



Appeal Decisions

Hearing held on 12 August 2026.

Site visit made on 13 August 2026.

by Grahame J. Kean B.A. (Hons) Solicitor, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2026

Appeal A Ref: APP/J1915/C/26/3378191

1 Park Hill View, Chapel Lane, Little Hadham, Hertfordshire, SG11 2BZ

Appeal B Ref: APP/J1915/C/26/3378192

2 Park Hill View Chapel Lane, Little Hadham, Hertfordshire SG11 2BZ

Appeal C Ref: APP/J1915/C/26/3378193

10 Park Hill View, Chapel Lane, Little Hadham, Hertfordshire, SG11 2BZ

Appeal D Ref: APP/J1915/C/26/3378195

4 Park Hill View Chapel Lane, Little Hadham, Hertfordshire SG11 2BZ

Appeal E Ref: APP/J1915/C/26/3378196

3 Park Hill View, Chapel Lane, Little Hadham, Hertfordshire, SG11 2BZ

Appeal F Ref: APP/J1915/C/26/3378197

6 Park Hill View, Chapel Lane, Little Hadham, Hertfordshire SG11 2BZ

Appeal G Ref: APP/J1915/C/26/3378198

5 Park Hill View Chapel Lane, Little Hadham, Hertfordshire SG11 2BZ

Appeal H Ref: APP/J1915/C/26/3378199

7 Park Hill View, Chapel Lane, Little Hadham, Hertfordshire SG11 2BZ

Appeal I Ref: APP/J1915/C/26/3378200

8 Park Hill View, Chapel Lane, Little Hadham, Hertfordshire SG11 2BZ

Appeal J Ref: APP/J1915/C/26/3378201

9 Park Hill View, Chapel Lane, Little Hadham, Hertfordshire SG11 2BZ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made against an enforcement notice issued by East Hertfordshire District Council.
- Further appeal references and appellants' details can be found in the table at the end of the decision.
- The enforcement notices were issued on 12 February 2026.
- The breach of planning control as alleged in the notices is: breach of condition 5 of planning permission reference 3/19/0893/FUL for: change of use of land to 10 Gypsy/Traveller pitches accommodating the siting of 10 mobiles homes and stationing of 10 touring caravans and 10 utility buildings. Formation of access road and hardstandings.
- The development to which permission 3/19/0893/FUL relates, granted on appeal (Ref APP/J1915/W/19/3234671) on 4 February 2020 is: change of use of land to 10 pitches accommodating the siting of 10 mobiles homes and stationing of 10 touring caravans and 10 utility buildings. Formation of access road and hardstandings.
- The condition in question is no 5 which states that:
"The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
i) Within 3 months of the date of this decision a scheme for:
 - *the means of foul and surface water drainage of the site;*
 - *proposed and existing external lighting on the boundary of and within the site;*
 - *the provision of adequate visibility splays at the site access;*

- the internal layout of the site, including the siting of caravans, plots, hardstanding, access roads, parking and amenity areas;
- a scheme of tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities including details of safeguards and / or protective buffers against the Westland Green and Pigs Green Local Wildlife Site. Unless identified to be removed, all existing trees and hedgerows on the land, shall be retained. The scheme shall set out measures for their protection throughout the course of development;

(hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter [sc “be”] retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined”.

- The notices allege that the condition has not been complied with in that: applications X/20/0177/CND and X/20/0540/CND to discharge conditions 5 and 6 relating to the means of foul and surface water drainage of the site have been refused by the Council. Appeal (APP/J1915/W/20/3264831) against X/20/0177/CND has been dismissed in relation to the foul and surface water drainage. (Application 3/24/0888/VAR, Variation of appeal conditions 5 (Site Development Scheme) and 6 (Landscape Maintenance Plan) pursuant to planning permission 3/19/0893/FUL has now also been refused by the Council).
- The requirements of the notices are:
 - 1) Remove all caravans (static and mobile), utility buildings and boundary treatments from the land and cease the use of the land for residential purposes.
 - 2) Break up and remove from the land all materials forming the hardstandings.
 - 3) Remove from the land all domestic paraphernalia associated with the use as a residential Gypsy and Traveller caravan site
 - 4) Restore the land to its condition before the breach occurred, including grading and levelling the ground; replacing and compacting topsoil; reseeding or replanting with grass.
- The period for compliance with the requirements of each notice is: 56 days from the date on which this notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (b), (g) of the Town and Country Planning Act 1990 (as amended). Since appeals has been brought on ground (a), applications for planning permission are deemed to have been made under section 177(5) of the Act.

Appeal Ref: 6006221

Land Off Chapel Lane, Little Hadham, SG11 2AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under Section 73A of the 1990 Act.
- The appeal is made by Timothy Mahoney & Traveller Group against the decision of East Hertfordshire District Council.
- The application Ref is 3/24/0888/VAR.
- The development proposed is: variation of appeal conditions 5 (Site Development Scheme) and 6 (Landscape Maintenance Plan) pursuant to planning permission 3/19/0893/FUL (allowed on appeal APP/J1915/W/19/3234671) dated 04.02.2020 (for: change of use of land to 10 Gypsy/Traveller pitches accommodating the siting of 10 mobiles homes and stationing of 10 touring caravans and 10 utility buildings. Formation of access road and hardstandings). The amendments include alterations to condition 5 to be in accordance with details submitted and alterations to the implementation requirements of each part, and alterations to condition 6 to be in accordance with details submitted.

Formal Decisions

Appeals A to J inclusive

1. It is directed that the enforcement notices are varied by the substitution of 12 months for the period of compliance in each notice. Subject to the variation, the appeals are dismissed, and the enforcement notices are upheld.

Appeal 6006221

2. The appeal is allowed and planning permission is granted for change of use of land to 10 Gypsy/Traveller pitches accommodating the siting of 10 mobiles homes and stationing of 10 touring caravans and 10 utility buildings. Formation of access road and hardstandings at Land Off Chapel Lane, Little Hadham, SG11 2AB in accordance with the application Ref 3/24/0888/VAR, subject to the conditions set out in the annex to this Decision.

Preliminary Matters

3. The appeals are about a “retrospective” condition requiring approval of a foul and surface water drainage scheme and in default to cease the use of the site and restore it to its prior condition, as described in the banner heading above. Condition 5 was attached to a permission granted on appeal¹ (2020 permission) relating to the entire site occupied by travellers. The travellers’ site (the wider appeal site) is divided into 10 pitches or plots. Each plot is separately owned by the each of the several appellants in the s174 appeals.
4. The sole appellant for the s78 appeal is “Timothy Mahoney & Traveller Group”. Mr Mahoney attended the hearing but no other s174 appellant was present. It was clarified that there was no formal organisation by that name, but Mr Mahoney was there to speak for himself and the other travellers occupying the wider appeal site.
5. Whereas the s78 appeal relates to the wider site, each notice is drafted to refer to a separate individual plot within the site. The plan attached to the notice identifies the “Land” in each case as the individual plot to which it relates.
6. Of the 10 appeals made against the notices, 4 are proceeding on ground (a) as the other appeals on ground (a) have lapsed since the required fee was not paid. The details are set out in the table annexed to this decision.

Whether ground (a) appeals are barred

The statutory framework

7. The effect of s174(2A) of the 1990 Act is that an appeal may not be brought on ground (a) if the enforcement notice was issued after an application for planning permission was made that was “related” to the enforcement notice.
8. An application is “related” to an enforcement notice if granting permission for the development would “involve” granting planning permission in respect of the matters specified in the enforcement notice as constituting a breach of planning control. (s174 (2AA) (a))

¹ APP/J1915/W/19/3234671 dated 4 February 2020.

9. As to whether in this case, the application is related, it was made on 8 May 2024 and sought variation of Condition 5 of the 2020 permission “*to allow provision and implementation of Drainage Strategy submitted alongside this application*”. On 19 December 2025 the application was refused by the Council, an appeal was made and the appeal decision issued on 4 February 2020.
10. The enforcement notices were all issued on 12 February 2026. The deemed applications are applications to enable the developer to carry on the 2020 permission without complying with that part of Condition 5 that requires the permitted use to cease, and all caravans, structures, equipment and materials brought onto the land for the purposes of such use to be removed. A particular feature here is that several notices allege breach of the same Condition 5 of the 2020 permission but as it applies to an individual plot. However, the breach concerns the same condition and the same underlying development. The refused permission would still have involved granting permission for matters that included a given plot subject to the deemed application.
11. The appellants deny that the deemed application seeks to consider exactly what is being considered by the Council in the s78 appeal. In that respect, it is said, an alternative scheme is advanced.² However, if the deemed application were granted, this would effectively enable the appellants to continue to occupy the site, or to be more precise their individual plots.
12. A ground (a) appeal is not barred if the application for planning permission has ceased to be under consideration and the enforcement notice was issued after the end of the period of two years beginning with the day on which the application ceased to be under consideration (see subsection (2AB)).
13. The notices were issued after the date of determination of the application. The s78 appeal is assumed to have been made on 10 March 2026 (agent’s email of that date to ECAT). As no appeal was made by the time the notice was issued, the application is deemed to have ceased to be under consideration, however the s78 appeal is not lost because the appeal was still made within the period of 28 days of the issue of the notice.
14. The upshot is that if the s78 appeal is allowed it will have involved, to all intents and purposes granting planning permission for the matters specified in the notice. Each s174 appeal made on ground (a) with the requisite fee has engendered a related planning application, but which was deemed to have ceased to be under consideration at the relevant time. Therefore, the appeals made on ground (a) are barred.

Appeals A-J inclusive

Whether notice a nullity

15. As I understand the appellants’ case, it is that compliance with the notices cannot be achieved in isolation by any one recipient: the requirements in condition 5 exceed what can be reasonably undertaken by an individual recipient of a notice in requiring remedial works beyond the land to which the individual notice relates. Cessation of the use and compliance as required by the notice is said to require cessation of the site as a whole.

² Paragraph 1.15 Appellants’ joint statement of case.

16. The notices do not allege that each plot individually failed to submit drainage details. The allegation is that the continued residential occupation on each plot is unlawful because Condition 5 has not been complied with. The breach is therefore correctly alleged to be on the individual plot of land where the unauthorised use continues. The agent would have been aware of this. To suggest that *“parties who do cease the use are not precluded from further action as a consequence of other parties who do not cease the use”* is incorrect, as is the assertion that the alleged breach can only occur across the entire land of the 2020 permission. Each notice states the land affected is the individual plot and its requirements are confined to that land.
17. In any event, liability for not complying with a notice that has come into effect, as set out in s179 of the 1990 Act, does not attach to someone who is not the owner of the land, does not have control of or an interest in the land and who can show that they did everything they could be expected to do to secure compliance with it.
18. The statutory requirement is that the notice identifies the land on which the alleged breach is occurring with sufficient clarity for the recipient to understand what is alleged and what must be done. The fact that the notices identify individual plots does not render them invalid.

Ground (b)

19. An appeal on this ground is that the matters alleged in the notice to have occurred, have not occurred as a matter of fact at the time the notice was issued. The onus of proof is on the appellant on the balance of probability.
20. The factual matters alleged are that condition 5 (iii) has not been met and that in breach of the condition, all caravans, structures, equipment and materials that have been brought onto the land for the purposes of the use of the land as a gypsy and traveller site still remain on the land.
21. The appellants' case is that condition 5 is a site-wide condition and cannot be breached on individual plots. Thus, the notices' reference to the "land to which the notice relates" is smaller than the land covered by the 2020 planning permission, so it is said that the Council should have issued a single notice covering the entire site, and therefore the breaches alleged in the several notices have not occurred on the land identified in each notice.
22. As the Council puts it, the manifestation of the site-wide breach has occurred on each individual plot because each plot continues to be occupied in circumstances where Condition 5 requires the use to cease and all caravans, structures and materials to be removed, but they have not been so removed as regards each plot.
23. All the notices were issued on the same date. It is important to understand what precisely is the allegation of fact or facts that constitutes the alleged breach of planning control. This requires examination of each of the matters listed in the so-called "retrospective" condition 5, namely the matters of fact listed in 5(i), 5(ii), 5(iii) and 5(iv). Retrospective conditions impose serious sanctions should there be a failure of one of the matters listed.
24. The lead appellant had already attempted to vary condition 5 by appealing against a refusal of an application to discharge certain matters reserved by the 2020 permission, including a foul water and surface drainage scheme. The attempt was

unsuccessful. Inspector McDonald's appeal decision dated 9 November 2022³ had recorded as a matter of fact, at paragraph 10 that the appellant had submitted a scheme within the required period and so had complied with Condition 5 (i).

25. I note in passing that at paragraph 38 she stated "*there is a fundamental lack of detail to adequately demonstrate the site's drainage proposals are satisfactory. This element of condition No 5 cannot be discharged at this time.*" She dismissed the appeal and refused consent insofar as it related to details for the means of foul and surface water drainage pursuant to condition No 5 of the 2020 permission.
26. Next to consider is criterion 5(ii). Plainly an appeal was made as provided for and accepted as validly made.
27. As to criterion (iii) an appeal was made in pursuance of 5(ii) above, that appeal was finally determined but the submitted scheme **was not approved** by the Secretary of State. Thus, the Council is correct in its allegations that there was a failure of criterion (iii), more than 28 days had passed since the rejection of the scheme before the notices were issued, and there was and is an ongoing failure to ceased the permitted use, remove the caravans and other items and restore the land to its prior condition.
28. Criterion (iv) is not reached. I am satisfied that the breaches as alleged by the Council have occurred as a matter of fact. The appeals on ground (b) must fail.

Ground (g)

29. An appeal on this ground is that the period for compliance with a notice is too short. In this case the stipulated period is 56 days, ie just short of two months.
30. Condition 5 which was imposed 6 years ago, contained a serious sanction in default of providing a satisfactory drainage scheme. The merits of the 28-day period stipulated for cessation of the use and restoration of the land were not challenged. It is not an unusual period to have inserted into retrospectively styled conditions because the intention is to make clear the seriousness of the matters which have to be addressed and the consequences of failing to do so in a timely fashion. When the 2020 permission was granted on appeal, Inspector Sherratt made it clear in her decision letter (paragraph 52) that:

"...As the development has commenced, the condition requiring the submission of details will need to be worded in such a way that the use should cease in the event of any failure to comply with this requirement."
31. Condition 5 has been the subject of judicial comment. In *East Herts CC v Timothy Mahoney and Others* [2020] EWHC 2768 (QB), Swift J noted:

"Condition 5 is to the effect that the planning permission granted would lapse unless an appropriate application was made and permission granted for a Site Development Scheme. A Site Development Scheme would deal with matters such as drainage water, lighting on the site, site access, and the internal layout of the site including the siting of caravans. The conditions set a timetable for the application in relation to the Site Development Scheme. If that timetable is not met,

³ APP/J1915/W/20/3264831 Land Off Chapel Lane, Little Hadham SG11 2AB

the Inspector's decision provides that the permission that she granted for change of use of the land into ten pitches will lapse."

32. The court was told that an application had been made relating to the site development scheme but of course that scheme was refused consent, on 9 November 2022 as it related to the drainage strategy, in the appeal decision to which I have already referred, after a public inquiry.
33. Consideration of drainage matters at the appeal site has been ongoing since 2020 following the granting of planning permission. Another Inspector then considered what she recorded was the 4th version of the drainage strategy presented 4 years ago in 2022. She clearly rejected it for sound planning reasons.
34. The period for compliance in the notice effectively doubles the period within which the site must be cleared. Enforcement action is remedial, not punitive. However, Planning Policy Guidance is that:

*"Effective enforcement is important to: tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area; maintain the integrity of the decision-making process; help ensure that public acceptance of the decision-making process is maintained."*⁴
35. The appellants argue that the period for compliance should be further extended, based on human rights legislation and difficulties for the site occupants in finding alternative accommodation. They seek substitution of a period of 12 months for the purpose. The probability was that *"the family would have to find temporary places to stay whether in car parks, on open spaces, unauthorised encampments, doubling up with family or friends and such like"*.⁵ It is then said that a 56 day period would *"inevitably lead to the occupants returning to a roadside existence with them being moved on a daily basis, with no public site being available, and no transit provision within the area"*.
36. There is no doubt in my mind that if alternative accommodation is not found for the occupants it is more likely than one of the predicted scenarios would occur which would be challenging for the occupants and their families. It is also stated that a period of 12 months would allow for further efforts to be made to regularise the site and address outstanding matters.
37. Ordinarily an appellant is entitled to assume success when appealing so should not be penalised by taking into account time expended on the appeal when it is said, the notice could have been complied with according to its terms. The ground (b) case for the appellant failed, but it was legitimate to have made it.
38. In the circumstances it would be reasonable to extend the period for compliance to 12 months. The appeals on this ground succeed to this extent.

Conclusion

39. For the reasons given above, I conclude that the period for compliance with the notices falls short of what is reasonable. I shall vary the notice prior to upholding it. The appeals on ground (g) succeed to that extent.

⁴ Paragraph: 005 Reference ID: 17b-005-20140306. Revision date: 06 03 2014.

⁵ Joint statement of case and grounds of appeal, paragraph 10.3.

Appeal 6006221

National Planning Policy Framework (NPPF)

40. The updated version of the NPPF was published on 17 August 2026. The parties were invited to comment as to whether the national decision-making policies (NDMP) have relevance to their cases. The appellants replied that they had no further comments to make. I have considered the Council's comments received.

Introduction and main issues

41. The appellants explained in the application form that they wished "*Condition 5 to be varied to allow provision and implementation of Drainage Strategy submitted alongside this application.*" It was also said that "*the s73 application seeks variation of Condition 5 such that the scheme can be considered, and determined, remedying a current breach of planning control.*" In reply to the request: "If you wish the existing condition to be changed, please state how you wish the condition to be varied" it was stated:

"Deletion of condition 5 and substitution with a "Compliance with ..." condition relating to all details contained within the Site Development Scheme."

42. As was established in the Lawson⁶ case, s73A enables the grant of planning permission for development that has already been carried out. The court held that if a developer applies to vary a condition under s73, but the development is completed or carried out in breach of that condition, the application necessarily operates under s73A. New conditions attached to the permission would take immediate effect. It was the Council who advised the application be made under s73 but I have treated it as an application under s73A.
43. The appellant seeks to remove the retrospective nature of the condition in relation to all matters outstanding under the site development scheme, ie the foul and surface water drainage and landscaping of the site (conditions 5 and 6).
44. The Council advised the appellant before submission of the application, that a drainage consultant for the Council, Mark Geddes from Richard Jackson Engineering Consultants, had been onto the site and that there could be a workable solution for the drainage on site but "*the onus is on you to provide a scheme for the Council to consider*" and that the agent should "*apply to vary the above planning condition to allow the details to be submitted and considered now. This would include the need to submit all the details of the means of foul and surface water drainage for the site.*"
45. Current arrangements for discharge of foul water differ from plot to plot. 6 plots are connected individually to their own cesspit in each plot and the other 4 plots each have a portaloo. Condition 5 envisaged a comprehensive and technically robust drainage strategy, approved and implemented for the site. The sole reason for refusal of the application was based on advice from the Lead Local Flood Authority (LLFA) issued on 24 November 2025 shortly prior to the refusal on 19 December 2025. The decision should be read alongside the appeal decisions and the consultation responses from the LLFA.

⁶ Lawson Builders Ltd v Secretary of State for Communities and Local Government [2015] EWCA Civ 122.

46. For the appellant, technical detail⁷ is advanced that builds on information previously submitted. Indeed, it is common ground that detailed drainage layouts, levels, sections, construction details, manhole schedules and maintenance arrangements have been submitted, unlike in the previous appeal proceedings.
47. It is further agreed that BH5 is a falling head test located in the proposed infiltration basin, 0.96m deep. The depth to water increased to 625mm within 300seconds and remained at this level. TP6 is a BRE36 test located in the proposed infiltration basin, 1.5m deep for which the water failed to disperse and the test failed. The relevance of these matters is disputed by the appellant.
48. Other matters agreed are that the proposed area draining into the surface water drainage system is 0.772ha; the proposed infiltration basin is 1.1m deep with a cover level of 106.8m AOD and an invert level of 105.7m AOD; the drainage calculations apply a factor of safety of 10, using an infiltration rate of 4.37×10^{-5} m/s; the hydraulic assessment considers the 1% annual-probability event within a 40% climate-change allowance across storm durations from 15 to 1,440 minutes; the submitted model predicts no flooding to the site during the 1 in 100 (1%) plus climate change design storm; and the infiltration basin maximum water level is 106.787m AOD providing a freeboard of 3mm.
49. The main issues in dispute are:
 - whether the submitted scheme provides a compliant and deliverable drainage solution without increasing flood risk to the surrounding area, including whether surface water flow from all rainfall events from the channel is proposed to flow overland to the adjacent 3rd party field; and
 - whether or not the variation of condition 5/6 would allow an enforceable condition on the grant of any planning permission.

Policy background

50. By s38(6) of Planning and Compulsory Purchase Act 2004 any determination under the Planning Acts must be made in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework 2026 (NPPF) asserts that it is a material consideration of critical importance and states in Annex A that its national decision-making policies (NDMP) are “*material considerations which must be taken into account in decision-making from the day of its publication*” (despite the Government’s decision not to put the NPPF on a statutory basis).
51. The development plan includes the East Herts District Plan 2018 (EHDP) and key policies for this appeal are Policies WAT1, WAT3, WAT5 and WAT6. Policy WAT1 and Policy WAT3 seek to prevent development that increases the likelihood or intensity of flooding or the risk to people, property, crops or livestock on site and to neighbouring land or further downstream and generally to preserve or enhance the water environment, ensuring improvements in surface water quality and the ecological value of watercourses and their margins and the protection of groundwater.

⁷ Section 8 of the Joint Statement of Case

52. Policy WAT5 states that development must utilise the most sustainable forms of drainage systems in accordance with the SUDS hierarchy, unless there are practical engineering reasons for not doing so, whilst aiming for Greenfield run-off rates managing surface water run-off as close to its source as possible. Where practicable, the sustainable drainage networks should have the additional capacity required to cope with infrequent adverse weather conditions to reduce flood risk. Policy WAT6 states that development must ensure that adequate wastewater infrastructure capacity is available in advance of the occupation of development.
53. The NPPF policies applicable to development outside settlements, NDMP S5 and NDMP HO12 (by which is included development addressing an unmet need for travellers' sites) are not directly relevant here. NPPF section 18 deals with managing flood risk. It aims to minimise risks from all sources of flooding, steering it away from areas of risk and ensuring it will be safe for its lifetime without increasing flood risk elsewhere, and incorporating sustainable drainage systems where appropriate. The WAT policies are broadly consistent with this aim.
54. NDMP Policy F7 states that development proposals should not present a risk from flooding to potential occupiers, users or visitors and should not increase flood risk elsewhere.
55. National Standards are embedded in the NPPF. Policy F8 requires development proposals which could affect drainage on or around a site to incorporate sustainable drainage systems to control flow rates and reduce runoff volumes, proportionate to the nature and scale of the proposal. It also requires SuDS to be designed in accordance with the National Standards for Sustainable Drainage Systems, to have maintenance arrangements in place for the anticipated lifetime of the development and, for major development, to take account of LLFA advice.
56. The recent changes to the NPPF are relevant. Development should satisfy the National SuDS Standards, reduce runoff volumes, control discharge rates, secure multifunctional benefits where possible and include reliable long-term maintenance ensuring flood risk is not increased to the site or the surrounding area. Standard 1 requires a feasible runoff destination to be demonstrated.

Proposed scheme

57. The chronology is instructive. The application was received on 8 May 2024 and not determined until 19 December 2025. In between times the Council obtained several consultation responses from the LLFA, on each occasion seemingly at the Council's behest. All except the most recent came from its SuDS and Watercourses support officer. The initial reply on 7 August 2024 made it clear that the LLFA had reviewed the supporting documentation and had no objection to the variation of Condition 5 in the terms sought. This was also confirmed in the further reply of 13 September 2024. It was acknowledged that the Council had been writing to the Environment Agency but that did not change their assessment.
58. The Council consulted the LLFA again, sending them 6-page and 18-page documents from Flume Consulting Engineers. The reply on 7 October 2024 noted that the strategy incorporated SuDS features, providing levels of water quality treatment. There was a criticism that the calculations used outdated rainfall parameters (FSR) but given the long history of the application such parameters would have previously been accepted. The proposals included an infiltration basin

with a connection via a flow control manhole into the existing pipe outfall that flows south beneath Chapel Lane. It appeared that there was good infiltration. The Council consulted the LLFA again on or around 24 February 2025 and the reply on 17 March 2025 response was the same as on 7 October 2024. It is clear from these responses that the LLFA was not moved to object to the proposed scheme.

59. The senior flood risk officer for the LLFA had emailed the Council on 8 November 2024 informing it that Thames Water sewer mapping showed no public foul water sewers but that the infiltration would overflow to the private (treated) foul sewer serving the site before discharging via the existing outfall under Chapel Lane, believed to be to ditches. A plan was supplied, with the senior flood risk officer pointing out the red lines indicating (excluding sections over the infiltration basin) the private foul sewer. No objection was raised and no concerns were expressed.
60. One may suppose that the Council was dissatisfied with this approach. It must have contacted the LLFA again because on 24 November 2025 a very different reply was received from the LLFA. There had been a change of personnel. The author was the SuDS and Watercourses Technical Specialist who attended the hearing as did a technical expert for the appellant. Both were well qualified and experienced persons and proved to be of considerable assistance to the hearing.
61. The available documents listed in the annex to the letter of 24 November 2025 included all the documents made available to the previous LLFA officer with two additions: a soakage assessment letter report dated 9 May 2023, and an email from the planning agent dated 24 July 2025 supplying the drainage maintenance and monitoring document.
62. Surprisingly, the LLFA's letter of 24 November 2025 was neither copied to the appellant nor was an opportunity given to respond to it. At any rate The Council made its position clear when it refused the application on 19 December 2025. The main points addressed by the LLFA are listed in points 1-14 of the letter. They fall broadly into five issues, namely infiltration testing; the secondary point of discharge of surface water run-off; the greenfield run-off rate; design of the infiltration basin; and permeable paving.
63. The drainage scheme provides some elements but not all to meet with National SuDS Standards (2015 and 2025 versions). The infiltration rate applied was in the design was 4.37×10^{-5} m/s from BH5 with a FoS of 10 applied. At the hearing I was supplied with documentation pertaining to a zero-infiltration sensitivity check to demonstrate that even with no infiltration, discharge could be restricted to the existing site QBAR (mean annual flow) of 5.8 l/s. Also supplied was the greenfield run-off assessment for the full site catchment area, which gives this rate. This figure differs from that relied on by the Council⁸.
64. As regards the modelling scenarios criticised by the LLFA, it was explained that the perforated carrier drains included in the model were not conventional closed pipes but part of the permeable paving sub-base system, providing distributed infiltration along its length. This type of system would, I agree, operate differently from a traditional piped network in that flows are attenuated and infiltrated rather than conveyed downstream. As regards the basin design and outfall, it is designed to infiltrate the 1 in 100 yr + 40% climate change storm. The flow control manhole

⁸ Statement of Case, paragraph 2.36

with weir provides an exceedance spillway rather than a standard discharge. The modelling confirmed minimal overflow under extreme exceedance, the figure of 18.3 l/s quoted in the LLFA letter was therefore said to be a misreading of the model's weir capacity, not a continuous design discharge. The scheme proposes permeable paving which would reduce the total volume reaching the basin.

65. There is no foul sewer in the immediate or wider area. The outfall is into the existing ditch/culvert beneath Chapel Lane, confirmed during a previous site visit and which I saw during my own site inspection. Its location, invert and cover levels are included in the manhole schedule and section drawings. The posited watercourse into which it would ultimately flow may be some distance away and across 3rd party land. Whilst I recall that trespass is actionable per se⁹, the detail of what established rights may or may not exist to discharge through express or implied easements, riparian rights and so forth have not been fully explored in this appeal. I am satisfied from the information given, that flow to the existing outfall pipe would occur only under exceptional exceedance conditions beyond the basin's capacity, ensuring the proposed scenario discharges less surface water than the greenfield baseline.
66. I find that the submitted drainage evidence demonstrates that the system is robust enough to operate safely and effectively across the full range of rainfall events. Reliance on the Chapel Lane outfall would not materially increase downstream flood risk. Foul drainage would be managed via an on-site RBC treatment plant with foul water managed separately by the plant, discharging under the EA General Binding Rules. There is no foul sewer connection and no interconnection between foul and surface systems.
67. Thus, the post-development scenario would not result in any material increase in the scale of discharge than the pre-existing greenfield rates. In other words, it would be returned to greenfield status. The scheme would comply with Policies WAT3 and WAT1, in that it would preserve surface water quality and neither increase the likelihood nor the intensity of any form of flooding. It would also accord with NDMP F7 in not presenting any undue risks from flooding to potential occupiers, users, or visitors, and should not increase flood risk elsewhere.
68. Considering also the elements of the foul and surface water drainage strategy as now proposed, I am satisfied that it provides an appropriate, sustainable water management and drainage system to manage surface water run-off, compliant with the aims of Policy WAT5 and it provides adequate waste water infrastructure and foul water network capacity, meeting the aims of Policy WAT6. In terms of NDMP F8, having regard to the nature and scale of the proposal the scheme would comply in a proportionate way with its requirements to incorporate sustainable drainage systems to control flow rates and reduce runoff volumes.

Other matter: intentional unauthorised development

69. NDMP DM8(2) requires decision-makers to give substantial weight against granting retrospective planning permission or allowing an enforcement appeal if evidence shows the unauthorized development was done intentionally

⁹ ie the mere act of crossing the boundary without permission, whether by foot, water, etc may be sufficient to constitute a trespass.

70. This may be a significant change from the way in which the previous WMS was drafted. I disagree that this further strengthens the Council's position. The principle of the development is established long since. Inspector Sherratt took this matter into consideration before allowing the appeal in February 2020. That decision was challenged in the High Court in the Nixon case¹⁰ but that challenge did not succeed. In Nixon the court recorded that the Inspector:

*"took into account the fact that the development had taken place without permission, and thus was intentional unauthorised development, but that did not tip the balance against granting permission."*¹¹

71. The appeal before me is about an application to vary a condition retrospectively. It would not be appropriate to re-open the issue of intentional unauthorised development.

Planning balance

72. The Council's decision drew upon the updated advice received from the LLFA. Procedurally that is an entirely reasonable approach. I make no criticism of the exacting standards to which the Council and its advisors have adhered to, and I recognise that the NDMP policies are of critical importance to consider in any development where there are flood risk issues to consider. However, considering the evidence, including the nature and history of the site, it is important at this juncture not to place unnecessary and unreasonable obstacles in the way of implementing an otherwise generally robust and acceptable drainage solution.
73. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The key development plan policies for determining this appeal are those I have referred to above and in broad terms they are not materially inconsistent with the NPPF. The development would comply with the development plan as a whole. There are no other considerations that indicate that a decision should be made other than in accordance with the development plan. Therefore, I shall grant permission subject to conditions.

Conditions including whether retrospective nature of condition to be retained

74. In the s174 appeals decided as part of this decision letter, the planning merits were not reached, and the notices were upheld because they were not a nullity and ground (b) failed.
75. When it comes to considering the merits of the retrospective nature of condition 5, I find in the present circumstances it has limited utility. The families have occupied the site since 2019. I will not rehearse the personal circumstances that may be brought to bear, that militate strongly against the consequences of following through on such a condition. They include that the families would have to be removed from the site which would then have to be cleared and the 2020 permission would have no beneficial effect.
76. The present position does not demand a retrospectively styled condition. I will impose that suggested by the appellants but without such a clause. The Council

¹⁰ Emma Nixon v Secretary of State for Housing, Communities and Local Government and CO/1012/2020 East Hertfordshire District Council v Secretary of State for Housing, Communities and Local Government [2020] EWHC 3036 (Admin).

¹¹ Paragraph 5 of the judgment.

has always had at its disposal a means of pursuing a breach of condition notice that bypasses any appeal processes and potentially results in prosecution for failure to comply with it. I will impose a condition that requires the appellant to implement the scheme within 6 months at the latest.

77. The Council's list of suggested conditions largely mirror those attached to the 2020 permission which is appropriate. For the reasons given in the appeal decision that granted the original permission, conditions are needed to restrict the use to gypsies and travellers meeting the current definition, to limit numbers of caravans on each pitch to no more than two, of which only one can be a static and to limit heavy vehicles on site.
78. There is agreement concerning the landscaping condition but for similar reasons it does not need to be retrospective, although separate conditions are needed to ensure permeable paving is put in place beforehand and to provide for replacement planting.
79. Conditions are also needed to restrict external lighting to ensure the development does not cause undue visual harm. The condition restricting permitted development does not require a tailpiece referring to applications; they can be made in any event.

Section 180 of the 1990 Act

80. Where planning permission is granted after the service of an enforcement notice for any development already carried out, the notice shall cease to have effect insofar as it is inconsistent with the permission. The effect of s180(1) is that the permission overrides the notice to the extent that the permission authorises what is enforced against.

Grahame J. Kean

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alan Masters	Counsel, One Pump Court
Peter Brownjohn	WS Planning & Architecture
Tom Quigg	Flume Consulting Engineers,
Timothy Mahoney	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Scott Stemp	Counsel, Landmark Chambers
Phillip Hughes	Planning Consultant
Katherine Waters	Technical Specialist LLFA
David Oncle	Principal Flood Risk Officer, LLFA
Kay Mead	Principal Planning Policy Officer
Nina Johnson-Marshall	Senior Planning Enforcement Officer
Neil Button	Development Management Team Leader

INTERESTED PARTIES:

Councillor Jones
Phil Hallwood
Teresa Harris

Annex 1 - List of persons who have appealed

Appeal Ref	Case Reference	Appellant		Comment
A	APP/J1915/C/26/3378191	Mr Timothy Mahoney	1 Park Hill View	Fee paid
B	APP/J1915/C/26/3378192	Christine Mahoney	2 Park Hill View	Gd (a) lapsed
C	APP/J1915/C/26/3378193	Mr Anthony Stokes	10 Park Hill View	Gd (a) lapsed
D	APP/J1915/C/26/3378195	Madison Clarke	4 Park Hill View	Fee paid
E	APP/J1915/C/26/3378196	Mr Daniel O'Reilly	3 Park Hill View	Fee paid
F	APP/J1915/C/26/3378197	Ms Heather Bryan	6 Park Hill View	Fee paid
G	APP/J1915/C/26/3378198	Dena Morgan	5 Park Hill View	Gd (a) lapsed
H	APP/J1915/C/26/3378199	Peter Donoghue	7 Park Hill View	Gd (a) lapsed
I	APP/J1915/C/26/3378200	Mr Thomas Doherty	8 Park Hill View	Gd (a) lapsed
J	APP/J1915/C/26/3378201	Julie O'Sullivan	9 Park Hill View	Gd (a) lapsed
-	6006221	Mr Timothy Mahoney & Traveller Group	Whole site	-

Annex 2 – Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: J003285-TD01 rev G - Proposed Site Plan; J003258/CD01 Rev 0 - Location Plan; A20042/0300 Rev P2 - Proposed Access; 811-L-01 – Landscaping; and 811-L-02 – Landscaping.
- 2) The site shall not be occupied by any persons other than gypsies and travellers, i.e. persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, and all other persons with a cultural tradition of nomadism or of living in a caravan, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 3) There shall be no more than 10 pitches on the site and on each of the 10 pitches hereby approved no more than 2 caravans shall be stationed of which no more than 1 caravan shall comprise a static caravan/mobile home.
- 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 5) Any works associated with condition 6 shall include the removal of all existing hardstanding unless evidence has previously been provided to demonstrate that any area of existing hardstanding is permeable.
- 6) Within 6 months of this decision, the layout shown on plan ref. J003285-TD01 rev G shall be implemented together with the landscaping shown on plan ref. 811-L-01 and 811-L-02.
- 7) Any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted shall be replaced, in the same position (or a position agreed by the Council) with a tree of the same species and a size to be agreed with the Council.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no sheds or amenity/utility buildings, or other buildings or structures, walls, fences or other means of enclosure other than those shown on the approved plans shall be erected on the site.
- 9) No external lighting, other than that in accordance with plan J003258/CD02 Rev F and the solar powered LED Light Specifications submitted shall be provided at the site the subject of this permission.
- 10) Within six months of the date of this decision the surface water and foul drainage scheme shown on Drawings 1333-6001, 1333-6101, 1333-6102, 1333-6103, 1333-6110 and 1333-6201 shall be implemented in accordance with the approved Plans. The drainage infrastructure shall thereafter be retained, operated and maintained in accordance with the submitted drainage maintenance and monitoring arrangements (as set out within document DMMD 01).