

Appeal Decisions

Inquiry held on 12 & 13 May 2026 and 22 June 2026

Site Visit made on 12 May 2026

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 6 July 2026

Appeal A Ref: APP/D3830/C/25/3376721

Appeal B Ref: APP/D3830/C/25/3376722

Land at Fir Tree Place, Title Number WSX48293, Turners Hill Road, Crawley Down, West Sussex

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Michael Delaney (Appeal A) and Mr Miles Delaney (Appeal B) against an enforcement notice issued by Mid Sussex District Council.
 - The enforcement notice was issued on 12 November 2025.
 - The breach of planning control as alleged in the notice is:
 - (a) without planning permission, the material change of the Land to a mixed use comprising agriculture and stationing of caravans and their residential use
 - (b) without planning permission, the carrying out of works to form hardstanding and a service trench.
 - The requirements of the notice are:
 - (i) Cease all residential use of all caravans stationed on the Land
 - (ii) Disconnect from all services all caravans stationed upon the Land
 - (iii) Remove all caravans from the Land
 - (iv) Remove from the Land all pipes, cables, conduits and other paraphernalia installed to provide services to the caravans
 - (v) Remove from the Land all materials laid to form the hardstanding within the area shown in the approximate position hatched green on the plan attached to the notice
 - (vi) Remove any debris and chattels from the Land in association with the steps taken to comply with requirements 5.1, 5.2, 5.3 and 5.4 above.
 - (vii) Reinstate the Land to its condition prior to the unauthorised development taking place.
 - The period for compliance with the requirements is compliance with the requirements is 3 months in relation steps 5.1 and 5.2; 4 months in relation steps 5.3 and 5.4; 5 months in relation steps 5.5 and 5.6; and 6 months in relation to step 5.7.
 - The appeals are proceeding on the grounds set out in section 174(2) (a) (Appeal A only) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeals are dismissed and the enforcement notice is upheld with a correction and variations.

Procedural Matters

1. The reasons for issuing the notice originally included that the unauthorised development failed to secure adequate visibility splays and safe access onto the B2028. The Council now accepts that, subject to the imposition of a suitably worded condition, this reason can be overcome and no longer pursues its objection in terms of highway safety.
2. At the site visit, I noted that a kennel had been constructed close to where one of the caravans is stationed. The kennel comprises a combination of timber and metal bars and is roofed. The kennel stands on a hard base. Whilst I make no formal determination on the point, on the balance of probability it appears to me that this kennel constitutes the erection of a building. Although I do not have any evidence as to the precise date for the erection of this building, it is more likely than not that this post-dates the issuing of the enforcement notice. Accordingly, the erection of this kennel is not before me.
3. Following the sitting sessions of the Inquiry, the appellant submitted the Mid Sussex Land Availability Assessment for my consideration. The purpose of doing so was not explained and was not immediately obvious to me. The Council was offered the opportunity to comment but chose not to do so. In the event, the appellant did not rely on the Mid Sussex Land Availability Assessment in his closing submissions. Consequently, I have not had further regard to that document.
4. On the basis of evidence given at the Inquiry, the Council now accept that the appellant and all the occupiers of the site meet the definition of Gypsies & Travellers as set out in Annex 1: Glossary to the Planning policy for traveller sites (PPTS). I see no reason to take a different view.

The Enforcement Notice

5. In part, the breach of planning control alleged in the notice is, without planning permission, the material change of the Land to a mixed use comprising agriculture and stationing of caravans and *their* residential use (emphasis added). The appellant has concerns relating to the use of the word 'their' and suggests the following description for the breach of planning control that is alleged:

Without planning permission, the material change of the Land to a mixed use comprising agriculture and stationing of caravans and for residential use

6. The Council has no objection to the appellant's proposed description. I am satisfied that with one minor amendment (the deletion of the word 'and' after the word 'caravans') the appellant's description accurately describes the breach of planning control that has taken place and I shall correct the notice accordingly. I shall also vary the requirements of the notice as necessary to ensure that they are consistent with the revised allegation.
7. Paragraph 5.2 of the notice requires the disconnection of all services from all caravans stationed upon the Land. Paragraph 5.4 of the notice requires the removal from the Land of all pipes, cables, conduits and other paraphernalia installed to provide services to the caravans. On my reading, there is a

considerable overlap between the requirements at paragraph 5.2 and 5.4 of the notice albeit neither is defective in any way. Consequently, there is no benefit to be gained from varying the notice in this respect.

8. The requirement at paragraph 5.6 of the notice is to remove any debris and chattels from the Land in association with steps taken to comply with requirements 5.1, 5.1, 5.3 and 5.4 above. Two points arise.
9. Firstly, the requirement at paragraph 5.6 of the notice specifically links the removal of any debris and chattels to the requirements 5.1, 5.1, 5.3 and 5.4 of the notice. In that context, the removal of 'debris' is an obvious and valid requirement. No so the removal of 'chattels'. There is nothing in the requirements at 5.1, 5.2, 5.3 and 5.4 of the notice that would qualify as a 'chattel'. Accordingly, I will delete the reference to chattels from this requirement.
10. Secondly, the requirement at paragraph 5.6 of the notice makes no mention of the requirement at paragraph 5.5 of the notice, which is to remove from the Land all materials laid to form the hardstanding within the area shown in the approximate position hatched green on the plan attached to the notice. The removal of debris resulting from the removal of the hardstanding would be an obvious requirement and its omission appears to be an oversight. I will therefore vary the notice by adding the requirement at 5.5 of the notice to those already listed in this requirement.
11. Section 176 of the 1990 Act provides that an enforcement notice may be corrected and/or varied if there is no injustice to the appellant or Local Planning Authority. The above were discussed at the Inquiry and neither party raised any objection to the correction and variation of the notice in these respects. I am therefore satisfied that I can correct and vary the notice in these respects without causing injustice.

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

12. 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.
13. The Council has stated a total of seven substantive reasons for issuing the enforcement notice, from which the main issues raised are:
 - the effect, if any, on the character and appearance of the area
 - whether the appeal site is a suitable location the development
 - whether the development would have an adverse effect on protected species and their habitats
 - whether the measures for disposal of foul and surface water at the site are, or could be made to be, adequate

Character and appearance

14. The appeal site sits within the High Weald Character Area as defined in the Landscape Character Assessment for Mid Sussex 2005 (LCAMS). The key characteristics of the Character Area are a wooded, confined rural landscape of intimacy and complexity, with a pattern of small, irregular-shaped assart fields.

On a more local level, the Mid Sussex Landscape Capacity Study 2007 (MSLCS) describes the Turners Hill High Weald as making a 'fairly high' contribution to the distinctive settlement setting due to the topography and contributes to the rurality of the surrounding landscape by containing Turners Hill.

15. The appeal site displays many of the characteristics of the High Weald Character Area insofar as it is enclosed by a line of trees linked to a large area of woodland. The main part of the appeal site lies behind this line of trees when viewed from Turners Hill Road, with the gap resulting from the access road providing the only glimpse into that space. Furthermore, there are only very limited views of the wider landscape from within the site itself. As such, the appeal site exhibits many of the characteristics of the High Weald Character Area in terms of being wooded, confined and intimate.
16. The only part of the development subject to the notice that is visible from the public domain is one static caravan, this being the end unit of a row of five static caravans stationed to the north of where the access road enters the main body of the site. The eye is drawn to that caravan by the line of the access road leading up to it. As such, the visual effect of that one caravan is disproportionate to its size and appearance.
17. The obvious visual presence of that one caravan destroys the qualities of confinement and intimacy previously displayed by the appeal site, both key characteristics of the High Weald Character Area. Consequently, I find that the harm to the character and appearance of the appeal site caused by the breach of planning control alleged in the notice to be substantial, insofar as it fundamentally destroys the key characteristics of the appeal site and therefore undermines its contribution to the rurality of the High Weald Character Area as defined in the LCAMS and the Turners Hill High Weald as defined in the MSLCS.
18. The appellant's case is largely predicated on the basis that the appeal site is not generally visible from the public domain. Two points flow from this.
19. Firstly, the breach of planning control alleged in the notice (as I propose to correct it) is the material change of the Land to the stationing of caravans for residential use. It follows that, in the event that planning permission was granted for the breach of planning control alleged in the notice, caravans could be stationed on any part of the land to which the notice relates. This could include in the gap resulting from the access road, resulting in the harm that I have identified above.
20. Secondly, the relevant policies in the development plan reflect those in the National Planning Policy Framework (Framework) by recognising the intrinsic character and beauty of the countryside. In this case, that intrinsic character derives in no small part from the confined and intimate form of the landscape. It follows that the mere presence of development within the landscape is harmful to the confined and intimate form of that landscape, irrespective of whether it is visible from the public domain. That harm is substantial, to the extent that it is unacceptable.
21. The appellant maintains that any harm in this respect could be overcome by the revising the layout of the site through the submission of a Site Development Scheme (SDS). In that context, the appellant has referred to some appeal decisions where precisely that approach has been taken, including the appeals relating to a site at Neverend Farm, Pye Corner, Ulcombe

(APP/U2235/C/19/3243808 & APP/U2235/W/19/3241823). I note immediately that the Inspector's Decision in those cases related to appeals made both under section 78 and section 174 of the 1990 Act.

22. In principle, that approach can be helpful when there is an attendant appeal under section 78 of the 1990 Act, as in the Neverend Farm appeals. In such cases, there is considerable scope to amend the development that is proposed. Not so where the appeal is made solely under Section 174 of the 1990 Act. In these circumstances, Section 177(1) of the 1990 Act provides that planning permission may be granted in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates. It follows from the wording of section 177(1) that the deemed planning application arising out of an appeal on ground (a) can only relate to the matters stated in the notice. This invariably reduces the scope for amending the development through the submission of a Site Development Scheme.
23. In this case, the appellant has submitted a As Proposed – Illustrative Site Layout and Enhancement Plan (Drawing No: J005445-DD-04). The layout proposed on that drawing shows four static caravans stationed on the Hardstanding (Pre-existing) with two static caravans stationed on Hardstanding (Not Pre-existing). This layout would have the benefit of not stationing any caravans in the gap in tree line resulting from the access road, such that no caravans would be visible from the public domain.
24. However, for the reasons set out above, that would not overcome the intrinsic harm to the character of the countryside in this location. The harm would be reduced by not being visible from the public domain but not entirely overcome.
25. A further difficulty is that two of the four static caravans purportedly to be stationed on the Pre-existing hardstanding are shown as being stationed on hardstanding identified on the drawing as being Hardstanding (Not Pre-existing). That land is currently grassed and behind a fence.
26. The stationing of those two caravans would therefore necessitate the construction of an additional area of hardstanding which would potentially constitute an engineering operation under Section 55(1) of the 1990 Act and therefore constitute new development that itself requires planning permission. It therefore does not form part of the matters stated in the notice. Accordingly, Section 177(1) of the 1990 Act dictates that I cannot consider granting planning permission for the layout shown on As Proposed – Illustrative Site Layout and Enhancement Plan (Drawing No: J005445-DD-04).
27. Moreover, the static caravans shown on Drawing No: J005445-DD-04 are not of the same size as those currently stationed on the site. I am fully mindful that Drawing No: J005445-DD-04 is an illustrative layout that does not necessarily reflect the size of the static caravans currently stationed on the land. I am also mindful that the breach of planning control alleged in the notice (as I propose to correct it) is the material change of the Land to the stationing of caravans for residential use.
28. Consequently, provided that the caravan accords with the definition of a caravan set in the Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1965, there would in theory be no limitation on the size of the caravan that could be stationed on the site. Nevertheless, on the evidence

of Drawing No: J005445-DD-04, I am not satisfied that a total of six caravans of any size could be stationed on the Hardstanding (Pre-existing) and therefore without requiring additional hardstanding that could potentially require planning permission.

29. Furthermore, one of the caravans (and associated parking spaces) shown on Drawing No: J005445-DD-04 would be located very close the kennel that has been erected in this position (see above) and which is not shown on the drawing. To my mind, this raises further doubts as to whether the layout shown on Drawing No: J005445-DD-04 could be achieved in practice.
30. For these reasons, I am not persuaded that the harm to the character and appearance of the appeal site can be overcome by the submission of an SDS. This case can therefore be distinguished from that submitted in relation to the site at Neverend Farm, as well as the other appeal decisions referred to by the appellant.
31. During cross-examination, Mr Dale ultimately accepted that the use of the appeal site for stationing caravans could be controlled through a condition requiring landscaping and retention of existing trees such that the caravans were not visible, then it would be "hard to resist" the development purely in character and appearance terms. For the reasons set out above, I do not share that view. The imposition of conditions requiring landscaping and the retention of existing trees could reduce the visual impact to some extent, but I am not persuaded that the imposition of conditions could make the development acceptable in landscape terms.
32. I conclude that the breach of planning control stated in the notice significantly and unacceptably harms the character and appearance of the area. I therefore conclude that the development is contrary to Policies DP12, DP26 and DP33 of the Mid Sussex District Plan (Local Plan) as well as Policies CDNP05 and CDNP08 of the Crawley Down Neighbourhood Plan (Neighbourhood Plan). These policies provide, amongst other things, that the countryside will be protected for its intrinsic character and beauty and that development in the countryside will be permitted where it maintains and where possible enhances the rural and landscape character of the District, and that development outside the village boundary (of Crawley Down) will only be permitted if it does not detract significantly from the character of the landscape.
33. Paragraph 187 of the Framework states 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. For the reasons stated above, the development on the appeal site is itself harmful to the intrinsic character and beauty of the countryside in this location. For these reasons, the development subject to the notice fails to accord with the guidance in the Framework in terms of conserving and enhancing the natural environment.
34. Paragraph 26 of the PPTS states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements. The appeal site is relatively close to the settlement of Crawley Down and in addition there is development on both side of Turners Hill Road, as well as to the rear of the site. I therefore consider that the appeal site cannot be properly considered as being with open countryside for the

purposes of Paragraph 26 of the PPTS, such that there is no conflict with the PPTS in this respect.

Location of the development

35. There is no dispute that the appeal site is outside of the defined settlement boundary and therefore within the countryside (albeit not open countryside). Policy DP12 of the District Plan states, amongst other things, that development will be permitted in the countryside provided it maintains and where possible enhances the quality of the rural and landscape character of the District and is (i) necessary for the purposes of agriculture or (ii) is supported by a specific policy reference either elsewhere in the District Plan, a Development Plan Document or a relevant Neighbourhood Plan.
36. Policy DP33 of the District Plan specifically relates to Gypsies, Travellers and Travelling Showpeople. It therefore qualifies as a 'specific policy reference' for the purposes of Policy DP12. It follows that Policies DP12 and DP33 must be read together for present purposes.
37. Policy DP33 of the District Plan does not say in terms that Gypsy & Traveller development is acceptable in the countryside. However, it does state that in rural and semi-rural areas Gypsy & Traveller sites should not dominate the nearest settled community. The clear inference is that as a matter of principle the District Plan does not preclude Gypsy & Traveller sites from being located in the countryside.
38. Policy DP33 of the District Plan goes on to state that new Gypsy & Traveller sites will be permitted subject to a list of criteria. These are set out as bullet points, not all of which are relevant to this appeal. Of those that are relevant, I have already found that the development unacceptably harms the landscape character. I will consider the remainder in turn below.

The site satisfies a clearly identified need (for Gypsy & Traveller pitches)

39. The appeal site contributes to meeting the clearly identified need for sites/pitches set out in the Mid Sussex Gypsy and Traveller Accommodation Assessment.

The site is reasonably accessible to schools, shops, health and other local services and community facilities

40. The first point to note is that the benchmark established by the policy is 'reasonably accessible'. The term 'reasonably accessible' is neither defined nor quantified in the policy itself.
41. It is common ground¹ that the appeal site is some 1.4km from Crawley Down, this being the nearest settlement providing services and amenities. The facilities available at Crawley Down includes shops, restaurants and medical services. However, although described by Mr Delaney as having "everything you need", a return journey on foot would involve a walk of some 2.8km. This is far in excess of the walking distance of 800m recommended in the Active Travel England Advice Note and this is likely to be the reason why the site has a "below average" score of 33 for walking using the Connectivity Tool, despite having an overall score of 47 ("slightly below average").

¹ Statement of Common Ground dated 8 May 2026.

42. The footpath to Turners Hill Road outside the appeal site leads directly into Crawley Down. I did not walk the full length the footpath into Crawley Down as part of my site visit but I did note that Turners Hill Road (B2028) is heavily trafficked and that in places the footpath is relatively narrow. It is therefore an inhospitable environment for a pedestrian, particularly over a long distance. For these reasons, I consider it unlikely that occupiers of the appeal site would walk into Crawley Down on a regular basis, particularly during the hours of darkness and/or in inclement weather. Furthermore, walking into Crawley Down would be a less attractive proposition when carrying heavy shopping and/or with a pushchair.
43. There is a bus stop some 150m to the south of the access to the appeal site. This bus stop serves a total of five routes, serving destinations that include Crawley Down, Brighton, Crawley and Horley. With the exception of Crawley Down, which is served by all routes, the bus services are regular if infrequent.
44. As part of my site visit, I walked from the caravans stationed on the appeal site to the bus stop. Allowing for the delay caused by waiting for a vehicle to exit an access, it took approximately 4 minutes to reach the bus stop from the nearest caravan on the appeal site. The difficulty is that the first part of the journey is on the unlit access road within the appeal site itself. Whilst the access road is otherwise generally suitable for pedestrians, the absence of any lighting on this part of the route is likely to act as a disincentive to accessing the bus stop and the bus services that it serves, particularly during the winter months and/or in inclement weather.
45. To some extent this is borne out by the oral evidence of Mr Michael Delaney. In answer to my question at the Inquiry, Mr Delaney's evidence was that he had on one occasion taken the bus into Crawley Down but generally drives there to do his shopping, etc. I note that Mr Delaney did not claim to have ever walked to Crawley Down.
46. The appellant calculates that the appeal site scores 47 using the Government's Connectivity Tool. The appellant considers this score to be laudable for a Gypsy and Traveller site, given that comparable developments allowed on appeal have scored between 20 and 35. I have read all the appeal decisions provided to me by the appellant and the common denominator, it appears to me, is that they all turned on the particular facts and circumstances of the site in question. This led to some appeals being allowed (for example, APP/J1915/W/19/3234671 – Chapel Lane, Little Hadnam) and some being dismissed (For example, APP/D3830/W/25/3362298 – Moonshine Meadow, Ansty). By definition, those facts and circumstances are different to those of the appeal site. For that reason, those appeal decisions do not greatly assist me and I have determined this appeal on its own facts and circumstances.
47. In response, the Council accepts that some elements of the appeal site promote sustainability, specifically the proximity to the bus stops. However, notwithstanding the proximity of the bus stops to the appeal site, the distance to Crawley Down combined with the inhospitable pedestrian environment on Turners Hill Road means that the site occupiers would be largely reliant on private vehicles to access services and facilities. In that context, there is clearly a difference between a rural location such as this and sites within an urban area. Nevertheless, the location of this site does not offer a genuine

choice of transport modes. Consequently, when looked at in the round, I consider that the site is not 'reasonably accessible' in terms of Policy DP33.

48. Paragraph 110 of the Framework indicates that significant development should be focused on locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes, whilst recognising that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. The Framework does not define the term 'significant' but in the context of this rural location I consider that the breach of planning control alleged in the notice can be considered to constitute significant development.
49. Paragraphs 115 and 117 of the Framework are of particular relevance to this issue. They require, amongst other things, that "sustainable transport modes are prioritised taking account of the vision for the site, the type of development and its location" and that proposals "give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport".
50. In these respects, given that the location of the appeal site does not offer a choice of travel modes that are readily accessible to the occupiers, I consider that the development does not accord with the Framework. In reaching that conclusion, I am mindful of the differences between urban and rural areas in terms of the opportunities to access public transport and have taken that into account.
51. Paragraph 13(h) of the PPTS indicates that planning policies should reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability. I have had regard to that guidance but the evidence before me is that none of the current occupiers of the site live and work in the same location. This therefore limits the weight that I can attach to any benefits arising from the development in this respect and therefore the sustainability credentials of the appeal site.

The development is appropriately located and designed to/or capable of being designed to ensure good quality living accommodation for residents and that the local environment of the site would not have detrimental impact on the health and well-being of the Travellers

52. The caravans currently stationed on the site are arranged in two 'groups': one static caravan stationed on the pre-existing hardstanding and a row of five static caravans stationed on the newly constructed hardstanding. There is no evidence before me to demonstrate that this arrangement provides good quality living accommodation, including in relation to fire risk.
53. The layout shown on the As Proposed – Illustrative Site Layout and Enhancement Plan (Drawing No: J005445-DD-04) is intended to show that the site can provide a layout that provides good quality living accommodation for residents, including in relation to separation distances and reducing fire risk. However, for the reasons stated above, I am not convinced that the layout shown on this drawing can be achieved in practice without additional development that it itself requires planning permission. Consequently, the appellant has not shown that the site is capable of being designed to ensure good quality living accommodation for residents.

The site is compatible with neighbouring land uses and minimise impact on adjoining uses and built form

54. There is reference in representations about direct adverse impacts resulting from the breach of planning control in terms of increased noise, disturbance, loss of privacy and security. However, those concerns have not been supported with evidence and none of the residents concerned gave evidence at the Inquiry. Consequently, the evidence lacks detail and is untested. It therefore carries only limited weight.
55. There is also reference in representations about direct adverse impacts on the occupiers of the site resulting from neighbouring uses and infrastructure, including the adjoining commercial arboriculture firm and the electricity cables that pass directly over some of the caravans. Again, I have not been provided with any evidence to support these claims and, in the absence of that evidence, have not considered them further.

In rural or semi-rural areas, sites should not dominate the nearest settled community

56. It is possible that if caravans were to be stationed across the whole of the appeal site it could dominate elements of the nearest settled community. However, the appellant has made it clear that this is not his intention and has proposed a layout consisting of a total of six pitches in total. For the reasons stated above I am not in a position to entertain that layout but am nonetheless satisfied that at this time the development does not dominate the nearest settled community.

Conclusion on the location of the development

57. For the reasons stated above and looked at in the round, I conclude on balance that the appeal site is not in a suitable location. The breach of planning control is therefore contrary to Policies DP12 and DP33 of the District Plan, as well as Policy CDNP10 of the Neighbourhood Plan. The development also fails to accord with the Framework and PPTS in this respect.

Protected species and their habitats

58. The appellant has produced a Preliminary Ecological Appraisal (PEA), the survey for which was undertaken in April 2026. The consultants who produced the PEA explain that is a walkover survey and desk study, the purpose of which were to assess the nature conservation importance of the site and the potential of the site to support protected species.
59. I note, however, that the PEA also refers to determining whether any ecological constraints could affect *proposed* works for the site (emphasis added). The PEA also refers to the works having *commenced* and frames its recommendations in terms of whether or not a significant loss of grassland is *proposed* (emphasis added), as well as recommending a precautionary approach site clearance. The PEA goes on to advise that on-site contractors must be made aware of badgers in the locality and that all clearance work is undertaken in the presence of a suitably qualified ecologist.
60. It is therefore not clear to me whether the authors of the PEA have fully grasped the fact that the purpose of the report was to explore what the ecological value of the site was likely to have been before the breach of

planning control occurred, particularly in relation to protected species. Alternatively, it may be that a generic PEA has been adapted for present purposes. Either way, for these reasons I have treated the findings of the PEA with an element of caution.

61. In summary, in relation to protected species the PEA concluded that the site offered:

- **moderate** potential for foraging and commuting bats, but **negligible** potential for roosting bats
- **negligible** potential for breeding Great Crested Newts (GCN), but **high** potential for foraging and commuting GCN
- **moderate** potential to support reptiles
- **low** potential for breeding birds
- **low** potential for breeding badgers but high potential for foraging and commuting badgers and
- **low** or **moderate** potential for other protected species

62. The PEA recommended that targeted surveys are undertaken for GCN and reptiles, as well as for foraging and commuting bats. The Council's Place Services also confirm that, based on the PEA, the site "does nearly meet the definition of g1a lowland dry acid grassland", and that further survey work is "essential" to establish if this is the case

63. But that misses the point. The key findings of the PEA include that the site provides suitable habitat for some protected species of moderate and in one case high potential. The salient point is that some habitat loss has occurred, albeit only of site level significance. The inescapable conclusion is therefore that the matters stated on the notice as constituting the breach of planning control have caused at least some harm to protected species and their habitat.

64. Consequently, on the date the enforcement notice was issued, the development was harmful in this respect. At this point in time, whilst it has been recognised that mitigation and/or compensation measures will be necessary, I do not have a full package of such measures before me. The PEA recommends that the site is enhanced by introducing some compensatory planting and by installing bat boxes. It also recommends that a buffer zone is provided to the adjacent ancient woodland. Nonetheless, the nature and extent of any such compensation is unevidenced and unspecified.

65. The appellant accepts that some harm to protected species has occurred but considers that any such harm can be mitigated and/or compensated for through the imposition of a suitably worded condition(s). However, this is not the approach advocated in Circular 06/2005, paragraph 99 of which states:

"It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted. However, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected

by the development. Where this is the case, the survey should be completed and any necessary measures to protect the species should be in place, through conditions and/or planning obligations, *before the permission is granted.*" (emphasis added)

66. It is now too late to follow the approach advocated in Circular 06/2005. The PEA that has been submitted concluded that the site offered potential for protected species, GCN in particular. However, the level of harm to those protected species is not set out in the PEA, not least because the development took place before there was an opportunity to establish the baseline in terms of any protected species that might be present. Moreover, the package of measures that might be necessary to mitigate and/or compensate for the harm that has been caused are not sufficiently well developed to understand how effective they might be.
67. Consequently, having regard to the six policy tests set out in the Planning Practice Guidance (PPG) relating to the imposition of conditions, as well as to the guidance in Policy 06/2005, I am not satisfied that is potentially open to me to rectify the harm to protected species resulting from this development through the imposition of a condition(s). In that context, in my view the circumstances of this development do not qualify as 'exceptional circumstances' for purposes of paragraph 99 of Circular 06/2005.
68. I take the appellant's point that the lawful use of the land is for agriculture and that the undertaking of that lawful use could itself have had/could have an impact on the habitats for protected species, including GCN. However, the breach of planning control that is subject to the notice constitutes an additional use over and above the lawful use for agriculture. There are specific harms resulting from that use: for example, the laying of additional hardstanding. Any residual harms resulting from the lawful use of the land for agriculture therefore do not justify the additional (and potentially ongoing) harms resulting from the breach of planning control that has taken place.
69. There is a further consideration. One of the mitigation/compensation measures proposed is the creation of a new pond on the site itself, which would be suitable for GCNs and could potentially offset the harm caused to their existing habitat, at least to some extent. However, as a matter of fact and degree, this is likely to constitute another act of operational development which would not form part of the matters stated in the notice and would therefore be beyond the scope of the ground (a) appeal. It follows that this would not be permissible as part of this appeal, such that I am not able to consider it.
70. I conclude that the breach of planning control that has occurred has had an adverse effect on protected species and their habitats. I therefore conclude that the development is contrary to Policy DP38 of the District Plan and Policy CDNP09 of the Neighbourhood Plan. These policies state, amongst other things, that biodiversity will be protected and enhanced by requiring measures to avoid and reduce disturbance to sensitive habitats and species.
71. Paragraph 193(a) of the Framework states that "if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused". There is no evidence before me that the harm to protected species can be

adequately mitigated or compensated for. In these circumstances, paragraph 193(a) of the Framework clearly states that permission should be refused.

Foul and surface water disposal

72. The appellant has not provided a fully detailed Drainage Strategy at this time but considers that this is a matter that can be dealt with through the imposition of a suitably worded condition(s). In support of that position, the appellant refers me to three appeal decisions where this approach was followed: the first in relation to a site at Quin Hay Paddocks, within the South Downs National Park (APP/Y9507/W/21/3285377); the second was in relation to a site at Randalls Farm, Chiddingfold, East Sussex (APP/C1435/C/23/3326457 & APP/C1435/W/23/3330564), and the third related to Neverend Farm (APP/U2235/C/19/3243808 & APP/U2235/W/19/3241823). I return to these below.
73. In this case, no details whatsoever have been provided in relation to the measures for disposal of foul and surface water at the site. The breach of planning control alleged in the notice (as I propose to correct it) is the material change of use of the Land to a mixed use comprising agriculture and the stationing of caravans for residential use. It follows that if planning permission was granted on the deemed application arising from the appeal on ground (a) the caravans could currently potentially be located at any point within the land subject to the notice.
74. In relation to foul drainage, the appellant indicates that if a sewer connection is not possible to deal with foul water then the hierarchy of package treatment plant - septic tank - cess pit would be followed. It was indicated that a drainage engineer would need to provide a report on "the best way for this land".
75. No information has been provided about the location of the nearest mains sewer, if known. Nevertheless, it is reasonable to conclude that the nearest main sewer runs along Turners Hill Road. The access road leading connecting the caravans to Turners Hill Road is some 75m in length. This therefore represents the absolute minimum distance that a connection to the main sewer would need to be. This is likely to be an expensive engineering operation.
76. However, no estimation of the cost of connecting to the nearest main sewer has been provided to show if this would be financially viable. Similarly, no evidence has been provided to show that connection to the main sewer would be technically feasible or viable. In the absence of that information, I cannot form an informed view as to whether a connection to the main sewer is a realistic possibility. In any event, the appellant's position was that such a connection is "unlikely".
77. The same is equally true of the other potential solutions in the hierarchy of foul water drainage schemes. In the absence of any information relating to those other potential solutions, I cannot form an informed view as to the extent of work that would be involved and whether any of them represent a realistic possibility.
78. It follows that relying on the imposition of a condition to secure a satisfactory scheme for the disposal of foul and surface water would constitute a hostage to fortune. I recognise that a condition could be phrased as an 'enforcement' type

condition whereby failure to arrive at and implement a suitable scheme for the disposal of foul and surface water would result in the cessation of the use and the removal of the caravans from the site.

79. However, the absence of any details regarding the proposed measures for the scheme for the disposal of foul and surface water would create a considerable degree of uncertainty, not least for the appellant and the occupiers of the site. This would place the appellant and the occupiers of the site in an invidious position, whereby they would be uncertain as to whether the site would be their home going forward until and unless a suitable drainage scheme was arrived at. Throughout that period of time, there would be the omnipresent threat of having to vacate the site in the event that a suitable Drainage Strategy could not be devised.
80. Given that there are no details whatsoever of a potential Drainage Strategy before me, and therefore considerable uncertainty as to whether an acceptable strategy would be forthcoming and when, I have discounted this possibility as being unreasonable, that being one the six policy tests set out in the PPG with which a condition must comply.
81. Overarching all of the above is that the scope of an appeal under ground (a) and the power to grant planning permission under section 177(1) of the 1990 Act have been “deliberately limited” by Parliament². Specifically, section 177(1)(a) of the 1990 Act provides that, on determination of an appeal under Section 174, the Secretary of State may grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole *or any part of those matters* or in relation to any part of the land to which the notice relates (emphasis added).
82. The appellant contests that approach, referring me to the judgement of the High Court in *Bhandal v Secretary of State for Housing, Communities and Local Government & Bromsgrove District Council* [2020] EWHC 2724 (Admin). In that case, the Inspector dismissed the appeal stating the alternatives were outside the scope of ground (a) as they involved new works. The High court held that the Inspector clearly considered that the work proposed could not be considered under s177(1)(a) due to the nature of that work, but that the wording used was interpreted as automatically excluding any new work from consideration. The High Court rejected that as a “very narrow view” and held that it was too narrow to say that *any* new work would mean that what was being proposed fell outside “part” of the matters alleged to be a breach of planning control (emphasis added)
83. Nevertheless, the High Court held in *Bhandal* that whether or not new work could form part of the development was a matter of planning judgement. In this case, the operational development which is contemplated by the appellant to resolve the drainage issues is clearly not “part of” of the operational development identified in the notice. Moreover, it potentially goes far beyond that, ranging from connection to a main sewer that is at least 75m away to the digging of an unspecified number of cess pits.
84. This last point is key. The complete absence of any details on the measures proposed – as yet still to be identified in an engineer’s report – means that I

² See *SSCLG v Ioannou* [2015] 1 P&CR 10

have no way of determining as a matter of planning judgement how far beyond the matters stated in the notice those measures might be. Consequently, on my reading of *Ioannou* and of *Bhandal*, section 177(1)(a) of the 1990 Act dictates that it is not open to me to grant planning permission for the operational development contemplated by the appellant to resolve surface and foul water drainage issues arising from the development or to secure those through the imposition of a suitably worded condition.

85. There is a further distinction in this case. The area of case law to which the appellant alludes in his closing submissions, in effect that specific matters that are necessary for a residential use to continue (such as drainage and services) are 'part and parcel' of such a use, derives from and is synonymous with cases involving an appeal made on ground (f) as set out in section 174(2) (a) of the 1990 Act: namely 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.
86. There is no appeal on ground (f) in this case. It follows that the obligation imposed by the case law that has evolved in connection with ground (f), including the obligation to consider obvious alternatives which would overcome planning objections at less cost and disruption to the developer, does not apply in this case. Moreover, that case law is in connection with removing works that have already taken place rather than works yet to be undertaken, as is the case here. That is an important distinction, linking back to the constraints imposed by section 177(1)(a) of the 1990 Act.
87. The breach of planning control alleged is in two parts, relating to: (a) a material change in use of the Land and (b) operational development, specifically to form hardstanding and a service trench. The provision of a fully detailed Drainage Strategy would involve (possibly significant) operational development. These would fall under (b) as set out in the enforcement notice.
88. In these circumstances, I consider that the provision of a Drainage Strategy could not be considered to be 'part and parcel' of the breach of planning control that is alleged: otherwise, it would logically have been necessary to install the drainage (details not yet known) at the same time as the caravans were stationed on the site for residential purposes. That was not the case here. Consequently, I consider that the provision of a fully detailed Drainage Strategy potentially involving extensive operational development falls outside of the constraints imposed by section 177(1)(a) of the 1990 Act.
89. I fully recognise that other Inspectors have taken a different approach where the circumstances allow. The appeal in relation to Quin Hay Paddocks was in relation to a material change of use to the stationing of caravans for residential purposes but was effectively for a single pitch. The matter of the disposal of foul and surface water was not a main issue before the Inspector. This implies that the Council was satisfied in principle that this issue could be resolved. That is not the case here. On that basis alone, the Inspector's reasoning and decision in that case can be distinguished from the case that it is before me. There was also a parallel section 78 appeal that was not constrained by provisions of section 177(1)(a) of the 1990 Act.
90. In relation to the site at Randalls Farm, a condition was imposed requiring the submission of a SDS that was to include measures for the disposal of foul and surface water. That condition was imposed on the decision to grant planning

permission for a proposed development pursuant to the appeal made under section 78 of the 1990 Act. The matter of the disposal of foul and surface water was a main issue before the Inspector in that case, with the Inspector concluding that the development failed to demonstrate that there were adequate arrangements which, in turn, could cause problems outside of the site. Again, there was also a parallel section 78 appeal that was not constrained by provisions of section 177(1)(a) of the 1990 Act.

91. The Inspector was however satisfied that the matter could *potentially* be ameliorated by way of an appropriately worded condition. The word 'potentially' in that sentence is key, insofar as it implies that the Inspector had sufficient information before him to arrive at that conclusion. That is not the case with the development before me. There is no information whatsoever that would entitle me to arrive at the conclusion that the matter could be resolved through the imposition of a suitably worded condition.
92. At the site at Neverend Farm, a septic tank had already been installed at the point the enforcement notice was issued. The parallel section 78 appeal sought permission for the gypsy and traveller site and "associated operational development", thereby providing scope to grant permission for future acts of development needed to make the development acceptable. That case can again be distinguished from this appeal for that reason.
93. I conclude that the measures for the disposal of foul and surface water at the site are not adequate. I therefore conclude that the development conflicts with Policies DP41 and DP42 of the District Plan as well as Policy CDNP06 of the Neighbourhood Plan which, amongst other things, state that development should connect to a public sewerage treatment works or, where this is not feasible, should be supported by sufficient information to understand the potential implications for the water environment. The development and the deemed application for it manifestly fail in both these respects.

Other considerations

94. 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. I have found that the development subject to the enforcement notice fails to accord with the development plan. 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.

Intentional Unauthorised Development

95. In a letter dated 21 August 2015, the Chief Planning Officer at the (then) Department for Communities and Local Government in England issued a planning policy statement which included the following:

"The government is concerned about the harm that is caused where the development of land has been undertaken in advance of obtaining planning permission. In such cases there is no opportunity to appropriately limit or mitigate the harm that has already taken place. Such cases can involve local

planning authorities having to take expensive and time-consuming enforcement action.

For these reasons, this statement introduces a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals. The policy applies to all new planning applications and appeals received from 31 August 2015”.

96. The statement was repeated in a Written Ministerial Statement (WMS) dated 17 December 2015. The WMS has not been withdrawn and remains a material planning consideration. The appellant accepts that the occupation of the appeal site constitutes Intentional Unauthorised Development.
97. It is firstly necessary to consider the sequence of events surrounding the appellant’s occupation of the appeal site. The Council was first alerted to the construction of hardstanding on the site in or around August 2025. The development continued and the Council issued a Temporary Stop Notice on 19 September 2025, at which time two caravans were stationed on the land. On 25 September 2025, a further three mobile homes were brought onto the site, albeit only one was occupied. This was *less than a week* after the Temporary Stop Notice was issued. A sixth mobile home was noted as being present on the site on 13 October 2025, prompting the Council to issues a Permanent Stop Notice and the Enforcement Notice on 12 November 2025.
98. In his Proof of Evidence, Mr Michael Delaney sets out his own previous experience of the planning system, this in relation to his land at Shepley Bridge within the administrative area of Tandridge District Council. At paragraph 1.10 of his Proof of Evidence, Mr Michael Delaney says “I know how painstakingly difficult it can be to obtain planning permission”. This statement reveals that Mr Michael Delaney not only knew that planning permission was required to station caravans for residential use on the appeal site but also had foreknowledge that obtaining planning permission would not be straightforward. Yet this did not deter him from occupying the site without the benefit of planning permission.
99. The appellant’s occupation of the appeal site represents the very epitome of the situation envisaged in the WMS insofar as there is no opportunity to appropriately limit or mitigate the harm that has already taken place. Nowhere is this more evident than in relation to the protected species that are now known to be present on the site, in particular GCN.
100. Furthermore, the appellant continued with the development notwithstanding that a Stop Notice had been served upon him. As set out in the Stop Notice itself, it is an offence to contravene a Stop Notice for which the appellant would be liable for prosecution. Again, this knowledge did not deter Mr Michael Delaney from continuing with the development.
101. In my view, the appellant’s occupation of the appeal site constitutes a blatant, contemptuous and egregious example of Intentional Unauthorised Development in the terms set out in the WMS. For the avoidance of any doubt, I do not regard this matter as being determinative in itself: I am fully mindful that enforcement action is intended to be remedial rather than punitive. Nevertheless, given the circumstances set out above, in this case I attach substantial weight to this as a material planning consideration.

Need for and supply of Gypsy and Traveller sites

102. It was agreed at the Inquiry that there was no benefit to be gained by forensically examining the Council's Gypsy & Traveller Accommodation Assessment (GTAA), not least because this pre-dates the current definition of Gypsies & Travellers as set out in Annex 1: Glossary to the PPTS.
103. In summary, the Council's most recently published assessment of need and supply is the GTAA Review July 2024. That identified a need, between 2024/5-2028/9 for 3 pitches for those meeting the 2023 PPTS definition, and 9 pitches for those not meeting the definition; a proportion of which may now meet the revised 2024 PPTS definition. On that basis, the Council accepts that it cannot currently demonstrate a 5-year supply of sites.
104. The appellant contends that the Council's failure to provide a 5-year supply of sites constitutes a failure of policy, a material consideration to which he attaches significant weight. The lack of supply itself triggers the tilted balance, and the contribution of an additional site carries weight as a benefit. In the circumstances it would amount to double counting to add additional weight in favour of development based on the claimed "failure of policy". Similarly, it is inevitable that any new sites that did come forward would be located outside of the defined settlement boundary. However, they would be assessed on their individual merits against the policies in the development plan and national guidance, and as such could potentially be found to be acceptable. I therefore attach only limited weight to this as a material consideration.

Availability of suitable alternative sites

105. The Council cannot identify any suitable alternative sites that are available and/or deliverable. However, in this case, I am not convinced that being forced to move from this site would necessarily mean that the appellant and the other occupiers would be obliged to adopt a roadside existence, with all the implications that would bring.
106. In his Proof of Evidence, Mr Delaney repeatedly implies that there is a single site in Shipley Bridge, referring to it as "the site in Shipley Bridge". In oral evidence to the Inquiry, Mr Delaney identified the site on the right-hand side of the aerial photograph produced by Mr Woods as the site which he had passed down to his sons jointly. It was Mr Delaney's evidence that there were 6 caravans on that site, two of which were the subject of the pending application with Tandridge District Council and which were said to have been left vacant because the family "did not want to upset the council".
107. Reference is made in a number of representations to several sites in which the appellant has an interest, notably sites (plural) at Shipley Bridge, this being one of several sites in which the wider Delaney family have a legal interest. In his oral evidence, Mr Michael Delaney explained that the caravans on the Shipley Bridge site(s) are now occupied by various members of his family. It was Mr Delaney's own evidence there are 10 caravans split between the two sites at Shipley Bridge.
108. However, the representations that have been received include a screenshot of a page on social media advertising the availability of four mobile homes on that site. That advertisement contains a photograph of the site, taken from ground level, in which at least four mobile homes are evident. During his

cross-examination, a copy of that photograph was put to Mr Michael Delaney, together with a copy of an aerial photograph of the site. In answer to the question(s) put to him, Mr Michael Delaney was adamant that this was not his site.

109. I was wholly unconvinced by the response given by Mr Michael Delaney. It is clear from comparison of the photograph taken at ground level with the aerial photograph that they are of the same site. The arrangement of the caravans stationed on the site is identical in both photographs and the background of trees visible in the photograph taken at ground level can be discerned in the aerial photograph. There may be an element of ambiguity as to whether the long unit with a dark roof at the rear of the site (shown in the photograph as facing the site entrance) is a 'stable block' and not a mobile home, as with the other claimed 'outbuilding'. Nevertheless, on my examination of the photographs, I am satisfied on the balance of probability that the photographs on social media are of Mr Delaney's site³.
110. It follows that the evidence of Mr Michael Delaney that the caravans on this site are occupied by members of this family must be called into question. That evidence is not consistent with the caravans being advertised on social media as being available for occupation. Furthermore, this does not take into account the other sites referred to in representations.
111. I take the appellant's point that Michael Delaney is a common name in the Gypsy & Traveller community. Nevertheless, at least some of these other sites are owned/registered jointly in the names of Miles and Michael Delaney, those being the names of the appellant's sons. One of the sites at Shipley Bridge is registered to Michael Delaney Jnr which, given the appellant's own evidence, is more likely than not also the appellant's son. In my view, the above is unlikely to be a coincidence and is indicative of numerous sites being owned by the wider Delaney family. The appellant provided no evidence to show that he and the other occupiers of the appeal site could not be accommodated on one of these sites.
112. I therefore cannot discount the possibility, and indeed likelihood, that there are other sites that are available for the appellant and other occupiers of the site to move onto and at relatively short notice. In particular, there is no good explanation as to why none of the current occupiers of the appeal site could not have moved into the two empty caravans at the 'right hand' Shipley Bridge site. Given that the lack of planning permission was clearly not seen as a barrier to moving on to the appeal site, I attach no credence to Mr Delaney's explanation that this is due to the fact that the caravans do not have planning permission. Similarly, there is no evidence before me as to why the occupiers of the appeal site could not move onto any of the other sites in which the Delaney family clearly have an interest. This is a significant material consideration in the overall planning balance.

Personal circumstances

113. The site is currently occupied by a total of six static caravans. One of these is occupied by the appellant, Mr Michael Delaney. He is retired and resides at the site on a permanent basis. He suffers from numerous medical conditions,

³ This being the site owned/being left to Mr Delaney's son Michael

for which he is receiving treatment as an outpatient at a local hospital. He is also registered at a local doctor's surgery.

114. I have been provided with the names of the occupiers of the other five caravans but none of them appeared at the Inquiry and Mr Delaney was not able to assist greatly with their personal circumstances.
115. I recognise that Mr Delaney in particular has a need to be close the medical facilities. However, there is no evidence before me to suggest that either Mr Delaney or any of the occupiers of the site have an overriding imperative to reside at the appeal site. My conclusion in that respect is in no small part informed by the evidence set out above that Mr Delaney has other sites available to him from which he could access medical facilities.

Best interests of the children residing on the site

116. I understand that a total of three children currently reside at the site, one of which is an infant. I was informed at the Inquiry that the two older children are both currently home schooled but are looking for school places. I also understand that one of the occupiers is expecting their first child.
117. I have no doubt that it would be in the best interest of all the children residing on the site to remain there as a stable base from which to access education and medical facilities. I also do not underestimate the importance to the children residing on the site of having a stable base from which they can navigate the challenges of growing up, not least in terms of having the opportunity to socialise with other children. The starting point is that the best interest of the children is a material consideration of at least equal importance and weight to any other.

Human Rights and Public Sector Equality Duty

118. I am fully aware that the dismissal of this appeal would result in the appellant and the other occupiers of the site losing their homes. This 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, 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) would be interfered with. Both of the above are qualified rights, and interference with them may be justified where lawful and in the public interest.
119. The issue of an enforcement notice is in accordance with the law, specifically section 172 of the Town and Country Planning Act 1990 as amended, such that there is a clear legal basis for the interference with the rights under Article 8 and Article 1 of the First Protocol held by the appellant and the other occupiers of the site. I have found amongst other things that the development subject to the notice is harmful to the character and appearance of the area, and as such is contrary to policy objectives in the development plan for that area as well as in the Framework. It has also resulted in the loss of habitat for protected species. Upholding the notice would therefore be in the wider public interest.
120. I am satisfied that the relevant planning policy objective could not be achieved by means which interfere less with the appellant's rights and could not be met by a less intrusive action. In that context, I am satisfied that the

requirements of the notice are the minimum necessary to achieve the planning policy objective(s).

121. The appellant and the occupiers of the other static caravans reside on the site. It is their home. The best interest of the children residing on the site would be to remain on the site. However, for the reasons set out above, on the balance of probability I am not persuaded that the dismissal of this appeal would force the appellants and the other occupiers of the site to adopt a roadside existence, with all the attendant implications.
122. As the appellant points out, it was held in *Chapman v UK* 33 EHCR that:
- “The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases ... To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life ...”
123. Nevertheless, it was also held in *Chapman* that:
- “.....being a member of minority with a traditional lifestyle different from the majority of society does not confer immunity from general laws intended to safeguard the assets of the community as a whole, such as the environment.”
124. There is, therefore, a need to balance a positive obligation imposed by virtue of Article 8 to facilitate the Gypsy way of life against safeguarding the assets of the community as a whole, including the protection of the environment. In weighing this balance, it is necessary to apply the approach to ‘proportionality’ as laid down in the case of *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 38 and elsewhere.
125. Against this background, the courts have held that it would be impossible to hold that the loss of a gypsy family's home, with no immediate prospect of replacement, is incapable in law of being regarded as a “very special” factor. However, the courts have also held that this is far from saying that planning authorities are bound to regard this factor as sufficient in itself to justify the grant of permission in any case. It was held in *Chapman* that the balance involves issues of “complexity and sensitivity”. The courts have subsequently held that this is a judgment of policy not law, and it needs to be addressed at two levels: one of general principle, the other particular to the individual case.
126. Applying those principles to the facts of this case, as a general principle I fully recognise the positive obligation to facilitate the Gypsy way of life. I also fully understand all the implications that dismissing these appeals and upholding the enforcement notice would have on the appellants and the other occupiers of the site, not least in relation to the best interests of the children residing on the site. The latter is a primary consideration.
127. In no small part, my conclusions flow from the fact that the development that has taken place on the site was carried out without the benefit of planning permission. The concerns in that respect reflect those set out in the Written Ministerial Statement (WMS) made on 17 December 2015, in which the Government expressed concern about the harm that is caused where the development of land has been undertaken in advance of obtaining planning permission. In such cases, the WMS points out that there is no opportunity to appropriately limit or mitigate the harm that has already taken place. This is

exactly what has happened in this case. In particular, carrying out the development without first obtaining planning permission resulted in the loss of habitat suitable for GCN and presumed/accepted harm to that protected species which cannot now be avoided or mitigated.

128. It was held in *Chapman* that:

“where a dwelling has been established without the planning permission which is needed under the national law, there is a conflict of interest between the right of the individual under Article 8 of the Convention to respect for his or her home and the right of others in the community to environmental protection. When considering whether a requirement that the individual leave his or her home is proportionate to the legitimate aim pursued, it is highly relevant whether or not the home was established unlawfully. If the home was lawfully established, this factor would self-evidently be something which would weigh against the legitimacy of requiring the individual to move. Conversely, if the establishment of a home in a particular place was unlawful, the position of the individual objecting to an order to move is less strong. The Court will be slow to grant protection to those who, in conscious defiance of the prohibitions of the law, establish a home on an environmentally protected site. For the Court to do otherwise would be to encourage illegal action to the detriment of the protection of the environmental rights of other people in the community.”

129. Adopting the terminology used in *Chapman*, and having regard to the facts in this case, I do not consider that the above factors should be regarded as sufficient to justify the grant of planning permission. Whilst not itself an environmentally protected site, the appeal site is nevertheless particularly sensitive in environmental terms, not only in terms of its positive contribution it makes to the wider landscape character but also in terms of the protected species on/using the site. Consequently, dismissing the appeals would be in the wider public interest. Balancing the appellant’s rights under the HRA against the wider public interest, I conclude that in this case the interference with those rights is proportionate and justified in the protection of legitimate policy objectives.

130. In terms of the Public Sector Equality Duty (PSED), on the evidence before me I am satisfied that the appellant and the other occupiers of the site have other sites potentially available to them. It follows that dismissing this appeal would not oblige the appellant or the other occupiers of the site to adopt a roadside existence, with all the attendant implications. The dismissal of this appeal would not prevent or hinder the ability of the appellant or other occupiers to pursue their traditional way of life, albeit on a different site. Neither would it impact their equality of opportunity and specifically their ability to access appropriate healthcare and education.

Conditions

131. 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. The parties have provided a list of suggested conditions, which were discussed at the Inquiry.

132. A condition limiting the occupation of the site to persons meeting the definition of Gypsies & Travellers in Annex 1 of the PPTS would be necessary, not least because the status of the appellant and the other occupiers of the site

are fundamental and unique to the some of the material planning considerations raised by this appeal.

133. A condition limiting the number of caravans stationed on the site to no more than six static caravans would be necessary to safeguard the character and appearance of the site. A condition requiring that no industrial, commercial or business activity shall take place on or from the site would be necessary in the interests of safeguarding the character and appearance of the area. For the same reason, a condition requiring no vehicle over 3.5 tonnes shall be stationed, parked or stored on the site for use only by the occupiers of the site is also necessary.
134. The appellant places considerable reliance on the submission of Site Development Scheme and proposes a condition to require the submission of that. The condition proposed is of the 'enforcement' type and would require the submission of details including, but not limited to, a site layout plan, a landscaping scheme, a surface water scheme and a scheme to demonstrate measures to enhance biodiversity. For the reasons set out above, I am not satisfied that the submission of a Site Development Scheme could overcome all the reasons for issuing the notice.
135. However, in the event that planning permission is granted having regard to other material considerations, a condition requiring the submission and subsequent implementation of Site Development Scheme would be necessary, albeit in some respects I would amend it from that suggested. In that event, a separate landscape condition would not be necessary.
136. A condition requiring that no external lighting or floodlighting is installed without prior permission from the local planning authority is necessary in order that protected species (bats) are not prevented from foraging over and/or commuting across the appeal site. A condition requiring details of measures to safeguard visibility splays at the entrance of the site would be necessary.
137. The Council suggest a condition to remove the permitted development rights in relation to the erection of fences, etc granted by Class A, Part 2, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO). The PPG advises that such rights should only be removed in exceptional circumstances.
138. It follows that if no condition was imposed to remove permitted development rights for the erection of walls, fences and other means of enclosure, the appellant would be entitled to erection a close-boarded fences up to a maximum of 2 metres in height all across the appeal site. This would be harmful to the rural character of the appeal site. I am therefore persuaded that exceptional circumstances do exist such that there are sound planning reasons to withhold permitted development rights in this respect in this case.
139. Having regard to the above, I find that the harms identified are intrinsic to the breach of planning control that has occurred and could not be overcome by the imposition of the conditions.

Temporary and permanent permissions

140. The PPG indicates the circumstances where a temporary permission may be appropriate. These include where it is expected that the planning circumstances will change in a particular way at the end of that period.

141. I have considered whether a temporary planning permission would be appropriate in this case to allow time for the Council to fully assess the need for Gypsy & Traveller sites in the District in the light of the revised definition in the 2024 version of the PPTS. However, in this case I am satisfied that there are sites available to the appellant and the other occupiers of the site that could be available to them in the relatively short term. Consequently, I am not persuaded that a temporary permission of any duration would be appropriate in this case.
142. I have considered whether a personal planning permission would be appropriate in this case. The PPG explains that planning permission usually runs with the land and that it is rarely appropriate to provide otherwise. However, the PPG does indicate that there may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission.
143. The personal circumstances of the appellant and the other occupiers of the site, as explained to me at the Inquiry, do not reveal any imperative for them to remain on the site. I therefore conclude that in the context of the full breach of planning control alleged in the notice the personal circumstances of the appellant and the other occupiers of the site do not constitute an exceptional reason as envisaged in the PPG, where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission.

The Paragraph 11d balance

144. Paragraph 11d of the Framework states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, planning permission should be granted unless: i. the application of policies in the Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed⁴; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
145. Paragraph 28 of the PPTS states that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, the provisions in paragraph 11(d) of the Framework apply. The Council cannot demonstrate an up-to-date supply of deliverable sites for Gypsies and Travellers, and the development therefore falls to be considered under paragraph 11(d) of the Framework.
146. Paragraph 11(d) of the Framework is essentially a balancing exercise to establish whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. In that context, the adverse impacts arising from the development that comprises the breach of planning control are set out in detail above but can be summarised here as being harm to the landscape, the location of the site, harm to protected species

⁴ Footnote 7 of the Framework specifies those areas/sites to which the Policies in the Framework are applicable. These do not apply to the appeal site.

and their habitats and inadequate arrangements for the disposal of foul and surface water.

147. In terms of benefits, the principal benefit arises to the appellant and the other occupiers of the site is in terms of providing their home and a stable base from which they carry on their way of life. In that context, the occupation of the site can reasonably be said to constitute an effective use of land in the terms expressed in paragraph 11d of the Framework. Associated with that is the benefit of a stable base from which the children residing on the site can access education and medical facilities.

148. I have found that the appeal site is not in a suitable location for the development that has taken place. The location of the appeal site is such that opportunities to travel by sustainable modes of transport are limited and most journeys for day-to-day purposes are likely to be made by private car. Consequently, for the purposes of the paragraph 11d balancing exercise, I find that the poor sustainability of the site (in terms of opportunities to travel by sustainable modes of transport and on foot) constitutes a harmful factor rather than being a benefit arising from the development.

149. In addition, there are harms to the character and appearance of the area and to protected species and their habitats, in particular GCN.

150. Looked at in the round, the benefits arising from the development constituted by the breach of planning control alleged in the notice are experienced primarily (in fact, to all intents and purposes exclusively) by the appellant and the other occupiers of the site. They are not public benefits in any form. In weighing the balance required by paragraph 11(d) of the Framework, I conclude that the adverse impacts of granting planning permission significantly and demonstrably outweigh the benefits. This points towards not granting planning permission for the development.

The appeal on ground (a): conclusion on the breach of planning control that is alleged in the notice

151. I have found that the development subject to the enforcement notice fails to accord with the development plan when read as a whole. I have not been advised of any material considerations of sufficient weight, 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 breach of planning control constituted by the matters stated in the notice when considered in full.

The appeal on ground (a): part of the matters to which the notice relates

152. Section 177(1) of the 1990 Act provides that planning permission may be granted in relation to the whole or any part of the matters stated in the notice or in relation to the whole or any part of the land to which the notice relates.

153. In that context, the impact on the character and appearance of the area would be less harmful if the number of caravans stationed on the site was reduced. In particular, I am mindful that the static caravan occupied by the appellant himself is stationed on a pre-existing hardstanding that has become lawful over time and is not visible from the public domain. I have therefore considered whether planning permission ought to be granted for the stationing of that caravan in isolation. This would also mean that the other caravans and

the hard surface on which they are stationed could be removed, with attendant partial restoration of the rural character of the appeal site and allowing for the re-introduction of habitats suitable for protected species.

154. There are, however, three factors that weigh against granting planning permission for the stationing and residential use of that caravan.
155. Firstly, the site is not in a sustainable location in terms of opportunities to travel by sustainable modes a transport and on foot. Although the number of movements would be greatly reduced (in comparison to that generated by six caravans), it is still likely that those movements would mostly be made by private car.
156. Secondly, on the evidence that is before me the occupier of that caravan (Mr Delaney) has other sites that are available to him. Consequently, there is no immediate prospect of Mr Delaney being forced to live on the roadside. He would also be able to access the medical facilities that he needs from a different site.
157. Thirdly, considering whether to grant planning permission for only part of the notice does not negate the fact that the stationing of this caravan still constitutes an act of Intentional Unauthorised Development. This therefore remains a material consideration of substantial weight.
158. Having regard to all the above, I conclude that planning permission ought not to be granted for any part of the matters stated in in the notice. In reaching that conclusion, I have considered whether the harms that I have identified could be overcome by the imposition of suitably worded conditions but conclude that they could not.

Appeal A and Appeal B: The appeals on ground (g)

159. 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 (as I propose to vary it) is 3 months in relation steps 5.1 and 5.2; 4 months in relation steps 5.3 and 5.4; 5 months in relation steps 5.5 and 5.6; and 6 months in relation steps 5.7.
160. 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. In so doing, the starting point is that the operational development subject to the enforcement notice does cause the harm that I have identified above.
161. The appellant's evidence on this ground of appeal is limited. The appellant has not advanced any compelling reasons why the requirements of the notice could not be accomplished within the period of compliance specified in the notice. The necessary work is not technically complex and does not require any specialist skills, tools or machinery. Neither is there any imperative to extend the period of compliance in order to enable the appellant and the other occupiers of the site sufficient time to find an alternative site(s). The evidence before is that site(s) are available to the appellant and the other occupiers to move onto.
162. The focus of the appellant's appeal on this ground is to facilitate the prospect of a revised scheme to be submitted and determined. The decision to entertain

a revised planning application is entirely a matter for the Local Planning Authority in exercise of their discretionary powers under Section 70C of the 1990 Act. It would not be appropriate for me to extend the period for compliance on that basis alone, since that could fetter the decision-making of the Local Planning Authority in this respect.

163. There is also a procedural point to be considered. The period of fifteen months sought by the appellant is tantamount to a temporary planning permission. A temporary permission would not accord with either of the two circumstances indicated in the PPG where a temporary permission may be appropriate. It follows that extending the period of compliance to fifteen months would similarly not be an appropriate response.
164. 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 stated in the notice is a proportionate response to the breach of planning control that has occurred. Accordingly, the appeals on ground (g) fail.

Conclusion

165. For the reasons given above I conclude that neither Appeal A nor Appeal B should succeed. The appeals will be dismissed and the notice enforcement notice upheld with a correction and variations.

Formal Decisions

Appeal A Ref: APP/D3830/C/25/3376721

166. It is directed that the notice is corrected by:
- in paragraph 3 of the notice, deleting the breach of planning control alleged at sub-paragraph (a) and substituting there the words 'without planning permission, the material change of the Land to a mixed use comprising agriculture and stationing of caravans for residential use.'
167. It is directed that the notice is varied by:
- deleting paragraph 5.1 of the notice in its entirety and substituting there the words 'cease the use of the Land for the stationing of caravans for residential use'
 - deleting paragraph 5.6 of the notice in its entirety, and substitute there the words, 'Remove any debris from the Land in association with the steps taken to comply with requirements 5.1, 5.2, 5.3, 5.4 and 5.5 above'
168. Subject to the correction and variations, the appeal is dismissed and 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 in whole and in part.

Appeal B Ref: APP/D3830/C/25/3376722

169. It is directed that the notice is corrected by:

- in paragraph 3 of the notice, deleting the breach of planning control alleged at sub-paragraph (a) and substituting there the words 'without planning permission, the material change of the Land to a mixed use comprising agriculture and stationing of caravans for residential use.'

170. It is directed that the notice is varied by:

- deleting paragraph 5.1 of the notice in its entirety and substituting there the words 'cease the use of the Land for the stationing of caravans for residential use'
- deleting paragraph 5.6 of the notice in its entirety, and substitute there the words, 'Remove any debris from the Land in association with the steps taken to comply with requirements 5.1, 5.2, 5.3, 5.4 and 5.5 above'

171. Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer
INSPECTOR

APPEARANCES

For the appellants:

Mr Brian Woods BA (TP) MRTPI, Founder of WS Planning & Architecture, in the capacity as both advocate and witness

He called:

Mr Michael Delaney

Appellant

Mr Peter Brownjohn AssocRTPI

Senior Planner, WS Planning & Architecture (participation in round table discussion only)

For the Local Planning Authority

Ms Emma Dring

Of Counsel

She called:

Mr Martin Dale BA (Hons)

Principal Planning Officer

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1/ Opening submissions on behalf of the appellant
- 2/ Opening submissions on behalf of the Local Planning Authority
- 3/ List of conditions

DOCUMENTS SUBMITTED AFTER THE INQUIRY SITTING DAYS

- 1/ Copy of the Mid Sussex Land Availability Assessment
- 2/ Closing submissions on behalf of the Local Planning Authority
- 3/ Closing submissions on behalf of the Appellant