

Appeal Decision

Hearing held on 2 September 2025

Site visit made on 2 September 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 20 November 2025

Appeal Ref: APP/C3620/C/24/3351897

Land known as Riverdale Paddocks, Capel Road, Rusper, Surrey, RH12 4PZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Joe Maloney against an enforcement notice issued by Mole Valley District Council.
 - The enforcement notice, numbered 2023/0031/ENF, was issued on 22 August 2024.
 - The breach of planning control as alleged in the notice is, without planning permission:
 - a) The formation of a vehicular access to the public highway
 - b) The erection of a brick wall and entrance gates
 - c) The formation of hard surfaced areas, and
 - d) The erection of pole mounted external lighting and CCTV cameras.
 - The requirements of the notice are:
 - i) Demolish and remove from the land the brick wall and entrance gates
 - ii) Remove from the land the pole mounted external lighting and CCTV cameras
 - iii) Remove the vehicular access to the public highway
 - iv) Remove the hard surfaced areas
 - v) Following compliance with steps (1) to (4), remove all resultant debris and unused materials from the land to an authorised place of disposal.
 - The period for compliance with the requirements is six (6) months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld with corrections and variations as set out in Formal Decision below

Procedural Matters

1. In the interests of clarity and conciseness, I have summarised the breach of planning control alleged in the notice and the requirements to comply with the notice in the header above. In particular, the notice refers to the location of the individual elements of the breach of planning control by reference to coloured notations on the plan attached to the notice. The requirements of the notice are expressed in the same way. It is axiomatic that this Decision must be read in conjunction with the Enforcement Notice itself.
2. As originally submitted, the appeal included an appeal on ground (c) as set out in Section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act) namely that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. However, that ground of appeal was withdrawn at the Hearing.

3. The planning policies cited in the reasons for issuing the notice are from the Mole Valley Core Strategy and the Mole Valley Local Plan, which were part of the development plan for the area at the time the notice issued. Shortly after that, the Council adopted the Mole Valley Local Plan 2020-2039, which completely superseded those earlier documents. The policies in the new Local Plan were discussed at the Hearing, and I have determined this appeal having regard to the policies in the new Local Plan.

The Enforcement Notice

4. Paragraph 4(i) of the notice states that it appears to the Council that the breaches of planning control alleged in the notice have occurred within the last ten years. All the breaches of planning control alleged in the notice relate to operational development. No material change of use of the land is alleged in the notice.
5. The time limits for taking enforcement action are set out in section 171B of the 1990 Act, as amended by The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024). These provide that operational development becomes immune from enforcement if no action is taken within 10 years of substantial completion for a breach of planning control where substantial completion took place on or after 25 April 2024, or within 4 years of substantial completion for a breach of planning control where substantial completion took place before 25 April 2024.
6. The notice was issued on 22 August 2024. It is no part of the Council's case that substantial completion took place on or after 25 April 2024. Consequently, in order to succeed on this ground, the appellants must show that the development was substantially complete on the date four years before the notice was issued: in other words, that the development was substantially complete on 22 August 2020. I shall correct the notice to refer to a period of four years.
7. The requirement at paragraph 5(v) of the notice is to remove all resultant debris and unused materials from the land *to an authorised place of disposal* (emphasis added). The highlighted element of that requirement is excessive: all that is required to comply with the notice is to remove all resultant debris and unused materials from the land. I shall vary the notice accordingly.
8. Section 176(1) of the 1990 Act provides that an enforcement notice may be corrected or varied if there is no injustice to the appellant or the local planning authority. I am satisfied that no injustice would be caused by correcting and varying the notice in the above respects.

The appeal on ground (d)

9. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. The test in this regard is the balance of probability and the burden of proof is on the appellant. The appeal on this ground is made only in respect of the formation of a vehicular access to the public highway and the formation of hard surfaced areas as alleged in the notice.

10. The appellant has provided a Statutory Declaration dated 20 February 2025, with Appendices. The appellant's Statutory Declaration was witnessed by and signed in the presence of a solicitor, and I am satisfied that it is properly made in accordance with the Statutory Declarations Act 1835. I accordingly afford the appellant's Statutory Declaration due weight.
11. The appellant's Statutory Declaration states that the entrance was created by a Mr Mark Maloney in May 2020 and was "certainly finished" by 1 June 2020¹. The appellant's Statutory Declaration is supported by photographs attached in Appendix 2. A photograph taken in June 2019 shows the location in which the access was formed covered by vegetation. It is clear from that photograph that the access had not been constructed on that date.
12. A photograph taken in August 2021 appears to show the access during construction. In any event, the access appears to be unfinished in that photograph and of a different shape to the access as completed (and at the time of my site visit). The material from the surface of the access is constructed also appears to be different in that photograph to the access as completed. Both of these factors suggest that the access was not substantially complete at the time the photograph was taken. Consequently, on the appellant's own evidence, the vehicular access was not substantially complete on 25 April 2020.
13. My conclusion in this respect is reinforced by aerial photographs embedded within the Council's evidence. In the aerial photograph dated 15 April 2020 the area where the access is located is covered by vegetation. This is entirely consistent with the appellant's photograph taken in 2019.
14. An aerial photograph taken a little over a year later, on 9 June 2021, shows the vegetation to have been removed and a vehicular access created, albeit the shape of that access is different to that now on site. These photographs are entirely consistent with the appellant's Statutory Declaration, insofar as they show the access being created at some point between 15 April 2020 and 9 June 2021 and that the shape of the access is not the same as when substantially completed.
15. Also embedded with the Council's evidence is a photograph taken at ground level on 22 October 2020 showing the area adjacent to the eastern boundary of the appeal site. It is apparent from that photograph that this area was laid to grass on that date. It follows that, on the balance of probability, the area of hardstanding now in that position was created at some point after that photograph was taken, such that the hardstanding could not have been substantially complete on 25 April 2024.
16. The appellant has provided no substantive evidence on this ground of appeal in relation to a second area of hard surface that is alleged in the notice.
17. This is not a situation where the local planning authority has no evidence of its own to contradict that of the appellant or make his version of events less than probable. On the contrary, I find that the appellant's evidence is not sufficiently precise and unambiguous to counter the photographic evidence produced by the Council. The appellant has therefore not discharged the burden that falls upon him.

¹ As I understand it, Mr Mark Maloney was the previous owner of the land.

18. I therefore conclude that, on the balance of probability, on the date on which the notice was issued the Council was in a position to take enforcement action in respect of the breach of planning control constituted by the matters stated in the notice. Accordingly, the appeal on ground (d) fails.

The appeal on ground (a) and the deemed planning application

19. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issue raised is the effect of the development, if any, on the character and appearance of the area.
20. The appeal site is located on the north side of Capel Lane within open countryside beyond the Green Belt. The character of the surrounding area comprises large areas of woodland and small, irregular shaped fields enclosed by woodland. There is some built development fronting onto Capel Lane but this is widely spaced and separated by long stretches of open fields and patches of woodland. Where built development does occur, it tends to be in agricultural or industrial use and, whilst in some cases the buildings are substantial, they are typically confined to the road frontage. To the rear of that, the surrounding area is largely undeveloped and the landscape is dominated by open fields and woodland.
21. The appellant acknowledges that the application site is located within the countryside but considers that the designation of countryside is of the lower level in the hierarchy of designations such as, for example, National Landscapes. However, paragraph 187 of the National Planning Policy Framework (Framework) indicates that planning policies and decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside. I note that policies in the development plan adopt the same approach and provide that the rural character and largely undeveloped nature of the countryside will be protected for its own sake.
22. Overall, the area surrounding the appeal site is an attractive rural landscape with an overtly rural character. Residential development is limited and, whilst there are some examples of caravans outside of the appeal site itself, caravans are not a dominant feature of the wider landscape in which the appeal site is located.
23. In that context, I recognise that in August 2015 conditional planning permission was granted on appeal for the change of use of land for the stationing of up to 5 caravans for residential occupation with associated development (Council Ref: MO/2015/0768). Planning permission was then granted in November 2017 for the siting of 7 No. additional caravans, together with additional utility buildings and associated hard standing (Council Ref: MO/2017/0803). Finally, in December 2019, conditional planning permission was granted for the Change of use of land to provide 2 No. additional pitches with associated hard standing, utility blocks, package treatment plant and fencing on land immediately to the west of the current appeal site (MO/2019/0369).

24. It is my understanding that the above planning permissions represent the totality of the caravans/pitched with planning permission on the site. Other caravans stationed on the site either do not have the benefit of planning permission and/or are subject to Breach of Condition Notices. This amounts to a total of 12 caravans. This total represents the baseline for my consideration of the development on the appeal site itself. Consequently, whilst the appellant is correct to point out that is an established Gypsy and Traveller site that covers an extensive area of land with a neighbouring Gypsy Site directly adjacent, it is not correct to say that this provides the setting for the development subject to this appeal. It is necessary to consider the development in its wider setting of an overtly rural landscape.
25. Within this overtly rural landscape, the provision of a vehicular access with the associated brick wall and entrance gates represents the introduction of an urban/suburban feature that is wholly incongruous in and out of keeping with its surroundings. I fully recognise that there is an existing vehicular access to the site which is not the subject of enforcement action. That vehicular access also features associated brick wall and entrance gates that are very similar in character and appearance to those subject to the enforcement notice. However, the provision of a second vehicular access and brick wall/entrance gates only serves to compound the urbanisation resulting from the first access to a point beyond the capacity of the rural landscape to successfully assimilate.
26. The appellant has referred me to other examples of vehicular accesses with walls/fences and entrance gates in the vicinity of the appeal site. I was able to view some of those examples as part of my site visit. In particular, I note that the neighbouring travellers site also has large residential style gates and hard surfacing at the entrance along with residential style fencing.
27. I fully recognise that all the examples to which I have been referred are very similar to the development subject to the enforcement notice, insofar as they all have an urban/suburban character and appearance and to a greater or lesser extent all have an urbanising effect on the character and appearance of the locality. In that respect, they each harm the rural character and appearance of the area to some degree. The neighbouring travellers site is a case in point. The large residential style gates and the style of fencing are incongruous in and harmful to the overtly rural character and appearance of the surrounding area.
28. However, the salient point is that these examples are relatively few in number and are spaced widely apart. As a result, they do not fundamentally change or undermine the rural character and appearance of the locality, which therefore retains its overtly rural character. As such, the examples of other vehicular accesses and entrance gates in the vicinity of the appeal site do not serve as a precedent for or justify the development subject to the enforcement notice.
29. The same harm to the rural character the area applies, albeit to a lesser degree, to the areas of hardstanding. These areas of hardstanding are (in most cases) directly associated with a residential use of the land rather than, for example, an agricultural use. In that context, the areas of hardstanding are incongruous within this wider rural context and for that reason are harmful to character and appearance of the area.

30. The pole mounted external lighting and CCTV cameras serve to reinforce the urban/suburban appearance of the site. Whilst these features are sometimes to be found on larger buildings in a rural setting, in this case that is not the situation. The pole mounted external lighting and CCTV cameras are directly associated with a residential use of the land. In that context, by reason of their height, design and function, they are an incongruous addition within this overtly rural landscape.
31. I conclude that the breach of planning control alleged in notice unacceptably harms the character and appearance of the area. I therefore conclude that the development is contrary to Policies EN2, EN4 and EN8 of the Mole Valley Local Plan 2020-2039 which, amongst other things, encourages developments that are sensitive to their landscape context.

Other considerations

32. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. Having regard to the above, I conclude that the breach of planning control alleged in the notice fails to comply with the development plan when read as a whole. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
33. Policy H5 of the Local Plan specifically relates to accommodation for gypsies, travellers and travelling showpeople. This policy post-dates the issuing the Enforcement Notice but is referred to by the appellant in his Appeal Statement. On my reading, Policy H5 of the Local Plan primarily relates to the provision of new sites as opposed to operational development associated with existing sites. For that reason, I do not consider this policy to be directly relevant to this appeal.
34. I accept that external lighting is reasonably required so that occupiers of the site may move around safely during the hours of darkness. However, there is no evidence before me to suggest that external lighting could be provided in a form that is less harmful to the rural character of the surrounding area: for example, at ground level.
35. I have had regard to my responsibilities under the Public Sector Equality Duty (PSED). In that respect, there is an argument that the closure of the vehicular access would prevent or seriously hinder the occupants of the site in carrying on their nomadic habit of life. I noted at my site visit that there is an existing pedestrian link between the part of the site served by the vehicular access subject to the enforcement notice and the wider site that is served by the existing vehicular access. Consequently, whilst there may need to upgrade the internal link between the two parts of the site and it would be less convenient for the site to be served by only one vehicular access, the ability of the occupiers of the site to carry on their nomadic habit of life would not be entirely compromised. Moreover, in the absence of any evidence to the contrary, I do not perceive there to be an overriding Health & Safety imperative to have more than one vehicular access in terms of escape in the event of fire or other emergency.

36. Similarly, there is no cogent evidence before me that the closure of the vehicular required by the Enforcement Notice would interfere with their rights under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA). In particular, I considered their rights under Article 8 (right for respect for private and family life, home and correspondence) and Article 1 of the First Protocol (right to respect to property), specifically in relation to the security of tools, vehicles and equipment stored on the site. In that context, the appellant explained that whilst he had not himself suffered from theft, some neighbours have had items stolen.
37. The best interests of the children residing on the site are at the forefront of my mind but there is nothing before me to suggest that these children would come to harm or be significantly disadvantaged by the closure of the vehicular access.
38. To the extent the appellant's rights under the HRA may be interfered with by the issuing of the Enforcement Notice, I have balanced the rights of the appellant and other occupiers of the site under the HRA against the public interest in compliance with the Enforcement Notice in terms of the harm the countryside resulting from the breach of planning control that is alleged. Having done so, I am satisfied that the Enforcement Notice is a proportionate response to the breach of planning control that has occurred.
39. I have considered whether the imposition of suitably worded conditions could overcome the harms that I have identified above and make the development acceptable in planning terms. However, in my view the harms identified are intrinsic to breach of planning control that has occurred and could not be overcome by the imposition of conditions.

Conclusion on the appeal on ground (a) and the deemed planning application

40. For the reasons set out above, the breach of planning control alleged in the notice is contrary to the development plan when read as a whole. Having weighed the factors in support of the development, I am not persuaded that there are any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan. Accordingly, I conclude that planning permission ought not to be granted for the matters stated in the notice.

The appeal on ground (f)

41. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements include removing; the vehicular access to the public highway; the brick wall and entrance gates; the hard surfaced areas; and the pole mounted external lighting and CCTV cameras. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.

42. The appellant maintains that, rather than close the access, alternative solutions to bring the access to acceptable format and appearance could be secured by condition, thus retaining the use for the occupants and to ensure the occupants can safely move in and around the site as well as ensuring there is sufficient and adequate access for emergency services. That is a matter that would properly fall to be considered under the appeal on ground (a) but, since it was raised in the context of the appeal on ground (f), I shall consider it here.
43. The difficulty with that argument is that there is not an acceptable scheme before me for which planning permission could be granted subject to conditions. Moreover, nothing short of removing the vehicular access in its entirety (together with the wall and entrance gates) would achieve the purpose of the notice.
44. The same applies to lowering the height of the wall/entrance gate and lowering the height of the lighting columns/CCTV cameras. Similarly, fitting the lights with hoods to reduce glare/light spillage would not achieve the purpose of the notice.
45. I have considered whether there are any other suitable alternatives to the requirements stated in the notice which would achieve the purpose of the notice with less cost or disruption to the appellant, but none are obvious to me. Consequently, the appeal on ground (f) fails.

The appeal on ground (g)

46. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is six (6) months. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with enforcement notice against the private interest bound up in the development subject to the notice.
47. The appellant contends that the occupants would need to carry out significant works and make alternative arrangements whilst at the same time managing day to day living. This could involve applying for alternative access arrangements and layouts to existing approved site plans, and there may be a need to reconsider where caravans are located on the site to ensure that they can be moved in the future. This may require further consents from the local planning authority. Furthermore, throughout the period when the works are taking place to comply with the notice, there is a need to ensure that the safety of the children and site occupants is safeguarded. Accordingly, it is requested that the period of compliance is extended to 18 months.
48. In considering the argument made by the appellant on this ground of appeal, I am mindful that the works required to comply with the notice would take place almost exclusively outside of the main body of the site and well removed from those parts of the site where caravans in residential occupation are stationed and activities associated with the residential occupation of the site take place. Access to the site would be available to the site at all times using the exiting vehicular access. I am therefore satisfied that there would be minimal disruption to the day-to-day activities

of the occupiers of the site, and that there would be only a minimal risk to the occupiers of the site (including the children residing on the site).

49. No further consents or permissions would need to be obtained before the remedial works could commence. The duration of the period of compliance with the requirements of the notice is therefore to be determined by how long it would take to physically complete the necessary works. The appellant confirmed at the Hearing that would take “a couple of months”.
50. In weighing the balance between public and private interests, for the reasons set out above I consider that the public interest in expeditious compliance with the requirements of the enforcement notice outweighs private interest in extending that period of compliance. I am, therefore, not persuaded that there is any need to extend the period for compliance with the notice and am satisfied the period of compliance of six months stated in the notice is a proportionate response to the breach of planning control that has occurred. Accordingly, the appeal on ground (g) fails.

Conclusion

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

Formal Decision

52. It is directed that the notice is corrected by:
- in Paragraph 4(i) of the notice, deleting the word ‘ten’ and substituting there the word ‘four’
53. It is directed that the notice is varied by:
- in paragraph 5(v) of the notice, deleting the words ‘to an authorised place of disposal’
54. Subject to the correction and variation, 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.

Paul Freer
INSPECTOR

APPEARANCES

On behalf of the appellant

Mr Stephen Whale

Of Counsel

Mr Tony White

White Planning & Enforcement

Mr Joe Maloney

Appellant

On behalf of the Local Planning Authority

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