings and hardstandings, restoration of the land and “erection of two storage buildings, compound and stable block”. However, this was subject to a condition preventing any outside storage of materials, apart from within the fenced compound (which has not to date been constructed) containing the proposed stores and barn, and a condition restricting the use of the proposed stables to being “incidental to the enjoyment of” the dwellinghouse, that being the house at Oak Tree Farm. The Certificate of Lawful Use or Development issued in 2021 also applies to the entirety of the planning unit, but simply confirms that the construction of the two storage barns and stable block, in the positions shown on the attached plan, would be lawful: it does not go further than the 2000 grant of planning permission, or override the conditions attached to it.
98. It is common ground that the completed barns and compound could be occupied and used by a separate business, although the evidence of the Appellants is that they would use them for their own business purposes if planning permission for the residential use were granted. In any event, there is no evidence of the single barn so far completed having yet been put to this purpose. Similarly, while it is fair to note that “equestrian stable (incidental private use)” is a component of the existing lawful mixed use of the planning unit, there is no evidence of that use having taken place, the permitted stable having not yet been constructed.
99. The two caravans occupied by Mr Stevens and his family as their only place of residence have been stationed on an area in the south west of the planning unit, between the first of the storage barns to be constructed, and the rear compound. This area has been surfaced with pea shingle, to create a car parking area and garden space, and is enclosed by close-boarded wooden fencing. It is reached by the same access and drive as the rest of the site. No use other than residential use is taking place in this area, and no residential use is taking place on any other part of the site.
100. In my judgment, the residential occupation of the caravans is not incidental or ancillary to existing lawful activities on the land, but rather is a new primary use, taking place in a distinct and contained part of the existing planning unit. While this area is physically separate and distinct, there is a functional relationship with the area where the storage barns are being constructed, because the Appellants have been living in the former while carrying out works necessary for the latter.

¹³ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

¹⁴ Ref F.34313/006/FUL dated 12 May 2000

101. Neither physical separation nor functional connection are necessarily decisive in establishing whether the new use has resulted in the creation of a new planning unit, or has added another component to the mixed use of the existing planning unit. But it seems to me that which ever approach is taken to the assessment of materiality, the outcome is the same. This is because the introduction of the residential use has resulted in substantial and significant changes to the character of the activities that have gone on previously, whether considered in the context of the specific area of residential use, or the wider area of the planning unit as a whole.
102. The siting and occupation of two static caravans, together with the creation of a sizeable enclosed outdoor amenity and parking area, and the presence of residential paraphernalia such as flower pots, washing lines and garden furniture has notably altered the formerly agricultural character and appearance of not only the part of the site in which they are located, but the planning unit as a whole. Similarly, the number and pattern of vehicle movements generated by residential use – including trips to the shops, healthcare services and school – are markedly different to those generated by the existing lawful use, and since they use the same access route and internal drive, this affects the planning unit as a whole.
103. I conclude that as a matter of fact and degree, a material change to residential use has taken place. Since it did not constitute Permitted Development a grant of planning permission was required, but was not obtained. The appeals on grounds (b) and (c) must therefore fail.

The appeals on ground (f)

104. The ground of appeal is that the steps required by the Notice exceed what is necessary to remedy the breach of planning control. The Appellants' case on this ground has three strands. Firstly, that since part of the site is agricultural and so would benefit from Permitted Development Rights to site a caravan for welfare use, it would be excessive to permanently remove all caravans. Secondly, that the requirements include matters which are not detailed in the allegation and therefore should not be included, such as fencing, which would be Permitted Development. Thirdly, that since the property has permission for B8 Storage, there is nothing to prevent the Appellant from storing residential items "within the red line of the map which is a consented B8 storage yard and for which they have rights".
105. An Enforcement Notice which is directed at an alleged material change of use, such as this one, may require the removal of works integral to and solely for the the purpose of facilitating the unauthorised use, even if such works on their own would not constitute development, or would be Permitted Development, or would be immune from enforcement. In such cases, it is not necessary for the allegation to refer specifically to those works.
106. There is no evidence that either of the caravans here at issue were previously stationed anywhere on the planning unit for welfare purposes in connection with agriculture, or for any other purpose. Rather, the evidence is that the caravans were brought to the site specifically to provide residential accommodation for the Appellant and his family while they were engaged in constructing the permitted buildings. For the reasons set out above I have found that this amounted to a material change of use, and since the stationing of the caravans was integral to

and solely for that unauthorised change of use, it is reasonable to require their removal.

107. This does not extinguish or undermine any Permitted Development Rights for the stationing of caravans as part of the existing lawful use of the land, and once the requirements of the Notice had been complied with, the Appellants could exercise such rights over the land edged red on the plan attached to the Notice. But there is no evidence at all that any agricultural use is being, or will shortly be, made of the land that would require the presence of a caravan for welfare purposes. The possibility that a caravan may potentially be required for welfare purposes at some point in the future does not justify retaining one or both of the static caravans currently being occupied as a place of residence.
108. Similarly, the construction of the fence around the area where the caravans are sited was part and parcel of the unauthorised material change of use. It is therefore in order for the Notice to require the removal of the fence, even though it was not specifically referenced in the allegation and even though it would, in other circumstances, be Permitted Development.
109. Turning to the third strand of the Appellants' case on this ground, I do not agree that the land edged red on the plan attached to the Notice could lawfully be used as a storage yard. As discussed above, the 2000 Permission was for two storage barns and a compound around them, and was subject to a condition preventing any outdoor storage apart from within that compound, which has not yet been constructed. The extent of the compound is shown on the "Proposed Site Plan" approved by the 2000 Permission, and does not overlap with the land edged red on the plan attached to the Notice. It follows that while domestic items could lawfully be stored inside either of the permitted storage barns, or outside within the compound when constructed, the land edged red on the plan attached to the Notice does not constitute a "yard" within which outside storage could lawfully take place.
110. I conclude that the steps required by the Notice are not excessive, and are necessary to remedy the breach of planning control. The appeals on ground (f) must therefore fail.

The appeals on ground (g)

111. The ground of appeal is that the period specified by the Notice for compliance with its requirements falls short of what should reasonably be allowed. The Notice specifies a period of six months, but the Appellants contend that a period of three years is needed. The Council accepted at the Inquiry that the period should be extended, but was unwilling to state by how much: its position in closing submissions was that the Inspector should form a view on the appropriate period considering all the evidence heard.
112. As discussed above in the context of the Planning Appeal, there are no public or transit sites available in the District, no pitches available on any allocated sites, and no evidence of other sites where planning permission has been sought and is expected to be granted. The lack of any currently available alternative accommodation indicates that requiring the Appellants to relocate within six months is unreasonable.

113. It is not a straightforward matter to establish what a reasonable amount of time would be. I am mindful that the substantial unmet need for pitches, and the lack of a five year supply of sites, will likely make it harder for the Appellants to find suitable alternative accommodation than would be the case for members of the settled community. Providing sufficient time to locate an alternative site, so that the family can move straight there and avoid the insecurity and disruption caused by having to lead a roadside existence for an interim period, would clearly be in the best interests of the child in this case; a period of roadside living would also have serious adverse consequences for the medical conditions of some of the family members. I note that the emerging Local Plan, which is required to contain measures to address the need for pitches, is still some way from being finalised. It is currently expected to be submitted for examination in November 2026, and adopted by August 2027.
114. Had I been able to conclude that the development would not have any significant adverse impact on the nearby protected habitats sites I would have been minded on balance to allow the Planning Appeal, but for the reasons set out at length above the provisions of the Habitats Regulations operate to prevent the grant of planning permission at the Appeal Site, even for a temporary period.
115. The Habitats Regulations do not apply to my determination of the Enforcement appeals, but I do need to take into account the adverse impact of continued residential occupation of the caravans during the compliance period. In this context it is relevant to note that an extended compliance period would provide further time to research and secure mitigation and/or compensation options for effects on the habitats sites, or potentially for a change in the applicable legal framework: as the Appellant rightly points out, the Government clearly recognises that current environmental impediments to housing development need to be looked at and revised, and is taking steps to bring this about through the Planning and Infrastructure Bill currently progressing through Parliament.
116. In my judgment, a compliance period of two years would strike the right balance between the conflicting public and private interests in this case. I shall vary the Notice accordingly, and the appeal on ground (g) succeeds to this extent.

Conclusion on the Enforcement Appeals

117. For the reasons given above I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the Enforcement Notice prior to upholding it. The appeals on ground (g) succeed to that extent. On all other grounds the appeals fail.

Formal Decisions

The Planning Appeal

118. The appeal against the Council's refusal to grant planning permission is dismissed.

The Enforcement Appeals

119. It is directed that the Enforcement Notice is varied by:

The deletion of “6 months” and the substitution of “two years” in section 6.

Subject to this variation, the Enforcement Notice is upheld.

Jessica Graham

INSPECTOR

Appearances

FOR THE APPELLANT:

Mr Michael Rudd	Counsel for the Appellants
Mr Barry Medicott	Former owner of the Appeal Site
Mr Jesse Stevens	Appellant
Mr Tony White	of White Planning and Enforcement

FOR THE COUNCIL:

Mr Ben Du Feu	Counsel for the Council
Mr Luke Galloway	Senior Planning Enforcement Officer
Mrs Lyn Griffiths	Senior Estates Surveyor, Hampshire County Council
Mrs Nicki Paton	Countryside Team Manager, HCC
Mrs Amanda Dunn	Principal Policy Planner
Mrs Charlotte Smith	Landscape Architect, HCC
Ms Katherine Pang	Principal Planning Officer

Documents

1. Statement of Common Ground as to the need for Gypsy and Traveller sites
2. Statement of Common Ground as to other matters
3. Opening Submissions on behalf of the Council
4. Opening Submissions on behalf of the Appellant
5. Copy of LG06, marked up by Mr Medicott to show access route
6. Agreed map of viewpoints for Inspector's unaccompanied site visit
7. Copy of Officer's Report on LDC application Ref 34313/026
8. Extract from Apple Maps, showing route from Kingsley to Appeal Site
9. The Council's LDS (Timetable for emerging Local Plan) March 2025
10. Habitats Regulations Information Note re development close to the SPA, published jointly by the Council, SDNPA and Waverley BC, in 2015
11. Closing Submissions on behalf of the Council
12. Closing Submissions on behalf of the Appellant
13. The Appellants' comments on the Council's response to the costs application
14. Post-Inquiry Note from the Inspector, dated 10 March 2025
15. The Appellants' response to the Inspector's Post-Inquiry Note
16. The Council's response to the Inspector's Post-Inquiry Note.