



Appeal Decisions

Site visit made on 8 December 2025

by Chris Preston BA (Hons), BPI, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th February 2026

Appeal A Ref: APP/Y9507/W/24/3346589

Moodys Meadow, Petersfield Road, Bramdean, Hants, SO24 0JX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Ayrton James-Mills against the decision of South Downs National Park Authority.
 - The application Ref is SDNP/23/03545/FUL.
 - The development proposed is: Caravan site for one Gypsy/Traveller family (one mobile home, touring caravan and stables/utility block).
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Appeal B Ref: APP/Y9507/C/24/3346595

Moodys Meadow, Petersfield Road, Bramdean, Hampshire, SO24 0JX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Ayrton James-Mills against an enforcement notice issued by South Downs National Park Authority.
 - The notice was issued on 20 May 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land to a residential caravan site; together with any operational development associated with the material change of use of the Land.
 - The requirements of the notice are:
 - i) Cease the use of the Land as a residential caravan site.
 - ii) Disconnect and remove all services (water, gas, electric, waste, internet, pumps) connecting and serving the residential caravan site use of the Land.
 - iii) Remove all buildings, mobile homes/caravans, vehicles, concrete bases, walls, steps, play equipment, wastewater cabin tank, and development associated with the unauthorised material change of use as described in paragraph 3 of this notice from the Land.
 - iv) Remove any resultant waste from the Land.
 - v) Restore the land to its condition before the breach of planning control took place.
 - The period for compliance with the requirements is one year from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) & (g) of the Town and Country Planning Act 1990 (as amended).
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. Two appeals are before me in relation to the same site, as set out in the banner heading above. I shall determine both within this decision letter, given that the issues are closely linked, addressing the planning merits relating to the Council's

decision to refuse to grant planning permission in respect of Appeal A first, before considering the enforcement appeal, which is submitted on grounds (f) and (g).

APPEAL A:

Reasons

4. The main issues in the determination of the appeal are:
- i) The effect of the development on the character and appearance of the area, including the South Downs National Park, within which the appeal site is situated;
 - ii) Whether the site is suitable for the development having regard to flood risk;
 - iii) The effect on the Itchen River Catchment Special Area of Conservation (SAC)/ Solent Special Protection Area (SPA) arising from phosphates and nitrates associated with the foul sewerage arising from the development
 - iv) The extent to which the development meets a defined need for Gypsy and Traveller Accommodation within the area; and
 - v) The weight that should be afforded to the personal circumstances of the appellant and his family, having particular regard to the best interests of the children.

Character and Appearance of the Area

5. The appeal site is located within the South Downs National Park. In line with paragraph 189 of the National Planning Policy Framework, great weight should be given to conserving and enhancing the landscape and scenic beauty of National Parks, which have the highest status of protection in relation to those matters.
6. Moreover, Policy SD4 of the South Downs Local Plan (2019) (the SDLP) identifies that development proposals will only be permitted where they conserve and enhance landscape character by demonstrating a number of characteristics. Amongst other things, those require that development is informed by landscape character; that the design conserves character features which contribute to the distinctive character and pattern of the landscape; that the experiential qualities of the landscape are conserved and that any planting is consistent with local character.
7. In addition, the policy requires that the predominantly open and undeveloped land between settlements will not be undermined. In design terms, Policy SD5 of the SDLP states that proposals will only be allowed where they adopt a landscape led approach through sensitive and high-quality design that makes a positive contribution to the overall character and appearance of the area, informed by the design principles at paragraphs (a) to (k).
8. The planning application was submitted retrospectively. There is no evidence before me to suggest that the development was informed by an analysis of the landscape and scenic qualities of the area, as required by policies SD4 and SD5. In fact, the supporting statement submitted with the application makes no reference to the South Downs National Park at all.

9. I have not been provided with any detailed landscape analysis but the site would appear to lie within the “Chalk Valley systems”, as identified in the map at figure 5.2 of Policy SD4, being situated within the flood plain at the valley bottom, with downland hills rising in the distance beyond. The flood meadows are a distinctive element of the wider landscape, providing a generally open, low-lying, patchwork of fields, surrounded by mature trees and hedgerows. The meadows and streams are attractive and contribute to the scenic beauty of the area, of themselves, but they also combine with the downland hills to form part of the characteristic South Downs landscape.
10. At a local level, the site is to the south of the busy A272, within the countryside to the west of the village of Bramdean. Aside from Maple Cottage, an attractive vernacular building, which sits some distance further to the west, the development at the appeal site represents the only residential incursion in the stretch of countryside to the south of the A272 until one reaches the junction with Hinton Hill. Given the sparsity of built development on that side of the carriageway, open views of the chalk meadows with the downs beyond are prevalent as one passes along the highway by the appeal site.
11. The development sits awkwardly in that context on account of its distinctly residential form and the utilitarian design of the static unit. The entrance and associated car parking/ turning area has a stark and engineered appearance on account of the close boarded timber fencing and substantial area of hardstanding made up of road planings. The barren appearance is incongruous against the greenery of the surrounding meadows.
12. Understandably, given the nature of the use, the associated parking, washing lines, children’s play equipment and the like have introduced a domesticated appearance, again which is at odds with the landscape and scenic beauty of the area. I appreciate that the site was previously developed with a stable block but the nature of that use would be notably different. The extent of built form/ structures was less and the associated paraphernalia of the residential use would have been absent. The present use, with significant hardstanding also appears to have expanded onto a greater area of the meadow, at least in terms of its visible impact.
13. The static caravan itself is reasonably well-screened from the road on account of the existing hedgerow. Nonetheless, it remains visible in the winter months and can be seen from footpaths in the wider area. The overall effect of the residential development at the site is significantly at odds with the character of the landscape in this part of the National Park. I am not satisfied that harm could be mitigated through additional planting. Views of the development would remain given the proximity to the road.
14. Furthermore, surrounding the site with additional planting would be at odds with the surrounding landscape which is relatively open, with the river bed meandering through the meadow and surrounding fields. Sectioning off a small parcel of land and enclosing it with planting would not be a design solution that would harmonise with the existing context, contrary to the aims of paragraph 1(d) of Policy SD4.
15. Overall, the development has caused significant harm to the landscape character and scenic beauty of the South Downs National Park, contrary to the aims of

Policies SD4 and SD5 of the SDLP, as described and paragraph 189 of the Framework.

16. Whilst the Council has referred to Policy SD7 of the SDLP, with regard to “Relative Tranquillity”, the location of the site is not one that adds to the sense of tranquillity, given its position adjacent to the busy A272. Consequently, that is not a matter that adds to my concerns relating to the impact on the landscape and scenic beauty. Moreover, whilst no lighting assessment has been submitted, the level of external lighting could be controlled by condition if I were minded to allow the development, such that the result would comply with the aims of Policy SD8.

Flood Risk

17. The Environment Agency (EA) raised an objection to the development at the application stage on the basis that the application site lies within Flood Zones 2 and 3 and the absence of a site-specific Flood Risk Assessment (FRA) to demonstrate that the development would be safe from flooding without increasing risk elsewhere.
18. The appellant has subsequently submitted a FRA with the appeal but no further comments from the EA have been received. That belies some of the problems with approaching these matters on a retrospective basis. Based upon the FRA, the site is partially within Flood Zones 1, 2 and 3, with the higher land closest to the road in Flood Zone 1. The mobile home is predominantly in Flood Zone 1, with a small section in Flood Zone 2. The domestic store/ utility falls within Flood Zones 1 and 2. Much of the hardstanding and the amenity area, as shown on the submitted block plan fall within Flood Zone 3¹. Consequently, the appellant’s assertion that the red line boundary of the application site is within Flood Zone 1² is not borne out by his own FRA.
19. I appreciate that the adjacent watercourse appears to be seasonal and the riverbed was dry at the time of my visit. However, I cannot take that as a representative indication of conditions and must consider the published flood data from the EA. In fact, there is evidence that the site flooded in the winter of 2000/2001.
20. In line with paragraph 173 of the Framework, a sequential, risk-based, approach should be taken to individual applications in areas known to be at risk of flooding now or in future. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Paragraph 175 states that the sequential test need not be applied where a site-specific FRA demonstrates that built development within the boundary, including access and escape routes, land raising or other vulnerable elements would not be at risk of flooding now or in future.
21. However, that applies to built development. The siting of a mobile home for residential occupation represents a material change of use of the land. In line with paragraph 176 of the Framework, the sequential test is applicable to such development.
22. In any event, the FRA does not demonstrate that the built development would not be at risk from flooding. Land levels in the area of the domestic store/ utility were

¹ Figure 8 of the FRA prepared by

² Paragraph 21 of Statement of Case and paragraph 2 of Final Comments

partially below the modelled flood levels for a 100 year plus 35% climate change allowance event³. The FRA does state that finished floor levels of the building are 200mm above ground level which would be sufficient to prevent the interior flooding based on those modelled levels. Whilst that may be the case, it does indicate that the building could have knock on implications for flood storage capacity elsewhere.

23. It can also be seen that the majority of the hardstanding and the vehicular access route from the mobile home to the A272 would be in flood at such an event⁴. In such situations it is not clear how residents could evacuate from the mobile home to the A272 without passing to the south of the domestic store, given that is the route of the vehicular access. The modelled data shows that land to be in flood at the 1:100 year +35% climate change event. Consequently, whilst the FRA considers that safe evacuation routes could be achieved in the event of a flood it is not clear how that would be achieved.
24. Moreover, the FRA includes information on recorded flood extents relating to the winter of 2000/2001⁵. On the map provided recorded flood level is shown to be half-way across the position of the mobile home and entirely across the area where the touring caravan would be sited, as shown on the submitted block plan. The event was said to be caused by high groundwater levels, high rainfall, with the subsequent contribution to streamflow being unusually large. Despite the mapping showing that the recorded flood covered the area in which the mobile home is situated, the FRA doesn't appear to make any comment on the implications for the safety of the residential use.
25. For all of those reasons, the FRA does not fully demonstrate that the residential development would be safe from flooding in my view. Nor is it sufficient to negate the need for the sequential test to be applied, having regard to paragraphs 175 and 176 of the Framework. In fact, the FRA itself identifies that the development should be the subject of the sequential and exception tests.
26. The Council did not conduct a sequential test at the application stage but refused the application on the basis of the advice given by the EA in the absence of an FRA. Neither party has indicated what they consider the relevant search area for examining alternative sites should be. The appellant maintains that attempts to find an alternative site have failed but very little information to indicate what other sites, if any, were examined and why they were discounted has been provided.
27. The Planning Practice Guidance (PPG) identifies that it is the responsibility of the planning authority to consider whether the test is passed but the developer will need to identify whether there are any other alternative sites within their search area. In the absence of any real detail from either party it is not clear if any less vulnerable sites have been considered.
28. Sites should be considered 'reasonably available' for the purposes of the sequential test if their location is suitable for the type of development proposed, they are able to meet the same development needs and they have a reasonable prospect of being developed at the same time as the proposal. Alternative sites do

³ Page 17 of the FRA

⁴ Figure 10 of the FRA

⁵ Figure 11

not need to be owned by the applicant to be considered 'reasonably available'⁶. That does not indicate that such sites must already have planning permission.

29. The Local Plan does acknowledge that insufficient sites to meet the identified need for Gypsies and Travellers have been identified through the plan making process⁷. However, the definition of a deliverable site for the purposes of calculating five-year supply is not the same as the definition of whether a site is reasonably available for flood risk purposes. It may be that none are available but the absence of any information to indicate what measures the appellant has taken to investigate other options does not help in demonstrating that the sequential test has been met.
30. Policy SD33 of the Local Plan provides a mechanism for planning permission to be granted on unallocated sites, subject to certain criteria being met. Given positively worded thrust of that policy, if no allocated sites are available one could reasonably expect any non-allocated sites that may comply with the criteria-based policy to be considered. It seems to go against the thrust of the sequential test and its purpose to jump straight to a site in an area at risk of flooding, simply because no allocated sites are available, especially given that a mechanism to secure permission for sites is available through Policy SD33.
31. As required by paragraph 174 of the Framework, development should not be permitted where there are 'reasonably available' sites appropriate for the development within a lower risk of flooding. In the absence of any information to suggest that other sites were considered I am not satisfied that the sequential test has been met.
32. Even if I am wrong in my interpretation of how the sequential test should be carried out and I were to assume that no reasonably available alternative sites were available it would also be necessary to consider the 'Exception Test', as required by paragraph 177 of the Framework. In line with Annex 3 of the Framework, the use of land as a caravan site is classed as a Highly Vulnerable use. Table 2 of the PPG identifies when the exception test needs to be carried out⁸. A Highly Vulnerable use in Flood Zone 3 should not be permitted according to that Table. In Flood Zone 2, the Exception Test is required. No exception test is required for a Highly Vulnerable use in Flood Zone 1.
33. The Table identifies that some developments may contain different elements of vulnerability and the highest vulnerability category should be used, unless the development is considered in its component parts. It is not entirely clear how that should be applied to a residential caravan site. If permitted, the whole of the site would technically be classed as residential in use. That would result in residential elements within Flood Zone 3 including amenity areas and the parking and turning area. Those elements are a fundamental part of the use, even though the mobile home itself would be outside of FZ3.
34. The Planning Policy for Traveller Sites (PPTS) states that policies should not locate *sites* [my emphasis] in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans. That appears to indicate that consideration should be given to the site as a whole and not just the part upon

⁶ Planning Practice Guidance paragraph: 028 Reference ID: 7-028-20220825

⁷ Paragraph 7.111

⁸ Paragraph: 079 Reference ID: 7-079-20220825

which the caravan is stationed. To my mind that would be a sensible approach, taking account of the fact that key functional elements of the residential use would be in FZ3 and the broad thrust of national policy in steering vulnerable development to the lowest areas of flood risk. Consequently, that would indicate that the use is not compatible and should not be permitted, having regard to Table 2 of the PPG.

35. Even if that is an incorrect interpretation of the guidance, the appellant's FRA suggests that the exception test should be applied, presumably given that the domestic building/ utility is within FZ2. No sustainability benefits have been put forward. I accept that the development has provided a home and stable base for the appellant and his family and that enables the children to attend school. The Council has raised no issue in terms of the location with respect to access to services. Thus, there are some social and economic benefits arising from it. However, there is also environmental harm, as identified in the main issues above. Viewing the social, economic and environmental issues in the round I am not satisfied that there are any sustainability benefits to outweigh the flood risk.
36. In any event, the exception test is two pronged and both elements need to be satisfied for permission to be granted. I have reservations as to whether the development will be safe for its lifetime, given that the main vehicular access to the property is shown to be in flood in the 1:100 year +35% climate change allowance event. Insufficient detail has been provided as to how safe access and egress would be maintained in such situations. Furthermore, the recorded flood details provided within the FRA depict that the area where the mobile home is sited and the area where the proposed touring caravan would be sited did flood in the flood event of 2000/2001. Whilst it may be possible to anchor the mobile home and to incorporate flood resilience measures into its fabric that does not overcome my concerns around safe access and egress or the potential impact on the touring caravan.
37. Overall, the evidence, including the FRA, does not demonstrate that the development is safe from flooding. There is a lack of evidence to demonstrate that any attempt has been made to comply with the sequential test and application of Table 2 of the PPG would indicate that caravan sites are incompatible within FZ3. Application of the exception test indicates that permission should not be granted and the details before me are not sufficient to make clear that any residual risk is managed or that safe access and egress is possible, having regard to paragraph 181 of the Framework.
38. For all of those reasons the development is contrary to the thrust of the Framework with regard to flood risk and with paragraph 13(g) of the PPTS. That weighs heavily against the grant of permission.

The Effect on the Itchen Catchment SAC/ Solent SPA

39. The appeal site lies within the catchment of the River Itchen Special Area of Conservation (the SAC), an internationally designated site which, in turn, connects to the River Solent Special Protection Area (the SPA). The SAC is designated on account of the nature of the river system and the vegetation and species it supports.
40. The submitted Ecological Appraisal identifies that increased nitrate and phosphate levels entering the water system are impacting the integrity of the SAC and SPA.

Discharge from new residential development has the potential to increase such emissions. The delegated officer report states that “*all applications for new dwellings or overnight accommodation are required to demonstrate that they are nitrate neutral in order to meet the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended)*” (the Habitat Regulations). It goes on to state that the planning application was not accompanied by the latest Natural England nitrates/ phosphates calculator or any other information relating to that matter. As a consequence, the report concluded that the application failed to make satisfactory mitigation measures to compensate for the likely effect on European protected sites.

41. The Ecological Appraisal that has been submitted was prepared in 2021. It concludes that the development will result in an increase in nitrates and makes reference to mitigation measures with reference to “Natural England Advice on Achieving Nutrient Neutrality for New Development in the Solent Region”. That advice was said to be a draft version, dated June 2020. Judging from the Council’s comments it would appear that advice may be out of date and that a more recent Natural England nitrates/ phosphates calculator may be in use.
42. In any event, the Ecological Appraisal sets out proposed mitigation with the use of a particular type of Package Treatment Plant and the payment of a financial levy to the Council, secured through a Grampian condition. The amount of any financial levy is not specified, nor is the precise detail of how any financial contribution would be spent. In the absence of such details I cannot conclude that the measures would be effective or that they would be proportionate in kind to the scale of development.
43. In the view of the Council, options for mitigation would require the appellant to enter into a s106 agreement in order to purchase off-setting credits or for monitoring and on-site mitigation measures. No planning obligation relating to the matter is before me. A Grampian condition would not be appropriate for a number of reasons. Firstly, it is unclear precisely what measures are to be included or the financial amount of any contribution. Secondly, a planning condition could not require other parties to carry out work. For example, if the proposed mitigation required the Council or other parties to undertake work, either relating to monitoring or off-setting it would need to be subject to a s106 agreement to be enforceable.
44. Overall, there is a paucity of information in relation to the suggested mitigation and the Ecological Appraisal is some years out of date. What is clear is that the site is within the catchment of the River Itchen SSSI/SAC and that the integrity of the designated asset is vulnerable to the increase of nitrates and phosphates resulting from residential development. The fragility of chalk-based water courses in that respect has been well-publicised. It also appears that a local mechanism to off-set and mitigate such impacts is in place but the appellant has failed to demonstrate that the proposed mitigation is in line with that strategy.
45. Whilst any increase from an individual site may be small, Regulation 63(1) of the Habitats Regulations requires the competent authority (the Inspector in appeal situations) to make an Appropriate Assessment (AA) of the implications of any plan or project potentially affecting a site with regard to that site’s conservation objectives. This must be done before deciding to give any consent, permission or other authorisation for a plan or project which is: (a) likely to have a significant

effect on such a site, *either alone or in combination* [my emphasis] with other plans or projects. Plans or projects should only proceed where, beyond all reasonable scientific doubt, there would be no adverse effect on the integrity of a site.

46. In other words, the fact that the individual impact may be small does not negate the need to carry out an AA. The combined impact of residential development across the impacted area must be taken into account. The information provided indicates a likelihood that the development has caused an increase in phosphates/nitrates reaching the Itchen River system, contrary to conservation objectives.
47. In the absence of any clear mitigation the likely impact on the SAC and SPA is a matter that weighs against a grant of permission and the development is contrary to the aims of Policies SD9 and SD17 of the Local Plan with regard to the need to conserve biodiversity and protect water quality. It is also contrary to paragraph 193(a) of the Framework for the same reasons.

Need and Supply of Sites

48. Paragraph 10(a) of the Government's Planning Policy for Traveller Sites (PPTS) requires local planning authorities to identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets.
49. Figure 7.4 of the SDLP identifies a summary of the calculated need for permanent and transit pitches across the various local authority areas that make up the area covered by the SDLP. Winchester, within which the appeal site is located, is shown to have no need for further pitches. However, that table is stated as being the position, as of October 2018 and the figures and the basis behind them are significantly out of date.
50. Furthermore, the Gypsy and Traveller Accommodation Assessments (GTAA) upon which the data was based pre-dated the findings of the *Lisa Smith* judgment and the subsequent revision of the Gypsy and Traveller definition within the PPTS. A more recent GTAA, dated 2022, referred to in the delegated officer report also pre-dates that judgment and cannot be relied upon to form the basis of an accurate assessment of the needs of Gypsies and Travellers within the area, as acknowledged by the Council. It is not clear when any updated assessment is likely to be available, if one is being prepared at all.
51. Consequently, the present position, as accepted by the Council is that there are an unknown number of people within the SDLP area who meet the current definition and are in need of accommodation. The Council also accepts that it can no longer be assumed that the level of need is zero in the Winchester area of the National Park.
52. In view of the above, the Council is clearly unable to demonstrate what the level of need actually is, less still, identify sites to meet that need. That represents a clear failure against the requirement to identify and update annually a supply of specific deliverable sites to provide 5 years' worth of sites.
53. The Council accept that the appellant and his family meet the current definition within the PPTS and I have no reason to take a different view, given the information provided. The family clearly have a need for a settled base. They

were living at a site in Botley Road, West End, prior to moving to the current site but had to leave following the grant of permission to reorganise that site.

54. The Council suggests that the family does not have a need specific to Winchester. Their previous base would appear to have been outside of the SDLP boundary, albeit close by. Whilst I accept that there is no requirement for an appellant to prove that no other sites are available it is not unreasonable to seek an understanding of why a site within the National Park, with its associated landscape constraints, was needed as opposed to sites in areas outside the SDLP area, for example closer to Southampton where the appellant was previously based.
55. No information has been provided to indicate that any alternatives in that area were considered. It may be that none were available but the absence of any information to indicate that alternatives were considered does not weigh in favour of the appellant in my view.
56. However, they clearly have connections in the wider locality in general and the preamble to Policy SD33 of the SDLP recognises the cross-boundary nature of needs assessments, such that six different GTAA's combined to cover the whole of the National Park area. In that context although the family previously resided outside the SDLP area their previous base was close to it and the family do have a need for accommodation in the locality in a wider sense. I am told that the children attend school in Upham roughly nine miles away within the SDLP area.
57. Recognising the cross-boundary nature of the issues and the facts of the case I am satisfied that the family have a local need for accommodation, even if that is not specific to Bramdean. Given that the authority is unable to demonstrate any available sites within the SDLP area, that is a matter that weighs in favour of the grant of permission.

Personal Circumstances

58. As noted, the appellant, his wife and family fall within the definition of travellers set out by the current version of the PPTS. They moved onto the site in 2023 having had to leave another site which was being re-organised. The appellant travels for work but the family are in need of a settled base and it is said that the eldest two of the four children attend primary school in Upham. The Council does not dispute those facts and I have no reason to, notwithstanding the absence of any confirmation from the school to verify attendance, as is commonly provided in such situations.
59. Reference has also been made to health-related issues of the appellant and his wife. Again, I have no reason to doubt that evidence although it is not supported by any letters or corroboratory evidence from healthcare professionals.
60. Having regard to the need for a settled base, which will assist the children in attending school, the personal circumstances advanced represent a positive material consideration in the planning balance. It will also help to facilitate the traveller way of life and help the appellant and his wife in attending medical appointments.
61. If I were to dismiss the ground (a) appeal and uphold the enforcement notice the family would be likely to resort to roadside living, given the absence of any immediate alternatives. The implications of the enforcement notice would have

significant consequences for the home and family life of the family and it is clearly a circumstance where Article 8 Convention Rights are engaged. Article 8 imposes a positive obligation to facilitate the Gypsy way of life and, as a minority group, special consideration should be given to their needs and lifestyle.

62. In addition, Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of children must be a primary consideration in all actions made by public authorities. I must consider the Article 8 rights of the children in that context. No other consideration can be treated as inherently more important than the best interests of the children. However, such matters are not necessarily determinative and may be outweighed by other considerations.
63. In other words, rights under Article 8(1) are qualified rights and, in appropriate circumstances, interference may be justified in the public interest. Regulation of land use through development control measures is recognised as an important function of Government and is necessary to ensure the economic well-being of the country. In that sense, the regulation of development for legitimate planning aims can be said to be in the public interest. The aim is to strike the right balance between the general interests and rights of the wider community and the requirement to protect an individual's private rights. Central to the principle of a fair balance is the doctrine of proportionality.
64. I am very mindful of the human rights of the family and must also have due regard to the protected characteristics of Gypsies in relation to the PSED when applying the duties of section 149 of the Equality Act 2010.
65. Thus, I attach substantial weight to the need to facilitate the Gypsy way of life and am very mindful of the implications for the family if the enforcement notice was upheld. The fact that the family would probably be rendered homeless and forced to roadside living is also a matter to which I attribute significant weight. Clearly, a settled base is in the best interests of the children, particularly in terms of their education.
66. Having regard to my conclusions in respect of flood risk, below, I do have some reservations as to whether it could be said to be in the best interests of the children or adults to occupy a site that is vulnerable to flooding. I recognise that the mobile home would be sited in the area of the site at the lowest risk of flooding but the recorded flood event of 2000/2001 was shown to be in the area where the caravan is situated and I also have reservations relating to the safe access and egress in the event of a flood. The fact that the recorded event shows that the site has previously flooded demonstrates that it is not merely a theoretical risk.
67. That is a matter that tempers the weight I attach to the benefit of a settled base in this case.

Other Matter

68. The appellant has referred to an appeal decision within which the Inspector granted planning permission for Gypsy and Traveller site for a single mobile unit and one touring caravan in Knowle, Hampshire. However, the circumstances were materially different. That site was not in the National Park, flood risk did not appear to be an issue and I note that a legal agreement relating to nitrate mitigation had been submitted. Consequently, it is not a decision that has any significant bearing on the outcome of the present appeal.

The Planning Balance

69. I have concluded that the development has caused harm to the landscape and scenic beauty of the South Downs National Park and that harm could not be satisfactorily mitigated through the use of conditions. It is contrary to the relevant policies of the Local Plan and the Framework in those respects. In line with paragraph 189 of the Framework, that harm attracts great weight.
70. I attach significant weight to my concerns relating to the potential for the site to flood and the development is also contrary to relevant policies of the Local Plan, the Framework, PPG and PPTS in that respect, as set out above. Furthermore, an increase in residential development is likely to have an adverse effect on the River Itchen SAC and The Solent SPA, in combination with other residential development. The absence of a clear mechanism for mitigating that harm is a matter that also attracts great weight, in view of the international significance of those assets.
71. However, the Council is unable to demonstrate a five-year supply of deliverable sites and accepts that it cannot accurately estimate the need for additional pitches at the present time. Although I have some reservations regarding the appellant's attempts to look for alternative sites beyond the SDNP area, I accept that the family have a need for accommodation in the locality in a wider sense. In the absence of any alternative sites that is a matter that weighs strongly in favour of the application. Given my conclusion in that regard, there is no conflict with the criteria-based policy SD33.
72. However, given the degree of harm and policy conflict arising from the matters set out above, the proposal is clearly contrary to the aims of the Local Plan as a whole. Section 38(6) of the Planning and Compulsory Purchase Act requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
73. In addition to the weight attached to the need and supply of sites, the personal circumstances of the appellant and his family attract significant weight, particularly given that the family would be likely to have to resort to living by the roadside, with potential disruption to schooling and access to health services. An approval would also facilitate the Gypsy way of life which adds weight to those personal circumstances which amount to a social benefit. Notwithstanding the benefits in that regard I do have reservations as to whether it could be said to be in the best interests of the children, or any occupants, to reside in an area at risk from flooding.
74. In situations where a planning authority cannot demonstrate a five-year supply of sites paragraph 28 of the PPTS identifies that paragraph 11(d) of the Framework should be applied. For decision taking that means granting planning permission unless either of the scenarios in paragraph 11(d) (i) or (ii) apply. Under 11(d)(i) planning permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed.
75. In my view that would clearly be the case in this instance given the harm to the landscape and scenic beauty of the National Park and the harm to the SAC and SPA. In any event, paragraph 195 of the Framework states that the presumption in favour of sustainable development does not apply where the project is likely to

have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. Given the likelihood of significant harm and the absence of mitigation it is not possible to conclude that the project will not affect the integrity of the respective sites.

76. When all of those factors are combined the harm arising from the development is extremely significant, given the landscape of national importance, natural assets of international importance and the serious implications of flood risk. Those matters clearly outweigh the benefits in planning terms and the balance of material considerations strongly suggests that planning permission should be refused, in accordance with the relevant policies of the development plan.
77. Whilst not a matter raised by the appellant, I have considered whether the grant of a temporary planning permission would be appropriate. The environmental harm caused by the landscape effects and to the SAC/SPA would be mitigated to a degree by the fact that the harm would only be temporary but, even for a temporary period, the development would remain contrary to the relevant policies of the development plan. Moreover, a temporary permission would not overcome the harm to the SPA/SAC. In addition, given the unpredictability of flood risk there would remain the possibility of a flood event even during any temporary period.
78. Equally, any benefits in terms of the personal circumstances of the appellant and his family would also be temporary and the weight I could attach to those benefits would be tempered accordingly. Those personal circumstances, in addition to the weight to be applied to the lack of a five-year supply of sites and the uncertainty over when that position will be addressed would still not be sufficient to overcome the extent of harm, even for a temporary period and the overall balance remains the same. Thus, the development is not acceptable for a time limited period.

Proportionality Assessment

79. The proportionality assessment required by Article 8 necessitates a balancing exercise to ascertain whether the rights of the occupiers would be disproportionately interfered with should planning permission be refused.
80. The family presently have a settled home at the site and two of the children attend school nine miles away. Continued attendance is more likely if the family have a permanent home, when compared to roadside living. The appellant and his wife have health issues and a settled base would assist in attending any doctor's appointments. There is no immediate prospect of an alternative site becoming available. All of those factors attract great weight.
81. However, whilst continued occupation of the site would be beneficial in those respects I have reservations regarding the suitability of the site in terms of the risk of flooding. I cannot accept that it would be in the best interests of any of the occupants and particularly the children and am not convinced that any risk could be adequately mitigated by conditions.
82. In making that assessment I have had regard to the personal circumstances described and the positive obligation to facilitate the gypsy way of life. Weighed against that is the public and community interest. Regulation of land through the planning system can be said to be in the public interest with the legitimate aims of protecting the economic well-being of the country and public safety.

83. Economic well-being would encompass protection of the environment through the avoidance development that would cause harm to the character and appearance of the National Park, the protection of the natural environment, including SPAs and SACs. Public safety would encompass risks associated with flooding. For the reasons set out above, the harm arising from the development in respect of those matters is significant and the legitimate aims of protecting the environment and public safety attract great weight.
84. Having regard to the balance of personal interests against the public interest I find that the interference with the home and family life of the family is necessary and proportionate having regard to legitimate land use planning objectives. My conclusions in that regard would apply equally to a temporary planning permission. I recognise that the harm would be temporary but the development would remain contrary to the aims of the development plan and the implications in terms of flood risk are, by their nature, unpredictable.
85. For the reasons set out above, the weight I attach to concerns relating to public and personal safety arising from flood risk is not tempered to any significant degree by the suggestion of a temporary permission. Whilst the balance is slightly different, I remain of the view that the interference would be necessary and proportionate having regard to legitimate land use objectives.
86. Accordingly, to dismiss the appeal and refuse to grant planning permission would not result in a violation of rights under Article 8.

Conclusion

87. For the reasons given above Appeal A should be dismissed.

APPEAL B:

The Appeal on Ground (f)

88. An appeal under ground (f) is made on the basis that that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
89. In this case, it is clear from the requirements that the Council is seeking to remedy the breach in its entirety. The appellant contends that the requirement to remove the concrete bases and services is excessive because concrete bases were present in relation to the former stables and that the site was served by water and electricity when he purchased it. He also maintains that the requirement to restore the land to its condition before the breach took place is excessive on the basis that would necessitate the reconstruction of the former stable block, which was in dilapidated condition.
90. On the first of those matters it is clear that the concrete base that is currently on site was newly constructed and is not the same base that was previously associated with the stables. The Council's site visit photographs, dating from April 2023, depict a brand new concrete base having been constructed, with subsequent images from May 2023 showing the utility building/ store being erected upon that base. One of the images shows that the appellant had written his initials and the year into the concrete; "AJM 2023".

91. Accordingly, I have no doubt that the base referred to in the notice was newly constructed as part of the construction of the utility block. It is part of the unauthorised development and its removal would go no further than required to remedy the breach of control.
92. Likewise, the photographic evidence from Council officer site visits depicts that the services to the caravan were newly installed. The images from April 2023 depict the concrete base of the utility block and the newly erected close boarded fence to the northern edge of the site. Cabling can actually be seen propped against the fence, awaiting installation. What appears to be a new electricity consumer unit and external tap are attached to the fence. The fence was clearly new, the electricity unit and tap must logically have been installed after its erection given the way in which they are attached.
93. Moving forward to the images taken in 2024 one can see that further pipework and ducting has been extended from the tap along the fence to enter the mobile home which had been moved onto the site by that point. The images therefore show the progress of work and the installation of services contiguous with the erection of the building and siting of the caravan.
94. The requirement at 5(ii) is to disconnect and remove all services connecting and “serving the residential caravan”. Those elements are integral to the breach of control and the requirement to remove them goes no further than is necessary to remedy the breach. If there was any previous connection it would seem that was removed when the structure was demolished because the evidence strongly suggests that all of the services associated with the caravan were newly installed and integral to the breach of control. As such, the removal of those services goes no further than necessary to remedy the breach.
95. The requirement to restore the land to its condition before the breach took place is commonly applied on enforcement notices. The Council contend that the land immediately prior to the breach taking place was agricultural land, with the former stables already having been removed. Thus, its view is that the requirements do not necessitate the reconstruction of any buildings. I am satisfied that is the case. The requirement relates to the condition of the land. If any rebuilding was required by the notice it would need to expressly state as much in my view.
96. Therefore, there is no requirement to reconstruct the former buildings and the appeal on ground (f) must fail.

The Appeal on Ground (g)

97. The appellant contends that the 12 month period for compliance with the enforcement notice falls short of what should reasonably be allowed on account of the likely difficulty in securing an alternative site. However, the statements submitted do not set out what he considers would be reasonable. No alternative timeframe is put forward.
98. When considering appeals on ground (g) it is necessary to balance the public interest in remedying the harm arising and maintaining public confidence in the planning system and the private interests of those impacted by the requirements. Proportionality is a key consideration. The Article 8 Convention right is relevant to ground (g) because the residents would lose their settled base and home. A short compliance period probably would result in a greater level of interference with their

Convention rights whereas a longer period may help them to find accommodation elsewhere.

99. I have considered whether the grant planning permission on a permanent basis or on a temporary basis but have found that the extent of harm is such that neither of those would be justified. I reached those conclusions taking account of the severity of the implications for the appellant and his family but considered that a refusal to grant permission was proportionate.
100. Thus, there is a likelihood that the appellant may need to leave the site without having an alternative site to go to. In terms of the practicality of the timing the 12 month period would enable children to complete the current school year and is more than sufficient to carry out the required work in a physical sense. It would also provide time for the appellant to look for other sites.
101. Whether any alternative would become available is unknown and it is a difficult balance to strike. However, even accounting for that possibility I am satisfied that the 12 month period strikes a proportionate balance between the need to remedy the harm, maintain confidence in the planning system, ensure effective enforcement and the personal circumstances involved.
102. Accordingly, the appeal on ground (g) fails.

Conclusion on Appeal B

103. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice accordingly.

Chris Preston

INSPECTOR