



Appeal Decisions

Hearing held on 4 September 2025

Site visit made on 4 September 2025

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2025

Appeal A: APP/M3645/C/24/3349803

Land to the north of Farfield, Green Lane, Shipley Bridge, Surrey RH6 9TJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Edward Connors Jnr against an enforcement notice issued by Tandridge District Council.
- The enforcement notice was issued on 16 July 2024.
- The breach of planning control as alleged in the notice is: Without planning permission or Tree Preservation Order consent:
 - a) The clearance of trees and other vegetation from the Land, including trees covered by Tree Preservation Order No.3 (2024), preparatory to the making of a material change of use of the Land to a residential caravan site;
 - b) Operational development consisting of the importation of materials for the raising of the Land and laying of surfacing materials all associated with the use of the Land as a residential caravan site;
 - c) The making of a material change of use of the Land to a residential caravan site;
 - d) The parking and/or storage of vehicles, plant and machinery on the Land associated with the use of the Land as a residential caravan site;
 - e) The storage of construction materials on the Land associated with the use of the Land as a residential caravan site; and
 - f) Operational development on the Land consisting of the installation of septic tanks and pipework, installation of water supply pipes and electrical cabling, construction of a brick wall fronting Green Lane and installation of an entrance gate, and erection of close boarded fencing on other boundaries of the Land, all associated with the unauthorised use of the Land as a residential caravan site.
- The requirements of the notice are to:
 - i) Cease the clearance of trees and other vegetation from the Land, including trees covered by Tree Preservation Order No.3 (2024), preparatory to the making of a material change of use of the Land to a residential caravan site within 1 day;
 - ii) Cease the importation of materials and the raising of the Land within 1 day;
 - iii) Cease the residential use of the caravans stationed on the Land within 1 month;
 - iv) Cease the use of the Land for the stationing of caravans for residential purposes within 1 month;
 - v) Remove all residential caravans (with associated gas cylinders, skirtings and steps) and all touring caravans from the Land within 1 month;
 - vi) Remove all domestic paraphernalia from the Land;
 - vii) Cease the use of the Land for the storage of hardcore, bricks, plastic pipes and other construction materials placed there for the purpose of the use of the Land for the stationing of caravans for residential occupation, and remove all such stored materials from the Land within 1 month;
 - viii) Cease the parking or storage of vehicles, plant and machinery on the Land that are there for the purpose of the use of the Land for the stationing of caravans for residential purposes, and remove all such vehicles, plant and machinery from the Land within 1 month;

- ix) Remove all brick walls, entrance gates, and close-boarded fencing from the Land within 3 months;
 - x) Remove from the land to a licensed waste management facility accumulated debris or rubbish arising from the use of the Land for the stationing of caravans for residential purposes and compliance with the requirements of this Notice within 3 months;
 - xi) Using the Environment Agency's LIDAR data to determine the levels of the Land before it was raised, dig up and otherwise remove from the Land to a licensed waste management facility all materials brought onto the Land for the purposes of raising the land and the use of the Land for the stationing of caravans for residential purposes within 3 months;
 - xii) Following compliance with steps i) to xi) above, level then scarify the surface of those parts of the Land that have been the subject of the unauthorised development and seed with a grass and wildflower seed mixture during the next period of the year that includes the months of April to September immediately following compliance with steps i) to xi) above.
 - xiii) Following compliance with steps i) to xii) above, plant 19 trees as detailed within Table 1 set out in the enforcement notice, and in the locations indicated within the area edged blue on the attached tree planting and remediation Plan 2 in compliance with the following requirements:
 - a. The trees must be planted following complete removal of the imported aggregates and waste, and subsequent decompaction of the soil throughout the area edged blue on the attached tree planting and remediation plan.
 - b. Decompaction and remediation of the soil must be achieved by deep soil aeration and tree fertiliser injection by the use of a VOGT Geoinjector to a minimum depth of 1 metre and to achieve a soil bulk density of less than 1.5 g cubic cms.
 - c. Each tree should be supplied, planted, watered, and maintained in the positions shown on the attached planting plan and remediation Plan 2 for a period of 5 years following the date of planting – in full accordance with the specifications contained within British Standard 8545:2014 Trees: from nursery to independence within the landscape.
 - d. Tree planting to be undertaken during the next period of the year that includes the months of October to March immediately following compliance with steps i) to xii) above.
 - The period for compliance for steps i) and ii) is within one day, steps iii), iv), v), vii) and viii) within one month and steps ix), x) and xi) within three months. No compliance period is given for step vi).
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Appeal B: APP/M3645/W/24/3345628

Land to the north of Farfield, Green Lane, Shipley Bridge, Surrey RH6 9TJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the Council's decision to refuse planning permission.
 - The appeal is made by Mr Edward Connors Jnr against the decision of Tandridge District Council.
 - The application Ref TA/2023/451, dated 8 April 2023, was refused by notice dated 30 April 2024.
 - The development proposed is described as '*Change of use of land to create 3no plots for residential use by gypsy/traveller family including 3no permanent site mobile homes, 3no tourers, cesspit, hardstanding, fencing, new access and conversion of existing building to dayroom/stables (Part Retrospective)*'.
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Formal Decisions

Appeal A

1. The enforcement notice is corrected by:
 - The deletion of requirement (xiii);
 - Required steps (i, ii, iii, iv, v, vii, viii, ix, x, and xi) are amended with the additional wording ‘...of the date the notice takes effect’;
 - Required step (vi) is deleted and replaced with the wording ‘Remove all domestic paraphernalia within 1 month of the date the notice takes effect.’
2. Subject to the above corrections the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Appeal B

3. The appeal is dismissed.

Application for Costs

4. An application for Costs was made by Mr Edward Connors Jnr against Tandridge District Council. This application is the subject of a separate decision.

Background

5. In April 2023, around the time that the appellants moved on to the site, a planning application was submitted to the Council proposing the change of use of the land to a residential caravan site for the purposes of gypsy accommodation, involving three pitches, comprising one static caravan/mobile home and one touring caravan.
6. Following the land being cleared for caravans to be moved onto the site its occupation then commenced constituting, in the absence of the necessary planning permission, an unauthorised material change of use. The planning application was subsequently refused in April 2024 and the enforcement notice was issued some three months later. These are the subjects of the current appeals.

Preliminary Matters

7. Turning to the provision of land for gypsy and traveller purposes in Tandridge District, in an attempt to provide appropriate evidence to adequately plan for the delivery of such and to support a replacement Local Plan, which has been significantly delayed due to issues of soundness, the Council recently commissioned a new Gypsy and Traveller Assessment (GTAA). Undertaken by Opinion Research Services (ORS), a response rate of 97% was said to have been achieved, and the exercise was completed in March 2025.
8. The aim of the GTAA is to provide a robust assessment of current and future need of land for gypsy and traveller purposes, and covers a 20 year period from 2025 to 2044.

9. The research identified a need for 138 pitches emerging from the 109 households that met the 2024 Planning Policy for Traveller Sites (PPTS) definition of gypsies and travellers. This is as follows:

'Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependents' educational or health needs or old age have ceased to travel temporarily or permanently, and all other persons with a cultural tradition of nomadism or of living in a caravan...'

Matters concerning the enforcement notice

10. The alleged breaches of planning control are wordy and extensive, and could have perhaps been consolidated to make the document more easily readable. However, as no appeal under ground (b) was lodged the appellant is accepting that the various alleged breaches have occurred, as a matter of fact. Although there was little, if any, open storage of plant and machinery evident at the time of my site visit that is not to say, of course, there was no such storage at the time the enforcement notice was issued.
11. At the Hearing I asked the Council witness whether the Council had issued a Tree Replacement Notice (TRN) in addition to addressing the unauthorised felling of trees, subject to Tree Preservation Order (TPO) no 3, 2024, as a breach of planning control specified in the enforcement notice. I was told that this was not the case as a Tree Planting Schedule had been included within the enforcement notice.
12. Section 207 of the 1990 Act empowers the local planning authority to issue a Tree Replacement Notice if the duty to replace a felled TPO tree is not met. This duty arises automatically when a tree subject to a TPO is removed. The legal power to enforce tree replacement is specifically and exclusively provided for under s207, not the general planning enforcement provisions. Accordingly, on this matter, the Council would need to issue a separate TRN to secure the replacement planting, and this has to be served within four years of the unlawful works being carried out.
13. Accordingly, I shall correct the enforcement notice with the deletion of Requirement (xiii).
14. The various compliance periods, specified in the Requirements section of the enforcement notice do not include the standard wording 'within...of the date the notice takes effect'. As it is clear, though, to the recipient what the notice requires for and when – this omission was not raised by the appellant – the parties would not be prejudiced by the enforcement notice being amended with the insertion of this wording in order to clarify matters.
15. Also, requirement (vi) which refers to the removal of all domestic paraphernalia from the land does not stipulate any time period. However, given that this breach is sandwiched between other remedial steps where the compliance period is specified as one month I shall further amend the notice, accordingly.

The appeal on ground (c)

16. An appeal under ground (c) is that the appellant is of the view that the benefit of planning permission is not required for the specified breach of control, or elements thereof. Here, the appellant makes the point that any brick walls,

entrance gates and close boarded fencing under 2m in height would be permitted by way of the Town and Country Planning (General Permitted Development) (England) (Order) 2015, as amended (GPDO).

17. Class A, Part 2 of Schedule 2 to the GPDO permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure subject to certain limitations. Paragraph A1 thereof states that such development is not permitted by Class A if the height of the enclosure adjacent to a highway used by vehicular traffic would, after carrying out the development, exceed one metre above ground level.
18. The question to be asked is whether the brick wall, entrance gates and close boarded fencing referred to are adjacent to Green Lane, the highway. There is no definition of the word 'adjacent' within the GPDO but it is defined in the dictionary as 'sharing a boundary' or touching each other physically, or continuous. However, case law shows that the meaning of 'adjacent' in the context of the GPDO does not equate to 'contiguous' or 'abutting'. Relevant case law is by way of the judgement in *Simmons v SSE and Rochdale* [1981] which considered that gates and their associated structures can be set back from a highway but still be adjacent to it.
19. The assessment of what constitutes 'adjacent' must therefore amount to a question of fact and degree, and falls to be assessed in relation to the particular circumstances involved.
20. Accordingly, the appeal on ground (c) succeeds, but only insofar as any boundary enclosure which exceeds one metre in height can be reasonably considered as not adjacent to the highway. If so, as mentioned, the enclosure can extend to a maximum height of two metres.

Appeal A - the appeal on ground (a), the deemed planning application (DPA) and Appeal B

Main Issues

21. The main issues arising from the DPA are:

- 1) the need for, and provision of, gypsy and traveller sites within the Tandridge District Council area;
- 2) whether the occupants can be considered as gypsies and travellers, by way of the December 2024 PPTS definition;
- 3) whether the site can be considered as 'Grey Belt' within the Green Belt and, if not, the effect of the development on the openness of the Green Belt;
- 4) the effect of the development on the character and appearance of the surrounding area, along with biodiversity; and
- 5) the effect of the development on local flood risk.

Need and provision

22. Policy CSP 9 of the Council's Core Strategy (CS), adopted in 2008, is the starting point for assessing the merits and impacts of developing land for gypsy and traveller purposes. The policy says that the Council will make provision through a Site Allocations Development Plan Document (SADPD). However,

crucially, the SADPD never materialised and, therefore, in the absence of any allocated sites planning applications are assessed on a case by case basis. Accordingly, the Council has been reliant on windfall sites in this regard.

23. The recent GTAA identified a need for 81 new gypsy pitches over the period 2025 to 2029. Due to the level of need identified and the lack of supply of available pitches a Pitch Delivery Assessment (PDA) was also then carried out in an attempt to meet the need. This aims to identify and assess potential sites for pitches and focusses on determining the suitability, availability, and achievability of existing sites and the scope for intensification or expansion of existing sites. The PDA suggests that 43% of all need for the plan period to 2044 could potentially be met. When discounting travelling show-people, this rises to 64% for gypsies and travellers, specifically.
24. The PDA resulted in an overall total residual need of 120 pitches/plots for persons meeting the 2024 definition over the plan period, but is reduced when accounting for gypsy and traveller households.
25. Nonetheless, policy CSP 9 has failed to achieve its purpose. That said, though, the Council takes the view that the PDA findings along with planning permissions granted for related development suggest that a supply of deliverable pitches in excess of 5 years can be demonstrated. However, the PPTS says that for pitches to be considered deliverable they should be available now, have a suitable location, and there should be a reasonable prospect that development can be delivered within the 5 year period.
26. In the circumstances the Council has drawn up an interim policy position statement (IPPS) to assist in the determination of gypsy and traveller development proposals which, it is said, should be used alongside the PPTS, the Framework and policy CSP 9.
27. The purpose of the IPPS is to establish a consistent approach for the determination of planning applications for temporary and permanent pitches for gypsy and traveller accommodation purposes throughout the Tandridge District Council area. Its requirements are standard which, amongst other things, refer to harm to the character and appearance of the local area, an over-concentration of sites in any particular area, and the number of pitches being appropriate to site size and availability of infrastructure and services.
28. ORS, who carried out the GTAA has identified an adjusted 5 year supply target of 80 pitches to 2029/30 for gypsies and travellers that meet the 2024 PPTS definition, places an emphasis on deliverability rather than site allocations. This is made up of some 53 pitches identified through the PDA, 18 pitches by way of new planning applications made since the baseline date of the GTAA, and 11 pitches with planning permission on a public site, which the Council says are currently 'mothballed', and also from 12 pitches currently occupied which, although permitted, are in breach of planning conditions imposed.
29. The Council also drew my attention to sites within the Tandridge District area where planning permission has recently been granted for gypsy and traveller purposes, but the evidence does not necessarily give certainty to the Council's view that it can currently demonstrate the availability of land in excess of a 5 year supply of pitches deliverable within the Tandridge District area.

30. Taking all the evidence into account on this matter I consider that the expected deliverability to achieve a five year land supply is an aspiration which the Council is hoping can be met by placing much less reliance on policy CSP 9 which has become increasingly ineffectual. It has been necessary to bring in the IPPS because the circumstances when the Core Strategy was adopted in 2008 are now very different with contemporary guidance set out in the Framework and the PPTS.
31. The GTAA was also commissioned as an update to inform the emerging replacement Local Plan, which was aborted. As a result the new Local Plan is being compiled, yet the Council's latest Local Development Scheme indicates that adoption is not expected until at least July 2028. This date might be ambitious but at least by then the effectiveness of the IPPS in terms of the deliverability of land for gypsy and traveller purposes will have been monitored and measured from the empirical evidence arising.
32. In summary, there has been a failure of policy in that CS policy CSP 9 has not achieved its purpose and there has been a clear unmet need in this regard. With a new Local Plan now being prepared, albeit at an early stage, the Council is now attempting to take measures to reverse this position. Currently, though I am not fully convinced as to whether the level of deliverability expected by the Council will fully bear fruit. Sites must be both suitable and deliverable, and the evidence for such is not yet there.
33. My findings on this main issue will be weighed in the planning balance with the other substantive issues and material considerations that have to be factored in.

Occupation of site

34. At the time of my site visit there were three caravans/mobile homes on the land and it had been indicated to me at the Hearing that one caravan had recently been removed. That said, the appellant's agent had referred to four separate plots within the site, two of which would have included family accommodation for gypsies/travellers, with dependent children present. Such a level of occupation, though, exceeds that applied for under the unsuccessful planning application ref. TA/2023/451; the subject of the current s78 appeal.
35. Notwithstanding this, there is also some confusion as to who has been occupying the site, and whether they have gypsy/traveller status, due to an advertisement having been placed on Facebook in May 2025 indicating the availability of three caravans for rent at the site.
36. At my site visit I was only able to inspect two of the three caravans on the land. It was not possible to access the largest due to a problem with the lock, and the others did not appear to be currently occupied.
37. No Statutory Declarations or independent evidence to corroborate the appellant's claims as to who has, or who is, intended to occupy the site have been produced and, in view of this, there is uncertainty as to the appellant's claims in this regard.
38. Accordingly, I do not find the appellant's evidence on this main issue particularly compelling.

Green Belt or Grey Belt

39. The site lies within the Green Belt. For the purposes of the Framework inappropriate development, such as the use of land for residential purposes in the Green Belt is, by definition, harmful thereto, and should not be permitted unless 'very special circumstances' (VSC) exist to outweigh the harm caused. Accordingly, paragraph 153 of the Framework indicates that, when considering planning applications, substantial weight should be given to any harm to the Green Belt.
40. The Framework advises at Paragraph 154 that development in the Green Belt is inappropriate unless one of the specified exceptions applies. None of the exceptions listed apply in this case. However, Paragraph 155 goes on to set out instances where development in the Green Belt should not be regarded as inappropriate; in particular, and in certain circumstances, utilising Grey Belt land – a recent concept. Where this applies, there must also be a demonstrable unmet need for the type of development proposed – the development here being a case in point - and must be in a sustainable location.
41. Grey belt is defined in the glossary to the Framework as land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes in paragraph 143. *'Grey belt excludes land where the application of the policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development'*.
42. The appellant argues that this is a Grey Belt site, whilst the Council takes a contrary view.
43. Although it is understood that, most recently, the land was used as a paddock, the Council witness mentioned that, previous to this, the land had been used as residential garden. As the Council considers the site to lie within the open countryside, and with regard to the judgement of *Dartford BC v SSCLG* [2017] EWCA Civ 141, it would likely be categorised as previously developed land (PDL) unlike residential gardens within built-up areas.
44. Should a site, therefore, not be of high environmental value, if it were inconsistent with local character, and would make effective and efficient use of land, the proposal might be considered as Grey Belt, and not inappropriate development within the Green Belt.
45. However, Grey Belt does not include land that benefits from strong environmental protections or planning restrictions, where national policies provide a clear reason for restricting development. This includes areas that are subject to a high probability of flooding, including land falling within Flood Risk Zones 2 or 3. Such a designation would override possible Grey Belt status, meaning that even if land meets the Grey Belt definition in terms of its contribution to Green Belt purposes, it cannot be considered suitable for development due to an overriding national planning constraint such as this.
46. Flood risk is a separate environmental consideration, and is an obstacle to development. A flood-prone area would still be considered as Green Belt land, but flood risk – one of the considerations that could prevent or restrict development - would likely prevent it from being classified as Grey Belt or make any development proposals there difficult to get approved.

47. At the Hearing it was agreed that that approximately 41% of the appeal site is situated within Flood Risk Zone 2, with the remainder within Flood Risk Zone 1. Paragraph 170 of the National Planning Policy Framework (the Framework) indicates that, in areas at high risk of flooding, inappropriate development should be avoided as this should, instead, be directed away from such areas but, where development is necessary, it should be made safe without increasing flood risk elsewhere.
48. It appears that no meaningful site specific Flood Risk Assessment (FRA) exercise was undertaken and, therefore, given the factors involved, I must agree with the Council that the appeal site cannot be considered as Grey Belt, and the development at issue must, instead, be considered as inappropriate within the Green Belt.
49. Notwithstanding my findings on this issue the key question is not whether some large, previously defined Green Belt area fits the new Grey Belt definition. Accordingly, the focus will not be on the broader area within which the site sits, but will be on the specific site at issue. Even if I had considered the land as Grey Belt, although this might remove some traditional barriers to development, it does not, of course, guarantee planning permission. Each proposal must be assessed individually and with regard to the planning merits and impacts arising.
50. For instance, in terms of material considerations, all Grey Belt development should be in a sustainable location, and must preserve local character and biodiversity. Although certain interested parties have raised the matter of sustainability the Council has not put forward any objections to the development on this issue. However, the development's effects on local character and biodiversity are pronounced and are discussed below.

Openness of Green Belt land

51. Openness in terms of the Green Belt, which is recognised as relating to the absence of built form, can have a spatial as well as a visual aspect, although the Supreme Court has held that a consideration of openness is essentially a matter for the decision maker on a case by case basis.
52. To illustrate, in the judgement of *John Turner v Secretary of State for Communities and Local Government*, heard in the Court of Appeal, it was said that the word 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if development occurs and also factors relevant to the visual impact on the aspect of openness which the Green Belt presents. A 2020 judgement (*Samuel Smith Old Brewery and others v North Yorkshire CC*) concluded that matters relevant to openness in any particular case are a matter of planning assessment, so whilst visual impact can be relevant to openness it is not necessarily relevant in all cases.
53. The site previously had a number of trees, some subject to a Tree Preservation Order. This changed considerably when the appellant arranged for the land to be cleared with a number of trees then being felled. A pond at the site was also filled in and a significant amount of hardstanding was then laid. As a consequence, the land was raised, and then mobile homes were brought onto the land. The site has openness now, but this is due to it being bereft of its

vegetation and features, and it now has taken on a spartan feel. This sterile appearance is completely at odds with its former rural character.

54. Further, the land has been developed, both in terms of its use and also the placing of permanent buildings on the land, in addition to the caravans. This, along with domestic paraphernalia and vehicular movements, means that the openness of the Green Belt has been severely compromised.
55. I must therefore conclude that, in both spatial and visual terms, the development has adversely impacted on the Green Belt's openness, contrary to relevant advice within the Framework and policy DP10 of the Tandridge Local Plan: Part 2 – Detailed Policies (LP).

Character and appearance, plus Biodiversity

56. The site lies outside the District's development boundaries. As mentioned, following its sale in 2023 it was then largely cleared of its natural features and vegetation to ostensibly prepare the land to be used by gypsies and travellers. Interested parties spoke at the Hearing to describe the loss of these features and the visual change that has taken place.
57. The immediate area has a semi-rural character, with the appeal site lying close to the junction with the B2037 which crosses the M23, nearby. Green Lane itself is rather narrow but serves as the access to a number of scattered residential properties set back from the lane, such as Farfield. Further down the lane, off its east side, are also other caravan sites which appear to be well established.
58. Paragraph 26 of the PPTS says that gypsy and traveller sites in rural areas should respect the scale of, and should not dominate, the nearest settled community, and avoid placing an undue pressure on local infrastructure.
59. In this regard, Documents 1 and 2, produced at the Hearing by a local resident, and labelled so, show a proliferation of such occupation along Green Lane, which would appear disproportionate to the number of local dwellings. Accompanying aerial photographs illustrate the incidence of such. This evidence was not challenged by the appellant and, to me, it is indicative of increasing cumulative impact.
60. A requirement in both CS policy CSP 9 and the IPPS is that the development would not significantly harm the visual amenities and character of the area. LP policy DP19 also says that nature conservation should be protected. This common proviso has clearly been violated with such a substantial amount of vegetation having been lost. In this regard I sympathise with the residents who made representations objecting to the development, both in writing and at the Hearing. This illustrated the substantial visual changes that have taken place since the appellants moved onto the land. Compared to what was described as an attractive landscape they see this as a deleterious development.
61. At my site I visited Farfield and, accompanied by its owner and representatives of both main parties, walked around its garden. The raising of the appeal site land and the significant loss of trees put the appeal site in context and clearly demonstrated that the unauthorised works have had a serious detrimental effect on both local character and appearance. Moreover, it seems obvious, both from the photographs produced and my site visit, that the expansive area

of hardstanding laid has given rise to surface water drainage problems. Indeed, the owner indicated that this has necessitated the regular operation of an electric flood pump.

62. This appears to be at odds with the documents provided in relation to Appeal B whereby, at the time the application was made, it was said that, with the use of permeable gravel paving, surface water drainage will be reduced significantly.
63. As a result of a Written Ministerial Statement Intentional unauthorised development (IUD) is a material consideration that should be weighed in the determination of planning applications and appeals. The development was obviously done in the knowledge that planning permission was required; in fact, an application for the change of use of the land had been made some two weeks before the clearance works began, yet the development proceeded regardless, and is clearly illustrated in photographs produced at the Hearing.
64. In the circumstances, I attach some significant weight to the IUD undertaken which, given its extent and I must consider the degree of land clearance undertaken to facilitate the use, was an act of environmental vandalism.
65. CS policy CSP 17 and DP policy DP19 require that development proposals should provide for the enhancement of biodiversity. This is consistent with the Framework which states that planning decisions should provide net gains for biodiversity. The Council says that it is currently actively working on Biodiversity Net Gain (BNG) as part of its planning and development processes to enhance biodiversity within its area; BNG being integral to the planning process and the assessment of proposals.
66. The Council says that a Preliminary Ecological Survey was made which, prior to the site's clearance, showed the site comprising tussocky grassland, scrub, hedgerows and scattered mature trees. Robert Hutchinson of the Surrey Wildlife Trust spoke at the Hearing and made the point that the habitat value recorded at the time of the survey did not provide an accurate baseline given his understanding that the site was, until the time it was cleared, inhabited by protected species, including great crested newts.
67. In this particular instance, due to the removal of their habitat and the current condition of the land, I must question the effectiveness of any planning condition that could be imposed on the necessary planning permission. Although the appellant is of the view that the site could benefit from biodiversity gain by way of a wide-ranging condition I would disagree as, to my mind, it is a case of after the horse has bolted.
68. In the circumstances I conclude that the development is harmful to both the character and appearance of the area and also local biodiversity, and it materially conflicts with the aims and requirements of CS policy CSP 17 and LP policies DP7 and DP19, along with relevant advice from the Framework.

Flood Risk

69. As mentioned, it was agreed at the Hearing that, although some 59% of the appeal site lies within Flood Risk Zone 1; the remainder falls within Flood Risk Zone 2, and the Council comments that this is part of a more extensive area of Flood Risk in the locality.

70. LP policy DP21 advises that proposals should seek to secure opportunities to reduce both the cause and impact of flooding. Accordingly, the policy goes on to say that development proposed within either Flood Risk Zones 2 and 3 will only be permitted where, amongst other things, the standard sequential test and, where appropriate, the exception test have been applied and demonstrated as being appropriate through a FRA. As mentioned, no site specific FRA of any real substance has seemingly been carried out in this instance.
71. Further, in terms of surface water drainage, despite the problems now suffered on neighbouring land in this connection, the appellant, in his representations, makes a rather sweeping and unsubstantiated statement that, due to the topography of the site, there will be no risk of flooding from groundwater.
72. By way of the evidence I must conclude that, in the absence of a FRA prepared by specialist consultants, the development cannot be properly assessed and is thereby contrary to both LP policy DP21 and paragraph 170 of the Framework, not least due to the adverse effect on the neighbouring land.

Other Considerations

Public Sector Equality Duty (PSED), Human Rights and the Best Interests of the Child

73. In instances where unauthorised gypsy and traveller accommodation is at issue and targeted by planning enforcement action I am required to have regard to persons with protected characteristics when applying the duties under s49 of the Equality Act 2010. There is also a positive duty by virtue of Article 8 of the Human Rights Act to facilitate the traditional and nomadic way of life of travellers. However, in considering the proportionality of a requirement to leave one's home it is relevant to assess whether or not the home was established unlawfully.
74. Article 8 of the European Convention on Human Rights provides that there should be respect for private and family life, home and correspondence. In this regard there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and necessary, amongst other things, for the protection of the rights and freedoms of others.
75. Accordingly, if Article 8 is engaged, then interference with those rights can be justified by the Council if it is for a legitimate aim, in accordance with the law and necessary in the public interest. In this particular instance I am firmly of the view – and I have illustrated why – the Council's remedial actions serve a clear and justifiable planning purpose.
76. Article 3(1) of the United Nations Conventions on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. Obviously, a roadside existence should be avoided but, although the appellant says that children would be accommodated at the site, I was not provided with any convincing evidence or detailed and independent confirmation of such.
77. Accordingly, on the basis of the evidence adduced, and its obvious limitations there is nothing compelling to suggest that the above criteria directly apply in this instance.

Planning Balance

78. Whilst I attach substantial weight to the absence of a five year land supply for gypsy and traveller purposes in the Tandridge area there are also other factors which must be considered here. Firstly, it is not certain – and no compelling information was put forward by the appellant, nor statutory declarations sworn by persons involved – that the occupiers, or intended occupiers, hold gypsy and traveller status, or that their respective dependents reside here.
79. Given my findings I have concluded that the development represents inappropriate development within the Green Belt for the purposes of the Framework and, from my assessment of the various other main issues and material considerations, no VSC have been demonstrated. The visual impact on the character and appearance of the surrounding area, including the harm to biodiversity and flood risk, weigh heavily against the development.
80. Notwithstanding the above, even if I was considering allowing the appeal, granting planning permission subject to conditions, whereby retrospectively worded planning conditions might be considered for imposition, raises severe doubts as to the effectiveness of such given the clear lack of regard for the natural features and character of the surroundings due to the substantial degree of IUD carried out.
81. A key test for any planning condition is that it must be enforceable and reasonable in all aspects. Imposing conditions that are likely to be ignored or cannot reasonably be enforced – a potential cat and mouse situation would be less than satisfactory – damages public confidence in the planning system. Notwithstanding this, though, given the decimated state of the land now compared to that of its previous verdant appearance, the landscaping measures offered by the appellant, including boundary hedgerows, planting a wildflower mix, log piles and nest boxes would hardly mitigate the damage already done.
82. Further, in terms of the flood risk issue it could not be assumed that a condition requiring a FRA could work because it could not overcome the possibility that any FRA showing the risk could be abated and thereafter implemented.
83. Accordingly, notwithstanding the above, taking all factors into account, I must conclude that the adverse effects of granting planning permission significantly and demonstrably outweigh the benefits. In this regard, I acknowledge that a temporary planning permission for gypsy and traveller accommodation was allowed on appeal (*APP/M3645/C/24/3349392*) at a nearby site off Green Lane, earlier this year. However, the circumstances there were somewhat different in that the Council had accepted that the site could be termed as Grey Belt land and there was no flood risk issue consequent upon the development.
84. In contrast, given the issues arising from the current appeal, I am not of the view that a temporary permission, by way of a time limitation condition, is appropriate here. Also, as it is not clear in this instance who any planning permission would realistically provide on-site benefits for, and why, any permission made personal to the appellant is similarly not a justifiable option.
85. Although I find that policy CSP 9 of the Tandridge District Core Strategy (CS) has been less than effective in enabling the Council to be able to demonstrate a

5 year land supply of sites for gypsy and traveller purposes, the development is in particular conflict with policies DP10, DP21, DP19 and DP7 of the Tandridge Local Plan Part 2 – Detailed Policies (LP) and policy CSP 17 of and, moreover, the development plan as a whole.

86. I have had regard to previous appeal decision letters produced by both main parties but, as each development is site sensitive and subject to particular and individual circumstances, direct parallels are not easily drawn. Accordingly, these have not affected my conclusions. Whilst the visual material and oral contributions made by interested parties similarly did not alter my conclusions, they did, though, reinforce my findings gained from the evidence as a whole and my site visit observations.
87. In summary, there is little to convince me that there are any clear material considerations which could reasonably override the resultant harm and fundamental policy objections I have identified.
88. For the reasons given above I conclude that both Appeals A and B should be dismissed.

Appeal A (other grounds)

The appeal on ground (f)

89. An appeal under ground (f) is that the required steps in the enforcement notice go beyond what is necessary to remedy the degree of harm caused by the development. The appellant's appeal on this ground was that it was unreasonable to require for the removal of all caravans from the site. However, at the Hearing the appellant withdrew the appeal on this ground.

The appeal on ground (g)

90. An appeal on ground (g) is that the periods for compliance set out in the enforcement notice are unreasonably short. The appellant, in citing the need to find alternative sites, to re-plant trees and carry out relevant surveys, requests a minimum period of 18 months. However, given my doubts as to the actual intention to use the land for gypsy and traveller purposes, and that the tree planting schedule no longer forms part of the enforcement notice, I am satisfied that the various compliance periods stipulated are proportionate and reasonable in the circumstances.
91. Accordingly, the appeal under ground (g) does not succeed.

Timothy C King

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Whale of Counsel (instructed by Philip Rowe)

Philip Rowe (agent for the appellant)

FOR THE LOCAL PLANNING AUTHORITY:

Mark O'Brien O'Reilly of Counsel (instructed by Tandridge District Council)

Cliff Thurlow (Planning Officer)

Robert Hutchinson, of Surrey Wildlife Trust

INTERESTED PARTIES

Philip Cator

Jeannie Ryan

Cllr Catherine Sayer