



Appeal Decisions

Hearing held on 7 May & 1 October 2025

Accompanied site visit made on 6 May 2025

by Nick Fagan Bsc(Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2025

All the Appeals A-E below relate to Moate Farm, Stodmarsh Road, Canterbury, Kent, CT3 4AP

Appeal A Ref: APP/J2210/C/25/3358538

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Ms Philomena Brown against an enforcement notice issued by Canterbury City Council.
 - The enforcement notice EN/24/00010 was issued on 6 December 2024.
 - The breach of planning control as alleged in the notice is failure to comply with the condition below.
 - The development to which the permission relates is: 1. The stationing of caravans for residential use in excess of the numbers permitted by condition (5) of planning permission CA/01/00697 granted on appeal on 24 June 2008 (APP/J2210/A/03/1123213).
 - Condition 5 to permission CA/01/00697 granted on appeal on 24 June 2008 is in these terms: No more than 2 caravans including no more than 1 static caravan shall be stationed on Plot 1; no more than 3 caravans including no more than 2 static caravans shall be stationed on Plot 2; and no more than 3 caravans including no more than 1 static caravan shall be stationed on Plot 3. All of the caravans shall be defined in Part 1 of the Caravan Sites and Control of Development Act 1960 and section 13 of the Caravan Sites Act 1968 as amended.
 - The notice alleges that the condition has not been complied with in that more than this number of caravans are sited on the land.
 - The requirements of the notice are to: 1. Permanently remove from the Land the caravans stationed in excess of the number permitted under condition (5) of planning permission CA/01/00697 allowed on appeal APP/J2210/A/03/112321. 2. Permanently remove any paraphernalia on the land associated with the caravans described at paragraph 5.1 above.
 - The period for compliance with the requirements is: Three months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/J2210/C/25/3358540

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Tom Delaney against an enforcement notice issued by Canterbury City Council.
- The enforcement notice EN/24/00011 was issued on 6 December 2024.
- The breach of planning control as alleged in the notice is failure to comply with the condition below.
- The development to which the permission relates is: 1. The stationing of caravans for residential use in excess of the numbers permitted by condition (4) of planning permission CA/14/01255/FUL granted on 2 April 2015.
- Condition 4 of permission CA/14/01255/FUL granted on 2 April 2015 is in these terms: No more than 4 caravans including no more than 2 static caravans shall be stationed on the site. All of the caravans shall be defined in Part 1 of the Caravan Sites and Control of Development Act 1960 and section 13 of the Caravan Sites Act 1968 as amended.
- The notice alleges that the condition has not been complied with in that more than this number of caravans are sited on the land.
- The requirements of the notice are to: 1. Permanently remove from the Land the caravans stationed in excess of the number permitted under condition (4) of [sic] CA/14/00697. 2. Permanently remove

any paraphernalia on the land associated with the caravans described at paragraph 5.1 above. 3. Cease the operation of commercial activities taking place on the land at paragraph 3(2).

- The period for compliance with the requirements is: Three months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal C Ref: APP/J2210/C/25/3358541

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Tom Delaney against an enforcement notice issued by Canterbury City Council.
 - The enforcement notice EN/24/00011/A was issued on 6 December 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the land to use for the stationing of caravans for residential purposes.
 - The requirements of the notice are to: 1. Cease the use of the Land for the stationing of caravans for residential purposes. 2. Permanently remove from the Land the caravans stationed there. 3. Permanently remove any paraphernalia on the land associated with the caravans described at paragraph 5.2.
 - The period for compliance with the requirements is: Three months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal D Ref: APP/J2210/C/25/3358542

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Peter Delaney against an enforcement notice issued by Canterbury City Council.
 - The enforcement notice EN/24/00012 was issued on 6 December 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the land to use for the stationing of caravans for residential purposes.
 - The requirements of the notice are to: 1. Cease the use of the Land for the stationing of caravans for residential purposes. 2. Permanently remove from the Land the caravans stationed there. 3. Permanently remove any paraphernalia on the land associated with the caravans described at paragraph 5.2.
 - The period for compliance with the requirements is: Three months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal E Ref: APP/J2210/C/25/3358543

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Peter Delaney against an enforcement notice issued by Canterbury City Council.
 - The enforcement notice EN/24/00012/A was issued on 6 December 2024.
 - The breach of planning control as alleged in the notice is failure to comply with the condition below.
 - The development to which the permission relates is: 1. The stationing of caravans for residential use in excess of the numbers permitted by condition (4) of planning permission CA/16/00446 granted on appeal on 4 October 2017 (APP/J2210/W/16/3157586).
 - Condition 4 of planning permission CA/16/00446 granted on appeal on 4 October 2017 (APP/J2210/W/16/3157586) is in these terms: There shall be no more than eight pitches on the site, and no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be a static caravan or mobile home) shall be stationed on each residential pitch at any time.
 - The period for compliance with the requirements is: Three months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decisions

1. The notices in respect of Appeals B and E are quashed. The notices in respect of Appeals A, C and D are upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended (the Act).

Applications for costs

2. An application for costs has been made by the third party attending the Hearing, Fordwich Town Council and the Friends of Fordwich District, against the appellant. This application will be the subject of a separate decision.

Preliminary Matters

3. I conducted a site visit on the afternoon of the day before the Hearing, when I was accompanied by representatives of the appellants and the Council. After that visit I familiarised myself with the local area including by driving and partially walking along Stodmarsh Road, Moat Lane and Well Lane. I made clear at the start of the Hearing the next day that I was willing to conduct another visit if anyone at the end of the Hearing considered that to be necessary. Having checked at the Hearing's end, nobody considered that to be necessary, and I had all the information I needed to make my decision.

Background

4. A previous enforcement notice was issued on 22 July 2021. This alleged, without planning permission, the change of use of the same land as in this notice for the stationing of 37 additional caravans for residential use. What that notice was meant to mean was 37 caravans additional to the numbers of caravans granted planning permission by three separate permissions dated June 2008, April 2015 and October 2017¹ relating to three parts of the wider Moate Farm site. These areas were labelled A, B and C respectively on the Plan attached to that notice.
5. That notice was the subject of two appeals by Tom Delaney and Peter Delaney², the same appellants in Appeals B-E here. The notice was quashed on 23 February 2024. The Council accepted that the wording of the notice purportedly needed to be changed to a breach of conditions notice rather than a change of use. However, it was quashed essentially because the three separate planning permissions granted at different times relate to different parts of the site, each separate breach could have occurred at a different time and injustice may be caused to each of the three main owners, one of whom did not appeal the notice (the Browns).
6. Hence, under the second bite provision in the Act, the Council has issued the five separate above notices, those attacking Tom Delaney's (Appeals B & C) and Peter Delaney's (Appeals D & E) land being framed in the alternative, either against a breach of condition or a material change of use. Appeal A purely deals with Notice 00010 against the breach of Condition 5 attached to the 2008 appeal decision in respect of the Brown land. The appellants' argument that the second bite provisions don't apply are misplaced because the current notices attack the same enforcement issue, whether the breach is a material change of use of Areas B and

¹ As indicated in the description headings to Appeals A, B & E above

² APP/J2210/C/3281250 & 3281251

C for the stationing of caravans for residential purposes or a breach of implemented planning permissions. That is precisely the purpose of the second bite provisions under s171B(4)(b) of the Act.

The Notices

7. The notices in respect of Areas B and C are framed in the alternative, although the Council argues that the caravan site permissions for these areas issued in 2015 and 2017 respectively have not been implemented (and have now lapsed). In contrast, the appellants maintain that these permissions were implemented. I need to decide whether this was the case because only one alternative of the notices for both Areas B and C are valid.
8. In respect of Area B (the southeasterly part of the current Moate Farm site), the Council's planning permission CA/14/01255/FUL was granted on 2 April 2015 with 9 conditions, including a 3-year commencement condition. The permission is for: *'Formation of hard-standing and earth bund for use of land for stationing of two mobile homes and two touring caravans, together with a day room for a gypsy/traveller family on land'* (my emphasis). The permission is for a material change of use including associated operational development.
9. Condition 6 of that permission states: *'Before the development is commenced a scheme for the landscaping of the site incorporating native planting and to include the siting and specification of tree and shrub/hedgerow planting, seeding and turfing and the treatment of all hard surfaces shall be submitted to and approved by the local planning authority'* (LPA). The reason given is: *'To ensure that the site is adequately landscaped in the interests of the appearance of the locality.'*
10. This is obviously a pre-commencement condition that goes to the heart of the permission because, without such an agreed landscaping scheme, it would not have been granted. No such scheme was submitted before caravans were brought onto the site. Therefore, the development that has occurred on the site is not the development for which planning permission was granted. Consequently, the permission was never implemented and has now lapsed.
11. The appellant argues that some hardstanding was laid on the site and that the permission was therefore implemented. It appears from the 2013 aerial photo image that there may have been a small area of hardstanding and possibly some small piles of gravel on the western part of Area B. But that was prior to the grant of this permission and that image otherwise shows an undeveloped greenfield site. So, even if there was a small area of hardstanding at that time, it was entirely unrelated to the subsequent planning permission.
12. I acknowledge that the application form for the development indicated that it was partially retrospective in that work was indicated as being started on 15 May 2014, prior to the date of submission on 6 June 2014, but it is unclear what works were undertaken. In any case, Condition 6 still bites, because the Council must have considered that the material change of use of the land to a caravan site had not commenced. No challenge by way of a s73 application or appeal was made against that condition. The fact that the Council also attached a standard 3-year commencement condition to the permission for the material change of use of the land implies that the use had in any case not commenced. The application was a

s70 planning application; it was not a s73A application for works that had already been carried out.

13. In respect of Area C (the westerly part of the current Moate Farm site), the appeal decision (APP/J2210/W/16/3157586) dated 4 October 2017 granted planning permission for *'the change of use of land to eight pitches for gypsies and travellers and the formation of a bund and hardstanding'* with 12 conditions, including a 3-year commencement condition.
14. Condition 8 is a pre-commencement condition requiring a landscaping scheme to be submitted to and approved in writing by the LPA, similar to Condition 6 on the Area B permission above. Condition 9 states: *'No development shall take place until a plan showing visibility splays 2.4m by 59m to the west and east of the junction of the access drive and Stodmarsh Road have been submitted to and approved in writing by the LPA. None of the pitches hereby permitted shall be occupied until the splays have been provided in accordance with the approved plan, and they shall be retained thereafter.'* Highway safety was given as the reason for imposing this condition.
15. These conditions obviously go to the heart of the permission in terms of addressing the issue of character and appearance and highway safety respectively. Without such satisfactory landscaping and highway visibility schemes the permission would not have been granted. No such schemes were submitted before caravans were brought onto the site. Therefore, the development that has occurred on the site is not the development for which planning permission was granted. Consequently, the permission was never implemented and has now lapsed.
16. Since the two permissions were never implemented and have now lapsed, the breach of conditions notices the subject of Appeals B and E can therefore be quashed, allowing the alternative notices the subject of Appeals C and D to bite on the material changes of use that have occurred on Areas B and C of the site.

Reasons

Ground (d)

17. Appeals A and C include ground (d), that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. Appeal A relates to breach of Condition 5 of the permission granted on appeal in June 2008, in terms of the numbers of caravans exceeding the numbers set out in that condition on the Area A land. In terms of the second bite provisions, this means that the breach must have occurred continuously since 21 July 2011, 10 years prior to the issuing of the first notice on 22 July 2021, if the appeal on ground (d) is to succeed.
18. Condition 5 states: *'No more than 2 caravans including no more than 1 static caravan shall be stationed on Plot 1; no more than 3 caravans including no more than 2 static caravans shall be stationed on Plot 2; and no more than 3 caravans including no more than 1 static caravan shall be stationed on Plot 3. All of the caravans shall be defined in Part 1 of the Caravan Sites and Control of Development Act 1960 and section 13 of the Caravan Sites Act 1968 as amended.'*

19. Although the image is slightly grainy, I consider that the aerial photograph produced by the Council in Appendix H of its appeal statement shows that in September 2011 there were no more caravans than specified in Condition 5, with reference to Plan 2 of the appeal decision. The appellant has provided an aerial photo dated 7/9/2013 that it maintains shows a second unauthorised static on Plot 1 and a second unauthorised tourer on Plot 2. Even if that were so (which is unclear from the image), this evidence is insufficient to establish that the numbers and types of caravans on each plot have breached the terms of Condition 5 continuously for 10 years from 21 July 2011. Consequently, the ground (d) appeal on Appeal A fails.
20. Appeal C relates to the material change of use of the Area B land (the southern most part of Moate Farm) land to use for the stationing of caravans for residential purposes. Again, in terms of the second bite provisions, this means that the breach must have occurred continuously since 21 July 2011, 10 years prior to the issuing of the first notice on 22 July 2021, if the appeal on ground (d) is to succeed.
21. The appellants' own image of the Area B land in September 2013 (Appendix 9, Image 2 of their appeal statement) shows a greenfield site unused by any caravans, which is less than 10 years back from 22 July 2021. The appellants' first image of Area B with caravans on it is Image 3 dated September 2016, less than 10 years back from 21 July 2021. So, even if the second bite provisions do not apply, the unauthorised caravan site use would have had to have commenced by 7 December 2014. The appellants have supplied no direct evidence of such a use occurring between that date and September 2016, notwithstanding the assertion that the development commenced on 15 May 2014 in the original application form. No photographic evidence has been supplied to show that there were caravans on Area B prior to 2016. Consequently, the ground (d) appeal on Appeal C must fail.
22. For these reasons, the ground (d) appeals on Appeals A and C are both unsuccessful.

Ground (a)

23. There is a ground (a) appeal in respect of all the appeals. Ground (a) 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 or, as the case may be, the condition or limitation concerned ought to be discharged.
24. The main issues pertaining to ground (a), the deemed planning application, are as follows:
 - The effect of the development on the character and appearance of the area
 - Its effect on highway safety
 - Whether it could be made nutrient neutral in order to comply with the Habitats Regulations
 - Whether there are any other material considerations which outweigh any identified harm

Character and Appearance

25. There are grassed earth bunds to the south and west of the site that generally screen the caravans from these directions, including from Moat Lane. There is a hedge of varying thickness along Well Lane and Stodmarsh Road but there are still public views of some of the caravans including the mass of caravan roofs from these directions.
26. Standing within the wider Moate Farm site the impression is of a very crowded caravan site whose surface is all tarmac hardstanding. The caravans are generally very close together, predominantly no more than 4m-5m apart and sometimes less than that, particularly where statics more or less abut touring caravans that are clearly permanently occupied. The Council's description of 'cheek-by-jowl' in Areas B and C is particularly apt. There is no amenity space within the site and nowhere for children to play safely. Indeed, on my visit I noticed several young children playing or cycling on the main access route within the site, alarming but unsurprising since there was nowhere else for them to play.
27. The overall impression was of an entirely hard surfaced densely populated site with a distinctly urban feel, located next to the green fields used as horse pasture to the south and southeast of the site between Moat Lane and Well Lane, and the open countryside fields and woodland beyond. Given the large number of caravans on the site, there is no space or opportunity to provide any amenity or soft landscaped areas. The three permissions allowed for a total of 28 caravans as follows: 8 on Area A (including 4 statics), 4 on Area B (including 2 statics) and 16 on Area C (including 8 statics). There are now about 60 caravans, predominantly statics on the site, way above the number originally allowed, which explains the cramped and overdeveloped nature of the site.
28. As such the character and appearance of the site is entirely at odds with the surrounding countryside, including the dwelling plots on Stodmarsh Road. The caravans are generally far too close together resulting in a very poor, substandard and possibly dangerous (in terms of fire spread) living environment for the occupiers. The lack of any green play space for children living on the site is particularly concerning and unacceptable, especially since the landscaping conditions on the three permissions were never complied with and no soft landscaped areas exist on the site (apart from the grassed bunds around it).
29. I am aware of the Romany Acres traveller site immediately to the north within the Fordwich conservation area. However, and notwithstanding the three permissions on the appeal site, the number of caravans now occupying it dominate the local area including Fordwich, which only has a population of 370 people, with 177 properties. Combined with Romany Green Acres I consider that the number of occupiers on these caravan sites dominate the settled population of Fordwich, such that the unauthorised development on the appeal site breaches paragraph 26 of the Planning Policy for Traveller Sites (PPTS), which states that LPAs should ensure that this does not happen in rural areas. The development inevitably generates numerous additional traffic movements on the unsuitable narrow Moat and Well Lanes, far in excess of that generated by the permitted schemes.
30. For these reasons the development fails to comply with the following criteria of Policy HD10 of the Canterbury District Local Plan, adopted in July 2017 (CLP):

'c. Where the site is within the built up area or on the outskirts of a settlement it should be of a scale which respects, and does not dominate, the settled community.' The scale of the Moate Farm traveller site, when combined with the Romany Green Acres site immediately to the north, dominates the settled community of Fordwich in terms of the overall numbers of caravans occupied, which overall approaches the existing population of the settled local community.

'e. The use of the site should not have an adverse impact on residential amenity or existing buildings or uses, either by the design, close proximity, activities or operations on the site which would be detrimental to the surrounding area.' The traffic movements of the occupiers of the caravans on the site in excess of the permitted numbers, which include unauthorised commercial vehicles, including use of the unsuitable narrow Moat and Well Lanes and the access on Stodmarsh Road without suitable visibility splays (see below) is detrimental to surrounding residential occupiers who use these roads.

'g. Proposals should incorporate a landscaping strategy and/or an environmental management plan where appropriate.' There is no such strategy or plan. There is no soft landscaping or amenity space on the site for the occupiers, and no children's play space.

And therefore the development fails to comply with this Policy as a whole, given that all the criteria must be complied with.

31. CLP Policy DBE3 (Principles of Design) seeks to promote *'high quality, sustainable inclusive design, which reinforces and positively contributes to its local context creating attractive, inspiring and safe places.'* The development does not do that – in fact it does the precise opposite. It fails to respect the character of the surrounding countryside including the dwellings on the Stodmarsh Road plots (criteria a and c), it provides no soft landscaping (criterion h), no amenity or open space (criterion j), and provides poor access arrangements via a substandard junction with Stodmarsh Road (see reasons below, criteria l and n), all for the reasons set out above. It therefore fails to comply with this policy.

Highway Safety

32. The appellants consider the sole access into the site from Stodmarsh Road to be acceptable. However, the Council points out that there has been a requirement, since the previous appeal for Area C and with the appeals against the first enforcement notice (and the s78 appeal that accompanied them) for suitable visibility sightlines at the access. I set out in full Condition 9 attached to the 2017 appeal decision for Area C above.
33. Although the appellants clearly agreed to the condition imposed by the Inspector in the 2017 appeal decision, they never submitted a plan pre-commencement of the development showing the 2.4m by 59m visibility splays in both directions for the access, hence my conclusion above that the permission for Area C was never implemented. It turns out that all the land within the splay to the east of the access is not owned by the appellants and is not highway land and is in fact controlled by a third party.
34. At the Hearing, with no prior warning, the appellants produced an apparently recently appointed highways witness, Mr McMurtary, who produced no written

statement but simply took part in the discussion, without even having visited the site. He conceded that the above visibility splays set out Manual for Streets (MfS) guidance cannot be achieved but that the existing access situation is nonetheless acceptable because: it has been in place for some time without an excessive number of accidents, cars tend to be in the centre of Stodmarsh Road because of its narrowness, and that weight should be given to another appeal decision recently submitted by Mr Woods³, which concluded that breach of MfS guidance in that case would not result in any significant highway danger.

35. In my opinion these arguments are very weak. Since Mr McMurtary has not been to the site, his opinion concerning how cars drive on Stodmarsh Road is pure speculation and therefore carries no weight at all. Inevitably, the circumstances at this junction are different to the circumstances at the junction the subject of the cited appeal, which concerns a site in Surrey, particularly as described in paragraphs 60-62 of that decision. The decision in that appeal that technical breach of MfS guidelines would be acceptable does not therefore indicate that a similar breach would be acceptable here because, by definition, an assessment must be made on the circumstances of the access here – which are, of course, completely different. The access here is on the inside of a shallow bend in Stodmarsh Road, where the national speed limit applies. It appears to be quite a busy road.
36. More importantly, the Inspector in the 2017 appeal (for only 16 caravans) considered the visibility splays of 59m each way on Stodmarsh Road to be necessary. There is now much more traffic, including commercial vehicles to the site, as a result of the approximately 60 occupied caravans on the site. The fact that there have not been an excessive number of accidents may simply be luck or coincidence.
37. I agree with the previous Inspector that the 2.4m by 59m sightlines in both directions are necessary in the interests of highway safety but the appellants cannot create the sightline to the east because they do not own that land, nor is it highway land controlled by Kent County Council, the Highway Authority. Without the sightlines as set out in Condition 9 attached to the 2017 appeal decision, I conclude, for the above reasons, that the access to the site would not be safe.
38. As such the development is in breach of CLP Policy HD10 f, which states: '*Access to the site should not be detrimental to highway safety for vehicles and pedestrians...*'

The Habitats Regulations⁴

39. The River Stour and Stodmarsh designated site, located just north of the appeal site, is a Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar Site, important for its wildlife and habitats. High levels of nitrogen and phosphorous have been found within this water environment, thought to be linked to wastewater from housing and agricultural sources. These high levels are evidenced to be causing eutrophication, which is adversely impacting on protected habitats and species within the designated sites. The standing advice from Natural England (NE)⁵ is to object to new dwellings coming forward within the catchment

³ APP/M3645/W/23/3331609

⁴ Conservation of Habitats and Species (England and Wales) Regulations 2017 (as amended)

⁵ In Appendix K of the Council's appeal statement

of the Stour Valley as it cannot rule out the likely significant effects on its conservation status and protected habitats.

40. Therefore, as the competent authority under the Habitats Regs, I have a duty to undertake an appropriate assessment to consider whether it would be possible to secure satisfactory mitigation measures in order to prevent such significant effects on the designated habitats sites.
41. Wastewater from Moate Farm is collected in cesspits on the site. The appellants argue that a cesspit emptying company can discharge wastewater to a treatment plant outside of the Stour Valley catchment area. That is possible in theory, albeit impractical. However, I agree with the Council that this would be unacceptable, certainly unfeasible and impractical for the following reasons. First, all of Canterbury's tanker-ed waste goes to the Canterbury Waste Water Treatment Works located on the Stour, which discharges into the River Stour. Secondly, there is no license in place for the waste from the site to be taken to any other treatment works. Thirdly, I agree that this cannot be secured through a planning condition or S106 legal obligation because such an arrangement comes under different regulations outside the remit of planning control.
42. The appellants argue that, alternatively, it could be dealt with via a planning condition in a similar way in which it was dealt with in two allowed appeals cited in Appendices 24 and 25 of their appeal statement, the Carousel Park and Horsham decisions.⁶
43. At Carousel Park, paragraph 67 of the decision makes clear that the appellants in that case had secured an offer letter from an adjoining Council enabling them to purchase nitrate credits (associated with the cessation of farming practices, proportionate to the net scale of proposed development on the site) to the tune of £265,830. It was solely on this basis, and with NE's agreement, that a condition to secure this mitigation was found to be acceptable. Those circumstances do not apply here – no such agreement regarding nitrate or phosphate credits has occurred here between the appellant and the Council. The appellants' pleas that this is not their fault does not gainsay that fact, hence a similar condition here would be unacceptable.
44. I don't fully understand the reason for the appellants citing the Horsham decisions because those appeals were dismissed because of adverse effects on the local SAC, SPA and Ramsar sites. The compliance period to remove the caravans there was only increased from 10 to 12 months. Citing those decisions is therefore irrelevant in the current context. I have no idea if or when the Council might establish a nitrates/phosphates credit scheme similar to the one at Carousel Park.
45. For these reasons, and based on the precautionary principle, I cannot be certain that wastewater from the site will not be treated in treatment works that discharge into the River Stour and am therefore unconvinced that wastewater from the site's inhabitants would not result in harm to the conservation status of the River Stour and Stodmarsh habitats sites.

⁶ APP/L1765/C/22/3296767 et al, and APP/Z3825/C/21/3271265 & 3271265

Other Material Considerations

46. The Council's draft emerging Local Plan was initially published for consultation under Regulation 18 (of the Local Plan Regulations) in March 2024 and another recent consultation featuring draft site allocation policies, including gypsy and traveller (G&T) draft policies and allocations, ended on 21 October 2025. Draft Policy SS3 identifies the need for 54 G&T pitches by the end of the plan period in 2040/41. Subsection 8 of draft Policy DS5 has a criteria policy for determining windfall G&T applications. The final report for the Council's current Gypsy and Traveller and Travelling Showperson Accommodation Assessment (GTAA) was published in February 2024, which identified the need for 54 additional G&T pitches from 2023.24 to 2040/41, and this will support G&T allocations in the emerging Plan.
47. However, at present there are no allocated sites and the Regulation 19 full draft Plan will not be published before next year and won't be submitted for examination until at least next summer. So, clearly at present, there is an unfulfilled need for more G&T sites and no current policy, save CLP Policy HD10, to address this. If the site is occupied by G&Ts, significant weight should be given to the lack of a 5-year supply of deliverable G&T pitches, albeit the tilted balance in paragraph 11(d) of the National Planning Policy Framework (NPPF) does not apply because of the above Habitats Regs objection.
48. However, I have my doubts that the site is actually occupied by G&T families. I acknowledge that Peter Delaney and family and Tom Delaney and family occupy the pitches edged in black on Plan DD-02, and that the blue and red edged areas are indicated as being for transit provision for their wider families. But I am not sure what is meant by transit provision and beyond this Plan and a list of family members that use these areas, I am none the wiser because no explanation of any personal circumstances was given to me at the Hearing, including what is meant by 'transit provision'.
49. I say this because it was obvious when I visited the site that the majority of the people, including children, that I saw and heard there were speaking foreign, eastern European language(s). When I raised this point with Mr Woods subsequently, he suggested that these eastern European occupiers, who clearly live on the site now, could be gypsies. However, beyond the above information, no evidence or personal circumstances of occupiers has been supplied as to who occupies the wider site now, nor when and for how often the blue and red edged areas on Plan DD-02 are actually occupied for transit use by the indicated named relations of the Delaneys. Consequently, I am unclear as to how many of the 60+ caravans are occupied by G&Ts. Therefore, I reduce the weight I give to the Council's lack of a 5-year supply of G&T pitches.
50. The lack of a 5-year supply does not outweigh the substantial harm of this development in terms of adverse character and appearance, highway safety harm and breach of the Habitats Regs.

Ground (g)

51. Ground (g) is that the compliance period specified in the notices falls short of what should reasonably be allowed.

52. The appellants suggest 12 months is a reasonable period for the occupiers to comply with the notices, rather than the specified 3 months. Whilst the Council and I accept that the appellants and their families are gypsies/travellers, it is unclear how many people are in their families and how many caravans they occupy, since I have had no information on the families' personal circumstances. The Council also state that appellants have other pitches available at Eastry and Rose Farms that they could occupy, which they have not denied.
53. There is of course an extant permission on Area A, which is a substantial area, that could in theory be occupied by the appellants, given the Land Registry ownership titles. If more room than that is needed for them and their families together, additional applications could be submitted for Area B and potentially C, both of which were of course granted permission in the past, including the permission on Area B by the Council itself.
54. For these reasons I consider that the notices' 3-month compliance period is quite acceptable, especially since the appellants and their families are unlikely to face a roadside existence after that period. Any non-G&Ts who are living on the site should move from it within 3 months and go and live in bricks and mortar accommodation, in accordance with the CLP's spatial strategy.

Conclusion

55. For all the above reasons, I quash the enforcement notices in Appeals B and E. I conclude that the appeals should not succeed. I uphold the enforcement notices in Appeals A, C and D and refuse to grant planning permission on the application deemed to have been made under s177(5) of the 1990 Act (as amended).

Nick Fagan

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

- Brian Woods & Peter Brownjohn of WS Planning & Architecture
- David McMurtary – Highways

FOR THE LOCAL PLANNING AUTHORITY:

- Vic Hester

FOR THE INTERESTED PARTY (Fordwich Town Council & Friends of Fordwich & District):

- Claire Nevin & Gregory Jones KC (Francis Taylor Building)
- Paul Lulham – Highways